

Setting minimum social standards at EU level: Main Issues

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The views contained in this document belong to the individual authors and are not the views of the European Commission.



The Project

This two year Transnational Project ‘Setting Minimum Social Standards Across Europe’ was initiated by partners in seven European states, co-ordinated by EAPN Ireland, to study whether an EU role in setting social standards would strengthen the fight against poverty, particularly in the Open Method of Coordination in the field of social inclusion, and if so how this can be best done. The partners include national and regional Government, research bodies and NGO partners in Ireland, Finland, Flanders (Belgium), Norway, Hungary, Bulgaria and Catalonia (Spain) as well as two European-level organisations.

The above questions are particularly topical in view of the public unease with the imbalance between the economic and the social sides of the EU, the debates on the EU ‘Services Directive’ and fears that enlargement and globalisation might lead to a social “race to the bottom”. It is also timely with the consultations on the recent Commission Communication on active inclusion for people furthest from the labour market and will attempt to influence the impact assessment of EU basic requirements on measures to promote the integration of persons excluded from the labour market.

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Definition of (minimum) social standard

The term ‘standard’ can be understood in a twofold way in the context of social law and policies. First, ‘standard’ could refer to (precise) measurements, principles or rules established by an recognised authority and acting as reference yardsticks against which (international) comparison can be done with all others equivalent items and distance from common obligations or objectives assessed (reference standard). Second, a standard could also be seen as a harmonisation tool or process, composed by rules or principles designed to uniform differentiated patterns or variants of a common object to improve their coordination and/or efficiency in order to fulfil common obligations or achieve common objectives (standardisation).

Standards can be ‘hard’ or ‘soft’, according to their legal status (compulsory or not) or their degree of precision (from very detailed to a simple set of common rules). In the field of social protection at EU level, the scope can range from hard standards related harmonisation of the social protection schemes on their conditions of access for EU and third country workers and legal residents (Regulations), to simple harmonisation of access to information on social protection schemes.

Standards can be ‘maximum’ or ‘minimum’. They can refer to ceiling values that have to be respected and thus not exceeded or on the contrary to floor values that could eventually be exceeded. Setting EU standards in social protection means a move towards a more integrated harmonisation of national social protection schemes as it creates common rights and privileges at a given level in the whole EU. But this move could be downwards as well as upwards, according to the political choices that are made. It is quite challenging to imagine a maximum level of social protection, as this contradicts the idea of progress towards better social protection¹. Consensus is easier around minimum standards as they let place to progression and impede regression, and also because it is always easier to agree on a common minimum denominator. The key issue here is to be sure that this minimum common denominator is fixed according progressive orientations aiming at the eradication of poverty and social exclusion situations.

Setting minimum standards imply that a clear consensus must be made on the objective pursued by the Union (high level of social protection for all) but also on the common comprehension and agreement of the minimum reference point. This is far from being an easy issue at European level, especially after the recent and future enlargements, given the marked differences existing between Member States in terms of living standards and aims of social protection schemes. Minimum standards are often based on the minimum common denominator and thus can be perceived by the more “socially advanced” countries as a factor of regression of their national systems. But for richer Member States the setting of minimum social standards is also a way to preserve their economic competitiveness by rising livings standards of less advantaged Member States (social dumping). On the contrary, these minimum standards could be seen as a serious constraint for countries with lower levels of social attainment if they are set at a (too) high level. Another layer of difficulty is added when considering the setting of minimum guaranteed income in relation with the fight against

¹ It could be discussed in which measure the pressure actually put on guaranteed minimum income schemes in Europe through the so-called welfare to work and Make Work Pay policies constitutes a step in the direction of a sort of maximum level of benefit determined in reference to (low) wages and economic constraints. We will come back on this issue in the section on minimum income schemes.

poverty and social exclusion; where the main yardstick of reference for the adequacy of benefits is only described in vague terms and strongly determined by national perceptions (decent living, living in dignity, living out of poverty...). We will come back on this question later when discussing the issue of guaranteed income schemes adequacy.

For the purpose of this project a 'social standard' is defined as

For the purposes of this project, a social standard means a set of common rules and/or laws whereby public authorities ensure human dignity and fundamental social rights, through guaranteeing an adequate level of resources and services for all.

This project will focus particularly on minimum social standards as they contribute to the eradication of poverty and ensure equal participation in society.

In reference to the fight against poverty and social exclusion in the EU the setting of minimum standards of social protection is one of the ways that can be used to tackle the problem. In an enlightening report to the Finnish ministry of social affairs and health, Pieters and Nickless describe some pathways that could be followed by social policy in Europe in the new Millennium. They highlight seven different pathways, which are non mutually exclusive and subject to a gradation of means that can be used within themselves (from hard to soft regulation) : the introduction of fundamental social rights ; the use of minimum standard setting; the development of the concept of social quality; the application of EC financial incentives; the setting of common objectives; the creation of standardised terminology and the development of European social federalism (Pieter D., Nickless J.A, 1999). If some of these pathways have been followed since, notably in the field of social inclusion, the setting of social standards has remained largely underutilised. This is not without reasons.

Discussing the way minimum standards could be set to ensure that every European citizen is guaranteed a minimum level of social protection, Pieters and Nickless distinguish three ways that can be followed:

- Harmonisation of national laws: EU could lay down binding standards which have to be respected by the Member States and implemented into the substance of their national laws. The first step will be to decide which type of harmonisation is suitable. The authors distinguish various kind of possible harmonisations involving decisions on the acceptance or not of the possibility for Member States to allow more generous levels of protection to their citizens, the consideration (or not) of the differences in prices and living standards in the Member States, and the necessity to prevent the more 'socially advanced' Member States to shed their high levels of social protection². The second step will be even more complex as it consists in the assessment of the level at which the minimum protection should be set. Which standard will be

² Minimum harmonisation: setting of a basic level of protection that Member States could exceed if they want to ensure better protection to their citizens;

Standard harmonisation: where the level of protection is final and cannot be exceeded by Member States;

Absolute harmonisation: where the level of protection is set at a fixed level for all EU without taking account of differences between Member States;

Relative harmonisation: where differences between Member States are taken into account to set the level of protection;

Conservative (non regression) harmonisation: where the measures are designed to prevent Member States lowering their levels of social protection. (Pieter D., Nickless J.A, 1999)

considered: the higher standard in the EU, or the median or even the lowest ones? On which basis determine which Member State has the best level of social protection?

- **EU funding guarantees:** EU could formulate specific minimum levels of protection, which it itself ensure via some form of guarantee mechanism (European funding) to ‘fill the gaps’ left after an EU citizen has received help from its national social protection scheme. This works as a kind of reinsurance scheme. The authors identify various risk to this approach: to incite Member States to lower their own national social protection schemes, the risk of fraud given the distance between the EU evaluator and recipients, and the difficulty to value from an EU perspective some services such as free meals at school or subsidised transportation.
- **Concerted action:** this third option combines the two previous ones and involves a concerted action between EU and Member States, the Member States adapting national laws to incorporate the EU minimum standards with the support of an EU funding guarantee³. As noted by the authors, although complex, this way may encourage those Member States reluctant to agree on a high level of EU guaranteed income given the EU funding of the difference between national and EU scheme. But the drawbacks identified in the two other ways are nevertheless still present.

(Pieter D., Nickless J.A, 1999)

When trying to set minimum standards at EU level it is thus very important to carefully consider and study what exist at national and sub national levels and the potential effects of these standards. The EU standards should not lead to a weakening of national social achievements that are the result of proper historical developments in the Member States. They could only be useful and accepted by Member states if they are perceived as introducing a necessary improvement in the framework of commonly accepted objectives.

Main conditioning factors for setting standards in EU

Diversity of welfare regimes

The great diversity and complexity of forms that national social protection regimes have develop as a result of their proper history is a factor that make the pathways of harmonisation very complex. Each system is different although some convergences can be found. We will explore more in depth the issue of diversity of national social protection institutions in the section on guaranteed minimum schemes. Let’s just mention here that these systems are different on various levels, such as the way they are financed, their basic aims and principles, the institutional organisation, their relative generosity, their coverage and accessing conditions,... These diverse comprehensions and histories of welfare regimes among European countries lead also to various conceptions of what poverty is, the way to measure it and the actions to undertake in order to tackle it. They play thus an important role to understand what are the different, or even divergent, positions around (minimum) social standards in EU.

EU institutional and legal framework

³ An analogue process could be found in the Common Agricultural Policy where farmers are protected against the market prices and reinsured through EU funding in order to maintain ‘a reasonable standard of living’.

The setting of social standards at EU level is primarily determined by the possibilities offered by the legal European institutional framework. Standards emitted at European level could endorse different forms with different concretisations according to the binding or non-binding character they may have. The Commission and other EU institutions have only the competences they receive from Member States, as they are stated in the Treaties. In the social field the competences devolved to the EU are quite limited, especially for social protection issues, and the main decisive lever of action for setting standards remains at the level of Member States. Social protection, as social inclusion, is governed by the principle of subsidiarity. This subsidiarity plays also an important role at national level in certain Member States where competences involved in social matters are under responsibility of regional/local levels. Thus, it is complicated for the EU to design social standards that have an appreciable impact, given the non binding character of the vast majority of the standards that could be set⁴.

Lack of political will

Another important factor that has to be taken into account is the lack of political will among Member States to set such minimal social standards at EU level. In Europe different visions are coexisting on the understanding and thus utility of setting minimum standards, either at EU or national levels. As mentioned earlier, minimum social standards are perceived as a risk of regression by the more socially advanced Member States while on the contrary other countries fear the burden and the supposed counterproductive effects on their economies. It is very difficult to reconcile these diverging approaches, especially in the framework of a global European policy focused on employment and growth (the 'revised' Lisbon Strategy), underpinned (or justified?) by a (relatively) a slow economic performance, which tends to leave aside social preoccupations and prioritize economic ones. The changes that take place in recent years in economic conjuncture but also in political majorities in EU Member States have deeply influenced the actual reduction of the Lisbon Strategy to only two of its original pillars, the employment and growth. There is still a strong belief among deciders but also citizens that economic performance has a mechanic repercussion on social well-being. We will not enter here in the discussion about the validity of this belief; just recall that numerous researches seriously question this mechanical link and that the basic parameter in this relationship is the redistribution of wealth, which is notably the main function of welfare schemes, but also of fiscal policies. So, the general actual climate at national and EU level is not very favourable to discuss and agree common decisions in the social field, especially on a complex issue such as common standards. The area of social protection has been until now characterised by a high resistance to attempts of harmonisation, with the exception of regulations issued concerning the harmonisation of access to national social protection schemes by EU workers and citizens (Regulations 1408/71, 574/42 and recently 574/72). Decisions concerning social protection at the European council(s) are still under the rule of unanimity, which means that the 25 Member states have to commonly agree the decisions in social field, while starting from very different situations and conceptions in terms of poverty

⁴ Nevertheless, some social standards of binding nature have been introduced along the years in the broad social domain, notably concerning the work dimension. In the field of work organisation (working time, rights of part-time workers, collective redundancies, ...) and health and safety at work (exposure to noise, radiations,...) or gender equality and non discrimination in the access to work and social protection a number of standards have been submitted through Directives and transcribed into national laws. In the field of social protection, the respect of the principle of free circulation of workers and citizens has induced a harmonisation of the social protection schemes on their conditions of access for EU and third country legal residents. These standards refer to domains where the UE has legal competences (common market, equality and non discrimination, social dialogue,...).

and social exclusion. This could be seen as a drawback as it makes any progress in this field very hard to achieve given the increased difficulty to reach a unanimous decision in an EU with 25 members. It is reversely seen as a guarantee of non regression by certain Member States as it impedes the possibility for EU to impose lower standards of social protection than the national ones. This is a central point in the debate on social standards at EU level. It underlines also the necessity to have what is called in European jargon a ‘bottom-up impulse’, in other words the necessity to push and increase the debate at national and sub-national levels in order to create the possibility of an agreement at European level. NGOs but also social partners and citizens have a major role to play in this respect.

Technical nature

We must also mention here among the factors contributing to the complexity of the setting of social standards at EU level the issue of their technical nature. The more precise the standard is defined, especially when referring to a minimum standard, the more it implies to have common and agreed ways to concretely express it from a technical point of view. For instance, should the reference level be national or European when discussing a minimum income ? Let ‘s imagine a minimum income threshold based on budget standards, how to ensure that the basket of good and services utilised to calculate it is representative of all EU members states patterns of consumption? If national thresholds are used how far are they comparable across EU ? Numerous questions of technical order underpin also the feasibility of standards at EU level and should not be neglected as they interfere significantly with the even conception of minimum standards.

Adequacy: a central concept when discussing standards

A central issue which underpins the debate around the setting of social standards, especially when they are minimum, concerns the adequacy of these standards in relation with the given goal of the standard, in our case to tackle poverty and social exclusion.

Etymologically, the word ‘adequate’ means ‘sufficient’, enough or satisfactory for a particular purpose, sufficient to satisfy a requirement or meet a need (Cambridge Dictionary). Literally the latin roots of the word refer to equality, to set conditions of ‘A’ equal to those of ‘B’. But when is a minimum sufficient? What is sufficient when broadening the focus to the European level? The understandings of the sufficiency are quite diverse among the 25 Member states that are forming European Union today. These are complex questions as the answers may differ from country to country but also according to the definitions we give to poverty.

In the framework of the multidimensional conception of poverty and social exclusion embodied in the European process on social inclusion different understandings are related to adequacy according to the dimensions considered:

- in terms of income (“how much is enough”);
- in terms of coverage of population(s) and accessibility of the various existing schemes;
- in terms of the policy solutions proposed to tackle the problem (for instance are solutions related to activation and training adequate when considering individual capabilities development, valorisation of existing qualifications, improvement of individual and household well-being,...);

- In terms of adequacy of provided services notably concerning their quality or accessibility.

When discussing adequacy of minimum standards in the framework of EU social inclusion process but also in a social right-basis approach we must consider all these aspects in conjunction. But it is very difficult, even impossible, to know what are the respective effects of each of these dimensions and their combination on the concrete reality of poverty and social exclusion experienced by European citizens, which is deeply embedded in individual histories and trajectories but also in national and/or regional and local realities. Quality of services is for instance a crucial issue but when is a service adequate? It implies first to conciliate views that are sometimes contradictory, those of service providers and users.

The issue of adequacy has been mainly treated in literature in relation with income, especially in the Anglo-Saxon world. One central reading is probably the book by John Veit-Wilson (1998) which discusses the adequacy of minimum incomes as set by governments. Although concerning only income, many elements of its approach can be extended to the domains we mention above when discussing a broader vision of poverty and social exclusion in the framework of EU social inclusion OMC. The approach described in this book synthesise and underpins notably the debate on minimum income schemes in Anglo-Saxon countries such as Ireland (see Combat Poverty Agency policy submission) or UK (see Zacchaeus 2000 Trust) as well as in USA, Australia or New-Zealand. If we insist here on this Anglo-Saxon anchoring of the debate in literature concerning adequacy and minimum income standards it is because it highlights also that the very idea of minimum standards, especially concerning income, is not much discussed in other countries and may be rejected or not seen as feasible or even desirable in the field of income. It reflects a particular view of poverty and social exclusion in terms of apprehension and policy action that may not be understood and accepted the same way in welfare regimes from a different nature, such as those existing in Scandinavian countries, Continental and Southern Europe. We will discuss more in detail the differences in design and philosophies of welfare models in Europe in the Working paper II. Let's just mention here that this point must be carefully taken into account when discussing minimum (income) standards at EU level.

For the purpose of our project the main input of Veit-Wilson concerns the definition of the four fundamental questions⁵ that have to be asked when discussing minimum income standards that can be enlarged to the general discussion on minimum standards:

1. **For what?** : What is the purpose of the standard? Ensure a decent income in comparison to the “normal” society? To meet basic needs?
2. **For whom?** : For every citizen in the society or for a specific group? Who are the beneficiaries, how are they defined and/or targeted?
3. **For how long?** : What is the time dimension of the standards, being in terms of duration or policy prospective?
4. **By Who?** Who set the rules and conditions of the standards? According to which criteria?

These four questions are to be consider as the main structuring factors to discuss the issue of (minimum) social standards, and therefore for our work in the project. To answer these questions when examining national situations will help us to better compare and understand what is behind the national debates and conceptions of minimum social standards.

⁵ Starting from the contribution of Dubnoff (1985) who highlights three of these questions, Veit-Wilson adds a fourth question on the time dimension to underline the effect of expected duration on the design of income maintenance schemes (Veit-Wilson, 1998:21)

Another fundamental distinction introduced by Veit-Wilson is between the scientific approach of poverty, oriented towards the measurement of poverty with (relatively) objective criterion and purpose, and (minimum) income standards which reflect political decisions on how societies and governments understand the issue and are prepared to invest to tackle it. So it is important to avoid confusion between these two aspects of the question, although they may be sometimes confused by certain Member states or even the ‘common sense’, which identifies easily the poor with those being on minimum income or eligible to it. It is important to repeat again that this is an erroneous confusion as poverty is a much wider issue than only minimum income or social assistance benefits. As stated by Veit-Wilson, “*the complex question of income maintenance adequacy standards demands clarity about objectives and clear and unambiguous ideas and language to discuss them. This condition is often lacking. Indeed, in politics it may be rejected, when discourses are chosen to exclude those who are not experts in their use, those who lack power, and questions which are politically inconvenient*”. (Veit-Wilson, 1998:110)

Thus, a standard is, according to Veit-Wilson, an abstraction, a set of qualities for making judgements, in this case on the adequacy of income: “*a Minimum income standard (MIS) is a political criterion of the adequacy of income levels for some given minimum real level of living, for a given period of time, of some section or all the population, embodied in or symbolised by a formal administrative instrument or other construct*”. (Veit-Wilson, 1998:1)

A minimum income standard is thus a broader concept than certain specific minimum incomes, such as the GMI. *It is essentially a policy-tool that can be applied as a benchmark of adequacy of various welfare provisions or other socially defined minimums, such as the minimum wage or minimum State pension for instance. It is thus not intended to be a scientific measure of poverty even if a scientific measurement of poverty may be used to define it.*

Veit-Wilson underlines also the way the different discourses⁶ on poverty among countries affect the choice of MIS by the governments. Among the different discourses (and their limitations in terms of adequacy definition) he distinguishes various approaches (and measurements) of poverty:

- Deviation from average level of living (but without searching for income levels at which this becomes intolerable);
- Statistical inequality (but no information on when the distribution of income becomes unacceptable);
- Social exclusion (without being able to define what level of income causes it);
- Concepts drawn from economic theory (without consideration on how it relates to people own appreciation of adequate minimum income).

These different approaches of poverty lead to different types of governmental minimum income standards which reflect their values, discourses and assumptions about:

- *Stratification*, when MIS reflects adequate income for all citizens against only for lower-status groups;
- *Minimum wage or minimum social benefit*: whether the MIS is related to people expected “normal” source of income (mainly work but also family/household transfers

⁶ Here a discourse has to be understood as a package of values, ideas, technical language and power made by those in power to decide the “right” way.

or capital) and the maintenance of living standards, or only by reference to a State responsibility of residual income maintenance in absence of earnings;

- Conception of MIS in terms of *budget standards* (composition and cost), or *attitudinal standards* (structured around a political and/or public consensus on what is a minimum tolerable level of income), or also *statistical standards* (in relationship with other indicators of level of living).

As we will see in Working paper II these different approaches structure the understanding of GMI schemes in the European Union Member states.

Finally Veit-Wilson highlights also what are the necessary requirements of a good minimum standard:

- *Public acceptability* : the underlying concept of the MIS must be broadly acceptable and accepted, be in accordance with common sense;
- *Statistical/methodological defensibility*: the criteria used to set the MIS must be subject to verification and present statistical qualities in terms of integrity, logical consistency, robustness, reliability, comparability across time and social groups, but also across countries in a European perspective. Another related question that we add concerns the issue of who proceeds to this verification and how the different stakeholders in the process of validity check are involved.
- *Administrative feasibility*: the MIS must be capable to be constructed, maintained and implemented with maximum efficiency and acceptability while retaining its effective integrity as a standard of adequacy. (Veit-Wilson, 1998:105 citing Citro and Michael, 1995).

These structuring elements, although centred on the issue of minimum income standards, give us a useful base to use in the discussion of the various elements that may underpin the debate in Europe on minimum social standards in various relevant fields.

Social rights and social standards

One declared aim of our project is to strengthen the rights-basis in the NAPs and the EU Inclusion process. Although only a limited number of NAPs inclusion are clearly encompassing a fundamental rights approach (Belgium, France for instance) these rights are recognised by almost all Member States in their constitutions as well as in the common approach (EU objectives) structuring the OMC on social inclusion at EU level. They are also reflected in the common understanding of poverty and social exclusion in this EU process as a multidimensional issue, covering not only monetary issues but also access to fundamental rights such as housing, education, health, civil and social participation, justice, culture,...

Definitions of Social Rights

In a rights-basis approach we have to considerer social standards as a tool guaranteeing and favouring the expression and concretization of social rights recognised to all EU citizens through national and EU laws. In this context the objective of social standard is to guarantee the effective access and effective fulfilment of these social rights for all EU citizens. But the concept of social rights is not yet clearly identified although these rights are recognised in national/regional constitutions and fundamental laws and increasingly in International conventions.

Social rights at international level

At the international level, if we exclude more general conventions of the United Nations or International Labour Organisation, there are mainly 3 conventions that are particularly relevant for EU countries⁷:

- The Charter of Social Rights, established in the framework of the Council of Europe in 1961;
- The Community Charter of the Fundamental Social Rights of Workers of 1989;
- The Charter of Fundamental Rights of the EU proclaimed in 2000 and incorporated as Part II of the Treaty establishing a Constitution for Europe currently under ratification (?).

We include in annex to this document a detailed presentation of the social rights as they are recognised in these conventions. For the definition of these rights we will use a definition given during the debate on the Charter of Fundamental Rights of the EU and which search to express as well the state of international conventions and the content of national constitutions and fundamental laws.

Trying to set a bill of fundamental social rights⁸ for the European Parliament, Butt and al. define these rights as *“rights to which the individual citizen is entitled, which he can exercise only in his relationship with other human beings as a member of a group and which can be made effective only if the State acts to safeguard the individual’s environment. Social rights are a necessary complement to civil rights and liberties, since the latter cannot be enjoyed without a minimum of social security. In contrast to civil rights and liberties, this means that it is not freedom from the State that is achieved, but freedom with the State’s help. These are, then, fundamental rights in the form of entitlements.”* (Butt & al., 2000:9)

They distinguish the following rights:

- **Right to work**
 - fair/safe working conditions
 - fair wages
 - paid leave
- **Right to education and training**
 - free elementary education
 - free secondary school education
 - free university education
 - vocational training
- **Right to social security**
 - public welfare
 - special protection for mothers
 - special protection for families/parents

⁷ We must also recall here that the EU Treaty refers since Amsterdam to fundamental rights as recognised in the European Council’s Charter of Social Rights and the Community Charter of the Fundamental Social Rights of Workers.

⁸ The authors did not consider certain social rights as these are more the expression of collective rather than individual rights (freedom of occupational choice, right to collective representation, right to strike,...) or already well established and protected in EU and national legislations (gender equality, non discrimination).

- special protection for the disabled
- special protection for children/young people
- special protection for the elderly
- **Right to housing**
- **Right to health**
 - free for the indigent
- **Right to culture**
- **Right to a healthy environment**

In a report adopted by the Council of Europe Mary Daly enlarges this definition of social rights. She first notes that legal and research literatures on rights commonly divide Human Rights between two broad categories asserted to be different in nature: civil and political rights on the one hand, economic and social rights on the other. The reasons of this distinction are generally based on the role played by the State in the guarantee and implementation of the rights (economic and social rights require a State framework of understanding and intervention while civil and political rights are free from State intervention), their legal nature (civil and political rights are supposed to be “absolute and immediate” while economic and social rights are programmatic and gradual) and status (civil and political rights are defined by Constitutions and laws and therefore easily brought to Justice Courts than economic and social rights realised through policy and social provisions).

We agree with the author when she states that these assumed differences are actually overstated, given that social rights can also be brought to justice and that the “absolute and immediate” character of civil and political rights is not without questions. Moreover, the evolution over time in international conventions is in the direction of a greater integration between these categories of rights⁹. In the context of the Council of Europe the social rights of the European Social Charter and its revised version are seen as the natural counterpart of the human rights guaranteed in the European Convention on Human Rights. Mary Daly highlights that social rights not only refer to individual needs but also to societal cohesion: *“Another way of understanding social rights is in terms of the values and benchmarks which they connote in relation to society and societal well-being. That is, social rights also acquire their meaning by reference to what is to be a participant in or member of a society. In this regard, they imply a commitment to social cohesion, solidarity, equality and inclusion. They also imply a major concern with the protection of vulnerable groups”*. (Daly M., 2002:16) She then defines social rights as *“...those provisions, expressed in legal and other forms, which are necessary for the fulfilment of people’s social needs and for the promotion of social cohesion and solidarity.”* (Daly M., 2002:16)

Thus, social rights have to be interpreted not only in terms of law but also in terms of social provisions provided through social policies and programmes, as they are a blend of these two aspects. This means, especially for social provisions, that a determinant factor in the way these rights are guaranteed and implemented is the institutional arrangement of the environment in which they could be exercised (from local to European).

With this enlarged definition we see clearly the relation between social rights and the multidimensional issue of poverty and social exclusion as such, but also the link with social benchmarks (standards) used as reference of what is “fair”, or “decent” or “socially

⁹ The Charter of Fundamental Rights of the EU and the UN Convention on the Rights of the Child put side by side all categories of rights

acceptable” or “full participation to society”, all concepts of common use in EU and national legal, institutional and academic contexts.

As mentioned earlier, these social rights are also encompassed in the Common objectives that Member States have agreed at the Nice Council in 2000 and which are the backbone of the OMC in the field of poverty and social exclusion at European level. The Common Objective 1 concerns access for all to employment, resources, rights, goods and services. The rights mentioned in the common objective are the right to live in accordance with human dignity, to access to decent and sanitary housing as well as to the basic services necessary to live normally having regard to local circumstances (electricity, water, heating etc.), to healthcare appropriate to their situation, to education, justice and other public and private services, such as culture, sport and leisure. Thus they cover the description of social rights expressed above.

These social rights are also recognised as fundamental by a certain number of Member states and stated in their national constitutions. The following table gives us an insight on the way the different national constitutions identify the social rights. The table concerns only countries which have statutory Constitutions, this means by no way that countries not included in the table do not recognised social rights, just that these are expressed in legal texts that have another legal status (such as the Bill of Rights in the UK). We must also be cautious when reading this table about the fact that there is no direct correlation between an extensive description of rights and their effective respect and implementation as well as impact on poverty and social exclusion extent. Countries of Southern Europe have the most extensive and detailed description of social rights in their Constitutions but experience higher levels of poverty and social exclusion than other countries where rights are of a more universalistic nature and not very detailed, such as Scandinavian countries for instance. But what this table shows us is that all EU Member states do consider social rights as fundamentals, although with different degrees of formalisation.

Inscription of social rights in national Constitutions

	BE	CZ	DK	DE	GR	EE	ES	FR	IR	IT	CY	LU	LV	LT	HU	MT	NL	PL	PT	SL	SK	FI	SE
Right to work	▲		▲		▲	▲	▲	▲	▲	▲		▲					▲		▲	▲		▲	▲
- fair/safe working conditions	▲	▲					▲			▲	▲			▲				▲	▲			▲	
- fair wages	▲	▲					▲			▲			▲	▲	▲				▲			▲	
- paid leave							▲			▲			▲	▲	▲	▲			▲	▲		▲	
Right to education and training	▲				▲		▲	▲	▲						▲			▲	▲			▲	▲
- free elementary education	▲	▲	▲		▲	▲	▲		▲	▲	▲	▲	▲	▲				▲	▲	▲	▲	▲	
- free secondary school education	▲	▲			▲	▲							▲	▲				▲	▲			▲	
- free university education		▲												▲					▲			▲	
- vocational training		▲					▲												▲				▲
Right to housing	▲				▲		▲			▲							▲	▲	▲	▲		▲	▲
Right to health	▲	▲			▲	▲	▲	▲	▲	▲		▲	▲	▲	▲		▲	▲	▲	▲	▲	▲	▲
- free for the indigent										▲									▲				
Right to social security	▲		▲	▲	▲		▲	▲		▲	▲	▲	▲		▲	▲	▲	▲	▲	▲	▲	▲	▲
- public welfare	▲	▲				▲	▲	▲		▲				▲	▲				▲			▲	▲
- special protection for mothers				▲			▲	▲	▲	▲					▲				▲				
- special protection for families/parents				▲	▲	▲	▲		▲	▲								▲	▲				▲
- special protection for the disabled					▲	▲	▲							▲	▲				▲	▲	▲	▲	▲
- special protection for children/young people.					▲		▲	▲		▲									▲				
- special protection for the elderly		▲			▲	▲	▲	▲			▲			▲	▲	▲			▲	▲	▲	▲	▲
Right to culture	▲						▲										▲		▲				
Right to a healthy environment	▲	▲		▲		▲	▲			▲	▲			▲	▲	▲	▲		▲	▲	▲	▲	▲

Source : author's compilation based on European Parliament fiches

Obstacles to access the social rights

All of these social rights are de facto appropriate to set minimum standards, although the competences related to these rights are mainly in the hands of Member States and therefore can difficultly be the object of EU standards, at least at present state of EU institutions. In order to make a decisive improvement on poverty and social exclusion the social standards may focus, at least in a first stage, on the factors affecting the effective access to these rights.

Mary Daly, in the report mentioned early, identifies various factors impeding access to social rights (table) and the seven main challenges in regard to access to social rights:

1. To strengthen the entitlement to social rights and improve relevant provision;
2. To strengthen monitoring and enforcement in relation to social rights;

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3. To increase the resources made available to realise social rights;
4. To modify and improve the procedures and management of services and benefits which are intended to give effect to social rights;
5. To improve information and communication about social rights and related benefits and services;
6. To combat psychological and socio-cultural obstacles which hinder access to social rights and affect both service providers and users;
7. To specifically target vulnerable groups and vulnerable regions for the purpose of improving access to social rights.

These recommendations, or some of them, could be used as starting points for the definition of domains where improvement of social situation of EU citizens in a rights-basis understanding could be done, possibly through the setting of standards.

The following table from May Daly's report gives us a more precise vision of possible factors of improvement for the realisation of social rights.

The Main Types of Factors Impeding Access to Social Rights

Specification of Right and Adequacy of Legal and Other Provision	<ul style="list-style-type: none"> ▪ Lack of explicitness in the specification of the right or entitlement ▪ Rights limited to particular sectors of the population ▪ Gaps in the social safety net ▪ Lack of specification of a basic threshold or minimum standard ▪ Exclusive conditions of access or entitlement ▪ Mismatches between the nature of provision and need
Inadequate Monitoring and Enforcement	<ul style="list-style-type: none"> ▪ Inadequate monitoring ▪ Inadequate protection against the non-realisation of rights ▪ Discrimination and/or differential treatment ▪ Inadequate responsibility to users
Resources	<p><u>For Providers:</u></p> <ul style="list-style-type: none"> ▪ Insufficiency of a range of resources (funding, staffing, facilities, equipment) ▪ Failure to guarantee or provide resources on a long-term basis ▪ Imbalance in resources between levels of administration <p><u>For Users or Rights' Claimants:</u></p> <ul style="list-style-type: none"> ▪ Insufficiency of a range of resources and capacities including financial resources, educational capacities, personal resources, social skills and contacts
Management and Procedural	<ul style="list-style-type: none"> ▪ Fragmentation between levels of administration and services ▪ Inadequate integration of and consultation with NGOs and users ▪ Complexity of procedures ▪ Obstacles arising from the mode and practice of service delivery
Information and Communication	<ul style="list-style-type: none"> ▪ Insufficient stock and flow of high-quality information ▪ Inappropriate form and nature of information provided ▪ Underuse of 'new' or alternative channels
Psychological and Socio-cultural Obstacles	<p><u>On the Part of Providers:</u></p> <ul style="list-style-type: none"> ▪ Negative expectations of and predisposition towards certain groups ▪ Stigmatisation of certain groups ▪ Lack of understanding of minority cultures <p><u>On the Part of Users or Rights' Claimants:</u></p> <ul style="list-style-type: none"> ▪ Fear and insecurity induced in and by public procedures and settings ▪ Low self-esteem ▪ Cultural obstacles
Inadequate Attention to Vulnerable Groups and Regions	<p><u>Vulnerable Groups:</u></p> <ul style="list-style-type: none"> ▪ The existence of vulnerable groups which may lack the 'resources' to claim benefits and services ▪ The existence of overlapping difficulties among these sectors of the population <p><u>Vulnerable Regions:</u></p> <ul style="list-style-type: none"> ▪ The existence of regions or localities which are multiply-deprived ▪ Lack of investment in certain communities and localities ▪ Climatic and geographical obstacles which act to cut off areas or regions

(Daly M., 2002:20)

This approach in terms of factors impeding the realisation of social rights authorise us to highlight three main areas propitious for the setting of EU minimum standards.

The first area relates to the **adequacy**. We have discussed this topic earlier in this document. This could be the adequacy of social protection benefits and provisions in relation with poverty and social exclusion (guaranteed minimum income schemes), the adequacy of housing, of judicial protection,... A parallel issue is the development of adequacy standards fully recognised by all.

The second area concerns **coverage** and the access for all, and especially disadvantaged groups, to social protection and other social rights related provisions (housing, health, education,...) . These may concern conditions of affiliation to social security schemes, coverage of certain (new) social risks, access to social housing and social healthcare, to basic services (electricity, water, heating, transportation, minimum banking services,...)

A third area, which is vital in terms of realisation of rights, is the **information** on rights and available provisions. Lack of information plays a crucial role in non take-up of benefits and rights. As this area is the less binding one for Member States it could be also the more propitious for the setting of EU minimal standards in short or medium term.

When discussing more particularly the issue of minimum income standards, we could usefully add to our scope the principles and criteria expressed in the European Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in the social protection systems (see details in Working Paper II).

Bibliography

- Butt M.E., Kübert J., Schultz C.A., 2000, Fundamental Social Rights in Europe, European Parliament Social Affairs Series SOCI 104 EN, European Parliament
- Citro, C.F., Michael, R.T., (1995), Measuring Poverty: A new approach, Washington DC: National Academy Press
- Combat Poverty Agency, 2001, How Much Is Enough ? – Setting an Inclusive Minimum income Standard, Policy Submission to the Adequacy benchmarking and Indexation working group, Dublin
- Daly M., 2002, Access to Social Rights in Europe, European Committee for Social Cohesion, Council of Europe, Strasbourg
- Dubnoff, S., (1985), “How Much Income is Enough? Measuring Public Judgements”, in Public Opinion Quarterly, vol 49, n°3, pp 285
- Pieters D., Nickless J.A., 1999, Pathways For Social Protection In Europe, report to the Finnish Ministry of Social Affairs and Health,
<http://pre20031103.stm.fi/english/tao/publicat/pathways/contens.htm>
- Pieters, D. Harmonisation of Social Security with an Eye on, 1993, a English translation of a chapter in Pieters, D. Sociale Zekerheid na 1992: één over twaalf, published in the Reeks Sociale Zekerheidswetenschap series by the Katholieke Universiteit Brabant
- Veit-Wilson, J., 1998, Setting Adequacy Standards – How Governements Define Minimum Incomes, Policy Press
- Zacchaeus 2000 Trust, 2004, Memorandum to the Prime Minister on Minimum Income Standards, London

ANNEX 1: recognition of fundamental social rights at European level

This annex is based on information retrieved and compiled from the web sites of European Parliament and European Commission DG Home and Justice Affairs

1. The European Social Charter (Council of Europe)

The European Social Charter (ESC) can be seen as the 'social counterpart' of the European Convention on Human Rights (ECHR). Like the ECHR, it emerged from the Council of Europe and since 1961 has been signed by 22 countries, though with reservations and derogations in some cases.

The ESC requires the signatory states to take legal and administrative measures in the areas of working life and social security. Although it does not provide for any real sanctions for infringing the rules, it does obligate the signatory states to send a report every two years to the Committee of Experts, which then identifies infringements and submits proposals for changes. As a result, the ESC has had a major influence on the legislation of the signatory states, this being especially true of the first twenty years of its existence. In the 1970s, for example, the United Kingdom and Denmark amended their merchant shipping acts because they contravened the prohibition of forced labour referred to in Article 1(1) of the ESC.

The EU itself is not a party to the ESC. In the preamble to the 1987 Single European Act (SEA) the Member States of the Community nevertheless referred to the 'fundamental rights recognised in the European Social Charter, notably freedom, equality and social justice. This declaration is now also to be found in the preamble to the Treaty on European Union (fourth recital). The European Court of Justice has also referred to the ESC on several occasions in its judgements and uses it as a source of legal findings when establishing general principles of Community law.

Articles 1 to 19 of the European Social Charter list the following fundamental rights:

- ◆ the right to work;
- ◆ the right to just, safe and healthy working conditions;
- ◆ the right to fair remuneration;
- ◆ the right to organise;
- ◆ the right to bargain collectively;
- ◆ the right of children and young persons to protection;
- ◆ the right of employed women to protection;
- ◆ the right to vocational guidance and training;
- ◆ the right to protection of health;
- ◆ the right to social security;
- ◆ the right to social and medical assistance and to benefit from social welfare services;
- ◆ the right of disabled persons to vocational training and integration;
- ◆ the right of the family to protection;
- ◆ the right of mothers and children to protection;
- ◆ and rights relating to the freedom of movement, combined with the right to protection and assistance.

A question that has yet to be answered is whether the EU, or EC, should itself accede to the ESC (and to the ECHR). Parliament has always favoured this, but the Court of Justice takes the view that the EC lacks a legal basis for such action. The two charters might, however, be

incorporated into Community law without formal accession. A particular problem with accession is that, as the two charters would rank higher than EU law, it would have to be possible for the case law of the European Court of Justice to be reviewed by the European Court of Human Rights in Strasbourg.

2. The Community Charter of the Fundamental Social Rights of Workers

The Community Charter of the Fundamental Social Rights of Workers of 9 December 1989 was signed at the time by all the EC Member States except the United Kingdom. It is neither a binding legal act of the EU, nor is it a treaty among the signatory states that is binding in international law. It is merely a solemn declaration by the Heads of State or Government of the Member States. It should nonetheless be used as an aid to the interpretation of the provisions of the EC Treaty, since it reflects views and traditions common to the Member States and represents a declaration of basic principles which the EU and its Member States intend to respect¹⁸. Together with the action programme for implementing the Community Charter, which has also been approved by the Heads of State or Government, it is therefore used by the Commission as a basis for justifying many of the directives it proposes.

Title I of the Community Charter of the Fundamental Social Rights of Workers details rights in the following areas:

- ◆ freedom of movement;
- ◆ employment and remuneration;
- ◆ improvement of living and working conditions;
- ◆ social protection;
- ◆ freedom of association and collective bargaining;
- ◆ vocational training;
- ◆ equal treatment of men and women;
- ◆ information, consultation and participation of workers;
- ◆ health protection and safety at the workplace;
- ◆ protection of children and adolescents;
- ◆ elderly persons;
- ◆ disabled persons.

Title II of the Community Charter makes it clear that the Member States are generally responsible for guaranteeing fundamental social rights in accordance with national practices. The EU takes action only inasmuch as Articles 29 and 30 of the Charter require the Commission to draw up an annual report on the application of the Charter and to forward it to the Council, Parliament and the Economic and Social Committee. As a consequence, it has already been stated in the literature that the ESC of the Council of Europe (see 1 above) affords better protection of fundamental social rights than the EU Member States' Community Charter. Now that the Treaty of Amsterdam has helped fundamental social rights to find their place in the preamble to the EU Treaty, the Court of Justice might take greater account of them – as the 'driving force of integration' – in its case law on fundamental rights and so make them an important element of the system of fundamental rights.

3. The Charter of Fundamental Rights of the EU

The Charter was proclaimed at the European Council in Nice on 7 December 2000, by the presidents of the Council, the European Parliament and the Commission. However, it was not then incorporated into the Treaties establishing the European Union. As pressure for the Charter to be given full legal status was unequivocal during the drawing up of it. The

European Parliament came down firmly in favour of a binding legal document, integrated into the Treaties, as did the Economic and Social Committee and the Committee of the Regions. Civil society representatives are virtually unanimous in their support.

Accordingly, the Convention on the Future of Europe proposed to incorporate the Charter on fundamental rights as the second part of the draft Constitution which was submitted to the Thessaloniki European Council on 20 June 2003.

The text submitted by the Convention served as the basis for the work of the Intergovernmental Conference, which brought together the representatives of the governments of the 25 current Member States, the European Commission and the European Parliament. The three candidate countries - Bulgaria, Romania and Turkey - also took part in all the meetings of the IGC.

At the European Council in Brussels on 17 and 18 June 2004, the IGC brought its work to an end after eight months of negotiations, with agreement having been reached between the governments of the 25 Member States.

The Charter has been incorporated as the second part of the draft European Constitution, which is in the process of ratification by the 25 Member States of the European Union.

On 29 October 2004, Heads of State or government and Ministers of Foreign Affairs of the 25 Member States of the European Union signed in Rome the Treaty establishing a Constitution for Europe. Currently Member States are in the process of ratifying the Constitution in accordance with their respective internal requirements (i.e. by parliamentary procedure and/or by referendum). This process is expected to last about two years. Consequently the Charter is not yet a binding legal document.

Is the Charter just a wish list with no binding power? According to the Commission, since December 2000 the Charter has increasingly made its existence felt. More and more EU citizens are referring to its provisions in the letters, petitions and complaints they send to the European Parliament and Commission. The proclamation in December 2000 represented a solemn commitment by three institutions - the European Parliament, the Council and the Commission - to respect the Charter.

While awaiting the ratification of the European Constitution by 1st November 2006 by Member States of the Union, and despite the uncertainty surrounding the ratification actually, it is obvious that the Council of Ministers of the European Union and the European Commission cannot ignore, when they act in a legislative capacity, a text prepared at the behest of the European Council (the heads of state and government of Member States), and by every national and European source of legitimacy - the European Parliament, national parliaments, representatives of Member State governments and the Commission - united within a single framework. Similarly, the Court of Justice of the European Communities and national courts are already drawing inspiration from it. The Charter is becoming binding through its being interpreted as enshrining the general principles of Community law.

The social rights included in the Charter are declined as follows:

Chapter I - Dignity

Article 1 : Human dignity

Human dignity is inviolable. It must be respected and protected.

Chapter II - Freedoms

Article 14 : Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15 : Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Chapter IV - Solidarity

Article 27 : Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the procedures laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37 : Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38 : Consumer Protection

Union policies shall ensure a high level of consumer protection.

Chapter V - Citizen's Rights

Article 41 : Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Chapter VI - Justice

Article 47 : Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

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