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# CEEMET RESPONSE TO THE PUBLIC CONSULTATION ON A EUROPEAN PILLAR OF SOCIAL RIGHTS

On 8<sup>th</sup> March 2016, the European Commission launched the public consultation on a European Pillar of Social Rights.

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## CEEMET's key messages:

- In the discussion about a European Pillar of Social Rights it is important to acknowledge that the EU already today has a strong social dimension. Especially considering the current lack of support for the EU from its citizens our focus should be on how to make EU citizens aware of this existing social Europe and how to inform EU citizens of the advantages of a highly competitive Single Market, as well as the freedoms established within the EU. Any efforts to make the EU even more social have to be based on solid competitiveness of the industry to be sustainable.
- Clarity should be provided on what the European Pillar of Social Rights is and what it will aim at, whether it is benchmark-setting to support member states national reforms or creating more social rights for EU citizens, or both. Either way, it should be borne in mind that social rights are already strongly embedded in EU law as well as at national level, and that social indicators already exist within the framework of the European Semester. Hence, the possible added value of a European Pillar of Social Rights should be explained.
- The European Commission has to respect the EU's competences and in particular its limits. The principle of Subsidiarity has to be respected. Also, the competences of the social partners and the role of social dialogue should not be devaluated.

## 1. Introductory note: choice of public consultation and online questionnaire

President Juncker correctly stated in his State of the Union on 9 September 2016 that social partners should play a central role in the process of developing a European Pillar of Social Rights.

The European Commission has nevertheless opted for a public consultation of all interested parties within the framework of which social partners are consulted together with other stakeholders and individuals. As a consequence, we wonder whether appropriate weight is given to the voice of social partners. The European Commission has organised social partner hearings at EU level in June and October 2016, but only a limited number of social partners was invited to attend. Hence, no central role is given to the social partners, whereas a discussion on a European Pillar of Social Rights should first and foremost be held with social partners.

Furthermore, the online questionnaire that was chosen as the main format for public consultation, appears biased and is directing answers that indicate that the further strengthening of the EU social acquis is needed.

## 2. General notes on the European Commission's initiative to launch a consultation on a European Pillar of Social Rights

### **The EU is the most social region in the world.**

This is the conclusion of the data provided by the European Commission in its working paper *"Social Europe. Social protection budgets in the crisis in the EU"*, not a statement of CEEMET. The expenditure on social protection in the EU accounted for around 40 % of the world's public social security expenditure.<sup>1</sup>

CEEMET believes that especially in the current climate – the economic crisis, the (geo-)political crisis and the crisis the EU finds itself in after the Brexit vote - it is of great importance to underline the prosperity the Single Market has brought.

Is the European Pillar of Social Rights really the correct answer to the current climate and the changing world of work?

The social acquis of the EU offers already extensive social protection to EU citizens and workers. Article 3 of the EU Treaty determines the basic principle of a competitive social market economy, aiming at full employment and social progress. Also, the Charter of Fundamental Rights of the European Union lays down the main social rights for workers in the EU and for EU citizens in general.

Hence, one could question for the added value a European Pillar of Social Rights, whilst the principle of a social market economy and social rights are already strongly embedded in primary EU law, such as the principle of equal treatment, the right to education, the worker's right to information and consultation, the protection in the event of unjustified dismissal, the right to fair and just working conditions, the protection of young people at work, the right to reconciliation of family and professional life, the entitlement to social security benefits and social advantages, the right to access to health care and the right to effective remedy. Also, the national social acquis of each Member State, including the social acquis established through social dialogue, should not be ignored either as an important part of what makes Europe social.

The European Commission quotes in its Communication the Five Presidents' report on completing Europe's EMU stating that the EU's ambition should be *"to earn a social triple A"*, while taking into account both EU social acquis and the national social acquis within each Member State, it goes without saying that the EU already earns a social triple A. The EU and its institutions should be confident about the value of this social acquis that has been established as a social protection that has no equivalent in the world. The Member States have also an important role in carrying out the EU social acquis and in explaining to their citizens the EU's achievements and the advantages of the Single Market.

Bearing in mind the European Commission's "Better Regulation" initiative and the aim of the European Commission to be big on big things and small on small things, with as its main goal to lessen over-regulation by the European Commission, we wonder where this initiative fits in.

It is also important that the aim to achieve an even more social Europe should not put obstacles to the competitiveness of the EU, which is a precondition of the social Europe and the social protection of the EU citizens. At the same time, the EU institutions should focus on strengthening this competitiveness and on demonstrating and explaining to EU citizens the importance of the competitiveness of the Single Market.

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<sup>1</sup> The EU accounts for approximately 7 % of the world population, but for around 40 % of the global public social protection expenditure. (cf. European Commission Working Paper 1/2013 "Social Europe. Social protection budgets in the crisis in the EU.", May 2013)

Rather than creating new regulations and rights to win over EU citizens, which may harm this competitiveness, EU citizens should be informed of the many advantages of the EU Single Market and the freedoms that have been established within the EU.

The main challenge is how to preserve this social Europe in the changing world, with new forms of work and an increased demand of flexibility. Social policy must anticipate and facilitate the uptake of digitalisation in the EU and the Member States and its impact on the world of work. CEEMET wonders how a static European Pillar of Social Rights can fit in this context. It is important to take up this challenge, and not try to protect the present from the future, and rather embrace this future than embracing the past.

### **The aim of a European Pillar of Social Rights remains unclear.**

The European Commission states in its Communication launching a consultation on a European Pillar of Social Rights that it *“will build on, and complement, the existing EU-level social acquis.”* Furthermore, it is stated that the Pillar *“should help to modernise, broaden and deepen social rights”*.

According to this Communication, the European Pillar of Social Rights should *“become a reference framework to screen the employment and social performance of participating Member States, to drive reforms at national level and (...) to serve as a compass to renewed convergence within the euro area”*.

CEEMET opposes a European Pillar of Social Rights that aims to broaden the EU social acquis and to set social benchmarks. As indicated above, the EU already deserves a social triple A.

Social rights are already strongly embedded in both EU primary and secondary law. Moreover, the competence of the EU to implement a European Pillar of Social Rights introducing a broader EU social acquis is questionable, not at least taking into consideration the principle of Subsidiarity. On the other hand, social indicators, serving as ‘benchmarks’, already exist within the framework of the European Semester.

### **The principle of Subsidiarity should be observed at all time.**

Whereas the European Commission states it respects the principle of Subsidiarity and the competence of Member States within the social sphere, it appears to go beyond the EU's competences in its First Preliminary Outline of a European Pillar of Social Rights.

In accordance with article 153 TFEU, the EU may only complement and support the activities of the Member States in the social sphere. Nevertheless, certain areas covered by the First Preliminary Outline of a European Pillar of Social Rights are far outside the EU competence, such as education, wages and salaries, pensions, etc. The wording and terminology used in the First Preliminary Outline, as well as a lack of differentiation between primary, secondary and supplementary law, give an indication that the European Commission oversteps the EU competences. In the First Preliminary Outline it is often forgotten that in principle, the EU may only set minimum requirements.

Moreover, in the First Preliminary Outline of a European Pillar of Social Rights, the European Commission grossly ignores the autonomy and responsibility of social partners, in particular in the area of wage setting, by reducing the competence of social partners to a mere “consultation”.

### **The European Pillar of Social Rights should not introduce new social policy benchmarks parallel to the European Semester.**

It appears that the European Pillar of Social Rights shall serve as a counterpart of the economic pillar within the framework of the European Semester. However, within the European Semester, a scoreboard of key employment and social indicators already exists as a reference framework, screening employment and social performance on the basis of the unemployment rate, youth unemployment, gross household disposable income, the at-risk-of-poverty rate and inequalities. Hence, it appears that a parallel process to the European Semester is being implemented, creating confusion and eventually weakening competitiveness and much needed investment.

A separation of social policy from economic policy and reform would be counterproductive. CEEMET therefore opposes a European Pillar of Social Rights introducing new benchmarks on social policy. It should be borne in mind that economic growth is the main catalyst and financier of a social Europe and the main security of social rights. A too strong one-sided focus on social rights only may be detrimental to the EU's competitiveness and to the economic growth within the EU, whereas this competitiveness and the economic growth is essential to a social Europe.

### **Convergence should be reached through a well-functioning Single Market**

It appears from the preliminary outline of a European Pillar of Social Rights that “*renewed convergence*” is one of the main goals to be achieved by the implementation of a European Pillar of Social Rights.

Convergence should be reached through a well-functioning Single Market, not by regulation which would essentially harm competitiveness. The European Commission should therefore focus on completing the Single Market and on encouraging competitiveness via national reforms.

It is not entirely clear which renewed convergence is sought by the European Commission.

### 3. Detailed notes on the First Preliminary Outline of a European Pillar of Social Rights

Whereas the position of CEEMET is that a European Pillar of Social Rights is neither needed, nor desirable, CEEMET wishes to react to the terms of the Preliminary Outline of a European Pillar of Social Rights.<sup>2</sup>

- The explanatory note to the First Preliminary Outline of a European Pillar of Social Rights underlines that it does not re-state or modify existing rights. However, the current draft is going far beyond the existing EU social acquis and the EU's competences according to the EU treaty. It aims not merely for complementing existing rights, but for broadening existing rights. As indicated above, CEEMET cannot support a European Pillar of Social Rights deepening the EU social acquis.
- The preliminary outline of a European Pillar of Social Rights defines the notion of "worker". Whereas this definition is provisional, it should be noted that it has to remain up to the Member States to define who can be considered employee or worker, employed on the basis of an employment contract, taking into consideration the particularities of the types of employment or work, as well as the different social security schemes, existing within each Member States. Evidently, the same goes for the definition of "self-employed". It should also be noted that throughout the preliminary outline, it is not always clear to whom the rights apply. Such lack of clarity is contradictory to the European Commission's "Better Regulation" initiative.
- The EU must not overstep its role in what is primarily a national competence, particularly in the field of providing basic skills. Furthermore, we see clear overlap with the newly launched Skills Guarantee. Both initiatives have the possibility to create burden, not only on employers but also on Member State Governments. While we agree that promotion of Vocational Education and Training is a fundamental element of the education and training at a European level, we question the inclusion of quality education and the possibility for misinterpretation, eventually by the European Court of Justice. CEEMET is firmly of the view the current rights set out in the Treaties are sufficient and we must respect the principle of subsidiarity.
- It appears that according to the European Commission, self-employed work is presumed to be bogus. It should be noted that on national level sufficient remedies exist to tackle bogus self-employment. It also goes without saying that self-employment cannot be targeted in general as an undesirable form of work. On the opposite, Europe needs more entrepreneurs. Also, taking in consideration the different forms of work on national level, there cannot be a one fits all solution on EU level.
- Securing professional transitions for employees should not entail additional obligations or commitments for the employer. The preservation and portability of social entitlements may harm businesses' HR policies designed to attract new employees. Also, it may become difficult, especially for small and medium-sized enterprises to hire employees with a broad set of accrued rights. The preservation and portability of social entitlements may thus have a negative impact on the employability of employees.

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<sup>2</sup> It should be noted that the overview of observations set out below is not exhaustive and by no means can be interpreted as an agreement with the dispositions regarding to which no detailed comments are formulated.

- The Preliminary Outline is often unclear in the wording chosen. For instance, reference is made to “remunerated” leave, which appears to imply an obligation for the employer to guarantee the payment of remuneration during leave, whereas often leave is paid through social security schemes. Within this framework it should also be noted that when it comes to granting leave to parents or other carers, the national, sectorial and company level are best fit to determine which types of leave could be granted. The same goes for flexible working arrangements: these should be determined on company level, taking in consideration the needs of the company.
- Wage-setting is a key competence of social partners, whether at national level or at sectorial or company level. It is surprising that in the Preliminary Outline the role of social partners is reduced to “consultation”. The EU has no competence whatsoever when it comes to wage setting, which appears clearly from the fact that no legal basis can be mentioned justifying the provision on wages.
- The same goes for the terms of social dialogue and the involvement of workers: the role of social partners is again marginalised to “consultation” whereas social partners are rightly said to be at the heart of social dialogue.
- The EU is the most regulated area in the world in relation to health and safety. The challenge for the EU does not consist of a lack of legislation and regulation but rather consist of a lack of knowledge concerning existing legislation and more so a lack of knowledge of health and safety practice which are not a result of legislation but a result of what actually works in practice. There is thus no need for more legislation and the EU should focus on identifying and spreading knowledge and good practice. The current EU acquis regarding health and safety at work, notably the numerous downstream Directives on health and safety, largely suffices to protect workers against health and safety risks at work. Protection should be provided from possible, foreseeable risks. It is disproportionate and not feasible to guarantee protection from all risks that may arise at work.
- With regards to the terms on adequate and sustainable social protection it should be noted that the EU lacks competence in most of these areas.

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### About CEEMET:

**CEEMET (Council of European Employers of the Metal, Engineering and Technology-Based Industries)** is the European employers’ organisation representing the interests of the metal, engineering and technology-based industries. Through its national member organisations, it represents 200 000 companies across Europe. The vast majority of them are SMEs, providing over 13 million jobs.