

Challenges to the EU in 2017: Brexit implementation, populism, and the renewed attempt at advancing the social dimension of the European integration project

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Abstract: *Over the last decade, the European Union has faced a number of challenges, several of which have also dominated the regional political climate during 2017. For the first time in history, one of its member states is leaving the EU. In many other EU countries, the phenomena of populism and Euroscepticism are on the rise, while terrorist attacks continue to occur; the migration crisis continues to question EU solidarity, and social and economic inequalities are increasing. In light of these manifold challenges, this article examines the EU's renewed attempt to advance the social dimension of the European project against the backdrop of two related political developments: the implementation of Brexit and the election outcomes in key member states in 2017. Brexit and the rising influence of populist, Eurosceptic parties pose a threat to European integration and effective political leadership, which in turn hinders the ability of the EU to tackle the challenges it faces. At the same time, these political developments highlight the importance of the social dimension of Europe for a large part of the electorate. Brexit and the election outcomes in The Netherlands, France, the UK and Germany in 2017 demonstrate that many citizens are concerned about the social implications of globalisation, urbanisation and digitalisation, particularly in light of the financial and economic crises that many EU countries had to confront over the last decade. The final section of the article examines the EU's renewed pledge to strengthen its social dimension through the European Pillar of Social Rights. It considers that the political landscape has started to shift towards a more social stance during 2017 and argues that the operationalisation of the European Pillar could revitalise the EU narrative and ground for social policies and, accordingly, the European integration project, which needs to deepen its social dimension in order to survive and prove that it is able to enhance the living standards of European citizens.*

Key words: *European Union; Brexit; elections; political parties; populism; social Europe; European Pillar of Social Rights*

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1 Introduction

The European Union (EU) turned 60 on 25 March 2017. The Treaties of Rome¹ established the European Economic Community, aimed at creating a common market where people, goods, services and capital can move freely, and to foster cooperation in the peaceful use of nuclear energy. They shaped the conditions for stability and prosperity for European citizens. This anniversary provided an important chance to look back on past achievements and towards the future. In the Rome Declaration adopted on this anniversary, the leaders of 27 EU member states and of the European Council, the European Parliament and the European Commission acknowledged that they were ‘facing unprecedented challenges, both global and domestic’ (including ‘regional conflicts, terrorism, growing migratory pressures, protectionism and social and economic inequalities’) and pledged to work towards various objectives. A strong social Europe was included among them, and its significance was outlined specifically as follows (Rome Declaration 2017):

[a] Union which, based on sustainable growth, promotes economic and social progress as well as cohesion and convergence, while upholding the integrity of the internal market; a Union taking into account the diversity of national systems and the key role of social partners; a Union which promotes equality between women and men as well as rights and equal opportunities for all; a Union which fights unemployment, discrimination, social exclusion and poverty; a Union where young people receive the best education and training and can study and find jobs across the continent; a Union which preserves our cultural heritage and promotes cultural diversity.

In light of the acknowledgment of the EU facing serious challenges and its renewed commitment to foster social rights and principles, this article examines the EU’s renewed attempt to advance the social dimension of the European project against the backdrop of two related political developments: the implementation of Brexit and the election outcomes in key member states in 2017. Brexit and the rising influence of populist, Eurosceptic parties in several other EU member states pose a threat to European integration and effective political leadership, which in turn hinders the EU’s ability to tackle the challenges it faces. At the same time, these political developments highlight the significance of the social dimension of Europe for a large part of the electorate. The result of the British referendum to leave the EU as well as the election outcomes in The Netherlands, France, the United Kingdom and Germany in 2017 show that many citizens are concerned about the social implications of globalisation, urbanisation and digitalisation, particularly in light of the financial and economic crises many EU countries have had to grapple with over the last decade. Therefore, the final section of the article examines the EU’s renewed pledge to strengthen its social dimension. It considers that the political landscape has started to shift (albeit slowly) towards a more social stance during 2017 in view of the European Pillar of Social Rights (EPSR). This has even been called ‘the last chance for social Europe’ (Brooks 2017),

1 The Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom), otherwise known as the Treaties of Rome, were signed on 25 March 1957 and entered into force on 1 January 1958. Belgium, France, Germany, Italy, Luxembourg and The Netherlands were the six founding member states.

after austerity policies were ordered for years with an adverse impact on European citizens and were widely criticised for not being capable of a return to growth.

2 Implementing Brexit

In March 2017, British Prime Minister Theresa May invoked article 50 of the Treaty of European Union (TEU) triggering the process for the UK leaving the EU (or Brexit). On 23 June 2016, British voters were asked in a referendum, which had been approved by the British Parliament in 2015 at the request of then Prime Minister, David Cameron, whether the country should leave or remain in the EU. In a shocking upset to many, 52 per cent voted to leave the EU. Political turmoil followed and Cameron resigned as Prime Minister. Less than a month later Cameron was succeeded by May, who decided to invoke article 50 of the TEU by the end of March 2017. Parliament approved her decision in December 2016 and, after lengthy political and legal deliberations involving the UK Supreme Court, the path was cleared for May to trigger article 50 of the TEU on 29 March 2017, a few days after the EU celebrated its 60th anniversary.

No EU member state has ever left the EU and, as one of the drafters of article 50 of the TEU points out, '[n]one of us in the Convention ever expected the provision actually to be used – which might explain its relatively sketchy character' (Duff 2016). This provision sets out a two-year timeframe during which the UK and EU have to complete the negotiations for the separation. While this complicated process is unfolding and the legal debates about the practicalities of the UK leaving the EU continue, it is worth looking at the implications of Brexit for the EU, now that the UK government has officially launched the separation procedure.

For one thing, 60 years after the European project was launched with the Treaties of Rome, Brexit signals a renunciation of the trend towards greater European integration. Indeed, over the last ten years the EU has had its fair share of major crises, most notably the 2007-2008 financial crisis, which led to the sovereign debt and Eurozone crises, as well as the more recent migration crisis. Together with the reality of one of its biggest member states deciding to leave the Union, these crises have raised the question of the current and future status of European integration; arguably 'Europe as a space of economic progress and social development and cohesion is now at stake' (Da Costa Cabral, Gonçalves & Cunha Rodrigues 2017: 2). Some have argued that this challenging moment can serve as an opportunity for the EU to review its structure and decision making in order to develop a clearer idea for its path forward (Cunha Rodrigues 2017: 78). In light of such reform discussions, the European Commission (2017a: 15-25) released a White Paper on the future of the EU after British departure. It provides five scenarios for future developments of European integration up to 2025:²

- carrying on (the EU focuses on delivering its positive reform agenda);

2 The White Paper was accompanied by various 'Reflection Papers' relating to certain policy areas, including one on the social dimension of Europe, which was published in April 2017 together with the recommendation on the EPSR.

- nothing but the single market (the EU is gradually re-centred on the single market);
- those who want more do more (the EU allows willing member states to do more together in specific areas);
- doing less more efficiently (the EU focuses on delivering more and faster in selected policy areas, while doing less elsewhere);
- doing much more together (the EU decides to do much more together across all policy areas).

However, whether and, if so, which one of these scenarios will guide the EU through the next decade remains to be seen. In the meantime, Brexit comes with practical implications, particularly in the economic realm, that do not bode well for a way out of the EU's crises in the near future. With Brexit, the EU is in the process of losing its second-largest economic power, while the UK will lose its largest trading partner, the EU. This means bad news for both sides at least in the medium term, when Brexit will result in a loss of gross domestic product (GDP) and productivity in the UK and the EU countries (Della Posta and Rehman 2017: 23). Considering that economic growth in Europe is already slow, these Brexit consequences, if unmitigated, are likely to lead to more economic instability, problems for the Eurozone, for job growth and, by extension, to more economic inequality.

At the same time, scholars have pointed out that the Brexit vote signalled a disillusionment with the political establishment. It showed that many people felt left behind in a globalised world by the political elites in the capital cities and in Brussels. Out of frustration with the traditional, particularly centre left, parties, they voted for a dramatic change (McGowan 2018: 3). In light of this political climate, the UK Independence Party (UKIP) was able to mobilise voters for its anti-EU, anti-immigration cause. A similar trend is occurring across many European countries, as the next section on key European elections in 2017 shows. In France, presidential contender Marine Le Pen from the populist Front National has called for a Frexit, while in The Netherlands Geert Wilders's nationalist party advocates a Nexit. These are disturbing developments for the EU. However, on the bright side, the reckless gamble of David Cameron, who seemingly called for the British referendum under the impression that a victory for the 'leave' camp was not a real possibility, has served as a warning for mainstream politicians in other countries to be more careful with supporting referendums on EU membership.

In overall terms, the exit of the UK leaves the EU weak and in a very uncertain position. Due to Brexit, many of the EU's debates and resources understandably are focused inwardly at the moment, but global problems also require attention, particularly in the area of solving the underlying causes of the migration crisis, which in turn is weaved into the causes of Brexit and the rise of nationalist, anti-EU movements across Europe. The latter have gained political momentum in several key EU countries in 2017, as the next section examines in more detail.

3 Key elections in EU member states in 2017

Elections in several EU member states took place in 2017, accompanied by increasing concerns about the rise of right-wing, nationalist and EU-sceptical parties across Europe. The following section provides an

overview of these major elections and discusses the possible implications of their outcome for European politics and the future of EU integration.

3.1 The Netherlands

The Dutch general elections took place on 15 March 2017. Geert Wilders's anti-Islam and anti-EU Party for Freedom (PVV) became the second-largest party in the House of Representatives after Prime Minister Mark Rutte's Conservative-Liberal Party (VVD). Rutte's party remains the largest, but lost a significant number of seats in parliament. The Social-Democratic Labour Party (PvdA) was hit even worse, suffering its largest loss in history, dropping from 38 to only nine seats (Boersma 2017). Although many observers in The Netherlands and in Europe were relieved by the fact that the populist Wilders and his party did not receive enough votes to become the ruling party, the outcome of the elections nevertheless signals challenging political developments.

For one, Wilders's stance on immigration and integration will continue to have an influence on the mainstream political parties. As a political scientist at Amsterdam's Free University put it: 'What [Wilders] wanted, and he's pretty much already achieved it, is for the two mainstream rightwing parties ... to say and do what he wants. In a sense, he had already won the elections' (Henley 2017). Unlike most of the populist politicians who have in recent years become influential in other European countries, Wilder is not a political outsider. He has been in parliament since the 1990s and has for many years proposed the de-Islamisation of The Netherlands (Serhan 2017). His party's current platform calls for the closure of all mosques in The Netherlands and a ban of the Koran; proposes to close Dutch borders to asylum seekers and immigrants from Islamic countries; and demands that The Netherlands leave the EU (Geert Wilders Weblog 2016). These are drastic proposals for policies that, if enacted, would in some cases blatantly violate human rights. Based on the election outcome, such policies nonetheless seem to speak to a significant number of Dutch citizens. The mainstream parties, therefore, have tailored their rhetoric to appeal to such voters. For example, Rutte adopted some of Wilders's rhetoric on immigrants in a bid to win over Wilders supporters during the election campaign (Henley 2017).

The Dutch election outcome also signals a second trend in European politics, namely, that it is becoming increasingly difficult for the mainstream parties to build stable governing coalitions. Historically, in The Netherlands it was possible to build coalitions of two or three parties, but after the 2017 elections four were needed (Boersma 2017). Coalition negotiations among more partners naturally are more difficult and take longer. The 2017 Dutch coalition negotiations broke the country's record, leaving it without a government for 225 days (Reuters 2017). What is more, observers have pointed out that larger coalitions require even more political compromise, which does not encourage strong policy making and is likely to lead to further frustration among voters, which in turn can play into the hands of populists and fringe parties (Van der Staak 2017).

On 26 October 2017, the new Dutch government, made up of Rutte's Conservative-Liberal party, two conservative Christian parties (CDA and Christian Union) and the liberal D66, was finally sworn in. The coalition is outspokenly pro-EU, but has moved towards more nationalist policies such as stricter limits on immigration and a stronger focus on upholding

traditional notions of Dutch identity. In sum, observers have warned that challenges from the far-right have led one of Europe's most progressive countries to embrace more conservative policies that will lead to more inequality (Rubin & Schuetze 2017).

3.2 France

In 2017 French voters took to the polls in April and May to elect a new President, and in June to elect the members of the National Assembly. The independent liberal centrist Emmanuel Macron won the presidential election with 66,1 per cent of the vote against the far-right National Front's Le Pen, who received 39,9 per cent in the second round of voting (France 24 (undated)). The presidential election has been described as a turning point in French electoral politics because Macron, at 39 years of age the youngest French President ever, was a newcomer to the French political establishment and did not represent any of the mainstream parties that had dominated French politics since the establishment of the Fifth Republic (Gougou & Persico 2017: 303-4). The first round of elections had already been remarkable because the results placed the candidates of the major parties and Macron, with his newly-created party, *La République en Marche!* (LRM), almost equally, with an average margin between them as low as 1,5 percentage points (Evans & Ivaldi 2018: 3).

This situation demonstrated that the electorate was split between four very different policy alternatives: Macron stood for moderately liberal policies in favour of immigration, gay rights and business. Le Pen proposed the far-right manifesto against immigration and economic globalisation. Republican François Fillon advocated social conservatism and neoliberal reforms, while Jean-Luc Mélenchon merged policies from the traditional left and the green movement (Gougou & Persico 2017: 304). Interestingly, by voting for Mélenchon's Left Party, which split from the mainstream Socialist Party in 2009, a substantial number of French voters also voiced their support for left-wing populism that runs on anti-EU and anti-globalisation policy proposals (Evans & Ivaldi 2018: 10-11). Overall, these results underline the dissatisfaction of the French voters with the two major establishment parties on the centre left and centre right, the Socialist Party and *Les Républicains*. They had dominated the party system in France and had for several decades alternated in holding government power. However, now they had to ask their supporters to vote for a centrist to avoid a victory by the far-right Front National (Evans & Ivaldi 2018: 2).

The landslide victory of Macron was widely seen as a relief both within and outside France and as a sign that amidst the rising tide of right-wing populism across Europe, liberalism at the heart of the continent was still alive and well. In other European capitals and in Brussels, the Macron victory was also greeted as a renewed sign of faith in the European project, which Le Pen had prophesised would die and had threatened to undermine by calling for a referendum on leaving the Eurozone (Rankin 2017). However, despite the positive implications of the election result for the EU, the presidential elections were a sign that traditional party politics were changing in France. The legislative elections held in June 2017 indeed followed the trend. Although only having been established a year earlier, Macron's party, along with its coalition partner, won by a landslide and secured 350 out of a total of 577 seats in the National Assembly,

introducing more women and a number of younger law makers, albeit many of them less politically experienced. The Front National retained its eight seats, short of the 15-seat threshold of forming a parliamentary group, which would have given them more resources and influence. For the parliamentary centre left and centre right, the elections were disappointing. Although the Republicans remain the strongest opposition party with 137 seats, they lost significantly, but not as much as the Socialists. For the Socialist Party, the elections were nothing short of a debacle. After having previously controlled the National Assembly under President François Hollande, they and their coalition partner now only hold 44 seats (Briançon 2017).

Although, the political system has changed, the trend that emerged from the 2017 elections in France is similar to that emerging in The Netherlands: The right-wing populists are kept at bay, but the mainstream parties suffer because of an increasingly split electorate. While the Dutch parties compensate for this development by creating larger government coalitions, the traditional French parties have been side-lined by an entirely new party that is politically located at the centre, something that is a novelty in French politics, which had long been dominated by an alternation between the centre left and centre right.

3.3 United Kingdom

The United Kingdom also experienced what turned out to be extraordinary elections in 2017. Following the UK referendum to leave the EU and the resulting personnel changes in the ruling Conservative Party, Prime Minister May called for snap general elections in order to secure a larger majority, which would strengthen her hand in the Brexit negotiations. Less than two months before the elections, most polls showed a considerable lead for the Conservatives, and May led with personal ratings at unprecedented numbers at least 40 points above those of Jeremy Corbyn, the leader of the Labour Party. Given these numbers, the Prime Minister was sure to secure her own mandate and deliver a landslide majority for the Tories (Thorsen, Jackson & Lilleker 2017: 8).

The elections took place on 8 June 2017 and did not go according to plan for the Conservative Party. It remains the biggest party in the House of Commons, but lost 13 seats, and in the process also its majority. The Labour Party, on the other hand, gained 30 seats and received 40 per cent of the vote, just behind the Conservatives who received 42 per cent (The Electoral Commission (undated)). These results did not bode well for the Prime Minister and the Brexit negotiations. Although the outcome did not reverse the Brexit referendum or change the fact that article 50 of the TEU had been triggered, May nonetheless faced concerns over whether her weakened political mandate would undermine her ability to balance the demands of different domestic players in the Brexit negotiations (Usherwood 2017: 114). For example, after losing their majority, the Tories now have to rely on the support of Northern Ireland's Democratic Unionist Party (DUP) to stay in power. The DUP supports Brexit, but is concerned about Brexit creating a hard border between Northern Ireland and the Republic of Ireland. They therefore might undermine May's stance with regard to negotiating a 'hard' or 'soft' Brexit (BBC News 2017).

Contrary to trends emerging in The Netherlands and France, the general election of 2017 marked the return of two-party dominance after

more than a decade of rising multi-party politics in the UK (Thorsen, Jackson & Lilleker 2017: 8). Yet, the UK election outcome also underlined the disillusionment with the political establishment and the desire of voters for a different type of politics. Some have argued that Corbyn and the Labour Party under his leadership embodied this type of politics during the 2017 election campaign, which accounts for his electoral success. He offered a different type of content, shifting to the left by calling for higher taxes and nationalisation, and a different type of form, chaotic and amateurish, that contrasted with the clean-cut image of the professional political elite (Flinders 2017: 19).

3.4 Germany

The Germans are another important electorate that took to the polls in 2017. On 24 September elections were held to elect the members of the *Bundestag*. Chancellor Angela Merkel's party, the Christian Democratic Union/Christian Social Union (CDU/CSU), remained the strongest party with 26,8 per cent of the vote. With only 20,5 per cent of the vote, the Social Democratic Party (SPD) achieved their worst result since the end of World War II. Most disturbingly, the populist, anti-immigrant, right-wing Alternative for Germany (AfD) became the country's third largest party with 12,6 per cent of the vote, followed by the Liberals (10,7 per cent), the Left (9,2 per cent) and the Greens (8,9 per cent) (The Federal Returning Officer 2017).

The election outcome meant a defeat for Merkel despite winning a fourth term as Chancellor. Her party lost 55 seats and had to enter into difficult coalition negotiations. Given that a coalition with the far-right AfD and the far-left party was out of the question, not many options for a stable governing coalition remained. In addition, the Social Democrats, who have been Merkel's coalition partners for the last decade and who blame this circumstance, at least partly, for their historical defeat in the September elections, initially were reluctant to continue to rule as part of the so-called Great Coalition. However, after a failed attempt to form a coalition with the Liberals and the Greens, and tense negotiations between the Social Democrats and Merkel's Christian Democrats, another Great Coalition was formed in February 2018 (Martin & Rinke 2017).

The election results thus show that the German political establishment is facing the same developments as other European countries with regard to the decreasing appeal of traditional parties. As in The Netherlands, the Social Democrats in Germany experienced a dramatic defeat and coalition talks became increasingly difficult and lasted for more than four months. What is more, the success of the AfD, which for the first time entered parliament with a staggering 94 seats, demonstrates that many German voters are looking for alternatives to mainstream parliament politics. That the AfD counts right-wing extremists among their ranks is even more disturbing. Although the party cannot pass legislation, it will be able to use its position to influence the public debate on their core issues: refugees, law and order, and the supposed 'Islamisation' of Germany. Because the party likes to gain publicity through provocation and breaking taboos, it will be a balancing act for the mainstream parties to engage with the AfD in a way that does not alienate its current and potential supporters in a bid to curb their popularity. The AfD is already attempting to position itself as legitimate successor to the conservative CDU and is claiming issues such

as law and order that used to be considered the purview of the conservatives (Chase 2017). Dealing with this new party of primarily political outsiders, therefore, will require finesse from the establishment parties.

When comparing these elections, several similarities become obvious. First, anti-immigration and anti-EU parties are on the rise. What they have in common is that they are narrowly focused on policy areas pertaining to national identity, which makes them different from traditional parties that have a more comprehensive policy platform. The second trend that can be observed across these European countries is that, despite successfully keeping extreme right-wing parties out of power, the mainstream parties face difficulties. They increasingly lose votes to these right-wing, nationalist parties, which qualify more as political movements rather than traditional parties. The centre left parties are particularly affected by this trend and several of them, especially in The Netherlands and in Germany, received a historically low number of votes in 2017. They seem to be losing their influence on classic left-wing welfare and redistributive goals. The centre right, on the other hand, is struggling to deal with the strong competition of radical right-wing parties (De Sio & Paparo 2018: 11). In the case of The Netherlands, the Prime Minister's ruling party attempts to cope with this threat by embracing some of the radical right-wing rhetoric, as mentioned above. The UK seems to be the outlier in the context of challenger parties, as the 2017 general elections marked a return to a narrower two-party dominance after successful showings of third parties such as UKIP in previous elections and in the Brexit campaign.

As a result of the successes of the challenger parties and new voting patterns, it is becoming increasingly difficult for the mainstream parties to form effective governing coalitions. The Netherlands and Germany, for example, were without governments for more than four months during which tense coalition negotiations took place. These new coalition circumstances undermine strong decision making at the national level, which is likely to lead to more popular disillusionment with the politics of the mainstream parties, which in turn might play into the hands of the populist movements, thus further undermining the mainstream parties (Van der Staak 2017). At the same time, weak decision makers in France, Germany and The Netherlands are not good for the EU either. At a time when the EU faces unprecedented challenges such as Brexit, migration, the rise of right-wing and anti-EU populists, the breakdown of liberalism and the rule of law in Eastern Europe, and slow economic growth and recovery from the financial and Eurozone crises, strong leadership is essential to put the EU on a path towards more unity. Unfortunately, Brexit and the 2017 election outcomes across Europe do not signal that Europe is on that path just yet. Furthermore, the success of populist movements and political outsiders, as manifested in electoral successes in The Netherlands, France, the UK and Germany in 2017, demonstrates the popular dissatisfaction with traditional parties and their policies. In light of growing social and economic inequality and fears over the forces of globalisation in many countries, this is hardly surprising. Yet, the EU has only recently started to again pay more attention to the importance of its social dimension. The next section will look at recent EU efforts to bolster social rights in more detail.

4 European Pillar of Social Rights

After a year-long preparatory phase,³ the European Pillar of Social Rights (EPSR) was enacted on 26 April 2017 in the form of a recommendation by the European Commission pursuant to article 292 of the Treaty on the Functioning of the European Union (TFEU).⁴ The EPSR sets out a range of rights and principles ‘to support fair and well-functioning labour markets and welfare systems’, tackling evolving social challenges and changes in view of emerging types of employment originating from the digital revolution and new technologies, with the objective of fostering ‘a renewed process of convergence towards better working and living conditions across Europe’.⁵ Notably, delivering on these principles and rights has been conceived as ‘a joint responsibility’. While most of the tools to deliver on the Pillar are in the hands of EU member states (precisely local, regional and national authorities), as well as social partners and civil society, the EU institutions can assist and set the framework giving relevant guidance, in full respect of specific national circumstances and institutional set-ups.⁶ Hence, the European Commission proposed a supplementary package of implementation measures (including both pre-existing⁷ and new legislative proposals as well as soft law initiatives, such as on the work-life balance for parents and carers;⁸ on access to social protection for all employment types;⁹ on working time;¹⁰ and on information of workers about essential aspects of their employment

3 European Commission, Communication launching a consultation on a European Pillar of Social Rights, COM(2016)0127, 8 March 2016. The EPSR was first announced by European Commission President Juncker in his State of the Union Address of 2015.

4 European Commission, Recommendation on the European Pillar of Social Rights, C(2017) 2600 final; Communication to the European Parliament and the Council, Establishing a European Pillar of Social Rights, COM(2017) 250 final, 26 April 2017. See the EPSR booklet at https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf (last visited 23 June 2018).

5 Commission Staff Working Document, Communication to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, Establishing a European Pillar of Social Rights, SWD (2017) 201 final, 2.

6 As above.

7 Eg, European Commission, 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), COM (2008) 0426 final – CNS 2008/0140; Proposal for a Directive aimed at further ensuring greater equality among management positions in the corporate sphere, COM(2012) 614; and 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.

8 European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘An initiative to support work-life balance for parents and carers’, COM(2017) 252 final, 26 April 2017; Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM(2017) 253 final, 26 April 2017; Commission’s statement accompanying the Commission Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, 26 April 2017.

9 European Commission, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132 final, 13 March 2018.

10 European Commission, Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (2017/C 165/01), 26 April 2017.

relationship);¹¹ along with a ‘social scoreboard’ to track performances and trends across EU member states in 12 areas, which analysis will feed into the European Semester for economic policy coordination.¹² Then, the following EPSR proclamation signed by the European Parliament, the Council and the European Commission on 17 November 2017, at the Social Summit in Gothenburg, expressed a clear inter-institutional political commitment to endorse the principles and rights enshrined in the new soft law instrument.

According to both these non-legally-binding manifestations, the EPSR ‘is primarily conceived for the Euro area’, particularly in view of the risks stemming from persisting social and economic imbalances in several member states whose inability to correct them may result in costlier divergence. The recommendation specifies the additional applicability of the Pillar ‘to all member states that wish to be a part of it’, but the subsequent proclamation indicates that ‘it is addressed to all member states’ (paragraph 13), thus making it clear that the core pronouncement of social values is shared by all and that the commitment to EU social policy is stronger. In concrete terms, such principles and rights are addressed to EU citizens and legally-residing third country nationals in EU member states, irrespective of their employment status, as well as to public authorities and social partners.

As far as the content is concerned, the EPSR covers a wide range of areas of social policy and labour law, categorised in three chapters: (I) equal opportunities and access to the labour market; (II) fair working conditions; and (III) social protection and inclusion. Under these headings, 20 policy domains are acknowledged, to which various principles and rights are attached, covering subjects already part of the EU social *acquis* (for instance, ‘gender equality’ or ‘healthy, safe and well-adapted work environment’) as well as subjects beyond the EU’s legislative competence (for instance, ‘wages’, ‘housing and assistance for the homeless’).¹³ They also formulate some rights that are novel in respect to the EU system (for instance, ‘the right to adequate minimum income benefits’ under principle 14; ‘the right to fair wages that provide for a decent standard of living’ under principle 6(a); and the rights to adequate social protection for the self-employed under principle 12), while restating certain long-existing entitlements (such as the right to equal pay for work

- 11 European Commission, First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights, C(2017) 2611 final, 26 April 2017; Commission Staff Working Document, REFIT Evaluation of the ‘Written Statement Directive’ (Directive 91/533/EEC) 26 April 2017. See also European Commission, Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union, COM/2017/0797 final - 2017/0355 (COD), 21 December 2017.
- 12 For details of the three dimensions of the social scoreboard, see <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/>.
- 13 Under art 153 of the TFEU the EU’s competence is to ‘support and complement the activities of the member states’ in various fields for people inside and outside the labour market (ie the unemployed, job seekers, workers), with the objective to advance working conditions; social protection and social security; workers’ safety and health; consultation and information of workers; and the integration of people left out from the labour market. In fact, EU member states are primarily responsible for and competent in the determination of their employment and social policy, including labour law and the organisation of welfare systems.

of equal value for men and women under principle 2(b), and the right to information and consultation for workers in case of transfer or restructuring of undertakings under principle 8(b)). Instead, some social dimensions traditionally covered by EU law (for example, the right to limited working time, the right to maternity leave and the rights of migrating workers) are not included.

It must be highlighted that the EPSR builds on the relevant body of law existing at EU and international level but does not provide further direct, legally-binding social rights protection in the Union.¹⁴ When it comes to the enforcement of the EPSR, the Preamble expressly states that for its principles and rights to be legally enforceable, they first 'require dedicated measures or legislation to be adopted at the appropriate level' (paragraph 14). Furthermore, it refers to an implementation which should take into account the different socio-economic environments (paragraph 17), which has to occur within the Union's powers and competences conferred by the EU treaties (paragraph 18), which does not affect member states' rights to define the basic principles of their social security systems and manage their public finances, and must not significantly affect the financial equilibrium thereof (paragraph 19).¹⁵ Therefore, extensive political discretion is clearly recognised for EU member states as well as EU institutions on the follow-up and future compliance with the new Pillar. Indeed, in early 2017 the non-binding nature of the EPSR was critically viewed by the European Parliament, which called upon the European Commission to

build on the review of the social *acquis* and of EU employment and social policies as well as on the outcomes of the 2016 public consultation by making proposals for a solid European Pillar of Social Rights that is not limited to a declaration of principles or good intentions but reinforces social rights through concrete and specific tools (legislation, policy-making mechanisms and financial instruments).¹⁶

Nonetheless, the EPSR has been regarded as 'a boost to the EU's social dimension through renewed use of the legal competences of the Social Policy Title' (Garben 2018: 222). The Union legislative action in fact is limited (in comparison to the national competence in this area) under article 153(1) of the TFEU and article 155 of the TFEU, but in the course of the European integration process a social mandate and output have to

- 14 On the one hand, it draws on the Union's social *acquis* as developed over the last 30 years, through novel provisions in the EU treaties, the Charter of Fundamental Rights of the European Union (CFR), which has acquired the same legal value as the TEU and the TFEU following the ratification of the Treaty of Lisbon, new legislation and the case law of the CJEU, but also the political declaration that is better known as the Community Charter of the Fundamental Social Rights of Workers of 1989. On the other hand, the EPSR draws on 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, besides taking into account many International Labour Organisation (ILO) conventions, recommendations and related protocols, and the United Nations Convention on the Rights of Persons with Disabilities.
- 15 The CJEU has also acknowledged the financial equilibrium as a legitimate objective that potentially permits restrictions to social protection; *Hepple & Others v Chief Adjudication Officer C-196/98* [2000] ECR I-3701.
- 16 European Parliament, Resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)), para 1. As the main concrete suggestion, the European Parliament called on the social partners and the European Commission to provide a common proposal for a framework directive on decent working conditions (para 4).

some extent been developed by the EU, although with a low use of its allocated competences in recent years (Barnard 2014: 199). Such critical practice in the pursuit of reinforcing the European Social Model has been debated as 'a first type of social displacement' (Muir 2018). Underlying political or constitutional factors have been addressed in this regard, such as the Union enlargement complicating the EU decision making in this policy area by raising the number of member states advocating liberal market economies (Scharpf 2010: 211; Scharpf 2002: 645; Copeland 2012: 476); the CJEU case law on national social standards in the context of the internal market, which has reinforced the bargaining positions of those countries and made social re-regulations by the Union very difficult (Scharpf 2010); the strengthened role of national parliaments in the EU legislative process via the Early Warning System, with two of the three yellow cards so far triggered concerning social initiatives; the EU Better Regulation Agenda holding back the progress of social initiatives in the Barroso Commission (Dawson 2016: 1209); and the financial and economic crisis making it more challenging to uphold or raise social standards at both the national and European level. Paradoxically, some of these factors, such as the deepened economic diversity among EU member states and the worsening social and economic conditions within them, have intensified the necessity for social protection and integration at the EU level but also made it more problematic. In this context, the EPSR implementation by means of the needed legislative measures as currently envisaged in the aforementioned package would be capable of tackling some of the urgent issues of social justice and protection relating to European labour markets and workers (Garben 2018: 224-226).

Conversely, the EPSR does not have the potential to resolve the basic constitutional asymmetry underlying the 'social problem' of European integration, which is principally due to other forms of 'social displacement'. First, the most important social decisions made in the EU during the past decade have been undertaken in other areas, namely, the internal market and European economic governance. Second, such decision making has been done by the judiciary and the executives respectively, rather than by the national or European legislators, and therefore is not the result of democratically legitimate procedures and genuine parliamentary participation (Garben 2018: 227-230).

In any case, possible levels to 'instrumentalise' the EPSR in favour of an actual impact on certain dimensions of the EU policy-making process, both within and beyond the social policy area, have been addressed (Rasnača 2017b). On the one hand, in terms of re-shaping and indirectly influencing EU primary law (at the very least, by serving as 'an interpretation aid' for the social rights enshrined in the CFR and widened by the Pillar as well as by reinforcing article 9 of the TFEU and paving the way for attaining the EU social objectives under article 3(3) of the TEU and articles 151 and 152 of the TFEU), in terms of inspiring and structuring EU secondary law initiatives in the field (particularly given that various matters covered by the Pillar have not yet been regulated at the EU level) and, finally, in terms of triggering the mainstreaming of more social standards into the EU's governance mechanisms such as in the European Semester. On the other hand, a possible role beyond the social *acquis* is seen in terms of utilising and influencing the EU institutions' discretion when their actions have an effect on issues covered by the Pillar, in view of the inter-institutional nature of its proclamation. In this vein,

for instance, the CJEU's use of such proclamation to define the obligations of EU institutions when implementing all its policies would be desirable to guarantee respect for the enshrined social rights and principles.¹⁷ The EPSR could also function as a reference for policy proposals outside the social policy domain, in any area of EU law.

Significantly, the non-legally-binding nature of the EPSR does not exclude its possible use as a source of interpretation of EU law. In this regard, the judicial application of the EPSR by EU and national courts is seen as another pathway for the Pillar to gain a certain protective role, especially given that it comprises principles mostly formulated as individual rights and that it covers various areas where its principles could be complementary to the existing EU *acquis* (Rasnača 2017a). Emblematically, the consideration of its principle 2 (on equal opportunities regardless of gender, racial origin, religion, disability or sexual orientation) by the CJEU when interpreting EU legal acts regulating this area would represent a step closer towards 'a substantive equality approach' which is mostly absent in EU law (Mulder 2017: 59).

According to an analysis of the various social revivals in the history of European integration (Pochet 2017), every 15 years the social dimension has been addressed and debated for between five and six years before disappearing for a moment from the European agenda. Emerging within the tough social mobilisation at the beginning of the economic crisis in the 1970s, the first attempt led to the development of the gender equality and health and safety flagship policies. The second attempt stemmed from the project of a large internal market at the end of the 1980s, with the entering into force of the Single European Act in 1987 and the adoption of the non-binding Community Charter of the Fundamental Social Rights of Workers of 1989. The ambitious but less successful third attempt was made in the context of the negotiation of the treaty establishing a Constitution for Europe in 2004 and the proclamations of the CFR in 2000 and 2007, even though the latter has become a key element of the Union's body of constitutional rules following the ratification of the Lisbon Treaty in 2009. Thus, the Union and its member states have a new round of years to guarantee the translation of the EPSR into concrete effects for a tangible, long-lasting European social construction. Against the rising Euroscepticism, however, they are urged to rebalance the economic growth and social progress concerns of the European integration project via an ambitious social plan of action, in order to ensure a strong and effective social dimension. The credibility and survival of such project seems in fact to rely on something beyond the peace brought to the continent over 60 years and beyond the economic law of regulation by the market.

17 After having been proclaimed and before having acquired legally-binding force, the CFR was referred to by the CJEU to delimit institutional discretion; *Parliament v Council* C-540-03 [2006] ECLI:EU:C:2006:429. According to the same Court, institutions cannot depart from their obligations stemming from soft law instruments in their relations with third parties, as this could violate the general principle of legal certainty; *Dansk Rørindustri & Others v Commission* C-189/02 P ECLI:EU:C:2005:408.

5 Conclusion

The EU continued to confront multiple crises during 2017, putting the European construction under exceptional pressure as well as putting into serious question the Union's policies and the legitimacy of its institutions. Whether the EU was able to address citizens' and workers' tangible concerns became increasingly questionable, while the inability of member states to deliver on security, economic and social progress also raised doubts. Nonetheless, according to Eurobarometer surveys from 2017, 75 per cent of Europeans have a positive view of the EU (Eurobarometer 2017a: 6); 47 per cent (a rising trend) trust the EU (Eurobarometer 2017b: 18); and 70 per cent identify as EU citizens, representing the highest percentage recorded since 2010 (Eurobarometer 2017c: 31). In the midst of this unprecedented crisis in which the EU finds itself, these numbers provide the hope that many Europeans still look to the EU to solve some of their most pressing concerns. At the same time, Brexit and the election outcomes in many EU member states in 2017 have shown that wide margins of the European electorate feel increasingly let down by the political establishment that, in their mind, fails to adequately address the consequences of globalisation and migration. Against this political backdrop, the EPSR represents an opportunity for the Union. If implemented and developed further, it could become a way to alleviate concerns of the citizens that are increasingly turning away from mainstream politicians towards populist, anti-EU movements. Bolstering social rights and principles might offer one way of tackling these trends in the context of addressing rising social and economic inequalities that might resonate with the electorate, and by extension increase approval for EU policies and institutions.

Indeed, as a political initiative in evolution, the EPSR has a certain potential to contribute to the real inauguration of a more socially-oriented era of European integration. However, the EPSR's promising content needs to be made operational both at national and EU level. While the role and action of EU member states remains fundamental to accelerate this process, the consultation with and support of EU institutions is necessary to further deliver on the new Pillar, and the principle of subsidiarity under article 5 TEU applies.¹⁸ Besides being endorsed unanimously by all member states, the inter-institutional proclamation intensifies the relevance and political legitimacy of the Pillar but is just a first positive step, while it is a collective responsibility (which also includes social partners and civil society in general) to ensure that it turns into a living instrument. Thus, a roadmap for the implementation of the EPSR should

18 The first steps of the 2018 European Semester Package have been influenced by the EPSR, which featured strongly in the European Commission's Annual Growth Survey; the Country Reports published on 7 March 2018 used the new Pillar 'as a compass' for social policy guidance, focusing on reforms that can assist in increasing the resilience of labour markets, the effectiveness of national welfare systems and the ability to cope with longer-term structural drivers of change (such as demographic ageing or novel forms of work). On the other hand, as part of a Social Fairness Package, on 13 March 2018 the European Commission adopted a proposal for a Regulation establishing a European Labour Authority and a proposal for a Council Recommendation on access to social protection. It also published a staff working document recalling the legal framework for each of the principles of the EPSR, considering the respective competences of the EU and its member states, including the role of the social partners and recent EU-level initiatives in each area.

be settled by the European Commission as it would assist in fostering convergence and realising its objectives. A clear consensus on who should do what in the social policy domain is in fact needed, together with more transparency and accountability (also for any failure to act). In this vein, the completion of the various aforementioned initiatives already envisaged at the European level in this context would be desirable, and as such would also address the critical ‘displacement of the Social Policy Title’ in the construction and regulation of Social Europe. Moreover, implementing the Pillar through the European Semester is intended to advance the social dimension of the Economic and Monetary Union, but more adequate social benchmarks and objectives should be included in the annual recommendations and related follow-up. Nonetheless, concrete proposals and actions are desirable at national level for the implementation of the Pillar rights and principles, particularly where the Union has no direct competence. As emphasised by the European Economic and Social Committee (EESC) following several national consultations, the new Pillar should make a progressive impact on the need for social stabilisation and to address growing poverty, inequality and social exclusion, and rising divergences between and within EU member states. The EESC has also called for further efforts to delineate common principles, standards, policies and strategies at appropriate levels on better convergence of wages, establishing or increasing minimum wages, minimum income for all, and the increase of social cohesion and social investment (EESC, Opinion: para 1.5). Overall, the EPSR operationalisation could revitalise the Union narrative and ground for social policies and, accordingly, the European integration project, which needs to deepen its social dimension to survive and prove that it is able to enhance the living standards of European citizens besides handling economic markets.

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