

To fight poverty and social exclusion, EU law must buttress basic nuts and bolts of the welfare edifice

European Journal of Social Security
2020, Vol. 22(4) 486–492
© The Author(s) 2020
Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/1388262720974034
journals.sagepub.com/home/ejs


Frank Vandenbroucke 

University of Amsterdam, Amsterdam, Netherlands

Abstract

This article provides a conclusion to the EJSS Special Issue ‘Discussing strategies for Social Europe: The potential role of EU law in contributing to the Union’s policy objective of fighting poverty and social exclusion’. The contributions to this Special Issue raise a fundamental question: why did European governments fail to deliver on their promise, proclaimed with so much emphasis twenty years ago, to reduce poverty in Europe? It is too easy to say that the one and only problem was the non-binding nature of the social objectives of Lisbon and the antipoverty targets of *Europe 2020*. There is a broader challenge at the EU level, which goes beyond minimum income protection and directly involves crucial nuts and bolts of the whole welfare edifice: when confronted with severe economic and social shocks, welfare states need an adequate stabilization capacity. This implies that the European Monetary Union becomes a true ‘insurance union’. I argue that one should understand the relevance of the European Pillar of Social Rights from this perspective, and I relate that argument to the contributions to the Special Issue.

Keywords

Social Europe, poverty, social inclusion, European social union, European pillar of social rights

Conclusion to the European social security review special issue ‘Discussing strategies for Social Europe: The potential role of EU law in contributing to the Union’s policy objective of fighting poverty and social exclusion’

This EJSS Special Issue on the role of EU law in fighting poverty raises a fundamental question: why did European governments fail to deliver on their promise, proclaimed with so much emphasis twenty years ago, to reduce poverty in Europe? Social policy was introduced as a distinct focus of

Corresponding author:

Frank Vandenbroucke, University of Amsterdam, 1012 WX Amsterdam, Netherlands.

E-mail: F.I.G.Vandenbroucke@uva.nl

attention for European cooperation at the special European Summit in Lisbon in March 2000. The Lisbon Council concluded that “steps must be taken to make a decisive impact on the eradication of poverty.” Expectations ran high. By the end of 2001, common objectives to fight poverty and social exclusion and social indicators to measure progress were agreed. In 2010, *Europe 2020*, the successor strategy to the Lisbon Strategy, introduced concrete targets for the reduction of poverty and exclusion. Yet, the targets were missed.

Although this story is well known, we may have forgotten about part of the inspiration. Why did we focus so single-mindedly on poverty in 2000? Many welfare state scholars would emphasize that fighting poverty is but one dimension of the mission of welfare states. They are right. However, apart from the idea that a litmus test for social justice is how well a society caters for its most vulnerable members, in 2000, a broader motivation and a ‘tactical’ consideration were at play, at least in my mind. The tactical consideration was that a call to fight poverty would have strong political traction, and inevitably imply a much broader concern with the quality of the welfare state at-large. We suspected that national political actors would be wary about a comprehensive debate on the architecture of their national welfare states as well as all the hardware applied in it. But, engaging them in a debate on poverty *outcomes* (which they could not refuse, so we thought in 2000) would also gradually engage them in a debate on how to generally safeguard and modernize Europe’s welfare states. In this way, the focus on poverty would lead, indirectly, to a comprehensive review of essential nuts and bolts of welfare states. Simultaneously, the new process of ‘Open Coordination on Social Inclusion’ was considered ambitious, but realistic, because it was at pains to respect the diversity and policy sovereignty of Member States. Hence, the Open Method of Coordination not only put a strong emphasis on common objectives and guidance, as opposed to on hard legislation, but also on subsidiarity.

Two decades later, we have to admit that poverty increased. What went wrong? The softness of EU social governance – ‘cheap talk, no bite’ – is the usual suspect in discussions on the ‘what-went-wrong’ question. This motivates the search for more effective European policy levers, notably legal instruments, to support the fight against poverty, and it inspires different contributions to this EJSS Special Issue. Yet, it is too easy to say that the one and only problem was the non-binding nature of the social objectives of Lisbon and the anti-poverty targets of *Europe 2020*. There is no denying that the non-binding nature of the processes launched in the 2000s made them weak. Nevertheless, their being non-binding was not happenstance: subsidiarity is a salient and sensitive principle when it comes to minimum income protection. Even within national welfare states, instruments against poverty *sensu stricto* are often decentralized *qua* implementation and even *qua* design. In the realm of poverty, the actual challenge is therefore to move from ‘outcome indicators’ to ‘policy input indicators’ that can critically question the existing policies of Member States without enforcing a uniform ‘one-size-fits-all’ policy architecture.¹ A European legal framework would give such an approach extra bite: that is the way forward which I see on the basis of Ane Aranguiz’ contribution to this Special Issue. The review by Eddie Bambrough and Gijsbert Vonk of how the human rights approach to social assistance plays out in the existing case law also sheds useful light on the potential of EU-level legal initiatives. However, next to making the EU’s anti-poverty strategy more incisive through legal initiatives, there is a broader challenge at the EU level: the broader challenge goes beyond minimum income protection and *directly* involves crucial

1. On the use of ‘policy input indicators’, see Cantillon et al. (2019).

nuts and bolts of the whole welfare edifice. What is at stake is the stabilization capacity of welfare states in the face of severe economic and social shocks.

Over only a little more than a decade, the EU experienced two very severe shocks. The Eurozone crisis was the first shock, triggered by the international financial crisis in 2008. COVID-19 triggered the second shock. The relationship between such economic shocks and poverty as we technically measure it with our European social indicators is complex, but there is no doubt that the financial crisis created hardship for millions of people. One of the three components of the *Europe 2020* target on poverty and social exclusion is the number of people experiencing severe material deprivation. Material deprivation measures the extent to which basic needs are unmet. Because the nine items on the basis of which material deprivation is assessed reflect basic social and economic progress, the long-term trend for deprivation is downward, as prosperity and new patterns of consumption are spreading throughout the enlarged EU. However, the number of people confronted with severe material deprivation jumped up from 41,7 million in 2010 to 49,5 million in 2012, only to then resume its downward trend. Today, the fall-out of COVID-19 destroys jobs on a massive scale and creates much hardship again. Once more, we see how crucial universal unemployment and sickness insurance and health care are for the resilience of today's societies.

Securing social and economic stability on a macro-level and protecting people against vulnerability on a micro-level are intrinsically related functions of welfare states. With hindsight we must admit that the problem of instability was vastly underestimated twenty years ago, not only in the economic policy debate but also in much of our social policy literature. This may be due to the fact that very severe shocks hardly occurred in the two decades before 2000 in the countries belonging to the EU prior its enlargement. This analytical and policy neglect notably holds for the monetary union. In the run-up to monetary unification, the *European Employment Strategy* emphasized the necessary 'flexibility' of labour markets, as a supply-side precondition for a well-functioning Economic and Monetary Union (EMU). With the financial crisis of 2008, we learned a hard lesson: next to fiscal stabilizers, a well-functioning monetary union needs labour market institutions that support both flexibility and stability. To be sure, flexibility, as understood in the EU's employment strategy, was not about a neo-liberal deregulation of labour markets; rather, it was associated with 'enabling' policies: equipping people with adequate skills would empower them and thus recreate individual security. 'Social investment', which became an important theme in the European policy discourse, can be seen as an enabling policy *par excellence*. Nevertheless, it cannot cater for stability. To achieve stability, one needs collective action: collective bargaining, but also the organisation of collective insurance devices. Stability requires instruments that typically shelter vulnerable individuals: unemployment insurance stabilises the economy because it protects the purchasing power of the unemployed. Thus, stability is intrinsically associated with collective action and 'protective' policies. Enabling and protective policies are mutually reinforcing in creating *resilient* welfare states.

How could we have prevented the severity of the Eurozone crisis? The answer largely surpasses anti-poverty policy *sensu stricto*. It would have required more prudence in the regulation of banks and the housing market and different economic and fiscal policies. We should have allowed Eurozone welfare states to function as welfare states must function in times of crisis, that is, as stabilizers. Partly, the errors were a matter of doctrine, notably the belief in supply-side policies and austerity. It was also a matter of design flaws in the monetary union. Repairing the design flaws implies that our EMU becomes a true 'insurance union'. The aim should not be a European welfare state, but a union that supports national welfare states in some of their key systemic functions. This entails a broad agenda in which concern with 'social insurance', 'labour market

standards' and 'social investment' are interwoven, hence the expression a 'European Social Union'.² It may have been a mistake to, in the year 2000, think that anti-poverty policies, understood as minimum income protection *sensu stricto*, could take the lead in the debate on social Europe and that broader concerns about the resilience of welfare states would follow suit. What seemed a clever and expedient strategy at that time turned out to be incomplete. The policy failure was much broader than simply a failure in terms of adequate minimum income protection. To avoid a repetition of this dismal experience, anti-poverty policies have to be embedded in a broad set of realistic social, employment and economic policy objectives, both at the level of the EU and at the level of individual countries. This is what a European Social Union is about: it implies a comprehensive, slow and piecemeal process. But, it is the only process that at least has the potential to avoid broken promises.

The *European Pillar of Social Rights*, solemnly proclaimed in 2017, was a good step in the right direction: it formulated a European agenda for social policy at large and thus addressed the whole welfare edifice. The launching of this *Pillar* was not an isolated event: it fitted into a broader evolution in EU policy-making. The Commission steered away from an emphasis on fiscal consolidation and economic competitiveness, which dominated in the immediate aftermath of the financial crisis of 2008. In 2013, the Commission's *Social Investment Package* explicitly signaled the need to broaden the EU's agenda. Below the radar, social issues became gradually more important in the *European Semester* process. Official reflection papers on the completion of EMU underscored the need to equip it with a social dimension. The Commission tackled the thorny problem of posted workers and announced the creation of a *European Labour Authority*. While the *Pillar of Social Rights* was but one instance of a cautious yet deliberate policy shift at the level of the Commission, it marks a point of no return. If the EU fails to deliver on the promise enshrined in the *Pillar*, the initiative will backfire and the frustration it generates will, for a long time to come, undermine any new attempt to equip the EU with a comprehensive social dimension.

What does it mean that EMU becomes a true 'insurance union'? Basically, it means that Member States' automatic stabilisers can fully play their role in times of crisis. Adequate unemployment insurance is key in this respect. Unemployment insurance supports purchasing power in an economic downturn and is therefore an automatic stabiliser *par excellence*. Existing monetary unions either opt for a downright centralisation of unemployment insurance (like in Canada or in Germany), or they demand some convergence in the organisation of unemployment insurance and provide a degree of reinsurance and centralisation when the need is really high (like in the US, which combines centralisation and decentralisation in unemployment insurance). This is rational behaviour for two reasons. First, risk pooling enhances resilience against asymmetric shocks. The second reason also applies when shocks are symmetric across the whole Union and risk *pooling* across Member States has no added value per se. National insurance systems create an externality: a country that properly insures itself also helps its neighbours. Therefore, the concern with the stability of the Eurozone entails a cluster of policy principles to sustain an effective stabilisation capacity in *each* Member State: sufficiently generous unemployment benefits; sufficient coverage rates of unemployment benefit schemes; no labour market segmentation that leaves part of the labour force poorly insured against unemployment; no proliferation of employment relations that are not integrated into systems of social insurance; effective activation of unemployed individuals;

2. On the idea of a European Social Union, see Vandenbroucke et al. (2017). For a further development of the normative arguments underpinning the idea of an 'insurance union', see Vandenbroucke (2020).

and the constitution of budgetary buffers in good times, so that the automatic stabilisers can do their work in bad times. These principles become *a fortiori* imperative, as *quid pro quo*, if the Eurozone were equipped with reinsurance of national unemployment insurance systems. More broadly, my contention is that such common principles would be a corollary of any conceivable Eurozone risk-sharing scheme that is triggered by unemployment shocks. Nevertheless, even without a Eurozone risk-sharing scheme, the implementation of common ‘stability-related’ principles would benefit the Eurozone as a whole. In the context of severe economic disruption, such as during the COVID-19 crisis, the argument that well-organized stabilisation in each Member State is a matter of common concern even holds for the whole Single Market.³

The upshot of this argument is that we need a degree of convergence in some key features of the Member States’ social policies. Access to social protection for all workers and the self-employed (notably, but not only, adequate unemployment insurance) is such a key feature, and the Commission was therefore right to launch an initiative on ‘access to social protection’ in the context of the *Pillar*. Whilst it was first announced with the promise of a ‘hard’ legal initiative, it had to be scaled down to a recommendation,⁴ and now the challenge is to give that recommendation real bite. Different arguments support selecting ‘access to social protection for all’ as a key priority for EU action. First, if the stabilization capacity of welfare states is important and merits EU-level support (notably through the organization of an EU-level unemployment re-insurance scheme), national welfare states must see to it that their stabilization capacity does not erode. For that reason, it is of utmost importance that all citizens have access to social protection, including access to insurance against lack of work or incapacity to work. New developments in labour markets, such as the proliferation of independent work with the ‘zzp’ statute in the Netherlands, but also the platform economy, undermine this basic element in the ‘nuts and bolts’ of welfare states. Second, in this domain, we have both real spill-overs and intellectual spill-overs among Member States. We are confronted with real spill-overs because the proliferation of new forms of work that are not integrated in social security in some countries may put unfair competitive pressure on other countries and thus trigger similar developments. There are, however, potentially positive intellectual spill-overs: mutual learning among Member States’ policy-makers will contribute to our understanding of the challenges of the new economy and to the variety of future scenarios and possible solutions. The EU is uniquely well-equipped to serve as a platform for innovative policy development in unchartered policy domains, of which new forms of work are a prime example. Third, the political legitimacy of the EU would be bolstered if EU citizenship is inextricably linked with access to social protection. ‘Access to social protection for all workers’ is a principle that speaks both to mobile and non-mobile EU citizens. Such a principle would state that every EU citizen must always have access to social protection irrespective of the sector, the type of activity, and the type of employment relationship in which he or she, or the persons on whom he or she depends, are engaged. If it would also hold for those who are not able to work, it would really be a ‘European social right’ for each and every individual European. In yet other words, an EU-level process of mutual learning would not be confined to exchanges between high-level experts and policy-makers. Rather than remaining an ivory-tower exercise – a feature characterizing EU-level learning and peer-review processes all

3. This is the rationale for SURE, as explained in Fernandes and Vandenbroucke (2020).

4. Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01) [2019] O.J. C 387.

too often – it would inform the definition of social rights to be understood and enjoyed by all EU citizens.

In similar vein, if the EU is to become a true insurance union, the replacement of the *Written Statement Directive* (Directive 91/533/EEC) with the *Directive on transparent and predictable working conditions* (Directive (EU) 2019/1152), yet another Commission initiative in the slip-stream of the *Pillar*, is well-taken. It answers the need to address growing gaps in employment protection in EU labour markets which add to macro-economic and social instability.

In their contributions to this Special Issue, both Paul Schoukens and Bartłomiej Bednarowicz signal key challenges for EU law in this respect. Bednarowicz evaluates the *Directive on transparent and predictable working conditions* positively, but he also underscores that a new concept of worker is overdue “so that all labour and social security rights apply to every worker who provides work or services in a predominantly personal capacity and is not genuinely operating a business undertaking on his or her own account.”⁵ Schoukens regrets the fact that the final text of the *Council Recommendation on access to social protection for workers and the self-employed* asks for mandatory coverage of self-employed workers by social protection schemes only “where appropriate”; coverage for the self-employed on a voluntary basis is the general default principle in the Recommendation. This lacuna makes it harder to address the deficits in social protection of platform workers. More fundamentally, the Recommendation does not define what is considered to be work or what is professional activity, nor does it provide own definitions of workers and self-employed. As Schoukens puts it: “There is indeed something to be said about keeping these concepts open and having them gradually defined over the years on the basis of the national reporting. After all the Recommendation is mainly targeting an approach, where national systems are monitored; using strict legal definitions from the outset does not work very well with this approach. The case of platform work does, however, immediately show some limits of this approach: what is to be considered as work and professional income becomes increasingly blurred.” Herwig Verschueren’s contribution to this Special Issue signals yet another legal challenge if the EU is to become a true and reliable insurance union: gaps in coverage in the coordination of social security for mobile citizens not only create poverty, but also harm the quality of unemployment insurance as individual protection and societal stabilizer.

Thus, this Special Issue shows that a reflection on the role of EU law opens up a broad agenda. How can legislative initiatives contribute to a more incisive European role with regard to the quality of minimum income protection *sensu stricto*? How can EU law buttress basic nuts and bolts of our welfare states, such as access to social protection without gaps for people in precarious employment or for mobile citizens? EU law definitely has a key role to play in this endeavour.

Declaration of conflicting interests


The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

5. Citing Countournis et al. (2020).

ORCID iD

Frank Vandenbroucke  <https://orcid.org/0000-0001-9748-9567>

References

- Cantillon, B., Marchal, S. and Luigjes, C., (2019) 'Toward Adequate Minimum Incomes: Which Role for Europe?' in Cantillon, B., Goedemé, T. and Hills, J. (eds.), *Decent Incomes for All: Improving Policies in Europe*, Oxford: Oxford University Press, 269–289.
- Countournis, N., de Stefano, V., Ewing, K. and Freedland, M. (2020) 'Covid-19 crisis makes clear a new concept of 'worker' is overdue' Social Europe. Available at: <https://www.socialeurope.eu/covid-19-crisis-makes-clear-a-new-concept-of-worker-is-overdue> (last visited 15 July 2020).
- Fernandes, S. and Vandenbroucke, F. (2020) 'SURE: A welcome lynchpin for a European unemployment re-insurance' (2020) Notre Europe Jacques Delors Institute, Policy Paper No. 251. Available at: <https://institutdelors.eu/en/publications/sure-un-catalyseur-bienvenu-pour-une-reassurance-chomage-europeenne/> (last visited 15 July 2020).
- Vandenbroucke, F., Barnard, C. and De Baere, G. (eds.) (2017), *A European Social Union after the Crisis*, Cambridge: Cambridge University Press.
- Vandenbroucke, F. (2020) 'Solidarity through Redistribution and Insurance of Incomes: The EU as Support, Guide, Guarantor or Provider?' Amsterdam Centre for European Studies Research Paper No. 2020/01.