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EU governance of economic and social policies: chances and challenges for Social Europe

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I. INTRODUCTION

Since the financial crisis erupted in 2008, Europe has been caught up in finding effective ways to rescue the Economic and Monetary Union (EMU). This goes hand in hand with a strong emphasis on fiscal consolidation, stricter economic and budgetary surveillance and new enforcement mechanisms to put especially Eurozone States under pressure to comply with the rules underpinning the EMU. At the same time, European countries are facing serious social challenges: (long-term and youth) unemployment rates are rapidly rising and so are the numbers of people at risk of poverty and social exclusion. Also skills mismatches, job losses, precarious forms of employment and in-work poverty are on the rise across the EU.¹

In the light of these developments it is more urgent than ever that the Union's social objectives are adequately implemented.² Also the social, employment and education targets spelled out in the Europe 2020 strategy require an effective response. This is all the more so because we are dealing here with more than just noble intentions or only a 'good weather' strategy.³ The Court of Justice of the European Union (CJEU) more than once underlined that the Union is not merely an economic union, but also has a social purpose.⁴ The Treaty of the European Union confirms this by expressly stating that a social market economy, aimed at full employment, social progress and a high level of social protection, is what the Union should strive for.⁵ This statement should not degenerate into an empty slogan under macroeconomic pressures. Against this backdrop, this article aims at establishing to what extent the renewed EU economic

¹ See 'EU Employment and Social Situation Quarterly Review', December 2012.

² The Union's social objectives include employment promotion; the development of human resources with a view to lasting, high employment; improved living and working conditions; the dialogue between management and labour; proper social protection and the combat against poverty and social exclusion. See Art 151 TFEU.

³ R. Thillaye, 'Gearing EU Governance towards Future Growth', Policy Network Paper, March 2013; F. Vandenbroucke, 'Europe: the social challenge. Defining the Union's social objective is a necessity rather than a luxury', Opinion paper No 11, (2012) *Observatoire Social Européen*.

⁴ For examples, see case C-43/75, *Defrenne II* [1976] ECR 455. See also case C-341/05, *Laval* [2007] ECR I-11767, point 105 and case C-438/05, *Viking* [2007] ECR I-10799, point 79.

⁵ Art 3 (3) TEU.

and social policy coordination cycles offer opportunities to uphold and further develop the Union's social objectives.

First, it seeks to examine to what extent the legal frameworks in which macroeconomic and social policies operate may safeguard a balance between macroeconomic and social concerns (part II). Next, it explores the extent to which policy cycles take into account social aims and targets. For this purpose the National Reform Programmes, Stability and Convergence Programmes and the country-specific recommendations, addressed in 2011 and 2012 to the Netherlands and Germany, will be put to the test (part III). The analysis will focus on policy responses to Guideline No 10 of the Integrated Europe 2020 Guidelines. This Guideline was newly introduced in 2010 in order to ensure that employment and macroeconomic policies are compatible with the objective to combat poverty and social exclusion, one of the core objectives of the Union's social policy. Lastly, the analysis will lead to some concluding remarks (part IV).

II. IMBALANCES IN THE INSTITUTIONAL SET-UP

The first question to be answered is to what extent the institutional ground rules for macroeconomic, employment and social policymaking influence the process of lawmaking and policymaking. We assume that the answer to this question is closely related to differences in the EU's competence to interfere with national actions in these three fields.⁶ In order to gain a better understanding of the implications thereof, the frameworks in which macroeconomic, employment and social policies operate will be described in more detail below.

A. Steering mechanisms in the macroeconomic policy field

a. Hard rules to ensure budgetary discipline

When the European Economic Community (EEC) was founded, the choice was made to vest in the supranational institutions the power to establish a law-based order committed to advancing economic integration. This opened a window for the development of a comprehensive Treaty-based framework in the macroeconomic policy field. Over the years, this framework has become more rigid and more focused on European interference with national policy choices in an early stage. Illustrative of this are the rules defined in the Stability and Growth Pact (SGP) in order to prevent excessive deficits.⁷ For this purpose Member States are to define country-specific, medium-term budgetary objectives (MTOs) representing in structural terms the reference value for their budgetary position.⁸ All Member States must reach their MTOs, or be on an appropriate path towards it.⁹ Progress is monitored by the Commission on the basis of Stability and

⁶ For the 'competence issue', see Fritz W. Scharpf, 'The asymmetry of European integration, or why the EU cannot be a "social market economy"', (2010) *Socio-Economic Review* 8, 211–250.

⁷ The SGP is based on Art 121 and 126 TFEU and elaborated in Reg 1466/97, later amended by Reg 1055/2005 and Reg 497/2009.

⁸ See R. Morris, H. Ongena & L. Schuknecht, 'The Reform and Implementation of the Stability and Growth Pact', (2006) ECB Occasional Paper Series 47.

⁹ An annual improvement of the structural balance equal to 0.5 % of GDP is thereby used as a benchmark. This benchmark anchors expenditure growth to the medium-term growth so as to

Convergence Programmes (SCPs), which Member States are to hand in annually.¹⁰ The Commission delivers an opinion on the appropriateness of the Member States' MTOs and SCPs in the first six months of each year.¹¹ In cases of significant deviations from the MTO, the Member State concerned can expect a warning from the Commission.¹² Within a month, this will be followed by a Council recommendation indicating policy directions to return to the MTO. The Council may also impose a sanction equal to an interest-bearing deposit of 0.2 % of GDP, in cases of persistent non-compliance.¹³

The budgetary surveillance framework also provides specific rules for correcting excessive government debts and deficits. These rules apply when the Excessive Deficit Procedure (EDP) is launched. This may be the case when Member States exceed the Treaty's deficit limit of 3 % of GDP and/or the Treaty's debt limit of 60 % of GDP.¹⁴ The Council then can make recommendations to the Member State concerned with a view to bringing that situation to an end within a given time frame. The EDP may be stepped up when the deadline has passed.¹⁵ In that case, revised recommendations will follow with a new timeline to take corrective action.¹⁶ For Eurozone States this may end up in a fine of 0.2 % of GDP.¹⁷ Countries receiving financial assistance may face a temporary suspension of this financing. In both cases sanctions will continue for as long as the Member State concerned fails to take effective action. However, in the case of exceptional circumstances, or following a reasoned request by the Member State concerned, the Commission may recommend that the Council reduces, or even cancels, the sanction imposed on that Member State.¹⁸

With the adoption of the intergovernmental Treaty on Stability, Coordination and Governance of EMU (TSCG), Eurozone States committed themselves to integrate the core principles of the SGP in their national legal frameworks through provisions of binding force and of a permanent character.¹⁹ They also agreed to include a national correction mechanism, supervised by an independent monitoring body, to ensure compliance with the budgetary targets of the preventive arm of the SGP.²⁰ The TSCG is to be

ensure a gradual strengthening of the budget balance. See Art 5 of Reg 1466/97 as amended by Reg 1175/2011.

¹⁰ Stability Programmes are to be presented by eurozone states; non-euro states submit Convergence Programmes.

¹¹ This is one of the components of the 'European Semester' introduced in 2011 in order to provide policy advice in an early stage. See Reg 1175/2011.

¹² Art 121 (4) TFEU.

¹³ Art 4 of Reg 1173/2011.

¹⁴ Art 126 TFEU and Protocol No 12. The debt rule is violated when the gap between a country's debt level and the 60 % reference is not reduced by 1/20 on average over a period of three years: Art 2 (1) (a) of Reg 1467/97 as amended by Reg 1175/2011.

¹⁵ Art 126 (3) TFEU.

¹⁶ Art 126 (13) TFEU.

¹⁷ Art 6 of Reg 1173/2011. Art 8 of the same Regulation stipulates that, if the Member State concerned already lodged a non-interest bearing deposit, the latter shall be treated as a fine.

¹⁸ Art 126 (3) TFEU and Reg 1173/2011.

¹⁹ The TSCG is also referred to as 'the Fiscal Compact'. All Member States except the UK and the Czech Republic agreed to the TSCG in March 2012. It entered into force on 1 January 2013. After ratification, the TSCG will apply as from the first day of the month following the deposit of the Member States' instruments for ratification. See Art 14 of the TSCG.

²⁰ Art 3 (2) of the TSCG. Art 3 (1) of the TSCG encapsulates the 'Balanced Budget Rule' according to which the budgetary position of a contracting party must be at its MTO with a lower limit of a structural deficit of 0.5 % of GDP.

incorporated into Union law within five years.²¹ The first step towards it will be taken with the adoption of the Two-Pack, which will extend the Commission's power to review Eurozone countries' draft budgetary plans.²² It will also tighten the surveillance procedure for countries in receipt of financial assistance or facing severe financial difficulties.²³

All in all, the budgetary surveillance framework can be qualified as quite directive. Especially the prospect of becoming liable to a fine may put Eurozone States under pressure to abide by the Union's rules. This pressure may be augmented by the fact that, since adopting the Six-Pack Regulations in 2011, a qualified majority in the Council is required to halt a sanction proposed by the Commission.²⁴ This makes it much more difficult to form blocking minorities in the Council.²⁵ Therefore the odds are that, once initiated by the Commission, the enforcement procedure will assume a semi-automatic course of action. One could say that this procedure furthers the maturation of a 'two speed Europe', which started to take shape with the decision to submit only Eurozone States to sanction procedures. Yet, no sanctions have been imposed so far. At present, seven Member States are facing the risk of entering the phase in which the EDP may be stepped up.²⁶ Whether this risk will actually materialise depends on the Council's willingness to give the Member States concerned some respite, for example on the ground that their fiscal position results from a severe economic downturn or from other exceptional circumstances beyond their control.²⁷ In 2013, this possibility was used to give some Member States, including the Netherlands, extra time to meet the 3 % deficit rule.

b. The Macroeconomic Imbalance Procedure (MIP)

When the EMU was founded, policy coordination at the European level became the main technique to regulate the Member States' economic policies. Yet, with the introduction of the Macroeconomic Imbalance Procedure (MIP) in 2011, the governance

²¹ Art 16 of the TSCG.

²² For the Two-Pack, see COM (2011) 821 and COM (2011) 819. The Council and the EP adopted both packages in March 2013. They are expected to enter into force in the autumn of 2013. Then Eurozone States will have to present, ahead of parliamentary adoption, their draft budgetary plans for the forthcoming year to the Commission and their Eurozone partners in accordance with a common time frame. The Commission can request a new draft in cases of serious violations of the SGP.

²³ Quarterly progress reviews will have to be submitted reflecting the measures taken to deal with the problems causing the financial difficulties. The European Stability Mechanism (ESM) was already established as an instrument of financial aid, based on international law.

²⁴ Art 5 (5) and Art 6 (2) of Reg 1173/2011. Prior to the Six-Pack, imposing sanctions required the support of a qualified majority in the Council.

²⁵ See further S. Bekker, 'The EU's stricter economic governance: a step towards more binding coordination of social policies?', 2013, Discussion Paper, SP IV 2013-501, Social Science Research Center Berlin (WZB), 2-8.

²⁶ The deadline for corrective action expires in 2013 for Denmark, Austria, the Czech Republic, the Netherlands, Slovenia, Slovakia and France. Germany is not in the EDP anymore.

²⁷ Art 126 (3) TFEU stipulates that a deterioration of a country's fiscal position due to natural disasters or exceptional events outside its control, or as a result of a severe economic downturn, may not lead to launching (or stepping up) the EDP, on condition that the debt ratio is below the reference value of 60 % of GDP and the excess of the deficit ratio is close to the reference value of 3 % of GDP and temporary.

method used in this field obtained features which closely resemble the features of the budgetary surveillance framework. For example, like the preventive arm of the SGP, the MIP seeks to avoid macroeconomic imbalances in an early stage.²⁸ For this purpose, an alert mechanism has been installed that uses a scoreboard of indicators against which the Member States' performances are evaluated. When, after an in-depth analysis, potentially problematic macroeconomic imbalances are detected, the procedure proceeds in more or less the same way as the SGP. So, after a warning from the Commission, Council recommendations may follow entailing policy directions for corrective action.²⁹ If the response is not satisfactory, the Member States concerned will enter the Excessive Imbalance Procedure (EIP). This procedure requires them to draw up a concrete action plan and a roadmap for its implementation within a time frame set by the Council.³⁰ Should this not lead to better performances, Eurozone States run the risk of having to make an interest-bearing deposit of 0.1 % of GDP, which in the last resort may be converted into a fine.³¹ Also here, the reverse majority rule applies for rejecting a Commission proposal initiating the sanctioning procedure.³²

As such, the MIP provides a framework for stricter economic governance. Increased policy control over the Member States' economic policies was seen as necessary in order to more systematically address competitiveness gaps and macroeconomic imbalances. The idea is that the MIP will help to steer the Member States more strongly towards the reforms needed to improve their adjustment capacity and their growth potential. The Broad Economic Policy Guidelines specify the actions to be taken in this respect, thereby guiding the Member States towards developing a growth and stability oriented macroeconomic policy mix.³³ This policy mix includes labour market reforms that focus on addressing skills mismatches and on enhancing a flexible organisation of work and a flexible workforce so as to give companies a comparative advantage on the global stage. This is part and parcel of the Union's strategy to foster competitiveness and growth.

Employment policies are linked to macroeconomic policies this way. The Treaty confirms this link by explicitly stating that the Member States' employment policies are to be consistent with the Broad Economic Policy Guidelines.³⁴ The MIP further strengthens this link by referring not only to financial and economic issues, but also to (un)employment trends and labour costs as determinants of macroeconomic stability.³⁵ In principle, this opens a window for addressing Council recommendations that entail policy directions for corrective action when domestic employment policies involve the risk of jeopardising macroeconomic stability, for example by insufficiently addressing

²⁸ The MIP was introduced as part of the so-called Six-Pack. See Reg 1176/2011.

²⁹ Art 121 (4) TFEU, and Art 5 and 6 of Reg 1176/2011.

³⁰ Art 7 (2) and 8 of Regulation 1176/2011

³¹ Art 10 (4) of Reg 1176/2011. Where two successive decisions are adopted establishing non-compliance, the interest bearing deposit shall be converted into an annual fine. If the Council thereafter concludes that recommended corrective actions have been implemented in the course of a given calendar year, the deposit or the fine paid for in that year shall be returned *pro rata temporis*: Art 3 (7) of Reg 1174/2011.

³² Art 3 (3) of Reg 1174/2011. On this matter, see also K. Tuori, 'The European financial crisis; Constitutional aspects and implications', (2012) 28 *EUI Working Papers Law*.

³³ The macroeconomic policy mix encompasses actions to ensure price and exchange rate stability, sound public finances, a smoothly functioning product and service market and labour market reforms conducive to job creation and economic change. See Council Reg 1466/97.

³⁴ Art 146 TFEU.

³⁵ Art 3 and 4 of Reg 1176/2011. See also European Commission, 'Scoreboard for the surveillance of macroeconomic imbalances', (2012) 92 *European Economy Occasional Papers*.

rising levels of (youth) unemployment or labour costs that rise faster than productivity. As the enforcement mechanisms emanating from the EIP may come within reach if the Council recommendations are not adequately responded to in time, the prospect of eventually risking a fine may serve as a stick for Eurozone States to pursue the required reforms, also in this area.

c. The Euro Plus Pact

In order to complete the picture, it is important to note that Eurozone States and a number of non-Eurozone States voluntarily signed up to the so-called Euro Plus Pact (EPP) in 2011. This is an intergovernmental agreement which seeks to reinforce the economic pillar of the EMU by defining a set of additional actions to foster wage cost competitiveness and employment growth whilst preserving financial stability.³⁶ The actions include reforms of domestic wage-setting arrangements so as to closer align wages to productivity.³⁷ This may call for adjustment of the mechanism for automatic indexation and/or a decentralisation of the national systems of collective bargaining. As such, the EPP promotes increased wage flexibility through 'internal devaluation' as a means to revamp growth and competitiveness. In 2012, the ECB elevated this strategy to a key component of the labour market reforms needed to ensure fiscal consolidation and to prevent or correct macroeconomic imbalances.³⁸ Yet, unlike the SGP and the MIP, the EPP operates within a soft coordination framework without sanctions.³⁹

B. Steering mechanisms in the employment and social policy field

The question is how the embedding of employment policies in the macroeconomic governance structure relates to the institutional ground rules for lawmaking and policymaking in the employment and the social field. From the outset, the development of employment and social policies has been regarded as a domestic issue which is to be decided upon democratically by the electorates of the Member States.⁴⁰ The EEC's founding fathers saw no need for legislative action at the European level in these fields as the free movement of goods, services, capital and labour would, in time, result in the improvement of living and working conditions throughout the Community.⁴¹ Indeed, over the years the scope for legislative action at the European level broadened. This opened the possibility to adopt Directives setting minimum standards in certain fields, including working conditions, dismissal protection and the integration of those excluded from the labour market.⁴² However, at the same time, consensus grew that the role of the EU in the employment and the social field was to be merely programmatic and goal-setting. This was seen as essential, not only to permit the coexistence

³⁶ See Annex I of the European Council Conclusions of March 2011. The non-Eurozone signatories to the EPP are Bulgaria, Romania, Latvia, Lithuania, Poland and Denmark.

³⁷ Council Resolution 97/236/01 and 02 already suggested keeping real wage developments below the increase in productivity in order to strengthen the profitability of employment-creating investment.

³⁸ European Central Bank, 'Euro area labour markets and the crisis', 2012 Structural Issues Report.

³⁹ The coordination technique resembles the technique used in the employment field. See II.B.a.

⁴⁰ D. Hodson, 'EMU and political union: what, if anything, have we learned from the euro's first decade?', (2009) 16 *Journal of European Public Policy* 4, 508-526.

⁴¹ See the Spaak Report, Brussels, 21 April 1956, 13.

⁴² Art 153 (1) (a) and (b) TFEU.

of different national systems, but also to enable them to adapt more easily to changing circumstances.⁴³ As a result, the focus shifted away from ensuring employment protection and social rights through legislative standard-setting. Instead, non-binding modes of governance focusing on policy coordination became the main tool for driving the Union's social objectives forward.⁴⁴

a. The Open Method of Coordination (OMC)

In the field of employment, the above translated into a new Employment Title which paved the way for the Open Method of Coordination (OMC).⁴⁵ While respecting the Member States' prerogatives and competences, the OMC provides policy guidance which initially focused on the implementation of the European employment strategy (EES), the predecessor of the Lisbon Strategy and Europe 2020. The guidance provided for in these strategies is based on common EU goals and quantitative targets which are elaborated in Employment Guidelines. Member States are to report on their responses to the Employment Guidelines in National Reform Programmes (NRP), which are to be consistent with the Broad Economic Policy Guidelines.⁴⁶ As in the economic field, the Council can issue country-specific recommendations indicating directions for policy changes to be implemented within a given time frame.⁴⁷ However, the coordination technique used here does not include 'hard' sanctions; it relies on peer pressure, 'naming and blaming' and policy warnings.⁴⁸

Soft law techniques also became the main method to drive the Union's social policy objectives forward. Apart from the employment field is, however, that the Treaty explicitly states that, when it comes to combating social exclusion and the modernisation of the Member States' social protection schemes, EU intervention is to focus on measures designed to encourage the cooperation between Member States and to support and complement their action.⁴⁹ After a period of experimenting, this resulted in an overarching OMC for social protection and social inclusion (OMC SPSI).⁵⁰ The OMC SPSI builds on common objectives reflecting the view that social exclusion is a multidimensional phenomenon to be combated through a wide range of interventions, ranging from proactive employment and education policies to adequate social protection (and pension) policies, access to health care and social services of good quality. Under the OMC SPSI also a set of benchmarks and indicators emerged to

⁴³ See the Commission's White Paper on Social Policy, COM (94) 333.

⁴⁴ For an overview, see S. Giubboni, *Social Rights and Market Freedom in the European Constitution* (Cambridge University Press, Cambridge, 2006), 114–128.

⁴⁵ Art 128 TEC, now Art 148 TFEU. The Employment Title was introduced by the Treaty of Amsterdam.

⁴⁶ Art 146 TFEU.

⁴⁷ Art 148 TFEU. Since 2010, changes have to be made within the next twelve to eighteen months.

⁴⁸ Art 121 (4) TFEU.

⁴⁹ Art 153 (2) (a) TFEU. Harmonisation is not possible here: Art 153 (2) (a) and Art 352 (3) TFEU. Note that, in as much as 'exclusion' takes the form of 'exclusion from the labour market', it is still possible to adopt Directives establishing minimum requirements: Art 153 (1) and (2) (b) TFEU.

⁵⁰ An OMC for social protection and social inclusion was launched in 2000. It was extended to pensions in 2001 and three years later to health care and long-term care. In 2005 the three strands were converged into the OMC SPSI. See K. A. Armstrong, *Governing Social Inclusion; Europeanization through policy coordination* (Oxford University Press, New York, 2010), 133.

evaluate progress towards the common objectives.⁵¹ Member States are to report on this in National Strategy Reports (NSRs). However, in the absence of a Treaty-based coordination technique, the Council cannot adopt guidelines or issue country-specific recommendations here. Instead, the social OMC relies on a relatively open ‘bottom up’ process based on policy learning, the exchange of good practices, peer reviews and the involvement of a wide range of (non-)governmental actors.⁵²

b. The Europe 2020 Strategy

The Europe 2020 strategy, introduced in 2010, centred the coordination of employment and social policies around the overarching objective to foster smart, sustainable and inclusive growth in order to enhance a swift recovery of the crisis.⁵³ At the same time, it introduced new elements. For example, it transformed the OMC SPSI into a platform for cooperation, peer review and exchange of good practices in order to commit public and private actors more strongly to poverty reduction.⁵⁴ It also set, for the first time, an EU-wide poverty target, involving a 25 % reduction of the number of people at risk of poverty and social exclusion.⁵⁵ This target is flanked with ‘flagship programmes’ on poverty and inclusive growth specifying the actions to be taken to shield people from the risk of poverty and social exclusion.⁵⁶ These actions reflect the set of measures defined under the OMC SPSI, albeit that now strategies addressing child poverty and homelessness have been explicitly included. Also new is that Member States are incited to make full use of the ESF and the Cohesion funds in order to ensure the delivery of the required reforms in times of economic downturn.⁵⁷ This way, the Europe 2020 strategy seeks to make sure that the fiscal consolidation package is smartly combined with a social investment agenda.⁵⁸

It is furthermore innovative that the Europe 2020 strategy introduced a new set of Integrated Guidelines, which include a specific guideline on promoting social inclusion

⁵¹ The indicators included an at-risk-of-poverty rate (share of people living on less than 60 % of the national median equalised income) and the material deprivation index (share of persons experiencing at least four out of nine constituents of deprivation defined).

⁵² See P. Lelie & B. Vanhercke, ‘Inside the Social OMC’s learning tools: How “Benchmarking Social Europe” really worked’, (2013) OSE Paper Series Research Paper No 10, 19.

⁵³ See the Commission’s Communications ‘Europe 2020, A Strategy for Smart, Sustainable and Inclusive Growth’, COM (2010) 2020 and ‘Towards a job-rich recovery from the crisis’, COM (2012) 173 final.

⁵⁴ See the Commission’s Communication ‘The European Platform against Poverty and Social Exclusion’, COM (2010) 758 final, 18.

⁵⁵ By 2020, also 75 % of the population should be employed; 3 % of the EU GDP should be invested in R&D; greenhouse gas emissions should be reduced by 20 %; the share of early school leavers should be below 10 % and at least 40 % of the younger generation should have a degree/diploma.

⁵⁶ The flagship programmes build on the ‘Agenda for New Skills and Jobs’, COM (2010) 682 and on the Commission’s Recommendation on the active inclusion of people excluded from the labour market, 2008/867 EC. The Recommendation promotes adequate income support, inclusive labour markets and access to quality services. Implementation measures are to respect the fundamental right to human dignity and equal opportunities for all.

⁵⁷ ‘Commission’s Employment Package’, COM (2012) 173 final.

⁵⁸ The Commission proposed to allocate at least 25 % of cohesion policy funding to investment in human capital and 20 % of the ESF resources to promoting social inclusion and combating poverty. See its Communication ‘A Budget for Europe 2020’, COM (2011) 500, part 1.

and combating poverty.⁵⁹ This guideline is placed under the Employment Guidelines (guideline No 10). By articulating the objective to combat poverty and social exclusion in a specific guideline, the Europe 2020 strategy seeks to strengthen its potential to inform and influence employment and macroeconomic policies so as to ensure that these policies are compatible with the objective to combat poverty and social exclusion. Like before, Member States are to report on their policy responses to the Integrated Guidelines in NRPs. These reports are assessed in parallel with the SGP reports within the context of the 'European Semester'. Thus, fiscal, economic employment and social policies are more closely aligned so as to appraise their coherency and complementarity before national decisions are made. This alignment is to assure that the Union's macroeconomic and employment policies are responsive to social needs. However, it works two ways. So, social policies may also be tested on their consistency with fiscal, economic and employment policies in order to make sure that they do not upset the economic balance of a Member State or overburden the national budget. In this process, the horizontal social clause, enshrined in Article 9 TFEU, is to ensure a conscientious weighing of financial, economic and social concerns and, thus, to safeguard balanced outcomes.⁶⁰

c. Potential imbalances

If we compare the governance methods used to deliver the Europe 2020 goals with their macroeconomic counterparts, at least three differences catch the eye. The first one is that the macroeconomic framework operates within a fixed legal framework comprising rather strict norms, such as the Treaties' debt and deficit limits. Indeed, the framework leaves room for granting countries exemptions to meet the 3 % deficit rule. But these exemptions do not change the 3 % norm as such. The Europe 2020 strategy, on the other hand, allows Member States to selectively respond to its headline targets, for example by setting national targets that deviate from the EU targets or by taking up an 'à-la-carte' approach. The EU poverty target is illustrative of the latter. The Europe 2020 strategy defined three indicators to measure the Member States' performances in this field.⁶¹ Member States are allowed to choose which of the three indicators they use as the target indicator(s) against which compliance with the EU poverty target will be assessed.

On the one hand, this approach offers countries leeway to tailor the EU targets in accordance with the specific national context and challenges. This is consonant with the Member States' prerogatives and competences in the employment and the social policy field. On the other hand, it may open a window for translating the EU targets into less

⁵⁹ See 'Europe 2020 Integrated Guidelines', COM (2010) 193 final. Guideline Nos 1-6 define the objectives of the Broad Economic Policy Guidelines, adopted under Art 121 TFEU. The Employment Guidelines are specified in guideline Nos 7-10, adopted under Art 148 TFEU.

⁶⁰ The horizontal social clause presents a mainstreaming requirement according to which European institutions are to regard the Union's economic and social objectives as equivalents when defining and implementing their policies and activities. As such, Art 9 TFEU provides a binding tool in which an obligation can be read to carefully assess the social implication of legislative proposals and non-legal measures in the process of law- and policymaking.

⁶¹ The three indicators are: at risk of (income) poverty; severe material deprivation and household joblessness. Member States are free to pick the easiest target or the most meaningful. See P. Cope-land & M. Daly, 'Variety of Poverty Reduction', (2012) 22 *Journal of European Social Policy*, 273-284.

ambitious national targets or no targets at all.⁶² This can make the benchmarking exercise more difficult, which, in turn, may involve the risk of relegating the realisation of the Europe 2020 goals to the back seat. This risk may be enhanced by differences in the institutional framework in respect to the possibility to impose sanctions. Whereas in the macroeconomic field semi-automatic enforcement mechanisms have been developed to keep especially Eurozone States alert to their duty to meet the requirements underpinning the EMU, the policy coordination regime in the employment and the social policy field does not include 'hard' sanctions. As such, this may induce the risk of making countries bow to the pressure and constraints of the macroeconomic policy regime and, therefore, thwart a truly integrated approach.

A third factor that may give rise to potential imbalances is connected to the choice to place Guideline No 10 under the Employment Guidelines. After all, the Treaty requires employment policies to be consistent with the Broad Economic Policy Guidelines, while an equivalent obligation in the social sphere is lacking. In addition, the wording used to explain the scope of Guideline No 10 may be judged as double hearted. On the one hand, this wording tries to give expression to the right of European citizens to live in dignity by empowering them to play a full part in society. This reflects the view of the former OMC SPSE. On the other hand, it narrows the scope of action by reducing 'social inclusion' to 'inclusion in employment' and by underscoring the importance of modernising social protection systems in such a way that they are 'fully deployed to ensure adequate income support and social services, whilst ensuring that these systems remain financially sustainable'. This reflects the view of the former Lisbon Strategy which sparked off the development of 'economic-related' social policies.

The joint assessment of national responses to the Europe 2020 Integrated Guidelines and the SGP reports within the context of the 'European Semester' may enhance an 'economic reading' of social policies. After all, this assessment may result in combined Council recommendations to make policy changes, especially in cases where social policy reforms also have a macroeconomic dimension. Via the back door of economic governance, Member States may thus become subject to the enforcement procedures of the MIP or the SGP, even though issues related to employment and social policy technically fall within the scope of coordination techniques which do not include 'hard' sanctions.⁶³ This discordance is caused by a lack of clear guidance as to which coordination technique is to be applied in cases where the objectives of different coordination cycles overlap, such as the MIP and the Europe 2020 strategy.⁶⁴

It is quite possible that the detected imbalances in the institutional ground rules for macroeconomic and social policymaking will end up in decisions favouring the application of the rules governing macroeconomic policies, given their paramount position

⁶² See, for example, S. Bekker, 'Mixing "hard" law and "soft" governance? The impact of stricter European economic governance on employment and social policies', Paper for the 8th Transatlantic Dialogue, Workshop Social risks and the role of the state, June 2012, Nijmegen, the Netherlands.

⁶³ See S. Bekker & I. Palinkas, 'The impact of the Financial Crisis on EU Economic governance: a struggle between hard and soft law and expansion of EU competences', (2012) 17 *Tilburg Law Review*, 359-365.

⁶⁴ D. M. Trubek & L. G. Trubek, 'New governance and legal regulation: complementarity, rivalry, and transformation', (2007) *Columbia Journal of European Law* 13, 1-26; J. Zeitlin, 'Towards a stronger OMC in a more social Europe 2020. A new governance architecture for EU policy coordination', in E. Marlier, D. Natali & R. Van Dam (eds), *Europe 2020. Towards a More Social EU?* (PIE-Peter Lang, Brussels, 2010).

in EU policymaking. General overviews of the renewed governance mechanisms seem to confirm this observation. They point at, for example, the negative impact of the Member States' crisis measures and pursued reforms on workers' rights. Especially the memorandum of understanding which Greece, Ireland and Portugal signed with the EC, ECB and IMF in order to receive 'bail-out loans', have put these countries under severe pressure to reform their labour law and social protection systems. The reviews suggest that there is an increasing risk that the new economic regulations and coordination mechanisms will undermine the fundamental social rights upon which the European Social Model is built.⁶⁵ The aim of this article is to explore whether the new sets of instruments also offer opportunities to further develop Social Europe. The next part seeks to gain a deeper insight into this matter by exploring how Germany and the Netherlands responded to Guideline No 10 in 2011 and 2012.

III. POVERTY AND SOCIAL INCLUSION COORDINATION: COMPARING GERMANY AND THE NETHERLANDS

The choice to scrutinise the social inclusion and poverty coordination cycles of Germany and the Netherlands is made in order to maximise the opportunity to find signs of this coordination enhancing Social Europe. This way, the case selection is strongly biased towards countries that have at first not been hit that hard by the economic crisis and are therefore in principle in a relatively fortunate position when it comes to enhancing social inclusion and combating poverty. This bias may on the one hand come across as 'overseeing' or 'ignoring' the devastating effects of the crisis as reported elsewhere. However, the bias may on the other hand show whether social policy enhancement is at all possible within the new coordination framework. It is exactly the latter question this article is interested in.

Before the crisis, Germany and the Netherlands had quite some similarities. For example, around 2008, both countries had a relatively good economic performance and low unemployment rates, whilst both being in the EDP because of their failure to meet the 3 % deficit rule. As of 2009, however, the countries' pathways differ considerably. Even though the economic shock of 2009 was considerable in both countries, Germany managed to recuperate rather quickly and experienced economic growth ever since, combined with declining unemployment rates. The country also managed to get out of the EDP earlier than expected because of its decreasing deficits. Conversely, the Netherlands is still struggling to catch up. It went into recession again in 2012 and faces rising unemployment rates.⁶⁶ It has also been placed in the MIP, and received an in-depth review related to its housing market. Moreover, the Netherlands is still in the EDP and did not meet the deadline of diving below the 3 % in 2013. On the other hand, the debt of both countries exceeds 60 % and is rising (Germany had a debt of 82.2 % of GDP and the Netherlands of 70.1 % in 2012). However, for both countries these too high debt rates are not yet a reason to (re-)start an EDP procedure.⁶⁷

⁶⁵ S. Clauwaert & I. Schömann, 'The crisis and national labour law reforms: a mapping exercise', (2012) ETUI Working Paper 04.

⁶⁶ Nevertheless, the unemployment rate is still low compared to most other EU countries. According to Eurostat the unemployment rate in the Netherlands rose from 4.4 to 5.3 between 2011 and 2012. In the same time period the unemployment rate of Germany decreased from 5.9 to 5.5, whereas the total unemployment rate of the 28 Member States rose from 9.7 to 10.5.

⁶⁷ This maximum debt of 60 % of GDP is a new rule, and therefore a transitional period applies. The 60 % rule does not yet apply to Member States which were already in the EDP in November

Translated to poverty and social inclusion targets, one may expect rather good prospects for both countries to meet them early on in the crisis. At present the Netherlands is expected to face more economic and fiscal constraints, while Germany should be stable enough to meet the proposed targets. The figure below however shows that, on many poverty and social exclusion indicators, the Netherlands is faring better than Germany. In 2011 and 2012, both countries received a CSR stating that consolidation should happen in a growth-friendly way, meaning that the countries should also invest in education, innovation and research. This goes to show that the Commission and Council judges these two countries financially stable enough to adopt an investment strategy as well, regardless of them being in the EDP in 2011. This may open up opportunities for poverty and social inclusion objectives, making the two countries potentially good cases to find traces of social policies aligned with or even counterbalancing economic policies.

Figure 1: Social exclusion and poverty in the Netherlands and Germany, 2006-2010.

Source: Commission Staff Working Documents 2012 of the Netherlands and Germany

1. People at risk of poverty or social exclusion: individuals who are at risk of poverty (AROP) and/or suffering from severe material deprivation and/or living in households with zero or very low work intensity. As a % of the total population.
2. At-risk-of poverty rate: share of people with an equivalised disposable income below 60% of the national equivalised median income. As a % of the total population.
3. Severe material deprivation: As a % of the total population.
4. Share of people living in low work intensity households: As a % of people aged 0-59 not student.
5. In-work-at risk-of poverty: As a % of persons employed.

A. National reform programmes and CSRs

As for Guideline 10 and the quantitative poverty target, both countries regard having a job as the main way to get out of poverty. Consequently, the quantitative targets on poverty reduction and social inclusion refer to work-related indicators. The

2011 and these countries remain exempt from the new rule until three years after the end of the deficit procedure.

Netherlands chose as its overall national poverty and social exclusion target the reduction of the number of jobless households by 100,000, whereas Germany aims at reducing the number of long-term unemployed by 300,000. The analysis below deals with poverty and social inclusion policies of both countries. It seeks to explore whether or not these are related to labour market inclusion, or also reflect genuine social concerns. The analysis also addresses in what way budgetary targets are met, and how the Commission judges the overall performance of the countries.

a. The Netherlands

An important first observation is that the Netherlands has written all of its last three NRPs whilst being in a politically complex situation. The past three years the Netherlands has had two newly installed governments and one caretaker government sending the NRPs and SCPs to Brussels. This has affected the NRPs in the sense that these are not always that precise and at times contain *ad hoc* created plans which are likely to have changed or abolished in subsequent NRPs. The Dutch Stability and Convergence Programme of 2012 gives the economic crisis as one argument to consolidate; however, also demographic changes and age-related expenditures are seen as important determinants to reduce public spending. Thus, the pension system will be revised, among others by gradually increasing the retirement age. Also wages will be moderated and the housing market and health care system will be restructured. This is conform to the concerns of the Commission that evaluates the Dutch long-term costs of ageing to be well above the EU average. In fact, the expected increases in both public pension and long-term care expenditure are by far the highest in Europe.⁶⁸ It goes to show that the economic crisis is not the single reason to cut public spending and that cutting expenditure does not solely relate to social security.

The poverty and social inclusion aims are dealt with within the headline target to improve labour participation, Guideline No 10, and in 2012 also in the light of the Dutch Euro Plus Pact commitments. Although the Netherlands acknowledges in-work poverty, it claims that this is mainly related to a low number of working hours per week due to part-time working arrangements. Moreover, the group of people remaining in poverty for longer than four consecutive years, is relatively low. Therefore, in 2011 the Netherlands was quite optimistic about reaching its target to reduce the number of jobless households (as was the Commission). However, by 2013 it had to acknowledge that at-risk-of poverty as well as the number of jobless households were growing.

Most poverty-related plans of action relate to labour market participation and the NRPs thus refer to the section on labour participation for policies to combat poverty. In 2013, there is a slightly broader approach that goes beyond inclusion in the labour market, for instance by announcing a review to assess how a combination of different budget cuts affects the same group of people, leading to a considerable drop in income for the most vulnerable. However, this does not change the fact that the focus is still on flowing into a paid job. To support this, a large merger of different arrangements has been presented to improve the employment opportunities for those 'at the bottom of the labour market'. The package aims at making it more attractive for employers to hire people who are distanced from the labour market; at 'eliminating disincentives' to

⁶⁸ European Commission, 'Assessment of the 2012 national reform programme and stability programme for the Netherlands', Commission staff working document SDW (2012) 322 final/2, Brussels, 06.06.2012.

take up paid employment in existing regulations; and last but not least at decentralising the responsibility for enhancing labour market integration for this particularly vulnerable group to the municipalities.

In the NRPs the Dutch government expresses the view that the proposed package is suitable to improve participation rates and tackling poverty and social exclusion. In 2011, the government also related the proposed measures to the Euro Plus Pact commitment to foster employment and reduce benefit dependence. A salient part of proposed measures is, however, that it is combined with a cut in public spending. It is this latter aspect that causes the Commission some concern. For example, in the 2011 Commission staff working document accompanying the NRP and SGP evaluations, the Commission carefully concludes that there is little evidence for the effectiveness of the proposed measures, especially concerning the low-skilled.⁶⁹ It moreover states that although in-work poverty is low in the Netherlands, the country should see to it that people who return to the labour market indeed escape from poverty. In 2012, the Commission was generally more worried. For one because it had doubts about the extent to which the proposed measures would really be implemented, given the Dutch economic situation. The Commission also questioned their purpose to help vulnerable groups into a job. In the Commission's view, the proposed decentralisation combined with major cutbacks in the budgets for sheltered workplaces and reintegration tools, was likely to bring about 'considerable implementation risks' and also could hinder municipalities to properly carry out the requested tasks. Commenting on the Euro Plus Pact commitment in relation to the proposed measures, the Commission repeated that the Netherlands should make sure that people who get back to work are indeed helped out of poverty.⁷⁰

The concerns expressed in the Commission's staff working document are not directly translated into a CSR. Whereas the staff working document explicitly addresses poverty and social inclusion related items, the CSRs received by the Netherlands in 2011 and 2012, merely refer in more general terms to the need to enhance participation in the labour market. The 2011 CSR emphasises to do so by reducing fiscal disincentives for second-income earners to work and by drawing up measures to support the most vulnerable groups and help them to re-integrate in the labour market. In 2012, also following some measures taken by the Netherlands, the fiscal disincentives for second earners has become a less pressing issue, although the CSR does mention to further reduce tax disincentives. More in particular, the Netherlands should enhance the labour market participation of older people, women, people with disabilities and migrants. It should also foster labour market transitions and address rigidities. A more general concern about the effect of the proposed package on the most vulnerable groups may only be found in annexes to the CSRs. In addition, the CSRs suggest that budget cuts may be realised by raise the retirement age (also in the second pillar pension system) and by reducing health care spending, especially when related to the ageing of society, conform to the concerns about high and rising age-related expenditures.

⁶⁹ European Commission (2011). See note 37.

⁷⁰ European Commission, 'Assessment of the 2012 national reform programme and stability programme for the Netherlands', Commission staff working document SDW (2012) 322 final/2, Brussels, 06.06.2012.

b. Germany

The German NRP 2012 pays ample attention to furthering social inclusion. Social inclusion, which is extended to labour market integration, is dealt with in relation to the quantitative headline targets, the AGS 2012, the Euro Plus Pact, and when dealing with Guideline 7 on labour participation (briefly) and Guideline 10 (more extensively). Overall, the German NRP 2012 states on page 5 that

'The Federal Government and Länder have pledged to work together to improve the conditions for steady economic growth in Germany. In doing so, they are guided by the proven principles of the social market economy.'

The 2011 German NRP had a similar challenge mentioning that it wanted to reach fiscal consolidation without obstructing the potential for growth or threatening the social balance, while stating that the policy of the Federal Government is founded on the basic principles of the social market economy. The Stability and Convergence Programme (SCP) of 2012 adds to this that Germany believes that its case shows that consolidation and economic growth can go hand in hand. Still, consolidation in some areas is deemed necessary. This necessity is mainly related to demographic changes rather than the economic situation. Most relevant expenditure areas are old-age protection (pensions and retirement pay), health and long-term care. The SCP however also states that in the spring of 2012 the government will put forward a Demography Strategy aiming to somehow find a balance between maintaining social cohesion, facing demographic challenges and ensuring growth and sound public finances.

Concerning Guideline 10, the German programmes especially focused on children, young people, women, single parents and elderly people. It finds long-term unemployment, including many older unemployed people and people with no vocational education, one of the key risk factors to experience poverty and social exclusion. In April 2012, the 'Act to Improve the Chances of Integration in the Labour Market' was implemented, providing job centres with more means to integrate long-term unemployed, as such also contributing to lower poverty and social exclusion. However, there are also other schemes, in which labour participation is less central in fighting poverty. For instance, as of 2011 people receiving social protection payments may get additional benefits for their children to prevent social exclusion. These benefits intend to cover, for example, expenses for school meals, learning support, and participation in sports clubs. Also, a social dialogue on old-age pension and the sufficiency of it is starting up. Moreover, in 2011 Germany adopted a national action plan called 'Our Path to an Inclusive Society', aiming at promoting the implementation of the UN Convention on the Rights of Persons with Disabilities.

In Germany none of the 2011 CSRs refer to the labour market or poverty. The only line perhaps hinting at a social dimension is that Germany should maintain a growth-friendly consolidation course. In 2012, however, Germany is out of the EDP and even has a surplus in expenditure. That year the CSRs started to include social issues. The 2012 CSR states on page 6, for example, that Germany should

'reduce the high tax wedge in a budgetary neutral way, in particular for low-wage earners, and maintain appropriate activation and integration measures, in particular for the long-term unemployed. It should also create the conditions for wages to grow in line with productivity and take measures to raise the educational achievement of disadvantaged groups, in particular through ensuring equal opportunities in the education and training system.'

In addition, Germany should phase out the fiscal disincentives for second earners, and moreover increase the availability of fulltime childcare facilities and all-day schools. The latter part of the CSR thus also focuses on labour market integration, especially of women. However, the first part of the CSR very much takes up the discussion on low-wage earners, encouraging Germany to increase wages.

Further explanations in the Commission staff working document reveal that this CSR is not only based on economic or employment concerns, but does have significant social connotations. First, it acknowledges that whereas the broader use of non-standard contracts has made the German labour market more flexible, it has increased also inequality among workers, especially concerning low-wage earners. An explicit example is the mini-job, of which the Commission establishes that acquired pension rights in these kinds of jobs are very low. The Commission also states that in-work poverty rates are rather high and even exceed EU averages for temporary workers and single parents. It also notes that a general minimum wage is being discussed in Germany and remarkably concludes that

'It is important that any mechanism for determining the level and scope of a minimum wage takes into account its potential impact on employment and the existing differences in labour market and economic conditions across regions.'

It is difficult to value this latter statement by the Commission. Is it a warning not to disrupt the economy too much by introducing a minimum wage? Following the Commission's concerns about in-work poverty and low wages, combined with the fact that the CSR recommends a wage increase (at least where productivity growth has exceeded wage growth), the statement could however very well be explained as a plea for a minimum wage in Germany.

IV. CONCLUDING REMARKS

A. Positive signs

The cases of Germany and the Netherlands show that a primarily employment-related approach towards poverty and social inclusion does not necessarily mean that genuine social concerns are absent. The Commission's assessment of the overall performances of both countries also displays an intrinsic concern for safeguarding a social balance, not only where it relates to topics belonging to Guideline No 10, but also in a wider context, such as the inequality between German workers resulting from an increase in non-standard employment and where the Commission shares its concerns about the possible negative social impact of the package that the Dutch government intends to implement to strengthen the position of vulnerable groups in the labour market. For Germany, concerns are even converted into a CSR that encourages Germany to let wages grow in line with productivity. It is furthermore promising that the CSRs referring to the budgetary commitments of both Germany and the Netherlands call for investments in research, innovation and education and, thus, for a growth-friendly consolidation. This means that, apart from cutting budgets, an investment approach is valued within the macroeconomic policy framework which, as shown in part II, has a firmer hard law basis than the social policy framework.

One could argue that these are positive signs. However, such positive signs might need more support to also expand to countries that are in less fortunate condition.⁷¹ In these countries it may be much harder to pursue a social investment agenda, while facing budgetary constraints. This is all the more true for countries receiving ‘EC-ECB-IMF bail-out packages’, which require them to deregulate parts of their employment protection, wage-setting and social security schemes as part of an overall plan to realise budgetary savings. It is painful that there is growing evidence that these reforms are not delivering the desired results.⁷² Practice shows that this can easily generate a vicious circle. After all, when the required reforms fail to deliver on their promise, there are few alternatives left but new budgetary savings combined with further reforms of national labour, wage-setting and social security standards in order to revamp growth and competitiveness and to regain fiscal credibility.⁷³

B. New initiatives

Recent developments show that European actors started to recognise that continuing along the same path may have detrimental repercussions on competitiveness and growth, requiring costly reparations in the future. Evidence of this can be found in recent proposals which seek to redirect the Member States’ policies towards a more effective social response to the challenges they are facing. Illustrative in this respect is the Social Investment Package which the Commission launched in February 2013.⁷⁴ With this Package, the Commission aims to give fresh impetus to the realisation of the Europe 2020 goals, inter alia by tuning the receipt of financial support from the Union’s structural funds more closely to the implementation of effective social inclusion and cohesion policies. For this purpose, a Common Strategic Framework (CSF) will be established which is to ensure that planned investments actually support initiatives proposed in this area in NRPs or the Council’s recommendations.⁷⁵ The implementation efforts made will be monitored in the context of the ‘European Semester’. Should the monitoring exercise reveal that the efforts made do not effectively address the structural challenges that Member States are facing, then the Commission can request the Member State concerned either to review its NRP or to reprogram planned investments in support of Council recommendations to foster social inclusion. If such a request is not satisfactorily responded to within a month, the Commission can suspend part or all of the payments and commitments related to the funded programme.⁷⁶ This boils down to a more rigorous steering towards reconciling budgetary and macroeconomic policy considerations with the medium and long-term goals of the Europe 2020 strategy.

Another interesting development relates to the EP’s call to ‘mimic’ the EPP by identifying priority areas in which Member States are to make social investments within a given time frame. The EP also proposed to set social investment targets and to

⁷¹ R. Thillaye, ‘Gearing EU Governance towards Future Growth’, Policy Network Paper, March 2013. See note 2.

⁷² See, for example, A. Koukiadaki & L. Kretos, ‘Opening Pandora’s Box: The Sovereign Debt Crisis and Labour Market Regulation in Greece’, (2012) 41 *Industrial Law Journal* 3, 276-304.

⁷³ K. Armingeon & L. Baccaro, ‘Political Economy of the Sovereign Debt crisis: the limits of internal devaluation’, 41 *Industrial Law Journal* 18, 254-275.

⁷⁴ Commission Communication ‘Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020’, COM (2013) 83 final.

⁷⁵ Art 10 and 13 of the Commission’s proposal laying down common provisions for the Union’s structural funds, COM (2011) 615, 14.03.2012.

⁷⁶ Art 21 of COM (2011) 615.

develop a scoreboard of indicators for monitoring progress made towards attaining the targets.⁷⁷ The recently introduced Social Protection Performance Monitor (SPPM) responds to this proposal. It provides a new tool for measuring policy successes and failures in meeting the objectives of the Union's social protection and social inclusion concept and for uncovering the social challenges that Member States are facing.⁷⁸ Also in the employment field indicators have been developed to further measure the Member States' performances.⁷⁹

C. In sum

In principle, the developments described above can help to counterbalance the existing imbalance in the institutional ground rules for macroeconomic and social policymaking. After all, they can help to give teeth to the social imperative of making investments in certain areas in decision-making processes at the national and the European level. As such, this could enhance a proper feeding of employment and social policy concerns into the financial and economic governance regime. However, this will only be the case if the Commission and the Council are as strict in rendering Member States accountable for their performances in the social field, as they are in the fiscal and macroeconomic field. Crucial for more balanced outcomes is furthermore that national law- and policymakers are forewarn of 'social imbalances' in the same way as they are forewarn of macroeconomic imbalances and that national governments are prepared to transfer parts of the national budget to the Union in order to lard the structural funds. In this respect, it will be interesting to see if and how the Commission is going to hold the Netherlands and Germany to CSRs related to wage growth and better sheltering vulnerable groups.

A truly integrated approach could be further enhanced by improving the interplay between law and policy. A natural way of assuring this would be to frame the guidelines and benchmarks of the Europe 2020 strategy, and their follow-up in country-specific recommendations, with reference to the realisation of Treaty-based legal norms and/or specific fundamental social rights. The cases of Germany and the Netherlands show that the scrutiny by the Commission does allow room for genuine concern for social issues. The next step should be to use fundamental social rights and values as a source of inspiration for the programmatic steering of national policy responses to the OMCs. This way, EU institutions and the Member States could be guided more systematically towards respecting and actively promoting the fundamental social rights and values expressed in the legal framework. As such, they would be provided with a broad framework of overall rights and duties against which policy choices can be assessed. The legitimacy, the coherence and the effectiveness of policy outcomes could thus be improved, whilst at the same time providing a stronger basis for rendering Member States accountable for the social quality of their policies. Indeed, adopting such a proactive, normative approach is a challenge, but it would also create new chances for Social Europe.

⁷⁷ See EP, Resolution of 20 November 2012, 2012/2003/INI, paragraphs 15 and 16.

⁷⁸ For further details see the Methodological Report of the Indicators Subgroup of the SPC of 17.10.2012.

⁷⁹ EMCO, Employment Monitor 2012, EMCO/08/03052012/EN.