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**Establishing a European Pillar of Social Rights**

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## Introduction

The European Pillar of Social Rights sets out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems. Together, these principles and rights set out an ambitious agenda for better-performing economies and more equitable and resilient societies. The goal is to foster a renewed process of convergence towards better working and living conditions across Europe. In this context, the European Pillar of Social Rights is about delivering new and more effective rights for citizens, addressing emerging social challenges and the changing world of work in light of, notably, emerging types of employment deriving from new technologies and the digital revolution. These principles and rights cover the areas of employment, social protection, social inclusion, education and equal opportunities.

The Pillar builds on the body of law which exists at EU and international level. In particular, the Pillar draws on the 1989 Community Charter of the Fundamental Social Rights of Workers, the European Social Charter of 1961, the Revised European Social Charter of 1996 and the European Code of Social Security of the Council of Europe. The Principles also take account of the relevant International Labour Organization (ILO) conventions, recommendations and related protocols, and the United Nations Convention on the Rights of Persons with Disabilities. At the same time, the EU social *acquis* has also developed over the last 30 years, through new provisions in the EU Treaties, the adoption of the Charter of Fundamental Rights of the European Union, new legislation and the case law of the Court of Justice of the European Union. More recently, the adoption of the UN Sustainable Development Goals for 2030 has provided a new agenda to address poverty eradication and the economic, social, solidarity and environmental dimensions of sustainable development in a balanced and integrated manner.

This document follows the structure of the three chapters of the European Pillar of Social Rights detailing the contents of each principle or right. Each one of these is presented in three main sections, covering the existing social *acquis*, an explanation of its content and scope, and suggestions with regard to its implementation.

### *The Union acquis*

For each principle or right, the first part of this document outlines the Union social *acquis*, starting with the relevant provisions of the Charter of Fundamental Rights of the European Union, and recalling the legislative powers and their limits set out in the Treaty on the Functioning of the European Union (TFEU). It concludes by recalling the key legislative and non-legislative measures already in place which are contributing to the implementation of the principle or right in question.

This section is not exhaustive as it presents the most relevant instruments, both legally binding measures and Council or Commission recommendations providing guidance.

For the record, when the Charter of Fundamental Rights of the European Union is referred to, it is important to recall that the provisions of this Charter are addressed to the institutions, bodies,

offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.

### *Principles and rights of the Pillar*

The Pillar renders the principles and rights contained in binding provisions of Union law more visible, more understandable and more explicit for citizens and for players at all levels. Moreover, for some particular areas, the Pillar adds new elements to the existing *acquis*. This is explained in detail in the second section.

The principles and rights enshrined in the Pillar are addressed to Union citizens and legally residing third country nationals in Member States, regardless of their employment status, as well as to public authorities and social partners.

### *Implementation*

Given the legal nature of the Pillar, these principles and rights are not directly enforceable and will require a translation into dedicated action and/or separate pieces of legislation, at the appropriate level. This is explained in the third part of this document, which addresses how each principle or right could be effectively implemented by Member States and the social partners, which have the primary responsibility for making social principles and rights operational on the ground. Additionally, this section outlines how the Union actions would contribute to implementing the Pillar.

The European Semester, the annual cycle of economic policy coordination, has been and remains an important vehicle to monitor closely developments at EU and Member State level, and promote targeted reforms according to national specificities covering the wide span of the Pillar, from education, training and life-long learning to active support to the unemployed, wages, childcare, social protection and minimum income or the pension and health care systems. The euro area and country analysis and recommendations will reflect and promote the development of social rights, by assessing, monitoring and comparing the progress towards their implementation. Benchmarking will be progressively conducted for a limited set of areas particularly relevant for the functioning of the euro area, such as employment protection legislation, unemployment benefits, minimum wages, minimum income and skills.

The European Structural and Investment Funds will support the implementation of the European Pillar of Social Rights. In particular, the European Social Fund, as well as other key initiatives for social cohesion such as the Youth Employment Initiative, the European Globalisation Fund and the Fund for European Aid to the Most Deprived, will play a key role in the follow-up to the Pillar. The Pillar will also play a role in the design of the post-2020 programming period.

Turning the principles and rights enshrined in the Pillar into reality is a shared commitment and responsibility between the Union, its Member States and the social partners, acting in line with the distribution of competences set by the Union Treaties and taking into account the principles of

subsidiarity and proportionality, sound public finances and the respect of the autonomy of the social partners.

Nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting principles and rights as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter of 1961 and the relevant ILO Conventions and Recommendations. The implementation of the Pillar can be reinforced by the ratification of relevant ILO conventions, the Revised European Social Charter of 1996 and its Additional Protocol Providing for a System of Collective Complaints.

The involvement of the social partners is also central to the delivery of social rights. The promotion of dialogue between management and labour is enshrined as a common objective of the Union and its Member States in Article 151 TFEU. At Union level, in the policy domains covered by Article 153 TFEU, social partners are to be consulted in accordance with Article 154 TFEU and may request implementation of their agreements at Union level in accordance with Article 155 TFEU. Social partners may support the implementation of the Pillar via collective bargaining at national level and/or by collecting and exchanging good practices across Europe.

In addition, civil dialogue at both national and Union level is vital for broadening participation in policy-making and further mobilising social actors to help deliver the principles and rights of the Pillar. Civil dialogue involving civil society organisations allows for a range of civic stakeholder interests to be represented and reinforces the transparency, accountability and legitimacy of public decisions.

The Pillar should be implemented according to available resources and within the limits of sound budgetary management and Treaty obligations governing public finances. In particular, the establishment of the Pillar does not affect the right of Member States to define the fundamental principles of their social security systems and should not affect the financial equilibrium thereof.

# Chapter I – Equal opportunities and access to the labour market

## Education, training and life-long learning

**Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 14 of the Charter gives everyone the right to education and to have access to vocational and continuing training. This right includes the possibility to receive free compulsory education.

#### *b) The legislative powers and their limits*

According to Article 165 of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to contribute to the development of quality education by encouraging policy cooperation between the Member States and, if necessary, by supporting and implementing their action while fully respecting the responsibility of the Member States for the content of teaching and their cultural and linguistic diversity. Article 166 TFEU empowers the Union to implement a vocational training policy which supports and supplements the actions of the Member States while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

#### *c) Existing measures*

Council Recommendation of 22 April 2013 on establishing a Youth Guarantee<sup>1</sup> calls on Member States to ensure that all young people under the age of 25 years receive an offer of employment of good quality, continued education, an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education.

Recommendation 2006/962/EC of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning<sup>2</sup> identifies the knowledge, skills and attitudes for personal fulfilment, active citizenship, social cohesion and employability.

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<sup>1</sup> Council Recommendation of 22 April 2013 on establishing a Youth Guarantee, OJ C120, 26.4.2013, p.1.

<sup>2</sup> Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning OJ L 394, 30.12.2006, p. 10.

Council Recommendation of 28 June 2011 on policies to reduce early school leaving<sup>3</sup> invited the Member States to develop comprehensive strategies to support young people in completing upper secondary education and to achieve the Europe 2020 headline target on reducing the rate of early school leaving to less than 10% by 2020.

Recommendation 2006/143/EC of the European Parliament and of the Council of 15 February 2006 on further European cooperation in quality assurance in higher education identifies actions that could be taken at national and EU level to support the development and accreditation of high quality higher education.

Recommendation 2009/C 155/01 of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training<sup>4</sup> provides common tools for the management of quality to promote better vocational education and training.

Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning<sup>5</sup> sets out a basis for measuring educational achievement based on learning outcomes. Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning<sup>6</sup> calls on the Member States to provide arrangements to identify, document, assess and certify learning outcomes leading to a qualification.

The New Skills Agenda for Europe<sup>7</sup>, adopted in June 2016, launched a number of actions to improve the quality and relevance of skills formation, make skills more visible and comparable, and improve skills intelligence. These include the Council Recommendation of 19 December 2016 on Upskilling Pathways: New Opportunities for Adults<sup>8</sup> which calls on the Member States to offer adults support for acquiring a minimum level of literacy, numeracy and digital competence and for progressing towards a secondary qualification and the blueprint for sectoral cooperation on skills.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The European Pillar of Social Rights sets out a general right to education and training throughout life. It goes further than Article 14 of the Charter of Fundamental Rights of the European Union by focusing on quality and inclusiveness.

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<sup>3</sup> Council Recommendation of 28 June 2011 on policies to reduce early school leaving, OJ C 191, 1.7.2011, p. 1.

<sup>4</sup> Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training, OJ C 155, 8.7.2009, p. 1.

<sup>5</sup> Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, OJ C 111, 6.5.2008, p. 1.

<sup>6</sup> Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning, OJ C 398, 22.12.2012, p. 1.

<sup>7</sup> Communication from the Commission, A New Skills Agenda for Europe, COM(2016) 381 final, 10.6.2016

<sup>8</sup> OJ C484, 24.12.2016, p.1.

The Pillar aims to ensure high quality education and training provision, both formal and non-formal. It emphasises the relevance of education and skills for successful participation in the labour market and for social cohesion. It emphasises opportunities to maintain and acquire skills. This entails flexible opportunities for learning and re-training which should be available at all times throughout a person's life and working career, including early childhood, initial, further, higher and adult education and training systems.

Inclusive education, training and lifelong-learning entail accessible means to acquire, maintain or develop skills and competences to a level that equips everyone for active life. For example, the special needs of people with disabilities or of those from disadvantaged backgrounds should be catered for so that they are ensured access on an equal basis.

Further emphasis is put on the skills required during labour market transitions, encompassing changes in employment status, changing employer, entering or returning from career breaks or moving between employment and self-employment. This encompasses *inter alia* the acquisition and maintenance of basic digital skills.

### **3. Implementation**

#### *a) What Member States and social partners can do*

Member States are responsible for determining the content of teaching and vocational training and for the organisation of education systems and vocational training. They are invited to give effect to the provisions of the Pillar in this context, in addition to applying it when implementing Union measures adopted in these fields.

Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies. In this context they may promote, develop and contribute to policies at company, local, national or Union level to improve training, re-training and life-long learning opportunities as well as to provide more traineeships and apprenticeships.

The EU social partners at cross-industry level selected skills needs in digital economies as well as fostering apprenticeships to increase youth employment as a priorities for their current work programme 2015-2017 and will organise exchanges between national social partners on these issues.

#### *b) Recent and ongoing initiatives at EU level*

In 2017, the Commission will propose a Council Recommendation on a Quality Framework for Apprenticeships, which will define the key elements that should be in place to enable people to acquire relevant skills and qualifications through high quality apprenticeships programmes.

The 2008 European Qualifications Framework is being revised (negotiations on a revised Recommendation are ongoing within the Council) and the 2006 Recommendation on Key Competences for Lifelong Learning is being updated.



The Europass Framework<sup>9</sup> is being updated to offer people improved tools to present their skills and obtain information on skills needs and trends.

The Commission will implement the recently launched Digital Skills and Jobs Coalition to accompany the digital transformation, by promoting the exchange of best practices as well as partnerships between industry, education providers and social partners.

The Commission will propose in 2017 a Council Recommendation on promoting social inclusion and common values through education and non-formal learning in order to provide support and guidance to Member States.

The Commission will present a Communication on the modernisation of higher education setting out EU-level actions to address key challenges, including tackling skills mismatches and promoting excellence in skills development; building higher education systems that are not only efficient and effective but are also socially inclusive and connected to their communities; and ensuring higher education institutions contribute to regional innovation.

The Commission will present a Communication on the development of schools and excellent teaching addressing the persistent high rates of young people with low basic skills, the inequalities in educational success and changing competence requirements in our societies..

The Commission will propose a Council Recommendation setting out guidelines on improving the availability of qualitative and quantitative information about what graduates from tertiary education and vocational education and training in the EU go on to do after they complete their education and training.

In its December 2016 Communication "Investing in Europe's Youth",<sup>10</sup> the Commission proposed fresh actions to support youth employment and create more opportunities for youth.

To ensure a full and sustainable implementation of the Youth Guarantee, the Commission proposed to extend the budget of the Youth Employment Initiative and provide an additional €1 billion to the YEI specific budget allocation, matched by €1 billion from the European Social Fund as well as further support for outreach and information activities, mutual learning and monitoring.

In June 2016, the European Commission proposed actions to support Member States in the integration of third country nationals in education under the EU Integration Action Plan.<sup>11</sup>

Cedefop, the European Centre for the Development of Vocational Training, one of the EU's decentralised agencies, is supporting the work of the Commission, Member States and social partners on the modernisation of vocational education and training systems, promoting the access,

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<sup>9</sup> Decision No 2241/2004/EC of the European Parliament and of the Council of 15 December 2004 on a single Community framework for the transparency of qualifications and competences (Europass), OJ L 390, 31.12.2004, p. 6

<sup>10</sup> COM(2016) 940 final.

<sup>11</sup> <https://ec.europa.eu/migrant-integration/news/europe-integration-action-plan-of-third-country-nationals-launched>.

attractiveness and efficiency of vocational education and training and informing on current and future skill supply and demand in the European labour market.

## Gender equality

**a. Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression.**

**b. Women and men have the right to equal pay for work of equal value.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 23 of the Charter provides that equality between women and men must be ensured in all areas, including employment, work and pay. It also stipulates that the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 33 of the Charter provides that in order to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### *b) The legislative powers and their limits*

According to Article 19 of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to take appropriate action to combat discrimination, including based on sex.

According to Article 153 TFEU, the Union is empowered to adopt measures, including directives setting minimum requirements, to support and complement the activities of the Member States, *inter alia*, in the field of equality between men and women with regard to labour market opportunities and treatment at work. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. Article 157(3) TFEU empowers the Union legislature to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. Article 157(4) TFEU specifies that the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

#### *c) Existing measures*

European Union Directives prohibit discrimination and promote gender equality in employment and occupation, in self-employment, in the access to and supply of goods and services and in social security, and lay down rights related to maternity and parental leave.

Directive 2006/54/EC of the European Parliament and of the Council<sup>12</sup> guarantees equal treatment of men and women in access to employment, including promotion, and to vocational training; working conditions, including pay; and occupational social security schemes. Commission Recommendation 2014/124/EU<sup>13</sup> aims to strengthen the Principle of equal pay between men and women through transparency.

Council Directive 79/7/EEC<sup>14</sup> provides for equal treatment of men and women in matters of social security such as statutory social security schemes which provide protection against sickness, invalidity, accidents at work and occupational diseases, unemployment and risks related to old age; and social assistance which supplements or replaces the basic schemes. Council Directive 2004/113/EC<sup>15</sup> guarantees equal treatment between men and women in access to and supply of goods and services. Directive 2010/41/EU of the European Parliament and of the Council<sup>16</sup> clarifies that the principle of equal treatment between men and women applies to self-employed workers and where spouses or life partners of a self-employed worker participate in his or her activities.

Council Directive 92/85/EEC<sup>17</sup> contains measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding and establishes the right to maternity leave for the duration of 14 weeks and guarantees protection against dismissal during the period from the beginning of pregnancy to the end of the maternity leave.

Council Directive 2010/18/EU<sup>18</sup> establishes the right to parental leave and sets out minimum requirements for that leave (4 months for each parent, at least one month of which cannot be transferred to the other parent) as well as protection of employment rights and when returning to work and the right to leave from work on grounds of force majeure.

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<sup>12</sup> 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) OJ L 204, 26.7.2006, p. 23.

<sup>13</sup> Commission Recommendation of 7 March 2014 on strengthening the Principle of equal pay between men and women through transparency, OJ L 69, 8.3.2014, p. 112.

<sup>14</sup> Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the Principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, p. 24.

<sup>15</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the Principle of equal treatment between men and women in the access to and supply of goods and services OJ L 373, 21.12.2004, p. 37.

<sup>16</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the Principle of equal treatment between men and women engaged in an activity in a self-employed capacity, OJ L 180, 15.7.2010, p.1.

<sup>17</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1.

<sup>18</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18.3.2010, p. 13.

## 2. Scope and changes introduced by the European Pillar of Social Rights

The Pillar emphasises the need to foster proactively equality between women and men through positive action in all areas. By extending equality to all areas, the Pillar goes beyond the existing *acquis*. The provisions on gender equality focus in particular on participation in the labour market (as reflected by the gap in employment between women and men), terms and conditions of employment (e.g. the gap in the use of part-time employment between women and men) and on career progression (e.g. the share of women in management positions and the low numbers of women entrepreneurs), all areas where further progress needs to be made. Principle 2b addresses the specific challenge of the gender pay gap, which persists despite the existing legislation.

## 3. Implementation

### *a) What Member States and Social Partners can do*

Member States are in charge of transposing and enforcing rules adopted at Union level. Given that the Union measures merely contain minimum standards, Member States are invited to go beyond these rules in order to give effect to the Principle.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU and may sign agreements that can be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

The EU social partners at cross-industry level selected gender equality as a priority for their current work programme 2015-2017, organising exchanges of national and sectoral social partner practices on ways to reduce the gender pay gap.

### *b) Recent and ongoing initiatives at EU level*

The Commission will implement the Strategic Engagement for Gender Equality 2016-2019,<sup>19</sup> which sets out the main priorities in this area, and outlines the use of existing tools such as the European Semester, the Union Funds and enforcement of legislation.

The Commission is presenting together with the European Pillar of Social Rights the "New start to support Work-Life Balance for parents and carers" initiative. It proposes legislative and policy actions aiming to facilitate the uptake of parental leave by both women and men, to introduce the paternity leave and the carers' leave, to promote the use of flexible working arrangements, as well as to provide more and better child and other care facilities and remove economic disincentives such as tax-benefit disincentives, which discourage second-earners, often women, from entering the labour market.

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<sup>19</sup> SWD (2015)278.

The Commission will adopt a follow up Report on progress made by Member States in the implementation of the Transparency Recommendation which will assess the potential need for additional measures in order to ensure the full application of the principle of equal pay.

Furthermore, it has proposed a Directive aimed at further ensuring greater equality among management positions in the corporate sphere.<sup>20</sup>

The Commission is stepping up its efforts to combat violence against women and is working towards the EU's accession to the Council of Europe Convention on preventing and combating violence against women (the Istanbul Convention) on the basis of its proposal made in March 2016.<sup>21</sup>

The European Institute for Gender Equality, one of the EU's decentralised agencies, is supporting the work of the Commission, Member States and social partners in the area of work-life balance.

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<sup>20</sup> COM(2012) 614.

<sup>21</sup> COM(2016) 111 final.

## Equal opportunities

**Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 21 of the Charter prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Subject to certain exceptions, Article 21 of the Charter also prohibits any discrimination on grounds of nationality.

#### *b) The legislative powers and their limits*

According to Article 19 of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Moreover, Article 18 TFEU refers to the prohibition of discrimination on grounds of nationality.

#### *c) Existing measures*

Council Directive 2000/43/EC<sup>22</sup> (the Racial Equality Directive) prohibits discrimination based on racial or ethnic origin in access to employment, to self-employment and to occupation, employment and working conditions, education, vocational training, social protection, social advantages, and access to goods and services which are available to the public, including housing. Council Directive 2000/78/EC<sup>23</sup> (the Employment Equality Directive) prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards access to employment, self-employment, occupation and vocational training. Both directives prohibit various forms of discrimination: direct and indirect discrimination, harassment, instruction to discriminate and victimisation. The EU is a party to the United Nations Convention on the Rights of Persons with Disabilities.<sup>24</sup>

Legally residing third-country nationals that are long-term residents or covered by other EU Directives<sup>25</sup> should enjoy equal treatment with nationals of host countries in a number of areas

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<sup>22</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the Principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22.

<sup>23</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16.

<sup>24</sup> Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 27.1.2010, p. 35.

<sup>25</sup> Directives on: Family reunification, Blue Card, Single Permit, Researchers, Students, Qualification as a beneficiary of international protection, seasonal workers and intra-corporate transferees.

notably working conditions, including pay and dismissal, access to education and vocational training, social security. In 2004, Member States adopted Common Basic Principles of integration of third-country nationals that constitute a framework for policy cooperation on integration in the EU and a framework against which Member States can judge and assess their own efforts.

Council Recommendation 2013/C 378/01<sup>26</sup> provides guidance on effective Roma integration measures in Member States, in particular as regards access to education, employment, healthcare and housing.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar partially goes beyond the current *acquis* by extending protection against discrimination on the grounds of religion or belief, disability, age and sexual orientation to the areas of social protection, including social security and healthcare, education, and access to goods and services available to the public. The Pillar also extends the prohibition of discrimination based on gender to the area of education, which is not covered by the current *acquis*.

Equal opportunities aim at promoting inclusion and participation of under-represented groups in the labour market and society. The provisions of the Pillar emphasise that specific measures may be necessary to prevent, correct and compensate for disadvantages linked to certain protected grounds. The Principle encourages Member States to address the challenge of groups at risk of discrimination through positive action and incentive measures, for instance by supporting workforce diversity practices among employers.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States are responsible for transposing and enforcing rules adopted at Union level. Given that the Union measures set out above contain minimum standards, Member States are invited to go beyond these rules in order to give effect to the Pillar. In addition, Member States are invited to continue making progress in the negotiations of the proposed new Equal Treatment Directive towards its swift adoption. Through their National Equality Bodies, Member States may promote equal opportunities of under-represented groups and assist victims of discrimination on the ground.

Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

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<sup>26</sup> Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, OJ C 378, 24.12.2013, p. 1.



*b) Recent and ongoing initiatives at EU level*

The Commission will continue its efforts to ensure the adoption of the proposed new Equal Treatment Directive to expand protection against discrimination based on religion or belief, disability, age or sexual orientation<sup>27</sup> to social protection, including social security and healthcare; education; social advantages; and access to goods and services which are available to the public, including housing.

The Union is supporting intermediary players such as NGOs, social partners and equality bodies to improve their capacity to combat discrimination; to support the development of equality policies at national level and encourage the exchange of good practices between Union countries; and push for business-oriented diversity management as part of a strategic response to a more diversified society, customer base, market structure and workforce.

The European Union Agency for Fundamental Rights, one of the EU's decentralised agencies, is supporting the work of the Commission, Member States and social partners in the area of equal opportunities and non-discrimination.

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<sup>27</sup> Proposal for a Council Directive on implementing the Principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}.

## Active support to employment

**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 transitions.**

**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.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 14 of the Charter gives everyone the right to education and to have access to vocational and continuing training. Article 29 of the Charter guarantees everyone the right of access to a free placement service. Article 34 of the Charter provides that the Union recognises and respects the entitlement to social security and social services providing protection *inter alia* in the case of loss of employment.

#### *b) The legislative powers and their limits*

Pursuant to Article 147 TFEU, the Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their actions. In doing so, the competences of Member States shall be respected. Article 153(2) TFEU empowers the Union to adopt legislative measures to support and complement the activities of Member States in the integration of persons excluded from the labour market. Article 166 TFEU empowers the Union to implement a vocational training policy which shall support and supplement actions by the Member States while fully respecting their responsibility for the content and organisation of vocational training.

#### *c) Existing measures*

The Union and its Member States together pursue the European Employment Strategy, which sets common objectives and targets for employment policy and aims to create more jobs and better jobs throughout the Union.<sup>28</sup> Coordinating Member States' actions to assist unemployed persons find work is at the core of this Strategy.

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<sup>28</sup> See, for example, Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policy of the Member States for 2015, OJ 268, 15.10.2015, p.28.

Council Recommendation of 22 April 2013 on establishing a Youth Guarantee<sup>29</sup> (the Youth Guarantee Recommendation) calls on Member States to ensure that all young people under the age of 25 years receive an offer of employment of good quality, continued education, an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education.

Council Recommendation of 15 February 2016 on the integration of the long-term unemployed into the labour market<sup>30</sup> recommends that long-term unemployed persons are offered in-depth individual assessments and guidance and a job-integration agreement comprising an individual offer and the identification of a single point of contact at the very latest when they reach 18 months of unemployment.

Commission Recommendation 2008/867/EC of 3 October 2008 on the active inclusion of people excluded from the labour market<sup>31</sup> sets out an integrated, comprehensive strategy for the active inclusion of those excluded from the labour market, combining adequate income support, inclusive labour markets and access to quality services.

The Entrepreneurship 2020 Action Plan<sup>32</sup> set out a vision and concrete measures to support the entrepreneurial spirit in Europe. Measures to support self-employment at EU level also aim to reach those segments of the population whose entrepreneurial potential is not yet fully exploited, in particular for women (who represent only 29% of entrepreneurs in Europe). Dedicated actions to develop social entrepreneurship were proposed by the Expert Group on Social Entrepreneurship (GECES) report<sup>33</sup> adopted in 2016.

The European Network of Public Employment Services (PES), established through the Decision No 573/2014/EU<sup>34</sup> of the European Parliament and Council, provides a platform to compare PES performance at European level, identify good practice and foster mutual learning in order to strengthen the active support services.

The European Network of Employment Services (EURES), re-established under Regulation (EU) 2016/589,<sup>35</sup> aims to improve the functioning, cohesion and integration of labour markets in the EU, including at cross-border level.

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<sup>29</sup> Council Recommendation of 22 April 2013 on establishing a Youth Guarantee, OJ C120, 26.4.2013, p.1.

<sup>30</sup> Council Recommendation of 15 February 2016 on the integration of the long-term unemployed into the labour market OJ C 67, 20.2.2016, p.1.

<sup>31</sup> Commission Recommendation 2008/867/EC of 3 October 2008 on the active inclusion of people excluded from the labour market, OJ L307, 18.11.2008, p.11.

<sup>32</sup> COM(2012) 795 final

<sup>33</sup> [http://ec.europa.eu/growth/sectors/social-economy/enterprises/expert-groups\\_en](http://ec.europa.eu/growth/sectors/social-economy/enterprises/expert-groups_en)

<sup>34</sup> Decision No 573/2014/EU of the European Parliament and of the Council of 15 May 2014 on enhanced cooperation between Public Employment Services (PES) OJ L 159, 28.5.2014, p. 32.

<sup>35</sup> Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013, OJ L 107, 22.4.2016, p. 1.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar establishes a set of rights for all jobseekers, regardless of their employment status. The focus is on the provision of assistance to find work, which can include employment services, such as job-search counselling and guidance, or participation in 'active measures', such as training, hiring subsidies or re-insertion support. These rights go beyond Article 29 of the Charter of Fundamental Rights, which refers only to the right to a free placement service. Assistance to engage in self-employment is also a significant extension of the existing *acquis*.

Three elements are central to these rights: early intervention, individualised assistance and support in enhancing employability. The latter element – based on a right to receive support for training or for obtaining new qualifications – is crucial in view of adapting to a rapidly changing labour market.

Today's workers change jobs more frequently than in the past, and existing training or social protection entitlements should not discourage such mobility. The Pillar affirms the transferability of workers' accrued training or social protection entitlements when they change employment status or employer, entering or returning from career breaks or moving between employment and self-employment.

Regarding young people, the Pillar recalls the main lines of the Youth Guarantee Recommendation extending their application to all young people.

For people in unemployment, the Pillar provides for a right to personalised support, which incorporates the ideas of individualised in-depth assessment, counselling and guidance. The consistency refers to continuity in support e.g. when eligibility for unemployment benefits end, including the provision of other measures such as social services to address barriers to finding work. For those in long-term unemployment, understood as unemployment lasting more than twelve months, it provides for a right to personalised support, which incorporates the ideas of individualised in-depth assessment and the job integration agreement referred to in Council Recommendation of 15 February 2016 on the integration of the long-term unemployed into the labour market.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States are responsible for implementing the guidelines and recommendations on employment strategy which have been agreed at Union level. To give effect to the Principle, Member States are invited to update and extend their practices concerning the provision of assistance to find employment and self-employment and, in addition, to encourage measures to protect workers' training and social protection entitlements when they change work.

At Union level, social partners are consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. The EU social partners at cross-industry level selected the effectiveness and quality of active labour market policies as a priority for their

current work programme 2015-2017. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

*b) Recent and ongoing initiatives at EU level*

The implementation of the Youth Guarantee has been assessed in the October 2016 Communication "The Youth Guarantee and Youth Employment Initiative three years on"<sup>36</sup>. In its December 2016 Communication "Investing in Europe's Youth"<sup>37</sup>, the Commission proposed fresh actions to support youth employment and create more opportunities for youth.

To ensure a full and sustainable implementation of the Youth Guarantee, the Commission proposed to extend the budget of the Youth Employment Initiative and provide an additional €1 billion to the YEI specific budget allocation, matched by €1 billion from the European Social Fund as well as further support for outreach and information activities, mutual learning and monitoring.

The Commission is presenting together with the European Pillar of Social Rights a first-stage consultation of the social partners on an initiative concerning "Access to Social Protection",<sup>38</sup> in order to address varying access to social protection by workers in standard employment and people employed on non-standard contracts and in various forms of self-employment. The consultation will address the means to make rights transferable and transparent when changing employer, contract type or transitioning to self-employment. The consultation will also address the ways to reduce the gap in access to employment services, training, rehabilitation and re-insertion measures across various types of employment relationships and for the self-employed.

Furthermore, in 2017, the Commission will consolidate and put on a firm legal basis the European Solidarity Corps to create new volunteering, traineeships or work placements opportunities for young people.

The European Network of Employment Services (PES Network) is implementing the *Benchlearning* project, aiming to improve the PES' performance, linking indicator-based benchmarking with mutual learning in order to better address the active support to job seekers.

In June 2016, the European Commission proposed actions to support Member States in the integration of third country nationals in employment under the EU Integration Action Plan.<sup>39</sup>

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<sup>36</sup> COM(2016) 646 final.

<sup>37</sup> COM(2016) 940 final.

<sup>38</sup> C(2017) 2610.

<sup>39</sup> <https://ec.europa.eu/migrant-integration/news/europe-integration-action-plan-of-third-country-nationals-launched>.

## Chapter II – Fair working conditions

### Secure and adaptable employment

a. Regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training. The transition towards open-ended forms of employment shall be fostered.

b. In accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured.

c. Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged. Occupational mobility shall be facilitated.

d. Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Any probation period should be of reasonable duration.

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#### 1. The Union *acquis*

##### a) *The Charter of Fundamental Rights of the European Union*

Article 31 of the Charter, entitled “Fair and just working conditions”, gives every worker the right to working conditions which respect his or her health, safety and dignity. Article 34 of the Charter affirms respect for the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

##### b) *The legislative powers and their limits*

According to Article 153(2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures to support and complement the activities of Member States *inter alia* in the fields of working conditions and the social security and social protection of workers. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. Article 153(4) provides that provisions adopted pursuant to Article 153 shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof.

According to Article 162 TFEU, the European Social Fund shall aim to increase the geographical and occupational mobility of workers within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems.

According to Article 166 TFEU, the Union shall implement a vocational training policy which shall support and supplement the action of the Member States while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

### *c) Existing measures*

Three Directives have already been enacted to protect workers working under non-standard employment relationships: the Framework Agreement on part-time work concluded by social partners (UNICE, CEEP and the ETUC) – annexed to Council Directive 97/81/EC<sup>40</sup> - protects part-time workers from being treated less favourably than comparable full-time workers and provides that employers should give consideration to requests by workers to transfer from full-time to part-time work or vice-versa; the Framework Agreement on fixed-term work also concluded by social partners (ETUC, UNICE and CEEP) – annexed to Council Directive 1999/70/EC<sup>41</sup> - protects fixed-term workers from being treated less favourably than comparable permanent workers and requires Member States to take measures to prevent abuse arising from the use of successive fixed-term contracts; and Directive 2008/104/EC of the European Parliament and of the Council<sup>42</sup> on temporary agency work establishes equal treatment regarding the essential conditions of work and of employment between temporary agency workers and workers who are directly recruited by the user company.

In addition, Council Directive 91/533/EEC<sup>43</sup> (the Written Statement Directive) gives workers the right to be notified in writing of the essential aspects of their employment relationship at the latest two months after the employment started.

The Commission supports innovative business models which create opportunities for EU citizens in terms of facilitating entry into employment, work flexibility and new sources of income.<sup>44</sup>

The Entrepreneurship 2020 Action Plan<sup>45</sup> sets out a vision and concrete measures to re-ignite the entrepreneurial spirit in Europe. Measures to support self-employment at EU level also aim to reach those segments of the population whose entrepreneurial potential is not yet fully exploited, in particular for women (who represent only 29% of entrepreneurs in Europe). Dedicated actions to develop social entrepreneurship were proposed by the Expert Group on Social Entrepreneurship (GECES) report<sup>46</sup> adopted in 2016.

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<sup>40</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L14, 20.1.1998, p.9.

<sup>41</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by UNICE, CEEP and the ETUC, OJ L175, 10.7.1999, p.43.

<sup>42</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L327, 5.12.2008, p.9.

<sup>43</sup> Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991, p.32.

<sup>44</sup> See in this respect the Communication on A European agenda for the collaborative economy of 2.6.2016, COM(2016) 356 final.

<sup>45</sup> Communication from the Commission, Entrepreneurship 2020 Action Plan, COM(2012) 795 final, 9.1.2013.

<sup>46</sup> [http://ec.europa.eu/growth/sectors/social-economy/enterprises/expert-groups\\_en](http://ec.europa.eu/growth/sectors/social-economy/enterprises/expert-groups_en)

The increased voluntary geographical and occupational mobility of workers on a fair basis are included in the objectives of both the European Network of Public Employment Services (PES), established through the Decision No 573/2014/EU of the European Parliament and Council, and of the EURES Network established through the Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets.

For highly qualified third country nationals, the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment<sup>47</sup> limits however their occupational mobility for the first two years of legal employment in a Member State, to respect the principle of Community preference and to avoid abuses.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar reflects the challenges posed by the changing world of work and new forms of employment, endorsing diversity of employment relationships, entrepreneurship and self-employment, and, on the other hand, establishing safeguards to prevent abuse of employment relationships that can lead to precarious employment relationships, and certain guarantees to ensure workers can access training and social security throughout the course of their career.

The Pillar extends the guarantee of equal treatment beyond the three forms of employment relationships (part-time, fixed-term and agency work) currently covered by the Union *acquis* and provides for equal treatment between workers irrespective of the type of employment relationship. Furthermore, it emphasises support for transitions towards open-ended employment relationships.

The Pillar recognises the necessary flexibility for employers to adapt swiftly to changes in the economic context. Such adaptations can for instance include differential treatment on objective grounds or adaptations in working conditions to avoid excessive employment loss during downturns. Such changes cannot be unilateral and need to be circumscribed within the limits of existing legislation and collective bargaining agreements.

The material scope of the equal treatment principle is extended to guarantee access to social protection and to training. The principle ensures equal treatment in accessing statutory social security. Current Union rules (for part-time and fixed-term work) require employers to facilitate access to training. The Principle goes beyond this and *requires* equality of treatment in access to training.

Equal treatment may however not always be sufficient to counter precariousness, in particular where one and the same employer only uses non-standard forms of employment. An explicit prohibition of abuse is therefore provided in the principle. The prohibition of both abuse of employment relationships leading to precariousness and of unreasonably long probation periods point beyond the current Union *acquis*. In this regard, preventive measures can include differential taxation of

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<sup>47</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009, p. 17.



employment relationships leading to precariousness or the establishment of *bonus malus* systems for the social security contributions.

The Pillar underlines the importance of supporting emerging business models, innovative forms of work, entrepreneurship and self-employment. In general, new business models have the potential of creating opportunities, facilitating entry into employment, work flexibility and new sources of income. Such support should, however, be premised on a requirement for quality working conditions. To maximise the employment impact of such innovation, the facilitation of occupational mobility can entail both enhanced possibilities for vocational training and re-qualification and a social protection system which fosters and facilitates career changes.

### **3. Implementation**

#### *a) What Member States and Social Partners can do*

Each Member State may define the balance between security and flexibility on its labour market differently. To give effect to the provisions of the Pillar, Member States are nevertheless invited to ensure that their employment and social rules are adapted to the emergence of new forms of work, in addition to transposing and enforcing rules adopted at Union level.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives envisaged under Article 153 TFEU and may sign agreements which can be implemented at Union level in accordance with Article 155 TFEU upon their request. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

#### *b) Recent and ongoing initiatives at EU level*

Together with the European Pillar of Social Rights, the Commission is launching a first-stage consultation of the social partners on the revision of Directive 91/533/EEC (the Written Statement Directive).<sup>48</sup> As part of this consultation, the social partners will be consulted on whether to amend the Directive more substantially with a view to introducing minimum standards applicable to every employment relationship and prohibiting abuse.

The Commission is also presenting together with the European Pillar of Social Rights a first-stage consultation of the social partners on an initiative concerning "Access to Social Protection"<sup>49</sup>, in order to address varying access to social protection by workers in standard employment and people employed on non-standard contracts and in various forms of self-employment. The consultation equally addresses the access to employment services and training and the transferability of social protection and training entitlements, in view of facilitating occupational mobility.

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<sup>48</sup> C(2017) 2611.

<sup>49</sup> C(2017) 2610.

In 2017, the Commission will complete a REFIT evaluation of the Directives which give effect to the Social Partner Framework Agreements on fixed-term and part-time work.

Eurofound, the European Foundation for the Improvement of Living and Working Conditions, one of the EU's decentralised agencies, is supporting the work of the Commission, Member States and social partners on working conditions and sustainable work, industrial relations, monitoring structural change and managing restructuring, focusing as well on opportunities and challenges in the digital age.

## Wages

**a. Workers have the right to fair wages that provide for a decent standard of living.**

**b. Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.**

**c. All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 31 of the Charter, entitled “Fair and just working conditions”, gives every worker the right to working conditions which respect his or her health, safety and dignity.

#### *b) The legislative powers and their limits*

Article 153(5) TFEU provides that the provisions of Article 153 TFEU shall not apply to pay.

According to Article 145 TFEU, the Union and the Member States shall work towards developing a coordinated strategy for employment. Pursuant to Article 147 TFEU, the Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of Member States shall be respected.

#### *c) Existing measures*

The Union and its Member States together pursue the European Employment Strategy, including as concerns the monitoring of wage and minimum wage developments and of the underlying wage setting mechanisms.<sup>50</sup> Trends in labour costs, including their wage component, are also monitored in the framework of the Union economic policy coordination process pursuant to Articles 120 and following TFEU. As provided for in Art 136 (1) (b) TFEU, economic policy recommendations are also addressed to the euro area; this may include the monitoring of labour costs.<sup>51</sup> The surveillance under Regulation (EU) No 1176/2011<sup>52</sup> of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances includes the monitoring of competitiveness developments, including labour costs.

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<sup>50</sup> See, for example, Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policy of the Member States for 2015, OJ 268, 15.10.2015, p.28.

<sup>51</sup> See, for example, the Council Recommendation of 21 March 2017 on the economic policy of the euro area. OJ C 92, 24.3.2017, p. 1.

<sup>52</sup> OJ L 306, 23.11.2011, p. 25.

The Council Recommendation of 20 September 2016 on the establishment of National Productivity Boards<sup>53</sup> recommends that the Boards thereby established should analyse developments and policies that can affect productivity and competitiveness, including relative to global competitors, in full respect of national established practices.

Commission Recommendation 2008/867/EC<sup>54</sup> of 3 October 2008 sets out an integrated, comprehensive strategy for the active inclusion of those excluded from the labour market, including the promotion of quality work, notably as concerns pay and benefits, with a view to preventing in-work poverty.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar sets out the right to fair wages providing for a decent standard of living for all workers. Comparable rights are already included in the 1989 Community Charter of the Fundamental Social Rights of Workers,<sup>55</sup> one of the sources of Title X on Social Policy of the TFEU as well as in the (revised) European Social Charter.

The Pillar foresees a level of the minimum wage which takes into consideration both the needs of workers and their families and social factors such as the evolution of the standards of living and economic factors, which can include the level of productivity. The Pillar recognises the role of minimum wages in combatting poverty, while avoiding employment traps. This is with a view to boosting the incomes of poor families and providing a fair compensation from work for those at the bottom end of the wage distribution, thus also increasing their incentives to work. Other measures may include reducing the tax burden on low-wage earners and their families and supplementing income from work with effective social benefits.

The Pillar requires that all wages are set in a *transparent and predictable way*, in full respect of national practice, notably as concerns the right to collective bargaining of social partners and their autonomy. As concerns minimum wages, most Member States have a national statutory minimum wage. This is a regulatory instrument making a single wage floor legally binding for all employees. A few Member States do not have a statutory minimum wage and different wage floors are set by the social partners through collective agreements, often at sector level. The Pillar does not challenge in any way this diversity of practices and recognises the autonomy of the social partners. Within this context, *transparency* means that well-established consultation procedures should be followed when setting the minimum wage, leading to consensus between relevant national authorities and the social partners, and possibly building on input from other stakeholders and independent experts. In addition, the Pillar calls for ensuring the *predictability* of wage decisions, for example through the definition of rules such as adjustment to the cost of living for minimum wages.

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<sup>53</sup> Council Recommendation of 20 September 2016 on the establishment of National Productivity Boards, OJ C 349, 24.9.2016, p. 1.

<sup>54</sup> OJ L307, 18.11.2008, p.11.

<sup>55</sup> The Community Charter of Fundamental Social Rights of Workers - December, 9th 1989.

### **3. Implementation**

#### *a) What Member States and Social Partners can do*

Member States and the social partners are responsible for the definition of wage and minimum wage developments in accordance with their national practices, as set in their collective bargaining and minimum wage-setting systems. They are invited to give effect to the provisions of the Pillar through transparent minimum wage setting mechanisms and effective collective bargaining at national, sector and firm level, and by taking complementary measures to avoid in-work poverty.

Furthermore, Member States may ratify, if not yet done so, and apply ILO N° 131 convention on minimum wage fixing and the Convention N° 154 on the promotion of collective bargaining.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of the Pillar through collective bargaining and through their involvement in the design and implementation of relevant policies.

#### *b) Recent and ongoing initiatives at EU level*

Minimum wages and other measures to address in-work poverty, as well as more general issues related to wage developments are addressed in Country Specific Recommendations within the European Semester process.

## Information about employment conditions and protection in case of dismissals

**a. Workers 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.**

**b. Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 27 of the Charter gives every worker the right to be guaranteed information and consultation in good time and at the appropriate levels, in the cases and under the conditions provided for by Union law and national laws and practices. Article 30 of the Charter lays down the right for every worker to be protected against unjustified dismissal, in accordance with Union law and national laws and practices. Article 47 of the Charter guarantees everyone whose rights and freedoms guaranteed by Union law are violated the right to an effective remedy.

#### *b) The legislative powers and their limits*

According to Article 153(2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures to support and complement the activities of Member States in the fields of working conditions, protection of workers where their employment contract is terminated and information and consultation of workers. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

#### *c) Existing measures*

Council Directive 91/533/EEC<sup>56</sup> (the Written Statement Directive) gives workers the right to be notified in writing of the essential aspects of their employment relationship, at the latest two months after the employment started. It does not contain specific obligations in relation to probation periods. The Written Statement Directive requires an employer to notify an employee of the length of the periods of notice to be observed should their contract or employment relationship be terminated or, where this cannot be indicated at the time when the information is given, the method for determining such periods of notice.

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<sup>56</sup> Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991, p.32.

Directive 2001/23/EC<sup>57</sup>, which regulates workers' rights in the case of transfer of undertakings, stipulates that the transfer of an undertaking does not in itself constitute valid grounds for dismissal. Council Directive 92/85/EEC<sup>58</sup> on maternity protection and the revised Framework Agreement on parental leave concluded by social partners (BusinessEurope, UEAPME, CEEP and ETUC) – annexed to Council Directive 2010/18/EU<sup>59</sup> – provide, respectively, specific protection against dismissal for women during their pregnancy and for parents taking paternity or adoption leave. Council Directive 2000/78/EC<sup>60</sup> (the Employment Equality Directive) on equal treatment in employment and occupation protects workers against dismissal where there is discrimination on a prohibited ground, including victimisation. Protection against dismissal and unfavourable treatment is also provided under EU law through the Part-time Work Directive<sup>61</sup>, the Gender Equality Directive,<sup>62</sup> the Directive on equal treatment between men and women engaged in an activity in a self-employed capacity<sup>63</sup> and the Parental Leave Directive,<sup>64</sup> and has been reinforced by the case-law of the Court of Justice of the EU.

Council Directive 98/59/EC<sup>65</sup> on collective redundancies requires employers to inform and consult workers' representatives and to notify public authorities prior to collective redundancies.

The Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships<sup>66</sup> aims to enhance the quality of traineeships, providing quality elements that are directly transferable to national legislation or social partner agreements. They relate in particular to learning content, working conditions, and transparency regarding financial conditions and hiring practices.

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<sup>57</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p.6.

<sup>58</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348 of 28.11.1992, p. 1.

<sup>59</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, OJ L68, 18.3.2010, p.13.

<sup>60</sup> Other EU anti-discrimination directives (such as Directive 2006/54/EC or Directive 2000/43/EC) also provide specific protection against unfair dismissal.

<sup>61</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L14, 20.1.1998, p.9.

<sup>62</sup> 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) OJ L 204, 26.7.2006, p. 23.

<sup>63</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the Principle of equal treatment between men and women engaged in an activity in a self-employed capacity, OJ L 180, 15.7.2010, p.1.

<sup>64</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18.3.2010, p. 13.

<sup>65</sup> Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.08.1998, p. 16.

<sup>66</sup> Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships, OJ C 88, 27.3.2014, p. 1.

## 2. Scope and changes introduced by the European Pillar of Social Rights

The Pillar requires written information to be provided to the worker about his or her working conditions *at the start* of the employment relationship, rather than within the two months currently provided for by the Written Statement Directive. Since probation periods are significant for most employment relationships, the Pillar also adds information duties in this regard. These changes will increase awareness of rights on the part of employers and workers. They should also help reduce undeclared work.

The Pillar also goes beyond the existing *acquis* by introducing procedural and substantive safeguards for workers in case of dismissals. Adequate reasoning should be provided and a reasonable period of notice be respected. Moreover, the Pillar provides that workers should have access to effective and impartial dispute-resolution procedures. This can include arbitration, mediation or conciliation procedures. The Pillar also introduces the right to adequate redress in case of unjustified dismissals, such as re-instatement or pecuniary compensation. Unjustified dismissals are to be understood as those that are in breach of the rules applicable to the employment relationship in question.

## 3. Implementation

### *a) What Member States and Social Partners can do*

Member States are in charge of transposing and enforcing rules adopted at Union level. Given that the Union measures set out above contain minimum standards, Member States are invited to go beyond these rules in order to give effect to the Pillar.

Furthermore, Member States may ratify, if not yet done so, and apply relevant ILO Conventions such as Convention N° 122 on Employment Policy, N° 144 on Tripartite Consultations, Convention N° 135 on Workers' Representatives and Convention N° 154 on Promotion of Collective Bargaining.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

### *b) Recent and ongoing initiatives at EU level*

The Commission is launching together with the European Pillar of Social Rights a first-stage consultation of the social partners on the revision of the Written Statement Directive,<sup>67</sup> covering the scope of application of the Directive and the extension of the 'information package', including on the probation period. As part of this consultation, the Social Partners will be consulted on whether to

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<sup>67</sup> C(2017) 2611.



amend the Directive more substantially with a view to introducing a minimum floor of workers' rights applicable to every type of employment relationship.

## Social dialogue and involvement of workers

a. The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States.

b. Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies.

c. Support for increased capacity of social partners to promote social dialogue shall be encouraged.

### 1. The Union *acquis*

#### a) *The Charter of Fundamental Rights of the European Union*

Article 28 of the Charter provides that workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. Article 27 of the Charter gives every worker the right at the appropriate levels to be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

#### b) *The legislative powers and their limits*

The promotion of dialogue between management and labour is enshrined as a common objective of the Union and the Member States in Article 151 of the Treaty on the Functioning of the European Union (TFEU). According to Article 153(2) TFEU, the Union is empowered to adopt measures to support and complement the activities of Member States in the fields of the information and consultation of workers and the representation and collective defence of the interests of workers and employers, including co-determination. The powers given by Article 153 TFEU do not apply to pay, the right of association, the right to strike or the right to impose lock-outs. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

### *c) Existing measures*

Directive 2002/14/EC of the European Parliament and of the Council<sup>68</sup> on informing and consulting workers (the Information and Consultation Directive) aims at ensuring workers' involvement ahead of decision-making by management, notably where restructuring is envisaged. Directive 2009/38/EC of the European Parliament and of the Council on the establishment of a European Works Council<sup>69</sup> addresses the need for proper information and consultation processes in the case of EU-scale companies through the setting up of European Works Councils to deal with transnational issues that could affect workers. Council Directive 98/59/EC<sup>70</sup> on collective redundancies and Council Directive 2001/23/EC<sup>71</sup> on the transfer of undertakings go beyond ensuring the information and consultation of workers' representatives; for instance, the latter Directive ensures the safeguarding of workers' rights when a business is transferred from one employer to another.

The EU Quality Framework for anticipation of change and restructuring<sup>72</sup> promotes principles and good practices addressed to employers, employees, social partners and public authorities with regard to the anticipation of change and the management of the restructuring processes.

The Joint Statement signed by the Presidency of the Council of the European Union, the European Commission and the European Social Partners on "A New Start for Social Dialogue" emphasises the importance of capacity building of national social partners, the strengthened involvement of social partners in EU policy and law-making and the commitment to promote cross-industry and sectoral social dialogue, including their outcomes at all levels.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar sets the right for social partners to be involved in the design and implementation of employment and social policies, and supports their stronger involvement in policy and law-making while taking into account the diversity of national systems.<sup>73</sup> Its realisation entails setting the appropriate institutional or legal framework at Union and national level, by giving a clear role to social partners not only in consultation and preparation of relevant legislation and policies, but also in their implementation and enforcement.

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<sup>68</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29.

<sup>69</sup> OJ L 122, 16.5.2009, p.28.

<sup>70</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.08.1998, p. 16.

<sup>71</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.03.2001, p. 16.

<sup>72</sup> Communication from the Commission, EU Quality Framework for anticipation of change and restructuring, COM (2013) 0882 final, 13.12.2013.

<sup>73</sup> A new start for Social Dialogue - Statement of the Presidency of the Council of the European Union, the European Commission and the European Social Partners, June 16, 2016.

The Pillar entitles all workers in all sectors to be informed and consulted directly or through their representatives on matters relevant to them such as the transfer, restructuring and merger of undertakings and collective redundancies. It looks beyond the current Union *acquis* given that: it applies regardless of the staff numbers involved; its material scope encompasses both the restructuring and merger of companies; and the right is not just to receive information but also to be consulted about any such corporate action, which implies an exchange of views and the establishment of a consistent dialogue with the employer. Moreover, Principle 8b covers any issues that concern workers, whereas existing Directives contain a limited list of topics for engaging in information and consultation processes. By referring to 'matters relevant to them, in particular (...) the transfer, restructuring and merger of undertakings and (...) collective redundancies', it goes further than Article 27 of the Charter, which provides for a right to information and consultation 'in the cases and under the conditions provided for by Union law and national laws and practices'.

While capacity-building is first and foremost a bottom-up process depending on the will and efforts of the social partners themselves, the provisions of the Pillar highlight that the efforts by the social partners can be complemented by public authorities while respecting the social partners' autonomy. Capacity-building refers to increasing the representativeness of social partners and to strengthening their operational, analytical and legal capabilities to engage in collective bargaining and to contribute to policy-making. This support can take the form of setting the appropriate institutional/legal framework, by giving a clear role to social partners in policymaking and also by providing financial support.

### **3. Implementation**

#### *a) What Member States and Social Partners can do*

While respecting the autonomy of the social partners, Member States are invited to involve the social partners closely in the design and implementation of relevant reforms and policies and to help them to improve the functioning and effectiveness of social dialogue and industrial relations at national level. Member States are also invited to encourage good practices as regards informing and consulting workers and their representatives.

Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

Social Partners may improve membership and representativeness of both trade unions and employers' organisations, particularly with regard to their capacity to represent the self-employed, workers on all types of employment relationships, young people, migrants and women, micro and small enterprises and to build legal and technical expertise in order to facilitate their proper involvement in the design and implementation of employment and social policies at both national and Union level.

The EU social partners at cross-industry level committed to promote capacity-building and to improve the implementation of their autonomous agreements in their current work programme 2015-2017.

*b) Recent and ongoing initiatives at EU level*

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union.

The Tripartite Social Summit for Growth and Employment and of the Macroeconomic Dialogue remains the crucial fora to discuss with social partner representatives at political level.

The EU social partners at cross-industry level committed to promote capacity-building and to improve the implementation of their autonomous agreements in their current work programme 2015-2017.

In 2017, the Commission will publish a REFIT Evaluation of Directive 2009/38/CE of the European Parliament and of the Council on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. It will also publish a guidance document concerning the same Directive aimed at improving its implementation and establishing greater legal certainty.

In 2017, the Commission will report to the other Union institutions and to the social partners on the way the good practices collected in the 2013 "*EU quality framework for anticipation of change and restructuring*"<sup>74</sup> are being applied by Member States.

The Union will continue to promote investment by the Member States in the capacity-building of social partners and to foster the provision of information to employee representatives, and consultation of employee representatives, taking account of national legislation that has transposed the Directives on informing and consulting workers, collective redundancies and European Works Councils.

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<sup>74</sup> COM(2013 ) 882.

## Work-life balance

**Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 23 of the Charter provides that equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex. Article 33(2) of the Charter stipulates that in order to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### *b) The legislative powers and their limits*

According to Article 153(2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures to support and complement the activities of Member States *inter alia* in the fields of workers' health and safety, working conditions and equality between men and women with regard to labour market opportunities and treatment at work. Article 157(3) TFEU empowers the Union to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

#### *c) Existing measures*

Council Directive 92/85/EEC<sup>75</sup> requires Member States to provide workers with maternity leave of a duration of at least 14 weeks, with an allowance at least at the level of sick pay. Directive 2010/41/EU of the European Parliament and of the Council<sup>76</sup> stipulates that female self-employed workers and the female spouses and life partners of self-employed workers need to be granted sufficient maternity allowance to enable the interruption of their occupational activity on account of pregnancy or motherhood, for a period of at least 14 weeks. The revised Framework Agreement on

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<sup>75</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348, 28.11.1992, p.1.

<sup>76</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the Principle of equal treatment between men and women engaged in an activity in a self-employed capacity, OJ L 180, 15.7.2010, p.1.

parental leave concluded by social partners (BusinessEurope, UEAPME, CEEP and ETUC) - implemented at Union level by Council Directive 2010/18/EU<sup>77</sup> - gives male and female workers an individual right to parental leave of at least four months and requires Member States to take measures to ensure that workers may request a change to their working hours and/or patterns when returning from parental leave, for a set period of time. The Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - implemented by Directive 97/81/EC<sup>78</sup> - protects part-time workers from being treated less favourably than full-time workers and provides that employers should give consideration to requests by workers to switch from full-time to part-time work or vice-versa.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar highlights the importance of work-life balance for all people with caring responsibilities and confers rights that are essential to attain this balance in today's working environment, such as the right to access childcare or long-term care. The Principle goes beyond the current *acquis* by providing rights for *all people in employment with caring responsibilities*. It will hence also apply to people in employment who are not parents, but who may, for example, care for elderly or disabled family members.

Furthermore, the Pillar confers *a right to flexible working arrangements* such as teleworking, adaptation of working schedules or switching between full-time and part-time work. That right currently exists in Union legislation only when a worker returns to work following parental leave.

As regards gender equality, the Pillar sets a new focus on ensuring equal access for women and men to special leave arrangements. The balanced use of these arrangements by men and women should be encouraged, for instance by adjusting the level of payment, or conditions related to flexibility and non-transferability.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States are in charge of transposing and enforcing rules adopted at Union level. Given that the Union measures set out above contain minimum standards, Member States are invited to go beyond these rules in order to give effect to the provisions of the Pillar.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU and may request implementation of their agreements at Union level in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this

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<sup>77</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, OJ L68, 18.3.2010, p.13.

<sup>78</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L14, 20.1.1998, p.9.

Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

The EU social partners at cross-industry level selected reconciliation of work, private and family life as a priority for their current work programme 2015-2017.

*b) Recent and ongoing initiatives at EU level*

The Commission is presenting together with the European Pillar of Social Rights the "New start to support Work-Life Balance for parents and carers" initiative.<sup>79</sup> It proposes legislative and policy actions aiming to facilitate the uptake of parental leave by both women and men, to introduce the paternity leave and the carers' leave, to promote the use of flexible working arrangements, as well as to provide more and better child and other care facilities and remove economic disincentives such as tax-benefit disincentives, which discourage second-earners, often women, from entering the labour market.

Eurofound, the European Foundation for the Improvement of Living and Working Conditions and the European Institute for Gender Equality, two of the EU's decentralised agencies, are supporting the work of the Commission, Member States and social partners in the area of work-life balance, quality of life and public services.

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<sup>79</sup> COM(2017) 252 and COM(2017) 253.



## Healthy, safe and well-adapted work environment and data protection

- a. Workers have the right to a high level of protection of their health and safety at work.
  - b. Workers have the right to a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market.
  - c. Workers have the right to have their personal data protected in the employment context.
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### 1. The Union *acquis*

#### a) *The Charter of Fundamental Rights of the European Union*

Article 31 (1) of the Charter of Fundamental Rights of the European Union gives every worker the right to working conditions which respect his or her health, safety and dignity.

Article 8 of the Charter of Fundamental Rights of the European Union gives everyone the right to the protection of personal data and states that such data, the right of access to data which has been collected concerning him or her, and the right to have it rectified. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Compliance with these rules shall be subject to control by an independent authority.

#### b) *The legislative powers and their limits*

According to Article 153 (2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures *inter alia* for the improvement in particular of the working environment to protect workers' health and safety. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provides that everyone has the right to the protection of personal data concerning him or her.

### c) Existing measures

Council Framework Directive 89/391/EEC<sup>80</sup> and 23 related Directives set minimum requirements for the prevention of occupational risks, the protection of safety and health and the elimination of risks and accident factors. The Framework Directive establishes the general principles for a proper management of safety and health, such as the responsibility of the employer, rights and duties of workers, risk assessment as an instrument to continuously improve company processes, or workers' representation. The related Directives tailor these main principles to some specific workplaces and sectors, specific risks, tasks or categories of workers. They define how to assess these risks and, in some cases, set limit exposure values for certain substances and agents.

Directive 92/85/EEC introduces measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

The General Data Protection Regulation<sup>81</sup>, replacing the Data Protection Directive<sup>82</sup> allows Member States by law or by collective agreements to provide for more specific rules to ensure the protection of the rights and freedoms of employees.

In its Communication "Safer and Healthier Work for All"<sup>83</sup> the Commission emphasises the need to refocus efforts on ensuring better and broader protection, compliance and enforcement of occupational safety and health standards on the ground. It announces a number of legislative actions to step up fight against occupational cancer, as well as initiatives to support effective implementation of the rules, notably in microenterprises and SMEs. The Commission invites Member States and social partners to work together in order modernise occupational safety and health legislation at EU and national level, while maintaining or improving workers' protection.

## 2. Scope and changes introduced by the European Pillar of Social Rights

The Pillar goes beyond the current *acquis* by foreseeing a high level of protection for workers from risks to health and safety at work. It therefore urges Member States, but also employers, to go beyond the minimum requirements laid down in the current *acquis* and to get as close as possible to an accident-free and casualty-free working environment. This does not mean only applying the rules, but also establishing ever-improving health and safety policies with the help of tools such as web-based tools to facilitate risk assessments, dialogue with workers and workplace suppliers, all supported by guidance and feedback.

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<sup>80</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work OJ 1989 L183, 29.6.1989, p.1.

<sup>81</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

<sup>82</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

<sup>83</sup> COM(2017) 12 final, of 10 January 2017.

Principle 10b introduces two inter-related rights: first, it goes beyond the protection of health and safety by affording workers the right to a working environment adapted to their specific occupational circumstances. Secondly, in accordance also with the principle of active ageing, it recognises the need to adapt the working environment in order to enable workers to have sustainable and longer working careers. Certain adaptations, such as for example better lighting for carrying out clerical work, may be necessary due to the worker's age. In addition, adjustments, such as more flexible working hours, may be necessary to maintain older workers' health and well-being.

The Pillar introduces as well the right to protection of personal data for workers. The processing of personal data by the employer has always to be based on a legal ground, normally performance of a contract, compliance with a legal obligation or for the purposes of the legitimate interest pursued by the employer, except where such interest are overridden by the interest or fundamental rights of the worker.

### **3. Implementation**

#### *a) What Member States and social partners can do*

Member States are in charge of transposing and enforcing rules adopted at Union level. Given that the Union measures set out above contain minimum requirements, Member States are invited to go beyond these rules in order to give effect to the Principle of a high level of health and safety at work and by encouraging good practices as regards active ageing at work.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU and may request their agreements to be implemented at Union level in accordance with Article 155 TFEU. In particular, they can promote and develop joint standards at national or Union level to adapt workplaces to accommodate active aging and intergenerational approach. European social partners signed on 8 March 2017 an autonomous agreement on active ageing and intergenerational approach also covering health and safety to be implemented by national social partners by 2020.

Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

*b) Recent and ongoing initiatives at EU level*

The Commission has recently proposed amendments to Directive 2004/37/EC<sup>84</sup> (the Carcinogens and Mutagens Directive) aimed at improving protection for millions of workers by revising or establishing binding occupational exposure limit values for a number of dangerous chemical agents.<sup>85</sup> The Commission – in consultation with the social partners - will continue to propose further updates of the Carcinogens and Mutagens Directive to introduce binding limit values to combat occupational cancer.

The Commission will support the implementation of the *acquis* by improving compliance with the rules, in particular in micro-enterprises and SMEs, by putting forward proposals to remove or update outdated health and safety provisions in the light of scientific, technical and societal changes. It will refocus efforts on ensuring better protection, compliance and enforcement on the ground, *inter alia* by developing guidance for employers. The publication of guides on agriculture, fishing vessels and work-related vehicle risks is expected in 2017.

The Commission will launch a peer review process with Member States with the specific aim of reducing administrative burden in national legislation while maintaining worker protection and, in cooperation with the European Agency for Safety and Health at Work, further foster the development of relevant IT tools.

The European Agency for Safety and Health at Work, one of the EU's decentralised agencies, will play a key role in collecting and disseminating good practice and will support experience sharing, notably through the Healthy Workplaces campaigns. The "Healthy Workplaces for All Ages" campaign will conclude in 2017, publicising a wealth of examples from across the Union. In 2018, the Commission will aim to enhance the practical application of age-sensitive risk management measures by developing and disseminating relevant guidance for labour inspectors. The Agency will launch the next Healthy Workplaces campaign in 2018, focussing on dangerous substances in support of Commission's effort to fight occupational cancer. To facilitate the application of the data protection rules, the Article 29 Working Party (composed of the 28 national Data Protection Authorities) will issue in 2017 an opinion on personal data processing in an employment context.

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<sup>84</sup> Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC), OJ L158, 30.4.2004, p.50.

<sup>85</sup> COM(2016) 248 and COM (2017) 11.

## Chapter III – Social protection and inclusion

### Childcare and support to children

- 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.**
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#### 1. The Union *acquis*

##### *a) The Charter of Fundamental Rights of the European Union*

Article 14 of the Charter gives everyone the right to education, including the right to free compulsory education. Article 24(1) of the Charter gives children the right to such protection and care as is necessary for their wellbeing.

##### *b) The legislative powers and their limits*

Article 153 (2) of the Treaty on the Functioning of the European Union (TFEU) empowers the Union to adopt measures to support and complement the activities of the Member States in the fields of combatting social exclusion and the modernisation of social protection systems. The Union is empowered pursuant to Article 165 TFEU to contribute to the development of quality education by encouraging policy cooperation between the Member States and, if necessary, by supporting and implementing their action. Pursuant to Article 156 TFEU, with a view to achieving the objectives of Article 151 TFEU and without prejudice to the other provisions of the Treaties, the Commission is tasked to encourage cooperation between the Member States and facilitate coordination of their action in all social policy fields under Title X of the TFEU. Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof.

##### *c) Existing measures*

In 2002, the European Council set ‘the Barcelona Targets’<sup>86</sup> to ensure the provision of formal childcare to at least 90% of children in the Union between the age of 3 and the mandatory school age, and at least 33% of children under the age of 3 by 2010. These targets were reaffirmed in the European Pact for Gender Equality 2011-2020.

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<sup>86</sup> Presidency conclusions, Barcelona European Council, 15-16 March 2002, SN 100/1/02 REV 1.

The 2009 Strategic Framework for European cooperation in education and training (ET2020) set up a number of objectives in education and training, including a benchmark in Early Childhood Education and Care (ECEC).<sup>87</sup>

Commission Recommendation 2008/867/EC on the active inclusion of people excluded from the labour market<sup>88</sup> refers to the need for access to quality services, including childcare. Council Recommendation of 28 June 2011<sup>89</sup> on policies to reduce early school leaving mentions the provision of high-quality ECEC as a preventive measure to reduce the risk of early school leaving.

Commission Communication<sup>90</sup> and Council conclusions of 2011<sup>91</sup> on Early childhood education and care: providing all our children with the best start for the world of tomorrow, acknowledged that ECEC provides the necessary foundation for lifelong learning, social integration, personal development and future employability.

Commission Recommendation 2013/112/EU on Investing in children: breaking the cycle of disadvantage<sup>92</sup> calls on all Member States to step up their investment in children, according to a three-pillar approach, which includes affordable, quality ECEC services and other measures to address child poverty, as part of an integrated child-rights based package of policy measures to improve outcomes for children and break intergenerational cycles of disadvantage.

On 16 June 2016, Council Conclusions on "Combating Poverty and Social Exclusion: An Integrated Approach" encouraged the Member States to address child poverty and promote children's well-being through multi-dimensional and integrated strategies, in accordance with the Commission Recommendation on investing in children.

The European Regional Development Fund supports measures to improve the ECEC infrastructure and the European Social Fund supports the promotion of equal access to good quality early-childhood education and access to high quality and affordable services for children and families. The Erasmus+ programme provides the possibility for strategic partnerships and mobility in order to improve practice and supports cooperation to advance ECEC policies.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar establishes that *all children have the right to good quality ECEC*. ECEC is understood as any regulated arrangement that provides education and care for children from birth to compulsory primary school age - regardless of the setting, funding, opening hours or programme content - and

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<sup>87</sup> By 2020, at least 95% of children (from 4 to compulsory school age) should participate in early childhood education

<sup>88</sup> Commission Recommendation 2008/867/EC on the active inclusion of people excluded from the labour market, OJ L 307, 18.11.2008, p.11-14.

<sup>89</sup> OJ C 191, 1.7.2011, p.1.

<sup>90</sup> Communication from the Commission, Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow, COM(2011) 66 final.

<sup>91</sup> OJ C 175, 15.6.2011, p.8.

<sup>92</sup> Commission Recommendation 2013/112/EU Investing in children: breaking the cycle of disadvantage OJ L 59, 2.3.2013, p. 5.

includes centre and family-based day-care; privately and publicly funded provision; pre-school and pre-primary provision.<sup>93</sup>

Furthermore, the Pillar highlights the quality aspects of ECEC, understood as combining aspects related to access, workforce, curriculum, monitoring, evaluation and governance. Universally available and good quality ECEC is beneficial for all children and particularly those from a disadvantaged background.

The provisions of the Pillar set a right for children to be protected from poverty, meaning that every child shall have access to comprehensive and integrated measures as set out in the 2013 European Commission Recommendation on investing in children. Prevention of poverty and social exclusion is most effectively achieved through integrated strategies. The targeted measures should, for instance, comprise access to adequate resources, a combination of cash and in-kind benefits allowing children to enjoy adequate living standards, access to affordable quality services in the area of education, health, housing, family support and promotion of family-based and community care, as well as legal protection and support for children to participate in decision-making that affects their lives.

In addition, Principle 11b gives children from disadvantaged backgrounds (such as Roma children, some migrant or ethnic minority children, children with special needs or disabilities, children in alternative care and street children, children of imprisoned parents, as well as children within households at particular risk of poverty) the right to specific measures – namely reinforced and targeted support - with a view to ensure their equitable access to and enjoyment of social rights.

### **3. Implementation**

#### *a) What Member States and Social Partners can do*

Member States are responsible for the content of teaching and for the organisation of their education systems and they are invited to give effect to the Pillar in this context, particularly through enhanced availability and better use of early childhood education and care facilities, and by introducing policies to counter child poverty and measures to promote equal opportunities, for instance national and subnational strategies that include targets, indicators, earmarked budget allocations and a monitoring mechanism. National strategies on child participation could be put in place to promote awareness on how to involve children in all actions and decisions that concern them.

At national level, social partners may support the implementation of this Pillar by collecting and exchanging good practices across the Union. Thanks to the involvement of the social partners in work-life balance issues, and in some countries their responsibility for social security systems, many

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<sup>93</sup> Proposal for key principles of a Quality Framework for Early Childhood Education and Care, report of the Working Group on Early Childhood Education and Care under the auspices of the European Commission, [http://ec.europa.eu/dgs/education\\_culture/repository/education/policy/strategic-framework/archive/documents/eccec-quality-framework\\_en.pdf](http://ec.europa.eu/dgs/education_culture/repository/education/policy/strategic-framework/archive/documents/eccec-quality-framework_en.pdf).

companies already promote or even provide childcare for their own staff. In this way, the social partners play a key role in the identification and exchange of good practices.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

*b) Recent and ongoing initiatives at EU level*

The Commission is presenting together with the European Pillar of Social Rights the "New start to support Work-Life Balance for parents and carers" initiative. It proposes legislative and policy actions aiming to facilitate the uptake of parental leave by both women and men, to introduce the paternity leave and the carers' leave, to promote the use of flexible working arrangements, as well as to provide more and better child and other care facilities and remove economic disincentives such as tax-benefit disincentives, which discourage second-earners, often women, from entering the labour market.

The Commission is presenting together with the European Pillar of Social Rights a review of the implementation of Commission Recommendation 2008/867/EC on the active inclusion of people excluded from the labour market, and of Commission Recommendation 2013/112/EU: Investing in children: breaking the cycle of disadvantage.

The Commission will further support Member States in providing a common framework for high quality early childhood education and care and step up efforts to help them learn from each other and identify what works best.

In 2017, the Commission will launch and implement a Preparatory Action on a Child Guarantee, following a European Parliament's proposal. It aims to clarify the concept of such a guarantee, its feasibility and potential to contribute to the overall objective of fighting child poverty.



## Social protection

**Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.**

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### 1. The current Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 34 of the Charter affirms respect for the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices. It recognises entitlement to social security and social assistance for everyone residing and moving legally within the European Union in accordance with Union law and national laws and practices. It also sets out the right to social assistance and social housing to ensure a decent existence for all those who lack sufficient resources and combat social exclusion and poverty.

Article 35 of the Charter guarantees the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

#### *b) The legislative powers and their limits*

Article 153(2) of the Treaty on the Functioning of the European Union (TFEU) enables the Union legislature to adopt measures, including directives setting minimum requirements, in the field of social security and social protection of workers.

Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Pursuant to Article 156 TFEU, the Commission is tasked to encourage cooperation between the Member States and facilitate coordination of their action in all social policy fields under Title X of the TFEU.

Article 48 TFEU requires the Union legislature to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers and the self-employed between the Member States.

### c) Existing measures

Council Recommendation 92/442/EEC on the convergence of social protection objectives and policies<sup>94</sup> covers social insurance for workers in relation to sickness, maternity, unemployment, incapacity for work, the elderly and family.

Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems<sup>95</sup> sets out principles and guidelines to implement this right.

Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in self-employed activity<sup>96</sup> grants access to maternity leave and benefits for at least 14 weeks. It does not cover access to any other social insurance risks.

Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>97</sup> coordinates the social security rules of the Member States as regards persons in cross-border situations.

Regulation (EU) No 1231/2010 of the European Parliament and of the Council<sup>98</sup> coordinates social security systems in the case of third country nationals and their family members legally residing in the territory of the Union who have moved between Member States.

Council Directive 2003/109/EC<sup>99</sup> concerning the status of third-country nationals who are long-term residents, together with a number of other Union directives concerning legal migration of third country nationals in the Union<sup>100</sup>, confer them equal treatment rights with host country's nationals in relation to social protection and social security.

## 2. Scope and changes introduced by the European Pillar of Social Rights

The Pillar transforms the call for a replacement income which will maintain the workers' standard of living in the 1992 Recommendation *into a right*. The provisions on social protection apply to all workers, regardless of the type and duration of their employment relationship, and, under

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<sup>94</sup> Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies OJ L 245, 26.8.1992, p. 49.

<sup>95</sup> Council Recommendation 92/441/EEC of 24 June 1992, OJ L 245, 26.8.1992, p. 46.

<sup>96</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the Principle of equal treatment between men and women engaged in an activity in a self-employed capacity, OJ L 180, 15.7.2010, p.1.

<sup>97</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems OJ L 166, 30.4.2004, p.1.

<sup>98</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, OJ L 344, 29.12.2010, p. 1.

<sup>99</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44. See also, for example, Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p.1.

<sup>100</sup> Directives on: Family reunification, Blue Card, Single Permit, Researchers, Students, Qualification as a beneficiary of international protection, seasonal workers and intra-corporate transferees.

comparable conditions, the self-employed. Its aim is to cover the whole range of non-standard contracts for the provision of work which are increasingly prevalent in today's labour market.

The Pillar also provides that the *self-employed* shall have access to social protection. By extending access to the self-employed, the Principle goes beyond the 1992 Council Recommendation, which only calls for examining the possibility of appropriate social protection for the self-employed.

The material scope of the right to social protection covers both social assistance and social security. Social security, which includes both contributory and non-contributory schemes, is defined in Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>101</sup> to include the following branches: (a) sickness benefits; (b) maternity and equivalent paternity benefits; (c) invalidity benefits; (d) old-age benefits; (e) survivors' benefits; (f) benefits in respect of accidents at work and occupational diseases; (g) death grants; (h) unemployment benefits; (i) pre-retirement benefits; (j) family benefits.

In guaranteeing also to the self-employed access to social protection under comparable conditions, the Principle goes beyond Directive 2010/41/EU, which dealt only with maternity leave.

Taken together, part one and part two of the provision on social protection ensure that comparable access to social protection is made available to people employed as workers and people working as self-employed.

### **3. Implementation**

#### *a) What Member States and social partners can do*

Member States are invited to adapt their rules in order to give effect to the Pillar provisions on social protection, in addition to transposing and enforcing rules adopted at Union level.

Furthermore, Member States may ratify, if not done so, and apply the relevant ILO conventions on social security, the European Code of Social Security and the Revised European Social Charter, and may review the reservations made for some Articles of the revised European Social Charter.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

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<sup>101</sup> The Regulation applies also to special non-contributory cash benefits which display characteristics of both social security and social assistance.

*b) Recent and ongoing initiatives at EU level*

The Commission is presenting together with the European Pillar of Social Rights a first-stage consultation of the social partners on an initiative concerning "Access to Social Protection",<sup>102</sup> in order to address varying access to social protection by workers in standard employment and people employed on non-standard contracts and in various forms of self-employment.

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<sup>102</sup> C(2017) 2610.

## Unemployment Benefits

**The unemployed have the right to adequate activation support from public employment services to (re)integrate in the labour market and adequate unemployment benefits of reasonable duration, in line with their contributions and national eligibility rules. Such benefits shall not constitute a disincentive for a quick return to employment.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 29 of the Charter guarantees everyone the right of access to a free placement service. Article 34 of the Charter affirms respect for the entitlement to social security benefits and social services providing protection *inter alia* in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices. It recognises the entitlement to social security and social assistance for everyone residing and moving legally within the European Union in accordance with Union law and national laws and practices.

#### *b) The legislative powers and their limits*

Article 147 of the Treaty on the Functioning of the European Union (TFEU) provides that the European Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. According to Article 153(2) TFEU, the Union is empowered to adopt measures *inter alia* in the field of the integration of persons excluded from the labour market. These measures can include directives setting minimum requirements. Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof. Directives adopted on the basis of Article 153 TFEU shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

#### *c) Existing measures*

Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems<sup>103</sup> provides the right to retain the entitlement to unemployment benefits in cash for a period of up to three months, with a possibility of extension up to six months, for a wholly unemployed person who satisfies the conditions for entitlement to unemployment benefits and who goes to another Member State to seek work.

Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market<sup>104</sup> calls for an integrated comprehensive strategy for the active inclusion of people

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<sup>103</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems OJ L 166, 30.4.2004, p.1.

<sup>104</sup> Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market, OJ L 307, 18.11.2008, p. 11.

excluded from the labour market, combining adequate income support, inclusive labour markets and access to quality services.

The European Network of Public Employment Services (PES) established through the Decision No 573/2014/EU<sup>105</sup> of the European Parliament and Council, provides a platform to compare PES performance at European level, identify good practice and foster mutual learning in order to strengthen the active support services.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar states the right to adequate support for people in unemployment from public employment services. Such support is based on assessment, counselling and guidance for job search and more broadly for career decisions.

Furthermore, the Pillar provides that the unemployed shall have a right to adequate unemployment cash benefits of reasonable duration. The Pillar requires an adequate level of benefits, as in relation to the income replaced. The replacement level should maintain incentives for a quick return to work. Provision of the benefit should be of reasonable duration: it is important to allow sufficient time to find a job matching the skills of the jobseeker, and to avoid negative incentives discouraging job-seeking. Notwithstanding, the benefits should be in line with the contributions and respect national eligibility rules.

The provision covers all unemployed, including those with short employment records and those who were formerly self-employed. Its material scope covers both contributory and non-contributory unemployment cash benefits, as well as unemployment assistance.

Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market already provides guidance to continually review the incentives and disincentives to work resulting from tax and benefit systems. As a new development, the Pillar requires that such incentives be built into the design of unemployment benefit schemes. Moreover, it links the unemployment benefits to the support of public employment services.

## **3. Implementation**

### *a) What Member States and social partners can do*

Each Member State retains the right to define the fundamental principles of its social security system. To give effect to the Pillar, Member States are invited to update their rules concerning the provision of unemployment cash benefits in addition to transposing and enforcing rules adopted at Union level.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and

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<sup>105</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.159.01.0032.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.159.01.0032.01.ENG)

exchange good practices across the Union. At national level, social partners may support the implementation of this Principle via collective bargaining and through their involvement in the design and implementation of relevant policies.

*b) Recent and ongoing initiatives at EU level*

The Commission is presenting together with the European Pillar of Social Rights a first-stage consultation of the social partners on an initiative concerning "Access to Social Protection",<sup>106</sup> in order to address varying access to social protection by workers in standard employment and people employed on non-standard contracts and in various forms of self-employment. The consultation will address the access to unemployment benefits and to employment services.

The Commission will continue to support negotiations on the proposal presented in December 2016 for amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 of the European Parliament and of the Council.<sup>107</sup> This proposal extends the minimum period for which an unemployed person can request unemployment benefits while searching for a job in another Member State from three to six months.

The European Network of Employment Services (PES Network) is implementing the Benchlearning project, aiming to improve the PES' performance, linking indicator-based benchmarking with mutual learning in order to better address the active support to job seekers.

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<sup>106</sup> C(2017) 2610.

<sup>107</sup> COM(2016) 815 final, 13.12.2006.

## Minimum income

**Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 34(3) of the Charter affirms recognition and respect of the right, *inter alia*, to social assistance to ensure a decent existence for all those who lack sufficient resources in accordance with the rules laid down by Union law and national laws and practices.

#### *b) The legislative powers and their limits*

According to Article 153(2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures to support and complement the activities of Member States in the field of the integration of persons excluded from the labour market. Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof. Pursuant to Article 156 TFEU, the Commission is tasked to encourage cooperation between the Member States and facilitate coordination of their action in all social policy fields under Title X of the TFEU.

#### *c) Existing measures*

Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems (commonly known as the "Minimum Income Recommendation")<sup>108</sup> calls on Member States to recognise the right to social assistance and sets out principles and guidelines to implement this right.

Commission Recommendation 2008/867/EC<sup>109</sup> on the active inclusion of persons excluded from the labour market calls on Member States to combine adequate income support with access to quality services and inclusive labour market measures in an integrated active inclusion strategy. This call to the Member States was reiterated in the Council Recommendation of 15 February 2016 on the integration of the long-term unemployed into the labour market.<sup>110</sup>

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<sup>108</sup> Council Recommendation 92/441/EEC of 24 June 1992, OJ L 245, 26.8.1992, p. 46.

<sup>109</sup> Commission Recommendation 2008/867/EC of 3 October 2008 on the active inclusion of people excluded from the labour market, OJ L 307, 18.11.2008, p. 11, endorsed by the Council of the European Union on 17 December 2008.

<sup>110</sup> Council Recommendation of 15 February 2016, OJ C 67, 20.2.2016, p. 1.



## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar sets out a right for everyone who lacks sufficient resources to access minimum income benefits. In the case of people who are able to work, benefits should be combined with incentives to (re)integrate into the labour market. It goes beyond the 1992 Minimum Income Recommendation by explicitly stating the right to a minimum income that ensures a life in dignity. The concept of "minimum income", pointing to a specific form of benefit, is used explicitly for the first time, replacing the more generic terms such as "social assistance" or "sufficient resources".

Minimum income aims at preventing destitution of people who are not eligible for social insurance benefits, or whose entitlement to such benefits has expired, thus combating poverty and social exclusion. Such benefits should also ensure a life in dignity at all stages of life combined with effective access to enabling services. They are non-contributory, universal and means-tested. They require people to be available for work or participate in community activities, if the individuals are capable.

An important element of ensuring incentives to work is that the design of the benefit should be consistent with other benefits and preserve financial incentives to take up a job and therefore avoid minimum income beneficiaries to be trapped in inactivity. Such incentives can take the form of requiring the person receiving the benefit to make use of employment services, which together with other enabling services can support labour market reintegration.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States are responsible for implementing the guidelines and recommendations on social protection agreed at Union level. To give effect to the Principle, Member States are invited to update and extend their practice concerning the design and payment of minimum income benefits.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

### *b) Recent and ongoing initiatives at EU level*

The efficient set up of minimum income schemes at national level is encouraged in Country Specific Recommendations within the European Semester process of economic policy coordination, to which the Social Protection Committee contributes. The Open Method of Coordination in the Social Protection Committee ensures policy coordination and monitors the progress of the Member States.

The European Union financial instruments and in particular the European Social Fund play an important role supporting the development of minimum income benefits.

The Commission has been supporting Member States to improve their minimum schemes through the European Minimum Income Network<sup>111</sup> focused on the promotion of adequate and accessible minimum income schemes and the dissemination of a methodology for cross-nationally comparable reference budgets in the Member States.

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<sup>111</sup> <https://emin-eu.net/what-is-emin/>

## Old-age income and pensions

**a. Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.**

**b. Everyone in old age has the right to resources that ensure living in dignity.**

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### 1. The EU *acquis*

#### a) *The Charter of Fundamental Rights of the European Union*

Article 25 of the Charter affirms recognition and respect for the rights of the elderly to lead a life of dignity and independence. Article 34 of the Charter affirms respect for the entitlement to social security benefits and social services providing protection, *inter alia*, in cases such as dependency or old age, in accordance with the rules laid down by Union law and national laws and practices and the entitlement to social security benefits and social services in old age. Article 23 guarantees equality between men and women in all areas.

#### b) *The legislative powers and their limits*

Article 151 of the Treaty on the Functioning of the European Union (TFEU) affirms that, *inter alia*, one of the objectives of the Union and the Member States is the promotion of proper social protection. According to Article 153(2) TFEU, the Union is empowered to adopt measures in the area of social security and social protection of workers. Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof. Pursuant to Article 156 TFEU, the Commission is empowered to encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields, including in the field of social security.

Article 19 TFEU empowers the Union legislature to take appropriate action to combat discrimination *inter alia* based on sex. Article 157(3) TFEU empowers the Union legislature to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in employment and occupation.

### c) Existing measures

There are a number of Directives which implement the principle of equal treatment between men and women, *inter alia*, in relation to pensions, covering statutory schemes, occupational and personal pensions.<sup>112</sup>

Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems<sup>113</sup> provides for the aggregation of periods of insurance and the right of export of pension for pensioners who worked in another Union Member State.

The Union has also adopted directives concerning occupational pension schemes, notably in cross-border situations.<sup>114</sup>

Council Recommendation 92/442/EEC<sup>115</sup> on the convergence of social protection objectives and policies covers social insurance for workers in relation to sickness, maternity, unemployment and incapacity for work; minimum subsistence for the elderly; and social protection of the family.

## 2. Scope and changes introduced by the European Pillar of Social Rights

The Pillar calls for an adequate pension for both workers and the self-employed. Thus, the Pillar goes beyond existing *acquis* by covering also the self-employed. It also calls for equal opportunities for both women and men to acquire old-age pension rights. At present, the pensions of women are lower than those of men largely due to the impact on contribution records of lower pay, more part-time and shorter, more interrupted careers linked to caring obligations. Thus, equal opportunities to build old-age income rights require, in conjunction with labour market and work-life balance measures, equal pensionable ages and adequate crediting of pension rights for care periods. The Pillar goes further than the 1992 Recommendation by calling for equality of opportunity between women and men when it comes to acquiring pension rights.

The Pillar calls for an adequate income at old age without regard to the type of pension system. Thus, it covers all three pillars of the pension system. Funded supplementary pension systems are becoming more important alongside state-based pension systems. Facilitating and encouraging lifelong saving for retirement, including fiscal incentives, is an important flanking measure.

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<sup>112</sup> Directive 79/7/EEC on the implementation of the Principle for men and women in matters of social security, OJ L 6, 10.1.1979, p. 24; Directive 2006/54/EC on the implementation of the equal opportunities and equal treatment of men and women in employment and occupation OJ L 2004, 26.7.2006, p. 23; Directive 2004/113/EC on the implementation of the Principle of men and women in the access to and supply of goods and services, OJ L 273, 21.12.2004, p.37.

<sup>113</sup> Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.04.2004, p.1.

<sup>114</sup> Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, OJ L 209, 25.7.1998, p. 46; Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, OJ L 128, 30.4.2014, p.1; Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) OJ L 354, 23.12.2016, p.37.

<sup>115</sup> Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies OJ L 245, 26.8.1992, p. 49.

The provisions of the Pillar apply to income support for older people irrespective of its form. They aim at preventing poverty in old age and maintaining retired people's standard of living. The 1992 Recommendation on Convergence of Social Protection Objectives and Policies deals with both poverty protection and income maintenance. However, the Principle sets the bar higher by speaking about the *right to* a pension ensuring an adequate income.

### **3. Implementation**

#### *a) What Member States and Social Partners can do*

Member States retain the right to define the fundamental Principles of their social security systems. They are invited to adapt their rules in order to give effect to the Principle, in addition to transposing and enforcing rules adopted at Union level.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

#### *b) Recent and ongoing initiatives at EU level*

The Commission is presenting together with the European Pillar of Social Rights a first-stage consultation of the social partners on an initiative concerning "Access to Social Protection"<sup>116</sup> in order to address varying access to social protection by workers in standard employment and people employed on non-standard contracts and in various forms of self-employment. The consultation will address occupational rights and ways to make pension rights transferable and transparent when changing employer, contract type or moving to self-employment.

While public pension schemes are the backbone of old age income support supplementary pension schemes can also contribute to a more adequate income protection. In its Action Plan on Capital Markets Union of 30 September 2015, the Commission committed to analyse ways to increase choices for retirement saving and build an EU market for personal pensions. A legislative initiative is under preparation with a view to creating pan-European Personal Pensions alongside domestic personal pension schemes.

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<sup>116</sup> C(2017) 2610.

## Health care

**Everyone has the right to timely access to affordable, preventive and curative health care of good quality.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 35 of the Charter recognises that everyone has the right of access to medical treatment and preventive health care under the conditions established by national laws and practices.

#### *b) The legislative powers and their limits*

According to Article 153(2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures to support and complement the activities of the Member States in the area of social security and social protection of workers.

Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof.

Pursuant to Article 168(2) TFEU the Union shall encourage cooperation between the Member States in the area of human health and, if necessary, lend support to their action. The Commission may, in close contact with the Member States, take any useful initiative to promote coordination between the Member States in this area, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. Articles 168(1) and (7) TFEU provide that Union action shall complement national policies and respect the responsibilities of the Member States and shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health.

Article 48 TFEU requires the Union legislature to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers between Member States.

#### *c) Existing measures*

The EU legislation on pharmaceutical products<sup>117</sup> and on substances of human origin<sup>118</sup> set common standards for accessibility, quality and safety of these products across the EU internal market.

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<sup>117</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use; Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Consolidated version: 05/06/2013).

<sup>118</sup> [https://ec.europa.eu/health/blood\\_tissues\\_organs/policy\\_en](https://ec.europa.eu/health/blood_tissues_organs/policy_en)

Council Recommendation 92/442/EEC<sup>119</sup> calls on Member States, *inter alia*, to ensure, under conditions determined by each Member State, access to necessary healthcare as well as to facilities seeking to prevent illness for all persons who are legally resident.

Council Recommendation 9 June 2009<sup>120</sup> establishes cooperation on patient safety and the related standards, including the prevention and control of healthcare associated infections.

Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security schemes<sup>121</sup> covers, *inter alia*, access to healthcare for mobile citizens. Furthermore, Directive 2011/24/EU of the European Parliament and of the Council<sup>122</sup> lays down rules intended to facilitate the receipt of cross-border health care within the Union.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar sets out a general right of access to good quality preventive health care and medical treatment. It goes beyond Article 35 of the Charter in that it requires timely access to healthcare and stipulates that it should be affordable and of good quality.

Timely access means that everyone is able to access healthcare whenever they need it. The realisation of the Principle requires a balanced geographical location of health care facilities and health professionals, as well as policies to minimise long waiting periods.

Affordable health care means that people should not be prevented from using needed care because of the cost.

The provision of the Pillar on healthcare includes the right to healthcare of good quality, meaning that healthcare should be relevant, appropriate, safe and effective.

Finally, preventive and curative healthcare means access to medical treatment and public health services, including health promotion and disease prevention.

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<sup>119</sup> Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies, OJ L 245, 26.08.1992, p. 49.

<sup>120</sup> Council Recommendation of 9 June 2009 on patient safety, including the prevention and control of healthcare associated infections OJ C 151 03.07.2009.

<sup>121</sup> Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.04.2004, p.1.

<sup>122</sup> Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, OJ L 88, 4.4.2011, P. 45 – 65.

### **3. Implementation**

#### *a) What Member States and Social Partners can do*

Member States are responsible for the definition of their health policy and for the organisation and delivery of health services and medical care, and retain the right to define the fundamental principles of their social security systems. They are invited to adapt their rules to give effect to the Principle, in addition to transposing and enforcing rules adopted at Union level.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

#### *b) Recent and ongoing initiatives at EU level*

Directive 2011/24/EU establishes cooperation between the Member States' health systems for addressing common challenges such as access to healthcare, in particular through the recently launched European Reference Networks; the cooperation on Health Technology Assessment; and the cooperation in the eHealth Network and within the Digital Single Market.



## Inclusion of people with disabilities

**People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.**

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### 1. The Union *acquis*

#### a) *The Charter of Fundamental Rights of the European Union*

Article 21 of the Charter prohibits any discrimination *inter alia* on the ground of disability. Article 26 of the Charter recognises the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. Article 34 of the Charter recognises the entitlement to social security benefits and services in cases such as dependency or loss of employment.

#### b) *The legislative powers and their limits*

According to Article 19 of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to take appropriate action to combat discrimination based *inter alia* on disability.

According to Article 153 TFEU, the Union is empowered to adopt measures, including directives setting minimum requirements, to support and complement the activities of the Member States in the fields of - *inter alia* - the improvement of the working environment to protect workers' health and safety; working conditions; social security and social protection of workers; and the integration of persons excluded from the labour market. Based on Article 153 TFEU, the Union is also empowered to support and complement the activities of the Member States in the field of combating social exclusion.

#### c) *Existing measures*

The Union is a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD),<sup>123</sup> an international legally binding instrument setting minimum standards for the rights of people with disabilities. 27 Union Member States<sup>124</sup> are also parties to the Convention. The UNCRPD requires its parties to adopt all appropriate measures for the implementation of the rights recognised therein, including persons with disabilities' right to work on an equal basis with others, to an adequate standard of living, to live independently and to be included in the community.

Council Directive 2000/78/EC<sup>125</sup> (the Employment Equality Directive) prohibits discrimination on the ground of *inter alia* disability as regards access to employment, self-employment, occupation and vocational training. It requires employers to provide reasonable accommodation, which means to

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<sup>123</sup> Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 27.1.2010, p. 35.

<sup>124</sup> Except Ireland which is finalising the ratification process.

<sup>125</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16.

take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

The core elements of the UNCRPD are reflected in the European Disability Strategy 2010-2020,<sup>126</sup> through which the Commission promotes participation of people with disabilities in society and in the labour market, decent living conditions and social inclusion. Moreover, provisions related to people with disabilities are included in Union sectoral legislation such as on transport, telecommunication, consumer protection, state aid, public procurement or health and safety.

Moreover, the Commission encourages Member States to ensure that people with special needs receive support within the general education system. It does so mostly through the European Agency for Special Needs and Inclusive Education, established in 1996. The Agency supports reforms at national level through long-term cooperation, expertise and knowledge exchange, working directly with ministries of education on a voluntary basis. The Agency's reviews help Member States meeting the international standards set in the UN Convention on the Rights of Persons with Disabilities, notably article 24. Through Erasmus+ funding, the Commission also supports concrete projects promoting inclusive education.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar reflects the holistic human rights-based approach to disability enshrined in the UNCRPD, based on respect for *dignity*, individual autonomy and independence of persons with disabilities, their full and effective *participation* and inclusion in society on equal basis with others, and equality of opportunity.

The Pillar highlights the right to *income support* as one of the elements of social protection, to *services* that enable people with disabilities to participate in the labour market and in society, and to *an adapted work environment* as key measures for people with disabilities to access other rights set out in the Principles of the Pillar, and to enjoy full equality and inclusion at work and in society. By specifying the necessary, mutually reinforcing combination of these measures, the Principle goes beyond the existing *acquis*.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States are responsible for the transposition and enforcement of rules adopted at Union level. Those Member States which have ratified the UNCRPD are responsible for its full implementation in matters falling under their competence. The Union measures referred to above

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<sup>126</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM/2010/0636 final.

contain minimum standards and Member States are invited to go beyond these rules in order to give effect to the Principle, including taking positive action to ensure inclusion of people with disabilities on an equal basis with others. In doing so, Member States should closely consult with and actively involve persons with disabilities.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

*b) Recent and ongoing initiatives at EU level*

The Commission continues to support negotiations for the adoption of the proposed European Accessibility Act<sup>127</sup> aimed at ensuring accessibility of certain products and services in the internal market, thus facilitating people with disabilities' employment and participation in society on an equal basis with others.

The Commission, as the focal point for the implementation of the UNCRPD at Union level, will continue to mainstream matters relating to disability in all relevant Union policies and legislation, including in all relevant areas of the European Pillar of Social Rights.

The Commission will also continue to support negotiations for the adoption by the Union legislature of its proposal for a Council Directive to expand protection against discrimination based on *inter alia* disability<sup>128</sup> to social protection, including social security and healthcare; education; social advantages; and access to goods and services which are available to the public, including housing.

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<sup>127</sup> Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services - COM/2015/0615 final - 2015/0278 (COD).

<sup>128</sup> Proposal for a Council Directive on implementing the Principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC (2008) 2180} {SEC (2008) 2181}.

## Long-term care

**Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 25 of the Charter recognises and respects the rights of the elderly to a life of dignity and independence and to participate in social and cultural life. Article 26 of the Charter recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. Article 34 affirms respect for the entitlement to social security benefits and social services providing protection, *inter alia* in cases such as illness, dependency or old age, in accordance with the rules laid down by Union law and national laws and practices.

#### *b) The legislative powers and their limits*

According to Article 153(2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures which support and complement the activities of the Member States in the fields of social security and social protection of workers, combatting social exclusion and modernisation of social protection systems.

Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof.

#### *c) Existing measures*

Council Recommendation 92/442/EEC on the convergence of social protection objectives and policies<sup>129</sup> calls on Member States to take appropriate measures in social security having regard to the specific needs of the elderly where they are dependent on outside care and services. Commission Recommendation 2008/867/EC on the active inclusion of people excluded from the labour market<sup>130</sup> recommends that Member States should provide such services, which are essential to supporting active and economic inclusion policies, including long-term care services.

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<sup>129</sup> Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies OJ L 245, 26.8.1992, p. 49.

<sup>130</sup> The Commission Recommendation (2008/867/EC) on the active inclusion of people excluded from the labour market, OJ L 307, 18.11.2008, p.11-14.

Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security schemes<sup>131</sup> covers, *inter alia*, access to long-term care benefits for mobile citizens.

The European Structural and Investment Funds provide funds to Member States for co-financing investments in social services and health care, which reinforce the shift from a hospital- and institution-centred model to community-based care and integrated services. Funds also support the development of long-term care services through the training of formal carers.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar affirms for the first time at Union level the right to long-term care services for persons who are reliant on care. It calls for services of quality which would help frail or dependent people maintain their health and functional status for as long as possible and improve their autonomy. Furthermore, the Pillar requires care services to be affordable since formal care services can have significant financial costs, leaving many persons who are reliant on care with unmet needs. While the Charter of Fundamental Rights sets out that older people should have the right to live in dignity and independence, the affordability, adequacy and quality of the services provided are central for the application of this right.

The Pillar privileges home-care (provided at the home of a person in need of care) and community-based services (range of care services of a non-institutional character) and therefore goes a step further than the Commission 2008 Recommendation on active inclusion. Developing community-based services helps persons with long-term care needs and with disabilities to live independently and to be included in the community.<sup>132</sup> This generally respects the preferences of persons in need of care to maintain independent living for as long as possible.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States retain the right to define the fundamental principles of their social security systems. They are invited to adapt their rules in order to give effect to the Principle, in addition to transposing and enforcing rules adopted at Union level.

At Union level, social partners are to be consulted in accordance with Article 154 TFEU on possible initiatives based on Article 153 TFEU, and may sign agreements which may be implemented at Union level at their request in accordance with Article 155 TFEU. Social partners may also collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

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<sup>131</sup> Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.04.2004, p. 1.

<sup>132</sup> In line with the UN Convention on the Rights of Persons with Disabilities.

*b) Recent and ongoing initiatives at EU level*

The Commission is presenting together with the European Pillar of Social Rights the "New start to support Work-Life Balance for parents and carers" initiative. It proposes legislative and policy actions aiming to facilitate the uptake of parental leave by both women and men, to introduce the paternity leave and the carers' leave, to promote the use of flexible working arrangements, as well as to provide more and better child and other care facilities and remove economic disincentives such as tax-benefit disincentives, which discourage second-earners, often women, from entering the labour market.

The Commission continues to support negotiations on the proposal presented in December 2016 for amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004.<sup>133</sup> The proposal aims to establish a coherent regime for the coordination of long-term care benefits in cross-border situations.

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<sup>133</sup> COM(2016) 815 final, 13.12.2016.

## **Housing and assistance for the homeless**

**a. Access to social housing or housing assistance of good quality shall be provided for those in need.**

**b. Vulnerable people have the right to appropriate assistance and protection against forced eviction.**

**c. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.**

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### **1. The Union *acquis***

#### *a) The Charter of Fundamental Rights of the European Union*

Article 34(3) of the Charter affirms recognition and respect of the right, *inter alia*, to housing assistance to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

#### *b) The legislative powers and their limits*

According to Article 153 (2) of the Treaty on the Functioning of the European Union (TFEU), the Union is empowered to adopt measures to support and complement the activities of the Member States in the fields of social security and social protection of workers, combating social exclusion and the modernisation of social protection systems. Pursuant to Article 156 TFEU, the Commission is tasked to encourage cooperation between the Member States and facilitate coordination of their action in all social policy fields in Title X of the TFEU.

Article 153(4) provides that provisions adopted pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security system and must not significantly affect the financial equilibrium thereof.

#### *c) Existing measures*

Commission Recommendation 2008/867/EC on the active inclusion of people excluded from the labour market<sup>134</sup> lays down that Member States should provide services that are essential for supporting social inclusion policies, such as housing support and social housing. Commission Recommendation 2013/112/EU on investing in children: breaking the cycle of disadvantage<sup>135</sup> addresses the housing and living conditions of poor children. The Union Framework for National Roma Integration Strategies<sup>136</sup> recognises housing as a key area of intervention for the inclusion of disadvantaged Roma people. The UN Convention on the Rights of Persons with Disabilities recognises

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<sup>134</sup> OJ L307, 18.11.2008, p.11.

<sup>135</sup> Commission Recommendation 2013/112/EU of 20 February 2013 Investing in children: breaking the cycle of disadvantage OJ L 59, 2.3.2013, p. 5–16

<sup>136</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Framework for National Roma Integration Strategies up to 2020 , COM/2011/0173 final.

the right to an adequate standard of living for people with disabilities and their families, including adequate housing, and to access to public housing programmes. The Convention also calls for its parties to take appropriate measures to ensure accessibility of housing.

As regards access to shelter, Union legislation lays down specific protection for particularly vulnerable people such as unaccompanied children, asylum-seekers and refugees. Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime<sup>137</sup> provides for the provision of shelter or any other appropriate interim accommodation.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar covers the different aspects of the right to housing in a comprehensive manner for the first time at Union level.

While the Charter of Fundamental Rights provides the right to housing assistance and to a decent existence for all those who lack sufficient resources, Principle 19a goes further by referring to the provision of housing support in-kind, namely social housing. Either social housing or housing assistance should be provided: the material scope of the Principle includes the whole range of possibilities in providing support in relation to housing, and covers, for example, housing benefit, income support, rental guarantees and tax deductions.

The personal scope of this provision is also wider than under the Charter as it includes housing assistance for *everyone in need*, not only for those who lack sufficient financial resources but equally those with special needs – due to their disabilities, family breakdown etc.

As regards assisting vulnerable people in the case of eviction, the Pillar represents a significant reinforcement of the right to housing and housing security in particular. Vulnerable people can include both at-risk tenants and dispossessed owners at risk of eviction. The Principle requires the provision of assistance and protection, such as affordable legal representation, advocacy and mediation; or protective measures, such as access to debt management schemes, to mitigate the risk of homelessness. At the same time, the principle is with due regard of the interests of landlords and in justified, lawful cases.

Moreover, the Pillar establishes universal access to adequate shelters for everyone in a homeless situation. Adequate housing can be understood in terms of security of tenure, affordability, habitability, accessibility, location and cultural adequacy. The Principle also sets the bar higher by promoting the reintegration of homeless people into society, by means of enabling social services.

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<sup>137</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57.



### **3. Implementation**

#### *a) What Member States can do*

Member States are invited to adopt measures, in particular, national, regional or local housing, cash and in-kind, to support universal and rapid access to shelter for people in all kinds of emergency situations as well as to enhance the coverage and the capacity of enabling social services in order to give effect to the Principle.

#### *b) Recent and ongoing initiatives at EU level*

The reform of social housing, the accessibility and affordability of housing, as well as the effectiveness of housing allowances are monitored and assessed within the European Semester process. The Open Method of Coordination in the Social Protection Committee ensures policy coordination and monitors the progress of the Member States.

The implementation of the Principle will be supported by Union Funds, including the European Fund for Strategic Investments for social housing investments, the European Regional Development Fund for housing infrastructure, the European Social Fund for social services and the Fund for European Aid for the Most Deprived for food assistance to homeless persons. The European Union also supports financially a number of civil society organisations active in the promotion of social inclusion and poverty reduction, including organisations working on homelessness.

## Access to essential services

**Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.**

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### 1. The Union *acquis*

#### *a) The Charter of Fundamental Rights of the European Union*

Article 36 of the Charter provides that the Union recognises and respects access to services of general economic interest as provided for in national law and practices, in accordance with the Treaty on the Functioning of the European Union, in order to promote the social and territorial cohesion of the Union.

#### *b) The legislative powers and their limits*

In accordance with Article 151 of the Treaty on the Functioning of the European Union (TFEU), one of the key objectives of the Union and its Member States is to ensure proper social protection and to fight exclusion. Article 14 TFEU provides that the Union and its Member States, each within their respective powers and within the scope of application of the Treaty, shall ensure that services of general economic interest fulfil their mission. Protocol 26 recognises the essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising these services and their diversity within the Union. Equally, this Protocol highlights that values of quality, safety and affordability, equal treatment, universal access and users' rights are shared values of the Union in respect of services of general economic interest. Declaration 22 annexed to the Treaty of Amsterdam states that in drawing up measures under Article 114 TFEU, the institutions of the Union are to take into account the needs of persons with disabilities. Article 106 TFEU lays down that undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in the Treaty, in particular the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

#### *c) Existing measures*

In its Quality Framework,<sup>138</sup> the Commission has already generally recognised the importance of services of general economic interest as a cornerstone of the European social model and its commitment to ensure access for all citizens to essential services. In view of clarifying the legal setting for the provision of such services, both state aid and public procurement (concession) legislation has been simplified and clarified for the benefits of public authorities and end-users. The

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<sup>138</sup> A Quality Framework for Services of General Interest in Europe COM(2011) 900 final.

new sets of rules have provided more legal certainty and simplification to public authorities and undertakings.<sup>139</sup>

The sectorial legislation adopted at Union level has always carefully taken account of the need to increase competition and the use of market mechanisms as well as the need to guarantee that every citizen continues to have access to essential services of high quality at prices that they can afford. This has been the case, for instance, in the network industries from telecommunications to transport. In the *electronic communications* field for example, Directive 22/2002 of the European Parliament and of the Council<sup>140</sup> (Universal Service Directive) ensures that the liberalisation of services and increased competition is accompanied by a regulatory framework which secures the delivery of a defined minimum set of services to all end-users at an affordable price.

In the field of *rail transport*, Commission Regulation (EU) 1307/2007<sup>141</sup> defines how competent authorities may act to guarantee provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed. Regulation (EU) 2338/2016 of the European Parliament and of the Council on the opening of the market for domestic passenger transport services by rail<sup>142</sup> (the Public Services Obligations (PSO)), amends the previous Regulation on public services contract awards in the area of transport by setting clearer rules on the specification of public services obligations and their scope of application as well as a new framework guaranteeing that railway operators will encounter non-discriminatory access conditions to rail rolling stock that will incentivise them to participate in tender procedures for a rail public service contract.

In the *energy* sector, a universal service obligation is included in, Directive 2009/72/EC of the European Parliament and of the Council<sup>143</sup> (the Electricity Directive) which clearly states that the citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply, and transparent, non-discriminatory and reasonable prices.

Union *water* policy is based on the principle that affordability of water services is critical. National authorities are competent for adopting/implementing concrete support measures safeguarding disadvantaged people and tackling water-poverty issues (through, for example, measures that

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<sup>139</sup> [http://ec.europa.eu/services\\_general\\_interest/index\\_en.htm](http://ec.europa.eu/services_general_interest/index_en.htm)

<sup>140</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ L 108, 24.4.2002, p. 51.

<sup>141</sup> Commission Regulation (EC) No 1307/2007 of 8 November 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables, OJ L 291, 9.11.2007, p. 1

<sup>142</sup> Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail, OJ L 354, 23.12.2016, p. 22.

<sup>143</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009, p. 55.

provide support for low-income households or through the establishment of public service obligations).<sup>144</sup>

In the *financial* sector, Directive 2014/92 of the European Parliament and of the Council<sup>145</sup> allows consumers in Europe to open a payment account with any payment service provider in the Union, regardless of their Member State of residence. Moreover, consumers are entitled to access to a payment account with basic features (which include withdrawals, bank transfers and a debit card) regardless of their Member State of residence or their personal financial situation.

## **2. Scope and changes introduced by the European Pillar of Social Rights**

The Pillar sets out the right to essential services and lists non-exhaustively some of those services which are of outmost importance in our daily lives. Member States retain competence in defining, organising, delivering and financing such services at national, regional or local level. However, the fact that essential services – including those provided across borders - should be available to all reiterates the importance that the Union attributes to services which are at the core of our social model. In particular, the right to water and sanitation is especially important to Union citizens, who presented a citizens' initiative in this domain only recently.

Some of these services are covered by universal service obligations by sectorial Union legislation to ensure that services of general economic interest are made available to all consumers and users in a Member State and across Member States, regardless of their geographical location, at a specified quality and, taking account of specific national circumstances, at an affordable price. The Pillar recognises the need to support the access to essential services for those in need. The accessibility of essential services in addition to availability and affordability, are essential to ensure equal access to all, and essential for persons with disabilities and older people.

## **3. Implementation**

### *a) What Member States and Social Partners can do*

Member States retain competence in defining, organising, delivering and financing essential services at national, regional or local level. Given that the Union measures embrace the principle that essential services should be available to all, as the core of the European social model, Member States are invited to go beyond these rules in order to give effect to the Principle.

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<sup>144</sup> The Drinking Water Directive (Directive 98/83/EC) concerns the quality of water intended for human consumption. Its objective is to protect human health from adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.

<sup>145</sup> Directive 2014/92 of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJ L 257 of 28.8.2014, p. 214.

Social partners may collect and exchange good practices across the Union. At national level, social partners may support the implementation of this Principle through their involvement in the design and implementation of relevant policies.

*b) Recent and ongoing initiatives at EU level*

In the field of *electronic communications* the proposed revision of the Electronic Communications Regulatory Framework<sup>146</sup> would require Member States to ensure affordable access to all end-users to functional internet access and voice communications services. Where Member States find a lack of affordability, they may require undertakings to provide affordable tariff options and a "right to contract" for end-users with low income or special social needs. The proposed Code also includes a provision requiring Member States to ensure, in the light of national conditions, that appropriate measures are taken for end-users with disabilities, with a view to ensuring the affordability of their terminal equipment, specific equipment and specific services enhancing equivalent access.

The Clean Energy Package, adopted on 30 November 2016, also included proposals on a new *electricity* market design. The proposal on a recast of the Electricity Directive (Directive 2009/72/EC of the European Parliament and of the Council) did not amend the provisions related to the public service obligations in the electricity sector, but strengthened provisions related to consumer empowerment and protection. It spelled out in more detail the rights of consumers as regards contracts, the possibilities for energy communities and active consumers, and the entitlement to smart meters. The proposal also provides for more detailed provisions on the protection of vulnerable consumers and the obligation of Member States to define criteria for measuring energy poverty, on which they will have to report as part of their integrated progress reporting on the national energy and climate plans. Furthermore, the package sets out a new approach to protecting vulnerable consumers, which also includes helping Member States reduce the costs of energy for consumers by supporting energy efficiency investments. Moreover, in line with its efforts to empower and protect consumers, the Commission proposes certain procedural safeguards before a consumer can be disconnected. The Commission is also setting up an Energy Poverty Observatory to provide better data on the problem and its solutions as well as to help Member States in their efforts to combat energy poverty.<sup>147</sup>

Moreover the *WiFi4EU proposal*<sup>148</sup> acknowledges that there is a need to ensure that the general public is encouraged to seize the opportunities that the digital transformation offers. The proposal will provide financial incentives in favour of local public authorities who want to provide free, high capacity local wireless connectivity through access points in the centres of local public life, whether within their premises or in outdoor spaces accessible to the general public.

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<sup>146</sup> Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) (COM(2016)590).

<sup>147</sup> [http://eur-lex.europa.eu/resource.html?uri=cellar:fa6ea15b-b7b0-11e6-9e3c-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:fa6ea15b-b7b0-11e6-9e3c-01aa75ed71a1.0001.02/DOC_1&format=PDF)

<sup>148</sup> Proposal for amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities COM (2016) 589.

In the field of *water and sanitation*, the Commission foresees in 2017 a revision of the Directive on drinking water<sup>149</sup> as a follow-up to the "Right2Water" European citizen's initiative.<sup>150</sup>

The Commission continues to support negotiations for the adoption by the Union legislature of the proposed European Accessibility Act.<sup>151</sup> The Act aims at ensuring accessibility of certain products and services in the internal market, including some essential services like electronic communication and audio-visual media services.

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<sup>149</sup> Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, OJ L 330 5.12.1998, p. 32.

<sup>150</sup> <http://ec.europa.eu/citizens-initiative/public/welcome>

<sup>151</sup> Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services - COM/2015/0615 final - 2015/0278 (COD).