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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

زيارة إلى الاتحاد الأوروبي

تقرير المقرر الخاص المعني بمسألة الفقر المدقع وحقوق الإنسان، أوليفييه دي شوتر* **

موجز

زار المقرر الخاص المعني بمسألة الفقر المدقع وحقوق الإنسان مؤسسات الاتحاد الأوروبي في الفترة من 25 تشرين الثاني/نوفمبر 2020 إلى 29 كانون الثاني/يناير 2021. ويتضمن هذا التقرير موجزاً لاستنتاجاته وتوصياته الرئيسية.

* اتُّفق على نشر هذا التقرير بعد تاريخ النشر المعتاد لظروف خارجة عن إرادة الجهة المقدِّمة له.

** يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعمم باللغة التي قُدّم بها فقط.

Annex

Report of the Special Rapporteur on extreme poverty and human rights on his visit to the European Union

Contents

I. Introduction

1. The Special Rapporteur on extreme poverty and human rights visited the institutions of the European Union from 25 November 2020 to 29 January 2021. The purpose of the visit was to provide the Human Rights Council with an assessment of the contribution of the European Union to the fight against poverty within its territory, and to offer constructive recommendations. The Special Rapporteur is grateful to the European Union for inviting him and facilitating his visit and for its continuing engagement with the special procedures. The present report is submitted in accordance with Council resolution 44/13.

2. During this visit, the Special Rapporteur met with representatives of over 20 institutions, including the European Commission, the Council of the European Union, the European Parliament, the European Labour Authority, the European Economic and Social Committee, the European Union Agency for Fundamental Rights, the European Central Bank and the European Investment Bank. In addition, he met with over 40 civil society and social partner organizations.[1] He also had an exchange with the President of the Eurogroup, and with the Chairs of the Social Protection Committee and the Employment Committee. He met with the United Nations agencies working on the European region. He also engaged with the representatives of France, Italy, Portugal, Slovenia and Spain, in order to improve his understanding of how national-level anti-poverty policies are supported by European Union-level policies. The Special Rapporteur would like to express his deep appreciation to his interlocutors who kindly offered their time and shared their knowledge during this visit.[2]

3. The Special Rapporteur heard from actors engaged in anti-poverty efforts and from people living in poverty, all of whom highlighted how close to the edge large segments of the European population already were before the economic activity collapsed at the start of the coronavirus disease (COVID-19) pandemic. Reliance on food banks and demands for emergency income support have surged. Estimates for income inequality and child poverty have worsened and are unlikely to improve even in the medium term.[3] And finding a quality job for those with low levels of qualification or experience is now increasingly difficult.

4. Since the end of the visit, on 29 January 2021, the European Union has taken important actions. It increased the funding allocated to combating child poverty. It proposed a directive on pay transparency to strengthen the requirement of equal pay for women and men. In March 2021, the European Commission announced an action plan for the European Pillar of Social Rights, adopted the European Union Strategy on the Rights of the Child and issued a proposal for a Council recommendation for a European Child Guarantee.

5. These are laudable advances and commitments. The question, however, is whether they can compensate for macroeconomic policy frameworks and rules that restrict member State action towards poverty eradication and lead to cuts in public services in the name of balanced budgets, affecting the most vulnerable first. An institutionalized race to the bottom among member States, leading to lower wages and lower worker protections in the name of competitiveness, hurts businesses and workers alike, but precarious and low-income earners suffer the most. The organized powerlessness towards damaging tax competition among member States all but ensures that progressive, redistributive tax rules – including taxes on wealth, corporations or financial transactions – remain relegated to the few countries who can afford the loss resulting from tax defection. The European Union can, if it so decides, change the rules of the game.

6. The COVID-19 crisis and the remarkable reaction of European Union institutions provide a unique opportunity to address the structural constraints that have thwarted its anti-poverty efforts thus far. The European Union should develop a European Union-wide anti-poverty strategy that ensures a structural, broad approach to poverty eradication, including

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[1] See www.srpoverty.org/wp-content/uploads/2021/01/Final-Meetings-schedule-EU-visit-1.pdf.

[2] In addition, submissions received are available at: www.ohchr.org/EN/Issues/Poverty/Pages/VisitEuropeanUnion.aspx.

[3] Zsolt Darvas, "COVID-19 has widened the income gap in Europe", *Bruegel*, 3 December 2020; and Dominic Richardson et al., *Supporting Families and Children Beyond COVID-19: Social Protection in High-Income Countries* (Florence, United Nations Children's Fund Office of Research – Innocenti, December 2020).

quality jobs and living wages, universal social protection incorporating harmonization of minimum income schemes, well-funded public services and tax justice. The action plan for the European Pillar of Social Rights is an important step in that direction, but it neither addresses the structural causes of poverty, nor every Pillar principle. It remains entirely silent, for instance, on principle 15, on old-age income and pensions; and the social scoreboard, even with its proposed revisions, is ill-equipped to monitor principle 19, on housing and assistance for the homeless. Good intentions are not enough: it is necessary to recognize the gaps that remain in the legal and policy framework under which European Union institutions operate, and align them better with the professed intention to eradicate poverty.

II. Poverty and social rights in the European Union

7. The European Union was enjoying steady economic growth before the COVID-19 pandemic, and unemployment rates have decreased in all member States since 2013.[4] The undeniable improvement in living standards that the European Union has spearheaded since its inception – and more recently since social objectives became a binding consideration under all other policy areas with the entry into force of the Treaty of Lisbon in 2009 – has positioned its member States at the top of the Human Development Index values,[5] and the European Union as a whole enjoys relatively low levels of inequality and income concentration.[6]

8. A closer look at poverty in the European Union, however, reveals a more troubling picture. One in five people – totalling 91.4 million people, or 20.9 per cent of the population – are still at risk of poverty or social exclusion in the European Union.[7] Inequality levels have remained virtually static or even worsened in some cases since the 2008 crisis.[8] A total of 17.9 million children, or 22.2 per cent, are at risk of poverty or social exclusion across the European Union,[9] an exceedingly high number for developed country standards. Rates of persistent risk of poverty – households at risk of poverty for at least three years in a row – have increased 3.6 percentage points since 2008,[10] as have the number of working poor in the majority of member States,[11] with overall trends at levels of 10 years ago.[12] These numbers suggest that the current approach to poverty eradication in the European Union is too narrow to be deemed appropriate for the scale of the problem.

9. Employment is important. It can provide stability, social connections and a sense of purpose. But a narrow focus on increasing employment rates as a recipe against poverty is doomed to fail unless it is accompanied by far-reaching changes in the broader macroeconomic framework of the European Union. The decisions the European Union takes in relation to its economic framework impact what member States can and cannot do in areas key for poverty reduction.

10. Empirical data analysing the post-2008 crisis have shown that employment growth and poverty alleviation do not necessarily go hand-in-hand. Job growth has generally benefited households where one or more members are already in employment: workless

[4] Eurostat, Labour Force Survey 2019 (une_rt_a). The indicator given in brackets represents a source data set from the survey data. Similar data sets are given in the footnotes throughout.

[5] United Nations Development Programme, *Human Development Report 2020 – The Next Frontier: Human Development and the Anthropocene* (United Nations publication, Sales No. E.21.III.B.1).

[6] Eurostat, European Union Statistics on Income and Living Conditions (EU-SILC) Survey 2019 (tessi190, ilc_di11); Organisation for Economic Co-operation and Development, income inequality (indicator).

[7] EU-SILC Survey 2019 (ilc_peps01).

[8] Organisation for Economic Co-operation and Development, income inequality (indicator), for Palma and Gini; and EU-SILC Survey 2019 (ilc_di11), for S80/S20.

[9] EU-SILC Survey 2019 (ilc_peps01).

[10] Eurostat, 2018 (latest available value), (ilc_li23).

[11] European Trade Union Institute and European Trade Union Confederation, *Benchmarking Working Europe, 2020*, p. 63.

[12] EU-SILC Survey 2019 (tespm070).

households benefited only marginally.[13] The share of workers at risk of poverty increased in 17 member States by an average of 1.4 percentage points between 2010 and 2019.[14] In short, the fact that a fifth of the population of the European Union lives at risk of poverty or social exclusion, and that there are 20.5 million workers in households at risk of poverty despite pre-pandemic record employment levels, makes clear that employment alone does not keep people out of poverty. However, problematically, it has often been recommended that member States focus on increasing overall employment rates without also referring to wage adequacy and decent working conditions, or to the improvement of their minimum income schemes.[15]

11. People who experience poverty, whether year after year or newly as a result of the COVID-19 pandemic, want to work, but are often unable to. Conditionalities and other limits to social assistance – whether in amounts or in time frames – are often provided as "labour incentives", but they will not help those who cannot find work: for instance, as a result of irreconcilable care responsibilities, limited work experience, low educational levels or long-standing health problems. The benefits arising from labour market improvements have been unequally distributed. Poverty will not be ended with employment policies alone, but only if paired with strong redistributive measures.

12. In 2010, as part of the "Europe 2020" strategy, the European Union set the target of reducing the number of people at risk of poverty or social exclusion by 20 million by 2020 or a 25 per cent reduction, from 18 per cent of the total population to 13.5 per cent.[16] Although progress was achieved by some accounts,[17] the target was largely missed. In fact, the official picture provided tends to underestimate the reality. Using a measurement that Eurostat considers more reliable for monitoring developments over time – known as the "anchored" rate – the rate of people at risk of poverty was in fact 2.3 percentage points higher in 2019 than in 2008, with great variations among member States.[18]

13. Moreover, national statistics offices conduct household interviews and surveys and provide data to Eurostat as part of the EU-SILC framework regulation. However, these surveys traditionally leave out both ends of the income distribution. Surveys rarely reach homeless shelters, old-age nursing homes, and other types of accommodations for vulnerable populations, who are also excluded from registers based on income tax declarations. They also typically exclude the richest households. The result is a skewed picture where the median income threshold may end up at a deceptively low level, leaving out segments of low-income earners from the poverty count and therefore from official statistics.

14. Worryingly, when asked about what lessons European Union institutions have drawn from the failure to meet the "Europe 2020" target, and what could be done differently in the future, institutional interlocutors consulted during the visit could not provide a satisfactory answer. The misguided assessment that the risk of poverty has declined in the European Union is leading to equally misguided solutions, as if doing more of the same would suffice. Unless the European Union designs a Union-wide anti-poverty strategy, with ambitious

13 Bea Cantillon, "The paradox of the social investment state: growth, employment and poverty in the Lisbon era", *Journal of European Social Policy*, vol. 21, No. 5 (14 December 2011), p. 439; and Ive Marx, Pieter Vandenbroucke and Gerlinde Verbist, "Can higher employment levels bring down relative income poverty in the EU? Regression-based simulations of the Europe 2020 target", *Journal of European Social Policy*, vol. 22, No. 5 (23 December 2012).

14 *Benchmarking Working Europe, 2020,* p. 63.

15 Silvia Rainone, *An Overview of the 2020–2021 Country-Specific Recommendations (CSRs) in the Social Field: The Impact of Covid-19* (Brussels, European Trade Union Institute, 2020).

16 COM(2010) 2020, 3 March 2010.

17 COM(2021)102 final, 4 March 2021 (p. 7).

18 Including an increase of 21.8 percentage points in Greece and 5.5 points in Luxembourg, and a 10-point decrease in Romania (Eurostat, "Living conditions in Europe – poverty and social exclusion", October 2020, p. 14). This measurement produces a more accurate picture of poverty rates because it "anchors" the poverty threshold (defined as 60 per cent of median incomes) at 2008 values, adjusting for inflation. In this way, if average incomes decline and lead to a lower threshold, people whose material conditions remained the same will not be automatically excluded from the count as a result of this lower threshold.

targets, coherent measurements and accountability mechanisms, it is bound to repeat the same mistakes.

15. The faces behind the poverty numbers are markedly gendered: women experience higher poverty rates than men (21.8 per cent versus 20 per cent), and the gap grows wider with old age (20.9 per cent versus 15.5 per cent)[19] as a result of inadequate pensions deriving from career interruptions to assume care responsibilities, gender pay gaps and gender gaps in part-time work.[20] The gender gap in pensions ranges between 1.8 per cent and 48.7 per cent across member States, but it is estimated to be a staggering 37.2 per cent on average, according to the most recent report.[21] Women are also disproportionately represented among lone-parent families (85 per cent),[22] 40 per cent of whom are at risk of poverty or social exclusion.[23]

16. Women do more unpaid work, and as a result become dependent on other adults for their social protection. A total of 29.4 per cent of women worked on a part-time basis in 2019, compared with 7.8 per cent of men.[24] Part-time work leads to lower benefits, including lower pensions. The gender pay gap remains at an unacceptable 14.1 per cent.[25] The European Institute for Gender Equality calculates that the European Union is still 60 years away from achieving gender equality, if it continues at the current pace.[26] While the adoption of the recent proposal for a directive on transparency in pay to combat unequal pay between women and men would be an important step in the right direction,[27] it is the European Union's breadwinner model of a 40-year uninterrupted career that does not relate to women's experiences and should be updated.

17. Other figures are equally a source of concern, owing both to the high numbers and to their unreliability. A total of 28.4 per cent of people with disabilities in the European Union were at risk of poverty or social exclusion,[28] which is 10 percentage points higher than the general population. That gap has in fact widened over the years – as confirmed by the evaluation of the European Disability Strategy 2010–2020[29] – and despite the fact that official figures exclude those with disabilities under 16 years of age.[30] Moreover, in most European Union member States, people with disabilities who have found a job are not allowed to continue receiving disability benefits,[31] a source of discrimination that denies them support meant to cover their disability-related costs and needs, none of which disappear with a job. In addition, homelessness is on the increase across Europe, with at least 700,000 people sleeping rough each night, although full and comparable data on the phenomenon are sorely lacking.

18. Poverty remains prevalent among the Roma, which is the largest minority in the European Union, with an estimated 6 million to 8 million members. The European Union Agency for Fundamental Rights reports[32] that even in the most affluent European Union countries from the western part of Europe, 12 per cent of the Roma and Travellers live in a household where at least one person went to bed hungry at least once in the previous month.

[19] EU-SILC Survey 2019 (ilc_peps01).
[20] European Institute for Gender Equality, "Area A – women and poverty: women at greater risk" (Vilnius, 2020), p. 2.
[21] European Commission, *Pension Adequacy Report*, vol. 1, 2018.
[22] European Institute for Gender Equality, "Poverty, gender and lone parents in the EU: Review of the implementation of the Beijing Platform for Action", 27 April 2017, p. 1.
[23] EU-SILC Survey 2019 (ilc_peps03).
[24] Eurostat, 2019 (latest available) (lfsi_pt_a).
[25] Ibid., (sdg_05_20).
[26] European Institute for Gender Equality, *Gender Equality Index 2020: Digitalisation and the future of work* (Luxembourg, Publications Office of the European Union, 2020).
[27] COM(2021) 93 final, 4 March 2021.
[28] EU-SILC Survey 2019 (hlth_dpe010).
[29] SWD(2020) 289 final, 20 November 2020 (and corrigendum: SWD(2020) 289 final/2, 27 November 2020).
[30] EU-SILC Survey 2019 (hlth_dpe010).
[31] See submission of the European Disability Forum.
[32] European Union Agency for Fundamental Rights, *Roma and Travellers in Six Countries: Roma and Travellers Survey* (2019); and European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey: Roma – Selected Findings* (2016).

The figure was 27 per cent in nine member States in the eastern and southern parts of the European Union, where it conducted a survey, with the highest proportion in Greece (48 per cent) and the lowest in Czechia and Hungary (20 per cent). In another survey, of six countries in the western part of the European Union, a total of 38 per cent of Roma and Travellers also reported difficulties making ends meet – with one in four Roma or Traveller children living in a household with severe material deprivation – whereas in the nine member States in the eastern and southern parts of the European Union, the figure was 72 per cent. The gap is so considerable that even in the most affluent European Union countries, the lives of Roma and Travellers are on average 10 years shorter than those of the general population.

19. These numbers are shocking, especially given the European Union's experience of overall economic growth until very recently. They are even more worrying considering that investments by member States in areas critical for poverty reduction – namely, social protection, health and education – have been steadily declining since 2009, and that 2019 investment levels are still below the levels seen before the 2008 financial crisis.[33] This decline is particularly troubling in countries that have ratified the International Covenant on Economic, Social and Cultural Rights, which includes the obligation to progressively realize human rights and not take retrogressive measures that could hinder that progress. Although the Covenant does not establish a minimum yearly increase in investments, the European Union should review country budgets, not only to ensure macroeconomic policy convergence, but importantly, to ensure no unjustified decreases in social investments are made in the name of deficit reduction.

20. This points to a broader problem: the weak status of social rights in the European Union's constitutional framework. The European Union Charter of Fundamental Rights, which plays an important role in introducing a fundamental rights culture within European Union institutions, presents significant gaps in comparison, for instance, to the Council of Europe's European Social Charter. In areas including the right to health care, the right to social assistance as a means of combating social exclusion or the right to housing, the Charter of Fundamental Rights guarantees no enforceable entitlements.

21. While this limited approach may be explained by the fact that these areas are primarily regulated by member States,[34] the underlying premise is incorrect. Guaranteeing a right does not necessarily equate to having the power to take measures to implement it. It may imply, more modestly but at the same time importantly, that the European Union commits to not restricting the ability of member States, within their own sphere of competence, to adopt measures that are aimed at the realization of the right in question. A more systematic reliance on internationally recognized social rights European Union law- and policymaking, beyond references to the Charter of Fundamental Rights alone, should be seen as an important component of an anti-poverty strategy, and it can be done without an explicit mandate in the European treaties.

III. A fairer social contract for the post-pandemic European Union

22. Recent initiatives seek to improve the alignment of the European Union regulatory and policy framework with the human rights obligations of the member States. If successful, such an alignment could strengthen their ability to do more in the fight against poverty (see sect. A below). Yet the economic downturn resulting from the COVID-19 pandemic should force upon the European Union a fundamental revision of the broader macroeconomic policy framework under which it operates (see sect. B below).

[33] Eurostat, 2018 (tepsr_sp110). See also Slavina Spasova and Terry Ward, *Social Protection Expenditure and Its Financing in Europe: A Study of National Policies* (Brussels, European Commission, 2019).

[34] Although art. 153 (1) (j) of the Treaty on the Functioning of the European Union does mention "the combating of social exclusion" among the fields where action by the Union may complement and support member States, the treaties have not provided for the adoption of European Union legislation in that area (see art. 153 (2) of the Treaty).

A. Aligning the European Union's social agenda with human rights obligations

23. Four recent developments deserve specific comments in the context of the present report. They are addressed from the broadest and earliest, to the most specific and most recent.

1. The European Green Deal

24. The European Green Deal, the European Union's new growth strategy designed to ensure a just and inclusive transition, makes explicit reference to both the 2030 Agenda for Sustainable Development and the European Pillar of Social Rights.[35] Complemented by the Just Transition Mechanism, the Green Deal must ensure not only that those in poverty and with low incomes are protected from the negative impacts of the transition, including that the poor do not pay for it, but that they equally benefit from this transition as well.[36] The Green Deal is not, however, an anti-poverty strategy. Indeed, while it refers extensively to the need to ensure a just transition, the only mention of poverty in the Green Deal is within the context of energy poverty. A more explicit focus on low-income earners would have been desirable.

25. Energy poverty is a very real phenomenon affecting over an estimated 50 million households in the European Union.[37] The European Commission recommendation on energy poverty and the recent Renovation Wave Strategy are aimed at addressing this challenge. However, despite ample evidence that social or regulated tariffs can help reduce energy poverty by lowering prices for vulnerable consumers,[38] member States will soon be forced to abolish them,[39] and the recommendation reinforces the market liberalization model that has led to higher prices in countries without such tariffs.[40] Similarly, in its current form, it is unclear how the Renovation Wave Strategy will benefit low-income groups (aside from simply protecting them from harm), address housing exclusion and avoid becoming another instrument of urban segregation.

26. More generally, a greater focus on the most vulnerable workers in reskilling processes, decent jobs and living wages would have been desirable, whether in the Green Deal or in the Just Transition Mechanism. In the Green Deal, it would have ensured a fuller integration of both the greening of the economy and the fight against poverty, two challenges that can only be met if addressed together.

27. The more fundamental weakness of the Green Deal is that, for all its ambition, it stops short of questioning the economic framework of the European Union. As a result, poverty reduction continues to depend on growth, which creates a tension between social and environmental objectives, including achieving climate neutrality by 2050, since economic growth cannot be entirely decoupled from ecological impacts.[41] The tension can only be addressed by refocusing efforts on the reduction of inequalities and on creating the conditions of an inclusive economy – one that truly ensures equal opportunities for all, especially in times of economic recession or stagnation.

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35 COM(2019)640 final, 11 December 2019, p. 3.

36 See, in this regard, the thematic report of the Special Rapporteur to the General Assembly on how to reconcile the ecological transformation with poverty eradication (A/75/181).

37 www.energypoverty.eu/about/what-energy-poverty.

38 Steve Pye et al., "Energy poverty and vulnerable consumers in the energy sector across the EU: analysis of policies and measures" (INSIGHT_E, May 2015), pp. 45–48.

39 European Parliament, "EU deal on electricity market rules to benefit both consumers and environment", press release, 19 December 2018.

40 See Recommendation (EU) 2020/1563, rec. 1; see also French Ecological Transition Ministry, "Tarifs réglementés de vente de l'électricité : le Gouvernement prend acte de la délibération de la CRE et confirme qu'il n'appliquera pas ces nouveaux tarifs pendant l'hiver", press release, 13 February 2019.

41 Jason Hickel and Giorgios Kallis, "Is green growth possible?", *New Political Economy* (2019); and Zora Kovacic et al., "Growth without economic growth" (European Environment Agency, 2020).

2. European Pillar of Social Rights Action Plan and the social scoreboard

28. The Action Plan of the European Pillar of Social Rights, released on 4 March 2021, is an important step towards providing the Pillar with practical effectiveness. As part of the Plan, the European Union has proposed three new headline targets to be achieved by 2030: at least 78 per cent of the population aged 20 to 64 should be in employment; at least 60 per cent of all adults are to participate in training every year; and there should be a reduction of at least 15 million in the number of people at risk of poverty or social exclusion, at least 5 million of whom should be children. The Plan will be the European Union's main tool for addressing poverty and social exclusion from now until 2030. Expectations were therefore particularly high and, as a result, it was difficult not to disappoint.

29. The Action Plan was prepared through a large number of consultations, including with civil society and social partners. It was informed by 1,041 unique written contributions, 23 high-level webinars at the national level and a dedicated strategic dialogue held on 21 October 2020. However, the Special Rapporteur received information describing some national consultations as poorly planned, often opaque, and arguably organized so as to simply check the participation box. It is unclear how the wealth of submissions were used in the outcome document, and therefore whether the Action Plan integrates perspectives other than the institutional consensus that the Commission had already generated beforehand.

30. At the conclusion of his visit, the Special Rapporteur recommended that a European Union-wide anti-poverty strategy be developed as the cornerstone of the Action Plan. He suggested that this strategy should include a target of 50 per cent poverty reduction, including child poverty, and a pledge to eliminate homelessness by 2030. The headline target of a reduction of 15 million people at risk of poverty or social exclusion is insufficiently ambitious. The European Union has over 90 million people in this situation, and the target set is widely below the pledge made in the Sustainable Development Goals to halve poverty according to national definition. Moreover, member States can set their own national targets and poverty thresholds, which leads to disparities in progress across the European Union. There are, moreover, no consequences for missing the target, and there are no mechanisms established to enable citizens to hold their governments accountable.

31. The proposed revisions to the social scoreboard remain limited, and its revision process lacks clarity. The scoreboard itself remains ill-suited for monitoring progress on several fronts. Household surveys miss the reality of homelessness, and as a result, estimates are at best optimistic, which puts into question the ability of the scoreboard to effectively monitor implementation of principle 19 of the Pillar, on housing and assistance for the homeless. The scoreboard does not include housing affordability either, even though it could be easily captured through the EU-SILC housing cost overburden rate. Moreover, references to the normative content of human rights are missing. The Action Plan, for instance, does not explicitly recognize the right to adequate housing and social protection as human rights, referring to them instead as commodities or services to be provided, rather than entitlements that people may claim.[42]

32. The European Pillar of Social Rights itself cannot be seen as a substitute for the recognition of social rights. While it draws inspiration from a range of international human rights instruments, it is not a new catalogue of rights, and no accountability mechanisms are put in place to guarantee their protection. The Pillar, including its Action Plan, remains for now a policy instrument: it provides useful guidance, but it does not create legal guarantees enforceable before courts or other independent bodies.[43] More efforts should be made to strengthen the protection of social rights as enforceable entitlements within the European Union legal order.

3. The debate on adequate minimum income

33. Minimum income schemes across the European Union are woefully inadequate in amounts, with almost all of them being ineffective at lifting people out of poverty. They also vary widely among member States. The Council of the European Union itself deplored the

[42] Birgit Van Hout, "Aligning the social pillar with human rights", 2 March 2021.
[43] SWD(2018)67 final, 13 March 2018, p. 4.

high discrepancies in terms of their adequacy and coverage and of beneficiary access to enabling services, and it requested that the Commission make proposals to effectively support and complement the policies of member States on national minimum income protection.[44] Providing support to families is also consistent with the pledge made in principle 14 of the Pillar, on minimum income. Regrettably, however, the Action Plan relegates action on minimum income to a Council recommendation, instead of the needed framework directive as advocated for by the Special Rapporteur; the European Parliament; national governments advocating for a binding instrument, including Germany and Portugal; and numerous civil society organizations.

34. A framework directive on minimum income schemes in the European Union[45] would establish a set of common human rights principles referring to the adequacy, universal unlimited access and coverage (including coverage of undocumented migrants[46] and of young people[47]) and enabling character of minimum income schemes. Relying on a human rights framework could help, since the criteria following from the International Covenant on Economic, Social and Cultural Rights,[48] the International Labour Organization (ILO) Social Security (Minimum Standards) Convention, 1952 (No. 102), and the ILO Social Protection Floors Recommendation, 2012 (No. 202) could be taken as minimum requirements.

35. The framework directive on minimum income schemes could also establish a set of common characteristics that all European Union countries must abide by, including participation of civil society, social partners and people with direct experience of poverty in the design of such schemes; transparency in member States' budgets and implementation; compatibility with work to ensure protection from in-work poverty, without prejudice regarding the need to ensure that minimum wage legislation prevents such a situation; non-retrogression; and accountability mechanisms so individuals can claim the benefits to which they are entitled. It should identify obstacles to the take-up of benefits and remove such obstacles to ensure effective access, paying particular attention to people experiencing homelessness, who face multiple hurdles in exercising their rights.

4. The Child Guarantee

36. Principle 11 of the Pillar provides that children have the right to affordable early childhood education and care of good quality; that they have the right to protection from poverty; and that children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities. On 24 March 2021, the European Commission proposed the adoption of a recommendation of the Council of the European Union for a European Child Guarantee,[49] a long-standing request of the European Parliament.[50]

37. As noted above, almost one in four children in Europe (22.2 per cent) are at risk of poverty or social exclusion, with lifelong consequences for the child concerned. Although 35.5 per cent of children under 3 are in formal childcare,[51] in more than one third of European Union member States, low-income families find early childhood education or care unaffordable. Building on the 2013 Commission recommendation on investing in children (2013/112/EU), the Commission proposed a European Child Guarantee to ensure that each child in the European Union had effective and free access to early childhood education and care; education, including school-based activities; a healthy meal each school day; health

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44 Council of the European Union, document No. 11721/20, 9 October 2020, para. 22.
45 Based on a combination of arts. 153 (1) (c) (social security and social protection for workers), 153 (1) (h) (integration of people excluded from the labour market) and 175 (strengthening of economic, social and territorial cohesion) of the Treaty on the Functioning of the European Union.
46 E/C.12/2017/1; and Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008) on the right to social security, para. 37.
47 Certain minimum income schemes do not extend to those aged 18–25, an especially shocking example of discrimination since the category is overrepresented among individuals who are unemployed or in precarious employment.
48 Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008).
49 COM(2021) 137 final, 24 March 2021.
50 European Parliament resolution of 24 November 2015 on reducing inequalities with a special focus on child poverty, para. 46.
51 EU-SILC Survey 2019 (ilc_caindformal).

care; and effective access to healthy nutrition and adequate housing. European Union member States will be expected to appoint a national child guarantee coordinator to coordinate and monitor the implementation of the guarantee through a national action plan, and member States are to report on progress. They will be supported in that regard by the European Social Fund Plus,[52] the European Regional Development Fund, the Recovery and Resilience Facility and, for school meals programmes, the European Union milk, fruits and vegetable scheme.

38. The Special Rapporteur commends the Commission for this important proposal. It is particularly encouraging that member States are expected to involve relevant stakeholders both in the preparation, implementation, monitoring and evaluation of the national action plans and in identifying children in need and the barriers they face in accessing and taking-up the services covered by the recommendation. In the European Union as elsewhere, high rates of non-take-up are a major barrier to the effective enjoyment of social rights, and the identification of obstacles is only possible with the effective participation of people in poverty in the evaluation of policies.[53]

39. The proposed recommendation for a European Child Guarantee refers to the need for member States to adopt labour market integration measures for parents or guardians and income support to families and households, so that financial barriers do not prevent children from accessing quality services. Consistent with the first pillar of the 2013 recommendation on access to adequate resources and as reiterated by the European Union Agency for Fundamental Rights in its 2018 study on combating child poverty,[54] support to children cannot be dissociated from support to parents’ access to employment and to a decent standard of living. It has also been noted that, in order to break the vicious cycle of the inheritance of poverty, it is not enough to focus on children in isolation from their parents; the family as a whole must be considered. Improving the situation of children depends on improving the situation of their families, whether by getting them out of debt, helping parents to get a good job with fair pay, or heating or renovating their homes.[55]

40. The Special Rapporteur notes that adopting a rights-based approach will be key to ensure effective access to the areas covered by the Child Guarantee, since tackling discrimination and stigmatization of children in need[56] and ensuring that the benefits are defined as entitlements that individuals may claim before independent bodies are both essential to reduce non-take-up. In addition, any credible national action plan in this area should include measures to ensure that families facing poverty are protected from institutional abuse. Since children living in poverty are particularly at risk of being separated from their families, member States should be reminded explicitly that, as emphasized by the Committee on the Rights of the Child, economic reasons cannot be a justification for child removal.[57]

B. Guaranteeing a rights-based recovery

41. Following the outbreak of the COVID-19 pandemic on the European continent in March 2020, European Union institutions have acted with remarkable swiftness, placing public health considerations above economic orthodoxy: their reaction was nothing short of remarkable. The rules on State aid were relaxed, in order to allow member States to support

[52] For the period 2021–2027, member States with a rate of children at risk of poverty or social exclusion higher than the European Union average will have to earmark 5 per cent of the European Social Fund Plus for combating child poverty or social exclusion, whereas other member States will be required to earmark an appropriate amount.

[53] Hans Dubois and Anna Ludwinek, “Access to social benefits: reducing non-take-up” (Eurofound, 21 September 2015).

[54] European Union Agency for Fundamental Rights, *Combating Child Poverty: An Issue of Fundamental Rights* (2018), sect. 3.1.

[55] Bianca Faragau et al., *Fighting Child Poverty in European Cities: Lessons from Cities for the EU Child Guarantee* (Eurocities, December 2020), p. 38.

[56] COM(2021)137 final, para. 6 (f).

[57] Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 61.

companies facing financial difficulties following the initial lockdowns.[58] The general escape clause of the Stability and Growth Pact was activated in March 2020 in order to allow countries to respond to the pandemic, and the Commission confirmed in May 2020 that it would not place any country under the excessive deficit procedure, despite the high levels of public deficit in almost all European Union member States.

42. The European Stability Mechanism established a new facility, Pandemic Crisis Support, to allow member States to respond to the pandemic, providing access to funds equivalent to up to 2 per cent of their GDP. The European Central Bank resorted to unconventional measures, known as quantitative easing, as it did in 2014 with the financial asset repurchase programme, this time in the form of the pandemic emergency purchase programme, for a total amount of 1.85 trillion euros. The temporary "Support to mitigate Unemployment Risks in an Emergency" programme (SURE) made available up to 100 billion euros in the form of loans for member States to address sudden increases in public expenditure for the preservation of employment. Extraordinary flexibility was introduced in the European Structural and Investment Funds, which were mobilized to the fullest, and rules were changed for better use of the Fund for European Aid to the Most Deprived (FEAD). Finally, and most significantly, the European Commission proposed an ambitious recovery plan for the European Union worth 750 billion euros. Called NextGenerationEU, it is to complement the European Union multiannual financial framework for the period 2021–2027.

1. Supporting recovery and resilience

43. The centrepiece of NextGenerationEU is the new Recovery and Resilience Facility, accounting for 672.5 billion euros in loans and grants. In order to receive access to funds, member States needed to submit national recovery and resilience plans by 30 April 2021. The fight against poverty and the inclusion of disadvantaged groups are mentioned in the preamble of the new facility regulation, and three of the six pillars that national plans should address are social in nature, including social and territorial cohesion; health, and economic, social and institutional resilience; and education and skills.[59]

44. Is this new facility, as it is designed, fit for the purpose of combating poverty? The Special Rapporteur submits three considerations in this regard.

45. First, national plans should "contribute to effectively address" country-specific recommendations issued to member States under the European Semester, insofar as such recommendations are "relevant". In practice, the focus will be on the recommendations issued in 2019 and 2020.[60] National governments and civil society organizations consulted during the Special Rapporteur's visit expressed concerns about that requirement. Some saw it as a potential limitation to their ability to deliver on social objectives, owing to what they perceived as the focus of recommendations on midterm fiscal sustainability. Although recent recommendations have been more lenient towards social investments, earlier country-specific recommendations have routinely included prescriptions that could constitute retrogressive measures prohibited by the International Covenant on Economic, Social and Cultural Rights, which all member States have signed.

46. On the other hand, the most recent country-specific recommendations allow greater flexibility to member States. Indeed, country-specific recommendations in the future could be designed to contribute to the fight against poverty and to the reduction of inequalities, beyond training and employment. Specifically, country-specific recommendations could address:

(a) Strengthening of public services and social investment, particularly for early childhood education and care;

(b) Minimum income schemes ensuring an adequate standard of living;

(c) An increase in levels of housing allowances to combat homelessness;

[58] C/2020/1863, 20 March 2020, p. 1.
[59] Regulation (EU) 2021/241, art. 3.
[60] Ibid., art. 18 (4) (b).

(d) Minimum wage legislation guaranteeing a living wage, in order to combat the phenomenon of working poor;

(e) Greater progressivity in taxation.

47. Thus conceived, country-specific recommendations, and the European Semester generally, can become important tools in the fight against poverty, and the recovery supported by the new facility can effectively contribute to the realization of Sustainable Development Goal 1. This would ensure better alignment between the European Union's economic sustainability and the human rights obligations of its member States. It also would help if European Semester country officers included individuals with a background in human rights and social policy, instead of just economics, as is largely the case at present.

48. Secondly, while the national recovery plans have to include a minimum of 37 per cent of expenditure related to climate and a minimum of 20 per cent to the digital transition, no comparable target is defined for social cohesion. This is not necessarily a problem if social cohesion – the reduction of poverty and inequalities – is indeed, as intended, a transversal concern, which should also guide the ecological and digital transitions. For this to occur, however, member States should use credible ex ante methodologies to assess the social cohesion impacts of their national plans, and provide the Commission with the results of such assessments. However, no such methodologies have been designed by the Commission, nor are such assessments prepared. This is a major weakness in the design of the Recovery and Resilience Facility.

49. Thirdly, the participatory dimension of the preparation of the national plans remains deficient. Although regional and local authorities should be appropriately consulted and involved in the design of national plans,[61] the Special Rapporteur has found that this has not been the case so far. While social partners are generally consulted, participation of civil society has been highly uneven, and that of people with experience of poverty has been minimal to non-existent. However, such participation is essential in order to ensure that no one is left behind in the economic recovery. Additionally, Eurocities surveyed 45 cities across 18 member States, and over 70 per cent of them deemed the consultation processes insufficient, with only 12 per cent able to contribute to the drafting of national plans.[62]

50. In the long term, only a more fundamental rebalancing of the economic and social components of the European Union's socioeconomic governance will ensure commitments to ending poverty and reducing inequalities in the European Union do not ring hollow.

2. Revising the Stability and Growth Pact

51. With the application of the general escape clause now preliminarily extended until 2023,[63] the revision of the Stability and Growth Pact is now at the top of the political agenda. Social investments – in early childhood education and care, education and training, health, and active labour market policy spending – should be seen not as costs, but instead as investments that, like those in research and development, ensure long-term productivity gains. As noted by the European Fiscal Board, doing so would create fiscal space for countries concerned with improving their competitiveness in the twenty-first century knowledge economy.[64] It would also alleviate any tension between the fulfilment of social rights, including the right to health, the right to education or the right to an adequate standard of living, and the objective of stabilizing the level of public debt below 60 per cent of GDP.

52. There is also a strong human rights rationale for allowing a deductible net social investment – for instance, up to 2 per cent of GDP.[65] This deductible would apply, not only to "productive" sectors of public expenditure strictly speaking, but more widely to all areas

[61] Ibid., preamble, para. 34.

[62] Eurocities, "Briefing note on the involvement of cities in the preparation of National Recovery Plans and Operational Programmes 2021–2027", 19 January 2021.

[63] COM(2021) 105 final, 3 March 2021, p. 8.

[64] European Fiscal Board, "Assessment of the fiscal stance appropriate for the euro area" (2020), pp. 17–32.

[65] Anton Hemerijck, *Making Social Investment Happen in the Eurozone*, policy paper 2019/08 (Robert Schuman Centre for Advanced Studies, 2019).

considered under the International Covenant on Economic, Social and Cultural Rights, namely the protection of labour rights, social security, childcare and lifelong education, and investments in ensuring an adequate standard of living, housing and health care.

3. State aid to companies

53. The relaxation of State aid rules was important in order to allow member States to support companies that otherwise, as a result of the crisis created by the COVID-19 pandemic, might have been forced into bankruptcy. That relaxation, however, primarily benefited those member States, such as Germany, that could best afford to help their economic actors, thereby increasing the risk of imbalances across the European Union.

54. In addition, while the Commission recommended that States make financial support conditional on the absence of links to jurisdictions featuring on the European Union list of non-cooperative jurisdictions,[66] that may still be insufficient. Apart from the ability of the Commission to effectively follow up on that recommendation, the list has been challenged, owing to its flawed methodology. For instance, zero-tax rate jurisdictions, or jurisdictions that impose only minimal taxes, including the Bahamas, Bermuda, the British Virgin Islands, Jersey, Guernsey and the Isle of Man, are not blacklisted. The reason behind this is that such zero-tax rates are treated merely as a "risk indicator" for the purposes of the European Union blacklist. Moreover, European Union jurisdictions are not blacklisted either, despite the fact that, as noted by Oxfam, five European Union countries – namely Cyprus, Ireland, Luxembourg, Malta and the Netherlands – would fail the European Union's own criteria on fair taxation and would be blacklisted were it not for the automatic exemption.[67]

55. Finally, the fact that, in most countries, State aid was granted without ensuring that the companies concerned would effectively contribute to the ecological transition, in particular by moving away from their dependency on fossil energy, constitutes a missed opportunity.

IV. Constraints member States face in combating poverty

56. The European Union's constitution is ill-suited to combat poverty. While it increasingly encourages economic policy convergence, it still fails to ensure proper social and fiscal convergence, thereby institutionalizing unhealthy competition among European Union member States. The member States are asked to be competitive and lean: they are pardoned for not being social enough.

A. Competing through wages and social contributions

57. Member States' decisions when setting wages and levels of social contributions are still driven by the perception that any increases in wages or social contributions could negatively affect their external cost competitiveness and reduce their attractiveness to potential investors in the most labour-intensive segments of the industry, leading to the misguided view that better wages and protections could result in unemployment. Yet there is little to no evidence of a negative impact of minimum wages on unemployment.[68] On the contrary, ILO has shown that minimum wages can in fact contribute to higher labour productivity, both at the enterprise level and across the economy, which can in turn strengthen competitiveness.[69] Despite this, member States continue the unhelpful practice of competing by lowering workers' wages and protections.

58. Some action has been taken to combat the worst instances of social dumping, including the revision of the Posted Workers Directive 2018,[70] the establishment of the

[66] C(2020)4885 final, 14 July 2020.
[67] Oxfam, "EU tax haven blacklist review", February 2021.
[68] Philipp Heimberger, "Does employment protection affect unemployment? A meta-analysis", *Oxford Economic Papers*, 28 November 2020.
[69] ILO, *Minimum Wage Policy Guide* (Geneva, 2016), p. 75.
[70] Directive (EU) 2018/957, 9 July 2018, p. 16.

European Labour Authority to support enforcement efforts at domestic level, and the proposal for a directive on adequate minimum wages in the European Union.[71]

59. These are commendable improvements, but they remain short of what would be required to protect the bargaining position of workers in the internal market. States still compete on wages and especially on social contributions paid by employers, and this race to the bottom in the field of wage-setting and worker protections damages enterprises, workers and member States alike.

60. The difference in average wages between countries, including Germany, Luxembourg and the Netherlands, and Bulgaria, Latvia and Slovakia, is on the order of 20,000 euros per year.[72] In-work poverty and part-time and precarious work have increased in the majority of member States, with 20.5 million workers living in households at risk of poverty in 2017 alone.[73] The density of trade unions has decreased in all member States since such data became available, with the lowest percentages of employees with the right to bargain present in Lithuania and Poland.[74]

61. As the Governments of Austria, Belgium and the Netherlands expressed in their contributions to the consultation on the Action Plan of the European Pillar of Social Rights, social convergence is essential to combat social dumping.[75] The European Union's ability to address this phenomenon remains limited, however. Although debate exists about the competence of the European Union to address social dumping, agreeing on common thresholds to ensure workers' right to a decent standard of living would protect vulnerable workers who have been particularly hit by the COVID-19 crisis, including self-employed, non-standard and precarious workers, among whom women and migrant workers are overrepresented.[76]

62. The main tool that could help keep coordinated track of social dumping across member States, the social scoreboard, is not fully equipped to meet these challenges. As already identified by the European Commission, the scoreboard does not monitor progress unionization rates, collective bargaining or coverage by collective agreements. The proposed changes to the scoreboard as part of the Action Plan of the European Pillar of Social Rights do not plan to address those deficiencies either.[77] Monitoring progress against social dumping through standardized measurements should be seen as a priority.

63. More systematic references to international human rights standards could significantly help improve the process of upward social convergence. For instance, consensus on the proposal for a directive on adequate minimum wages in the European Union could be facilitated by a reference to criteria derived from article 7 of the International Covenant on Economic, Social and Cultural Rights, as clarified by the Committee on Economic, Social and Cultural Rights.[78]

64. Similarly, encouraging member States to better align their international commitments would go a long way towards creating a more level playing field and combating the worst instances of social dumping. For example, only seven European Union member States have ratified the ILO Domestic Workers Convention, 2011 (No. 189), and none have ratified the

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[71] COM(2020)682 final, 28 October 2020, art. 5 (1).

[72] Eurostat, 2020 (earn_nt_netft).

[73] This number, moreover, is likely an underestimation because the European Union Labour Force Survey indicator for employment only covers those aged 20–64 and those in formal and regular work (Ramón Peña-Casas et al., *In-Work Poverty in Europe: A Study of National Policies* (Brussels, European Commission, 2019), p. 21).

[74] Jelle Visser, Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts, 1960–2018 (ICTWSS database, version 6.1). Amsterdam: Amsterdam Institute for Advanced Labour Studies, University of Amsterdam (October 2019). Available at www.ictwss.org/downloads.

[75] SWD(2021)46 final, 4 March 2021, p. 11.

[76] Eurofound, *Living, Working and COVID-19* (Luxembourg, Publications Office of the European Union, 2020).

[77] SWD(2021)46 final, 4 March 2021, p. 119.

[78] Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 18–24.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The European Union should prioritize joining these conventions to guarantee decent working conditions in the region.

B. Competing through taxation

65. Similarly, tax competition has deprived member States of public revenues necessary to provide public services and to finance social protection. Over the past 20 years, statutory corporate income tax rates have declined by an average of 11 per cent, and competition among States to attract particularly mobile profits has been magnified by arrangements such as patent boxes, tax rulings and “special purpose entity” statuses.[79]

66. In 2015, the losses in public revenue for States were estimated at around 50 billion to 70 billion euros per year, merely as a result of corporate tax avoidance, i.e., profit-shifting by companies within the European Union. Once other tax regime issues are included, such as special tax arrangements and inefficiencies in collection, the losses amount to around 160 billion to 190 billion euros – an estimate that is provided in a study prepared for the European Parliament and that is considered by the authors themselves to be conservative.[80]

67. All member States end up losing out from such competition. They now face the choice between lowering the levels of public services provided in areas such as health care or education, or shifting the tax service onto less mobile tax bases, such as labour or consumption.[81] Given the strong interdependence of the European Union member States in the internal market, the requirement of unanimity in the area of taxation[82] does not protect national sovereignty. It does rather the opposite: it impedes their ability to act collectively and thus more effectively. In addition, it operates to the detriment of workers and consumers, as well as of local businesses, who cannot, as multinational corporations do, rely on aggressive tax avoidance strategies through base erosion and profit-shifting.

68. The unanimity requirement also means that taxes such as the financial transactions tax or the digital services tax cannot be adopted at the European Union level. According to estimates made prior to the departure of the United Kingdom of Great Britain and Northern Ireland from the European Union, the financial transactions tax and the digital services tax could raise 57 billion and 5 billion euros per year, respectively. However, the enactment of such legislation still depends on member States taking action either individually or, as considered since 2013 for the financial transactions tax, through the enhanced cooperation procedure. It is hoped that advances will be made in this regard as the European Union will have to mobilize resources to pay back its debts in the period 2028–2058, by increasing its own resources.

69. The European Union has not remained inactive in this area, including through various instruments adopted to address the most serious abuses related to tax avoidance,[83] and aggressive tax planning has occasionally been addressed in country-specific recommendations under the European Semester to favour cooperation.

70. The unanimity requirement blocks more significant change, however. Even the proposals of the European Commission on the common consolidated tax base[84] remain stuck within the Council, despite the advantages of allowing consolidated taxable profits across the European Union being shared among the member States concerned according to an objective apportionment formula, and even though this approach, while useful to combat aggressive

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79 European Commission, *Tax Policies in the European Union: 2020 Survey* (Luxembourg, Publications Office of the European Union, 2020), p. 46.

80 Robert Dover et al., “Bringing transparency, coordination and convergence to corporate tax policies in the European Union – part II: evaluation of the European added value of the recommendations in the ECON legislative own-initiative draft report” (Brussels, European Union, 2015).

81 COM(2019)8 final, 8 January 2019, p. 7.

82 Arts. 113, 115, 192 (2) and 194 (3) of the Treaty on the Functioning of the European Union.

83 Council Directive (EU) 2016/1164; Council Directive (EU) 2017/952; and Council Directive (EU) 2018/822.

84 COM(2016)685 final and COM(2016)683 final, 25 October 2016.

tax avoidance strategies by large companies, would still leave it to each State to define its own tax rates.

71. Some progress on this front has been made recently. On 25 February 2021, the Council of the European Union, in its Competitiveness Council configuration, agreed to move forward with a proposal, initially tabled in 2016, towards a European public country-by-country reporting directive. The directive would require large multinationals to publicly disclose their pre-tax profit/loss, the income tax they pay in each member State, the nature of their activities and the number of employees. While final agreement still must be found with the other institutions, the adoption of this text would represent a welcome improvement, since increased transparency could prevent the most abusive forms of profit-shifting within the European Union.

72. The more significant problem, however, is that aside from the room it provides for aggressive tax planning, the principle according to which European Union member States may seek to improve the competitiveness of the companies they host by lowering corporate tax rates remains unchallenged. While the 1997 Code of Conduct for business taxation, the European Code of Conduct Group and, in exceptional cases, State aid rules may serve to address the most harmful forms of tax competition and level the playing field, these mechanisms have so far failed to stem the gradual erosion of the capacity for States to tax corporate profits, in particular as a result of digitalization and the reliance on letter-box companies or "special-purpose entities". This form of unhealthy competition between States has until now been compensated in part by a broadening of the tax base, but there is little room left to expand the tax base further.

73. Future country-specific recommendations adopted in the European Semester should address specifically both the issue of corporate income taxes and that of the progressivity of the personal income tax. A failure to act would result in a situation in which the tax liability of the most mobile actors – that is, corporations and the wealthiest individuals – will be gradually reduced, resulting in a shifting of the burden onto labour and consumers.

C. Macroeconomic convergence

74. Macroeconomic policy convergence rules in the European Union, and in the eurozone in particular, still represent an obstacle in the fight against poverty at member State level.

75. The Stability and Growth Pact, initially adopted in 1997 as part of the pathway to the monetary union, in effect has prohibited member States that have joined the single currency from relying on demand-driven growth. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union further strengthened the constraints. Member States that are parties to the Treaty committed in principle to adopt balanced budgets, with a maximum deviation of 0.5 per cent. They further committed to reducing the public debt exceeding the 60 per cent of GDP limit by 1/20 each year and to include such disciplines in rules of a constitutional rank in the domestic legal order.

76. Additionally, the new social and economic governance established in the European Union following the public debt crisis of 2009 to 2012 at first entirely ignored the impacts of fiscal and budgetary measures on social rights. Initially social rights did not play a role in the European Semester,[85] in the implementation of the Fiscal Stability Treaty,[86] in the "enhanced surveillance" procedure for States threatened by serious economic and budgetary difficulties,[87] or in the workings of the European Stability Mechanism, established in 2012 to

[85] Article 2a (2) of Council Regulation (EC) No. 1466/97, as amended by Regulation (EU) 1175/2011, dated 23 November 2011, p. 12.

[86] Under chapter II of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, in force since 2013, a total of 22 States, comprising the 19 euro-area States plus Bulgaria, Denmark and Romania, commit to seek to maintain balanced public budgets, or even to strive to having a surplus, and to internalize the balanced-budget rule and the automatic correction mechanism in rules of constitutional rank in the domestic legal order (art. 3 (2)).

[87] Regulation (EU) No. 472/2013.

ensure financial stability within the European Union.[88] This neglect of social rights explains why, following the reforms provided for in the 2010 memorandum of understanding between Greece and its creditors, the European Committee of Social Rights adopted a number of decisions finding various violations of the European Social Charter.[89]

77. As noted above, the current economic and social crisis provides a unique opportunity to rethink the balance between the social and the economic dimensions of the European Union's socioeconomic governance. The opportunity should be seized.

D. Rights-based social impact assessments

78. Against this background, considerable hopes have been placed on the "socialization" of the European Semester process, a process strengthened with the adoption in 2017 of the European Pillar of Social Rights and, more recently, with its Action Plan.

79. However, major deficiencies remain. First, neither the country-specific recommendations adopted as part of the European Semester process nor the memorandums of understanding agreed with countries supported by the European Stability Mechanism are accompanied by proper human rights impact assessments. The Commission pledged in 2014[90] to pay greater attention to the social fairness of new macroeconomic adjustment programmes to ensure that the adjustment is spread equitably and to protect the most vulnerable in society.[91] Yet its own guidance still suggests that in the field of economic governance, which includes "recommendations, opinions and adjustment programmes", impact assessments are not a priori necessary, since (it is said) such "specific processes are supported by country specific analyses".[92]

80. In other terms, the promise was not kept. Even the social impact assessment accompanying the third rescue package adopted for Greece in July 2015, which is aimed at examining "how the design of the stability support programme has taken social factors into account",[93] remains short of an impact assessment based on human rights, taking into account the full range of fundamental social rights. Furthermore, it was not participatory by design.

81. Second, regarding the European Stability Mechanism, the recent reform of the Treaty establishing the European Stability Mechanism does not include a reference to social considerations, let alone to social rights. The Court of Justice of the European Union considers that the requirement to promote the application of the Charter[94] may imply a duty on the Commission to proactively take into account fundamental rights in the design of memorandums of understanding with States provided with financial assistance.[95] It also takes into account, when assessing measures adopted to remove excessive budget deficits, whether the sacrifices imposed on the population are equally shared.[96] However, neither the European Stability Mechanism, nor the Commission itself, have adopted the tools that would allow them to effectively discharge the duties to ensure that reforms will further social rights, and not undermine them, and that such reforms will contribute to the reduction of inequalities. The Special Rapporteur looks forward to being updated on the Commission's commitment

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88 The Treaty establishing the European Stability Mechanism was signed on 2 March 2012 and entered into force on 1 May 2013.

89 Complaints Nos. 65/2011, 66/2011 and 76-80/2012. See also International Labour Office, *Report on the High Level Mission to Greece (Athens, 19–23 September 2011)* (Geneva, ILO, 22 November 2011).

90 Jean-Claude Juncker, "A new start for Europe: my agenda for jobs, growth, fairness and democratic change: political guidelines for the next European Commission" (Strasbourg, 15 July 2014).

91 COM(2015)600 final, 21 October 2015, p. 5; COM(2015)610 final, 27 October 2015.

92 See European Commission, "Better Regulation Toolbox – Tool #9: When is an impact assessment necessary?", p. 51.

93 SWD(2015)162 final, 19 August 2015.

94 Art. 51 (1) of the European Union Charter of Fundamental Rights.

95 Court of Justice of the European Union, *Ledra Advertising Ltd. v. European Commission and European Central Bank*, C-8/15 P to C-10/15 P, Judgment, 20 September 2016, paras. 59 and 67.

96 Court of Justice of the European Union, *Escribano Vindel v. Ministerio de Justicia*, C-49/18, Judgment, 7 February 2019, para. 67.

to present guidance to member States undertaking ex post distributional impact assessments in budgeting and planning of reforms.[97]

82. This neglect is surprising, not only considering the pledges referred to above, but also because the guiding principles on human rights impact assessments of economic reforms[98] provide a useful starting point to prepare such assessments. The Special Rapporteur welcomes the willingness expressed by his interlocutors to examine whether social impact assessments guided by human rights can be systematized in the future.

V. Priority recommendations

83. The Special Rapporteur makes the following priority recommendations:

(a) Proposals on the issue of minimum wage and for the Child Guarantee are pending. The adoption of these proposals will be important contributions to the reduction of poverty in the European Union. Harmonizing minimum income schemes across the European Union through the presentation of a legally binding instrument would be consistent with the pledges made in the Child Guarantee, including to increase “income support to families and households, so that financial barriers do not prevent children from accessing quality services”. Progress in these areas would be facilitated by more systematic references to the norms and standards of international human rights law, including both United Nations and Council of Europe instruments that are binding in European Union member States, which provide adequate starting points for the setting of minimum requirements at the European Union level;

(b) The current crisis provides a unique opportunity to rethink socioeconomic governance in the European Union. The revision of the Stability and Growth Pact should ensure that social investment will not be discouraged by budgetary disciplines. Efforts to strengthen the social dimension of the European Semester process should be pursued. Country-specific recommendations can support upwards social convergence in the European Union by demanding that member States strengthen public services, increase social investment, increase efforts to combat homelessness and ensure greater progressivity in taxation. Indeed, thus conceived – that is, as a tool to combat unhealthy social and fiscal competition and to complement macroeconomic policy convergence with a social dimension – the European Semester can become a powerful tool to encourage European Union member States to do more in the fight against poverty. Finally, national recovery and resilience plans presented under the new Recovery and Resilience Facility should effectively contribute to social cohesion, and member States should be expected to follow a rigorous methodology to ensure that that is indeed the case;

(c) At a minimum, measures adopted at the European Union level should not impede member States’ efforts to combat poverty and reduce inequalities. An essential requirement in that regard is that country-specific recommendations adopted as part of the European Semester process and the memorandums of understanding agreed with countries supported by the European Stability Mechanism be accompanied by proper human rights impact assessments.

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[97] COM(2021)102 final, 4 March 2021.

[98] A/HRC/40/57.