UN Special Rapporteur on extreme poverty and human rights

Visit to the European Union

Findings and recommendations

The Special Rapporteur on extreme poverty and human rights visited the institutions of the European Union from 25 November 2020 to 29 January 2021. The purpose of the visit was to provide the Human Rights Council with an assessment of the contribution of the EU to the fight against poverty within its borders, and to offer constructive recommendations. The Special Rapporteur is grateful to the EU for inviting him and facilitating his visit and for its continuing engagement with the Special Procedures. The final report of the visit will be presented to the 47th session of the Human Rights Council in June 2021 and will be made available online.

During this visit, the Special Rapporteur met with representatives from over 20 institutions, including the European Commission, the Council of the EU, the European Parliament, the European Labour Authority, the European Economic and Social Committee, the EU Agency for Fundamental Rights (FRA), and the European Central and Investment Banks, as well as with national governments and over 40 civil society and social partner organizations.[1] He also had an exchange with the President of the Eurogroup, as well as with the chairs of the Social Protection Committee and the Employment Committee. He met with the United Nations agencies working on the European region. He also engaged with the representatives of France, Italy, Portugal, Slovenia, and Spain, in order to improve his understanding of how national-level anti-poverty policies are supported by EU-level policies. The Special Rapporteur would like to express his deep appreciation to his interlocutors who kindly offered their time and shared their knowledge during this visit.The Special Rapporteur heard from actors engaged in anti-poverty efforts and from people living in poverty, all of whom highlighted how close to the edge large segments of the European population already were before the economic activity collapsed. Reliance on food banks and demands for emergency income support have surged. Income inequality and child poverty have worsened and are unlikely to improve even in the medium term.[2] And

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

2 Z.Darvas, COVID-19 has widened the income gap in Europe, *Bruegel*, Dec.3,2020; D.Richardson *et al., Supporting Families and Children Beyond COVID-19: Social protection in high-income countries,* UNICEF Office of Research, Dec.11,2020.

finding a quality job for those with low levels of qualification or experience is now increasingly difficult.Since the end of the visit on 29 January 2021, the EU has taken important actions. It increased the funding allocated to combatting child poverty. It proposed a directive on pay transparency, to strengthen the requirement of equal pay between women and men. In March 2021, the European Commission announced an Action Plan for the European Pillar of Social Rights and an EU Strategy on the Rights of the Child, and proposed a Council Recommendation for a European Child Guarantee.

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

The COVID-19 crisis and the remarkable reaction of EU institutions provide a unique opportunity to address the structural constraints that have thwarted its anti-poverty efforts thus far. The EU should develop an EU-wide anti-poverty strategy that ensures a broad approach to poverty eradication, including quality jobs and living wages, universal social protection incorporating harmonization of minimum income schemes, well-funded public services, and tax justice. Good intentions are not enough: what is needed is to recognize the gaps that remain in the legal and policy framework under which EU institutions operate, and align them better with the professed intention to eradicate poverty.

Poverty: a reality in the EU

The European Union has enjoyed steady economic growth until the recent pandemic and unemployment rates have decreased in all Member States since 2013.[3] The undeniable improvement in living standards that the EU has spearheaded since its inception —and more recently since social objectives became a binding consideration under all other policy areas in 2009— has positioned its Member States at the top of the Human Development Index values,[4] and the EU as a whole enjoys relatively low levels of inequality and income concentration.[5] But a closer look at poverty in the EU reveals a more troubling picture. One in five people —91.4 million or 20.9 percent of the population— are still at risk of poverty or social exclusion in the EU,[6] and inequality levels have remained virtually static or even worsened since the 2008 crisis in some cases.[7] A total of 19.4 million children, or 23.1 per-

3 Eurostat, Labour Force Survey 2019 (une_rt_a).

4 UNDP Human Development Reports 2020 http://hdr.undp.org/en/content/download-data

5 Eurostat, EU-SILC Survey 2019 (tessi190, ilc_di11); OECD, Income inequality (indicator). Doi: 10.1787/459aa7f1-en

6 Eurostat, EU-SILC Survey 2019 (ilc_peps01).

7 OECD, Income inequality (indicator). Doi: 10.1787/459aa7f1-en for Palma and Gini; Eurostat, EU-

cent, are at risk of poverty across the Union,[8] an exceedingly high number for developed country standards. Rates of persistent risk of poverty —households at risk of poverty for at least three years in a row— have increased 3.6 percentage points since 2008,[9] as have the number of working people who remain at risk of poverty despite being employed. These and other numbers suggest that the current approach to poverty eradication in the EU is too narrow to be deemed appropriate for the scale of the problem.Employment is important. It can provide stability, social connections, and a sense of purpose. But empirical data analysing the post-2008 crisis has shown that employment growth and poverty alleviation do not necessarily go hand-in-hand. Job growth has traditionally benefited households where one or more members are already in employment. Workless households benefited only marginally, and at-risk-of-poverty rates actually increased for households with low work intensity.[10] Problematically, Member States have often been recommended to focus on increasing overall employment rates, without also referring to wage adequacy, decent working conditions, or the improvement of social safety nets through minimum income schemes.People who experience poverty, whether year after year or newly as a result of the pandemic, want to work, but are often unable to. Labour incentives in the form of conditionalities and other limits to social assistance —whether in amounts or in timeframes— will not help those who cannot find work as a result of irreconcilable care responsibilities, limited work experience, low educational levels, or longstanding health problems – all of those for whom the risk of poverty is much higher. In fact, the steady decrease in unemployment rates in all Member States until very recently suggests an uneven distribution of the benefits arising from labour market improvements. In other words: poverty will not be ended with employment policies alone, but indeed with strong redistributive measures.

In 2010, as part of the "Europe 2020" strategy, the EU set the target of reducing the number of people at risk of poverty or social exclusion by 20 million by 2020 (or a reduction of 25 percent, from 18 percent of the total population to 13.5 percent).[11] Although some progress was achieved by some accounts,[12] the target was largely missed. In fact, the official picture provided tends to underestimate the reality. Using a measurement that the European statistics office (Eurostat) considers more reliable for monitoring developments over time —known as the "anchored" rate— the rate of people at risk of poverty was in fact 2.3 percentage points higher in 2019 than in 2008, with great variations among Member States.[13]Moreover, national statistics offices conduct household interviews and surveys and provide data to Eurostat as part of the EU-SILC Framework Regulation. But these sur-

SILC Survey, 2019 (ilc_di11), for S80/S20.

8 Eurostat, EU-SILC Survey 2019 (ilc_peps01).

9 Eurostat, 2018 (latest value), (ilc_li23).

10 B.Cantillon, The paradox of the social investment state: growth, employment and poverty in the Lisbon era, *Journal of European Social Policy*, 21(5):432–449, 2011, p.439; I.Marx *et al.*, Can higher employment levels bring down relative income poverty in the EU?, *Journal of European Social Policy*, 22(5):472-486, 2012.

11 COM(2010) 2020, of 3.3.2010.

12 COM(2021)102 final, 4.3.2021, The European Pillar of Social Rights Action Plan, p.7.

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

veys traditionally leave out both ends of the income distribution: surveys rarely reach homeless shelters, old-age nursing homes, and other types of accommodations for vulnerable populations, who are also excluded from registers based on income tax declarations, and they typically exclude the richest households as well. The result is a skewed picture where the median income threshold is set at a misguidedly low level, leaving out segments of low-income earners from the poverty count and therefore from official statistics.

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

The faces behind the poverty numbers are markedly gendered: women experience higher poverty rates than men (21.8 percent vs 20 percent),[14] and this gap only grows wider with old age (22 percent vs 17.6 percent)[15] as a result of inadequate pensions deriving from career interruptions to assume care responsibilities.[16] The gender gap in pensions ranges between 1.8 percent and 48.7 percent across Member States, but it is estimated at a staggering 37.2 percent on average.[17] Women are also disproportionately represented among lone-parent families (85 percent),[18] 40 percent of which have children and are at risk of poverty or social exclusion.[19]Women do more unpaid work, and as a result become dependent from other adults for their social protection. 29 percent of women, compared to 8.4 percent of men, worked part-time in 2019. Part-time work leads to lower benefits, including lower pensions. The gender pay gap remains at an unacceptable 14.1 percent.[20] The European Institute for Gender Equality calculates that the EU is still 60 years away from achieving gender equality, if it continues at the current pace.[21] While the adoption of the recent proposal for a directive on transparency in pay to combat unequal pay between women and men would be an important step in the right direction,[22] it is the EU's breadwinner model of a 40-year uninterrupted career that does not relate to women's experiences and should be updated.Other figures are equally a source of concern. 30.1 percent of people with disabilities in the EU were at risk of poverty or social exclusion, as compared to 20.9 percent for the general population: this gap has in fact widened over the years, as confirmed by the evaluation of the European Disability Strategy 2010-2020.[23] Homelessness is on the increase across Europe, with at least 700,000 people sleeping rough each

14 Eurostat, EU-SILC Survey 2019 (ilc_peps01).

15 Eurostat, EU-SILC Survey 2019 (ilc_peps01).

16 European Institute for Gender Equality, *Area A – Women and poverty: women at greater risk,* Mar.10, 2020, p.2, https://op.europa.eu/s/oIyD

17 European Commission, *Pension Adequacy Report*, Volume 1, 2018 (latest), https://op.europa.eu/s/oIDV

18 European Institute for Gender Equality, *Poverty, gender and lone parents in the EU,* Apr.27, 2017, p.1 https://op.europa.eu/s/oIDH

19 Eurostat, EU-SILC Survey 2019 (ilc_peps03).

20 Eurostat, (sdg_05_20).

21 EIGE, *Gender Equality Index 2020: Digitalisation and the future of work,* Dec.2020.

22 COM(2021) 93 final, of 4.3.2021.

23 SWD(2020) 289 final of 20.11.2020 (and corrigendum: SWD(2020) 289 final/2 of 27.11.2020).

night, although full and comparable data on the phenomenon are sorely lacking. Poverty remains prevalent among the Roma, who are the largest minority in the EU with an estimated 6-8 million members. FRA reports[24] that 38 percent of Roma and Travellers living in the six Western EU countries have difficulties in making ends meet (with one in four Roma or Traveller children living in a household with severe material deprivation), and 72 percent in the nine Eastern and Southern EU Member States. The gap is so considerable that even in the most affluent EU countries, Roma and Travellers live on average 10 years shorter that the general population.These numbers, shocking in themselves in a region experiencing steady economic growth until very recently, are even more worrying considering that Member States have only decreased their investments in areas critical for poverty reduction —social protection, health, and education— since 2009.[25] This decrease is particularly troubling in countries that have ratified the International Covenant on Economic, Social and Cultural Rights, which includes the obligation to progressively realize human rights and not take retrogressive measures that could hinder that progress. Although the Covenant does not establish a minimum yearly increase in investments, the EU should review country's budgets, not only to ensure macroeconomic policy convergence, but importantly to ensure no unjustified decreases in social investments are made in the name of deficit reduction.This points to a broader problem: the weak status of social rights in the EU's constitutional framework. The EU Charter of Fundamental Rights, which plays an important role in introducing a fundamental rights culture within EU institutions, presents significant gaps in comparison, for instance, to the Council of Europe's European Social Charter. In areas such as the right to healthcare, to social assistance as a means to combat social exclusion, or the right to housing, the Charter of Fundamental Rights guarantees no enforceable entitlements.

While this limited approach may be explained by the fact that these areas are primarily regulated by the Member States,[26] the underlying premise is incorrect. Guaranteeing a right does not necessarily equate to having the power to take measures to implement it: it may imply, more modestly but at the same time importantly, that the Union commits to not restricting the ability of Member States, within their own sphere of competence, to adopt measures aiming at the realization of the right in question. In order to respect a social right, there is no need for the EU to have the power to take measures that fulfil the said right: all that is required is that it abstain from taking or supporting measures that might affect its implementation.

A more systematic reliance on internationally recognized social rights in EU law- and policy-making (beyond the reference to the Charter of Fundamental Rights alone) should be seen as an important component of an anti-poverty strategy, and it can be done without an explicit mandate in the European treaties.

24 Roma and Travellers Survey (FRA, 2019); and EU-MIDIS II (FRA, 2016).

25 Eurostat, General government expenditure by function, 2018 (tepsr_sp110); See also S.Spasova and T.Ward, *Social protection expenditure and its financing in Europe*, 2019, European Social Policy Network, https://op.europa.eu/s/oIHi

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A fairer social contract for post-COVID-19 Europe

Recent initiatives seek to improve the alignment of the EU regulatory and policy framework with the human rights obligations of the Member States, and if successful, could strengthen their ability to do more in the fight against poverty (A). The economic downturn resulting from the COVID-19 pandemic also forced upon the EU a fundamental revision of the broader macroeconomic policy framework under which it operates (B).

A. Alignment of the EU regulatory and policy framework with the human rights obligations of the Member States

a.The European Green Deal

The European Green Deal, the EU's new growth strategy designed to ensure a just and inclusive transition, makes explicit reference to both the 2030 Agenda for Sustainable Development and the European Pillar of Social Rights.[27] Complemented by the Just Transition Mechanism, the Green Deal must ensure not only that those in poverty and with low incomes are protected from the negative impacts of the transition, including that the poor do not pay for it, but that they equally benefit from this transition as well. [28] The Green Deal is not, however, an anti-poverty strategy. Indeed, while it refers extensively to the need to ensure a just transition, the only mention of poverty in the Green Deal is within the context of energy poverty. While energy poverty is a very real phenomenon affecting over an estimated 50 million households in the EU,[29] a greater focus on the most vulnerable workers in reskilling processes, decent jobs, and living wages, whether in the Deal or in the Just Transition Mechanism, would have been desirable. This would have ensured a fuller integration, in the Green Deal, of both the greening of the economy and the fight against poverty, two challenges that can only be met if addressed together.

The more fundamental weakness of the Green Deal is that, for all its ambition, it stops short of questioning the economic framework of the EU. Because that framework is not questioned, poverty reduction continues to depend on growth, and there is therefore a permanent tension between social and environmental objectives, including to achieve climate neutrality by 2050, since economic growth cannot be entirely decoupled from ecological impacts (including both resource use and waste or pollution).[30] The tension can only be addressed by refocusing efforts on the reduction of inequalities and on creating the conditions of an inclusive economy – one that truly ensures equal opportunities for all, especially in times of economic recession or stagnation.

b.European Pillar of Social Rights Action Plan and Social Scoreboard

The Action Plan of the European Pillar of Social Rights, released on 4 March 2021, is an important step for providing the Pillar with practical effectiveness. The Plan will be

27 COM(2019)640 final, 11.12.2019, p.3.

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

29 European Commission, EU Energy Poverty Observatory.

30 J.Hickel and G.Kallis, "Is Green Growth Possible?", *New Political Economy*, https://doi.org/10.1080/13563467.2019.1598964 (2019); European Environment Agency, Growth without Economic Growth, Sustainability Transitions (2020).

Europe's main tool for addressing poverty and social exclusion from now until 2030. Expectations were therefore particularly high and, as such, it was difficult not to disappoint.

Nevertheless, the Plan could have been strengthened if the national consultations had been more meaningful and systematic. While early plans for consultations with civil society and other stakeholders were disrupted by the pandemic in March 2020, information received during the visit described some national consultations as poorly planned, often opaque, and arguably organized so as to simply check the participation box. It is unclear whether the Action Plan integrates perspectives other than the institutional consensus that the Commission had already generated beforehand.

At the conclusion of his visit, the Special Rapporteur recommended that an EU-wide anti-poverty strategy be developed as the cornerstone of the Action Plan. He suggested that this strategy should include a target of 50 percent poverty reduction, including child poverty, and a pledge to eliminating homelessness by 2030. The Action Plan includes a headline indicator dedicated to poverty and social exclusion – a reduction of 15 million people. This is insufficiently ambitious: the EU has over 90 million people who are at risk of poverty or social exclusion, and the target set is widely below the pledge made in the Sustainable Development Goals implementing the 2030 Development Agenda. Moreover, the Member States can set their own national targets and poverty thresholds, which lead to disparities in progress across the EU. There are, moreover, no consequences for missing the target, and no accountability mechanisms are established.

The proposed revisions to the social scoreboard remain limited and lack clarity. It is unclear who will be involved in its revision, and the scoreboard itself remains ill-suited for monitoring progress on several fronts. Household surveys miss the reality of homelessness, and as a result estimates are at best optimistic, which puts into question the ability of the scoreboard to effectively monitor implementation of Principle 19 of the Pillar (housing assistance for the homeless). Moreover, references to the normative content of human rights are missing: the Action Plan for instance does not explicitly recognize the right to adequate housing and social protection as human rights, referring to these instead as commodities or services to be provided, rather than entitlements that people may claim.[31]

The European Pillar of Social Rights itself cannot be seen as a substitute for the recognition of social rights. While it draws its inspiration from a range of international human rights instruments, including the European Social Charter and ILO instruments, it is not a new catalogue of rights, and no accountability mechanisms are put in place. As stated by the Commission itself: "Given the legal nature of the Pillar, for these principles and rights [listed in the Pillar] to be legally enforceable, they first require dedicated measures or legislation to be adopted at the appropriate level."[32] The Pillar, including its Action Plan, remains for now a policy instrument: it provides useful guidance, but it does not create legal guarantees enforceable before courts or other independent bodies. More efforts should be made to strengthen the protection of social rights as enforceable entitlements within the EU legal order.

31 *See* B.Van Hout, "Aligning the social pillar with human rights," *Social Europe*, Mar.2, 2021.

32 SWD(2018)67 final, 13.3.2018, p.4.

c.The debate on adequate minimum income

Minimum income schemes across the EU are woefully inadequate in amounts, with almost all of them being ineffective at lifting people out of poverty. They also vary widely among Member States. The Council of the EU itself deplored the high discrepancies on their adequacy and coverage, as well as on beneficiaries' access to enabling services, and requested that the Commission make proposals to "effectively support and complement the policies of Member States on national minimum income protection."[33] Providing support to families is also consistent with the pledge made in Principle 14 of the Pillar, on minimum income. Yet, regrettably, the Action Plan relegates action on minimum income to a Council recommendation, instead of the needed framework directive as advocated for by the Special Rapporteur, the European Parliament, national governments including Germany and Portugal, and numerous civil society organizations.

A framework directive on minimum income schemes in the EU[34] would establish a set of common human rights principles referring to the adequacy, universal unlimited access and coverage (including coverage of undocumented migrants,[35] and of youth[36]), and enabling character of minimum income schemes. Relying on a human rights framework could help, since the criteria following from the International Covenant on Economic, Social and Cultural Rights,[37] the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), and ILO Recommendation (No. 202) on Social Protection Floors, could be taken as minimum requirements.

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

33 Council Conclusions on Strengthening Minimum Income Protection to Combat Poverty and Social Exclusion in the COVID-19 Pandemic and Beyond, Oct.9, 2020, para.22.

34 Based on a combination of articles 153(1)(c) (social security and social protection for workers), 153(1)(h) (integration of people excluded from the labour market) and 175 (strengthening of economic, social and territorial cohesion) TFEU.

35 Committee on Economic, Social and Cultural Rights, *Statement on the Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights* (E/C.12/2017/1, 13 March 2017); Committee on Economic, Social and Cultural Rights, *General Comment No. 19 (2008): The right to social security* (E/C.12/GC/19), para.37.

36 Certain minimum income schemes do not extend to those between 18-25, an especially shocking discrimination since this category is overrepresented among individuals who are unemployed or in precarious employment.

37 Committee on Economic, Social and Cultural Rights, General comment No. 19 (2008): The right to social security (art. 9*)* (E/C.12/GC/19).

d.The Child Guarantee

Principle 11 of the Pillar states that “Children have the right to affordable early childhood education and care of good quality. Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.” On 24 March 2021, the European Commission proposed the adoption of a Recommendation of the Council of the EU for a European Child Guarantee,[38] a long-standing request of the European Parliament.[39]

As noted above, almost one in four children in Europe (22.2 percent) are at risk of poverty or social exclusion, with lifelong consequences for the child concerned; only 16 percent of all children under 3 are in formal childcare;[40] and in more than one third of EU Member States, low-income families find early childhood education or care to be unaffordable. Building on the 2013 Commission Recommendation on Investing in Children (2013/112/EU), the Commission therefore proposes a European Child Guarantee that would ensure that each child in the EU has effective and free access to early childhood education and care, education (including school-based activities), a healthy meal each school day and healthcare; and effective access to healthy nutrition and adequate housing. The EU Member States should be supported in that regard by the European Social Fund Plus (ESF+),[41] by the European Regional Development Fund, by the above-mentioned Resilience and Recovery Facility and, for school meals programs, by the EU milk, fruits and vegetable scheme.

The Special Rapporteur commends the Commission for this important proposal. It is particularly encouraging that Member States are expected to involve relevant stakeholders both in the preparation, implementation, monitoring and evaluation of the national action plan and in identifying children in need and barriers they face in accessing and taking-up the services covered by the Recommendation, since high rates of non-take-up are a major barrier, in the EU as elsewhere, to the effective enjoyment of social rights, and only effective participation of people in poverty in the evaluation of policies can help identify obstacles.[42]

The proposed Child Guarantee Recommendation refers to the need for Member States to adopt “labour market integration measures for parents or guardians and income support to families and households, so that financial barriers do not prevent children from accessing quality services.” Consistent with the first pillar of the 2013 Recommendation on access to adequate resources and as reiterated by the Fundamental Rights Agency in its 2018 study on combating child poverty,[43] support to children cannot be dissociated from

38 COM(2021) 137 final, of 24.3.2021.

39 European Parliament resolution of 24 November 2015 on reducing inequalities with a special focus on child poverty, para.46.

40 Eurostat, EU-SILC Survey 2019 (ilc_peps01), (ilc_caindformal)

41 For the 2021-2027 financing period, Member States with a rate of children at risk of poverty or social exclusion higher than the EU average will have to earmark 5 percent of the ESF+ for combatting child poverty or social exclusion; the other Member States will be required to earmark an appropriate amount.

42 Access to social benefits: Reducing non-take-up (Eurofound, 2015) (noting that “people who have been non-claimants can provide important information on how to make application procedures more accessible”)

43 Fundamental Rights Agency, Combating child poverty: an issue of fundamental rights (2018), section 3.1.

support to parents' access to employment and to a decent standard of living: as noted by the Eurocities network, "[t]o break the vicious cycle of the inheritance of poverty, it is not enough to focus on children in isolation from their parents; the family as a whole must be considered ... Improving the situation of children depends on improving the situation of their family, whether by getting them out of debt, helping parents get a good job with fair pay, or by heating or renovating their homes." [44]

The Special Rapporteur notes that adopting a rights-based approach will be key to ensure effective access to the areas covered by the Child Guarantee, since tackling discrimination and stigmatization of children in need[45] and ensuring that the benefits are defined as entitlements individuals may claim before independent bodies are both essential to reduce non-take-up. In addition, any credible national action plan in this area should include measures to ensure that families facing poverty are protected from institutional abuse. Since children living in poverty are particularly at risk of being separated from their families,[46] Member States should be reminded explicitly that, as emphasized by the Committee on the Rights of the Child, "economic reasons cannot be a justification for child removal."[47]

B. Revision of the EU's macroeconomic framework: guaranteeing a rights-based recovery

Following the outbreak of the pandemic on the European continent in March 2020, EU institutions have acted with remarkable swiftness, placing public health considerations above economic orthodoxy. The rules on State aid were relaxed, in order to allow Member States to support companies facing financial difficulties following the initial lockdowns.[48] The general escape clause of the Stability and Growth Pact was activated in March 2020, to allow countries to respond to the pandemic, and the Commission confirmed in May 2020 that it would not place any country under the excessive deficit procedure, despite the high levels of public deficit in almost all EU Member States.

The European Stability Mechanism established a new facility, the Pandemic Crisis Support, to allow Member States to respond to the pandemic emergency for up to 2 percent of their GDP. The European Central Bank resorted to unconventional measures, known as quantitative easing, as it did in 2014 with the financial asset repurchase programme (APP), this time in the form of the Pandemic Emergency Purchase Programme (PEPP), for a total amount of €1,850 billion. Finally, and most significantly, the European Commission proposed an ambitious recovery plan for the EU worth €750 billion, NextGenerationEU, complementing the EU multiannual financial framework 2021-2027.

44 Eurocities, *Fighting child poverty in European cities: Lessons from cities for the EU Child Guarantee*, Dec.2020, p.38.

45 See para.6, (f), of the draft Recommendation.

46 Council of Europe, Parliamentary Assembly, Report, Doc.13730, Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States, 13 March 2015, p.10.

47 Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1) (CRC/C/GC/14).

48 Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak C/2020/1863, OJ C 91I, 20.3.2020, p.1 (amended on a number of occasions since).

a.Recovery and Resilience Facility

The centrepiece of NextGenerationEU is the new Recovery and Resilience Facility, accounting for €672.5 billion in loans and grants. In order to receive support from these funds, Member States should submit national recovery and resilience plans by 30 April 2021. Both the fight against poverty and the inclusion of disadvantaged groups are mentioned in the Preamble of the new Facility Regulation, and three of the six pillars that national plans should address are social in nature, including social and territorial cohesion; health, and economic, social and institutional resilience; and education and skills.[49]

The Special Rapporteur evaluates whether this Facility is fit for the purpose of combatting poverty.

First, national plans should "contribute to effectively address" country-specific recommendations (CSRs) issued to Member States under the European Semester, insofar as such recommendations are "relevant."[50] In practice, the focus will be on recommendations issued in 2019 and 2020. National governments and civil society organizations consulted during the Special Rapporteur's visit expressed concerns about this requirement. Some saw it as a potential limitation to their ability to deliver on social objectives, due to what they perceive as the focus of recommendations on mid-term fiscal sustainability. Indeed, it is concerning that CSRs have routinely in the past included prescriptions that are retrogressive measures prohibited by the prescriptions of International Covenant on Economic, Social and Cultural Rights, which all Member States have signed. Although the most recent CSRs allow greater flexibility to Member States, in the future, they could be designed to contribute to the fight against poverty and to the reduction of inequalities, beyond training and employment.

Specifically, CSRs could recommend:

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

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

(c) increasing levels of housing allowances to combat homelessness;

(d) minimum wage legislation guaranteeing a living wage, to combat the phenomenon of in-work poverty;

(e) greater progressivity in taxation.

Thus conceived, CSRs, and the European Semester generally, can become important tools in the fight against poverty, and the recovery supported by the new facility can effectively contribute to the realization of Sustainable Development Goal 1. This would ensure better alignment between the EU's economic sustainability and the human rights obligations of its Member States. It would help of course if European Semester country Officers

49 Preamble, para.14, Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021.

50 Art.18.4.b), Regulation (EU) 2021/241.

included officers with a background in human rights and social policy, and not just economics as is currently largely the case.

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

Thirdly, the participatory dimension of the preparation of the national plans remains deficient. Although regional and local authorities "should be appropriately consulted and involved" in the design of national plans,[51] the Special Rapporteur has found that this has not been the case so far: while social partners are generally consulted, participation of civil society has been highly uneven, and people with experience of poverty has been minimal or non-existent. Additionally, Eurocities surveyed 47 cities across 18 Member States and over 70 percent of them deemed the consultation processes insufficient, with only 12 percent able to contribute to the drafting of national plans.[52] In the long term, only a more fundamental rebalancing of the economic and social components of the EU's socio-economic governance will ensure commitments to ending poverty and reducing inequalities in the Union do not end up hollow.

b.Revising the Stability and Growth Pact

With the application of the general escape clause now preliminarily extended until 2023,[53] the revision of the SGP is now at the top of the political agenda. Social investments (in early childhood education and care, in education and training, but also in health and active labour market policy spending) should be seen not as costs, but instead as investments that (just like those in research and development) ensure long-term productivity gains. As noted by the European Fiscal Board, this would create fiscal space for countries concerned with improving their competitiveness in the 21st century knowledge economy.[54] It would also alleviate any tension between the fulfilment of social rights, such as the rights to health, education, or to an adequate standard of living, and the objective of stabilizing the level of public debt below 60 percent of GDP.

Beyond the protection of the productive components of social spending as listed above, there is a strong human rights rationale for allowing a deductible net social investment – for instance, up to 2 percent of GDP.[55] This deductible would apply, not only to

51 Preamble, para.34, Regulation (EU) 2021/241.

52 Eurocities, *Briefing note on the involvement of cities in the preparation of National Recovery Plans and Operational Programmes 2021-2027,* Jan.19, 2021.

53 COM(2021) 105 final, 3.3.2021, p.8.

54 European Fiscal Board, Assessment of the fiscal stance appropriate for the euro area, 2020, pp.17-32.

55 *See* A.Hemerijck, *Making Social Investment Happen in the Eurozone*, RSCAS Policy Paper 2019/08.

"productive" sectors of public expenditure strictly speaking, but more widely to all areas considered under the International Covenant on Economic, Social and Cultural Rights, namely the protection of labour rights, social security, childcare and life-long education, and investments in ensuring an adequate standard of living, housing, and healthcare.

c.State aid to companies

The relaxation of State aid rules was important to allow Member States to support companies that otherwise, as a result of the crisis created by the pandemic, might have been forced into bankruptcy. This relaxation, however, primarily benefited those Member States, such as Germany, that could best afford to help their economic actors, thereby increasing the risk of imbalances across the EU.

In addition, while the Commission recommended that States make financial support conditional on the absence of links to jurisdictions featuring on the EU list of non-cooperative jurisdictions,[56] this may still be insufficient. Quite apart from the ability of the Commission to effectively follow up on this recommendation, this list has been challenged due to its flawed methodology. For instance, zero-tax rates jurisdictions or jurisdictions that impose only minimal taxes, such as Bahamas, Bermuda, British Virgin Islands, Jersey, Guernsey, and Isle of Man, are not black-listed. The reason behind this is that such zero-tax rates are treated merely as a 'risk indicator' for the purposes of the EU blacklist. Moreover, EU jurisdictions are not blacklisted either, despite the fact that, as noted by Oxfam, five EU countries (Cyprus, Ireland, Luxembourg, Malta, and the Netherlands) would fail the EU's own criterion on fair taxation and would be blacklisted were it not for this automatic exemption.[57]

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

Constraints Member States face in combating poverty

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

a. Competing through wages and social contributions

Member States' decisions when setting wages and levels of social contributions are still driven by the perception that increases in wages or social contributions could negatively affect their external cost competitiveness and reduce their attractiveness to potential investors in the most labour-intensive segments of the industry, leading the misguided

56 C(2020)4885 final, 14.7.2020.
57 Oxfam, "EU tax haven blacklist review," Feb.2020.

view that better wages and protections could result in higher unemployment rates. Yet there is little to no evidence of a negative impact of minimum wages on unemployment.[58] Instead, the ILO has shown that minimum wages can in fact contribute to higher labour productivity, both at the enterprise level and across the economy, which can in turn strengthen competitiveness.[59] Despite this, Member States continue to unhelpfully compete by lowering workers' wages and protections.

Some action has been taken to combat the worst instances of social dumping, including the revision of the Posted Workers Directive in 2018, the establishment of the European Labour Authority, and the proposal for a directive on adequate minimum wages in the EU.[60]

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

The difference in average wages between countries including the Netherlands, Luxembourg, or Germany, and Bulgaria, Slovakia, or Latvia is on the order of €20,000 per year.[61] In-work poverty and part-time and precarious work have increased in the majority of Member States, including 20.5 million workers living at risk of poverty only in 2017.[62] The density of trade unions has decreased in all Member States since data is available, with the lowest percentages of employees with the right to bargain present, perhaps unsurprisingly, in Slovakia and Latvia.[63]

As the governments of Belgium, the Netherlands, and Austria expressed in their contributions to the consultation on the Action Plan of the European Pillar of Social Rights, "social convergence is essential to combat social dumping."[64] The EU's ability to address this phenomenon remains limited, however.

The main tool that could help keep coordinated track of the reality of social dumping across Member States, the social scoreboard, is not fully equipped to meet these challenges. It does not monitor progress unionization rates, collective bargaining, or coverage by collective agreements. The proposed changes to the scoreboard as part of the Action Plan of the European Pillar of Social Rights do not plan to address those deficiencies ei-

58 P.Heimberger, *Does employment protection affect unemployment? A meta-analysis*, Oxford Economic Papers, gpaa037, Nov.28, 2020 https://doi.org/10.1093/oep/gpaa037

59 ILO, Minimum Wage Policy Guide, p.75, avahttps://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_508566.pdf

60 COM(2020)682 final, 28.10.2020 (art. 5(1)).

61 Eurostat, 2020 average net earnings of a full-time single worker without children earning an average wage, in purchasing power standard (earn_nt_netft).

62 This number, moreover, is likely an underestimation because the EU Labour Force Survey indicator for employment only covers those aged between 20-64 and those in formal and regular work. R.Peña-Casas *et al.*, *In-work poverty in Europe: A Study of national policies*, European Social Policy Network, European Commission, 2019, p.21.

63 OECD.Stat, Trade Unions and Collective Bargaining, values for 2017 and 2018 respectively.

64 SWD(2021)46 final, 4.3.2021, p.11

ther.[65] Monitoring progress against social dumping through standardized measurements should be seen as a priority.

More systematic references to international human rights standards could significantly help improve the process of upward social convergence. For instance, consensus on the proposal for a directive on adequate minimum wages in the EU could be facilitated by a reference to the criteria derived from article 7 of the International Covenant on Economic, Social and Cultural Rights, as clarified by the Committee on Economic, Social and Cultural Rights.[66]

Similarly, encouraging Member States to better align their international commitments would go a long way towards creating a more level playing field and combating the worst instances of social dumping. For example, only 7 EU Member States have ratified ILO Convention (No. 189) on Decent Work for Domestic Workers, and none have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The EU should prioritize joining these Conventions to guarantee decent working conditions in the region.

b. Competing through taxation

Similarly, tax competition has deprived Member States from public revenues necessary to provide public services and to finance social protection: over the past 20 years, statutory corporate income tax rates have declined by an average of 11 percent, and competition among States to attract particularly mobile profits has been magnified by arrangements such as patent boxes, tax rulings, and "special purpose entity" statuses.[67]

In 2015, the losses in public revenue for States were estimated at around €50-70 billion per year, merely as a result of corporate tax avoidance (i.e., profit shifting by companies within the EU); once other tax regime issues are included, such as special tax arrangements, inefficiencies in collection, and other practices, the losses amount to around €160-190 billion – an estimate provided in a study prepared for the European Parliament which the authors themselves consider conservative.[68]

All Member States end up losing out from such competition: they now face the choice between lowering the levels of public services provided in areas such as healthcare or education, or shifting the tax service on less mobile tax bases, such as labour or consumption.[69] Given the strong interdependence of the EU Member States in the internal market, the requirement of unanimity in the area of taxation[70] does not protect national sovereignty. It does rather the opposite: it impedes their ability to act collectively and thus more effectively, and it operates to the detriment of workers and consumers, as well as of

65 SWD(2021)46 final, 4.3.2021, p.119.

66 General Comment No. 23 (2016) on the right to just and favourable conditions of work (E/C.12/GC/23), paras.18-24.

67 European Commission, *Tax policies in the European Union 2020 Survey*, 2020, p.46.

68 R.Dover *et al., Bringing transparency, coordination and convergence to corporate tax policies in the European Union*, European Parliamentary Research Service, (Sept.2015).

69 Commission Communication, Towards a more efficient and democratic decision making in EU tax policy, COM(2019)8 final, 8.1.2019, p.7.

70 Arts.113, 115, 192(2) and 194(3) TFEU.

local businesses who cannot, as multinational corporations do, rely on aggressive tax avoidance strategies through base erosion and profit-shifting.

It also means that taxes such as the financial transactions tax or the digital services tax, which (according to pre-Brexit estimates) could raise respectively €57 and 5 billion per year, cannot be adopted at EU level, and thus still depends on Member States taking action either individually or (as considered since 2013 for the financial transactions tax) through the enhanced cooperation procedure. It is hoped that advances will be made in this regard as the EU will have to mobilize resources to pay back its debts in the period 2028-2058, by increasing its own resources.

The EU has not remained inactive in this area, including through various instruments adopted to address the most serious abuses related to tax avoidance,[71] and aggressive tax planning has occasionally been addressed in country-specific recommendations under the European Semester.

The unanimity requirement blocks more significant change, however. Even the proposals of the European Commission on the common consolidated tax base (CCCTB)[72] remain stuck within the Council, despite the advantages of allowing consolidated taxable profits across the EU being shared between the Member States concerned according to an objective apportionment formula, and although this approach, while useful to combat aggressive tax avoidance strategies by large companies, would still leave it to each State to define its own tax rates.

Some progress on this front has been made recently. On 25 February 2021, the Council of the EU (Competitiveness Council (COMPET)) agreed to move forward with a proposal initially tabled in 2016, towards a European public Country-by-Country Reporting directive (CbCR**)**. The proposed directive would require multinationals with total consolidated revenue of more than €750 million in each of the last two consecutive financial years**,** to publicly disclose in a specific report the profit/loss before tax and corporate tax income accrued, the income tax they pay in each Member State, as well as the nature of their activities and the number of employees**.** While final agreement still must be found with the other institutions, the adoption of this text would represent a welcome improvement, since increased transparency may prevent the most abusive forms of profit-shifting within the EU.

The more significant problem however is that, leaving aside the room it provides for aggressive tax planning, the principle according to which EU Member States may seek to improve the competitiveness of the companies they host by lowering corporate tax rates remains unchallenged. While the 1997 Code of Conduct for business transactions and State aid rules may serve to address the most harmful forms of tax competition and level the playing field, these mechanisms have failed so far to stem the gradual erosion of the capacity for States to tax corporate profits, particularly as a result of digitalization and the re-

71 Anti-Tax Avoidance Directive Council Directive (EU) 2016/1164, OJ L 193, 19.7.2016, p.1; Council Directive (EU) 2017/952, OJ L 144, 7.6.2017, p.1; Council Directive (EU) 2018/822, OJ L 139, 5.6.2018, p.1.

72 COM(2016)685 final, 25.10.2016 (on a common corporate tax base); COM(2016)683 final, 25.10.2016 (on consolidation).

liance on letter-box companies or “special-purpose entities.” This form of unhealthy competition between States has until now been compensated in part by a broadening of the tax base, but there is little room left for expanding the tax base further.

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

c. Macroeconomic convergence

Macro-economic policy convergence rules in the EU, and in the eurozone in particular, still represent an obstacle to the fight against poverty at Member State level.

The Stability and Growth Pact has prohibited Member States that have joined the single currency to rely on demand-driven growth. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) furthered strengthened the constraints: the Member States parties to that treaty committed in principle to adopt balanced budgets (with a maximum deviation of 0.5 percent) and to reduce by 1/20 each year the public debt exceeding the 60 percent of GDP limit; and to include such disciplines in rules of a constitutional rank in the domestic legal order.

The new social and economic governance established in the EU following the public debt crisis of 2009-2012 also at first entirely ignored the impacts of fiscal and budgetary measures on social rights: social rights initially played a role neither in the European Semester,[73] nor in the implementation of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG),[74] nor in the “enhanced surveillance” procedure for States threatened by serious economic and budgetary difficulties,[75] nor in the workings of the European Stability Mechanism, established in 2012 to ensure financial stability within the EU.[76]

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

d. Rights-based social impact assessments

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

73 Article 2a(2) of Council Regulation (EC) No.1466/97, as amended by Regulation (EU) 1175/2011, OJ L 306, 23.11.2011, p.12.

74 Under chapter II of the TSCG, in force since 2013, 22 States (the 19 euro-area States plus Bulgaria, Denmark, and Romania) commit to seek to maintain balanced public budgets, or even to strive to having a surplus, and to internalize the balanced-budget rule and the automatic correction mechanism in rules of constitutional rank in the domestic legal order (art.3(2)).

75 Regulation (EU) No. 472/2013, O.J. L 140, 27 May 2013, p.1.

76 The ESM Treaty was signed on 2 March 2012 and entered into force on 1 May 2013.

But major deficiencies remain. First, neither country-specific recommendations adopted as part of the European Semester process, nor the Memoranda of Understanding agreed with countries supported by the European Stability Mechanism, are accompanied by proper human rights impact assessments. The Commission pledged in 2014[77] to pay greater attention to "the social fairness of new macroeconomic adjustment programmes to ensure that the adjustment is spread equitably and to protect the most vulnerable in society."[78] Yet its own guidance still suggests that, in the field of economic governance — which includes "recommendations, opinions and adjustment programmes"— impact assessments are not *a priori* necessary, since (it is said) such "specific processes are supported by country specific analyses."[79]

Second, regarding the European Stability Mechanism, the recent reform of the ESM Treaty does not include a reference to social considerations, let alone to social rights. The Court of Justice of the European Union considers that the requirement to "promote the application" of the Charter[80] may imply a duty on the Commission to proactively take into account fundamental rights in the design of memoranda of understanding with States provided with financial assistance.[81] It also takes into account, when assessing measures adopted to remove excessive budget deficits, whether the sacrifices imposed on the population are equally shared.[82] Yet, neither the ESM, nor the Commission itself, have adopted the tools that would allow them to effectively discharge the duties to ensure that reforms will further, not undermine, social rights, and contribute to the reduction of inequalities.

This neglect is surprising, not only considering the pledges referred to above, but also because the Guiding Principles on human rights impact assessments of economic reforms[83] provide a useful starting point to prepare such assessments. The Special Rapporteur welcomes the willingness expressed by his interlocutors to examine whether social impact assessments guided by human rights can be systematized in the future.

Main recommendations

The Special Rapporteur makes the following main recommendations:

- Proposals on the issue of minimum wage and for the Child Guarantee are pending. The adoption of these proposals will be important contributions to the reduction of poverty in the EU. It would be consistent with the pledges made in the Child Guarantee, including to increase "income support to families and households, so that financial barriers do not prevent children from accessing quality services," to also harmonize minimum income schemes across the EU, by the presentation a legally binding instrument. Progress in these areas would be facilitated by more systematic

77 J.-C.Juncker, A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, Political Guidelines for the next European Commission, Jul.15, 2014.

78 COM(2015)600 final, 21.10.2015, p.5; COM(2015)610 final, 27.10.2015.

79 See Better Regulation Toolbox, Tool #5: When is an IA necessary?, http://ec.europa.eu/smart-regulation/guidelines/tool_5_en.htm

80 Art.51(1), Charter of Fundamental Rights.

81 *Ledra Advertising v Commission and ECB,* C-8/15 P to C-10/15 P, judgment of 21 September 2016, paras.59 and 67.

82 *Escribano Vindel v Ministerio de Justicia*, C-49/18, judgment of 7 February 2019, para.67.

83 A/HRC/40/57.

references to the norms and standards of international human rights law, including both United Nations and Council of Europe instruments binding in the EU Member States, which provide adequate starting points for the setting of minimum requirements at EU level.

- The current crisis provides a unique opportunity to rethink socio-economic governance in the EU. The revision of the Stability and Growth Pact should ensure that social investment will not be discouraged by budgetary disciplines. Efforts to strengthen the social dimension of the European Semester process should be pursued: country-specific recommendations can support upwards social convergence in the EU, by demanding from Member States that they strengthen public services, increase social investment, increase efforts to combat homelessness, and ensure greater progressivity in taxation. Indeed, thus conceived —as a tool to combat unhealthy social and fiscal competition and to complement macroeconomic policy convergence with a social dimension— the European Semester can become a powerful tool to encourage the EU Member States to do more in the fight against poverty.

- Finally, national recovery and resilience plans presented under the new Recovery and Resilience Facility should effectively contribute to social cohesion, and the Member States should be expected to follow a rigorous methodology to ensure that this is indeed the case. At a minimum, measures adopted at the EU level should not impede Member States' efforts to combat poverty and reduce inequalities. An essential requirement in this regard is that CSRs adopted as part of the European Semester process and the Memoranda of Understanding agreed with countries supported by the European Stability Mechanism are accompanied by proper human rights impact assessments.