

The European Social Pillar: labour law not only needs rights

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On 17 November 2017 the 'European Pillar of Social Rights' was officially proclaimed by the EU leaders at the occasion of the Social Summit held in Gothenburg, Sweden. It was signed by Jean-Claude Juncker (President of the European Commission), Antonio Tajani (President of the European Parliament) and Prime Minister Jüri Ratas (on behalf of the Presidency of the Council of the EU).

The initiative for this 'Social Pillar' was announced by President Jean-Claude Juncker during his first State of the Union before the European Parliament on 9 September 2015. In his speech, Juncker argued for "a fair and truly pan-European labour market" and the development of "a European Pillar of Social Rights, which takes account of the changing realities of Europe's societies and the world of work." He also specified that the pillar "should complement what we have already jointly achieved when it comes to the protection of workers in the EU" (cf. SPEECH/15/5614, 9 September 2015).

Now that the Pillar has become official, the impact of the 'Social Pillar' can be discussed. It would seem that the *legal* impact is going to be rather limited and that the main influence will be in the area of European governance.

The Pillar reads like a rights charter. It contains 20 rubrics under which various social rights are formulated. The fact that the Pillar formulates rights seems logical, since it is entitled Pillar of Social Rights. The Pillar departs from existing EU competences, although it goes quite deep into crucial areas of labour law. For example, although the EU has not yet been able to address (individual) dismissal law through legislation, it formulates the principle (or right?) that "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." Or, knowing the problematic exclusion of pay from the social chapter's regulatory competence, the Pillar states that "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.”

While the Pillar gives the impression to create new rights, nothing is pointing in the direction of a legally enforceable instrument. On the contrary, the Pillar is expressly referred to as being “designed as a compass” and “to serve as a guide” (preamble 12), as also expressed in the Interinstitutional Pillar Proposal of 26 April 2017. In the accompanying Commission Working Staff document it is mentioned that “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” (SWD(2017) 201 final, p3). Nevertheless, many of the rights mentioned in the Pillar are *in se* sufficiently clearly formulated. Take for example the Pillar’s provision that “prior to any dismissal, workers have the right to be informed of the reasons”. It is not excluded that both national courts and the Court of Justice of the EU start to draw inspiration from the Pillar’s rights and promote it as interpretative guidelines or as general principles of Union law.

In the European Commission Communication of 26 April 2017 (COM(2017) 250 final), Jean-Claude Juncker mentioned that “we do well to start with this initiative within the euro area, while allowing other EU Member States to join in if they want to do so.” Here, the Commission connects the ‘Pillar’ discussion with further reflection on the social dimension of Europe, elaborating three scenario’s for the future: 1) limiting the social dimension of the EU to free movement, 2) deepening the social dimension with all (27) member states, or 3) going further with the countries in the Eurozone. However, if the European Social Pillar may be seen as designed to enshrine fundamental social rights, one should expect that its aspirations and rights are drafted for an overall project for all EU member states.

As the Pillar’s legal profile is rather low, scepticism on its impact may become high. And we must indeed be critical. However, the Pillar obviously has the potential of bringing about a new policy dynamic. And within an EU context, labour law needs more than just new labour rights.

The Pillar has been linked to concrete legislative initiatives in the area of labour law, such as a revised EU Written Statement Directive or a new EU Posting Directive. Obviously, these initiatives are taken on the basis of existing EU competences. A Pillar is not required for this, nor expanding the EU’s competences. But the political consensus building is perhaps more crucial than the legal basis.

Furthermore, the Pillar’s potential may be highest in areas where the EU institutions itself hold a large degree of control. One of those fields concerns the European economic governance mechanism. This system, strongly driven by the European Commission itself, is under criticism as it is encouraging or even requiring national labour law reform, based on economic and financial parameters rather than social policy deliberation. The Pillar may lead to improvement in this field. As the Commission now suggests itself, in the annual cycle of economic policy coordination “the euro area and country analysis and recommendations will reflect and promote the development of social rights” (COM(2017) 250 final, p.3)). This may result in a positive impact on national labour law.

There are thus reasons to be optimistic. The Pillar’s message is positive. It builds on a renewed consensus. It re-establishes the idea that social progress must also serve the purpose of fairness and that European economic integration is subject to the respect of fundamental social rights. The Pillar reminds somewhat at the Community Charter of Fundamental Social Rights for Workers, adopted in 1989. That Charter also created a new momentum, though no legally binding rights. The 1989 Charter laid a basis for new Treaty changes. It also started a reflection on fundamental rights in the EU and this led to our current (binding) Charter of Fundamental Rights of the EU, legally much more important than the Social Pillar. So where the Pillar will lead us, may be more than we could expect.