

European Pillar of Social Rights (EPSR): what effects on children's rights law and policy?

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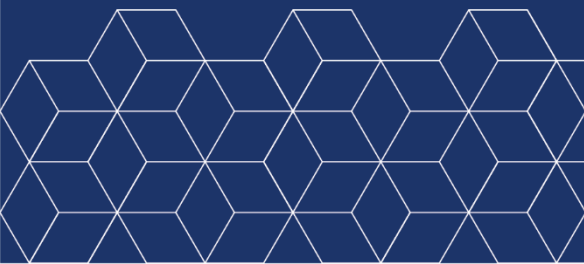
# WORKING PAPER

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## European Pillar of Social Rights (EPSR): what effects on children's rights law and policy?

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# European Pillar of Social Rights (EPSR): what effects on children's rights law and policy?

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*The views expressed in this paper are those of the authors and do not necessarily reflect those of INAPP.*

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## ABSTRACT

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# European Pillar of Social Rights (EPSR): what effects on children's rights law and policy?

In the last two decades, European Union's countries have been put under significant pressure by the 2007-2008 financial crisis and the more recent Covid-19 pandemic. As a result, social standards have generally worsened - thereby disseminating wide-spreading resentment among citizens. In this framework, the work examines the role of the Union in the improvement of Member States' social conditions through its social policy. In particular, it analyses the impact of the 2017 European Pillar of Social Rights and its Action Plan on children's rights and policy. To do so, section 2 provides an overview of the evolution of the European social policy; section 3 analyses the legal nature, powers and limits of both the Pillar and the Plan; section 4 presents the specific case of children law and policy, and assesses its evolution in the last four years in a multi-level perspective taking into account the example of Italy. Conclusions follow in section 5. Overall, the EU social policy appears to be a controversial field, with MS and several social partners showing reluctance to a major role for the Union in their public affairs. Nevertheless, although a European Social Unions still seems a long way off, there is currently a progressive change of attitude and a more open approach towards a multi-level sharing of competences in the field of social policy.

**KEYWORDS:** European social policy, children's rights, multi-level governance, social inequality

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## 1. Introduction

Since the 2007-2008 financial crisis, several politicians, academics, and journalists have been talking about a spreading *social crisis* in Europe. Generally, the decrease of the Gross Domestic Product (GDP), combined with increased unemployment – especially for the youth – was translated into a decline in real disposable income for families. In this respect, Ólafsson and Stefánsson (2019) built an index to measure the financial hardship of populations in 30 European countries based on three variables, i.e. income poverty, difficulties in making ends meet, material deprivation. They found that the most hit social groups were the middle class and the poorest, which were *squeezed* by globalization, advancing technologies and digitalization of work (Ólafsson and Stefánsson 2019, 27; Milanovic 2012). Member States (MS) were still struggling to cope with the aftermath of the crisis when, since the beginning of 2020, the Covid-19 pandemic put them under significant stress, and exacerbated the already existing social tensions which are still persistent nowadays (European Commission 2021). For instance, in the last decade, economic downturns, and the recent pandemic, have tendentially been translated into poorer working and social standards (Nolan 2014), and have given rise to wide-spreading resentment among citizens (Mukunda 2018; Bonotti *et al.* 2021).

In light of this, social policy has been recently gaining greater popularity in academia and policymaking, including at the European Union (EU) level. For instance, after a period of relative absence of the issue, the economic crisis had the merit to give it new salience, which led to a more proactive approach by EU institutions since 2015 – especially since the advent of Commission President Juncker. In particular, among the initiatives that had more potential, the President launched a European Pillar of Social Rights (EPSR) in 2017, which defined twenty principles guiding EU and MS' social policy. In 2021, his successor President von Der Leyen adopted the European Pillar of Social Rights Action Plan to give it concrete application and face the consequences of Covid-19. On the other hand, that was also the result of a different attitude of MS, which have been historically reluctant against EU's *intrusion* in their public affairs (Beaten 2013). However, some criticism has risen concerning its legal nature and implementability on the national level (Rasnača 2017), or, in other words, the concrete impact it can have on European and national social policy. In fact, the Pillar has been adopted through a simple Recommendation, and its Action Plan sets some macro-objectives that disregard state-specific backgrounds.

Given the framework, this working paper examines the historical meaning and effects that the EPSR and its Action Plan have had on EU and national legislation since 2017. To do so, section 2 provides an overview over the evolution of EU social policy, with the aim of understanding its relevance in an historical perspective. It further reconstructs the policy and consultation process behind it, thereby highlighting the controversies and focal points of the discussion among social partners. Then, section 3 analyses the legal nature, powers and limits of both the Pillar and the Plan, and draws the ground in which the initiatives have competence. Finally, section 4 presents the specific case of children law and policy, and assesses its evolution in the last four years in a multi-level perspective. In fact, it firstly reviews EU law evolution, and then considers the case of Italy to shed light on the implementation of the European social strategy on the national level. Conclusions follow in section 5. The paper mainly uses primary institutional sources, including formal statements from the main actors on the EU

landscape, as well as relevant European and national legal texts and policy documents. It additionally employs secondary sources, as academic or journalistic articles, to expand the general view and current understanding of the topic.

## 2. The European Pillar of Social Rights in perspective

From the 1950 Treaty of Paris until nowadays, EU social policy has taken different forms and has essentially evolved through four main stages (table 1). During the first period (1950-1992), some initial steps were taken towards employment protection of workers. Nevertheless, it was not until the 1997 Treaty of Amsterdam that the *social period* reached its peak (1992-2005), when employment promotion, and a fairer balance between social policy and monetary union began to be sought. By contrast, the 2005-2015 decade was marked by an initial absence and later questioning of social Europe, which was marked by the 2008 financial crisis. The rethinking of EU social policy of the last years finally gave rise to a new phase of revival opened with the adoption of the European Pillar of Social Rights (EPSR) in 2017 – whose actual implementation is still open to debate.

The initial phase (1951-1992) began with the signing of the Treaty of Paris, whose article 2 set the task of a common market “while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States” (EUR-Lex 1951, 6). In 1957, the Treaty of Rome provided the preliminary legal basis for social policy at EU level (Finn and Vaughan 2010, 10; EUR-Lex 1957). In particular, it established explicit legislative competence in areas such as the free movement of workers (articles 48-51), right of establishment (articles 52-58), and further defined the right to social security and non-discrimination in employment. It further founded the European Social Fund (ESF) and the Economic and Social Committee (ESC). As Finn and Vaughan (2010) argued, “many saw this as a fairly limited menu of social policy options as the then EEC was dedicated to the formation of a common market with social policies often playing a compensatory function in striving toward this goal” (ibidem, 4). The unbalance between monetary and social policy was addressed, at least in words, on 19 October 1972 in Paris. Here,

*[t]he Heads of State or Heads of Government emphasized that they attached as much importance to vigorous action in the social fields as to the achievement of the Economic and Monetary Union (CVCE 2013, 5).*

To achieve this goal, they invited institutions to define a social policy programme by 1974, which would make use of the ESF. Consequently, the Commission was instructed to draw a Social Action Programme, and important steps were taken especially in favour of gender equality (Council Directive 75/117/EEC and 76/207/EEC) (EUR-Lex 1975, 1976). In 1986, the Commission passed the Single European Act (SEA) under the Presidency of Jacques Delors, from the French Socialist Party. The President argued for a social dimension of European integration and therefore pushed for a revival of EU social policy. This happened for workers' occupational safety and health through Council Directive 89/391/EEC (EUR-Lex 1989) and the Community Charter of the Fundamental Social Rights of Workers (European Commission 1990). In 1992, a Protocol on Social Policy was attached to the Maastricht

Treaty, which included an Agreement on Social Policy, as well as a Protocol on Economic and Social Cohesion (European Union 1989, 93-97; EUR-Lex 1992).

**Table 1.** The Evolution of EU social policy (1950-2021) - main steps

Time-period	EU actions
<b>1) Initial phase (1950-1992)</b>	<b>1950</b> - Art. 2 Treaty of Paris
	<b>1957</b> - Arts. 48-58 Treaty of Rome
	<b>1972</b> - The Paris Summit
	<b>1974</b> - Social Action Programme
	<b>1975</b> - Directive 75/117/EC on equal pay
	<b>1976</b> - Directive 76/207/EEC on equal treatment
	<b>1986</b> - Single European Act
	<b>1989</b> - Charter of Fundamental Rights of Workers
	<b>1992</b> - Maastricht Treaty and Protocol on Social Policy
<b>2) Social period (1992-2005)</b>	<b>1993</b> - Council Directive 93/104/EC on working time
	<b>1997</b> - Amsterdam Treaty and Social Protocol
	<b>2000</b> - Lisbon Strategy and Open Method of Coordination
	<b>2000</b> - Charter of Fundamental Rights
<b>3) Absent EU social policy (2005-2015)</b>	<b>2007</b> - Lisbon Treaty incorporating the Charter
	<b>2010</b> - Europe 2020
<b>4) Revival of EU social policy (2015-present)</b>	<b>2017</b> - President Juncker, "Triple A Social Europe"
	<b>2017</b> - European Pillar of Social Rights
	<b>2021</b> - Action Plan and Porto Summit

Source: Authors' elaboration

The *social period* (1992-2005) was the outcome of the criticism against the Maastricht Treaty. Indeed, leftist parties, trade unions, NGOs and academics argued that, despite the efforts of Delors, the Treaty was unbalanced, as too little attention was given to social policy compared to monetary union measures. This led to the adoption of the European Employment Strategy in 1997 (EUR-Lex 1997a). This inaugurated a new approach to social issues which was no longer based on legislative harmonisation, but rather on convergence towards best practices (Pochet 2020, 15). It was later adopted and made legally binding through the Employment chapter in the Amsterdam Treaty (EUR-Lex 1997b). While Member States had primary responsibility to coordinate and implement policies, the Community's contribution relied on "encouraging cooperation between Member States and by supporting and, if necessary, complementing their action" (article 109p) (EUR-Lex 1997b, 33). More widely, the Treaty broadened EU competencies in gender equality from the issue of pay to all labour force issues, as well as in health and safety to all working conditions (Liebfried 2005). Another decisive

step was the adoption of the Lisbon Strategy in 2000 as a new mode of governance for social issues (Pochet 2020, 18). That through the launching of an Open Method of Coordination (OMC) based on the definition of guidelines, indicators, targets, and periodic monitoring on the national level. In fact, the OMC was conceived since its beginning as a decentralized approach involving different actors on different levels in line with the subsidiarity principle. In other words, a system of governance based on soft law rather than legally binding documents built on the model of EES and NAPs. Concretely, OMC processes have evolved differently depending on the policy in question (Zeitlin and Pochet 2005). In fact, as explained by Citi and Rhodes (2006), "there are in fact many new modes of governance as there are policy areas, each with their different histories, formats, procedures and rationales" (Citi and Rhodes 2006, 9). Gradually, OMC-type processes were extended to social inclusion (Nice Council 2000), pensions (Stockholm 2001) and healthcare (Gotenberg 2001). Nevertheless, unlike employment policy under EES and macro-economic policy under Broad Economic Policy Guidelines (BEPGs 2000) which were treaty-based, OMC in the social field is seen as having a more ambiguous legal and institutional status (Citi and Rhodes 2006, 467). To balance this ambiguity, the *Charter of Fundamental Rights* was adopted as a political declaration at the 2000 Nice European Council. The Charter was incorporated in the 2003 Draft Constitutional Treaty and, later, in the 2007 Lisbon Treaty – as the latter was not ratified following France's and Netherlands' national referenda in 2005.

In 2005, social policy disappeared from the EU political agenda, basically because of three factors (Pochet 2020). Firstly, EU enlargement to Central and Eastern European countries, as the *social dimension* was not an issue during the process, and "governments of almost all the new Member States made it clear that they were not in favour of binding European social rules and standards" (ibidem, 18). Secondly, another element concerned the political shift to the right on the national and EU level. In fact, between 2005 and 2010, MS were largely dominated by conservative, liberal or nationalist governments. *Inter alia*, Angela Merkel won the Federal elections in Germany, Silvio Berlusconi was in power in Italy and Jacques Chirac in France, soon to be replaced by Nicolas Sarkozy. Additionally, the European People's Party (EPP), grouping EU right-parties, gained 34,9% in the 2004 European elections, while Social and Democratic parties (S&D) gained 27,3%. The EU Commissions was led by Portugal's José Manuel Barroso, backed by a strong majority of centre-right commissioners. Thirdly, a major change of direction was marked by the EU Court of Justice's (CJEU) set of judgments (*Laval* and *Viking* cases ECJ 2007; *Rüffert* and *Luxembourg* cases ECJ 2008) affecting the principle of equal treatment of national and European workers, as the various judgements accepted the existence of competing social standards in time of pay, working time and conditions in the same territory for workers only temporarily working in another country, also known under the name of *posting workers* (Ghailani 2009).

The 2007-2008 financial crisis hit EU countries at a time EU social policy was staggering. As suggested by Begg (2008), the crisis uncovered the failure of the economic-financial system and mode of governance, and exacerbated the increase of inequalities, with GDP growth no longer resulting in an increase in collective well-being. However, as a positive result, the complex period relaunched national social policy debates, especially on employment promotion. On this line, the Commission launched *Europe 2020*, or the successor to the Lisbon Strategy, which considered the development of labour skills and the fighting of poverty two major strategic goals for the next decades. Nevertheless, in concrete terms, social policy was becoming less and less prominent: Natali (2012) examined the possibility of a disappearance of the social model, while Vanhercke (2011) wondered whether the



social dimension of Europe 2020 was an oxymoron. Afterwards, the banking crisis became a sovereign-debt one in 2010. In the attempt to avoid the collapse of the eurozone, a new type of governance was put in place, which was based on the key role played by the European Central Bank (ECB). In fact, the *Troika*, which was composed by the Commission, the ECB, and the International Monetary Fund (IMF), imposed its conditions of austerity on countries at risk of bankruptcy (Greece, Portugal, Spain, Ireland, Cyprus) (Degryse 2012). For some of those countries, this new governance meant a reduction in social standards (Degryse and Pochet 2012). For instance, in the ECB's strategy, social policy was an "adjustment variable for a monetary union without its own budget" (Pochet 2020, 23). As highlighted by, *inter alia*, Natali (2012), market efficiency was the priority on the EU level, social policies were left to MS. As a consequence, the EU was divided into two blocks: Germany, Austria, Benelux, Scandinavia and Poland coped sufficiently with the crisis, while Greece, Portugal, Spain, Ireland, Italy, the Baltic, Romania and Bulgaria largely suffered *austeritarianism*, or the almost obsession towards austerity measures (Hyman 2015).

Since 2015, the political landscape on the EU and national level has undergone some significant changes (Pochet 2020, 24). First, the Brexit campaign and vote was the result of a growing Eurosceptic sentiment instrumentalised by rising populist movements. These last have been able to give voice to the social needs of the vulnerable, while national politics has seen an unprecedented collapse of social democracy – i.e. Germany, Austria, France, Italy, the Netherlands and in Czechia. Furthermore, on the EU level, 2014 EP elections attested a gradual political shift towards Eurosceptic parties at the expense of EPP and S&D. In this context, EU institutions pushed for a reflection on the new role of the Union. In particular, the Commission President Jean-Claude Juncker – despite the centre-right leaning majority – launched the idea of a *Triple A Social Europe*, meaning the revival of EU social policy and the end of the Barroso austerity era. In this case, social rights' protection went hand in hand with the relaunch of European integration (Pochet 2020, 25). In his opening statement "A New Start for Europe. My Agenda for Jobs, growth, Fairness and Democratic Change" (Jean-Claude Juncker, Candidate for President of the European Commission, Strasbourg 15 July 2014), he publicly recognized the importance of a "social impact assessment" (Juncker 2014, 8) of any support and reform programme. In particular, he stated:

*The social effects of structural reforms need to be discussed in public. I am a strong believer in the social market economy. It is not compatible with the social market economy that during a crisis, ship-owners and speculators become even richer, while pensioners can no longer support themselves. (Juncker 2014, 8)*

Moreover, in 2015, the President published the report "Completing Europe's Economic and Monetary Union" (Juncker *et al.* 2017) in close cooperation with the then Presidents of the European Council, the Eurogroup, the European Central Bank (ECB) and the European Parliament (EP) – namely Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz. In their review, it was acknowledged that a strong monetary union was not possible if not supported by convergence and social cohesion among Member States (MS). In particular, the document stressed that "for EMU to succeed, labour market and welfare systems need to function well and in a fair manner in all euro area Member States" (ibidem, 8). In this context, he launched the idea of a European Pillar of Social Rights (EPSR) as part of

the effort for “a fair and truly pan-European labour market”, as outlined by President Juncker in his *State of the Union 2015* speech (Juncker 2015, 18). Specifically, he affirmed:

*I will want to develop a European pillar of social rights, which takes account of the changing realities of Europe's societies and the world of work. And which can serve as a compass for the renewed convergence within the euro area [...] This European pillar of social rights should complement what we have already jointly achieved when it comes to the protection of workers in the EU. I will expect social partners to play a central role in this process.”* (Juncker 2015, 18).

The EPSR was therefore the outcome of a new institutional awareness on the relevance of social policy in Europe, and was outlined through an unprecedented dialogue among institutions and social partners. In fact, according to the President, public legitimacy on the issue was a necessary first step to launch the Pillar. That because support from MS was necessary to undertake any significant step in EU social policy, considering the heterogeneity of interests of States and their general reluctance to EU's action in this sensitive policy-field (Crespy 2020; Baeten 2013). Therefore, a period of consultation of EU institutions and social partners was set up between 2016 and 2017. As outlined by the “Commission Staff Working Document. Report of the public consultation” (EUR-Lex 2017c) published in April 2017, the consultation was unprecedentedly far-reaching, involving beyond 2,500 participants in over 60 meetings (ibidem, 4). Stakeholders overall provided around 200 position papers, and the online questionnaire received 16,560 replies (ibidem, 5). They included citizens, Member States (MS), EU institutions, social partners, civil society groups and the European research community and international organizations (ibidem, 7). Overall, the consultation focused on the role and nature of the Pillar, including its purpose, scope, legal nature, and implementation (ibidem, 8-23). Currently, the Pillar is designed around three main chapters: *i. equal opportunities and access to the labour market; ii. fair working conditions; iii. adequate and sustainable social protection* (EUR-Lex 2017b). Each of them defines some policy domains to which some principles are attached – twenty in total (see figure 1). These latter derive from the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights and the case-law of the Court of Justice of the European Union (CJEU), the Social Charter adopted by the Council of Europe (CoE) and Recommendations from the International Labour Organization (ILO) (EUR-Lex 2016, 6).

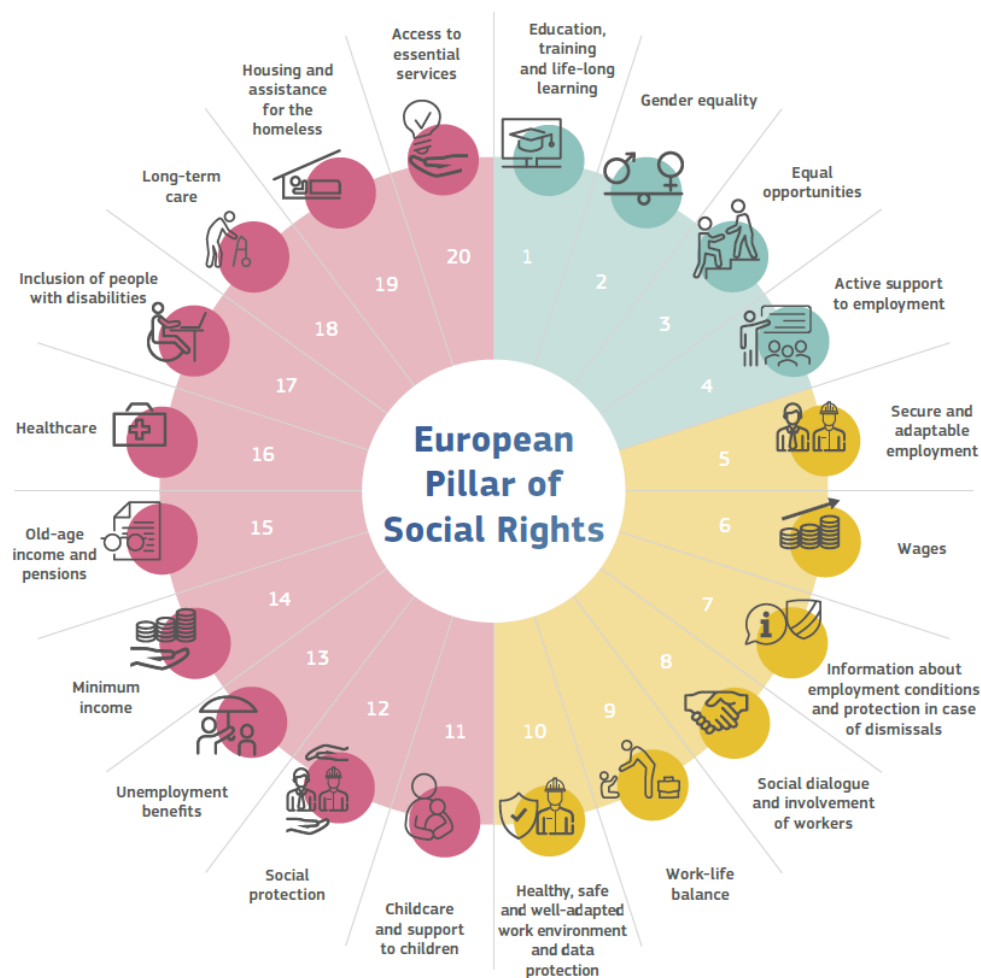
However, the Pillar does not only reiterate the EU acquis, but rather includes some inedited elements: the right to adequate minimum income benefits (principle 14), the right to fair wages (principle 6) and the rights to adequate social protection for the self-employed (principle 12) (Rasnača 2017). Furthermore, it adds new programmatic elements to existing hard law. For example, article 151 TFEU sets out that the EU and MS shall promote employment, while article 153 provides that the EU shall adopt minimum requirements and support MS efforts to integrate the persons excluded from the labour market. On its part, article 4 of the Pillar on Active support to employment provides that

*a. Everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search, training and re-qualification. Everyone has the right to transfer social protection and training entitlements during professional transition; b. Young people have the right to continued education, apprenticeship, traineeship or a job offer of good standing within 4 months of becoming unemployed or leaving education; c. People unemployed have the right to personalised, continuous and consistent*

support. The long-term unemployed have the right to an in-depth individual assessment at the latest at 18 months of unemployment. (EUR-Lex 2017b, 12).

Since the EPSR is not a simple combination of existing hard law deriving from the EU acquis, it is not intrinsically enforceable, but rather requires appropriate measures by European and national institutions to be implemented. To understand the concrete powers of the initiative, as well as the possible effects that it can have on MS, it is necessary to focus on its legal nature and the implementation instruments it has been invested by the Commission, as next section will examine.

**Figure 1.** The European Pillar of Social Rights



Source: European Commission 2021, COM(2021) 102 final <<https://bit.ly/3pgiFNI>>

### 3. Implementing the Pillar: legal nature and Action Plan

The legal nature and implementation of the Pillar were two widely discussed topics during the public consultation. As regards the first, the debate was primarily on the binding vs non-binding nature of the initiative. Namely, trade unions and NGOs supported the idea of a binding Pillar, while the majority of MS’ government representatives and employer organisations favoured the use of soft policy.

Furthermore, a better clarification between right and principles was demanded. Overall, stakeholders stressed the need for strong political commitment regardless of the final legal framework chosen. The final discussed point was the actual implementation of the Pillar. A strong position was

*[...] the need to respect the distribution of competences at EU, national and sub-national levels, subsidiarity, and the autonomy of social partners. The instruments deployed should reflect the primary responsibility of national governments and social partners in making social rights and principles operational on the ground (EUR-Lex 2017c, 16).*

Concerning the preferences for concrete instruments, government representatives favoured policy tools – European Semester, OMC, establishment of targets, monitoring, EU funds' employment, social dialogue – while trade unions and NGOs expressed their support for binding instruments and legislation update. What agreement did they find?

To clarify the nature of the proposal, it is important to start from the legal analysis of the instruments through which the Pillar was finally adopted. Namely, it was firstly launched on 26 April 2017 under the form of a Recommendation based on article 292 TFEU – as a Communication from the Commission gave notice (EUR-Lex 2017a). The Recommendation, according to article 288 TFEU, is an instrument that has no binding force on MS, and rather pertains to EU soft body of law. As an additional element, the *Communication* proposed an interinstitutional proclamation to adopt the Pillar, which was delivered on 13 December 2017 by the EU Parliament, Council and Commission (EUR-Lex 2017b). Although article 295 TFEU provides that interinstitutional agreements *may* be binding, the wording of EU bodies is clear: the Pillar is not adopted through agreement, but *proclaimed*, announced by institutions. In this sense, “the proclamation is an expression of political commitment by the proclaiming actors [...] and expresses political commitment to endorse the EPSR's principles” (Rasnača 2017). For instance, as emerged from the public consultation on the initiative, while NGOs and trade unions supported the idea of a binding Pillar,

*[...] national government representatives in a majority of Member States and employer organisations expressed their disagreement over the potentially prescriptive nature of the principles and favoured the use of soft policy (EUR-Lex 2017c, 14).*

Generally, EU competences are governed by the principles of *conferral* and *subsidiarity*, which are in their turn defined under article 5 TEU, which provides that

*2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. 3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (EUR-Lex 2012a, 18).*

Specifically, competence in social affairs is regulated by article 153 TFEU, stating that

*[...] the Union shall support and complement the activities of the Member States in the following fields: (a) improvement in particular of the working environment to protect workers' health and safety; (b) working conditions; (c) social security and social protection of workers; (d) protection of workers where their employment contract is terminated; (e) the information and consultation of workers; C 326/114 EN Official Journal of the European Union 26.10.2012 (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5; (g) conditions of employment for third-country nationals legally residing in Union territory; (h) the integration of persons excluded from the labour market, without prejudice to Article 166; (i) equality between men and women with regard to labour market opportunities and treatment at work; (j) the combating of social exclusion; (k) the modernisation of social protection systems without prejudice to point (c). (EUR-Lex 2012b, 114-115).*

The areas of competence therefore include those covered by the three chapters of the Pillar – *i. equal opportunities and access to the labour market; ii. fair working conditions; iii. social protection and inclusion* (EUR-Lex 2017b). In particular, under article 153 TFEU, directives can be adopted by the EU Parliament and Council through ordinary legislative procedure on *i.*, *ii.* and *iii.*; and by the Council acting unanimously with a special legislative procedure, after consulting the Parliament, on *iii.* The provisions shall exclude “any harmonisation of the law and regulations of the Member States” (EUR-Lex 2012b, 115), shall not affect their “financial equilibrium” or apply to “pay, the right of association, the right to strike or the right to impose lock-outs” (ibidem, 116). However, despite EU room for manoeuvre, MS have been traditionally reserved about accepting European intervention in their social policy, and their *primary responsibility* has often outweighed and obscured European shared competence in social policy (Baeten 2003). This was also the case for the Pillar, as a strong point coming from the consultation was

*[...] the need to respect the distribution of competences at EU, national and sub-national levels, subsidiarity, and the autonomy of social partners. The instruments deployed should reflect the primary responsibility of national governments and social partners in making social rights and principles operational on the ground. (EUR-Lex 2017c, 16).*

As a result of this political (un)willingness, the Pillar provides that, for the principles to be legally enforceable, they first require “dedicated measures or legislation to be adopted at the appropriate level” (EUR-Lex 2017b, 11). In particular, as clarified by the EU Parliament, Council and Commission

*Delivering on the European Pillar of Social Rights is a shared political commitment and responsibility [...] At Union level, the European Pillar of Social Rights does not entail an extension of the Union's powers and tasks as conferred by the Treaties. It should be implemented within the limits of those powers. [...] In particular, the establishment of the European Pillar of Social Rights does not affect the right of Member States to define the fundamental principles of their social security systems and manage their public finances, and must not significantly affect the financial equilibrium thereof. (EUR-Lex 2017b, 12).*

Thus, EU institutions could have played a more significant role within the EPSR project, but it was soon clear that MS would have rejected such a deal. Aware of the difficulties for individual countries to

implement the principles, on 4 March 2021, the Commission proposed a European Pillar of Social Rights Action Plan to give the Pillar concrete application through a set of macro-objectives that should be met by 2030 (EUR-Lex 2021a), which were later publicly endorsed in Portugal in May 2021. The need for its actual implementation ended up being a priority during Covid-19.

The current pandemic has exposed European countries to significant changes in economy, welfare, and people's social life. Namely, according to the European Centre for the Development of Vocational Training (Cedefop), almost 7 million EU jobs will be lost or not created due to the pandemic over the period 2019-22 (Cedefop 2021). Additionally, population percentage at risk of poverty has been increasing in several EU countries, including in Italy, France, Portugal, Greece, Ireland, Sweden, Austria and Bulgaria (Eurostat 2021). In this context, the actual implementation of the EPSR is more necessary than ever. In current Commission President von der Leyen's words:

*As we overcome the pandemic, as we prepare necessary reforms and as we speed up the twin green and digital transitions, I believe it is time to also adapt the social rulebook. A rulebook which ensures solidarity between generations. A rulebook that rewards entrepreneurs who take care of their employees. Which focuses on jobs and opens up opportunities. Which puts skills, innovation and social protection on an equal footing. (Von der Leyen 2021).*

On 14 January 2020, the Commission committed to launch an Action Plan in early 2021 to support the Pillar through the Communication on a Strong Europe for Just Transitions (EUR-Lex 2020). It invited EU institutions and bodies, Member States, regions, civil society organisations and think tanks to share their views by November 2020. As the Report on the consultation points out (EUR-Lex 2021b), the Commission received 1041 written contributions and organised 23 high-level webinars in EU Member States. Discussions addressed the most urgent social priorities, attached concrete proposals, as well as the instruments and strategies for their implementation. Each EPSR principle was analysed and considered in these terms.

The Plan was launched by a Commission *Communication* on 4 March 2021 (Eur-Lex 2021a). It set out a number of EU actions that the Commission will be committed to take during its mandate and put three EU-level targets to be achieved by 2030 aimed at steering national policies and reforms. As regards the latter, the first objective expects at least 78% of the population aged 20 to 64 to be in employment by 2030. Furthermore, to halve the gender employment gap, increase the provision of formal early childhood education and care (ECEC), and decrease the rate of young people neither in employment, nor in education or training (NEETs) aged 15-29 from 12.6% to 9% (ibidem, 6). The second target foresees at least 60% of all adults participating in training every year. That should go hand in hand with the possession of basic digital skills for at least 80% of the population aged 15-74, and the reduction of early school leaving. Currently, only 37% of adults were participating in training in 2016, and 10.2% of young people left school in advance in 2019 (ibidem, 6). Thirdly, the reduction of people at risk of poverty or social exclusion by at least 15 million by 2030. For instance, in 2019, 91 million people were at risk of poverty or social exclusion in the EU, out of which 17.9 million were children aged 0-17 (ibidem, 7). The launch of the targets run in parallel with the revision of the Social Scoreboard. Namely, several headline indicators were added: adult participation in learning during the last 12 months; at-risk-of-poverty rate or exclusion for children (0-17); disability employment gap; housing cost overburden (EUR-Lex 2021c).

Beyond that, the Plan defined some goals and the specific steps to be taken to reach them. Concretely, the creation of job opportunities in the real economy; the evolution of work standards; the improvement of occupational safety and health standards; the protection of labour mobility; investing in skills and education; promoting health and ensuring care. For example, in the case of jobs' creation, the Commission committed to review the Quality Framework for Traineeships; update the Industrial Strategy for Europe; adopt an Action Plan on the Social Economy; evaluate the Support to mitigate Unemployment Risks in an Emergency (SURE) by 2022. Furthermore, it encouraged MS to design packages to promote Effective Active Support to Employment (EASE) and reinforce the Youth Guarantee (EUR-Lex 2021a, 11). Nevertheless, what is important to remember is that the Action Plan is similar to the EPSR in terms of legal nature and distribution of competences. In fact, it was released under the form of a Communication, which, under article 295 TFEU, is not binding. Therefore, the steps the Commission will undertake are programmatic promises that lie on probability. Moreover, the concept of subsidiarity is still very present. As the Plan affirms in reference to the three headline targets, "the majority of the instruments for achieving them are competence of the Member States" (EUR-Lex 2021a, 6). In this sense, the Commission encourages MS to plan a variety of actions and implement EU instruments and suggestions to bring the goal closer – but there is no certainty MS will do so. Considering the need for a strong national commitment in lack of binding decisions, the Commission launched the Porto Social Summit in May 2021. EU leaders, institutions, social partners and civil society organizations met in Portugal to reinforce their adherence to the three headline targets proposed by the Action Plan. They furthermore called on the European Council to endorse the three goals, and on MS to set appropriate national targets (Presidency of the Council of the EU 2021). Doubts remain on MS capacity of implementation and, as a consequence, on the concrete impact of the EPSR and its Action Plan on EU social acquis and national social policy. Section 4 will analyse the significance of the two initiatives for minors' rights on the EU and national level.

#### **4. Children's rights law and policy: the role of the EPSR**

European children's rights law is focused on primary sources of law, as well as key policy documents, guidelines or other soft-law instruments. The former lie on treaties, conventions, secondary legislation and case law introduced by the Council of Europe (CoE) and the EU (European Union Agency for Fundamental Rights and Council of Europe 2015). Although there is no single and common definition of *child* in EU law, the reference is usually made to article 1 of the Convention on the Rights of the Child (CRC) (United Nations 1989), which establishes that "a child means every human being below the age of eighteen years" (*ibidem*, 2). Overall, the EU moved from a sectoral approach to a recent more coherent body of law and instruments. In fact, children's rights were initially developed in relation to specific blocks, *i.e.* the free movement of persons, while now build on three building stocks: the Charter of Fundamental Rights, the EU Treaties and the two overarching Commission Communications, namely the 2006 Communication, Towards an EU Strategy on the rights of the child, and the 2011 EU Agenda for the rights of the child (European Parliamentary Research Service 2019). Generally, the EU does not have competence in the area of fundamental rights, including children's rights protection (EUR-Lex 1996). However, article 6 TEU establishes that the EU must respect fundamental rights, including children's ones, which does not only imply a duty to avoid violating

them, but also to take action to implement them within the powers and limits set by the Treaties (article 153 TFEU), namely conferral and subsidiarity (article 5 TEU).

In 1989, the CRC was the first international instrument to explicitly recognise children as human beings with innate rights. It was ratified by 197 countries, including EU MS, and it is now considered the “landmark treaty on children's rights, outlining universal standards for the care, treatment, survival, development, protection and participation of all children” (European Parliamentary Research Service 2019, 1). While this was not the case for the 1992 *Treaty of Maastricht*, which only generally referred to fundamental rights, the 2000 *European Charter of Fundamental Rights* gave a significant boost to EU children law. In particular, article 24 states

*1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.* (EUR-Lex 2012c, 9).

Additionally, article 14 recognizes the right to education of children, article 21 prohibits any discrimination based on age, while article 32 prohibits child labour and requires the protection of young people at work. The 2007 Treaty of Lisbon not only gave the Charter the same legal status as the Treaties, but also made the respect for fundamental rights as EU core value (article 2 TEU) and explicitly introduced the objective to protect children's rights both in its internal and external policy (article 3 TEU).

In 2006, the Commission launched the Communication Towards an *EU strategy on the Rights of the Child* (EUR-Lex 2006), which was an important step for the homogenisation of minors' body of EU law. It firstly acknowledged the need for concrete measures by EU institutions, and secondly established some specific objectives, such as “mainstreaming children's rights in EU actions” (ibidem, 8), which is the process that ensures that

*[...] all internal and external EU policies respect children's rights in accordance with the principles of EU law, and that they are fully compatible with the principles and provisions of the UNCRC and other international instruments* (EUR-Lex 2006, 8)

To this end, the Commission published in 2011 the *EU Agenda for the rights of the child* (EUR-Lex 2011), which was aimed at promoting a minors' law perspective in all relevant policy fields. Four priority areas were identified, namely child-friendly justice, vulnerable categories of children, minors in the European external action and child participation. That through cooperation with the relevant stakeholders, evidence-based policy making and children's rights protection's prioritization. In 2013, the Commission further adopted the Recommendation *Investing in children: breaking the cycle of disadvantage* (EUR-Lex 2013), which had the goal to “organise and implement policies to address child poverty and social exclusion, promoting children's well-being, through multi-dimensional strategies” (EUR-Lex 2013, 2). In particular, it identified three pillars: *i. access to adequate resources*, meaning



supporting parents' employment and ensure the family adequate standards of living; *ii. access to affordable services* by reducing inequalities, investing in education, healthcare and housing; *iii. promoting children's right to participate* in play, sport, cultural activities and in decision-making affecting their lives. That through the improvement of multi-level governance, cooperation among relevant actors and the full use of available instruments and funds.

Principle 11 of the EPSR under the chapter on social protection and inclusion explicitly refers to childcare and support to children, and provides that

*a. Children have the right to affordable early childhood education and care of good quality; b. Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.* (EUR-Lex 2017b, 14).

While paragraph *a.* does not concretely add new material, paragraph *b.* transforms previous Communications and Recommendations into an operational principle. However, it is the Action Plan that tries to implement it through some programmatic steps to achieve. In particular, the Commission here encourages MS to "provide accessible and affordable education and care to all young children across Europe in line with the *Council Recommendation on High Quality Early Childhood Education and Care Systems*" (EUR-Lex 2021a, 21). It then plans to review and update the 2018 Barcelona targets on early childhood education and care (EUR-Lex 2018). Finally, it projects to propose an EU Strategy on the Rights of the Child and a Council Recommendation establishing the European Child Guarantee. The former was adopted in March 2021 by the von der Leyen Commission and set seven goals that required both EU and country-level action – participation in democratic life, inclusion, combating violence, child-friendly justice, safe internet, protection in external policy, and mainstreaming (EUR-Lex 2021d). Specifically, for the aim of socio-economic inclusion, the Commission proposed the Child Guarantee, which was proposed in March and adopted by Recommendation in June 2021 (EUR-Lex 2021e) to "prevent and combat social exclusion by guaranteeing access of children in need to a set of key services" (ibidem, 16). Here, the Commission invited MS to firstly identify children in need, and then guarantee for them free access to education, healthcare, housing and nutrition. To those ends, investment is crucial, and should make full use of available investments, including the European Social Fund Plus, the European Regional Development Fund, REACT-EU, Invest-EU, the Recovery and Resilience Facility and the Technical Support Instrument. Cooperation with EU institutions mainly addresses monitoring and mutual learning strategy. On this point, the Action Plan introduced some new headline and secondary indicators, namely "at-risk-of-poverty rate or exclusion for children (0-17); median at-risk-of-poverty gap; children from age 3 to mandatory primary school age in formal childcare" (EUR-Lex 2021c, 2).

Thus, EU has shared competence in social policy, and usually acts by Recommendations and Communications, which are not binding and are framed on the basis of the subsidiarity principle. Therefore, the question remains on the ability of the EPSR and its Action Plan to concretely have an impact on national policies, including for children's rights. Next paragraph will analyse the effect of latest EU developments in minors' protection policy in a specific country, i.e. Italy.

To understand the impact of the EPSR and its Action Plan on Italian children's rights law and policy, this section will analyse the *5° Piano di azione e di interventi per la tutela dei diritti e lo sviluppo dei soggetti in età evolutiva* (5<sup>th</sup> Action and intervention plan for the protection of rights and the

development of subjects in developmental age), which was published in May 2021 by the Department for family policy of the Presidency of the Council of Ministers (Presidenza del Consiglio dei ministri 2021). The Plan is published each five years, and for that reason it will be additionally compared to the one previously adopted in 2016 in order to observe whether there has been an evolution in policy terms. As clarified by the introduction, by *impact* it is here meant the evolutionary effect – whose direction and intensity is to be assessed – of EU social policy, particularly the EPSR, on Italian minors' law and policy. That can be in terms of agenda, law or policy-instruments harmonization among the EU and national level.

**Table 2.** Main points from the 5<sup>th</sup> Italian Action and intervention plan for the protection of rights and the development of subjects in developmental age

<i>Policy-Area</i>	<i>Objectives</i>	<i>Actions</i>
<b>Education</b>	<ul style="list-style-type: none"> <li>- Right to education</li> <li>- Mental and physical health</li> </ul>	<ul style="list-style-type: none"> <li>- Increasing 0-6 school offer</li> <li>- Increasing mental-support services</li> <li>- Reinforcing cyberbullying-contrast activities</li> <li>- Education on sexuality and gender</li> </ul>
<b>Inclusion</b>	<ul style="list-style-type: none"> <li>- Reducing minors' poverty</li> <li>- Equality of opportunities</li> <li>- Equal access to services</li> <li>- Protection from violence</li> </ul>	<ul style="list-style-type: none"> <li>- Revision of anti-poverty measures for children</li> <li>- Extension of school lunch service</li> <li>- Incentives for digitalization</li> <li>- Intervention against abuse</li> <li>- Monitoring activities</li> </ul>
<b>Empowerment</b>	<ul style="list-style-type: none"> <li>- Participation for children</li> </ul>	<ul style="list-style-type: none"> <li>- Ideate, implement and monitor new forms of active participation</li> </ul>

Source: Authors' elaboration from the 5<sup>th</sup> Italian Action Plan <<https://bit.ly/3ru6Bap>>

First of all, the 5<sup>th</sup> Italian Plan for children indicates both the 2021-2024 EU Strategy on the Rights of the Child and the Child Guarantee as integral parts of its legal reference framework (ibidem, 19-22). The Italian *Osservatorio per l'infanzia e l'adolescenza* (Observatory for childhood and adolescence) carries out monitoring activities on the national and local level on the basis of EU and international principles – namely the CRC. Although there is no direct reference to the EPSR and its Action Plan, the Strategy and the Guarantee are however two initiatives that directly derive from them. In terms of content, the Plan defines three macro-areas that are in line with EU agenda: education, inclusion and empowerment policies. Each area has some sub-categories and at least ten actions to implement in order to obtain the goal. In their turn, each action has a general and specific objective, it defines the actors to be involved, the instruments and resources to be used, the time-period and some indicators to assess the input, process and output. Concrete actuators usually are on the local level, which are invested, *inter alia*, of the funds coming from the EU – especially Next Generation Funds. Overall, the strategy follows EU guidelines and is focused on the implementation of nursery schools on the territory, especially in the South; the revision of the instruments employed to combat child poverty and exclusion, especially through the extension of school hours and incentives for digitalization; greater intervention against child-violence, both physically and online; the fostering of democratic participation of children; the increase of monitoring activities. Compared to the 4<sup>th</sup> Plan published in 2016, the former lacks a clear reference to the EU framework – which was however in progress at the

time. Furthermore, the Plan only present four objectives, *i.e.* anti-poverty measures, better quality education, inclusion and support for parenting. Indicators and EU resources are generally absent. Overall, despite the EPSR and its Action Plan being soft-law instruments, it can be seen in the Italian case that, at least in agenda-setting terms, the two initiatives have had an impact on the definition of national strategies. That is true for the principles and contents adopted, as well as the methodology based on monitoring and the use of EU funds. However, future research should observe whether national institutions are capable of translating macro-objectives and plans into reality, which still is a responsibility and primary competence of national institutions, and especially local in the Italian case.

## 5. Concluding remarks

This working paper has examined the meaning and impact of both the EPSR and its Action Plan on the EU and national legislation since 2017. Section 2 has provided an overview of EU social policy evolution, and has identified four different phases: in the first period (1951-1992), some initial steps were taken towards employment protection, although social issues were not at the centre of the debate. They became relevant starting from 1992, when criticism on the unbalance between monetary union and social policy in the Maastricht Treaty gave rise to a new age of revival and employment promotion (1992-2005). This phase reached its peak in 1997 with the Amsterdam Treaty, which inserted a Social Protocol in TEU, thereby making social rights and duties binding for MS. Acknowledging the limits of hard law, in 2000 the Lisbon Strategy inaugurated a new mode of soft and multi-level governance based on the Open Method of Coordination, whose implementation has not been generally accomplished among MS. A more difficult decade for EU social policy began in 2005 with the enlargement to Central Eastern countries, which was followed by the 2008 financial and the 2010 sovereign debt crisis – giving rise to a phase of austerity that consistently damaged social standards in Europe, especially in most fragile areas. The later questioning of *austeritarianism* and the rising popularity of left-wing parties in 2013 finally gave rise to a new period for EU social policy which was crowned in 2017 through the adoption of the EPSR. The latter was the result of an unprecedented consultation among social partners. Over 2,500 participants in over 60 meetings were involved, and included citizens, Member States, EU institutions, social partners, civil society groups and the European research community, as well as IOs.

Section 3 has shed light on the legal nature and implementability of the two initiatives. Namely, the instruments employed for their adoption – Recommendation, Interinstitutional Proclamation and Commitment – are non-binding and exercise little power on MS. Moreover, the role of the Union is almost obscured and overshadowed by the subsidiarity principle and the primary responsibility of MS. Both the employment of soft-law rather than hard-law measures and the unbalanced interpretation of subsidiarity in favour of MS were strong and undiscussed points coming from public consultation. Therefore, although a major edge could have been attached to the Pillar - based on EU competences on the matter - the burden of political unwillingness towards EU *intrusion* in national social affairs has partially arrested the *impetus* started with the Juncker Commission in 2014.

Section 4 has examined the concrete impact of the EPSR and its Action Plan on children's rights law and policy at the EU and national level – taking into account the case of Italy. What emerges from the analysis is that the European *acquis* for minors is based on three blocks, namely the Charter of

Fundamental Rights, the EU Treaties and two Commission Communications – the 2006 Towards an EU Strategy on the rights of the child, and the 2011 EU Agenda for the rights of the child. The EPSR has not concretely added much new, while the Action Plan has boosted the process towards the 2021 EU Strategy on the Rights of the Child and the European Child Guarantee. In Italy, the *5° Piano di azione e di interventi per la tutela dei diritti e lo sviluppo dei soggetti in età evolutiva* does not explicitly refer to the EPSR, but it nonetheless cites the 2021 Strategy and Youth Guarantee as the legal reference framework. Therefore, at least in agenda-setting terms, it seems that the initiatives have had an impact on national policymaking, although it is still soon to affirm with certainty whether policy-objectives will be translated into concrete actions and results.

Overall, the EU social policy appears to be a controversial field, with MS and several social partners showing reluctance to a major role for the Union in their public affairs. However, the 2008 financial crisis and Covid-19 have probably contributed to a change of attitude, and there is currently a more open approach towards a multi-level sharing of competences. Despite this, the way towards a Social EU still seems a long way off, and the EPSR and its Plan are still soft-law instruments excessively relying on the subsidiarity principle. The legitimate question is whether these initiatives, being as they are, can have a concrete impact on EU and MS law. It has been discovered that, in the case of children's rights, they pushed for a slight evolution on the EU level, while Italy only implemented them in terms of agenda-setting. Much has still to be done in order to grant social rights to all, regardless of origin, age and gender. The EU has been trying to row in this direction, but some more courageous steps need to be taken, especially thanks a more proactive attitude from MS in the sharing of their competences in the field.

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