

POLICY BRIEF

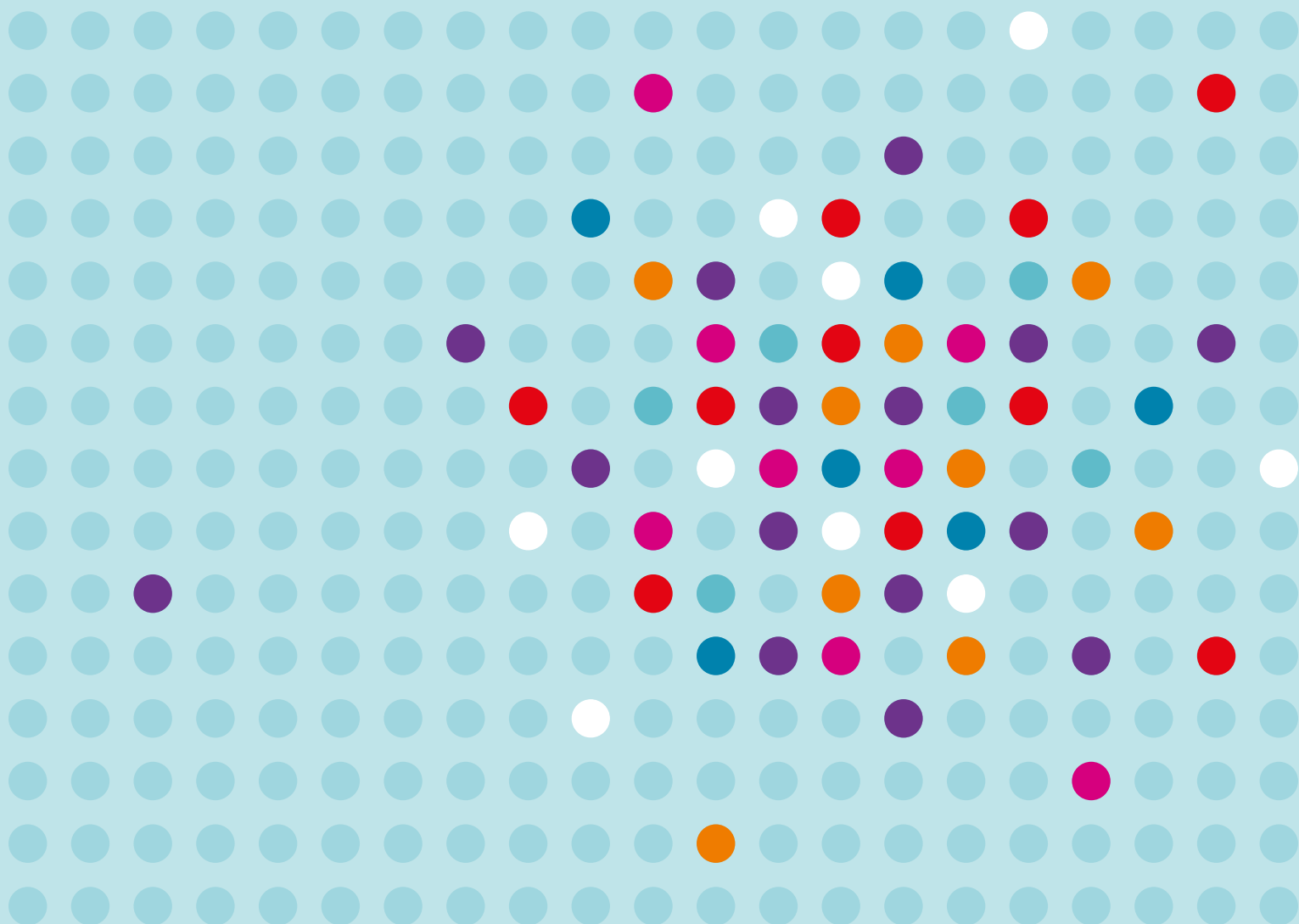
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THE FORMULA FOR A SOCIAL EUROPE

**Complementary social policy plus a monetary union and internal market compatible
with the European Social Model**

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Content

1	Introduction: Social Europe and the national pillars of the European Social Model	3
2	How large is the social potential of European policy?	4
3	The formula for a Social Europe	5
4	Conclusion	8
	Literature	9

1 Introduction: Social Europe and the national pillars of the European Social Model¹

“I want Europe to strive for more when it comes to social fairness and prosperity. This is our Union’s founding promise. [...] I believe it is high time that we reconcile the social and the market in today’s modern economy.”² This intention was announced by Ursula von der Leyen during her candidacy for the office of President of the European Commission. Already her predecessor Jean-Claude Juncker had stressed that Europe had to regain a “social triple-A rating”. Apparently, after years of stagnation in the field of social policy (Graziano/Hartlapp 2019) and the disastrous consequences of the EU’s political management of the European debt crisis, the strengthening of the EU’s social dimension is back on the agenda.

In fact, general commitments to the social dimension of European integration say very little about what exactly a more social Europe should look like and about how this could be achieved. These two questions lie at the heart of this WSI Policy Brief. Beginning with a brief analysis of the potential of European social policy, I suggest a series of measures aimed at strengthening the pillars of the European Social Model: the democratic welfare state and institutionalised labour relations – the big institutionalised historical class compromises of the 20th century. The empirical substance of the concept of the European Social Model is debatable. Regarding institutional frameworks, practices, and performance levels, the single components of this model are so widely diverse in the EU Member States that one can hardly speak of a uniform model. Nevertheless, the concept can serve as a normative guide for policymakers that provides for orientation (Busch/Hermann/Hinrichs/Schulten 2013, S.5).

The European Social Model rests primarily on national institutions that have historically developed over long periods of time. It is therefore valid to ask what role European policy can and should play in strengthening the European Social Model. Should it selectively regulate aspects of the EU internal market? Is the goal the development of a supranational welfare state? Or is its task to rebalance the relationship between the internal market and the Economic and Monetary Union (EMU) on the one side and market-regulating institutions at the national level on the other side? In this Policy Brief, I argue that the way to achieve a more social Europe is not the creation of supranational social and collective bargaining systems that replace existing national institutions. This point of view rests on the insight that the social potential of European integration is structurally limited and that these limits cannot simply be dissolved. A uniform, fully harmonised social model that would fit to such vastly different countries as Spain and Finland, Ireland and Austria, or Romania and France is hardly conceivable – not to mention existing fundamental ideological differences regarding the ‘right’ balance between the state and the market, problems of democratic legitimacy or transnational distributive conflicts (more on this in the next section). Since it is not possible to simply

¹ This WSI Policy Brief is a slightly modified translation of „Die Formel für ein soziales Europa: Komplementäre Sozialpolitik plus sozialkompatible Gestaltung von Währungsunion und Binnenmarkt“, published as WISO DIREKT 05/2021 by the Friedrich-Ebert-Foundation. I thank Martin Behrens for helpful comments on an earlier version of the text.

² Von der Leyen, Ursula 2019: A Union that strives for more. My agenda for Europe (https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf; last access: 09.06.2021).

replicate existing social accomplishments at the European level, European integration should concentrate on protecting and strengthening the national pillars of the European Social Model. For this reason, I do not suggest a classic redistributive, but a regulative European social policy that operates on the basis of minimum standards. This does not mean, however, that no redistribution of resources should take place between the EU countries (e.g. via the EU budget). The basic idea is to introduce 'ratches' that shall not only prevent Member States from mutually undercutting social and labour standards (cf. Seikel 2016) but also ensure an upwards convergence in the social area.

However, the realisation of a more social Europe depends not only on the implementation of European social policies but on reforms in other areas as well. In other words, the future of a social Europe will also be decided in areas outside the domain of social policy: the Economic and Monetary Union and the internal market. In these areas, the fiscal, macroeconomic, and legal foundations for a more social Europe still need to be created.

2 How large is the social potential of European policy?

The social potential of European policy is not unlimited. In order to understand why a social Europe has not already become reality, we first need to identify the underlying structural obstacles. This is necessary also to explore the limits of what is possible and reasonable. Four factors must be taken into account here.

First, there are major differences between the Member States in terms of the organisation, generosity, and performance capacities of their social systems. A uniform European social policy would have to fit as well to the welfare states of Bulgaria or Portugal as to those of Sweden or Austria – without lowering the social standards in countries with well-developed welfare states and without causing a complete financial overstrain on those countries with weaker social systems (Höpner 2017b). The same applies to the diverse national models of industrial relations, including the wide heterogeneity of collective bargaining systems. Second, there are programmatic-ideological differences among the national governments, and also between and even within the parliamentary groups in the European Parliament, regarding the 'right' (European) social policy, i.e. the classic fundamental conflict in capitalistic societies regarding the relationship between state and market. Thirdly, the already extremely challenging search for political compromise is further complicated by the strict majority requirements (unanimity or qualified majority) of European decision-making processes (Höpner 2013; Scharpf 2010). Fourth, Member States carefully guard their autonomy in the fields of social policy and labour law. This is not surprising given the heterogeneity of organisational forms, generosity levels, ideological preferences and the importance of social policies for national budgets and the impact of such policies on a country's economic performance. The legal competences of the EU in the areas of social policy and collective labour law, therefore, remain very narrow.

All these factors limit the potential of supranational social policy. But this in no way means that a more social Europe is impossible. What it does imply, however, is that these limitations must be considered when thinking about the role of European policy for attaining a more social Europe.

3 The formula for a Social Europe

If the future of a social Europe is not a European welfare state, what is it then? As briefly outlined above, the way to achieve a more social Europe could be a regulative European social policy complementary to the existing (redistributive) national institutions which protects and fosters the development of the welfare state and labour law at the national level. However, this does not only require a complementary European social policy but also an EMU and an internal market that are compatible with the pillars of the European Social Model. Here, reforms are necessary for laying the fiscal, economic, and legal groundwork for a more social Europe.

Without new fiscal rules, no social Europe

The current state of EMU undermines a social Europe in numerous ways. Despite its expansionary course in recent years, the monetary policy of the European Central Bank (ECB) is geared by statute towards monetary stability and not towards growth and employment. Furthermore, the fiscal rules of the EMU prescribe budgetary discipline which can be detrimental to expenditures for social and employment policies and for public investments. Due to the loss of the ability to effect exchange-rate adjustments, wages and social policy can quickly come under pressure to shoulder the main burden of economic adjustment. For example, during the European debt crisis, cuts in social expenditures, privatisation measures, wage cuts in the public sector, reductions of minimum wages, the abolishing of generally binding collective bargaining agreements, and the decentralisation of collective bargaining systems were demanded and enforced in exchange for financial assistance (Busch/Hermann/Hinrichs/Schulten 2013, S.5). This attack on the European Social Model is without precedence in the entire history of the EU.

The rules of the EMU therefore have to be changed. Euro countries must be given sufficient fiscal room for manoeuvre for financing social systems, for modernising public infrastructures, and for pursuing fiscal policies that foster growth and employment in an ecologically sustainable way. This is urgently needed particularly in the context of the Corona crisis: Without a reform of the fiscal rules, a European debt crisis could ignite any time again (Schneider/Syrovatka 2020; Seikel 2020).

A reform of the European fiscal rules would have to involve three steps. First, the debt ceiling of 60 per cent of GDP which stems from the last century, must be adjusted to new realities and has to be increased considerably.³ Such a reform is even more urgently needed in light of the severe and continuing increases in public debt of EU Member States because of the Corona

³ From a scientific point of view, there is no clear absolute limit above which a state's debt becomes problematic; it is doubtful whether it makes any sense at all to have one uniform threshold applicable to national economies as diverse as those of the countries of the euro area.

crisis. Second, the rigid deficit rule of a maximum of three per cent of GDP per year should be replaced with an intelligent expenditure rule that responds to economic developments and that does not force states to exercise procyclical austerity in times of crisis. Third, public investments should be excluded from the expenditure rule ('golden rule') as well as expenditures for unemployment support or social assistance that are important for macroeconomic stabilisation (see Dullien/Paetz/Watt/Watzka 2020; Seikel/Truger 2019; Truger 2016).

Strengthening social rights

European internal-market law requires a revision, too. The core components of internal-market law, i.e. competition law and the four fundamental freedoms – the free movement of goods, services, capital, and persons – interpreted and guarded by the European Commission and the Court of Justice of the European Union (CJEU) – create a powerful market-making force that virtually eludes political control (Höpner 2014). The former judge of the German Federal Constitutional Court, Dieter Grimm, identifies an 'over-constitutionalisation' of internal-market law driven by the CJEU (Grimm 2016). This 'over-constitutionalisation' systematically prevents the creation of a 'European social market economy' (Scharpf 2010). In its interpretation of the fundamental freedoms, the Court of Justice has subordinated social rights to economic freedoms (Höpner 2008). Collective bargaining law is particularly affected, i.e. the freedom of collective bargaining and the right to strike. Unions and employers are being negatively impaired in their ability to use collective bargaining agreements to oppose transnational wage-undercutting practices (Rödl 2009; Seikel 2015; Seikel/Absenger 2019).

To solve this problem, three different proposals have been developed that address the same problem. They are ordered from most to least ambitious in terms of majority requirements and political feasibility. The first and most far-reaching proposal is the creation of a genuine European constitution that only covers matters typically found in constitutions: general constitutional aims, organs, competences, procedures, and civil, political, and social fundamental rights. All other legal matters, including fundamental freedoms and competition law, would be converted into European secondary law which is politically easier to change than European treaty law. This would restore the primacy of democratic politics over the internal market. Compared to now, shaping the relationship between economic freedoms and social rights in democratic decision-making processes would become more feasible (Grimm 2016; Scharpf 2015; Seikel 2016). Secondly, the European Trade Union Confederation (ETUC) proposes the introduction of a social progress protocol which grants social rights general priority over economic freedoms (ETUC 2008). These two options would call for treaty revisions which require unanimity among member states and ratification in parliaments and in referendums. Thirdly, areas of exception could be defined that exclude collective bargaining law from the scope of application of competition law, fundamental freedoms, and the provisions of the EMU (see the preceding section) (Bast/Rödl/Terhechte 2015; Heuschmid 2018; Höpner 2017a; Kingreen 2014). The main advantage of this option as compared to the other proposals is that it could be adopted in the ordinary legislative procedure which only requires the approval of a simple majority in the European Parliament and a

qualified majority in the Council. Each of these proposals would have to overcome the obstacles identified before, too. However, since none of the options prescribes a concrete policy model, agreement would still be more feasible than in the case of a fully harmonized European social policy.

Regulative social policy for upwards convergence

In the reform concept presented here, European social policy would be given the task of protecting, coordinating, and fostering the development of social policy and labour law in the Member States of the EU. The goal is an upwards convergence among the EU countries with respect to social standards. The way to achieve this goal is through social minimum standards. Member states are not allowed to undercut the standards but are free to maintain or establish higher standards. This would insert 'ratchets' meant to prevent reciprocal undercutting practices in the areas of social and labour-law standards (Seikel 2016).

In light of the political-economic heterogeneity of the Member States, such standards cannot, however, at least not as a rule, take the form of uniform standards in the sense of absolute or nominal target values. Relative standards are more adequate. An example would be a European minimum wage. It would make no sense to define this as a uniform, nominal hourly wage that would apply in Luxembourg as well as in Croatia. Instead, a value of 60 per cent of a country's national average wage could be an adequate relative standard (Schulten/Müller 2019). Following this logic, relative minimum standards could be established for social assistance, unemployment benefits and pensions (in the last two cases, this would take the form of minimum wage-compensation rates), including minimum standards for entitlements to social benefits. Corresponding to the basic idea of the corridor model (Busch 2005, 2011), countries could be divided into groups with different target values according to their economic strength. In the medium term, these target values could be adjusted to higher levels in several steps (Seikel 2016). In addition, the protection of co-determination rights at the firm-level could be improved with the help of European minimum (see Leuchters/Sick 2020). The financial burdens that would be created particularly for poorer Member States through the improvement of their social systems would need to be cushioned through subsidies from the EU.

Since it is unlikely that all Member States will want to take part in this project, forms of flexible integration should be explored. If not possible otherwise, a smaller number of Member States could implement individual projects in the form of enhanced cooperation as second-best solution. This would undermine the total benefit of social minimum standards because some countries would still be able to undercut the norms. Furthermore, it could be just those member states not participating whose populations would benefit the most from European minimum standards. Yet, social minimum standards for some would still be better than no social minimum standards at all – even if this would mean a two-speed Europe in the field of social policy. Subsidies from the EU's budget, however, could be an effective incentive to join in.

4 Conclusion

The strengthening of the social dimension of the EU is back on the agenda of European politics. The European Pillar of Social Rights, the revision of the Posted Workers Directive (Directive 96/71/EC), and the initiative for a European minimum wage are interpreted by some as a turning point. However, the European Pillar of Social Rights is not legally binding, the revision of the Posted Workers Directive (Directive 96/71/EC) basically only repairs the damage caused by the CJEU's jurisprudence, and the future of the European minimum wage is completely open.

The road to a more social Europe is still very long. Against this background, this Policy Brief asks how a formula for a social Europe could look like. Based on the assessment that European social policy is limited by structural boundaries, I present a concept that takes these limitations into account. The formula for strengthening the social dimension of the EU can be formulated as follows: social minimum standards plus a reconfiguration of the internal market and EMU in a way that is compatible with the pillars of the European Social Model. The goal of the programme is the strengthening of the European Social Model which is based on national institutions that have evolved over time and that are to be protected and developed further.

All of the proposed measures would of course have to clear the high hurdles of the European decision-making processes which I discussed in the second section. Thus, progressive Europeans will still have to fight long and hard for a more social Europe. Without doubt, a common vision of a social Europe agreed to by all would be helpful. This Policy Brief is meant as a contribution to such a discussion.

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