

EU SOCIAL SECURITY LAW: THE HIDDEN 'SOCIAL' MODEL

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The EU monitoring of social security systems: in search of the hidden European social model

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Introduction	5
1. European social security standards: the social model by the Council of Europe	12
2. Looking for the hidden EU social security model: an inductive textual analysis of the EU recommendations	18
2.1. <i>Brief introduction to the EU monitoring procedure</i>	18
2.2. <i>Social recommendations under analysis: applied methodology</i>	22
2.3. <i>Structural analysis of the recommendations</i>	25
2.3.1. Keeping the system unified	25
2.3.2. Combating poverty and social exclusion	27
2.3.3. Linking pensionable age with life expectation and limiting access to early retirement	28
2.3.4. Harmonising pensionable age (gender)	29
2.3.5. Organisation of the health care scheme: more emphasis upon adequacy and health outcomes	30
2.3.6. Limiting the duration and the level unemployment benefits	31
2.3.7. Stricter regulation of access to invalidity benefits	33
2.3.8. Invest in child care services instead of parental schemes	34
2.3.9. A better targeting of the benefits	35
2.3.10. Guaranteeing adequate benefits (for example through supplementary schemes and private savings schemes)	37
2.3.11. Reduce the financial burden on labour	38
2.3.12. Disconnect benefit indexation from wage indexation	39
2.3.13. Fight hidden economy	39
2.4. <i>Underlying objectives</i>	40
2.5. <i>In conclusion of the analysis</i>	41
Concluding observations	44
Annex I	47
Annex II	51

Introduction The European Union is characterised by its social model, at least this is often claimed in official documents of the European Union (EU). Under the Presidency of *Jacques Delors*, the EU Commission referred explicitly to the ‘European social model’ for the first time in its White Paper on Social Policy (1994)¹. In the preface is stated that the “*objective in the coming period must be to preserve and develop the European Social Model as we move towards the 21st century...*”. After this opening statement, reference to the social model has repeatedly been made in communications and social agendas of the EU Commission². Likewise, it came regularly to the fore in the Presidency Conclusions of the European Council³. Although it is accepted that the European Union is characterised by its social model, the model is not defined explicitly. In the White Paper (1994) the Commission defines the ‘European social model’ in rather general terms as “*values that include democracy and individual rights, free collective bargaining, the market economy, equal opportunities for all and social protection and solidarity.*”⁴ A major component of the model are ‘*highly developed social protection systems*’⁵; the European social dialogue is mentioned as a cornerstone of the model⁶.

In social science literature the social model refers to developed labour law systems and redistributive social security systems, providing income protection and cost compensation for recognized contingencies such as old age survivorship, work incapacity,

¹ Comm.Comm. 27 July 1994 European Social Policy – A way forward for the Union: A White Paper, COM(1994) 333 final.

² Without claiming comprehensiveness, we can refer to: Comm.Comm. 12 March 1997 Modernizing and improving Social Protection in the European Union, COM(1997) 102 final; Comm.Comm. 21 June 2001 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – Employment and Social Policies: A Framework for investing in Qualities, COM(2001) 313 final; Comm. Comm. 28 June 2000 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions Social Policy Agenda, COM(2000) 379 final; Comm.Comm. 9 February 2005 on the Social Agenda, COM(2005) 33 final; Comm.Comm. 2 July 2008 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Renewed Social Agenda: Opportunities, Access and Solidarity and 21st century Europe, COM(2008) 412 final.

³ Lisbon European Council 23 - 24 March 2000: Presidency Conclusions (2000), para. 24 and 31; Nice European Council 7-10 December 2000 Presidency Conclusions (2000), para. 11-12; Barcelona European Council 15-16 March 2002 Presidency Conclusions (2002), para. 22 and 24; Brussels European Council 20-21 March 2003 Presidency Conclusions (2003), para. 10; Brussels European Council 25-26 March 2004 Presidency Conclusions (2004), para. 17; Brussels European Council 22-23 March 2005 Presidency Conclusions (2005), para. 22; Brussels European Council 23-24 March 2006 Presidency Conclusions (2006), para. 57 and 69; Brussels European Council 8-9 March 2007 Presidency Conclusions (2007), para. 18.

⁴ COM(1994) 333 final.

⁵ COM(1997) 102 final

⁶ COM(2008) 412 final.

unemployment, health care and family burden. Contrary to privately run schemes the underlying solidarity is not restricted to the horizontal level (solidarity within the group) but extends to the vertical level (income redistribution). And in its most complete form, the system has a residual social assistance scheme in place guaranteeing a minimum subsistence to all citizens when labour market mechanisms and social insurances fail to do so. Although there may be some diversity in shaping the European Welfare state, social scientists do however agree that income in our European societies is indeed extensively redistributed, from ‘the strong to the weaker shoulders’,⁷ in order to provide protection to those who face major costs and/or loss of income due to a social contingency.

For a social security lawyer however, this is too vague a concept to work with. In legal terms a model refers to a reference framework against which a system or rules can be set off in order to have it assessed. A practical example can show the potential legal relevance of such a model. At about the same time the EU Commission was referring to its social model for the first time, many Central and Eastern European states were, in the aftermath of the collapse of the Soviet Union, fundamentally reforming their social security systems. In some of these countries the reforms were to a large extent inspired by policy papers by the World Bank and the International Monetary Fund, the latter in its position as an international funding institution (to finance the necessary reforms), the first as a consulting institution providing advice on how to evolve from a Communist command economy towards a more Western like free market economy. As part of a broader financial package the countries were advised - or even instructed - on how to concretely reform their social security schemes to bring these more in line with typical free market economies; key concepts in the reform proposals were ‘to enhance competition between social providers’, a need for ‘more privatisation’ in the system, and more ‘targeted’ benefit provision, etc. The reform of the pension scheme into a three pillar scheme, combining to the best of their effects, elements of repartition and capitalization was almost mandatory. The World Bank even developed a concrete blueprint on how such a three pillar pension-

⁷ See more extensively on the various welfare models and the underlying characteristics of social security systems in Europe: G. ESPING-ANDERSEN, *The three worlds of Welfare capitalism*, Oxford, Oxford polity press, 1990; J. BERGHMAN, “Social policy in the 21st Century”, in B. V. Maydell, K. Borchardt, K-D Henke, R. Muffels, M. Quante, P-I Rauhala, G. Verschraegen and M. Zukowski, *Enabling Social Europe*, Springer-Verlag, Berlin-Heidelberg, 2006, 20 (5-50); J. BERGHMAN, “Social Protection revisited in Lisbon” in *Informal Meeting of the Ministers of Employment and social Affairs, Perspectives on Employment and Social Policy coordination in the European Union*, Guimaeraes, Portugal, 2007, 103-114 and W. ARTS, J. GELISSEN, “Three worlds of welfare capitalism or more? A state of the art report”, in *Journal of European Social Policy* 2002, 137-158.

scheme could be designed albeit that this model evolved over the years⁸. In essence the idea was to keep the first (pension) pillar, based upon repartition at a basic level and to have it cover the whole (working) population; in the subsequent (2nd and 3rd) pillars, insured persons had to accrue their savings on individual basis through capitalisation. The financial basis for pension accrual had to become less related to national labour income and conversely more based upon the international financial markets. To create an optimal economic effect (and thus pension return), it was recommended that capitalised pillars be organised in a defined contribution system, preferably without any return guarantee. Was such a pillared pension scheme however in line with the then so much acclaimed ‘European social model’? Many of the Central and Eastern European states involved had the ultimate ambition to join the EU⁹. Consequently, as they were reviewing their social systems they wanted to make them compatible with the EU. As hardly any of the EU states (at that time) had a pension scheme in place similar to the one being promoted by the World Bank or IMF, this raised some concern (or even suspicion) among the policymakers in the Eastern regions of Europe. The question as to whether these policy plans were in line with mainstream social Europe, was thus more than justified. However in the absence of a reference framework, i.e. what the model was standing for in concrete terms, the EU remained silent.

From a personal point of view, many of the proposed plans felt (at the time) rather “un-European” but this judgement could not be legally substantiated due to the lack of concrete EU standards. Somewhat to the surprise of the concerned states the EU social

⁸ World Bank, *Averting the old age crisis: Policies to protect the old and promote growth*, New York, Oxford University Press, 1994, 436p. For the impact in the 1990s, see M. AUGUSTZINOVICS, “Globalization and the European Social Security Model”, Z. FERGE, “The vision of supranational agencies about social security” and F. FERRERAS AND H-J REINHARD, “The Chilean Pension System: Myth and Reality”, in D. PIETERS, *International Impact upon Social Security. EISS Yearbook 1998*, London-The Hague-Boston, Kluwer Law International, 2000, resp. 5-22, 89-122 and 123-152. For a sample of recent social protection strategy reports: X, *Resilience, Equity and Opportunity: The World Bank 2012-2022 Social Protection and Labor Strategy*, Washington, World Bank, 2002, XXI + 40 p; H. ALDERMAN and R. YEMTSOV, *Productive Role of Safety Nets: Background Paper for the World Bank 2012-2022 Social Protection and Labor Strategy*, Washington, World Bank, 2012, 86 p; R. ALMEIDA, J. ARBELAEZ et al., *Improving Access to Jobs and Earnings Opportunities: The Role of Activation and Graduation Policies in Developing Countries*, Background Paper for the World Bank 2012-2022 Social Protection and Labor Strategy, Washington, World Bank, 2012, 99 p; M. DORFMAN and R. PALACIOS, *World Bank Support for Pensions and Social Security: Background Paper for the World Bank 2012-2022 Social Protection and Labor Strategy*, Washington, World Bank, 2012, 46 p; D. ROBALINO, L. RAWLINGS and I. WALKER, *Building Social Protection and Labor Systems: Concepts and Operational Implications: Background Paper for the World Bank 2012-2022 Social Protection and Labor Strategy*, Washington, World Bank, 2012, 44 p.; F. MARZO, H. MORI, *Crisis response in social protection*, Washington, World Bank, 2012, 2p.

⁹ A large group of them eventually did join the European Union.

model was not translated into practical yardsticks against which social security systems overall, and reforms in particular could be tested with reference to their social value. The model may be typical to Europe, but was too vague to be used as a concrete reference against which systems or changes in legal systems could be set off. For such testing one had to refer to the minimum social security standards of the International Labour Office (ILO) and the Council of Europe¹⁰. Yet these standards could not (and still cannot) be considered as a concrete emanation of the EU social model, as they have not been legally endorsed by the EU as an institution, despite references in the Treaty on the Functioning of the European Union (TFEU), that call for respect for the fundamental social rights of the Council of Europe (i.e. article 151, TFEU and article 34 of the EU Fundamental Charter)¹¹.

Pieters in 1989 was referring to this lack of a concrete reference model in his position paper on how to harmonise social security (more)¹². With the single market (1992) soon to be introduced, he deemed it to be the right time to make the (legal) harmonisation of EU social security a fact. His analysis of the pros and the cons of a harmonised social security is still valid to a large extent and many of the concrete proposals he made at the occasion of his paper are still worth consideration.

The EU however did not manage to introduce this (legal) reference framework, nor did it introduce minimum standards in the field of social security. It came up with a second best solution by introducing a European monitoring procedure (*Open Method of Policy Coordination – OMC*) in 2000 on the occasion of the Lisbon strategy, helping the

¹⁰ In particular ILO Convention 102 and the European Code of Social Security: often leading to a non-compliance when the envisaged reform plans were tested against the standards. This was at least the outcome when we carried out concrete ‘zero reports’ testing the social security system on its compatibility with the Code. See P. SCHOUKENS, “Instruments of the Council of Europe and interpretation problems”, in F. PENNING (ed.), *International social security standards*, Intersentia, Antwerp-Oxford, 2007, 71-89 and D. PIETERS and P. SCHOUKENS, “Social security law instruments of the next generation”, in F. VONK AND F. PENNING (eds.), *Research Handbook International Social Security Law*, Elgar, Cheltenham, 2015, 534-560.

¹¹ E. DE BECKER, J. SMITS and P. SCHOUKENS, “Fighting social exclusion under the Europe 2020 strategy: which legal nature for the social inclusion recommendations?”, *International Comparative Jurisprudence*, 2015, Vol.1, Issue 1, 11-23 and -, “Ontwikkelingen van het sociale Europa: de socio-economische monitoring van de EU juridisch afgetoetst aan het grondrecht op sociale zekerheid (Europees Sociaal Handvest)”, *Belgisch Tijdschrift voor Sociale Zekerheid*, 2014, (2), 89-141.

¹² D. PIETERS, *Sociale zekerheid na 1992: één over twaalf. De betekenis van ‘1992’ voor de sociale zekerheid in de lidstaten van de Europese Gemeenschap*, 1989, Tilburg, Katholieke Universiteit Brabant, 50-53. Subsequently, the proposals were further developed in: -, *Social challenges of the EU and the Intergovernmental Conference*, Helsinki, 1996, Finnish Ministry of Social Affairs and Health, 137p.; PIETERS, D. and NICKLESS, J., *Pathways for social protection in Europe*, Helsinki, 1998, Finnish Ministry of Social Affairs and Health, 87p.

European institutions to assess the social outcomes of their social systems. In this OMC-procedure best practices were discussed and by doing so, social protection was kept on the European agenda¹³. Yet the procedure is of too general a nature and the EU recommendations far too open ended for it to be considered as a reference framework (model) against which systems and reform plans can be legally assessed.

This started to change in 2010 with the launch of the ‘Horizon 2020’-programme. Emerging from a major financial and economic crisis, the EU wanted to have its economies redressed and to have more people integrated in the labour market to reduce the number of (young) unemployed persons. To that purpose it developed a common procedure monitoring national policies on their economic, labour and social performance. Ten major European guidelines were proclaimed (six economic¹⁴ and four labour oriented, of which one, the 10th, refers to social integration¹⁵) the underlying message being that the global challenges were to be addressed in an integrated manner, in which economic and social concerns are addressed equally. Interestingly from a legal perspective, the integrated monitoring approach borrowed the sanctioning procedures to be activated when the EU recommendations are not followed up, from the economic and budget monitoring

¹³ H. VERSCHUEREN, “Union law and the fight against poverty: which legal instruments?”, in B. CANTILLON; H. VERSCHUEREN and P. PLOSCAR (eds.), *Social inclusion and the social protection in the EU: Interactions between Law and Policy*, Antwerpen, Intersentia, 2012, 205-231; D. NATALI, “The Lisbon strategy, Europe 2020 and the crisis in between” in E. MARLIER, D. NATALI, a.o. (eds.), *Europe 2020: Towards a More Social EU*, Brussels, 2010, Peter Lang, 93-113; M. DALY, “Assessing the EU approach to combating poverty and social exclusion in the last decade”, E. MARLIER, D. NATALI, a.o. (eds.), *Europe 2020: Towards a More Social EU*, Brussels, 2010, Peter Lang, 143-146; SCHOUKENS, “Legal aspects of the European policy on combating social exclusion”, in P. SCHOUKENS (ed.) *Welfare Law in a Comparative Perspective*, Leuven, Institute of Social Law, 2003-2004, 157-174 and -, “How the European Union keeps the social welfare debate on track: a lawyer’s view of the EU instruments aimed at combating social exclusion”, *European Journal of Social Security*, 2002, Vol. 4/2, 117-150.

¹⁴ Council Recommendation for a Council Recommendation on broad guidelines for the economic policies of the member states and of the Union, Document 11646/10 of 7 July 2010: Guideline 1: Ensuring the quality and sustainability of public finances; Guideline 2: Addressing macroeconomic imbalances; Guideline 3: Reducing imbalances in the euro area; Guideline 4: Optimising support for R&D and innovation, strengthening the knowledge training triangle and unleashing the potential of the digital economy; Guideline 5: Improving resource efficiency and reducing greenhouse gases emissions; Guideline 6: Improving the business and consumer environment and modernizing the industrial base.

¹⁵ Ibidem. Guideline 7: Increasing labour market participation and reducing structural unemployment; Guideline 8: Developing a skilled workforce responding to labour market needs, promoting job quality and lifelong learning; Guideline 9: Improving the performance of education and training systems at all levels and increasing participation in tertiary education; Guideline 10: Promoting social inclusion and combating poverty.

procedures that were already in use as part of the Stability and Growth Pact¹⁶ and thus giving some enforceability to the procedure. And although the harder sanctions are still reserved for national situations that may put the European economic and/or budgetary stability at risk, member states are now also addressed on flaws in their social security systems which may endanger the European objectives, as addressed in the ten guidelines¹⁷. Ever since, national systems are reviewed on their compatibility with the European socio-economic guidelines in accordance with a structured semester system. EU social security recommendations are launched addressing shortcomings in the social security system and evaluating reform plans put on table by the respective member states to overcome the socio-economic challenges that are described by the European Institutions at the start of the monitoring procedure (in the Annual Growth Survey). By doing so, the EU is gradually creating a reference framework for assessing national social security systems. Yet contrary to standard-setting instruments put in place by the ILO and the Council of Europe, the underlying model with reference to which the social security recommendations are formulated, is not clearly defined. It remains hidden. One can rightly ask which are the standards used by the European institutions to assess national systems or reform plans? Do these standards emanate from a coherent vision on social security in Europe? What is the concrete social model behind the recommendations?

By absence of a concrete EU document describing the model, in this contribution we aim to reconstitute the model ourselves, by textually interpreting the EU recommendations related to social security. We made a structural analysis of both the recommendations and the justifications that the European institutions give for these recommendations on their social security contents (see *infra* for the applied methodology 2.2.). By looking at patterns that underpin these justifications and singling out the references for these justifications we tried to find out whether there is a structural vision behind the social recommendations. In essence the applied methodology is one of systematic inductive interpretation (interpretation with a view finding underlying structures across texts; inductive using single texts to create a more structured model).

¹⁶ European Council Presidency conclusions, No. 7619/05, 22 and 23 March 2005: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/84335.pdf. See more about this connection: P. SCHOUKENS, "From soft monitoring to enforceable action. A quest for new legal approaches in the EU fight against social exclusion, Leuven, Eurforum, 2013, 41p. (<https://www.kuleuven.be/euroforum/index.php?LAN=E>); J. BEKE and P. SCHOUKENS, "Fighting social exclusion under EU Horizon 2020. Enhancing the legal enforceability of social inclusion recommendations?", *European Journal of Social Security*, 2014, 16, 51-72.

¹⁷ E. DE BECKER, J. SMITS and P. SCHOUKENS, "Fighting social exclusion under the Europe 2020 strategy: which legal nature for the social inclusion recommendations?", *International Comparative Jurisprudence*, 2015, Vol.1, Issue 1, 11-23.

Before we embark upon this analysis (see *infra* 2.3.) we start with a chapter (see *infra* 2.1.) describing the current standards that are in use by the Council of Europe and the ILO. Both international organisations developed (in common) a structured set of (minimum) standards (respectively the European Code of Social Security and the ILO-Convention 102) in the field of social security which are used to monitor existing social security systems. As the EU itself is calling upon its institutions and member states to respect the social rights instruments of the Council of Europe¹⁸ it may be of interest to take notice of the social model which has developed under the umbrella of this human rights institution. Moreover, many of the EU member states are party to one or more of these standard-setting conventions. This also has the advantage that we already have a concrete vision of what such model might look like in legal practice. It can also be of interest to see to what extent these standards (still) play a role (or not?) in the EU monitoring procedure. Does the EU align to them?

In Chapter 2 the focus will be on the results of the analysis of the recommendations that are developed in the EU socio-economic monitoring process. This chapter will be introduced with a section describing how the monitoring procedure works under Horizon 2020, followed by the methodology that has been applied in unravelling the hidden model and ending with the results of this analysis. In the final chapter we have an outlook on how we could create a more outspoken EU vision on social security; for example we will refer to the latest EU initiatives to socialise the European semester, not the least the call by EU Commissioner *Juncker* to make the social protection floor more tangible in the EU¹⁹.

¹⁸ In particular the European Social Charter: one of the fundamental social rights in this Charter (article 12: right to social security) is referring to the right to social security which calls states to have a social security system in place that fulfills at least the requirements set forward by the ILO Convention 102 or the European Code of Social Security.

¹⁹ J.-C. JUNCKER, *Setting Europe in motion: Main messages, opening statement in the European Parliament Plenary Session*, Strasbourg, 22 October 2015.

1. European social security standards: the social model by the Council of Europe²⁰

For some decades now the Council of Europe has been setting minimum standards in the field of social security through the European Code of Social Security (Code; 1964²¹). The Code is traditionally labelled as an instrument that fleshes out the fundamental and more generally stipulated right to social security, laid down in article 12 of the European (Revised) Social Charter. Article 12 Charter is one of the compulsory core articles of this social rights catalogue. By accepting this article, states agree

- to establish a system of social security
- to maintain it at a level at least equal to that required for ratification of the European Code of Social Security/ILO Convention 102
- to raise it progressively to a higher level

The provisions of the Code are stipulated in specific social minima against which national systems schemes can be set off; likewise reform plans can be tested with reference to their compatibility with the standards. The provisions were designed in a manner flexible enough to facilitate social security systems of various types (Bismarck, Beveridge or Scandinavian type) to get aligned to the standards. They set standards in a comprehensive manner covering the personal scope of the schemes, the level of the benefits, the qualifying conditions and the duration during which the benefits have to be paid. Furthermore, we find in the standard setting instruments conditions with regard to the use of grounds to suspend benefit payment, as well as provision, be it of limited

²⁰ For the purpose of this publication that mainly aims at the European social model, we restrict the description to the instruments of the Council of Europe. However, as the European Code of Social Security setting the minimum standards for the Council of Europe, is mainly a (literal) copy of the ILO-Convention 102 as the monitoring of the standards (of both the ILO and the Council of Europe standard setting instruments) is done by one and the same supervisory committee of experts, it goes without saying that most of what will be written in the chapter applies unequivocally for the standards of the ILO-Convention. For a more extensive description of these social security standards, see D. PIETERS and P. SCHOUKENS, "Social security law instruments of the next generation", in F. VONK and Fr. PENNINGG (eds), *Research Handbook International Social Security Law*, Elgar, Cheltenham, 2015, 534-560; F. PENNINGG (ed.), *International social security standards*, Intersentia, Antwerpen-Oxford, 2007, 288p. and J. NICKLESS, *European Code of Social Security. A short guide*, Strasbourg, 2002, Council of Europe, 137p.

²¹ ILO-Convention 102 ratified by following EU member states: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden and the UK; the European Code of Social Security is ratified by following EU-member states: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Romania, Slovenia, Spain, Sweden and the UK.

nature, with regard to the financing (employees should never contribute more than the employers) and the administrative organisation (requirement to have social partners involved).

Standards are defined so that rules and schemes can be controlled in terms of compatibility. Although most provisions lack direct effect, some standards are however stipulated in such exact terms that they enjoy legal enforceability²²; standards are controlled in accordance with a monitoring procedure by independent experts. Sanctions are primarily soft, inviting infringing states to come back into line with the standards.

The standards are a compromise between the current (European) systems, not the least when it comes to the level of protection. An important issue was to find a way of standard setting that would not be totally out of reach of the poorer countries, but which would nevertheless have some relevance for the more developed systems. It is in this respect that we have to understand the approach of relative harmonization as most of the provisions dealing with the levels of protection use the (average) income from work in the country (see article 65-67) as reference standard. For example, according to the standard the old age pension of the person insured should at the very least be equal to a minimum income replacement percentage (40%) of what a skilled or unskilled person earns on average in the country. Absolute (minimum) income standards, valid across all signatory states, are thus not applied.

Social security is defined by referring to the traditional contingencies for which social protection is organised. The Code contains nine parts corresponding to the nine risks covered by the most developed social security systems of that time (1960s); social assistance being the major traditional risk missing in the list. The Code thus mainly focuses upon the traditional social insurances. Each state is required to comply with the standards of at least six of the contingencies. States can choose which contingency they will ratify, however one contingency must relate to the risk of unemployment, old age, industrial injury, invalidity or survival. Moreover, old age counts for 'three' and health care for 'two' showing that the Council of Europe gives more weight to these two contingencies than the seven others.

²² P. SCHOUKENS, "Instruments of the Council of Europe and interpretation problems, in F. PENNINGG (ed.), *International social security standards*, Intersentia, Antwerpen-Oxford, 2007, 71-89.

The Code lays down for each of the nine branches of social security:

- Minimum standards as to the proportion of workers or the population who must be protected. In other words it requires that a specified percentage of the population should be protected. For most of the contingencies, the percentage is either 50 per cent of all employees or 20 per cent of all (active) residents.
- Appropriate conditions for the receipt of social security benefits and the duration of such benefits. Minimum qualifying periods are allowed yet should not take longer than necessary to preclude abuse. For some contingencies these minimum periods are specified (i.e. pensions, a maximum of 15 years) yet at the same time states must provide minimum benefits to those who did not manage to complete the required minimum qualification period (e.g. for old age: article 29, par.2). Benefits should be paid as long as the contingency continues, be it that for some risks shorter periods are accepted (e.g. for unemployment; cfr. article 24). Interesting are the provisions in relation to the pensionable age, set at the maximum of 65 years. However states can set the pensionable age at a later stage (article 26) under the condition that the number of residents having attained that age is not less than 10 per cent of the number of residents under that age (but over 15 years of age).
- Minimum rates of benefits. These rates must be sufficient to provide a specific income replacement to a 'standard beneficiary', defined by the Convention for the purpose of most contingencies as a man with a (dependent) wife and two (dependent) children (see schedule to Part XI Code). As mentioned before, this minimum benefit is put in relation to the professional income a standard beneficiary is earning in the particular country. Generally the minimum income replacement ratio is set at 45%²³. Benefits aim at the continuation of the living standard which the insured had before the contingency occurred²⁴.

²³ See schedule to Part XI in the Code. Minimum 40% is required for old age, invalidity and survivorship; 50% for income replacement in case of labour accidents and professional diseases.

²⁴ To arrive at the reference average income some alternatives are provided by the Code, the application of which depends on type of system that is in use in the applying country. Crucial in this respect is the use of skilled and unskilled work as a reference for the average income, the latter type of work income to be used for countries having flat rate benefits in place, whereas skilled work income is a reference for countries in which benefits are more related to the previously/last earned income. The justification for this approach is to be found in the relation between the scope of persons covered and income protection. Social insurances of the Bismarck type are limited in their scope to workers: benefits are thus to be calculated in proportion to the previous earnings of the typical skilled worker. Whereas flat rate benefits are often used for a larger scope of the (working) population pursuant to the Beveridge idea: the benefits are calculated in proportion to the previous earnings of the typical unskilled worker, traditionally lower than the income earned by a skilled worker. When all residents are covered, use can even be made of a means test provided that a person without means receives not less in amount compared to what a person would receive in case of a benefit calculation based upon unskilled work.

The Additional Protocol to the Code of 1964 lays down some higher standards concerning the subject matter (i.e. greater number of units to be ratified) and the persons covered (i.e. larger percentage of the population to be covered). Some of the EU member states accepted these standards²⁵.

Although concrete in their wording, the standard-setting instruments have been subject to some major criticism:

- the control mechanism takes many years, is passive and depends largely upon information provided by the states themselves;
- a tendency towards formalism indicating that in the end a certain vision and structure of social security prevails over the eventual result (a certain level of social protection). Even if states can guarantee the prescribed levels, they still are considered to be in contravention with the standards when the protection of the level is done in the 'wrong' format (e.g. when the scheme is not managed by social partners; or when no specific scheme for labour accidents is in place even though the persons who are victim of a labour accident are covered well enough);
- the standards are outdated with regard to the standard model used to test the level of benefits (family composed of working man, housewife and two children) and the sample of contingencies (no standards for social assistance and care schemes) for which standards have been developed;
- the Code is not at the heart of legal and social policy debate in its member states²⁶; the resolutions do not touch the core of the social security debates in the member states;
- the national courts usually refuse to give direct effect to the provisions of the Code and to recognise subjective rights on the basis of this foundation.

Although increasingly criticized over the years, the standards are still used as a reference in the European debate on social security. Being the only concrete model in place, they had some revival, especially in the 1990s when Central and Eastern European states adhered to the Council of Europe²⁷. It even led to an initiative in which the Council of Europe had

²⁵ Ratified by Belgium, Germany, Luxembourg, the Netherlands, Portugal and Sweden.

²⁶ D. PIETERS and P. SCHOUKENS, "Social security law instruments of the next generation", in F. VONK en Fr. PENNING (eds), *Research Handbook International Social Security Law*, Elgar, Cheltenham, 2015, 534-560 and -, *Social security quo vadis? Interviews with social security administrations CEOs in 15 Western European countries*, IBM Global Social Segment – IBM Corporation, New York, 2007, 111p.

²⁷ Hence they were invited to envisage a possible signature of the European Social Charter. In order to find out whether article 12 (the right to social security) was within their reach, the standards of the Code and ILO-Convention were tested in so-called 'zero reports', as if they were a contracting party.

a concrete (model) system designed in which the various standards were translated²⁸. It gave the underlying standards a more concrete appearance in a concrete European model system.

The standards are the emanation of the traditional social security thinking, based upon repartition and intergenerational solidarity, in which benefits are defined in relation to the labour income in the country, and in which benefits guarantee a living standard reflecting the one prior to the contingency. Moreover, benefit levels should be defined from the outset by law (prior to the contingency taking place), contrary to the approach often applied in defined contributions systems where benefit outcomes may be volatile, depending on the investment return. The family situation has an impact on the benefit composition, suggesting that higher benefits are to be paid if there are dependants. Much attention is given to minimum benefits that guarantee a basic protection when the person is not able to complete a full social insurance record due to sickness, invalidity or unemployment. Many of the standards are an emanation of an enhanced (both horizontal and vertical) solidarity, typical of social security systems that were shaped after the 2nd World War in Western Europe. Hence it should not come as a surprise that many a social security reform introduced (or at least envisaged) in the 1990s in Central and Eastern Europe (see supra introduction) were at odds with these rather conservative standards.

In an attempt to have its social security standards modernised, the Council of Europe launched a proposal for a “revised European Code of Social Security”, eventually adopted in 1990. It was mainly influenced by new legislative tendencies and social security practices applied in certain countries (e.g. emphasis on the beneficiary’s real needs, on the prevention of risks, etc.); it was also a reaction against strong criticism of the 1964 Code, which was characterized as ‘rigid, conservative and discriminatory’. However, the Revised Code is not applicable due to insufficient ratifications.

The ILO also made an attempt to modernize its standard instruments when issuing a Recommendation N° 202 concerning ‘national floors of social protection’ in 2012. This concept needs further delineations and more specific impetus before it can be applied as a reference framework for states developing and/or adapting their social protection systems. In other words the ‘floor’ has not yet been laid. It is not enforceable and is formulated largely with general principles such as: ‘[M]embers should, in accordance with

²⁸ J. VAN LANGENDONCK, *Model provisions in the field of social security*, Strasbourg, Council of Europe and D. PIETERS and P. SCHOUKENS, *Model provisions in the field of social security for the South-Caucasian region*, Strasbourg, Council of Europe, 2001, 69p.

national circumstances, establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees. The guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level’ (article 4). The Recommendation has noble goals, but without any compelling character whatsoever, the social protection floor cannot prevent the deterioration of social security in reality. For that purpose it is too generally formulated; moreover it does not define which social objectives social security systems should aim at nor how these objectives can be maintained.

So far, the EU has not incorporated the standards of the Council of Europe in its own *social acquis*. It calls upon its institutions and its member states - when developing social protection rules - to respect the European Social Charter (article 151 ff Treaty of the Functioning of the European Union – TFEU). How far this respect for the fundamental social rules of the Council of Europe should go from a legal point of view is not yet clear. The EU itself is not party to the Social Charter, nor has it subscribed the social security standards of the Council of Europe. EU rules or national rules implementing these EU rules are not systematically tested in terms of their compatibility with the social standards. Moreover, the European Court of Justice (ECJ) takes a rather prudent position in giving concrete legal impetus to this respect for the European fundamental social rights²⁹. This reticence from the EU side can have several explanations: the supervisory procedure governed by a group of experts (articles 74 and 75 Code), certainly being one of them. The expert committees controlling the correct application of these standards cannot be compared with a traditional judicial institution; nor did they receive the mandate to assess the legal compliance of EU rules with the social standards of the Council of Europe. To conclude we can say that the minimum standards are certainly a part of the EU social model as a large number of member states are bound by them, yet they do not constitute the concrete corpus of the EU social model itself.

²⁹ E. DE BECKER, “The constraints of fundamental social rights on EU economic monitoring: a case-study of the right to social security in article 12 of the European Social Charter and the Greek austerity measures”, in J. De Bruyne, M. de Potter de ten Broeck, I. Van Hiel, *Policy within and through law*, Antwerpen, Maklu, 2015, 281p.; P. SCHOUKENS, E. DE BECKER, J. BEKE SMETS, “Ontwikkelingen van het sociaal Europa: de socio-economische monitoring van de EU juridisch afgetoetst aan het grondrecht op sociale zekerheid (Europees Sociaal Handvest)”, *Belgisch Tijdschrift voor Sociale Zekerheid*, 2014, 262-263; U. KHALIQ, 3EU an ESC: Never the Twain Shall Meet”, *Cambridge yearbook of European legal studies*, 2012, 180-183.

2. Looking for the hidden social security model: an inductive textual analysis of the EU

recommendations. Does the EU itself have a social security model in mind when it launches its annual socio-economic recommendations? Before we embark upon the analysis itself (2.3.), we first briefly introduce³⁰ (2.1.) the procedure as it is nowadays applied, followed by a justification of the applied analysis of the recommendations at stake (2.2).

2.1 Brief introduction to the EU monitoring procedure

For some time now the European Union has been monitoring the socio-economic and fiscal policies of its member states. The best known is probably the procedure applied within the *Stability and Growth Pact*: the legal framework for the coordination of fiscal policies in the EU³¹ to sustain the introduction of the single currency (Euro). But apart from the Eurozone all national economies have been made subject to an overall European monitoring process in order to safeguard European competitiveness and to strengthen the internal market (article 120 TFEU), followed later by a close employment monitoring to enhance employability in Europe (article 145 TFEU) and finally in 2000 by a social monitoring procedure aiming at the modernization of the European social protection systems and at the development of inclusive policies (article 153 TFEU). In 2010, with the Lisbon strategy coming to an end and in response to the global financial and economic crisis that took off in all its amplitude, the European Council launched its new Strategy ‘Horizon 2020’. In this new strategy the EU developed the monitoring procedures even further and at the same time integrated the various procedures in a more integrated approach. Together with integration the goal was to achieve more balanced monitoring in which both economic and social objectives were to be pursued in a more equivalent manner. In the same way, it was leverage for introducing additional social goals into the existing monitoring procedure, which until then was largely of an economic and fiscal nature.

Launched in June 2010, the new ‘Europe 2020 Strategy’ was to create more jobs and

³⁰ For an extensive explanation of this procedure see: E. DE BECKER, J. SMITS and P. SCHOUKENS, “Fighting social exclusion under the Europe 2020 strategy: which legal nature for the social inclusion recommendations?”, *International Comparative Jurisprudence*, 2015, Vol.1, Issue 1, 11-23.

³¹ See annex to the text for an overview.

economic growth³². The new Strategy is to achieve three priorities that are expected to be mutually reinforcing: smart growth, sustainable growth and inclusive growth. The third priority has an outspoken social character: it is about fostering a high-employment economy delivering social and territorial cohesion, and empowering people through high levels of employment, investing in skills, fighting poverty and modernising labour markets, training and social protection systems so as to help people anticipate and manage change, and build a cohesive society. One of the concrete objectives is to lift at least 20 million people out of poverty by 2020. The national systems, including social security systems, should support these objectives.

To do so, the Council adopted ten integrated guidelines to implement the ‘Europe 2020 Strategy’: six broad guidelines for the economic policies (Council Recommendation, 2010/410/EU, 2010) of the member states and four guidelines for the employment policies (Council Decision No. 2010/707/EU, 2010) of the member states (see supra footnotes 14 and 15). In the tenth guideline, reference is made to the social policies of the member states with regard to social inclusion: states should promote social inclusion and aim their policies at combatting poverty.

The integrated guidelines have been adopted on the basis of Article 121 TFEU (part of the Economic Policy Chapter) and Article 148 TFEU (part of the Employment Chapter). The social inclusion objective is thus explicitly intertwined with the employment and economic guidelines, but is strangely enough not embedded on its ‘own’ competence ground in the social policy chapter (i.e. article 153 TFEU).

The socio-economic monitoring process is organised through a ‘European Semester’ system, during which member states’ budgetary and employment policies are examined. The European Semester starts each year in March when the European Council identifies the main (socio-economic) challenges on the basis of the European Commission’s Survey on Annual Growth (AGS). After the identification of the main challenges for the member states, the Council gives strategic advice on how national policies could address these challenges in a general way. On the basis of this advice, each member state has to draw up two different programmes and send them to the Commission by the end of April:

- A national reform programme, setting out the actions and policy measures that it will undertake in areas such as economic policy, but also national employment and social inclusion policies;

³² COMMISSION EU, *EUROPE 2020 A strategy for smart, sustainable and inclusive growth*, COM/2010/2020 final.

- A stability and convergence programme, related to multiannual budget planning.

After an assessment of the programmes, the Commission adopts the Country Specific Recommendations in May, before the member states draw up their final budget plans for the following year. These recommendations are quasi tailormade advice on deeper reforms for the individual member states and do not only focus on economic measures or reforms, but also consist of measures relating to employment, social security and social inclusion. These recommendations are endorsed by the Council in June. The procedure is thus mainly of a *preventive* nature as it advises the states on how to address the upcoming challenges.

In 2011 this preventive approach has been broadened with a corrective procedure. The EU adopted six additional measures³³ to the European Semester (the so-called Six-Pack) to strengthen the fiscal discipline of the member states and to organise fiscal and macro-economic surveillance within the EU. One part of the Six-Pack – the Macro-Economic Imbalance Procedure (MIP)³⁴ – is of particular relevance, as it can be seen as a concrete application of the integrated monitoring approach. On the basis of the *MIP*, a procedure was established that enables the Commission to monitor the macro-economic policies of the member states on the basis of pre-defined indicators. By using a scoreboard that incorporates a set of indicators, the Commission can check whether a member state (potentially) faces macro-economic imbalances. If so, the Commission can insist that the member state takes *corrective* measures. The measures proposed by the Commission are reviewed by the Council. If necessary, the Council can propose concrete recommendations. In the event that the member state does not act upon the recommendation(s), a deposit can be demanded or a fine can be imposed³⁵. Recommendations that are not followed up can thus be sanctioned (enforced) by the EU institutions.

In 2013 the European Semester system was complemented by the ‘European Two-Pack’ which is however limited to the members of the Eurozone: this brings the control of the national budgets under an even stricter monitoring system. With the ‘European Two-Pack’ simplified rules for the surveillance of member states that are facing financial difficulties, as well as for the member states who have already received financial assistance, have been introduced: they give the necessary powers to the EU institutions to act more instantly

³³ Four of the six measures apply to all member states (Regulation No 1175/2011; Regulation No. 1176/2011; Regulation No. 1177/2011; Directive No. 2011/85/EU), while two, which define possible sanctions, only apply to Eurozone member states.

³⁴ Regulation No. 1173/2011 and Regulation No. 1174/2011.

³⁵ Regulation No. 114/2011, Article 3.

and swiftly when the Eurozone is endangered. For members of the Eurozone the Two-Pack is often labelled as the third ‘wing’ in the Stability and Growth Pact, complementing the preventive and curative mechanism in the socio-economic monitoring procedure.

As was mentioned before, the EU also designed support programmes for member states whose budgets ran (seriously) in deficit due to the economic and financial crisis. Under the umbrella of the European Stability Mechanism (ESM-Treaty, 2011) curative programmes providing financial assistance were launched; often this was done in conjunction with other international organisations such as the IMF. As these programmes were kept out of the traditional EU institutional procedures – they were based upon an agreement between the country, the EU and the IMF – and hence largely fall outside the traditional EU control procedures, we decided to leave them out for this analysis.

Before we start the analysis, it is important to underline that under the impetus of the renewed ‘Horizon 2020’ programme, the regulatory framework shaping the multilateral surveillance mechanisms for the coordination of the socio-economic policies introduced additional sanctioning tools to enhance enforceability of the procedures. The EU already had the competence to request deposits from member states when their budgets failed to reach predefined levels, e.g. in relation to the SGP. With the introduction of the European Six-Pack, it was now given additional competences to sanction member states of the Eurozone in cases of non-conformity³⁶.

The new integrated monitoring programme has thus enough legal character to be labelled a legal framework against which national systems can be tested; the EU institutions have the power to make recommendations, some of them can even be made subject to sanctions when the national situation could endanger the macro-economic balance or budgetary equilibrium of the state and, more generally, of the EU overall. As its recommendations deal with social security, the current EU testing framework has enough elements in place to be considered as a legal social security model which is used by the

³⁶ Due to the connection with the economic guidelines, the scale of legally enforceable measures that can sanction infractions of the employment-oriented Country Specific Recommendations has grown. However, as the sanctioning tools have been designed on the basis of the Treaty provisions dealing with the economic monitoring process (mainly Article 121ff TFEU), employment guidelines should, in our opinion, have enough of an ‘economic character’ to justify the use of the sanctioning powers of the aforementioned Regulations; i.e. in so far as they interact with the economic guidelines, use can be made of the stronger surveillance mechanism: P. SCHOUKENS, “From soft monitoring to enforceable action. A quest for new legal approaches in the EU fight against social exclusion, Leuven, Eurforum, 2013, 41p. (<https://www.kuleuven.be/euroforum/index.php?LAN=E>); J. BEKE and P. SCHOUKENS, “Fighting social exclusion under EU Horizon 2020. Enhancing the legal enforceability of social inclusion recommendations”, *European Journal of Social Security*, 2014, 16, 51-72.

EU to assess (the ongoing developments in) the European social security systems. But still the question remains: which contents does the model cover?

2.2 Social recommendations under analysis: applied methodology

Our hypothesis is that in the existing EU monitoring procedure a reference model is in place from which social security recommendations are launched, yet that the model is of an implicit, hidden, nature. In an attempt to have this (implicit) reference model tracked down, we developed a methodology to structurally analyse the social security recommendations that were developed within the framework of 'Horizon 2020'. Our aspiration is to bring the model underlying the recommendations, more to the surface and thus to make the hidden EU-social model from which recommendations are formulated more explicit.

The reconstruction is based upon a structured interpretation of the different social security recommendations that are provided throughout the EU economic monitoring process. We start from the Europe 2020 strategy (i.e. from 2010). The main sources are the Annual Growth Surveys from 2011 until 2015, launching the process on a yearly basis and, for the same period, the different Country Specific Recommendations advising the member states on how to tackle the challenges set by the EU institutions. Additional supportive documents used for the interpretation of the recommendations which the authors used are EU documents that were used at the occasion of the launching of 'Horizon 2020' as well as explanatory EU documents to the ten guidelines³⁷.

In order to reconstruct the vision of the EU on social security, we have grouped the different recommendations thematically. On the basis of an initial preliminary survey, we have tried to find several social security related themes, often recurring in the Country-Specific Recommendations. In order to do so, two researchers independently scrolled through the recommendations and listed recommendations in which a reference was made to social security as such or to one (or more) contingencies that are considered to be social security risks (old age, survivorship, work incapacity, unemployment, family burden, health care, care, and need). These separately developed lists of recommendations relevant for social security were subsequently compared by the two researchers and from this comparison a set of thirteen themes (relevant for social security) were taken.

³⁷ Council Recommendation for a Council Recommendation on broad guidelines for the economic policies of the member states and of the Union, Document 11646/10 of 7 July 2010.

The themes identified were the following recommendations where member states were urged:

- to have or to keep a unified social security system;
- to reform the family benefits (from income replacement to more services);
- to introduce additional targeting in their social security schemes;
- to link life expectancy to the retirement age;
- to restrict the unemployment benefits (duration and amount);
- to apply more stringent conditions in the invalidity/disability benefits;
- to harmonize the pensionable age between men and woman;
- to reform the national health care system (more adequacy and quality);
- to reduce the burden on social security contributions on labour;
- to loosen the indexation of social security benefits from wage indexation;
- to keep benefits adequate (a.o. through private savings and occupational pensions);
- to reduce the share of undeclared work and;
- to combat poverty and social exclusion.

In a following phase the concrete recommendations were inserted into the thematic groups, as well as the explanations given by the Commission and/or Council of Ministers on the recommendation, indicating why it was recommended. As not all information could be found in the recommendations themselves, we also needed to look at the recitals to the recommendations, sometimes also referring to the country reports indicating the problems faced by the country as well as the proposed national policies and strategies to address them. By doing so, we tried to gain insight in the underlying reasons behind the different recommendations and the different patterns underpinning these justifications. Crucial to unravelling the EU-vision, is to know why the social security recommendation is made. Listing all the justifications enabled us to gain insight into the frequency, the relevance and compatibility between the given justifications. It helped us as well to see the major objectives behind the social security recommendations; eventually it helped us to understand better why certain social recommendations are (repeatedly) made as well as to see the interrelation between the degree of concreteness of the recommendations and the kind of objectives supporting that recommendation.

Before we start the analysis we have to remember that it is restricted to the 'social security recommendations' only, i.e. when a reference is made to social security (including social assistance and social inclusion) or at least to a social security scheme, e.g. pensions, invalidity, etc. Moreover we restrict ourselves to the period ranging from 2010-2015. In 2010 the new Europe 2020 strategy was launched, replacing the Lisbon strategy (2000-2010) and focusing on the integrated coordination of the member states' economic and

social policies. We analysed the recommendations for the EU from the last five years (starting from the integrated monitoring process period between 2011 and 2015). Our total sample for the EU consists of 5 Annual Growth Survey (2011, 2012, 2013, 2014 and 2015) and 138 Country Specific Recommendations for the EU, from which the ones relevant for social security have been singled out. Consequently, recommendations from the previous era (the Lisbon strategy) have not been taken up in the analysis.

The analysis only deals with the standard socio-economic monitoring process, leaving thus aside recommendations that are formulated in the support programmes for countries in financial difficulties³⁸. These recommendations are subject of a further separate analysis. As the EU outsourced these programmes³⁹ to an intergovernmental structure specifically designed for this purpose, in which the EU is only a partner (together with other international organisations, such as the IMF) and the applied approach for the formulation of the recommendations is different from the one in the standard EU monitoring procedure we decided not to use in the analysis sample. This being said, the recommendations are an interesting source of comparison and hence occasionally reference will be made to them.

A more structural comparison however will be made with the IMF socio-economic recommendations that are launched on a regular basis in their Country Surveillance⁴⁰ described by the IMF as an *“ongoing process that culminates in regular (usually annual) comprehensive consultations with individual member countries, with discussions in between as needed. The consultations are known as “Article IV consultations” because they are required by Article IV of the IMF’s Articles of Agreement. During an Article IV consultation, an IMF team of economists visits a country to assess economic and financial developments and discuss the country’s economic and financial policies with government and central bank officials. IMF staff missions also often meet with parliamentarians and representatives of business, labor unions, and civil society.”*⁴¹

³⁸ Especially to be found in the memoranda of understanding supporting the instalments to the countries.

³⁹ For more information about this outsourcing see: K. LENAERTS, “Economic Integration, Solidarity and Legitimacy. The EU in a time of Crisis, KULeuven Euroforum 2013, 26 April 2013, 1-32; Treaty of 25 March 2011 Establishing The European Stability Mechanism Between The Kingdom Of Belgium, The Federal Republic Of Germany, The Republic Of Estonia, Ireland, The Hellenic Republic, The Kingdom Of Spain, The French Republic, The Italian Republic, The Republic Of Cyprus, The Grand Duchy Of Luxembourg, Malta, The Kingdom Of The Netherlands, The Republic Of Austria, The Portuguese Republic, The Republic Of Slovenia, The Slovak Republic And The Republic Of Finland, online: http://www.esm.europa.eu/pdf/esm_treaty_en.pdf.

⁴⁰ The IMF has also a Regional Surveillance for the whole of the EU. However, no social security relevant recommendations were found here and hence this surveillance was left out from the analysis.

⁴¹ <https://www.imf.org/external/pubs/ft/aa/index.htm#art4>.

The IMF uses an approach rather comparable to that of the EU in recommending states on how to address the upcoming socio-economic challenges. Here too recommendations, relevant for social security were found including their justifications (and thus underlying objectives). Hence, we thought it to be a useful additional element for the analysis. Consequently, an analogous mapping for the IMF, applying the same method as for the EU standard monitoring procedure, was carried out. In that regard, we have worked with a sample of 75 recommendations, as not all EU member states received recommendations from the IMF each year (from 2011 onwards). The different recommendations were retrieved from the IMF website, under the heading of the Article IV Consultation and Staff Reports. The outcome of this side-analysis will be discussed within the framework of the EU recommendations, comparing the recommendations of both institutions (EU and IMF). In the absence of any recommendations for a certain theme, no reference to the IMF analysis will be made in the report on the structural analysis (2.3.).

2.3 Structural analysis of the recommendations

The following thematic groups could be discerned from the social recommendations under analysis. Before focusing on the justifications provided for these recommendations, we shortly explain them and list the reasons invoked by the European institutions to their application. First we discuss the more general themes (keeping the system uniform and combating social exclusion), to be followed by the contingency related themes (pension age and harmonization of the pension age, health care organisation, duration of unemployment benefits, stricter invalidity conditions, investing in child care facilities, targeting benefits, adequacy benefits) and the financing related themes (reducing financial burden on work, disconnecting the benefit indexation from the wage indexation and fighting the hidden economy).

2.3.1 Keeping the system unified⁴²

The EU recommends having uniform social security systems in place. This recommendation has been translated in various ways. First and foremost states with categorical systems are required to better integrate special (pension) regimes in the general system (i.e. categorical pension schemes for miners and farmers). Moreover the creation of specific subregimes (Croatia, Germania) that grant a preferential treatment (e.g. early retirement, shorter insurance records for a full pension, etc.) in pensions schemes for defined groups of workers is to be avoided especially when there is no clear justification for doing so (i.e.

⁴² Recommended for Austria (2011), Belgium (2014), Croatia (2014 and 2015), Poland (2012, 2013, 2014, 2015), Spain (2014). Also present as condition in the Memorandum of Understanding (2010 and 2015) towards Greece for structural support.

hazardous working situations). The splitting up of social security schemes in subschemes and the creation of special conditions for particular groups hamper professional mobility overmuch and impose significant costs on public finances, especially when the regimes in consideration are subsidized by the state budget.

Too much territorial devolution (be it through decentralization or federalization) in social security systems is also negatively perceived: it is considered to be a major source for unnecessary complexity and inefficiency, both with regard to revenue raising and benefit granting (Austria, Croatia, Belgium and Spain). It also impedes upon the territorial mobility. Where systems (continue to be) organised in a territorially devolved manner, measures have to be taken to ensure that regimes operating at different levels are sufficiently aligned. Moreover, it is better to have the revenue raising and spending responsibilities kept at one and the same level. The reason invoked to promote more general systems is economic efficiency; hence a strong plea to make the necessary cooperation arrangements between the devolved and central entities. Interesting in this respect is also the remark made with regard to the introduction of a 'one-stop shop': the introduction of administrative systems that facilitate benefit delivery (such as the one stop shop envisaged in Croatia) will not have the hoped for effects when introduced in a fragmented social security system. It is better to have the sub-systems integrated before launching this administrative simplification.

Finally some recommendations refer to the need for better alignment or coordination across the various schemes. This applies when the provision of benefits is heavily interdependent with services such as labour mediation (during unemployment) or revalidation (work incapacity). A better coordination of benefits and services can more effectively support activation policies (annual growth surveys 2013-2015 and Spain). Similar suggestions for more alignment are made where social welfare benefits are provided outside the strict scope of social security (through the tax system or occupational regimes). Here too, efforts are to be made to align these complementary regimes with those of the statutory social security schemes.

Similar suggestions were found in the IMF recommendations to Croatia (2014 and 2015), Poland (2015) but also Bulgaria (2011) aiming at a reduction in the number of categorical schemes and special pension regimes. The need for more unification is considered to be relevant as well when it comes to the financing of social security (Slovak Republic 2011). Harmonising and simplifying social security contributions and unifying revenue collection are important steps towards efficient and transparent revenue collection.

2.3.2. Combating poverty and social exclusion

Quite a number of recommendations require member states to combat poverty and more in general social exclusion more effectively⁴³. We should remember that combating social exclusion is one of the principal guidelines in the Horizon 2020 process; requiring particular attention be given to this broad guideline should not come as a surprise. Somewhat deceptive is the little amount of practical guidance given in the recommendations on social exclusion, both as to substance (what kind of action should it entail and what should minimum subsistence levels aim at?) and as to justification grounds (why is it necessary to combat exclusion in the given situation?). Only in the more recent recommendations are some specific suggestions made with regard to the need to the monitoring of the impact that minimum wages and minimum social security contributions may have on the creation of unemployment and poverty (Bulgaria).

Overall, the recommendations call upon states (Belgium, Bulgaria, Estonia, Hungary, Romania, Spain and the UK) to pay the necessary attention to groups that are vulnerable to exclusion (such as elderly, children, young unemployed people, Roma, migrants). As to the kind of action, the following are made as suggestions (for Belgium, Bulgaria, Hungary, Latvia, Lithuania, Romania, Slovakia, Spain, UK): develop more comprehensive inclusion strategies, increase quality of service delivery, generate more efficient transfers, improve the adequacy⁴⁴ of the benefits, reform the social assistance schemes by making them more efficient while protecting better the poor, improve the employability of vulnerable groups, give more effective child and family support and enhance the work incentives. Imminent is the strong link to labour participation; after all the social exclusion guideline is based upon the employment chapter of the Treaty (see supra 2.1.). Social inclusion is first and foremost to be generated through inclusion in the labour market. Yet at the same time it is made clear in several recommendations that labour integration as a sole measure to combat social exclusion does not suffice (Bulgaria, UK, Germany). Work itself should not lead to poverty (i.e. danger of the working poor). Some recommendations are merely evaluations of the undertaken action: the policy is then appraised and the country is called upon to continue the undertaken action (Denmark and its flexicurity model), but also negative comments on the lack of a coherent or effective policy can be found (Cyprus, Croatia).

⁴³ Recommended for Belgium (2013), Bulgaria (2011-2015), Croatia (2014), Cyprus (2012), Denmark (2013), Estonia (2012), Hungary (2013-2015), Latvia (2012-2014), Lithuania (2011-2015), Romania (2013-2015), Slovakia (2013-2014), Spain (2012-2014), and UK (2012-2014).

⁴⁴ Without quantifying what is considered to be adequate. See as well infra on the recommendations dealing with benefit adequacy.

2.3.3. Linking pensionable age with life expectation and limiting access to early retirement

Compared to social exclusion, the retirement recommendations are more specifically defined. In order to deal with the aging of the population and to keep the pension budget sustainable, the EU institutions systematically call upon authorities to increase the retirement age and to have it defined in relation to the age expectations of the population⁴⁵. The recommendation is concrete in its wording. In the Annual Growth Surveys introducing the socio-economic challenges in the EU (see supra) we can read e.g. that “*fiscal consolidation should be supported by reform of pension systems, making them more sustainable. Member states that have not already done so should increase the retirement age and link it with life expectancy*”⁴⁶. For some member states the recommendation is stipulated in a rather instructive manner, not leaving them many other options. The fact that a recommendation is made to safeguard the sustainability of the state’s budget, means it belongs to the group of ‘enforceable’ recommendations (see supra). When the recommendation is formulated in such a directive and precise manner, we cannot but wonder whether the European institutions are not breaching the fundamental principles of competence division here (artt. 5, 6 and 153 TFEU: social security is a competence of the member states and can only be touched upon by the European unions in a supportive manner). Moreover one should recall that monitoring policies in the field of social security may not lead to any kind of legal harmonization (article 153, par. 2 TFEU). Yet this concrete pension recommendation is more likely to be considered as a fiscal-economic recommendation (safeguarding the budget) where apparently no comparable ban on harmonization is foreseen (art. 120 ff TFEU).

Within the same objective of keeping pension schemes sustainable, and more in general to keep the ageing of population financially under control, other suggestions are also made, such as: restricting access to early retirement schemes (all involved states), enabling longer working lives (Austria, Belgium, Finland..), closing the gap between the statutory defined retirement age and the age at which people effectively retire (Belgium, Luxemburg), improving the cost efficiency of public spending on health care (related to the elderly) and more specifically on long term care services (Austria, Belgium, Bulgaria, the Netherlands, Slovenia).

⁴⁵ A recommendation that is repeated on a yearly basis. It addresses over the years eventually all involved member states. Also present in Memorandum of Understanding (2009) structural support towards Romania. Interesting in this respect is that reference is made to a concrete minimum income replacement ratio for retirees on average (i.e. at 45% of the median income).

⁴⁶ Annual growth survey 2011, p. 6.

Similarly, the IMF suggests states such as Austria, Bulgaria, the Czech Republic, Finland, France, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, Spain, the Netherland and United Kingdom to link the retirement age to the life expectancy of their population as one of the main actions to address the challenges of an ageing population and the unsustainability of the statutory pension schemes. Structurally it recommends that all involved states prohibit arrangements that may facilitate early retirement in their pension schemes.

2.3.4. Harmonising pensionable age (gender)

The EU institutions suggest that states harmonise the statutory retirement age for men and women. The states involved are specifically recommended to increase the retirement age of women to that applying for men⁴⁷. After all the recommendation is intended to safeguard the sustainability of the fiscal budget. Therefore here too the reasons are also of an economic and financial nature: i.e. the long term sustainability of the pension schemes (Austria, Romania, Slovenia), the reduction of the financial risks to the pension scheme. Sometimes the justification is employment related, keeping women longer at work improves the adequacy of the labour supply (Bulgaria, Croatia).

Remarkably, the recommendation goes further than the EU Directives on equal treatment (gender). With regard to statutory social security EU Directive 79/7 foresees e.g. in the exception for member states (to continue) to use a different pensionable age⁴⁸. This brings us to the question as to whether states that are in conflict with the EU recommendations, can use EU Directive 79/7 as ground justifying this infringement? Or should the exception in this Directive be interpreted narrowly as only applying when the concerned member state has a sound financial budget and enough labour capacity? Do the justification grounds (sustainability; labour supply) of the EU recommendations condition the use by member states of the exception ground foreseen in Directive 79/7? The least one can say is that the legal approach applied, a recommendation restricting the application of an EU Directive, is remarkable.

The ‘directive’ nature of the recommendation itself is surprising. Does the recommendation not focus overmuch on ultimate legal harmonization (“equal pensionable age shall be”) and thus essentially conflict with the competence division rules in place in the EU?

⁴⁷ Recommended for Austria (2011-2015), Bulgaria (2012-2013), Croatia (2014), Slovenia (2012), Romania (2014-2015).

⁴⁸ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security OJ L 6, 10.1.1979, p. 24–25.

Looking at both pension recommendations together, do we face here yet further restrictions of national sovereignty when it comes to the design of social security systems? Member states are free to develop their own social security systems as long as they respect the EU monitoring rules and their underlying supportive goals of fiscal sustainability and employability. A situation akin to the one in relation to the EU internal market rules: as long as the EU internal market is not jeopardised, member states are totally free to design their own social security system.

Likewise the IMF recommendations to Austria and Italy contain similar suggestions for further harmonization of the retirement age (between men and women; and thus to increase the retirement age for women). Here too the justification grounds are the costs related to the ageing population and hence the need to reduce the potential (negative) effects on budgetary spending.

2.3.5. Organisation of the health care scheme: more emphasis upon adequacy and health outcomes

The European institutions systematically call upon authorities to organise the health care systems differently: health care schemes need to become more cost effective in order to guarantee the financial sustainability of the system and to curb rising costs connected to aging population⁴⁹. This could e.g. mean that states have to focus more on prevention, rehabilitation and the independence (Austria, Finland, Germany). The need for more rehabilitation is related to goal of more activation; independence is considered to be an effective cost reduction measure compared to schemes where the elderly are directed towards residential homes. In relation to some states the EU warns that the change in the organisation of health care should not be to the detriment of the quality of the services provided (Latvia, Romania, Slovenia) nor should it create unfair hindrances to access the health facilities (Romania and the Netherlands). This is either because in the envisaged countries quality and access are already considered to be problematic (of a low level, restricted access for the weaker parts of population) or it has been reported that the ongoing reform (supported by the EU institutions) may cause issues regarding accessibility or quality of care (the Netherlands). Yet no further indications are given by the EU as to what exactly should be understood as minimum standards with regard to levels of quality and access to care.

⁴⁹ Recommendation made on a yearly basis covering over the envisaged time span all the member states subject to revision. See as well Memorandum of Understanding (2009) structural support Romania.

In some recommendations more precise information is provided about how cost effectiveness can be introduced. Some states should strengthen outpatient and primary care (BG, Malta, Slovakia). In the financing of hospital care the funding should be more based on health outcomes (Bulgaria and Slovakia). Diagnosis related financing and evidence based medicine (financing in relation to outcomes) are to be used more. Moreover, activity based funding is to be preferred over envelope financing (Ireland). The financing system should be an incentive for creating (larger) hospital networks (Bulgaria, Slovakia) and should focus more upon integration and cooperation in the service delivery. In some countries the costs of pharmaceutical products in particular should be tackled (France, Ireland), by e.g. prescribing more generic medicines (Ireland). Targeting access to care to the ones who really need it, is also advised (Poland)

In order to maintain financial sustainability the IMF also repeatedly calls for a structural reorganisation of the health care system (Austria, Bulgaria, Czech Republic, Finland, France, Ireland, Lithuania and Luxemburg). Rather similar remedies are suggested such as strengthening prevention and rehabilitation, pharmaceutical savings, more outpatient care, but also more saving in highly specialised care is advocated as well as more and/or effective financial decentralisation in health organization (Austria, Finland), the latter advice going somewhat against the EU tendencies of centralisation (see supra 2.3. sub 1).

2.3.6. Limiting the duration and the level of unemployment benefits

The Annual Growth Survey of 2011 is clear on the objectives for reducing the duration of the unemployment benefits. *“Member states should design benefits to reward return to work or incentives to go into self-employment for the unemployed through time-limited support and conditionality linking training and job search services more closely to benefits. Member states need to adapt their unemployment insurance systems to the economic cycle so that protection is reinforced in times of economic down-turn”*⁵⁰. States have to invest in good unemployment schemes when it is economically needed; furthermore, wherever possible, schemes should promote activation of the unemployed and the adaptations undertaken by member states in the unemployment scheme should ultimately lead to labour market participation

This vision has been translated to some specific recommendations⁵¹. Much advocated is a degressive payment structure where the level of unemployment benefits decreases

⁵⁰ Annual Growth Survey 2011, 6.

⁵¹ For Belgium (2011), France (2013-2015), Ireland (2014) and Hungary (2014). See as well Memorandum of Understanding (2011) structural support Portugal.

gradually with the duration of unemployment (Belgium, France, Ireland). Moreover, states have to ensure that the benefit structure does not lead to a situation where the unemployed are better off in unemployment than at work (Ireland, especially problematic for the single parents). The unemployment trap however is often a consequence of a combination of elements, going beyond the mere unemployment scheme. The loss of unemployment status provokes adaptations and/or reductions in other provisions, such as the loss of supplementary payments in rent, the reduction in refund costs for medical care and/or child care, etc. Hence it is recommended to keep an eye on the secondary consequences when persons are redirected towards employment. Interesting in this respect are the recommendations for Hungary. The latter state followed the degressive payment structure (as recommended by the EU), yet in such a way that the benefits at the end of the degressive cycle, are now the lowest across the EU. Hungary is called upon to see what the effects of raising employment participation are. The concern is that they will mainly lead to growing poverty among unemployed people. Hence the additional suggestion by the EU institutions to have the adaptations accompanied with stronger links to activation, training and job search support. Moreover, the EU has some questions regarding the rather long insurance record needed for being eligible for unemployment benefits.

Apparently the EU is also concerned about the social side effects of the recommended restrictions in the unemployment scheme. Yet this social concern could, in our opinion, be formulated in more concrete terms, e.g. by indicating that some minima or thresholds are not to be trespassed. Moreover by calling upon Hungary to check the employment effects the EU seems to suggest that levelling down benefits can at the end of the day be justified when this policy creates enough employment opportunities. An approach in which employment effects could be outbalanced with a respectable (and clearly defined) minimum level of subsistence would represent a stronger (social) message from Europe. Overall one can but wonder whether the recommendations to lower benefit (periods) are not at odds with the social provisions set out in the Social Charter and Code calling for a standstill of social security levels, especially when this reduction is not based upon clear justification grounds and does not contain any safeguards for the weaker segments of population⁵²? At the end of the day, in recommending restrictions in our unemployment

⁵² Justifications used by the expert committee Social Charter in collective complaint procedures nr.76/2012, Federation of employed pensioners of Greece (IKA-ETAM) v. Greece; nr. 77/2012, Panhellenic Federation of Public Service Pensioners (POPS) v. Greece; nr. 78/2012, Pensioners' union of the Athens-Piraeus Electric Railways (I.S.A.P) v. Greece; nr. 79/2012, Panhellenic Federation of pensioners of the Public Electricity corporation (POS-DEI) v. Greece and nr. 80/2012, Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece.

schemes so bluntly and unconditionally, is this EU policy not in conflict with the fundamental social rights?

Compared to the EU, the IMF is even more restrictive in its recommendations (towards Belgium and France) when dealing with unemployment schemes: unemployment benefits could be phased out after a fixed period of time and (somewhat contrary to the EU recommendation for Hungary) the period of work that is required for eligibility could be lengthened somewhat more. At the end of the day the limitation of unemployment benefits increases the chances of finding a job (in the view of the IMF).

2.3.7. Stricter regulation of access to invalidity benefits

Recommendations aim at a tightening of the rules in the (too generous?) invalidity schemes⁵³. While all recommendations regard access to invalidity benefits, two main kinds of recommendations can be discerned. One set of recommendations focuses on the widespread use of early retirement schemes, including invalidity schemes. This is considered to have a negative impact on the labour supply in the longer term. The approach to invalidity needs to be fundamentally changed: instead of focusing on what disabled people cannot do, the schemes should focus more on what they still can do in the way of work. Consequently they should remain available for the labour market, taking into account their reduced capacity. Existing activation schemes, such as the flexjob system in Denmark should be rethought in relation to the weaker groups in society, including the disabled.

In another set of recommendations the focus is more on the eligibility criteria which are too prone to abuse. Here stricter criteria and controls for allocation of invalidity pension schemes are advocated. The following grounds are put forward as justification for these measures: reducing benefit abuse, but more importantly safeguarding pension schemes and keeping them sustainable, and guaranteeing enough labour supply (Bulgaria, Croatia, Estonia).

In its recommendations, addressing the invalidity schemes in Austria, Bulgaria, Finland and Lithuania, the IMF has made similar yet more specific suggestions: the range of alternative occupations on the basis of which the degree of disability is assessed should, in its view, be considerably expanded. In the short run there should be a more ambitious increase in the contribution rate and service requirement should be coupled with stricter disability evaluations in order to combat abuse more effectively. Finally, tighter

⁵³ For Austria (2011-2013), Bulgaria (2012-2014), Croatia (2014), Denmark (2011-2012), Estonia (2012-2013).

enforcement of the eligibility restrictions is needed (such as the annual control of the status of invalidity). The justification for these measures is the sustainability of public finances.

2.3.8. Invest in child care services instead of parental schemes

The EU repeatedly calls for more access to qualitative and affordable childcare facilities⁵⁴. This measure is mainly supported from a desire to have more women participating in the labour market. The recommendation becomes interesting when read in conjunction with the suggestion that family policies should become more targeted to further improved cost efficiency. In practical terms, surprisingly considering other EU legislation in this respect, is the suggestion that parental leave and parental benefit schemes can be levelled down as they are to the detriment of female participation in the labour market. In brief: the EU calls for more labour participation by female workers and hence more investment in care facilities to the detriment of parental benefit schemes; these schemes are judged as having a detrimental effect upon career opportunities for women.

It is difficult to reconcile this recommendation with the EU directive on parental leave, which was introduced on the basis of European collective bargaining between the social partners⁵⁵ and that forms the basis for the introduction of many parental benefit schemes throughout the EU. Interesting is the justification which is given in the recommendation for having parental benefits reduced: apart from the potential undesirable effects regarding gender discrimination, these schemes are considered costly and (financially) inefficient. That may explain why in the EU recommendations so little effort is made to call for gender friendly parental benefit schemes, as we know them e.g. in the Nordic states: no effort is to be made in this direction as the schemes are perceived to be economically inefficient and costly.

Here we thus find another example of a recommendation that is at odds with the social acquis in the EU (i.e. the EU parental leave directives). And here too we cannot but ask ourselves how member states should interpret this rather contradictory message on child care facilities and parental leave? Should we give a limited interpretation to the EU

⁵⁴ Mentioned in all, except one (2012), Annual Growth Surveys. Recommendation for Austria (2011-2015), Czech Republic (2011-2015), Estonia (2013-2015), Germany (2011-2012 and 2014), Hungary (2011-2013), Ireland (2011-2015), Italy (2012-2014), Malta (2012), Poland (2011-2012 and 2014), Romania (2014), Slovakia (2012-2015), UK (2012-2015). See as well Memorandum of Understanding (2015) structural support Greece.

⁵⁵ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (Text with EEA relevance) OJ L 68, 18.3.2010, p. 13–20.

parental directives? Is the Directive only to be followed when the economic and fiscal criteria of the Stability Pact and the MIP have been sufficiently been respected by the member state? Is there in other words a priority in the EU objectives to be respected?

The IMF takes the same approach (Germany, Italy and Hungary) in suggesting that female labour participation is best served by investing in quality child care services. Compared to the EU, there is a more explicit call for a reorientation of public spending from cash benefits (parental benefit schemes understood broadly, including the schemes of maternity and paternity) towards the development of high quality early childhood education and day care centres.

2.3.9. A better targeting of the benefits

A constant recommendation to all member states, repeated on a yearly basis, is the need for better targeting of schemes and benefits to the ones who really are in need. Yet it is not always made clear what is exactly understood by targeting. The recommendations call for more targeting but do not expand on what kind of measures are to be implemented (e.g. targeting through means testing benefits).

On the basis of the recommendations we could discern that targeting is often mentioned in the framework of the employment policies. To increase labour participation, people excluded from the labour market and who suffer structural exclusion should be targeted (Belgium, Croatia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Lithuania, the Netherlands, Slovakia and Sweden). Depending upon the labour market situation in the involved countries, the following groups of persons are mentioned: women with young children, the elderly, young people, low skilled workers, “people at the lower participation end of the labour market”, Roma, migrants, lone parents and those with caring duties impeding them to reintegrate in the labour market.

Employment policies should focus more on specific groups of persons who are structurally at the margin of the labour markets. They should single out the group’s specific needs around which the targeting can be designed. Each country has to find out which of these groups struggle to (re)enter the labour market and adapt the employment programmes likewise to their specific needs. This can be done in practice by better profiling the unemployed and through improved job search assistance (Latvia).

In some occasions targeting is mentioned within the framework of combating poverty. In order to combat poverty more effectively, schemes should become more effective: i.e. social security schemes that aim at combating poverty, should better address the persons

who are really in need (Croatia, Estonia, Latvia and Lithuania⁵⁶). More effectively targeting the needy is a recommended policy. In relation to poverty some recommendations suggest making more efficient use of means testing in order to single out the persons in real need (Estonia). An interesting consideration was made for Latvia: *“Lack of fiscal space has led Latvia to decrease the level of guaranteed minimum income (GMI) and to abolish the state budget financing of the GMI benefit. These decisions are likely to aggravate extreme poverty and exacerbate the existing inequality in access to social assistance across local governments, while reducing central government incentives to invest in policy development and control of social assistance. It is important to monitor the effects of these decisions to prevent any deterioration in the situation”*⁵⁷. The EU institutions show concern and call for further scrutiny yet stay away from specific parameters to indicate when persons can be considered to be in real need (e.g. or to which level the critical minimum subsistence may go).

Targeting social policies can also be justified to improve the quality of public finances (Poland) and to raise the effectiveness of social transfers (Italy, Slovenia, Estonia). Family support should focus on low income households with children (ITA, Slovenia, Estonia) or within the field of dependency, on those who really need care and cannot afford it (Slovenia). The most far reaching plea for a structural introduction of means testing is found in Estonia, *“improve delivery of social services, while better targeting family and parental benefits and removing distortionary income tax exemptions related to children”*. Targeting is thus also recommended to be applied outside the traditional poverty schemes. Slowly moving towards a policy where targeting is used as an overall tool in social security to make sure that benefits are paid out to those who are in or close to poverty.

The IMF also recommends more targeting in social security systems. Contrary to the EU, this is advocated not as systematically when it comes to employment policies (Poland, France). The focus here is more on targeting within social security by advocating the structural introduction of means testing⁵⁸ and hence to reserving benefits for those lacking financial means (Croatia, France, Czech Republic, Hungary, Ireland, Lithuania). Social security should focus mainly on a basic income protection; guaranteeing income at the previously earned levels is a matter for supplementary and/or occupational schemes.

⁵⁶ See as well Memorandum of Understanding (2010) for structural support to Latvia.

⁵⁷ Recital 13 Latvia 2013.

⁵⁸ Likewise strongly present in the Memoranda of Understanding for EU/IMF structural support (2009, 2010, 2011 and 2015) for Latvia, Portugal and Greece.

2.3.10. Guaranteeing adequate benefits (for example through supplementary schemes and private savings schemes)

That benefits should be of an adequate level is recommended repeatedly, but the specific benefit level that member states should guarantee are not specified anywhere by EU institutions. In relation to what exactly the adequacy is measured, is not mentioned either. Should benefits be adequate enough to keep citizens away from (extreme) poverty? Or should benefits be designed so that the standard of living can be upheld after the contingency occurs (in a more *Bismarckian* approach)?

Only occasionally is additional information provided on the basis of which recommendations refer to the adequacy of the benefits (Luxemburg 2014, recital 12 when referring to the adaptation of pension benefits to the standard of living; Malta 2013, referring to the needed pension reform to ensure sustainability while safeguarding adequacy and addressing intergenerational equity concerns; Slovenia 2013)⁵⁹.

In relation to social insurance the European institutions consider a system in which there is transparency between what has been paid in and what one receives from the scheme as a good income replacement policy. Can we deduct from this that the EU is inclined to support a policy that safeguards benefit adequacy in terms of keeping up the living standards? Yet in these paragraphs the EU institutions immediately add that a policy of transparency should not be consistently followed in the higher income scales in order not to jeopardise the necessary redistribution of means in the social schemes. After all, social insurance should guarantee enough redistribution between the income groups and hence benefit transparency is a good policy, but the main suggestion here seems to be that it should be applied moderately.

The paragraphs on benefit adequacy do not get much further than stating that benefits should not be too low (to keep people out of poverty) but not too high either (as otherwise no redistribution can take place and intergenerational equity concerns may be at stake). It is however to be deplored that not more use is made of the existing concrete indicators that are used in the ongoing OMC processes, both for monitoring social exclusion⁶⁰ and the modernization of social security schemes⁶¹. Giving some more concrete input on

⁵⁹ One of the only examples of a concrete reference with regard to a minimum can be found in a Memorandum of Understanding (2009) for structural support to Romania: gradual increase of retirement age with a view to protect vulnerable pensioners and to attain the objective of 45% replacement ratio for retirees on average.

⁶⁰ Where the risk of poverty is e.g. calculated as a given % (50-70: depending upon the group) of median national equivalised income. See annex to this text for the overview of social parameters used in the OMC.

⁶¹ For pensions e.g. reference is made to an objective of 45% replacement ratio for retired persons on average.

(minimum) income criteria could make the social model of the EU more concrete. By not establishing standards there is a serious risk that in reality the acceptable adequate level will continuously be levelled down (in the absence of a specific threshold safeguarding a respectable level).

It is worrying that in some recommendations the suggestion is made that benefit adequacy is to be guaranteed in supplementary/occupational schemes, while the basic income protection is the main function of the statutory schemes. These statutory schemes should be organised “adequately” in the sense that their main function is to keep persons out of poverty (pension adequacy: Lithuania 2013-2015). Overall, private saving schemes and occupational pensions are strongly supported in the recommendations⁶² either by suggesting they are introduced or by supporting their continuance. Although not always clearly expressed, there is tendency for the living standard to be primarily maintained through occupational and/or privatised second pillar schemes.

2.3.11. Reduce the financial burden on labour,

A standard recommendation in many of the reports is to lower the financial burden upon work⁶³. States are advised to take the necessary steps to reduce the effective tax and social burden on labour, especially for low income earners. States have to take measures so as to make sure that the system does not price the low-skilled worker out of the labour market. Overall the reduction of the financing costs on labour should be done in a budgetary neutral way: additional or new financial sources can thus be searched for on the basis of other sources. In other words there is a call to have a tax shift from labour to other income sources.

These recommendations are justified based on the increase of labour market participation (especially for low-paid and low-skilled workers) and the need to counteract the impact of demographic change on the working population.

The IMF calls upon several member states⁶⁴ to reduce the financial burden on labour and to use other sources for financing social security systems. The main justification reason is the sustainability of the public finances.

⁶² Czech Republic (2011), Germany (2014), Latvia (2012), Lithuania (2012 and 2014), Malta (2011-2013), Slovenia (2014), the Netherlands (2012-2014), be it that for the latter state more corrections should be introduced to ensure an appropriate intra and intergenerational solidarity.

⁶³ Austria (2011-2013), Belgium (2011), Bulgaria (2014), Estonia (2011), France (2011 and 2013-2014), Germany (2012-2015), Spain (2014).

⁶⁴ Austria (2011-2012), Belgium (2012), Bulgaria (2011-2012 and 2014), Hungary (2011), Lithuania (2014), the Netherlands (2014), Poland (2015), Slovakia (2011-2012)

2.3.12. Disconnect benefit indexation from wage indexation

When it comes to the indexation of benefits, the recommendations almost univocally call for a shift of wage indexation towards consumer price indexation⁶⁵. This is especially true in the pension schemes, but also in other benefit schemes this is recommended. This advice is at odds with the minimum standards of the Council of Europe, where a stronger interrelation between income replacement benefits and labour income is advocated.

The main justification for the recommendations is the financial sustainability of the pension schemes. Implicitly this calls for levelling down the intergenerational solidarity between the (younger) working populations and the retired persons on benefit, which is considered to be out of proportion.

The IMF recommendations on the indexation of social security benefits are more pronounced in their message. The indexation is often considered to be too generous and with an eye to keeping public finances more sustainable states have to adjust their indexation formula more to the cost-of living indexation⁶⁶.

2.3.13. Fight hidden economy

A final set of recommendations focuses on the hidden economy. States should focus more on reducing undeclared work⁶⁷. They should pursue the fight against tax evasion and take additional steps to reduce the shadow economy and undeclared work. Interesting are the reflections made with regard to the system of minimum contributions. As such it is not questioned whether the system can be useful for reducing the shadow income, yet it has to be closely monitored to ensure that low-skilled workers are not priced out of the labour market due to this system. Measures should therefore not only be intended to reduce fraud as such, but should also be assessed on their merits regarding the participation in the labour market of excluded groups.

The recommendations are mainly justified from the perspective of an increased labour participation and the sustainability of the (pension) scheme.

We find similar concerns and suggestions in the IMF socio-economic recommendations to several EU member states (Austria, Belgium, Bulgaria, Hungary, Lithuania, the Netherlands, Poland, the Slova Republic for reduction of the costs of labour and Bulgaria, Czech Republic, Luxemburg, Slova Republic, Slovenia)

⁶⁵ Czech Republic (2013-2014), France (2013), Lithuania (2012-2014), Slovakia (2011-2012), Slovenia (2012).

⁶⁶ Bulgaria (2011 and 2014); Czech Republic (2015); Luxemburg (2011-2012), Slovakia (2014); Slovenia (2013).

⁶⁷ Bulgaria (2011-2013) and Italy (2012-2014).

2.4 Underlying objectives

During the discussion we referred systematically to the justification that underpins the EU recommendations. Here we summarise these in a more structured manner. Firstly, the majority of social security recommendations are made to safeguard the overall economy and/or to guarantee the financial sustainability of the national (and indirectly also the European) economy. In some cases a direct link is made to social security – especially in pension related recommendations – when reference is made to safeguarding the financial sustainability of the social security system in the long term. Yet here too, the emphasis is upon the financing of social security. Secondly a number of social security recommendations is made for labour market purposes, with an eye to increasing employment in the particular state or more specifically to reintegrate excluded groups (again) in the labour market.

The number of measures suggested in support of social objectives ('socio-social recommendations') is rather scarce. Most of these recommendations are found in relation to combating social exclusion, and are made with an eye to integrating excluded groups in society. We only find sporadic reference to social goals in the other thematic fields, such as the need to safeguard (intra- and intergenerational) solidarity in the particular social security system or the need to keep benefits at an adequate level. However, typical to the group of so called 'socio-social recommendations' is the vagueness in which they are formulated. For instance often it is mentioned that there is need for an 'adequate protection', yet it is not made explicit what an adequate level means in reality for the EU. The risk is that the 'adequate level' will be reduced to the bare minimum as soon as systems come under European economic-budgetary constraints.

Until now social security systems in the EU are not so much assessed on their merits with regard to redistribution or equity; nor with regard to their adequacy of protection. They are assessed in terms of their efficiency and efficacy, their sustainability and transparency, in relation to their economic soundness, the budget and underlying fiscal policies. Social security systems should be lenient for labour participation and employment mobility; they are reduced to a mere cost factor, whereas the productive factor in social security is neglected completely. Social security policy in the EU is mainly approached from the perspective of activation: the elderly should work longer, the disabled should be activated in their remaining capacity for work; women on maternity should be redirected as quickly as possible back to work. Yet less attention is given to the conditions making it socially acceptable for the elderly to continue to work, for the disabled to be rehabilitated into new work and for the unemployed to be activated for work.

Financial sustainability, economic efficiency and efficacy, and labour activation are thus predominantly presented as referral grounds for justification. The assessment of the social systems is mainly approached from an economic and fiscal perspective, and less with regard to their social merits. Hence we can state that the EU definitely lacks a concrete social framework that can monitor cutbacks in the social security systems in a socially acceptable manner. The latter can only be guaranteed when the minimum limits are more clearly defined; when in other words "adequacy" is given a practical yardstick.

2.5 In conclusion of the analysis

What is now the vision of the EU on social security? What is the reference framework and of which standards does the EU use?

A first conclusion of the analysis is that, contrary to e.g. the standards systems applied by the ILO and/or Council of Europe, the underlying model is not comprehensively developed when it comes to social security and its underlying social objectives. There is a systematic reviewing of the EU social security systems, for which a reference framework is used. Yet the framework remains hidden and is not comprehensively developed. On first sight the flexible character of the model seems to be an asset as it can be adapted to the ever changing needs and challenges in society (see as well below) yet fundamentally speaking it is a major weakness as it does not express what the essential (and hence 'holy') core is of the model in practice. Recommendations are developed on a yearly basis but not always clearly embedded in a coherent and structural vision on social security.

Furthermore we notice that the true social reference standards used to assess the EU social security systems are rather vaguely stipulated. Benefits should be e.g. 'adequate' without 'adequacy' being concretely defined. The system should be 'inclusive' and preferably generating sufficiently inter- and intragenerational 'solidarity' without this being further explained. In the same way this applies for the more economic and labour inspired recommendations: it is not always made concrete what efficiency and efficacy mean; and what exactly is meant by the financial sustainability of the system. Nevertheless, contrary to the social standards, there is an underlying EU reference framework that details the parameters that national budgets and economies have to respect⁶⁸; and if states structurally do not meet these fiscal parameters they may eventually be sanctioned by the European institutions. Hence when a member state is structurally in breach of these fiscal-economic conditions it has to take action along the lines suggested by the EU. In this perspective, general references to efficiency, efficacy and sustainability are in the end

⁶⁸ See supra 2.1. and annex to the text for an overview of the economic and fiscal criteria applied by the EU in its monitoring processes.

the practical yardsticks to which national social security systems have to be aligned. And with vaguely stipulated social parameters (what is an adequate protection?) these fiscal-recommendations may in the long term even push levels of protection to an inadequately defined ‘acceptable’ minimum; an in-built race to a not defined minimum in other words.

A second finding is that the social model is intrinsically not coherent. It often conflicts with other EU (legal) achievements in the field of social security or even general principles on the basis of which the EU is built. The rather skeptical approach towards devolution (defederalisation, territorial decentralization or even functional decentralisation) conflicts with the principle of subsidiarity upon which EU decision making itself is based upon. The recommendations to invest primordially in child care services (and less income replacement benefits) conflicts with the (goals behind the) EU directives on parental leave. The recommendation that retirement age should be linked to life expectancy is maybe one of the only examples of a concrete recommendation, yet in its directivity probably at odds with the general principle that member states are sovereign in designing their own social security schemes. The condition that unemployment should follow a degressive payment structure (without indicating what an acceptable minimum level could be in the end) is probably not completely in line with the standards of the Council of Europe and the ILO (see supra); minimum standards that EU institutions should respect when developing their rules and instruments (article 9 TFEU, article 151 TFEU at least when developing a European social policy and article 34 of the EU Charter).

Although they do not go into so much detail, the EU-recommendations are formulated similarly to those of the IMF⁶⁹. In a way we could say that the recommendations drift slowly away from the hard core social security standards of the ILO and Council of Europe and slowly move to the direction of those developed by the major international financial organisations, such as the IMF and the World Bank.

Due to their vagueness the recommendations may have a tendency to reflect too much on what is in discussion in society at the moment. The social security recommendations are designed in relation to other policy domains. The actual system of reporting (states respond in national policy plans about how they will address the upcoming European challenges; these national policy plans are then assessed by the EU institutions) is an invitation to have (socially) less popular measures ‘imposed’ upon the national

⁶⁹ This is more clearly present in the memoranda used for the conditioning the financial support to countries in budgetary problems. At some occasions recommendations simply refer to the conclusions and policy suggestions as developed in IMF and World Bank projects.

governments by the EU; the fiscal-economic reference framework becomes the justification basis for unpopular measures. As a consequence states will “have to cut” into the system because the EU wants them to do so as they have to safeguard the EU internal market and European economic position globally. “Macro-economic parameters”, “activation” and “flexicurity” (coming from the employment policies) have dominated the social security recommendations strongly during the last five years. With the ongoing migration crisis in Europe it is likely that in the coming years social security systems might be influenced by, or even dictated to, migration and integration policies. Social security recommendations are thus reduced to a set of measures to be taken in response to other societal goals and social security systems in the EU are then primordially developed in response to other policy fields. They lack their own long term, stable and universally solid criteria upon which social security systems can be assessed. As long as the goals are not clearly set by the EU, and no concrete standards or minima are set, the social recommendations will always be of a kind to serve other policies; in the end this will be to the detriment of social security itself.

So far the model is predominantly of an economic-fiscal nature: social security measures, reforms or outcomes are approached with economic and fiscal parameters. Systems should be financially solid; the kind or degree of redistribution is less important. Systems after all should not overburden the economies in which they are embedded. The fact that, for example, the decentralised organisation of social security is only acceptable when it is organised in an economically efficient and/or effective manner is seriously limiting the justification scope that can serve as a basis for national or local devolution policies. What if decentralisation is leading to a qualitative better service provision? Or what if it calms down the existing (political, cultural, ...) tensions that may exist between the constituent groups in society? Should we limit the decentralisation options to the ones which hinder the economic objectives of efficiency, efficacy, sustainability the least?

In a way we get an amplification of the current situation in which EU internal market rules condition national (social) systems in their organisation: social security systems are the competence of the national member states yet in their organisation they should respect the EU economic freedoms. These European economic freedoms are legally of a higher order and in case of conflict the national social rules have to be adjusted on their infringement of the internal market rules⁷⁰. Similarly social security systems should be designed in such a way that they respect the European economic and fiscal stability rules.

⁷⁰ Hence the “paradox” solution to counter this evolution by giving more competence to the EU in the field of social security in order to outbalance the EU economic competences: see D. PIETERS and J. NICKLESS, Pathways for social protection in Europe, Helsinki, 1998, Finnish Ministry of Social Affairs and Health, 87p.

The economic and financial monitoring of social security systems as such is not to be criticized. Social security systems should indeed run on a financially sound basis; nor are they to undermine the national public budget which is largely making the required redistribution possible. Yet emphasizing only the economic and financial goals, is not doing enough justice to what social security is aiming at in the end: guaranteeing interdependency between citizens in society. It narrows society to its economic component, which cannot be the final goal of society itself.

Concluding

observations Despite the efforts to have the current monitoring procedures integrated at EU-level and by doing so, bringing the social recommendations officially at pair with the employment and economic monitoring procedures, we cannot but conclude that the underlying reference framework (model) that is used by the EU is mainly of an economic-fiscal nature. The hidden model is of a socio-economic kind in the sense that national social security systems are primordially monitored on their economic and financial soundness. The social objectives and social security parameters are simply not concrete enough to speak of a true social model, leave aside the legal tools to make the social model sufficiently effective. We are far from the original ideas of the EU social model as launched by the EU-Commission at the beginning of the 1990s.

Let us now return to the question which was the basis of this analysis: in the past some Central- and Eastern European states asked whether the social security reforms that were in preparation were in line with the EU-social security model? By lack of a concrete model (in the EU) twenty years ago it was hard to give an answer to this question. The reforms then felt quite contrary to traditional social security thinking and they were certainly not in line with the – admittedly somewhat outdated – standards of the Council of Europe/ILO. It is likely that when the same question would be addressed now, the answer would be of a different kind: the (then) challenged reforms align better with the actual testing framework used by the EU institutions to assess social security as they allegedly support financial sustainability and economic efficiency. Yet at the same time due to these reforms the systems in consideration start(ed) to struggle with the more traditional standards of the ILO and the Council of Europe, due to the degrading levels of redistribution, the absence of fixed income replacement levels known in advance, the too intensive privatisation of the management of social security, etc. The EU seems to be drifting away from the international social standards.

As such the growing emphasis upon the monitoring of the economic and financial strength of social security system is not to be considered as a bad evolution. It is also the merits of the European Union to have this monitoring process developed in a structural manner. No social security system can function without a solid and healthy economic basis. Redistribution can only take place when the economic strong shoulders are present; solidarity can only be generated when the strong economic players can see the added value of them generating support. Crucial in that respect is to have a well functioning economy and we have to be aware that our social security system itself is not undermining the economy upon which it is built. Yet addressing security only from its economic angle is too one sided and risks undermining the social security system in the end. Other parameters have to be taken into account as well, such as the level of income replacement to be guaranteed (adequacy); how the redistribution lines should run. If these parameters are not defined clearly, the risk is a levelling down of the system to the minimum acceptable, i.e. keeping people out of poverty. Such a ‘poor’ system however, will not be supported by the middle and higher classes; their main ambition - income guarantee – is not provided by this systems and hence they will be redirected to private safety provisions.

We cannot but support the call of the President of the EU Commission *Juncker*⁷¹ to undertake the challenge to define more clearly the social protection floor through the development of the European Pillar of Social Rights. If the EU wants to score a “social Triple A” it will have to make concrete the social parameters of its social model in such a way that they can outbalance (and thus not only support) the economic-fiscal mantra of the European Union. Signing as EU the social rights instruments of the Council of Europe (as some suggest) may not be enough, as these instruments are also in need of modernisation (see supra). The EU can, and should, do more. Together with the intergovernmental social organisations, such as ILO and Council of Europe, it should be at the core of the exercise in bringing the social security standards into the 21st century.

In a recent contribution⁷² we made a plea for the development of modern standards in the field of social security. Modern standards would need to address three main criteria: they should translate the fundamental legal principles that underpin our social security

⁷¹ State of the Union addressed in September 2015. Further addressed in Comm.Comm. 8 March 2016 Launching a consultation on a European Pillar of Social Rights, COM(2016)127 final, with Annex accompanying the Communication containing a first preliminary outline of a European Pillar of Social Rights. The consultation can be answered till end of 2016.

⁷² D. PIETERS and P. SCHOUKENS, “Social security law instruments of the next generation”, in G. VONK and Fr. PENNING (eds), *Research Handbook International Social Security Law*, Elgar, Cheltenham, 2015, 534-560.

systems (security, solidarity, responsibility and protection) and hence reflect modern social security thinking; they should be formulated in a way that makes them legally enforceable (and hence could be used/applied for); and they should remain realistic, in the sense that they are formulated in balance with the (among others economic) surrounding of the system. Standards should not be developed in isolation from other policy fields in society; they should not disrupt the balance between the interests of society at large and the rights of the individual. Consequently this means that standards should not only focus on social security as such, but standards will be needed to establish the relations between social security and other policy areas. Those standards would also establish direct connections between economic development and social protection levels. Finding a balance between economic development and social protection is at the core of the preoccupations of policymakers and academics, both national and international. Existing social security standard-setting instruments are often insensitive to issues of economic development, whereas legal instruments to support economic development are hardly interested in social issues. The result is that legal instruments do not connect with daily reality or that social issues are regulated by economic principles. The next generation of legal instruments should address the relation between economic development and social protection in an equilibrated way. With this in mind, we invite the (EU) policymakers to develop their EU social model and all social security researchers to explore the avenues that will help them to do so.

Paul Schoukens⁷³

⁷³ Many persons supported me in the development of the text. The author would like to express his profound feelings of gratitude, especially to the following persons: Eleni De Becker and Siemen Buttiens for the thorough analysis of the recommendations; Paula Cunningham for the language revision.

Annex I

Financial parameters - Economic monitoring

SGP (stability and growth pact)¹	<ul style="list-style-type: none"> • Limit for budget deficit 3% of GDP • Limit for public debt 60% of GDP • All member states are expected to reach their MTO's or to be heading towards them by adjusting their structural budgetary positions at a rate of 0,5% of GDP per year as benchmark 	<ul style="list-style-type: none"> • All EU member states
Six-Pack²	<ul style="list-style-type: none"> • For member states having a deficit above the public debt threshold of 60% of GDP article 126(2)(b) TFEU provides that those member states must ensure that the ratio is sufficiently diminishing and approaching the reference value at satisfactory pace. Regulation 1177/2011 defines satisfactory pace as 1/20th annual average. This means for example that if a member state currently has a debt-to-GDP level of 70% it is required to reduce that debt by 0,5% by next year. 	<ul style="list-style-type: none"> • All EU member states
TSCG³	<ul style="list-style-type: none"> • The balanced budget rule is deemed to be respected if the annual structural balance of the general government is at its country-specific medium-term objective as defined in the revised Stability and Growth Pact, with a lower limit of a structural deficit of 0,5% of GDP. (The lower limit may rise to 1% of GDP where the ratio of government debt to GDP is significantly below 60% and where the risks in terms of the long-term sustainability of public finances are low) 	<ul style="list-style-type: none"> • 25 EU member states (all except Croatia, Czech Republic and the United Kingdom)

MIPs (Part of the Six-Pack)⁴	<p>Scoreboard:</p> <ul style="list-style-type: none"> • 3 year backward moving average of the current account balance as a percentage of GDP, with thresholds of +6% of GDP and -4% of GDP • Net national investment position as a percentage of GDP, with a threshold of -35% of GDP • 5 years percentage change of export market shares measured in values with a threshold of -6% • 3 years percentage change in nominal unit labor cost, with thresholds of +9% for Euro-area countries and +12% for non-Euro area countries • 3 years percentage change of the real effective exchange rates based on HICP/ CPI deflators, relative to 41 other industrial countries, with thresholds of -/+5% for euro area countries and -/+11% for non-euro area countries • Private sector debt in percentage of GDP with a threshold of 133% • Private sector credit flow in percentage of GDP with a threshold of 14% • Year-on-year changes in house prices relative to a Eurostat consumption deflator, with a threshold of 6% • 3 year backward moving average of employment rate with a threshold of 10% • Year-on-year changes in total financial sector liabilities, with a threshold of 16,5% • 3 years change in p.p. of the activity rate with a threshold of -0,2% • 3 years change in p.p. of the long-term unemployment rate with a threshold of +0,5% • 3 years change in p.p. of the youth unemployment rate with a threshold of 2% 	<ul style="list-style-type: none"> • All EU member states
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Sanctions - Economic monitoring

SGP	<ul style="list-style-type: none"> • Countries that fail to respect the SGP's preventive or corrective rules may ultimately face sanctions. For Member States sharing the euro currency, this could take the form of warnings and ultimately financial sanctions including fines of up to: 0.2 % of GDP, if they fail to abide by either the preventive or the corrective rules, or 0.5 % of GDP, if they repeatedly fail to abide by the corrective rules. In addition, all Member States (except the United Kingdom), could see a suspension of commitments or payments from the EU's Structural and investment funds.
TCSG	<ul style="list-style-type: none"> • The European Commission is invited to present in due time to the Contracting Parties a report on the provisions adopted by each of them in compliance with Article 3(2). If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that a Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more of the Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3 (2), it may also bring the matter to the Court of Justice. In both cases, the judgment of the Court of Justice shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court. If, on the basis of its own assessment or of an assessment by the European Commission, a Contracting Party considers that another Contracting Party has not taken the necessary measures to comply with the judgment of the Court of Justice referred to in paragraph 1, it may bring the case before the Court of Justice and request the imposition of financial sanctions following criteria established by the Commission in the framework of Article 260 of the Treaty on the Functioning of the European Union. If the Court finds that the Contracting Party concerned has not complied with its judgment, it may impose on it a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0,1 % of its gross domestic product. The amounts imposed on a Contracting Party whose currency is the euro shall be payable to the European Stability Mechanism. In other cases, payments shall be made to the general budget of the European Union.
MIP	<ul style="list-style-type: none"> • The MIP allows the Commission and the Council to adopt preventive recommendations under article 121.2 of the Treaty. These recommendations are embedded in the package of country-specific recommendations which the Commission puts forward in May/June in the context of the European Semester. The MIP has also a corrective arm which applies in more severe cases: an Excessive Imbalance Procedure (EIP) may be opened for a Member State if it is found to experience excessive imbalances in the sense of the MIP regulation. The Member State concerned will have to submit a corrective action plan with a clear roadmap and deadlines for implementing corrective action. Surveillance will be stepped up by the Commission on the basis of regular progress reports submitted by the Member State concerned. A new enforcement regime is established for euro area countries. The corrective arm consists of a two-step approach: An interest-bearing deposit can be imposed after one failure to comply with the recommended corrective action. After a second compliance failure, this interest-bearing deposit can be converted into a fine (up to 0.1% of GDP).

Annex II Social Indicators at EU level

Social OMC - 2000

The 2000 Lisbon Council Conclusions called for the introduction of the Open Method of Coordination (“OMC”) “at all levels” (European Council, 2000: § 7) and explicitly referred to the use of the OMC with regard to social exclusion, information society and e-Europe (Ibid: § 8), as well as innovation and research and development (Ibid: § 13). Before 2005, three separate social OMC’s co-existed: one on Social Inclusion (2000), one on Pensions (2002) and one on Health and Long Term Care (2004). To monitor the progress towards the objectives that have been agreed at the European Council in December 2000, a first set of indicators, which are also called the Laeken Indicators, was set up by the indicators Sub-Group (ISG) of the Social Protection Committee (SPC) and finally decided on at the Laeken Council in December 2001. These indicators should play a crucial role in the Open Method of Coordination (OMC) on Social Inclusion and are considered as a reliable source policy makers can base their decisions on. Below we give the primary indicators for social inclusion. For the secondary indicators we refer to the quoted sources of the social protection committee.

Laeken indicators – Social Inclusion OMC (2001) Primary indicators

Indicator	Definition
1a	Percentage of individuals living in households where the total equivalised household income is below 60% of national equivalised median income Age groups are: 0-15, 16-24, 25-49, 50-64, 65+. Gender-breakdown for all age groups + total
1b	Percentage of individuals aged 16+ living in households where the total equalized household income is below 60% national equivalised median income. Most frequent activity status: employed, self-employed, unemployed, retired, inactive – other. Gender breakdown for all categories + total
1c	Percentage of individuals living in households where the total equivalised household income is below 60% national equivalised median income Persons household under 30 yrs old; 1 person household 30-64; 1 person household 65+; 2 adults with dependent child at least one person 65+; 2 adults without dependent child, both under 65; other households without dep. children; single parents, dependent child 1+; 2 adults, 1 dependent child; 2 adults, 2 dependent children; 2 adults, 3+ dependent children; other households with dependent children, total
1d	Percentage of individuals living in households where the total equivalised income is below 60% national equivalised median income Owner or rent free, tenant, total

1e	The value of the low income threshold (60% median national equivalised income) in PPS, Euro and national currency for: Single person household: households with 2 adults, 2 children
2	S80/S20 ratio between the national equivalised income of the top 20% of the income distribution to the bottom 20%
3	the share of persons below the 60% median threshold in at least two of the three preceding years. Gender breakdown + total
4	the difference between the income of persons below the at-risk-of poverty threshold and the at-risk-of poverty threshold as a percentage of the at-risk-of poverty threshold. Gender breakdown + total
5	Persons aged 0-65 (0-60) living in households where none is working out of the persons living in eligible households. Eligible households are all except those where everybody falls in one of these categories: <ul style="list-style-type: none"> • Aged less than 18 years old • Aged 18-24 in education and inactive • Aged 65 (60) and over and not working
6	Total long-term unemployed population (at least 12 months, ILO definition) as proportion of total active population; gender breakdown + total
7	the coefficient of variation of employment rates at NUTS (Nomenclature of Territorial Units for Statistics)
8	the proportion of persons aged 18 to 24 who have only lower secondary education (their highest level of education or training attained is ISCED 0, 1 or 2) and have not received education or training in the four weeks preceding the survey.
9	Number of years a person may be expected to live, starting at age 0, for males and females

With the streamlining of the three social OMC's in 2005 there have been major amendments to the reporting system and the respective indicators. Ever since there is a common report for the three strands which is based primarily on the newly instituted overarching portfolio of indicators (for social protection and social inclusion) and the respective three overarching objectives set out by the EPSCO Council in March 2006 (Indicators Subgroup 2009, p. 4). Though the overarching portfolio is of major importance every strand has its own portfolio of indicators. The new streamlined social inclusion portfolio (or Laeken portfolio) consists of 17 indicators (some of them still lacking a consistent definition). As for the old portfolio, the new portfolio is divided in primary, secondary and context indicators. The primary indicators are considered the “lead indicators” which cover the broad fields that have been considered the most important elements in leading to social exclusion”; (Indicators Subgroup 2009, p. 15). We restrict ourselves here to the overarching indicators for social inclusion.

Overarching indicators

Indicator	Definition	Breakdowns
1a	EU: at risk-of poverty rate + illustrative threshold value Source: SILC	By age: Total, 0-17, 18-64, 65+ By gender (not 0-17)
1b	EU: relative median poverty risk gap Source: SILC	
2	EU: S80/S20 Ratio of total income received by the 20% of the country's population with the highest income (top quintile) to that received by the 20% of the country's population with the lowest income (lowest quintile). Income must be understood as equivalised disposable income. Source: SILC	None
3	NAT: health life expectancy Number of years that a person at birth, at 45, at 65 is still expected to live in a healthy condition (also called disability- free life expectancy). To be interpreted jointly with life expectancy Source: Eurostat	At birth, at 45, at 65 By sex (by SES)

4	EU: early school leavers	Share of persons aged 18 to 24 who have only lower secondary education (their highest level of education or training attained is 0, 1 or 2 according to the 1997 International Standard Classification of Education – ISCED 97) and have not received education or training in the four weeks preceding the survey. Source: LFS	By sex
5	EU: people living in jobless households	Proportion of people living in jobless households, expressed as a share of all people in the same age group. This indicator should be analysed in the light of context indicator N°8: jobless households by main household types Source: LFS	By age: 0-17, 18-59 By sex (18+ only)
6	NAT: projected total public social expenditure	Age-related projections of total public social expenditures (e.g. pensions, health care, long-term care, education and unemployment transfers), current level (% of GDP) and projected change in share of GDP (in percentage points) (2010-20-30-40-50) Specific assumptions agreed in the AWG/EPC. See “The 2005 EPC projections of age-related expenditures (2004-2050) for EU-25: underlying assumptions and projection methodologies” Source: EPC/AWG	
7a	EU: median relative income of elderly people	Median equivalised income of people aged 65+ as a ratio of income of people aged 0-64 Source: EU-SILC	-
7b	EU: Aggregate replacement ratio	Median individual pensions of 65+ relative to median individual earnings of 50-59, excluding other social benefits Source: EU-SILC	By sex
8	NAT: self reported unmet need for medical care NAT: care utilization	Total self-reported unmet need for medical care for the following three reasons: financial barriers + waiting times + too far to travel To be analysed together with care utilisation defined as the number of visits to a doctor (GP or specialist) during the last 12 months. Source: EU-SILC available annually subject to adjustment of EU-SILC in the future	By income quintile
9	EU: at risk of poverty rate anchored at a fixed moment in time (2004)	Share of persons aged 0+ with an equivalised disposable income below the at-risk-of-poverty threshold calculated in year 2004 (1st EU-SILC income reference year for all 25 EU countries), up-rated by inflation over the years. Source: SILC	By age: Total, 0-17, 18-64, 65+ By sex (18+ only)

10	EU: employment rate of older workers	Persons in employment in age groups 55 - 59 and 60 – 64 as a proportion of total population in the same age group Source: LFS	By age: 55-59, 60-64 By sex
11	EU: in work poverty risk	Individuals who are classified as employed (distinguishing between “wage and salary employment plus self-employment” and “wage and salary employment” only) and who are at risk of poverty. This indicator needs to be analyzed according to personal, job and household characteristics. It should also be analyzed in comparison with the poverty risk faced by the unemployed and the inactive. Source: SILC	By sex
12	EU: activity rate	Share of employed and unemployed people in total population of working age 15-64 Source: LFS	By sex and age: 15-24, 25-54, 55-59; 60-64; Total
13	NAT: regional disparities – coefficient of variation of employment rates	Standard deviation of regional employment rates divided by the weighted national average (age group 15-64 years). (NUTS II) Source: LFS	
14	NAT: total health expenditure per capita	Total health expenditure per capita in PPP Source: EUROSTAT based on system of health accounts (SHA) data	