



The European Social Dimension and Dissensus over Liberal Democracy

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I INTRODUCTION

For the fourth year in a row, nearly nine in ten European citizens (88%) have stated that a social Europe is relevant to their daily life (Special Eurobarometer, 2024, pp. 10–11). This data represents a clarion call for the compound democracy of Europe (Fabbrini, 2007) to address inequalities across its citizens, territories and countries. This percentage has increased over time across the member states, especially after the financial and sovereign debt crisis, and with the COVID-19 pandemic.

At the same time, this survey epitomises the EU's unpopularity as a counterweight to national welfare states, especially during the 2010s, when neoliberal policies were boosted to tackle the financial crisis. Dissensus and radical contestation of the EU as an elite, neoliberal project have been the long-lasting result of the road not taken, i.e. the failed political struggle and political contestation of the 1970s in particular. This was the period in which socialists and social democrats rapidly lost ground to a conservative and neoliberal backlash (Andry, 2022, pp. 1–8). An additional problem was, and remains, the meaning of “social Europe,” an elusive concept which does not have direct continuity between the welfare state and the social policy competences in the EU, which have been strongly influenced by the market-oriented deregulation of the EU and budget rigour. This neoliberal embrace has been contested from various corners (Crouch, 2020, p. 15), since it has reduced the social Europe

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to harmonisation of social policies across the continent. Among the different components of the social Europe (Ferrera, 2014; Ferrera et al., 2024, p. 81), this chapter will be delving into the social *acquis*, i.e. the EU laws regarding social policy (European Commission, 2016).

This chapter aims to investigate the EU social *acquis* in relation to and in response to the mounting dissensus from the financial and sovereign debt crisis onwards despite, broadly speaking, the EU social policy remaining ancillary to the unintended consequences of economic integration. It will highlight how the EU supranational institutions attempted to cope with disruptive dissensus especially in the mid-2010s, and give a varied sense of the integration process, especially after the COVID-19 pandemic. In Sect. 2, the EU social dimension will be posited within the framework of the context of dissensus over liberal democracy and how the lack of social competences of the EU as a supranational organisation has eroded the welfare states and strengthened neoliberal stances. Section 3 will cover how the austerity measures adopted during the first half of the 2010s fostered dissensus and conflict from many member states both against EU institutions and among member states.

The turning point will be covered in Sect. 4, which highlights how, in order to cope with the growing popularity of far-right parties and their anti-establishment political projects, the EU has started to shift its attention to challenge the inequalities deriving from neoliberal policies, such as with the European Pillar of Social Rights (EPSR). Section 5 will examine how this trend has been strengthened after the COVID-19 pandemic and its consequences, leading to the adoption of several innovative financial tools for workers and countries most affected by the pandemic. From 2018 onwards, different legislative and budgetary tools were brought into effect in an attempt to make the EU more responsive to the social needs of its citizens. In Sect. 6, the Minimum Wage Directive will be analysed as the flagship initiative for coping with dissensus; in addition, it will emphasise how divergences among the member states emerged. The conclusion will include observations concerning the typology of dissensus related to the social question and how it evolved from severe to disruptive during the economic and financial crisis. It will also review how social policy has become a space in which to develop a different approach to the EU integration process. Despite the limits set by treaties, the EU has taken several initiatives to address dissensus, such as the European Pillar of Social Rights. These various measures demonstrate the EU's willingness to respond to the social needs of its citizens.

2 THE SOCIAL QUESTION IN THE EUROPEAN UNION: THE LOW PRIORITY POLICY OF EUROPEAN INTEGRATION

The social question within the European constitutional landscape is currently one of the best lenses through which to examine the dissensus surrounding liberal democracy. Its capacity to support different social and economic interests is steadily declining, and at the same time, some of these interests are

questioning whether and to what extent liberal democracy is a political and constitutional regime capable of satisfying their requests (Brack & Coman, 2025). The focus here is on the EU's capacity to regulate and sustain the social rights and welfare state of its member states. The EU represents a special angle of observation regarding the sustainability of dissensus surrounding conflicting values at the heart of liberal democracy. In fact, the EU legal system mirrors the tensions between liberty and equality, interdependence and sovereignty, which have been increasing in particular due to the financial crisis, i.e. polarised views within the EU that seem to be irreconcilable (Coman, 2022, p. 15). The social question and the role of the European Union are often employed as a weapon against EU integration and may be considered one of the issues opportunistically manipulated by nationalist parties such as Fidesz in Hungary and Law and Justice (PiS) in Poland (Pavone, 2024, p. 969).

Additionally, the treaties' linchpin is integration through market competition, with only a minor influence on social policy. This latter area remains within the domain of the member states which are more affected by the internal market legal framework. The result has been a limitation of the social manoeuvrability of the member states, fostering dissensus among the European polity (Grégoire, 2024, pp. 725–726).

This imbalance has provoked criticisms, especially related to its impact on substantive equality, social rights, and their implementation (Lake et al., 2021, pp. 226–237). Their target is economic liberalism and neoliberal stances and their impact on the weakening of the welfare state (Goddard et al., 2024) which, it should be remembered, has been theoretically elaborated and implemented within European constitutionalism (Fabre, 2005, p. 16). Authoritarian and illiberal regimes, often headed by a strongman (Ginsburg, 2024), claim superiority in addressing social issues, i.e. their effectiveness in implementing developmental models as well as reducing social inequality (Zürn et al., 2024, p. 5). Therefore, dissensus over the EU's capacity to address social inequalities may be considered mainly about the inability of the EU's legal framework to implement specific, key policies and social rights (Brack & Coman, 2025). Thus, dissensus and distrust regarding the EU's ability to tackle social inequalities come, on the one side, from the gap between legal proclamations in terms of rights and fundamental principles, and, on the other side, the practice, namely, the EU's austerity response and its consequences for national welfare systems, which led to the EU being considered more devoted to the market than to social justice (Brière & Crespy, 2025, pp. 158–159).

Distrust and later dissensus over the EU in the area of social policy have their roots in the origin of the European Community, whose legal rationale was to strengthen competitiveness and the European market. Therefore, it should come as no surprise that there is a persistent imbalance between social policy and internal market deregulation, where the former has not been able to counterweight the latter, but was rather conceived as a tool for addressing the excessive consequences of it. At the same time, social policy also remains in the purview of the member states because the resources of the EU allocated

to this aim are not comparable with the former (Crespy, 2023, pp. 2–10). It is argued that the EU faces a paradox: the more market-oriented provisions are implemented—both primary and secondary sources—the less the majority of the member states' welfare has been able to counter or address negative consequences of market and financial deregulation over social protection and substantive inequality (Dawson & de Witte, 2015, p. 989).

This legal pathway is mirrored by key treaty provisions. Article 153 of the Treaty on the Functioning of the European Union (TFEU), despite being the result of relevant revision of Article 118 of the Single European Act (SEA) (Garben, 2024, p. 1911), still shows the limits of EU law-making. In fact, the European Parliament and the Council may encourage cooperation between member states, and not the harmonisation of their laws and regulations. Consequently, social policy-related measures shall not affect the right of member states to define the fundamental principles of their social security systems as well as the financial equilibrium (Art. 153(4) TFEU) (Fasone & Simoncini, 2021, p. 488). This lack of political will, as well as very limited fiscal resources, has led to the regulation of social policy through soft law tools, hindering advancements (Dawson & de Witte, 2015, p. 978).

The primary soft law tool has been the coordination method, promoted by the Delors Commission (1985–1995) who sought a more social regulation to cope with the consequences of market competition. In addition, since the SEA and the Maastricht Treaty introduced respectively the Qualified Majority Voting (QMV) in health and safety at work and the co-decision procedure, the Commission was given more room to manoeuvre. In the early 1990s, the social dimension gained prominence with several directives but also with symbolic declarations, such as Community Charter of the Fundamental Social Rights of Workers of 1989. While the Workers' Charter was not applied by the Court of Justice of the EU (CJEU), it was referred to in several policy directives. However, this development did not advance further, since the Treaty of Amsterdam relegated social rights to the back burner (de Witte, 2005, pp. 156–159).

Therefore, soft law tools continued to govern social policy and the Amsterdam Treaty conferred on the Commission the role of coordinating the member states in the new European Employment Strategy (EES). This meant that employment was the backbone of the European social dimension (Sciarra, 2005, p. 204), where the EU's task was to move member states towards specific objectives and targets, whose results are monitored by EU institutions. This mechanism, the Open Method of Coordination (OMC), was later applied in other areas, ranging from education and training to social exclusion. This strategy was a weak attempt at partially rebalancing the consequences of the economic integration, strengthened by the goals set within the framework of the Economic and Monetary Union (EMU) in 1992 (Ferrera et al., 2024, p. 82). Soft law coordination was the path taken under the Lisbon Strategy, whose results were not satisfactory, and social policy areas were regrouped under the umbrella of a separate coordination mechanism:

the Social Policy and Social Inclusion OMC (Social OMC) (Copeland, 2023, p. 223). This differentiation was considered a downgrading of social inclusion when compared to other economic goals (Dawson & de Witte, 2015, pp. 978–983) in the 2000s, which marked a neoliberal turning point, where soft tools were used to mask the “lack of consensus on new transfer of social policy competences to the EU” (Crespy, 2023, p. 39).

The soft law governance of social policy reflects the constitutional hardship in creating a compromise for the EU in this area, i.e. a flexible and decentralised process where member states retain their competence, while the EU tackles the dysfunctionalities of market integration. Social policies for a fair market, not as independent goals conditioning the market (Dawson, 2018, pp. 192–195). This tension was clear even in two landmark judgements of the CJEU (*Laval* and *Viking*) and it should come as no surprise that the OMC, which was created as an alternative to harmonisation (Sciarra, 2005, p. 203), fostered divisions and criticisms by scholars (Sciarra, 2005, p. 212). Even though, even some positive features were highlighted at the time by those who viewed the OMC as a mediating tool for two conflicting policy areas between the EU and the member states (Dawson, 2009, pp. 55–79).

At the dawn of the Lisbon Treaty, the asymmetry between the economic and social dimension remained despite the novelties introduced by treaties, as did the belief that economic integration through an internal market would bring social inclusion and higher living standards. However, it has been rightly noted that the social question is dealt with in the treaties in some fashion, or has been raised by certain member states. However, the CJEU has viewed such claims as falling outside the scope of the rights and freedoms laid out by the EU’s legal system, and sees them merely as a justification—only after a strict scrutiny based on necessity and the proportionality principle—for limits on the negative effects of the market on, for example, posted workers (Grégoire, 2024, p. 724).

This legal framework is still in place, although the “constitutional” basis for a social Europe formally expanded with the Lisbon Treaty. Alongside Art. 2 Treaty of the European Union (TEU), according to Art. 3(1) TEU, social progress shall be pursued through a highly competitive social market economy, and this clause represents a step forward in tackling social exclusion. The symbolic recognition is strengthened by Art. 9 TFEU, which links the policies and actions of the EU with high employment, adequate social protections, the fight against social exclusion, high levels of education, and the protection of human health. In addition to other mainstreaming provisions (Articles 10, 11, 13 TFEU), a wider recognition of social rights was brought in with the Charter of Fundamental Rights (CFR). Yet according to Art. 51(2) CFR, the charter does not establish any new power or task for the EU, and the implementation of such rights must not exceed the limits set by the treaties (Art. 52(2) CFR). Therefore, the burden was left to the court which made clear, for example in *Brey*, that social assistance benefits should be balanced with the

availability of welfare resources (Crespy, 2023, p. 76; Fasone & Simoncini, 2021, p. 491).

Nevertheless, the EU's responses to the social question are meant to deal with the consequences of economic competition and create a level playing field between the diverse systems of social security and welfare, concerns undoubtedly heightened by the 2004 and 2007 EU expansions. That is the goal of Art. 114(3) TFEU which stipulates that, in pursuing the finalities of the internal market, the Commission must ground its proposals on protections for health, safety, the environment, and consumers. These goals are reflected in the posted workers directive of 1996 as amended in 2018, which was subject to an action for annulment promoted by Hungary and Poland, but which was later dismissed by the CJEU (Patrin, 2023, p. 180–181).

This example demonstrates the EU's pressing need to address unintended consequences of the internal market, which remains the focal point of EU law-making with regard to social policy objectives (see Delhomme and Rizcallah in this Handbook). Similarly, both the CFR and the other abovementioned clauses have never represented a legal basis for a social policy, which remains constrained by Art. 153 TFEU. Therefore, social rights remain a low priority when compared to market freedoms (Grégoire, 2024, p. 724), because the constitutional clauses related to the former are constrained by the latter, allowing for no more than a narrow interpretation. Thus, the constitutional inclusion of the social question has remained mostly hollow proclamations with little follow through in the law-making (de Witte, 2020, p. 196).

3 THE EMERGENCY OF SOCIAL EUROPE: POLYCRISIS AND DISSENSUS

This constitutional table holding of the social question by the European Union emerged especially after 2008, when fully fledged neoliberal policies and austerity measures were adopted to tackle the consequences of the financial crisis and sovereign debt crisis. This phase mirrored the ambivalence surrounding the integration of member states' welfare systems and the market oriented legal framework of the EU (Menéndez, 2023, pp. 282–303). Treaties' provisions allowed for the expansion of neoliberal policies and austerity measures when prompted by the EU's economic governance, but this in turn fostered discontent and disruptive dissensus against their implementation at the national level.

Not until the Lisbon Strategy was remodelled into “Europe 2020” (European Commission, 2010), would the social agenda seem to acquire a new, prominent role. Nevertheless, it remained an empty promise, since social objectives were overshadowed by other priorities, and the Social OMC was abolished. Social policy coordination was relegated below growth, jobs and, above all, financial stability, a direction further strengthened under the European Semester. In fact, Europe 2020's goals were filtered through the European Semester, established in 2010 and based on the Six Pack and Two

Pack Regulations, with the addition of the Fiscal Compact, which represented the backbone of the new economic governance based on Articles 121 and 136 TFEU (Leino-Sandberg & Salminen, 2017, pp. 68–107). Therefore, Europe 2020 was subsumed by the European Semester and its coordination process, with its country-specific recommendations (CSRs) (Bongardt & Torres, 2020, pp. 8–15).

Undoubtedly, the European Semester led EU's integration on the ground of fiscal austerity and financial stability, which other EU goals were strictly dependent upon. The result was that member states were requested to observe austerity measures and, at the same time, reduce poverty and social exclusion. These objectives were hard to achieve, especially by the southern member states which were more affected by the sovereign debt crisis and where disruptive dissensus against the EU steadily arose (Copeland & Daly, 2015, pp. 150–158). The practical result was that economic governance prioritised the reduction of spending and debt over employment and social exclusion (Copeland, 2023, p. 223). Contestation was fiercest in countries such as Greece, Italy and Portugal, especially because these countries were tasked with immediately implementing austerity measures, rather than over the long term. The consequence was a sharp increase of inequalities and the weakening of the middle class (Fromont, 2022, pp. 528–537), which provoked the disruption of party systems and the emergence of radical Eurosceptic political parties (Szczerbiak & Taggart, 2024, pp. 1171–1191).

In order to face the mounting dissensus against the EU's economic governance (Ferri & Cortese, 2019, p. 1; Vesan et al., 2021), the Commission started in 2013 to include social objectives in the European Semester, in what was purported to be an effort at socialising economic governance (Zeitlin & Vanhercke, 2017). Despite this, social policy and solidarity were often linked to employment and capacity of the market to create jobs, social targets were constrained by debt and deficit targets, and it was demanded that member states tackle their structural problems at source (European Commission, 2013). With meagre results, the Commission has quickly become aware that financial stability must consider social issues, as demonstrated by the fact that in CSRs social policies goals and targets sharply rose from 2011 and 2014 (Zeitlin & Vanhercke, 2017, p. 158). Indeed, between 2014 and 2015, the Commission combatted disruptive dissensus (Chopin, 2015; European Commission, 2015) by starting to change its position on social policy; the Juncker Commission stressed the need to seriously include the social dimension in the European Semester and in the CSRs.

Hence, the new Commission expressed its willingness to enhance coordination on social policy implementation within the European Semester and was aware that the time was ripe for an overall policy reorientation. This required a new soft law declaration: the European Pillar of Social Rights (EPSR) (Dawson, 2018, p. 209). This could be considered an implicit admission that the social dimension had not played any part in the economic governance of the crisis (Fromont, 2022, p. 537), as well as the Commission's awareness

of the fact that revamping social policies could aid in combatting increasing Euroscepticism.

4 THE RESPONSE TO DISSENSUS: SOCIAL POLICY BETWEEN SOFT LAW AND HARD LAW

Social policy in the EU has remained constrained by the treaties, and the expansion of this field of policymaking should consider more than the constitutional dimension. The reorientation of the Commission and EU institutions would be based on balancing social pressures with economic goals. As changes to the treaties are not a viable option for the time being, there remains a narrow path for increasing the weight of social policies via the European Semester, as well as a purposive interpretation of the social rights in the CFR—notwithstanding the limits embodied in Art. 153 TFEU (Syrpis, 2015, p. 960).

With the Juncker and Von der Leyen Commissions, the desire to change—at least in part—the Commission's legislative action needed a symbolic proclamation. This was the first function of the EPSR, i.e. relaunching the EU's social dimension as an institutional response to the consequences of the financial and sovereign debt crises. The document does not place binding legal obligations upon EU institutions and member states (Kilpatrick, 2023, pp. 205–206). Thus, the EU encapsulated its response to disruptive dissensus with a soft law declaration, as well as through many directives concerning social policy and workers' rights in particular. It was an attempt to reconcile EU citizens (and member states) with a more social Europe, as emphasised by Juncker in 2015.

In short, the EPSR embodies twenty principles which are divided into three main themes: (i) equal opportunities and access to labour market; (ii) fair working conditions; and (iii) social protection and inclusion. Despite the non-binding nature of this tool, it is interesting to note that it aims to respond to current and future challenges which impede the fulfilment of people's essential needs and social rights. To this end, the European Semester and the European Monetary Union (EMU) were to be remodelled with the addition of new principles besides those embodied in the CFR. Therefore, the EPSR called for dedicated measures or legislation to be adopted at the appropriate level. The language utilised is interesting since it entails the strict observation of the competences (and limits) envisaged by the treaties, while at the same time stating that the EPSR shall not prevent member states from establishing more ambitious social standards (European Commission, 2017). From an overall reading of the preamble, it seems that the EPSR purpose is to create convergence towards minimum standards for social inclusion in the EU's legal framework, further encouraging the enactment of legislative measures addressing social policy.

The EPSR redirected the EU towards a more serious consideration of social challenges when policymaking. In the same vein, the EPSR has been

viewed as a compass for the EU's law-making on labour and social matters. Indeed, it was seen as a political commitment towards the empty wording contained in the Lisbon Treaty—or risk of non-implementation, but was also directed to the member states, as indicated by a crucial passage contained in the preamble's recitals (de Witte, 2020, p. 200; Sabato & Vanhercke, 2017, p. 80). The intentions were the socialising of EU law, creating policy guidance and recommendations via the European Semester, and recalibrating EU funding to address social exclusion, especially the European Structural and Investment Funds and the European Social Fund (Garben, 2020, pp. 68–69). This policy orientation was created to tackle the perception of the EU as a supranational, anti-welfare organisation, a perception that had mobilised large masses of people who were then absorbed into radical, far-right political parties (Fabbrini & Zgaga, 2024).

To monitor the fulfilment of the EPSR's objectives, the EU Social Scoreboard was created, which represented a technical and concrete tool for aiding the EPSR in implementing its main themes. It was designed to gather information alongside the Social Protection Committee, whose task is also to prepare the council for discussions on social protections and country-specific recommendations within the European Semester. This means that from 2017 onwards, the EPSR was integrated into the European Semester with the addition of three new elements: mainstreaming priorities, providing technical assistance, and assessing and monitoring performances with the help of the new Social Scoreboard (European Commission, 2018; Fromont, 2022, pp. 555–559).

This shift in the European Semester was coupled with several legislative initiatives such as the 2019/1152/EU Directive on Predictable and Transparent Working Conditions, the 2019/1158/EU Work-Life Balance Directive, the 2018/957/EU Directive amending the Posting of Workers Directive 96/71/EC, and legislation adopted later such as the Equal Pay Directive and the Minimum Wage Directive (Garben, 2020, p. 68–72). What these and other initiatives have in common is that they are formally anchored and show their roots in the principles of the EPSR, which has symbolized the Commission's desire to make the EU more social. Therefore, despite the limitations set by the treaties, there was an acknowledged, moderate expansion of both soft and hard law initiatives from 2017 onwards (de Witte, 2020, pp. 200–201). While an expansion of the EU's legislative competences in social policy is debatable, it may nonetheless be argued that the EU's attitude started to be reshaped without any formal change in the treaties (Kilpatrick, 2023, pp. 209–210). However, this cannot be considered an about-face, given the lack of dedicated resources, the heterogeneity of the national welfare systems, and the competences' limitations set by the treaties.

5 SOCIAL POLICY AND THE EU BUDGET DURING THE COVID-19 PANDEMIC AND BEYOND

The path undertaken by the Juncker Commission was followed by the Von der Leyen Commission—albeit with some differences—especially in quantitative terms given the need to cope with the effects of the COVID-19 Pandemic. This emergency crossed different policy areas directly related to the social question: from health to the labour market, and the demand for subsidies for those affected by the pandemic. There emerged a clarion call for a stronger role by the European Union.

At that time, despite the conflicting views between the “Frugal Four” (Austria, the Netherlands, Denmark and Sweden) and the rest of the member states over the adoption of the Next Generation EU (NGEU) and its primary tool, the Recovery and Resilience Facility (Capati, 2023, pp. 341–363), the legal machinery of the two instruments later adopted were experimented firstly with the Support for Unemployment Risks in an Emergency Regulation (SURE) (Fabbrini, 2022, pp. 54–66).

The SURE programme was based on Art. 122 TFEU and was for that reason temporarily limited. However, it had an envelope of 100 billion euros and—for the first time—extended the EU’s budget to social purposes, specifically for jobs protection, for both employees and the self-employed (Cooper, 2024, pp. 80–92). The same legal basis was used to adopt the European Union Recovery Instrument (EURI), the “key legal architecture of the NGEU”, the primary tool of which is the Recovery and Resilience Facility (RRF), and which is grounded on Article 175(3) TFEU. Within the framework of the Cohesion Policy, this provision provides “a vehicle for policy goals for which there is no clear competence elsewhere in the treaties” (de Witte, 2021, p. 657). In other words, it is a flexible clause that can cover a broad range of measures. In fact, it was never previously used in the same manner as it had been for the RRF, but precedents indicate that social causes were at the heart of previous interventions based on Article 175(3) such as the European Union Solidarity Fund (EUSF) in 2002, which was amended in 2020 to include major health emergencies (de Witte, 2021, pp. 653–659).

The reorientation of EU institutions, especially the Commission and Parliament, in the area of social policy can be examined with respect to the constitutional ramifications of the NGEU legal framework. The major change lies in its main purpose: to tackle the broadening of the economic disparities between member states, worsened by the pandemic, through a transfer of resources from richer member states to poorer ones suffering from higher inequality and unemployment rates. The RRF is funding a wide range of projects, including those expected to impact social rights and policies, such as housing, training and education, and social inclusion. In this regard, it has been noted that “most of the funding is distributed based on factors that have no relation to the COVID-19 crisis” (Leino-Sandberg & Ruffert, 2022, pp. 442, 450). Thus, Article 175(3) TFEU was used both for innovations and

the enlargement of the EU's budget, and it is likely that the common debt will be permanent and further extended (Leino-Sandberg & Ruffert, 2022, p. 459).

The RRF has become the engine of the EU's social policy, which mirrored the Commission's desire to implement the EPSR. In fact, the Commission took this opportunity to use the RRF to fill out the EPSR, which had been something of an empty box. This was done with the adoption of the EPSR Action Plan in 2021 (European Commission, 2021). Scholars have highlighted three trajectories in social policies: addressing the labour market, industrial relations, and funding, but only the last matters for our purposes (Keune & Pochet, 2023, pp. 173–183). The EPSR Action Plan, with the support of the NGEU and the Multi-Annual Financial Framework (MFF) 2021–2027 (European Commission, 2021), advocates for a strong, social Europe as well as a social market economy. This commitment seems to address problem with previous policies as outlined above by placing European social integration on an equal footing with economic integration (Ferri & Cortese, 2019, p. 8).

Despite this enthusiasm, the initial text of the RRF did not include references to (gender) inequality, poverty, or equal opportunities. This task was left by the Commission to the Parliament, which eventually included these words to set priorities for the RRF's primary purpose, i.e. social and territorial cohesion (Art. 3 of Regulation 2021/241/EU). Nonetheless, despite being the fight against poverty and inequality being an objective of the RRF, not the same is reflected in the National Recovery and Resilience Plans (NRRPs). This is also because the EPSR Action Plan was approved in March 2021, in a not useful stage for being considered by the NRRPs. This may be why there is no direct link between RRF resources and social reforms and investments, which could have been considered an infringement of the member states' welfare competences. The result was a misalignment between the texts and the legal framework of the RRF and the NRRPs. The NRRPs only retrospectively reflected an impact on substantive equality and not from the outset. In addition to which, by linking the RRF with the European Semester and the CSR, social goals were tied to fiscal sustainability. By addressing inequality in terms of growth and jobs creation, RRF and NRRPs diminished other aspects of the social question, such as fighting inequality and poverty *per se* (Fromont, 2024).

However, this task is being pursued by the European Social Funds Plus (ESF+) which, with a budget of nearly 99.3 billion euros, currently incorporates the ESF and the Fund for European Aid to the Most Deprived (FEAD). This tool has not only been enlarged and restructured, but its purpose has shifted from job creation and economic growth to the integration of people at risk of poverty and social exclusion. Despite the increase of its scope, this tool still faces two problems: firstly, the funds remain insufficient even where combined with the NGEU, and secondly, the ESF projects must comply with CSRs of the European Semester (Fasone & Simoncini, 2021, pp. 500–501).

Against this backdrop, the EU Parliament remains the main voice of dissensus in highlighting the inadequacy of the ESF+. It recently pushed for a strengthened, separate ESF+ in the next MFF (2028–2034) since it cannot meet current needs—mainly because it was adopted before the crises that have since led to high rates of inflation. More importantly, the Parliament called on the Commission to not use the ESF+ as an emergency response tool, but rather as a means by which to address structural inequalities and economic challenges. Parliament wanted the EU to have specific financial reserve instruments for crises and emergencies such as the SURE fund or the EU Solidarity Fund. To sum up, the EU's parliamentary assembly is advocating for broadening resources to meet the rights embodied in the treaties (European Parliament, 2025).

The differences between the three funding streams—SURE, RRF and the ESF+—are related to their legal bases and rationales. SURE's financial architecture is based on Art. 122 TFEU, and given the exceptional occurrence of COVID-19, did not create dissensus because of its reiterated temporary nature (the last social bond was issued on 7 December 2022). In addition, the community method enabled an inclusive and transparent decision-making process; this approach brought longer-term positive effects on the labour market and fostered a sense of solidarity among member states. Most notably, it resulted in savings for the member states with the EU's high credit rating. SURE social bonds have developed an attractive financial market for investors and have not raised borrowing costs, paving the way for their use for future financial instruments (European Commission, 2025, pp. 47, 79–82).

By contrast, the RRF and ESF+ are grounded on Art. 175 TFEU. They are limited by Art. 310 TFEU and are firmly tied to the European Semester (D'Alfonso, 2023). At the same time, the sustainability of the RRF's achievement—the common debt—is not currently a permanent feature of the EU (Van Malleghem, 2023, pp. 3–41). Despite that, the need to invest in defence has also led to an easing of fiscal regulations, which has heightened the debate over the EU's common borrowing (Höflmayr, 2025). This could mean another flow of funds to the EU's budget, while the European Semester has gradually included key measures related to social policies, mainly of national competence. Again, the debate is on how to build a more social Europe, and, to that end, the Parliament is currently pushing for inclusion in the new European Semester of recommendations on housing affordability, and the promotion of policies related to mental health and demographic challenges (De Lemos Peixoto & Loi, 2024; Pape, 2025). Despite this effort, the compromises surrounding the RRF have shown that many member states are reluctant to utilise flexible clauses in the treaties to strengthen common spending, resulting in a political back and forth which manifested itself in other legislative proposals. At this stage, dissensus on the European social dimension may be considered severe.

6 ADDRESSING DISSENSUS: THE CASE OF THE MINIMUM WAGE DIRECTIVE

The need to reconcile the market with social needs was one of the priorities of the first Von der Leyen Commission. In the political guidelines of the Commission's mandate, the minimum wage was seen as the primary tool for achieving this goal, as well as for giving substance to the EPSR. There was also an implicit admission that it would redress previous neoliberal policies. Thus, the Minimum Wage Directive (Directive 2022/2041/EU) of 19 October 2022 has become the flagship initiative for the EPSR's implementation. Nevertheless, member states have held differing views concerning a minimum wage and the directive met with opposition from Denmark, and with Sweden's support, it filed an annulment action. This demonstrates how European labour law is relevant in its interaction with the limits of the treaties, i.e. the national welfare systems (Schubert, 2025, pp. 3–4).

This case may be considered a good example for two reasons. Firstly, it highlights the conflict between the northern countries of Denmark and Sweden, and other member states (Belgium, Portugal, Luxembourg, Greece, France, Germany and Spain). Secondly, it represents a concrete shift on the part of the Commission in making laws, especially if compared with the pre-EPSR era, in response to the dissensus over the EU's neoliberal path. It also signalled an attempt to promote "a new systematic interpretation of the provisions on social policy" (Di Federico, 2020, p. 111).

In fact, the Commission had never proposed similar legislation. Before the EPSR, the minimum wage was not on the EU's agenda (Menegatti, 2021, p. 22). In addition, whilst the decentralisation of collective bargaining was favoured during the financial crisis (Fromont, 2022, p. 528), the Minimum Wage Directive promotes the opposite. It aims at collective bargaining coverage above 80% across the member states, because it helps to ensure adequate minimum wage protection (Keune & Pochet, 2023, p. 177). The goal is an upward social convergence in the EU to provide a decent standard of living, as stated by Art. 3 TEU, Art. 27, 28 and 31 CFR, and Art. 151 TFEU, aiming at improving living and working conditions.

The drafting process did not include with radical changes, but some provisions were added by the council to set clearer limits on the Minimum Wage Directive. This is the case of Recital 17a (currently n. 21), where it was specified that the directive does not apply to self-employed persons and Art. 1(b) where it was added that it establishes a framework for the promotion of the collective bargaining on wage-setting (Council of the European Union, 2021).

The legal implications of the directive cannot be examined in detail here. Nevertheless, some key points must be highlighted. First of all, the legal basis lies in Art. 153(1)(b) TFEU, which permits the adoption of a framework directive concerning working conditions through qualified majority vote in the council. It does not affect the level of pay directly, and it does not intend to affect the competence of member states in setting statutory minimum

wages, thus circumventing the limits set by Art. 153(5) TFEU. Member states are obliged to establish procedures for the setting and updating of statutory minimum wages, guided by criteria related to achieving a decent standard of living, reducing working poverty, and promoting social cohesion. It is interesting that the purchasing power of statutory minimum wages in relation to the cost of living and the growth rate of wages is included in the criteria outlined in Art. 5 of the directive. The aim is to ensure a fair minimum income, and where there are different rates for specific group of workers, these differences must consider principles of non-discrimination and proportionality according to Art. 6 of the directive. The second key point is the directive's strengthening of collective bargaining to achieve that goal, with the involvement of social partners during the decision-making process beyond trade union organisations (Ratti, 2024, pp. 337–343).

In case C-19/23 *Denmark v Parliament and Council*, Denmark claimed there was a violation of Art. 153(5) TFEU, because the directive intervenes on wage levels and the right of association—competences reserved by the member states. In addition, Denmark objected on procedural grounds, asserting the violation of the unanimity requirement according to Art. 153(2) TFEU, since the directive impacts those subjects enlisted in Art. 153(1)(f) TFEU (Ratti, 2024, pp. 337–343).

At the time of writing, Advocate General Emiliou has issued an opinion on the directive (Kilpatrick & Steiert, 2025). It has garnered several critiques (ETUC, 2025) since his analysis was arguably based on an erroneous reading of the history of the drafting of the Maastricht Treaty, thus misinterpreting the will of the drafters. In this regard, it is unclear how the recognition of the 1989 Workers Charter impacted social policy competences. Additionally, the advocate general under emphasised that the compromise over the Maastricht Treaty narrowly limited the pay exclusion to Art. 153. In fact, this narrow reading of Art. 151 TFEU and, by contrast, the far-reaching reading of Art. 153 TFEU, did not find support in CJEU jurisprudence. For example, the court affirmed the legitimacy of the exclusion of pay only where there is direct interference (Judgment of the Court (Second Chamber of 13 September 2007, *Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud*, C-307/05). In that case, where the equal treatment of fixed-term and permanent workers was at stake, the CJEU held that “the ‘pay’ exception cannot, however, be extended to any question involving any sort of link with pay” and that this does not “prevent a fixed-term worker from seeking, on the grounds of the principle of non-discrimination, the benefit of a condition of employment reserved only for permanent worker” (Kilpatrick & Steiert, 2025, para. 41–42). For the advocate general, however, the exclusion is related to more than directly setting the wage level. Moreover, the advocate general distinguishes between incidental or indirect provisions related to the minimum wage and the directive—which, according to him, is the only intervening instrument (Kilpatrick & Steiert, 2025, para. 30)—and does not consider this the case for other acts, such

as the Pay Transparency Directive (2023/970) (Kilpatrick & Steiert, 2025, pp. 2–11).

Besides the legal controversy, the Minimum Wage Directive still has limitations, and avoids impacting member states competences. Rather, the directive tends to achieve key social policy objectives through procedural harmonisation in industrial relations and labour regulations (Ratti, 2024, p. 350). It is unlikely that the CJEU will follow the advocate general's opinion because it has already stated on several occasions that provisions which do not set individual and/or harmonise minimum wage levels, do not represent direct interference in a competence reserved to member states (Judgment of the Court of 15 April 2008, Case C-268/06, Impact; Judgment of the Court of 10 June 2010, Joined Cases C-395/08 and C-396/08, *Istituto nazionale della previdenza sociale (INPS) v. Tiziana Bruno and Massimo Pettini*; Judgment of the Court of 19 June 2014, Joined Cases C-501/12 to C-506/12, C-540/12 and C-541/12, *Specht and Others*). The CJEU's ruling—when it comes—could prove timely in crucially defining the role, relevance, and limits of social rights in pursuit of the social market economy. It is also worth noting that debates over the minimum wage have been fostered in many EU countries, which might also lead to a less market-oriented constitutional framework in the union.

7 CONCLUSION

Dissensus over the EU's neoliberal policies has grown steadily during the 2010s, and has ranged from severe to disruptive. It should be noted that during the 1970s and the Delors Commission, an unsuccessful attempt was made to address the deficiencies resulting from market deregulation. This was done in a context of mild dissensus. However, things have since evolved quite differently.

During the financial and sovereign debt crisis, the foundational values of the EU were endangered in the name of fiscal rigour and neoliberal policies. Despite the novelties introduced by the treaties and especially by the CFR, the lack of competences in social policy making made it impossible for EU law to cope with the economic consequences of austerity measures. National welfare systems were affected by those measures, which prompted harsh criticisms of the EU's legal architecture. Undoubtedly, substantive inequalities have risen steadily during the 2010s, and the breaking point was nearly reached in Greece. During these years, illiberal government in certain member states considered the social question a Trojan horse, and this is as an occasion for launching serious challenges to the EU integration process. Various other governments also exploited the EU's shortcomings in social policy, while remaining within the realm of disruptive dissensus.

The reaction of EU institutions—within the limits imposed by the treaties—which was fostered by the need to address the consequences of the pandemic, may be understood as a response to this kind of dissensus. It seems that some

concerns about the disjunction between the citizens' desires and normative answers to the social question had been heard (de Witte, 2013, pp. 581–611). The EPSR has been the EU's clearest commitment towards a more social Europe within the limits set by the treaties. The goal is to address a lack of political legitimisation via a proactive social policy, as evidenced by several legislative acts adopted since 2017 (Schubert, 2025, p. 27).

During the emergency, the EU enacted measures such as SURE and the RRF to address inequalities among citizens and countries, and advanced recommendations within the European Semester on matters and subjects related to substantive equality, equal opportunities, and poverty. This means that the EU's social dimension differs significantly from member states' constitutional provisions, because of the lack of EU's competences. Instead, it must be measured through the empowerment of the Cohesion Policy (European Court of Auditors, 2025) and directives and regulations adopted to govern different aspects of labour law and industrial relations, such as the Minimum Wage Directive.

It seems that the EU is addressing the conflict concerning social policy by de-coring its market origins in the name of current challenges (Dawson, 2024, pp. 451–481). Indeed, following the financial and sovereign debt crisis, the social question has become one of the goals of the integration process, also because the constitutional landscape of the European Union is composed of the social market economy as well as the social democratic state. Thus, dissensus from member states and citizens—the bottom, in other words—may find reconciliation at the EU level only by rediscovering integration through social policy to counter the problems deriving from neoliberalism (Schütze, 2025, pp. 34–35).

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