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## Fighting social exclusion under the Europe 2020 strategy: Which legal nature for social inclusion recommendations? ☆

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### ABSTRACT

In this paper, we take a closer look at the promotion of social inclusion in the framework of the Europe 2020 strategy, in particular the legal consequences of the incorporation of the social inclusion guidelines under the European Semester. Since the employment guidelines under the Europe 2020 strategy are now connected in a structural way to the economic guidelines, we first look at the monitoring procedures that accompany the implementation of these economic guidelines. Furthermore, we test the potential legal consequences of the integrated approach by unravelling (the formulation of) the social inclusion-related Country Specific Recommendations, and look at to what extent they answer to the economic, employment or social inclusion objectives.

The first legal consequence relates to the question of whether and to what extent the harder sanctioning tools, which have been developed for controlling the EU's economic-oriented Country Specific Recommendations, can be similarly applied to the guidelines relating to social inclusion (such as the application of sanctions in cases when the recommendations are not followed by states). In our opinion, there is a spillover effect only in relation to social inclusion recommendations that have sufficient economic or budgetary relevance ('social inclusion recommendations of the negative kind', supporting economic or budgetary goals). In other words, social inclusion recommendations that support only social objectives (or only employment objectives) do not enjoy the stronger legal effects of the integrated monitoring approach.

From analysing the concrete Country Specific Recommendations, we demonstrate that the incorporation of social inclusion into the employment guidelines has two additional consequences. On the one hand, social inclusion recommendations are nowadays formulated mainly in terms of employment objectives. On the other hand, the link with social inclusion also has implications for recommendations in the field of employment and economy that should not be to the detriment of social inclusion

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## 1. Introduction

With the Europe 2020 strategy, the European fight against social exclusion was given fresh impetus. In contrast with the Lisbon strategy, the objective of promoting social inclusion has been closely tied up with the employment and economic monitoring policies. Concretely, ten integrated guidelines for implementing the Europe 2020 strategy have been adopted: six broad guidelines for the economic policies of the member states and the EU, and four guidelines for employment policies. The guideline on social inclusion is the last of the employment guidelines.<sup>2</sup>

In this contribution, we first assess whether and to what extent, this new approach of incorporating social inclusion into the economic and employment guidelines has legal consequences. In particular, we try to answer following research question: Can we consider the new social monitoring strategy developed within the Europe 2020 strategy as a step forward from the previous social OMC, as applied in the Lisbon Strategy, when it comes to (legal) enforceability? In other words, we address the question of whether the decisions and recommendations that derive from the social inclusion guideline enjoy stronger enforceability than those of the past, when social inclusion was an integral part of the (non-legal) policy coordination method as established by the Social Policy Chapter in the TFEU (better known under the acronym OMC – Open Method of Co-ordination). In order to do so, we apply the new EU socio-economic governance framework to a sample of Country Specific Recommendations enacted by the Council during the last four years within the economic monitoring process of the EU. The sample is chosen on the basis of their relevance for social inclusion.

In that way, this contribution builds upon previous research done by the authors (Schoukens, 2013) and (Schoukens and Beke Smets, 2014), but also on other (previous) research, such as Armstrong (2010), Bekker (2014), Cantillon, Verschueren, and Ploscar (2012) in which, respectively, an overview has been provided of the current social inclusion recommendations and an analysis of to what extent these recommendations changed in nature under the Europe 2020 strategy (2010–2020) compared to the previous Lisbon strategy (2000–2010). In a similar way to the previous publication (Schoukens and Beke Smets, 2014), we categorise the Country Specific (social inclusion) Recommendations, taking into account the specific objectives they pursue. By addressing the legal consequences of the recent incorporation of social inclusion into the employment economic monitoring guidelines, this contribution differs from other papers on this topic which mainly focus on the governance structures and the institutional arrangements underlying the EU socio-economic monitoring of the Europe 2020 strategy.<sup>3</sup>

This paper will not provide an overview of the Memoranda of Understanding and the financial assistance measures. Although here as well, we see that the financial assistance measures and the conditions attached to receiving loans entailed several drastic social policy reforms, they are not part of the European Semester. Furthermore, these financial assistance measures have already received large scholarly attention (Kilpatrick and De Witte, 2014; Schoukens, De Becker and Beke Smets, 2014).

Before looking at a sample of the Country Specific Recommendations, we first provide an overview of the present competences in the field of social inclusion<sup>4</sup> that are to be found within the Chapter on Social Policy in the TFEU<sup>5</sup>. This overview will then be followed by a legal assessment of the new approach where social inclusion is embedded in the employment and economic monitoring processes of the European Union (Article 121, resp. 148 TFEU). In doing so, we take the relevant treaty provisions into account, as well as secondary legislation and regulatory documents and the relevant literature. For the sample of the Country Specific Recommendations, we looked at the recommendations of 2015, 2014, 2013 and 2012, and the EU documents relevant in this regard.<sup>6</sup>

## 2. Promoting social inclusion (within the EU Social Policy Chapter)

The main competences in the promotion of social inclusion are to be found in Title X TFEU (Social Policy Chapter). This title groups together the competences of the EU in the field of social policy. In it, reference is made to social inclusion in two ways: as a (social) objective and as a ground for competence.

As to the objectives, Article 151 TFEU explicitly refers to the combatting of social exclusion. As European objectives provide the framework within which the concrete competences of the EU can be applied, they are crucial for the development of European (legal) measures.<sup>7</sup> The EU can thus only make use of its powers if it positions its actions in terms of the

<sup>2</sup> Since 2010 the following integrated employment guidelines have been approved by the council: (1) increasing labour market participation and reducing structural unemployment, (1) developing a skilled workforce responding to labour market needs, (2) promoting job quality and lifelong learning, (3) improving the performance of education and training systems at all levels and increasing participation in tertiary education and (4) promoting social inclusion and combatting poverty. For more information about the integrated guidelines see: [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/eu2020/em0028\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/eu2020/em0028_en.htm):

<sup>3</sup> See for example the work of J. Zeitlin and B. Vanhercke (2014).

<sup>4</sup> In this paper, we refer systematically to the promotion of social inclusion in line with the integrated EU guidelines. Occasionally, reference will be made to the combatting of (social) exclusion. For the purpose of this contribution, both concepts are interchangeable and no legal value has been attributed to the distinction.

<sup>5</sup> Treaty on the functioning of the European Union.

<sup>6</sup> The Country Specific recommendations are available online, see the European Commission website.

<sup>7</sup> Art. 5 (1) TEU.

realisation of a European objective.<sup>8</sup> In this way, Article 151 TFEU sets out several social objectives – including the promotion of social inclusion – on their own merits, without referring to economic objectives, e.g. for the implementation of the internal market.<sup>9</sup>

Article 153 TFEU specifies a number of matters on which European institutions (in principle on the basis of a joint action by the Council and the European Parliament) can take action. Among them we find a reference to the combatting of social exclusion, allowing the EU institutions to take non-legislative measures in this field. Moreover, one should not forget that the EU only has a supportive competence in the area of social policy; member states still maintain the (primary) competence to organise their own social (security) systems.

As the promotion of social inclusion is not listed in the fields for which the EU can take legal measures<sup>10</sup>, the EU can only achieve the objectives of social inclusion through non-legal cooperation.<sup>11</sup> Furthermore, this technique of policy coordination may not lead to any harmonisation of the laws and the regulations of the member states.<sup>12</sup> Finally, Article 153 TFEU also restricts the scope of envisaged action with regard to the effect social inclusion measures may have. Measures taken on the basis of Article 153 TFEU, whether of a legal or co-operative nature, must not affect the right of member states to define the fundamental principles of their own social security system and must not significantly affect the financial equilibrium thereof.<sup>13</sup> The mandate to promote social inclusion has thus been kept rather restricted within the Social Policy Chapter: no legal action can be taken, and the action that is taken on the basis of Article 153 TFEU must not significantly affect the national social security systems.<sup>14</sup>

Within the ambit of the Lisbon Strategy, launched by the European Council in March 2010, the method of non-legal cooperation to promote social inclusion was made concrete through the open method of coordination (OMC; see also below). The OMC on social inclusion led to a vast machinery relating to objective setting and the measurement of poverty and social exclusion in the member states, as well as a close monitoring of national policies. Concrete guidelines were fixed, combined with specific timetables for achieving goals set in the short, medium and long term for the member states. Appropriate quantitative and qualitative indicators, as well as benchmarks – tailored to the needs of the different member states and sectors – were developed as a means of comparing best practices.<sup>15</sup> Furthermore, the European guidelines were translated into national and regional policies by setting specific targets and measures, accounting for national and regional differences. Finally, the whole procedure was to be governed by a periodic monitoring, involving systematic evaluation and peer review. All these concrete elements contributed to an envisaged mutual learning process in relation to the promotion of social inclusion.<sup>16</sup>

Whether the OMC on social inclusion is to be considered a success, apart from this outcome, will not be addressed in this paper. Others have commented extensively on the pros and cons of the applied policy monitoring process.<sup>17</sup> Probably the most valuable outcome of this process, apart from the fact that it guaranteed a high level debate on combatting poverty in Europe, has been the development of concrete tools (indicators) which provide a common standard for the measurement of poverty and social exclusion across the member states of the EU. At least one shortcoming, namely that national poverty figures were not comparable, as the underlying methodology diverged (too much) between states, was countered.

Whatever the outcome may have been, the fact is that in 2010, the EU launched a new ten-year programme labelled ‘the Europe 2020 strategy’ on the basis of the results of the Lisbon Strategy (EU Commission COM, 2010). As part of this strategy, the EU monitoring process was revived in a new setting in which the applied methodology of policy monitoring changed. The promotion of social inclusion has thus been integrated as a guideline within the broader economic and employment monitoring process. By doing so, the field of action shifted from the Social Policy Chapter to the Economic and Employment Chapters of the TFEU, giving some leeway for more enforceable action. Before we go into an analysis of this new approach, we first have to explain the employment and economic monitoring process as conducted by the EU, its legal basis, and the mandate to apply and enforce the Country Specific Recommendations in the member states.

### 3. Promoting social inclusion as an employment guideline

The Lisbon Strategy was formally concluded in June 2010 with the adoption by the Council of the new Europe 2020 Strategy, in which the Council agreed to the European Commission’s proposal (March 2010) to launch a new strategy for jobs and growth (Council Recommendation, 11646/2010a). This new Strategy is based on enhanced socio-economic policy coordination and is organised to achieve three priorities that are expected to be mutually reinforcing: smart growth, sustainable growth and inclusive growth. The third priority is about fostering a high-employment economy delivering social

<sup>8</sup> Art. 5 (1) TEU. For more information about functional competences, see (Lenaerts and Van Nuffel, 2011, p. 106).

<sup>9</sup> See also Art. 3 (3) TEU for additional social objectives.

<sup>10</sup> Article 153, § 2, sub b TFEU.

<sup>11</sup> Article 153, § 2, sub a TFEU.

<sup>12</sup> Article 153, § 2, sub a TFEU.

<sup>13</sup> Article 153, § 4 TFEU.

<sup>14</sup> For a similar argument, see Verschuere (2012, p. 214).

<sup>15</sup> For an overview of the social inclusion indicators used in the past, see (Inclusion Indicators, 2008).

<sup>16</sup> For an overview, see Schoukens (2002) and for more extended accounts: Natali (2010) and Daly (2010).

<sup>17</sup> For an overview, see: Vanhercke (2011) and Armstrong, 2010).

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. In that regard, the EU has (as one of its objectives) to bring at least 20 million people out of poverty and social exclusion by 2020.<sup>18</sup>

The Council adopted 10 integrated guidelines to implement the Europe 2020 strategy: six broad guidelines for the economic policies ([Council Recommendation, 2010b/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. 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. No explicit reference in the guidelines whatsoever is made to the modernisation of social protection systems, although this was considered to be a crucial element in the development of inclusive growth under the previous Lisbon strategy.<sup>19</sup>

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). Consequently, the tenth guideline, which deals with social inclusion, is not based on Article 153 TFEU, as it has been integrated into the four employment guidelines which have their legal basis in the Employment Chapter of the Treaty (i.e. Article 148 TFEU). This guideline aims directly at promoting social inclusion and combatting poverty. It suggests that these goals can be reached by employment measures such as promoting labour market participation.

By including the social inclusion guideline in the employment guidelines under the Europe 2020 strategy, this guideline is no longer part of a separate social OMC, like under the Lisbon strategy. This is also demonstrated by the annex to the guidelines for the employment policies of the member states which states that:

“equally, to fight social exclusion, empower people and promote labour market participation, social protection systems, lifelong learning and active inclusion policies should be enhanced to create opportunities at different states of people’s lives and shield them from the risk of exclusion” (Annex to the Council Decision No. 2010/707/EEU, 2010).

Social inclusion is thus explicitly intertwined with the employment and economic guidelines, where under the original Lisbon strategy, the Social OMC was a separate policy coordination mechanism. We now briefly introduce the Employment Chapter of the TFEU, and follow this with an explanation of the integrated EU monitoring of economic and employment policies.

### 3.1. *Monitoring employment polices (employment chapter TFEU)*

Due to structural unemployment levels in Europe, employment has been high on the agenda of the EU for some time now. Nevertheless, Article 146 TFEU emphasises that employment policy is first and foremost a matter to be dealt with by member states. They should, however, co-operate according to the provisions of Article 148 TFEU:

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission and after consulting the European Parliament, shall each year draw up guidelines which the member states shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 121 (2) TFEU.<sup>20</sup>

The ‘guidelines’ to be adopted by the Council do not have any legally binding force. However, this does not mean that measures to promote cooperation between member states are either useless or superfluous. The procedure under Article 148 TFEU has been further developed with the Europe 2020 strategy and the European Semester. In that respect, the guidelines to be adopted by the Council are the Country Specific Recommendations under the European Semester (see further below).

Furthermore, Article 149 TFEU allows the Council to take incentive measures<sup>21</sup> in order to encourage co-operation between member states and to support their action in the field of employment. This should be done through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. Although these measures go beyond mere advice, the minimal role of the EU in correcting national policies is confirmed in this Article. The measures under the Employment Chapter may not lead to any kind of legal harmonisation whatsoever.

<sup>18</sup> Compare with the objective under the Lisbon strategy where reference was made to the eradication of poverty by 2010.

<sup>19</sup> See however, the annex regarding guidelines 10: “Social protection systems, including pensions and access to healthcare, should be modernised and fully deployed to ensure adequate income support and services – thus providing social cohesion – whilst remaining financially sustainable and encouraging participation in society and in the labour market” see Annex to the Council Decision No. 2010/707/EU.

<sup>20</sup> Concrete reference is made to the economic guidelines of Article 121 TFEU; see more about this below.

<sup>21</sup> For more information about these measures, see [Lenaerts and Van Nuffel \(2011\)](#).

Like the EU social inclusion monitoring process, the original employment strategy led in practice to the setting out of guidelines with benchmarks, as well as a reporting procedure by the member states on the implementation of their employment policies in relation to these guidelines. We see that these guidelines provide a rather wide margin for adaptation at national level. Still, the fact that more quantitative indicators and benchmarks are progressively being introduced puts more pressure on the member states. The Employment Committee has so far played an important role in setting out priorities, objectives, and recommendations. As the employment guidelines are not legally enforceable, at least when exclusively based upon Article 148 TFEU, sanctions are limited to peer pressure and public opinion. Since 2010, however, the linkage with the economic guidelines under the Europe 2020 strategy has opened up some new perspectives on the legal enforceability of the employment guidelines (Council Decision No. 2010/707/EU). In the second part of this chapter, we will look further into the economic monitoring process, as well as the possibility to sanction member states.

### 3.2. *The employment guidelines integrated in the economic monitoring process*

#### 3.2.1. *The Europe 2020 strategy: towards an integrated monitoring procedure*

In 2005, the European Council (Brussels – 22 and 23 March) adopted its presidency conclusions on “Improving the implementation of the Stability and Growth Pact” ([European Council Presidency Conclusions, 2005](#)). In these conclusions, the European Council announced a structural interconnection between the employment and economic guidelines. In other words, the European Council recommended a more structural incorporation of employment (policies) into the European economic monitoring process.

At the same time, facing the financial and the subsequent economic global crisis, the EU started to exercise its competences to control the national economies and fiscal policies of member states more extensively. Ever since the introduction of the single currency, the EU’s main ambition has been to contain public deficit and public debts. Crucial in this respect is the avoidance of deficits and macroeconomic imbalances, and the duty to guarantee financial stability by a strong coordination of national economic policies. With that end in mind, the EU redesigned its (operating) procedures for monitoring national economies and its stability pack that guaranteed the stable introduction of the single currency (euro). Next to these control procedures, which were mainly of a preventive nature, it introduced reparation programmes (financial assistance measures) in order to (financially) support member states that had already faced serious budgetary problems.

The EU strategy for controlling the economies and fiscal policies of the member states has developed into a complicated set of monitoring procedures. For the purpose of this paper, we mainly focus on programmes of a preventive nature for developing recommendations to member states to keep their economies competitive. In these programmes, the employment monitoring procedure has been integrated, as well as the promotion of social inclusion and is thus closely intertwined with economic coordination programmes.

In so far as they are not relevant for social inclusion, less attention will go to budgetary programmes which have mainly been developed with the purpose of maintaining stability during the introduction of the single currency (euro). Similarly, we do not focus here on curative programmes (such as the European Stability Mechanism – ESM) ([Treaty, 2011](#)) that provide financial support<sup>22</sup> – in some instances in conjunction with other international organisations – to member states facing serious public debts.

We first explain the basic structure of the monitoring process (European Semester), identify where integration between employment and economic monitoring takes place, and finally highlight the possible legal effects for the enforceability of this integrated approach for the tenth guideline on social inclusion.

#### 3.2.2. *The European semester*

Economic monitoring takes place in a systematic manner through the ‘European Semester’, 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 (economic) challenges on the basis of the European Commission’s Survey on Annual Growth (AGS). After the identification of the main economic and social challenges for the member states, the Council gives strategic advice on their national policies on the basis of the AGS. 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.
- 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 a *quasi* tailor-made 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 and social inclusion. These recommendations are endorsed by the Council in June.

<sup>22</sup> For more information about these curative programmes, see [Lenaerts \(2013\)](#).



3.2.2.1. *The European Two-Pack.* For the member states of the Eurozone, the European Semester system is complemented by the 'European Two-Pack',<sup>23</sup> which encompasses a stricter budgetary monitoring system. The Two-Pack, based on Article 136 TFEU, complements the preventive and corrective arm of the Stability and Growth Pact (SGP – the legal framework for the coordination of fiscal policies in the EU) and aims at further strengthening the surveillance mechanisms for the member states of the Eurozone. Furthermore, the 'European Two-Pack', which entered into force on 30 May 2013, introduces simplified rules for the surveillance of member states that are facing financial difficulties, as well as simplified rules for the surveillance of financial assistance programmes for member states who have already received financial assistance.

The Two-Pack tries to improve budgetary coordination by introducing a common budgetary timeline and budgetary rules for the member states of the Eurozone and is structured in the following way: the member states submit a draft budgetary plan to the Commission and the Eurogroup each year before 15 October. The Commission subsequently adopts an opinion on these draft budgets before 30 November. When these draft budgets do not comply with the obligations set forth in the SGP, the member state has to submit a revised budgetary plan. In this way, the Two-Pack also complements the preventive arm of the SGP (Lenaerts, 2013, p. 6).

The official budget laws of the member states are then adopted and made public no later than 31 December. Finally, the member states make their medium-term fiscal plans public, no later than 15 April of the following calendar year. If the Commission observes severe non-compliance with the obligations set out in the SGP,<sup>24</sup> it will ask the member state concerned to submit a revised draft budgetary plan. Eurozone member states with serious difficulties will be subject to enhanced surveillance, as well as countries receiving certain types of financial assistance (Regulation No. 472/2013, Article 1 1 a) and b)). Surveillance involves an obligation for the member states to address the sources of the instability. These member states will, moreover, be subjected to regular review.

3.2.2.2. *The Macro-Economic Imbalance Procedure.* In 2011, the EU adopted six additional measures 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. 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 (Regulation 1173/2011; Regulation 1174/2011).

One part of the Six-Pack – the Macro-Economic Imbalance Procedure (MIP) (Regulation No. 1173/2011; Regulation No. 1174/2011) – 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. One of the indicators signalling a possible macro-economic imbalance is related to unemployment.

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 take 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 states does not act upon the recommendation(s), a deposit can be demanded or a fine can be imposed (see further below) (Regulation No. 1174/2011, Article 3).

In its list of indicators to monitor the macro-economic situation of these member states, the Commission also takes into account the '3-year backward moving average of the unemployment rate, with a threshold of 10%' (MIP Scoreboard). An excessively high structural unemployment rate is thus considered to be an indicator of an unbalanced macro-economic climate. As a result, national measures that tend to increase unemployment rates are closely monitored and can be made subject to recommendations for change. When such recommendations referring to the reduction of the unemployment rate are not followed by a Eurozone member state<sup>25</sup>, sanctions can potentially be applied (see below). Yet, the underlying goal is of relevance: long term unemployment is addressed and monitored closely, in so far as it may cause an unbalance regarding the macro-economic climate in a member state. That way, the monitoring of social objectives (e.g. reduction of unemployment) ultimately supports economic objectives. Combatting unemployment for the sake of increasing employment or, more generally, social cohesion is not the first priority here.

No reference was made (initially) in the list of indicators to social inclusion, but this has changed since the Commission proposed to add four additional auxiliary indicators to the MIP scoreboard in order to track employment and social problems in a more consistent way within the framework of the European Semester (EU Commission COM, 690, 2 October 2013). The following social indicators are used in the MIP as of 2014:

- the participation rate,
- the long-term unemployment ratio,

<sup>23</sup> The European Two-Pack consists of two regulations, both entered into force on May 30th 2013: (1) Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member states in the euro area, and (2) Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member states in the euro area experiencing or threatened with serious difficulties with respect to their financial stability.

<sup>24</sup> The legal framework for the coordination of national fiscal policies in the European Union.

<sup>25</sup> As, e.g. the ones formulated for Belgium: Council Recommendation No. 11244/12.

- the youth unemployment rate (complemented by the proportion of young people who are not in employment, education or training),
- the at risk of poverty and social exclusion rate, complemented by three sub-indicators:
  - the at risk of poverty rate,
  - the severe material deprivation rate,
  - the proportion of persons living in households with low work intensity.

The social (inclusion) indicators stem from the OMC-monitoring process (see Chapter 2) developed to assess (national) progress in the fight against social exclusion. This means that the national social inclusion policies are now monitored more in-depth through the MIP as well.

According to the Commission, the incorporation of social indicators would allow a better understanding of the risks of such imbalances in terms of unemployment, poverty and wider social consequences. It would also contribute to a better understanding of social developments (EU Commission COM, 2013). With regard to the exact role of these social indicators in the MIP, the discussions at the February 2014 ECOFIN Council were of particular interest (Council, 2014). The Council emphasised that the use of auxiliary social indicators will have the sole purpose of allowing a broader understanding of social developments, but that the nature of the MIP should be carefully preserved.

The indicators are thus useful to map the social consequences of the MIP, but they are apparently not meant to constitute indicators to establish macro-economic imbalances. In that regard, it is doubtful whether the EU is competent at all to introduce additional (auxiliary) social indicators in the MIP, as this procedure is based on the current Article 121 (6) TFEU and only allows the Union to take action in the domain of the member states' economic policy, and not in the domain of social policy.

From the monetary reports (i.e. the Alert Mechanism Report of 2013 and the in-depth reviews of 2014), we can learn that no specific concrete thresholds have been developed which member states have to meet for these auxiliary (social) indicators. Thus, it remains to be seen whether a more prominent position is considered for these auxiliary indicators in the future.<sup>26</sup>

**3.2.2.3. *The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.*** The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the TSCG) was signed on 2 March 2012 and signed by all member states, except for the United Kingdom and Croatia.<sup>27</sup> The main goal of the TSCG is to implement, in the context of the recent financial crisis, a balanced budget rule in national legislation which builds further on the rules of the European Stability and Growth Pact.

The TSCG is organised around four pillars: (1) limiting deficits, (2) an automatic correction mechanism, (3) reinforced coordination and (4) specific euro summit meetings. In the third pillar, the contracting states agree to work jointly towards an economic policy that fosters the proper functioning of the economic and monetary union and economic growth through enhanced convergence and competitiveness. In that respect, again, a specific reference is made to the objective of the promotion of employment (TSCG, Article 9).

**3.2.2.4. *Surveillance and enforcement.*** The regulatory framework shaping the multilateral surveillance mechanisms for the coordination of the economic policies foresees some possibilities for imposing fines when member states do not follow up on the recommendations of the Council. 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, the Union was given additional competences to sanction member states of the Eurozone in cases of economic non-conformity. These competences are mainly derived from the MIP, which was introduced in 2011 alongside the European Semester system (Regulation 1176/2011).

The supervisory mechanism as originally developed in Regulation 1466/97 (1997) sets out the sanctions that may be imposed when the Country Specific Recommendations have not been implemented in the year following the European Semester timeframe. Failure by a member state to act upon the guidance received may result in further recommendations to take specific measures (a), a warning by the Commission under Article 121(4) TFEU (b) or measures under Regulation 1466/97, Regulation 1467/97 or Regulation (EU) No. 1176/2011 (c).

The measures mentioned in (c) refer to a broad set of actions that the Commission and/or Council can undertake, ranging from an invitation by the Council to adjust its stability programme (Regulation 1466/97, Article 5) to the instalment of a fine when the member state does not address its excessive deficit (TFEU, Article 126, § 11; Regulation 1467/97). The assessment of the Commission allows it to touch on the employment-oriented Country Specific Recommendations as well, as the surveillance mechanism was adapted to have the employment guidelines incorporated under the Europe 2020-strategy.<sup>28</sup>

<sup>26</sup> This will become clearer when, as stated by Regulation 1176/2011, the MIP will be reviewed by the Commission. However an in-depth review of the MIP has not been carried out yet. See Art. 16 Regulation 1176/2011. The application of the MIP was to be reviewed by the Commission not later than 14th of December 2014. So far this has not been done yet.

<sup>27</sup> Belgium, Bulgaria, Denmark, Germany, Estonia, Ireland, The Hellenic Republic, Spain, France, Italia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, The Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland And Sweden.

<sup>28</sup> Although the member states were reluctant to transfer any further competence to the EU in the field of employment, leading to some adaptations in the surveillance mechanism itself. See more about this in (Mosher and Trubek, 2003, p. 67), see Article 1 Council Regulation No. 1466/97: in this provision,

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. By incorporating social indicators under the MIP, although non-binding, this link has been further strengthened.

The nature of the sanction is related to the kind of guidelines to be followed: fines can be imposed, for example, when the behaviour of the (Eurozone) state endangers macro-economic imbalances. When the employment-oriented Country Specific Recommendation is designed to address this imbalance, sanctions can be applied when the member states do not follow up on this recommendation. However, if the employment-oriented recommendation has been developed merely with a view to achieving a social objective, it remains out of the scope of the ‘sanctioning’ powers associated with the economic monitoring process. Thus, there should be at least some connection to the economic balance guidelines under the Europe 2020 strategy before the sanctioning tools come into play for employment-oriented Country Specific Recommendations. If not, we remain within the naming and blaming approach that has traditionally been applied in monitoring social and employment policies (through the OMC).

The concrete recommendations launched by the Council in the past four years, on the basis of the national reform programmes submitted by the member states in the framework of the European Semester, can serve as a further illustration.

#### 4. The integrated approach applied in practice: the country-specific recommendations and the promotion of social inclusion

In the previous section, we saw that the economic oriented recommendations can be enforced through the sanctioning apparatus, introduced through the Six-Pack (MIP), SGP or the Two-Pack. In this last section, we will present some examples of recommendations which relate to social inclusion in order to illustrate the legal effects of the integrated monitoring approach. The question addressed in this part is this: What do the Country Specific Recommendations tell us about the analysis in the previous section?

For several years now the Council has provided Country Specific Recommendations on national reform programmes. These national reform programmes are sent in as the (national) response to European defined challenges. In the first series of examples, we take a closer look at the relation between social inclusion and employment. A key area to be addressed is whether social inclusion recommendations are indeed defined in an employment-related way, and if so, what the consequences of such an approach are. Are the recommendations limited to employment-oriented social inclusion activities?

In a second and third series of examples, we focus on the social inclusion recommendations which are related to the achievement of economic goals (4.2), as well as social (inclusion) goals (4.3). We will ask ourselves: What do the recommendations in the second and third series of examples target? Are there recommendations that only support social (inclusion) policies without referring to employment or economic policies? Do they go beyond the mere economic and budgetary framework? And if so, what is their legal enforceability?

##### 4.1. Promoting social inclusion as an employment guideline

The following examples are illustrative. The recommendation for Belgium (2015 and 2014)<sup>29</sup> urges it to:

“Improve the functioning of the labour market by reducing financial disincentives to work, increasing labour market access for specific target groups and addressing skills shortages and mismatches” ([Country Specific Recommendation for Belgium, 2015](#)).

With regard to Denmark (2014 and 2013), there is also a clear link between employment and social inclusion. In the (second) recommendation we can read that Denmark needs to take further measures to improve the employability of people at the margins of the labour market” ([Country Specific Recommendation for Denmark, 2014 and 2013](#)). In the Country Specific recommendation of 2015, we see that this recommendation has not been repeated. The Commission however refers to the labour market reform of 2014, which tries to improve the employability of people at the margins of the labour market. For the Netherlands (2014 and 2013), the Council adopted a similar recommendation. In the recital the Council explains that the current measures do not suffice; further measures will have to be taken to improve the social inclusion of persons at the margins of the labour market ([Country Specific Recommendation for the Netherlands, 2014, 2013](#)).

*(footnote continued)*

we find that the budgetary targets in the stability and convergence programmes should explicitly take into account the measures adopted in line with the broad economic policy guidelines, as well as the guidelines for the employment policies of member states.

<sup>29</sup> See also for a similar recommendation: [Country Specific Recommendation 2013 Belgium](#).



Furthermore, the (fourth) recommendation for Poland made a link as well between the combatting of poverty on the one hand and employment on the other hand, urging Poland to complete the social assistance reform by adopting the relevant legislation and strengthening its link with activation measures ([Country Specific Recommendation for Poland, 2013](#)). Also, Slovakia needs to strengthen the link between social inclusion policies, such as social assistance, and activation (2014). In that respect, it should more effectively address long-term unemployment through activation measures, as well as second-chance education and tailored quality training. Subsequently, Slovakia needs to enhance the capacity of public employment services for case management, personalised counselling and the activation of jobseekers, and strengthen the link between activation and social assistance ([Country Specific Recommendation for Slovakia, 2014](#)). Latvia received a similar Country Specific Recommendation in 2015<sup>30</sup> and Italy (2014) was also recommended to alleviate poverty through its employment policy. For example, Italy needed to scale-up the pilot social assistance scheme in a fiscally neutral way, guaranteeing appropriate targeting, strict conditionality and territorial uniformity, as well as strengthening the link with activation measures ([Country Specific Recommendation for Italy, 2014](#)).

Another illustration is the (fourth) recommendation for Hungary, requiring it to reorient the budget resources allocated to the public work scheme to active labour market measures in order to foster integration into the primary labour market ([Country Specific Recommendation for Hungary, 2015](#)). The labour market reform was also reviewed under the In-Depth Review, which is part of the MIP. Consequently, this recommendation can be legally enforced. The In-Depth Review links the recommendation regarding social inclusion to the level of unemployment in Hungary and the negative repercussions this may have on the national budget:

“The Public Works Scheme appears to be an inefficient active labour market policy measure and distorts the proper functioning of the labour market. It nominally reduces unemployment, but there is a risk, also from a budgetary point of view, that public works of such a magnitude could entail significant ‘lock-in’ effects and become a permanent replacement for the system of welfare benefits for the low-skilled” ([In-depth Review for Hungary, 2015](#)).

In the Country Specific Recommendations of 2012, we can find other links between social inclusion and employment. The recommendation for Lithuania is perhaps the most salient example in this regard when it states:

“[i]ncrease work incentives and strengthen the links between social assistance reform and activation measures, in particular for the most vulnerable, to reduce poverty and social exclusion” ([Country Specific Recommendation for Lithuania, 2012](#)).

In the recommendation addressed to the UK (2012), it was advised to facilitate labour market integration and further ensure that “[p]lanned welfare reforms do not translate into increased child poverty”; and that ‘measures aiming to facilitate access to childcare services’ should be fully implemented. In the recitals to this recommendation, we notice that a link is made between employment and social inclusion when it is recalled that “the Government must take measures to ensure that the positive impact of new policies on new employment and incomes will not be offset by declining amounts available for benefits, which would risk increasing poverty, particularly for families with children. [...] The Government needs to take steps to ensure that there is sufficient access to childcare, in particular for low earners” ([Country Specific Recommendation for the United Kingdom, 2012](#)) Similar to the Hungarian case, the recommendations for the United Kingdom (2012) were part of the In-Depth Review under the MIP.

The Country Specific Recommendations thus demonstrate that the link between employment and social inclusion has two dimensions: the framework for social inclusion may be employment-oriented; on the other hand, the restrictive relation between employment and social exclusion also works the other way round: employment activation should not lead to social exclusion. By doing so, the recommendation respects the wording of the tenth guideline which stipulates that, through their employment policies, member states should promote social inclusion and combat poverty. Employment policies with an adverse effect on poverty and social exclusion should be banned. Overall, however, the recommendations also show that the Council is very careful when formulating policy advice in relation to the promotion of social inclusion; in most cases it is done with a (direct or indirect) reference to employment.

#### 4.2. *Social inclusion recommendations: answering economic objectives*

A considerable amount of recommendations regarding social inclusion are developed in relation to the promotion of a sound national economy or budget. Several examples of this kind can be found in the Country Specific Recommendations.

The second recommendation for Belgium included the phrase: “Continue to improve the cost-efficiency of public spending on long term institutional care” ([Country Specific Recommendation for Belgium, 2013](#)). This recommendation to Belgium was closely linked with the excessive deficit procedure, under the MIP, allowing for sanctions when Belgium does not reduce its budgetary deficit. For the Czech Republic, the Council adopted similar recommendations both in 2014 as in 2013, urging it to take measures in order to significantly improve the cost-effectiveness of healthcare expenditure, in particular for hospital care ([Country Specific Recommendation for the Czech Republic, 2014, 2013](#)). Romania needed to

<sup>30</sup> Portugal as well needed to ensure the effective action of benefit recipients, as well as an adequate coverage of the minimum income scheme (2015) see also Country Specific Recommendation 2015 Portugal.

pursue health sector reforms in order to increase efficiency, quality and accessibility, in particular for disadvantaged people and isolated communities ([Country Specific Recommendation for Romania, 2014, 2013](#)). Furthermore, Croatia needed to tackle the fiscal risks in health care ([Country Specific Recommendation for Croatia, 2015](#)).<sup>31</sup> In that regard we see that Finland ([Country Specific Recommendation for Finland, 2015](#)) as well needed to ensure the effective design and implementation of administrative reforms concerning the municipal structure and social and healthcare services, in order to increase productivity and cost-effectiveness, whilst ensuring their quality. Looking at the recital (8), we see that Finland needed to introduce an administrative reform in order to achieve the goals of the SGP. In this way, the recommendation addressed to Finland can be enforced under the SGP.

Other examples are Estonia and Italy regarding family benefits. Italy needed to improve the effectiveness of family support schemes and quality services favouring low-income households with children ([Country Specific Recommendation for Italy, 2014, 2013](#)). In relation to Estonia we read that it needs to increase the efficiency and cost-effectiveness of family policy while improving the availability and accessibility of childcare ([Country Specific Recommendation for Estonia, 2014, 2013](#)).

In most of these recommendations we can find either in the recommendation itself or in its recital, a link to the national economies and budgets of the member states. In this way, member states should reform or improve current social inclusion policies in order to not put national economies and subsequently the national budgets at risk. When looking at the annex to the Council decision on the guidelines for the employment policies, we see that this is not contrary to the legal mandate under the tenth guideline. According to the annex, social inclusion policies cannot be to the detriment of financial sustainability: “although social security must be modernised, national systems must remain at the same time financially sustainable” (Council decision No. 2010/707/EU, Annex). However, developing social security recommendations that refer purely to the implementation of social objectives is thus, not the primary goal of these Country Specific Recommendations.

#### 4.3. *Social inclusion recommendations for the sake of social objectives*

Examples of recommendations focussing on the promotion of social objectives without referring to the support of national employment and/or economic policies can also be found, but they are more restricted in number. From our sample of the Country Specific Recommendations, it becomes clear that not every recommendation tries to achieve budgetary sustainability or a higher employment rate in the member states. In this way, Croatia ([Country Specific Recommendation for Croatia, 2014](#)) should strengthen the effectiveness and transparency of its social protection system. This should be done by further consolidating benefits, unifying eligibility criteria and linking data from all relevant levels and government entities in a ‘one-stop shop’. Recital 16 provides more insight into this recommendation by stating that:

“high unemployment and low labour market participation have led to a deterioration of the social situation in Croatia. The proportion of persons at risk of poverty and social exclusion has increased in recent years and is significantly above the EU average. ... Despite several legislative reforms, since 2011, the design of the social benefit systems failed to effectively target people most in need.”

No specific link is made to financial sustainability of public finances, nor to the Croatian labour market policy. Yet this recommendation does show a concrete link with social inclusion.

The Country Specific Recommendation of 2014 to Romania is also (mainly) focused on the eradication of poverty, although we do find a short reference to ‘strengthen the links with activation measures’. Romania should, in order to alleviate poverty, increase the efficiency and effectiveness of social transfers, particularly for children and continue the reform of the national social assistance scheme, strengthening its links with activation measures ([Country Specific Recommendation for Romania, 2014](#)).

Although the recommendations refer to activation of the national social assistance scheme, it seems that the main objective is the eradication of poverty. The recital provides some additional information:

“Poverty reduction remains a major challenge. Despite the relatively stable employment situation, gross household incomes have been declining and income inequalities have been growing. Families with children are particularly exposed. There was only limited progress in speeding up the transition from institutional to alternative care for children deprived of parental care. There is still a high number of persons with disabilities in large residential institutions, while community services for the disabled are not sufficiently developed. The low take-up, coverage and adequacy of social benefits remain a challenge for the efficiency of social benefits in reducing poverty...” ([Country Specific Recommendation for Romania, 2014](#)).

The main objective of this recommendation is thus not the achievement of employment or budgetary policies, but aims at strengthening the national social inclusion policy.

Another example is the [Country Specific Recommendation for Latvia \(2013\)](#), urging it to tackle high rates of poverty by reforming social assistance or better coverage, by improving benefit adequacy and activation measures for benefit recipients. When looking at the consideration behind this recommendation, recital 12 states that:

<sup>31</sup> See also Country Specific Recommendation: 2015 Latvia and Country Specific Recommendation 2015 Lithuania.

“a lack of fiscal space forced Latvia to decrease the level of guaranteed minimum income and to abolish the state budget financing of the benefit. According to the Commission and the Council, 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” ([Country Specific Recommendation for Latvia, 2013](#)).

Like the recommendation to Croatia, there is a call upon Latvia to not translate limited budgetary means into measures that target the weakest groups in society in a negative manner (in particular the poor). More recent examples can be found in the Country Specific Recommendations of 2015 where both Ireland, Portugal and Hungary needed to improve the adequacy of social assistance or social benefits. Nonetheless, in all three of them we find an explicit link to activation measures (employment objectives).

Apart from the recommendations to Latvia, Romania and Croatia, the majority of the social (inclusion) recommendations have referred to national economies and budgets, as well as employment. They call for reform and improvement of current social policies so that they do not put national economies and related fiscal budgets at risk. Developing social recommendations that refer purely to the implementation of social objectives is not the primary goal of the integrated monitoring process. Moreover, in cases where such recommendations are launched by the Council, they are not enforceable by the means deployed by the surveillance mechanism of the integrated monitoring process; they lack the required link with economic monitoring policy.

## 5. Conclusions

Linking the guidelines on social inclusion to the employment guidelines first and foremost has consequences when it comes to the scope of action. The social inclusion recommendations discussed above were formulated mainly in terms of employment integration or activation, and the existing Country Specific Recommendations are exemplary in this respect. The narrowing down of the scope to employment-related actions is not surprising, given that the legal basis for the tenth guideline is Article 148 TFEU (Employment Chapter). On the other hand, we can see from the analysis of the recommendations that the link to social inclusion had an effect on the formulation of the employment guidelines as well; they should not be to the detriment of social inclusion. Activation measures thus, should not lead to an increase in the number of (working) people in poverty.

When it comes to the issue of enforceability, the relationship with the economic guidelines comes to the fore. Recommendations can be enforced through sanctions if they relate to the economic guidelines, especially in relation to the (budgetary) requirements for Eurozone member states. Thus, the Country Specific Recommendations formulated in the national reform programmes often refer to national actions that should be undertaken in order to safeguard the national economy and/or budget. Some of these actions relate to the social field, among them reforms that have to be undertaken or extended in relation to pensions, health care or poverty reduction schemes. The emphasis here is on ensuring the schemes' efficiency and effectiveness, in order to avoid overburdening the economy or budget of the country. In relation to these considerations, the social exclusion recommendations are an integral part of the economic guidelines; they address social protection schemes in a 'negative' manner by referring to budgetary burdens or challenges to the national economy. Until now, the tougher sanctioning apparatus is restricted to social (inclusion) guidelines of this nature. If there is no relationship to the state of the economy, the enforceability of the recommendations remains in the sphere of 'naming and blaming'. 'Positive' social recommendations (those which support social objectives) do not enjoy this strong form of legal enforceability.

The integration of the social inclusions recommendation into the economic monitoring procedure also generates the question to what extent the economic guidelines can work to the detriment of social inclusion. In line with [Hinarejos \(2012\)](#), we should discern here (1) budgetary discipline and economic balance rules from (2) socioeconomic redistributive rules. Budgetary discipline and balance rules are measures taken by member states in relation to annual deficit and public debt. On the other hand, socioeconomic redistributive rules are measures that revise the way in which public resources are allocated by the member states, such as reforms in pension schemes and national health systems. The EU only has the competence to impose the first kind of measures, and still lacks a clear power to impose direct changes in socioeconomic redistributive rules, at least in a 'positive' sense for the sake of the development of European social objectives.

The new monitoring mechanism of the Europe 2020 strategy and the European Semester does not change this starting point. However, the two kinds of measures may become interlinked. When the EU imposes discipline and balance rules which lay down fiscal objectives, the member states often have to fulfil these objectives through the (national) implementation of socioeconomic distribution rules. These measures are, however, aimed at supporting the financial and economic balances in the EU (member states) and may have a detrimental effect upon the level of social protection and the fight against social exclusion.

What if such measures at the national level were adopted in the application of European recommendations? Article 121 TFEU does not give an indication of how this relationship should be interpreted between national social inclusion policies and national budgetary recommendations. Yet, if we want to ascribe a useful meaning to the recent integration of the social (employment and social inclusion) monitoring process into the economic monitoring process, the relation should be

assessed in a two-dimensional approach: budgetary and economic guidelines should also be tested for their (negative) effect on the employment and social exclusion outcomes. A first reference to this approach can be found in the 2013 Country Specific Recommendations to Latvia (see above).

Such an interpretation would give further concrete contents to the horizontal social clause (Article 9 TFEU). Article 9 TFEU requires EU institutions to respect a high level of employment, adequate social protection, the fight against social exclusion, a high level of education and training, and protection of human health.<sup>32</sup> Taking into account the general wording, one could advocate the application of Article 9 TFEU to the guidelines developed in the socio-economic monitoring processes.

Such an approach would also pay the necessary respect to fundamental social rights, in particular the right to social security and social assistance (Article 34 CFEU). Although neither Article 9 TFEU nor Article 34 CFEU gives direct competence to the EU to take legal action, the main relevance of these clauses lies in the control of European measures on their (too) adverse effect on the social acquis, including the European fight against social exclusion. European measures which have an adverse effect upon social inclusion should be kept to a minimum, and if still necessary, be kept to a minimum by excluding the most vulnerable parts of the population from their scope.

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