

Francesco Costamagna

THE EUROPEAN SEMESTER IN ACTION: STRENGTHENING ECONOMIC POLICY COORDINATION WHILE WEAKENING THE SOCIAL DIMENSION?

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The underlying idea is that implementing forms of “civilized” politics is desirable as well as feasible. And, as far as the Italian political system is concerned, it is also urgently needed, since the system appears to be poorly prepared to deal with the challenges emerging in many policy areas: from welfare state reform to the governance of immigration, from the selection criteria in education and in public administration to the regulation of ethically sensitive issues.

In order to achieve this end, LPF adopts both a descriptive-explanatory approach and a normative one, aiming at a fruitful and meaningful combination of the two perspectives. Wishing to foster an informed public debate, it promotes theoretical research, empirical case studies, policy analyses and policy proposals.

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KEYWORDS

European Union, European Semester, European social dimension, welfare state, crisis, budgetary discipline, economic growth

ABSTRACT

**THE EUROPEAN SEMESTER IN ACTION: STRENGTHENING
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WHILE WEAKENING THE SOCIAL DIMENSION?**

The paper examines the impact of the European Semester on the European social dimension. The new coordination mechanism aims to strengthen economic policy coordination in order to fill the original EMU constitutional gap deriving from the choice to create a common currency without having an economic union in place. Its structure, which combines soft law and hard law procedures, allows EU institutions to exercise policy formulation, supervision and guidance on issues touching upon virtually the entire spectrum of Member States' economic and social policies. The analysis shows that in its early cycles the Semester tended to prioritize economic objectives, such as budgetary discipline, over competing social ones. Indeed, social security systems have been mainly taken into consideration because of their impact on public finances. However, there are signs of a progressive reorientation of the strategy adopted at supranational level. Indeed, the recommendations adopted in the 2013 cycle of the European Semester pay greater attention to social objectives, while the Commission has recently taken some initiatives that should contribute to find a better balance between the 'economic' and the 'social' within the EMU.

THE EUROPEAN SEMESTER IN ACTION: STRENGTHENING ECONOMIC POLICY COORDINATION WHILE WEAKENING THE EUROPEAN SOCIAL DIMENSION?

1. INTRODUCTION

The European Semester seeks to contribute to the consolidation of the European Economic and Monetary Union (EMU) by strengthening economic policy coordination.¹ The Semester is an umbrella framework that brings together different coordination processes, connecting them with existing or new surveillance mechanisms. The interplay between the different components of the Semester gives to EU institutions an unprecedented capacity of policy formulation, guidance and monitoring on virtually the entire spectrum of Member States' economic and social policies. This feature aims at avoiding that national authorities may keep adopting unsustainable policy choices, which could jeopardise the stability of the EMU and, thus, endanger the future of the common currency.

This paper examines the main features of the European Semester and the way in which it has been operating in its early cycles. The main aim is to assess its impact on the European social dimension and, in particular, on the relationship between economic and social objectives in the context of the European integration process. The paper is structured as follows. First, it looks at the evolution of the European social dimension and at the relationship between the 'economic' and the 'social', arguing that the need to find a balance between these two dimensions does represent a constituent element of the European integration process, especially after the entry into force of the Treaty of Lisbon. Secondly, the analysis focuses on the European Semester, examining its architecture and its main components. Thirdly, it takes into consideration the impact of the new coordination mechanism on the relationship between supranational level and the national one in the social domain,

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¹ *Towards a Genuine Economic and Monetary Union*, Report prepared by the President of the European Council in collaboration with the Presidents of the Commission, the Eurogroup and the European Central Bank, EUCO 120/12, 26 June 2012, p. 6. The Report says that strengthening economic policy coordination "is essential for the smooth functioning of the EMU and is an essential counterpart to the financial and fiscal frameworks."

by focusing on the extensive powers granted to EU institutions to intervene in this field. Fourthly, it examines the way in which the European Semester, at least in its early cycles, has tended to prioritise a narrow set of economic objectives, such as budgetary discipline and economic growth, over social ones. Lastly, the analysis looks at a recent proposal issued by the Commission allegedly aiming at strengthening the social identity of the new European economic governance.

2. THE EVOLUTION OF THE EUROPEAN SOCIAL DIMENSION

The European social dimension has been traditionally conceived as a rebalancing factor against the disruptive effects caused on the functioning of national social security systems by the deepening of the supranational economic integration process. In other words, its creation and progressive strengthening has primarily aimed at safeguarding the so-called ‘European Social Model’,² by restoring the balance between the ‘economic’ and the ‘social’ within the EU.

The need to find a point of equilibrium between these two dimensions has been considered as an essential prerequisite for the legitimacy of the European integration process since its inception. This concern was a key determinant of the choice made by the Treaty of Rome of 1957 to decouple the economic sphere from the social one—leaving the latter firmly into Member States’ hands, while opening the former to supranational intervention. Indeed, rather than a sign of founding fathers’ ‘social frigidity’,³ the creation of a double-track model was meant to enhance the legitimacy of the common market’s legal order, by allowing the process of economic integration to proceed without affecting national social security systems’ capacity to absorb any negative social effect deriving from it.⁴ Furthermore, this choice rested on the assumption that the benefits accruing from an integrated market at supranational level would have even contributed to reinforce national social security systems, by increasing Member States’ capacity to engage in redistributive functions. This vision was translated into the European legal order, by excluding almost any possibility for the then European Economic Community to intervene into the social sphere.

The deterioration of the economic situation in the mid-Seventies contributed to the demise of the embedded liberalism compromise, progressively altering

² F. Scharpf, “The European Social Model: Coping with the Challenges of Diversity”, *Journal of Common Market Studies*, 40, 2002, pp. 645-670. This chapter uses the admittedly controversial concept of ‘European social model’ to identify a socio-economic order in which economic growth and social cohesion are seen as objectives having an equal status and, thus, that have to be jointly pursued by striking a workable balance between competing interests and values.

³ GF. Mancini, “Principi fondamentali del diritto del lavoro nell’ordinamento delle Comunità europee”, in *Il lavoro nel diritto comunitario e l’ordinamento italiano*, Padova, CEDAM, 1988, p. 33.

⁴ See especially S. Giubboni, *European Citizenship and Social Rights in Times of Crisis*, Working Paper-LPF 2/2013, pp. 7-8.

the relationship between the ‘economic’ and the ‘social’ within the European integration process. In particular, as aptly observed by Giubboni, “[t]he order of political values and priorities was reversed [as] the market ... (re)assumed a position at the top of the list of objectives.”⁵ The original division of labour between the national and the supranational levels came under severe pressure, due to the progressive deepening and widening of economic integration following the adoption of the internal market programme and the Single European Act, as well as the infiltration of internal market rules in Member States’ social sphere.⁶ The latter evolution can be mainly ascribed to the Court of Justice of the European Union (CJEU), which, especially starting from the Nineties, started to assess the compatibility of key components of national welfare states with internal market rules. This was the case, for instance, with the application of competition and State aid rules to social insurance monopolies or norms on the freedom to provide services to cross-border medical treatments.⁷

The infiltration of internal market law has been perceived as a major threat to the functioning of national welfare states,⁸ trying to open up systems that rest on a logic of closure⁹ and, thus, challenging the viability of national social solidarity arrangements. This evolution upset the balance between the economic and the social dimensions, as the progressive infiltration of supranational economic law into the social sphere, and the ensuing erosion of Member States social sovereignty, was not matched by the strengthening of supranational social governance mechanisms.¹⁰ The lack of political consensus blocked any attempt to fill the constitutional gap between market-creating and market-correcting functions, leaving the EU without legal powers nor financial capabilities to engage in proper redistributive activities, so to compensate Member States’ reduced capacity of intervention.

The Treaty of Lisbon intervened by trying to enhance the safeguard of social interests vis-à-vis economic ones and by making the balance between the pursuit of economic objectives and the safeguard of social ones a fundamental principle of the EU legal order. This feature is very much evident with regard to the modification of the catalogue of aims to be pursued by the EU. The new Article 3 TEU gives unprecedented visibility to a host of social objectives, establishing,

⁵ S. Giubboni, *Social Rights and Market Freedom in the European Constitution. A Labour Law Perspective*, Cambridge, Cambridge University Press, 2006, p. 20.

⁶ G. Lyon-Caen, “L’infiltration du droit du travail par le droit de la concurrence”, *Droit ouvrier*, 1992, pp. 313-359.

⁷ See generally F. Costamagna, “The Internal Market and the Welfare State: Anything New After Lisbon?”, in M. Trybus, L. Rubini (eds), *The Treaty of Lisbon and the Future of European Law and Policy*, Cheltenham (UK) and Northampton (USA), Edward Elgar, 2011, pp. 382-384.

⁸ Compare C. Joerges, “A Renaissance of the European Economic Constitution?”, in U. Neergard, R. Nielsen, L.M. Roseberry (eds), *Integrating Welfare Functions into EU Law*, Copenhagen, Djøf Publishing, 2009, pp. 37-51.

⁹ M. Ferrera, *Friends not Foes: European Integration and National Welfare States*, URGE Working Paper 10/2006, p. 3.

¹⁰ Giubboni, above n. 6 at 26 speaks about a “joint sovereignty trap”.

for instance, that the EU “shall work for the sustainable development of Europe based on ... a highly competitive social market economy, aiming at full employment and social progress”, and it “shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.” Despite being hailed as marking “une réorientation majeure des objectifs de l’Union”,¹¹ this proclamation may sound hollow¹² if read in the light of the choice not to confer to the EU any new legal power to pursue them. However, the value added of this provision lies in the choice to put these aims on a par with more traditional economic ones, such as the establishment of an internal market. Corollary of this choice is the duty for EU and national institutions to strike a balance between competing objectives that enjoy the same constitutional status.

This duty is expressly imposed by the so-called ‘horizontal social clause’ contained in Article 9 TFEU. This provision establishes that “in defining and implementing its policies, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health”. The clause has been defined as “the most important innovation of the Lisbon Treaty”, marking the “appearance within the constitutional arena of [a] potentially strong [anchor] that can induce and support all EU institutions ... in the task of finding an adequate (and more stable) balance between economic and social objectives.”¹³ This assessment may sound over-optimistic, if measured against the uncertain language used in the provision to define EU institutions obligations. This notwithstanding, the clause has an important value from a constitutional perspective, as it clarifies that the need to find a balance between economic and social objectives lies at the core of the European legal order.

A similar function can be performed also by the EU Charter of Fundamental Rights (Charter) and, in particular, by the social rights contained therein, which now enjoy the “same legal value as the Treaties.”¹⁴ This recognition is admittedly accompanied by many doubts as to the scope of the legal obligations descending from the Charter’s provisions on social rights, due, *inter alia*, to the reference to the uncertain distinction between rights and principles.¹⁵ However, the new status

¹¹ *Conférence de presse finale de M. Nicolas Sarkozy, Président de la République, à l’occasion du Conseil européen à Bruxelles, 21-22 June 2007*, available at <http://www.ambafrance-uk.org/Conference-de-presse-finale-du,9147> (accessed 20 November 2013).

¹² For a critical assessment of the reference to the concept of ‘social market economy’ see C. Joerges, F. Rödl, *‘Social Market Economy’ as Europe’s Social Model?*, EUI Working Paper 2004/8, pp. 19-21.

¹³ M. Ferrera, “Modest Beginnings, Timid Progresses: What’s Next for Social Europe?”, in B. Cantillon, H. Verschueren, P. Ploscar (eds), *Social Inclusion and Social Protection in the EU: Interactions between Law and Policy*, Cambridge–Antwerp–Portland, Intersentia, 2012, p. 29.

¹⁴ Art. 6 TEU.

¹⁵ C. Hilson, “Rights and Principles in EU Law: A Distinction Without Foundation?”, *Maastricht Journal of European and Comparative Law*, 15, 2008, pp. 193-215.

acquired by the Charter strengthens social rights' role as a shield,¹⁶ i.e. as a balancing factor vis-à-vis the disruptive effects that the application of EU law may have on the functioning of social security systems. Their capacity to perform such a defensive role was already recognized in a moment in which the legal value of the Charter was still uncertain¹⁷ and, therefore, it cannot but being reinforced once it has become a primary source of EU law.

The Treaty of Lisbon reinforces the eminently defensive nature of the European social dimension by introducing a host of reforms that seem to be primarily concerned with preserving States' social competences from the intrusion of EU law. Conversely, the drafters of the Treaty chose not to endow the EU with new social competences that might have contributed to strengthen the European social dimension, by giving a basis to the development of a much-needed European social policy.

3. THE EUROPEAN SEMESTER: AN OVERVIEW

A stronger economic policy coordination represents one of the building blocks of the new European economic governance,¹⁸ filling the original EMU constitutional gap deriving from the choice to create a common currency without having an economic union in place.¹⁹ The fulcrum of the new system is the European Semester,²⁰ a framework that, after being launched as a code of conduct for the implementation of the Stability and Growth Pact (SGP),²¹ has been fully codified by the so-called Six-Pack²² and, in particular, by Regulation (EU) No. 1175/2011

¹⁶ D. Damjanovic, B. De Witte, "Welfare Integration through EU Law: The Overall Picture in the Light of the Lisbon Treaty", in Neergaard, Nielsen, Roseberry (eds), above n. 8 at 80.

¹⁷ M. Poiars Maduro, "The Double Constitutional Life of the Charter of Fundamental Rights of the European Union", in T. Hervey, J. Kenner (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights: A Legal Perspective*, Oxford, Hart Publishing, 2003, pp. 284-286.

¹⁸ Four Presidents' Report, above n. 1 at 3.

¹⁹ F. Snyder, *EMU Revisited. Are We Making a Constitution? What Constitution Are We Making?*, EUI Working Paper 1998/6, pp. 13-17.

²⁰ See generally M. Hallerberg, B. Marzinotto, G.B. Wolff, *An Assessment of the European Semester*, Study for the European Parliament's Committee on Economic and Monetary Affairs, IP/A/ECON/ST/2010-24, Brussels, 2012.

²¹ Commission Communication, *Reinforcing economic policy coordination*, 12 May 2010, COM(2010) 250.

²² It consists of six normative measures that entered into force on 13 December 2011 and that aim to strengthen fiscal and macroeconomic surveillance at EU level. As for the fiscal side, the Six-Pack strengthened the SGP, through the adoption of the following acts: Regulation (EU) No. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No. 1466/97 of 7 July 1997 *on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies* [2011] OJ L306/12; Regulation (EU) No. 1177/2011 of the European Parliament and of the Council of 8 November 2011 amending Council Regulation (EC) No. 1467/97 of 7 July 1997 *on speeding up and clarifying the implementation of the excessive deficit procedure* [2011] OJ L306/33; Regulation (EU) No. 1173/2011 of the European Parliament and of the Council of 16 November 2011 *on the effective enforcement of budgetary surveillance in the Euro area* [2011] OJ L306/1; Council Directive No. 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States [2011] OJ L304/41. Furthermore, the Six-Pack also introduced the so-called Macroeconomic Imbalance

on the preventive arm of the SGP. The Semester brings under the same umbrella different strains of EU policy coordination and surveillance that touch upon both economic and social policies, with the specific objective of increasing consistency among instruments that have different legal bases and rely upon distinct enforcement mechanisms. For this reason, the Semester's function has been described as "the coordination of coordination".²³

The Semester rests upon three main pillars, namely the Europe 2020 Integrated Guidelines, the Stability and Growth Pact and the Macroeconomic Imbalances Procedure. More in detail, as provided for by Article 2a of Regulation (EC) No. 1466/97, its constituent parts are: the definition, and the surveillance over the implementation, of the Broad Economic Policy Guidelines and of the Employment Guidelines; the submission and assessment of Member States' Stability or Convergence Programmes (SCPs), as well as of National Reform Programmes (NRPs); and, lastly, the surveillance to prevent and correct macroeconomic imbalances.

The whole process starts in November with the adoption of the Annual Growth Survey (AGS) by the Commission. The AGS is a policy document detailing a list of priorities and objectives for the EU and Member States aimed at ensuring that their policies align with the SGP and Europe 2020 Strategy. After its endorsement by the European Council in the spring meeting, the content of the AGS should feed into Member States' NRPs and SCPs. NRPs are policy documents adopted under the Europe 2020 Strategy that set out Member States' strategy in areas such as economic growth, employment and social inclusion for the following twelve months. They have to be drafted and implemented by following the guidance offered by the Europe 2020 Integrated Guidelines,²⁴ which have been adopted

Procedure, with the adoption of: Regulation (EU) No. 1176/2011 of the European Parliament and of the Council of 16 November 2011 *on the prevention and correction of macroeconomic imbalances* [2011] OJ L306/25 and Regulation (EU) No. 1174/2011 of the European Parliament and of the Council of 16 November 2011 *on enforcement measures to correct excessive macroeconomic imbalances in the Euro area* [2011] OJ L306/8.

²³ K. Armstrong, "The Lisbon Agenda and Europe 2020: From the Governance of Coordination to the Coordination of Governance", in P. Copeland, D. Papadimitriou (eds), *The EU's Lisbon Strategy: Evaluating Success, Understanding Failure*, Basingstoke, Palgrave Macmillan, 2012, pp. 208-228.

²⁴ The Integrated Guidelines merge the Employment Guidelines (Council Decision 2010/707/EU of 21 October 2010 *on guidelines for the employment policies of the Member States* [2010] OJ L308/46) and the Broad Economic Policy Guidelines (Council Recommendation of 13 July 2010 *on broad guidelines for economic policies of the Member States and of the Union*, [2010] OJ L191/28). The document contains 10 guidelines that are the following: ensuring the quality and sustainability of public finances, addressing macroeconomic imbalances, reducing imbalances in the Euro area, optimising support for R&D and innovation, strengthening the knowledge triangle and unleashing the potential of the digital economy, improving resource efficiency and reducing greenhouse gases emissions, improving the business and consumer environment and modernising the industrial base, increasing labour market participation and reducing structural unemployment, developing a skilled workforce responding to labour market needs, promoting job quality and lifelong learning, improving the performance of education and training systems at all levels and increasing participation in tertiary education, promoting social inclusion and combating poverty.

by the Council in 2010 in order to contribute to Europe 2020 priorities²⁵ and to achieve its headline targets.²⁶ Furthermore, NRPs should also make reference to the measures adopted under the Euro Plus Pact,²⁷ at least for those States that signed this political commitment to enhance policy coordination. On the other hand, Stability Programmes—which take the name of Convergence Programmes for non-Euro States—are to provide the Commission with all the necessary information for the purpose of multilateral surveillance to be conducted under Article 121 TFEU. According to Article 3 and Article 7 of Regulation No. 1466/97, SCPs represent “an essential basis for the sustainability of public finances which is conducive to price stability, strong sustainable growth and employment creation”. To this end, they must contain a long list of detailed information on, *inter alia*, the medium term budgetary objective together with the adjustment path toward it,²⁸ implicit or contingent government liabilities, the consistency of the SCP with the national reforms plan and the main assumptions about economic developments covering the preceding, the current and the following three years.

Both these documents have to be submitted by 30 April every year, in a moment in which national budgetary processes are still at an early phase or are yet to begin. The Two-Pack²⁹ invites Euro States to submit their documents and, in particular, their fiscal plans even earlier, by 15 April, although this is no longer mandatory as it was in the original proposal presented by the Commission in November 2011.³⁰ In May, the Commission evaluates national reform and fiscal plans and it issues Country-specific recommendations that set out the actions to be taken by the concerned State. These recommendations are, first, endorsed by the European

²⁵ The Europe 2020 strategy aims to enable the EU to achieve a growth, which is smart, sustainable and inclusive (Commission Communication, *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, 3 March 2010, COM(2010) 2020).

²⁶ Increasing the employment rate of the population aged 20-64 to 75%; investing 3% of gross domestic product (GDP) in research and development; reducing carbon emissions by 20%, increasing the share of renewable energies by 20% and increasing energy efficiency by 20%; reducing the school drop out rate to less than 10% and increasing the proportion of tertiary degrees to 40%; reducing the number of people threatened by poverty by 20 million.

²⁷ The Pact has been agreed in 2011 by 23 Member States that committed to adopt a series of actions in order to achieve five broad objectives contained therein: fostering competitiveness, fostering employment, contributing to the sustainability of public finances, reinforcing financial stability and strengthening tax policy coordination (see European Council Conclusions of 24-25 March 2011, EUCO10/1/11 of 20 April 2011, Annex 1).

²⁸ The definition of the MTO, which should provide a realistic budgetary target for the State, has been defined as “the central duty” of States in the context of balanced budget regimes: D. Chalmers, “The European Redistributive State and a European Law of Struggle”, *European Law Journal*, 18, 2012, pp. 677-678). However, the MTO methodology has been criticized for “focus[ing] on a handful of fiscal and growth variables and thus leav[ing] aside other important determinants of the sustainability of public finances” (P. Biraschi, M. Cacciotti, D. Iacovoni, J. Pradelli, *The New Medium-Term Budgetary Objective and the Problem of Fiscal Sustainability After the Crisis*, Department of the Treasury, Ministry of the Economy and Finance Working Paper No. 8, 2010, p. 6).

²⁹ Below n. 31.

³⁰ *Proposal for a Regulation of the European Parliament and the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the Euro area*, 23.11.2011, COM(2011) 821 final.

Council and, then, discussed by the employment, economic and finance, and competitiveness formations of the Council. In July, Country-specific recommendations are finally approved by the ECOFIN Council.

The approval of the Two-Pack³¹ and, in particular, the adoption of Regulation (EU) No. 473/2013 adds a further step to the Semester, at least with regard to Euro States. From 2013 onwards, the latter are required to submit to the Commission, by 15 October, a draft budgetary plan for the following year, including a series of information regarding, for instance, general government expenditure by function—including that on education, health care and employment—, as well as the description and the quantification of expenditure and revenue measures included in the national draft budget. This allows the Commission to look into the measures proposed by national governments in a moment in which these measures, and their modes of implementation, are still to be discussed by national parliaments. The Commission has the power to step into the debate and, should it identify serious non-compliance with SGP obligations, even request the concerned State to submit a revised plan within three weeks.³²

4. THE WIDE-REACHING SCOPE OF THE EUROPEAN SEMESTER: PUTTING SOCIAL POLICIES UNDER EU DISCIPLINE

The European Semester has the capacity to reach across the entire spectrum of Member States' economic and social policies. This enables EU institutions to exercise policy formulation, supervision and guidance on issues, such as the provision of social services or the regulation of the labour market, that fall within Member States' competences. This does not represent an absolute novelty in the EU legal order, as EU institutions were capable to exercise these functions in the context of already existent policy coordination processes having a soft character. However, the creation of the Semester brings about some relevant innovations in this regard, considerably enhancing EU institutions' capacity of intervention. The new framework is not a mere sum of past soft law processes, as coordination activities are now carried out under the shadow of hard law measures, or even financial sanctions for Euro States, that can be adopted against those Member States that fail to comply with the recommendations. These measures can be adopted under the SPG, which has been revised and reinforced by the Six-Pack,

³¹ Composed by two different legislative measures, both addressing Euro States only: a Regulation (EU) No. 472/2013 of the European Parliament and the Council of 21 May 2013 *on the strengthening of economic and budgetary surveillance of Member States in the Euro area experiencing or threatened with serious difficulties with respect to their financial stability* [2013] OJ L140/1 and Regulation (EU) No. 473/2013 of the European Parliament and of the Council of 21 May 2013 *on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the Euro area* [2013] OJ L140/11.

³² Art. 6 of Regulation (EU) No. 473/2013.

or the macroeconomic imbalance procedure, which has been introduced *ex novo* by the same legislative package.

The interplay between the different components of the Semester brings EU institutions and Member States in a process of co-government that “goes to the structure and rationale of a State fiscal and welfare systems”.³³ Admittedly, the use of this notion may seem an overstatement of the role that EU institutions can play in this context. However, the term is worth using as it captures well the essence of a process that goes beyond just setting quantitative constraints to Member States’ spending capacities. Indeed, the whole process gives to EU institutions unprecedented capacity to shape and control the decisions taken at national level, even in domains, such as the social one, that fall within Member States’ competence.

This feature emerges since the early phases of the Semester. On the one side, Article 2-a of Regulation (EU) No. 1466/97 empowers the Council to assess the programmes submitted by the Member States and to “address guidance” to them making full use of the instruments provided for by the Treaties and the SGP. On the other side, this provision requires Member States to take due account of the guidance “in the development of their economic, employment and budgetary policies before taking *key decisions* on their national budgets”.³⁴

The element is also present in other stages of the process. As it has been rightly observed,³⁵ in all these cases the focus is not simply on whether the State is meeting the quantitative targets aimed at securing balanced budgets, avoiding excessive deficits or preventing macroeconomic imbalances, but on whether is doing all what it takes to move in that direction, by following the advices issued by EU institutions. This gives them wide discretion in the exercise of powers that, albeit often described as having a mere technical character, are eminently political in nature.

As for the excessive imbalance procedure, Article 8 of Regulation (EU) No. 1176/2011 requires any “Member State for which an excessive imbalance procedure is opened [to] submit a corrective action plan”, detailing the remedial strategy. The plan is to be endorsed by the Council that, acting on a Commission’s report, may list the specific actions required and set a timetable for surveillance. Furthermore, Article 9 gives to the Commission the power to carry out IMF-style missions in the concerned country, with the possibility to involve social partners and other national stakeholders in a dialogue.

³³ Chalmers, above n. 28 at 679-681. The author uses this concept only with regard to the three regimes aiming at securing balanced budgets, avoiding excessive deficits and avoiding and correcting macroeconomic imbalances. However, as this paragraph will seek to demonstrate, the notion can be used to describe the functioning of the Semester as a whole.

³⁴ Emphasis added.

³⁵ Chalmers, above n. 28 at 677.

A similar procedure is also envisaged in the context of the SGP. As for its preventive arm, Article 5 of Regulation (EU) No. 1466/97 asks Member States to indicate, in their SCPs, their MTBO and an adjustment path toward it. In the event of a significant deviation from the path, the Commission may issue a warning and the Council, acting on a Commission's recommendation, may indicate which policy measures should be taken. The same feature is also very much present in the SGP's corrective arm, which may be launched should the Council decide on the existence of an excessive deficit or debt. In this case, the Council, acting on a recommendation from the Commission, may first recommend and, then, impose to the concerned State the adoption of specific measures, as respectively provided for by paragraphs 7 and 9 of Article 126 TFEU. The Two Pack further strengthens this process of co-government in the context of the Excessive Deficit Procedure, at least with regard to Euro States. Indeed, Article 9 of Regulation (EU) No. 473/2013, transposing into the EU legal order a duty imposed by Article 5 of the TSCG,³⁶ compels Euro States under an excessive deficit procedure to present to the Commission and the Council an economic partnership programme. This programme has to describe the policy measures and the structural reforms needed to ensure a durable correction of the deficit. It is worth highlighting that this programme should also identify a number of specific priorities aimed at enhancing competitiveness and long-term sustainable growth, by fully taking into account "Council recommendations on the implementation of the integrated guidelines for the economic and employment policies of the Member State concerned". The implementation of the programme is to be monitored by the Commission and the Council.

Lastly, the Commission is planning to further enhance EU institutions' steering capacity in this context, by introducing within the European Semester a binding framework for *ex ante* coordination concerning major national economic reform plans.³⁷ If adopted, this framework will require Member States to submit, before translating them into hard law, their major reform proposals³⁸ to the Commission. These plans are, then, to be assessed and discussed by the Commission and the Council, which, in turn, may even suggest modifications if necessary to ensure the smooth functioning of the EMU.³⁹

³⁶ *The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union* was signed in March 2012 by representatives of all EU Member States, but the UK and Czech Republic. It entered into force on 1 January 2013. For an analysis of its legal form and content, as well as its contradictory relationship with EU law, see P. Craig, "The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism", *European Law Review*, 37, 2012, pp. 231-248 and L.S. Rossi, "'Fiscal Compact' e Trattato sul Meccanismo di Stabilità: aspetti istituzionali e conseguenze dell'integrazione differenziata nell'UE", *Il diritto dell'Unione Europea*, 2012, pp. 293-307.

³⁷ Commission Communication, *Towards a Deep and Genuine Economic and Monetary Union. Ex Ante Coordination of Plans for Major Economic Policy Reforms*, 20 March 2013, COM(2013) 166 def.

³⁸ The Commission proposes to identify them by making reference to their possible spillover effects "on other Member States and/or on wider Euro area and wider EU" (Commission Communication, above n. 37 at 3). In the light of the high level of interdependence between Member States' economies, this criterion, if taken seriously, would broaden the scope of the framework so to encompass almost any reform plan elaborated at national level.

³⁹ Commission Communication, above n. 37 at 4-6.

This feature of the European Semester raises some doubts as to its compatibility with the allocation of competences provided for by the Treaties in the social field. Indeed, as seen above, the mechanism *de facto* puts Member States' social autonomy under EU discipline, in way that seems to go beyond the limits envisaged by the Treaties. Contrary to what happens with the infiltration of internal market law into the social sphere, in this case it is not just a matter of constraining national authorities' space of manoeuvre by requesting them to exercise their social powers in a way that does not unduly restrict the free circulation of goods, services and persons or violate competition rules. The coordination mechanism allows EU institutions to exercise quasi-normative functions in this field, enabling them to impose to national authorities the adoption of specific measures and to intervene in the national decision-making process. The fact that these functions are exercised through the adoption of instruments not having a normative character cannot alter this conclusion. As seen above, despite retaining the formal status of recommendations, these acts have binding effects, as failure to obey might trigger the adoption of hard law measures. Instead, their lack of "rule-like qualities and check and balances"⁴⁰ raises concerns as to their legitimacy and it may end up unduly broadening EU institutions' discretion in exercising their steering functions.

5. THE EUROPEAN SEMESTER IN ACTION: THE IMPACT ON THE BALANCE BETWEEN ECONOMIC AND SOCIAL OBJECTIVES

5.1. A second-tier status for social objectives?

The exercise of these coordination functions takes place in the context of a mechanism that has been created with the primary aim of remedying to the structural defects of the EMU. Therefore, it is hardly surprising that it has tended to focus on a narrow set of policy objectives, such as budgetary discipline and, more recently, economic growth, which are directly connected to this goal, prioritising them over potentially conflicting objectives, such as social ones.

This is not to say that social considerations have been completely absent: for instance, the 2012,⁴¹ 2013⁴² and 2014⁴³ AGSs put "tackling the social consequences of the crisis" among the priorities of the EU action. Moreover, especially in the 2013 cycle of the Semester, a number of recommendations have focused on core social objectives, such as reducing poverty and social exclusion. Some Member

⁴⁰ Chalmers, above n. 28 at 682-684.

⁴¹ Commission Communication, *Annual Growth Survey 2012*, 23 November 2011, COM(2011) 815 final, p. 3.

⁴² Commission Communication, *Annual Growth Survey 2013*, 28 November 2012, COM(2012) 750 final, p. 3.

⁴³ Commission Communication, *Annual Growth Survey 2014*, 13 November 2013, COM(2013) 800 final, p. 4.

States, as it is the case for Latvia and Lithuania, have been requested to adopt specific measures to extend the coverage of their social assistance systems in order to provide a better answer to these challenges.

However, this cannot hide the fact that social objectives still enjoy a second-tier status in this context. Indeed, as it will be seen in the following paragraphs, most of the recommendations touching upon the functioning of social protection systems or labour market regulation have been strongly concerned with ensuring their financial sustainability and their efficiency, paying limited attention to the effects on their capacity to perform core social functions.

5.2. Budgetary discipline and the European social dimension

Budgetary discipline represents the main objective of the coordination system. This is hardly surprising for a system whose stated aim is ensuring the smooth functioning of the EMU. Indeed, budgetary discipline has been long recognized as a key component of the economic and monetary regime established by the Maastricht Treaty,⁴⁴ and, more recently, it has been enshrined in Protocol No. 12 attached to the Treaties. Some of the measures adopted in the aftermath of the crisis have further enhanced its status, as it is the case of Article 3 TSCG that imposed to the Contracting Parties to give effect to the balanced budget rule⁴⁵ through binding provisions, “preferably constitutional”.

The 2011 AGS duly confirmed that its “first priority” was “to set budgetary policies on a sound footing through rigorous fiscal consolidation”.⁴⁶ In this context, it takes the precedence over any other objective, included social ones. Indeed, as observed in the 2012 AGS, fiscal consolidation is “a basis [...] to securing the future of the European social model” and, hence, it comes inevitably first.

Social security systems have been mainly taken into consideration because of their impact on public finances. Consequently, reduction of social expenditure has been one of the main items of the reform agenda invariably proposed by EU institution, especially during the 2011 and 2012 cycles of the Semester. In particular, several Member States have been required to proceed with the reform of the pension systems, so to align the retirement age with increased life expectancy, and of the healthcare systems, in order to ensure their long-term sustainability.

⁴⁴ J. Herdegen, “Price Stability and Budgetary Restraints in the Economic and Monetary Union: The Law as Guardian of Economic Wisdom”, *Common Market Law Review*, 35, 1998, p. 10.

⁴⁵ L. Azoulai et al., *Another Legal Monster? An EUI Debate on the Fiscal Compact Treaty*, EUI Working Paper 2012/9, pp. 4-5. See also F. Fabbrini, “The Fiscal Compact, the ‘Golden Rule’, and the Paradox of European Federalism”, *Boston College International and Comparative Law Review*, 36, 2013, pp. 1-38.

⁴⁶ Commission Communication, *Annual Growth Survey: Advancing the EU’s Comprehensive Response to the Crisis*, 12 January 2011, COM(2011) 11 final, p. 9.

As for pensions, this has been the case for Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia and Spain. In the case of Slovenia, for instance, the 2012 Country-specific recommendation required national authorities to adopt a detailed list of measures aimed at ensuring long-term sustainability of the system, such as equalising the statutory retirement age for men and women, increasing the effective retirement age, reducing early retirement possibilities and reviewing the indexation system for pensions.⁴⁷ Similar recommendations have been adopted also with regard health care and other welfare-related sectors. Belgium, for instance, has been required, in 2012, of “curbing health-related expenditure, including health expenditure”, while, in 2013, to improve cost-effectiveness of public spending with regard to long-term care.⁴⁸

There is little doubt that the focus on the reduction of social expenditure as the main route toward fiscal sustainability is seemingly justified by the sheer relevance of this item in State budget. Public spending for social policies, covering also pensions and health care, roughly accounts for 30% of GDP on average in EU Member States. However, the recommendations issued in the early cycles of the European Semester seems to have gone too far, paying little attention to the need to find a balance between budgetary discipline and other competing objectives and values, such as social ones. In this regard, the European Semester codifies and makes permanent the approach that characterized, even more intensely, the financial assistance packages devised to rescue EU States that have been hard hit by the financial crisis. In all these cases, recipient States have been required to adopt a set of fiscal consolidation measures aimed at halting and reverting the deterioration of their public finance position. Adjustment programmes invariably rested upon draconian measures, all entailing severe cuts to public spending and, in particular, to social expenditure.⁴⁹ In keeping with this evolution, which goes to the core of the European social model, it can be argued that the new coordination mechanism contributes to what Joerges has defined the transformation of the European economic constitution into “a general mandatory commitment to budgetary discipline”.⁵⁰

However, it is worth observing that EU institutions have been recently forced to partially soften their stance on this issue. Although budgetary discipline still represents the main priority for any effort aimed at ensuring stronger economic policy

⁴⁷ The 2013 Council Recommendation on Slovenia reiterated it, although in a less detailed manner.

⁴⁸ The same request, with regard to the whole health-care sector, is contained in the 2013 Council Recommendation on Spain.

⁴⁹ See generally F. Costamagna, *Saving Europe Under Strict Conditionality: A Threat for EU Social Dimension?*, Working Paper-LPF 7/2012. For a recent criticism of the austerity-driven approach used in the case of Greece see IMF, *Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement*, IMF Country Report 13/156, 2013, pp. 20-28.

⁵⁰ C. Joerges, “The European Constitution and Its Transformation Through the Financial Crisis”, in D. Patterson, A. Södersen (eds), *Blackwell Companion to EU Law and International Law*, Oxford, Blackwell, forthcoming.

coordination, it has been progressively accepted that this objective cannot be pursued without paying any consideration to other equally important aims. This change of attitude concerned first and foremost the relationship between budgetary discipline and economic growth. However, some of the 2013 Country-specific recommendations would seemingly suggest that a similar development is also taking place with regard to its relationship with social objectives, so to make the mechanism operate in a way that is more consistent with the model enshrined in the Treaties. For instance, both Spain and Lithuania have been expressly recommended to adopt targeted measures to reduce poverty and social exclusion, while the UK has been urged to stop the increase in child poverty. Albeit certainly promising, yet these signs cannot be taken as a proof of the reversal of the one-sided approach that characterized the EU early response to the crisis.

5.3. Economic growth and the European social dimension

The promotion of economic growth and employment has come to be another key aim of the coordination mechanism. This objective has progressively achieved a status that stands on a par with that of budgetary discipline in the priorities of the EU strategy, as well exemplified by the emphasis put on the goal of a “growth-friendly fiscal consolidation”. Albeit certainly welcome, this evolution, which rests on the belated recognition that “[f]iscal consolidation and financial repair are not sufficient in themselves”,⁵¹ may have a significant impact on the prospects of the European social dimension.

Similarly to what observed with regard to budgetary discipline, this set of recommendations tends to make the functioning of social protection systems and the regulation of the labour market subject to the achievement of overarching economic objectives, such as economic growth, competitiveness and job creation. In this context, social policy is primarily, if not exclusively, seen as a productive factor and, thus, it must be shaped accordingly. Recommendations are, indeed, mostly about enhancing efficiency, cost containment and private participation, while they tend to disregard principles, such as solidarity, equity, inclusion and cohesion, which represent the bedrock of the traditional paradigm of the welfare state.

By these means, the European Semester allows EU institutions to elaborate and enforce a positive vision on how the welfare state and labour relations should be organized. The paradigm⁵² places much emphasis on the principles of equality of opportunities, individual responsibility and reduced welfare dependency. Increased access to employment, to be achieved through the introduction of higher levels of flexibility in the labour market and the reduction of wages, is considered as the main instrument to foster social inclusion. Accordingly, activation policies play

⁵¹ 2012 AGS, above n. 41 at 7.

⁵² J. Vignon, B. Cantillon, *Is There a Time for ‘Social Europe’? Looking Beyond the Lisbon Strategy Paradigm*, OSE Opinion Paper No. 9, 2012, p. 5.

a pivotal role, as access to social assistance is made conditional upon the need for the beneficiary to take specific steps toward his integration or re-integration into the labour market. All in all, this paradigm is characterized by a low level of de-commodification,⁵³ as individuals have to rely first on the market to satisfy their needs, while social safety nets should be targeted and highly selective in their functioning. This conveys the idea of a residual welfare state, to be managed and financed through a greater involvement of private actors.

Several of the recommendations issued in the context of the European Semester are very much consistent with this model, which has neo-liberal roots. For instance, the 2011, 2012 and 2013 AGSs stress the importance of creating job opportunities by removing labour market rigidities through, *inter alia*, reforming employment protection legislation so to reduce “over-protection of workers with permanent contracts”.⁵⁴ The 2012 AGS, after a reference to the need to implement “balanced flexisecurity policies”, requires Member States to move forward in “revising wage setting mechanisms [...] to better reflect productivity developments”.⁵⁵ The 2013 AGS goes even further, by praising the “ambitious reforms” that have been implemented across Europe in order to “facilitate flexible working arrangements within firms, reduce severance pay for standard contracts and simplify individual or collective dismissal procedures”.⁵⁶ Furthermore, all these documents reiterate the need to make social benefits conditional upon activation measures.⁵⁷ The 2013 AGS expressly points to the need to strengthen “the link between social assistance and activation measures”, as it considers the latter one of the main strategies to promote social inclusion and tackle poverty.⁵⁸

These advices have been a constant feature of the Country-specific recommendations issued during the 2011, 2012 and 2013 cycles of the Semester. Belgium, Cyprus, France, Italy, Lithuania, Luxembourg, Malta, Poland, Slovenia and Spain have all been recommended to intervene on their labour market legislation so to enhance their competitiveness. In particular, they have been asked to revise, in consultation with the social partners and in accordance with national practices, the wage bargaining and indexation systems, to modify the law on dismissal and to introduce greater flexibility with regard to permanent contracts and working time arrangements. A similar emphasis is put on activation policies, which, in the case of the 2012 Council recommendation on Lithuania, are expressly considered as the only way to tackle poverty and social exclusion.

⁵³ See especially G. Esping-Andersen, *The Three Worlds of Welfare Capitalism*, Princeton, Princeton University Press, 1990. For a more recent and empirical assessment of the concept see L. Scruggs, J. Allan, “Welfare State Decommodification in 18 OECD Countries: A Replication and Revision”, *Journal of European Social Policy*, 16, 2006, pp. 55-72.

⁵⁴ 2011 AGS, above n. 45 at 7.

⁵⁵ 2012 AGS, above n. 41 at 10.

⁵⁶ 2013 AGS, above n. 42 at 10.

⁵⁷ 2011 AGS, above n. 45 at 6; 2012 AGS, above n. 41 at 10.

⁵⁸ 2013 AGS, above n. 42 at 12.

Lastly, it is worth observing that these recipes can also be found in the so-called Social Investment Pact,⁵⁹ a policy instrument that had been originally proposed to counterbalance the process of social retrenchment caused by the austerity-driven response to the crisis.⁶⁰ Its final version, adopted by the Commission in 2013, gives great visibility to economic objectives, such as ensuring social provisioning's sustainability and efficiency, putting them on a par with more traditional social ones. For instance, the Pact reiterates the need to move toward more targeted social policies, so to reduce the financial burden over public finances, as well as to make social support conditional upon the adoption of activation measures.⁶¹ Furthermore, the document emphasises the need to attract private actors, included for-profit ones, to complement public sector efforts, and innovative approaches to financing, including “participation of the public sector and financial engineering”,⁶² so to compensate Member States' reduced financial capabilities.

The model proposed through the European Semester is by no mean new. Indeed, these recommendations are fully in line with the “welfare state modernization”⁶³ discourse and programmatic agenda that had been elaborated by the Commission since the early 2000s and that has been further articulated through the Open Method of Coordination (OMC).⁶⁴ In particular, the 2005 Mid-Term Review of the Lisbon Strategy stressed the need for the whole process to focus on the promotion of growth and employment, to be achieved through enhanced competitiveness and productivity.⁶⁵ This contributed to tone down core welfare objectives, such as social inclusion, by making them an ancillary aspect of the jobs and growth agenda. The assumption, which has been criticized for not being supported by empirical evidences,⁶⁶ was that more employment and more competition would have seamlessly led to greater social inclusion and less poverty. The process of “colonization of the welfare state by economic policy-making process”⁶⁷ continued with the launch of the Europe 2020 Strategy,⁶⁸ although the

⁵⁹ Commission Communication, *Toward Social Investment for Growth and Cohesion – Including Implementation of the European Social Fund 2014-2020*, 20 February 2013, COM(2013) 83 final.

⁶⁰ F. Vandebroucke, A. Hemerijck, B. Palier, *The EU Needs a Social Investment Package*, OSE Opinion Paper No. 5, 2011. On the social investment approach see M. Ferrera, *From the Welfare State to the Social Investment State*, Working Paper-LPF 1/2010.

⁶¹ *Social Investment Pact*, above n. 59 at 9-12.

⁶² *Social Investment Pact*, above n. 59 at 6.

⁶³ The 2013 AGS (above n. 42 at 5) considers the “modernization of social protection systems” as a critical step “to ensure their effectiveness, adequacy and sustainability”.

⁶⁴ The OMC is a soft mode of governance that started in 1997 with regard to employment policy coordination and that, with the adoption of the Lisbon Strategy in 2000, was extended to social protection. Moreover, in 2001 an OMC-like process was launched on pensions and, in 2004, on health care. Lastly, in 2005 all these separate processes were consolidated in a single OMC for social protection and social inclusion.

⁶⁵ Commission Communication, *Working Together for Growth and Jobs. A New Start for the Lisbon Strategy*, 2 February 2005, COM(2005)24 final, pp. 12-14.

⁶⁶ C. Saraceno, *The Undercutting of the European Social Dimension*, LIEPP Working Paper No. 7, 2013, p. 2.

⁶⁷ D. Chalmers, M. Lodge, *The Open Method of Co-ordination and the European Welfare State*, CARR Discussion Paper No. 11, 2003, p. 10, use this expression with regard to the OMC.

⁶⁸ *Europe 2020*, above n. 25.

latter, for the first time, has given a specific and quantitative target to anti-poverty efforts.⁶⁹ Indeed, Europe 2020 confirms the tendency of subordinate social policy to economic policy goals, such as economic growth and job creation. This is very much evident by the Commission's definition of the inclusive growth priority, conceived as "fostering a high-employment economy delivering economic, social and territorial cohesion". Furthermore, it is worth observing that most of the structural reforms envisaged to achieve an inclusive growth concern the "modernization" of the labour market and the social protection systems with the aim of achieving higher employment rates.

Though not new in their content, these recipes take a new meaning, especially with regard to their impact on the European social dimension, once they are included in recommendations issued in the context of the European Semester. Indeed, as seen above, this framework gives to EU institutions and, in particular, to the Commission, stronger legal capabilities to pursue their agenda by going beyond the well-known limits of soft modes of governance, such as the OMC. Therefore, in this case Member States may be forced to reform their social protection system, by adopting, at least in part, the model 'proposed' by the Commission.

This evolution can have far-reaching effects, such as, for instance, upsetting the precarious balance between internal market law and the national welfare state.⁷⁰ One of the key features of this model is the push toward the introduction of greater competition in the national welfare schemes, in order to enhance the efficiency of the provision of the services, by opening up new spaces to the participation of private actors. This may contribute to bring these schemes within the scope of EU competition law, posing, thus, further constraints on Member States' autonomy in the exercise of their social functions.

6. STRENGTHENING THE SOCIAL DIMENSION OF THE EMU? THE ANALYSIS OF SOME RECENT INITIATIVES BY THE COMMISSION

The Commission has recently come to acknowledge the need to find a better balance between economic and social objectives within the new European governance. In particular, in a speech delivered in front of the European Parliament on 22 May 2013, Commissioner Olli Rehn called for a strengthening of "the social pillar of the EMU". The idea has been subsequently expounded in a Communication adopted on 2 October 2013 on the *Strengthening the Social Dimension of the*

⁶⁹ The reduction of the number of Europeans living below the national poverty lines by 25%, lifting over 20 million peoples out of poverty (*Europe 2020*, above n. 25 at 11).

⁷⁰ See especially J. van de Gronden, *The Transformation of EU Competition and Internal Market Law by the Stability and Growth Pact: Competence Creeps into the National Welfare States*, Nijmegen State and Law Research Papers Series, No. 2012/01.

Economic and Monetary Union.⁷¹ The document contains a number of proposals aimed at enhancing the social identity of the European economic governance.

The document refers, in line with what already done by Commissioner Olli Rehn, to the “social dimension of the EMU”⁷² rather than of the EU as a whole. This is a choice that, if taken seriously, has not a mere linguistic value. On the one hand, it seems to confirm Francis Snyder’s early prediction according to which, being the EMU a “metaphor for the European Union”, “the debate about EMU thus is a debate about the future of the EU as a polity, the European social model and the nature of European identity”.⁷³ In other words, it might represent a belated recognition of the political value of the EMU, moving beyond the technocratic perspective that has dominated for a long time. On the other hand, the choice to consider the social dimension as a part of the EMU may affect the role that this factor can play in this context. This emerges quite clearly from the weak definition of the concept adopted by the Communication, which says that “the ‘social dimension of the EMU’ relates to the ability of economic governance mechanisms and policy instruments to identify, take into account and address problematic developments and challenges related to employment and social policies in the EMU”.⁷⁴ The definition makes no reference to the possibility that the safeguard of the values and interests that underpin the social dimension may limit, or even trump, the pursuit of EMU objectives. Deprived of its rebalancing function, this dimension is mostly seen as a constitutive element of EMU, to be safeguarded as long as it might contribute to the achievement of its core objectives, by addressing issues, such as unemployment and social problems, that “hold back competitiveness and the growth potential of the economies concerned”.

Coming to the substance of the proposals, the Communication puts forward a diverse set of initiatives focusing on reinforcing social and employment surveillance and coordination, enhancing solidarity and strengthening social dialogue. Some of the proposed measures aim to socialize the functioning of the European Semester, by intervening on the coordination processes therein.

To further develop the coordination and surveillance of employment and social policies within the EMU governance, the Commission proposes to introduce a scoreboard of key indicators to be used in monitoring employment and social developments reported within the Joint Employment Report, which forms part of the AGS. These indicators should focus on changes in unemployment levels, young people not in education, employment or training; households’ real gross disposable income; at-risk-of-poverty rate of working age population and income

⁷¹ COM(2013) 690 prov.

⁷² This notion can already be found in the Conclusions of the European Council, 13-14 December 2012, EUCO 205/12, p. 4. On that occasion the European Council asked its President to elaborate proposal for possible measures that may strengthen the social dimension of the EMU.

⁷³ Snyder, above n. 19 at 4.

⁷⁴ Commission Communication, above n. 70 at 3.

inequalities. The use of this tool is meant to permit an early identification of the main social problems, so to contribute to a timely response. Furthermore, the scoreboard should complement other existing monitoring tools, such as the Joint Assessment Framework, the Employment Performance Monitor and the Social Protection Performance Monitor. From an analytical perspective, the scoreboard does not represent a major element of novelty, as most of the indicators are already used in the surveillance and coordination processes seen above. However, its creation may help to give greater visibility to these issues in the context of the Joint Employment Report and, in turn, of the AGS.⁷⁵

A potentially more impactful initiative is the attempt to make social issues a stronger presence within the macroeconomic imbalance procedure, which, as seen above, represents one of the key pillars of the EU economic policy coordination. To this end, the Commission proposes to introduce a number of auxiliary employment and social indicators⁷⁶ within the group informing the Alert Mechanism Report to complement the only already existing “social” indicator, which focuses on unemployment. This should allow for a better understanding of the social consequences of economic imbalances and, as pointed out by the Commission, of the “social developments during adjustment processes”. Such improved knowledge should, in turn, contribute to minimize the social impact of the measures adopted to correct imbalances. However, doubts may be raised as to whether the proposed reform is bold enough to achieve such an objective. Indeed, the introduction of some auxiliary indicators may certainly contribute to enhance the analytical potential of the mechanism, but it risks having a limited impact on how it operates and on the definition of the corrective measures that States have to adopt.

For these and other reasons, the President of the European Parliament⁷⁷ has criticized the Commission’s initiative, saying that its proposals are not ambitious enough. On the one side, one cannot but agree that the search for a better balance between the economic and social dimension in the context of the new European governance there would be the need for a more radical intervention. On the other side, these proposals may be seen as a first step in the right direction, especially because the Commission has already demonstrated to take them seriously. Indeed, the new social indicators have been swiftly included in the scoreboard used for the Alert Mechanism Report 2014, which is the first to put the deterioration of the social situation among the factors that are taken into account to determine whether a State is experiencing macroeconomic imbalances.⁷⁸ Furthermore, many Country-

⁷⁵ See K. Armstrong, “The Social Dimension of EMU – Socialising Economic Governance”, *EUtopia Law*, 2013, available at <http://eutopialaw.com/2013/10/04/the-social-dimension-of-emu-socialising-economic-governance> (accessed 20 November 2013).

⁷⁶ For the 2014 cycle of the Semester, the Communication (p. 5) proposes to add the following indicators: participation rate; long-term unemployment ratio; youth unemployment rate; at-risk-of-poverty and social exclusion rate.

⁷⁷ Available at http://www.europarl.europa.eu/the-president/en/press/press_release_speeches/press_release/2013/2013-september/html/schulz-on-the-social-dimension-of-economic-and-monetary-union (accessed 20 November 2013).

⁷⁸ Commission Report, *Alert Mechanism Report 2014*, 13 November 2013, COM(2013) 790 final, p. 10.

specific commentaries,⁷⁹ such as those directed at Bulgaria, Ireland, Spain, Croatia, Italy and Hungary, list increases in poverty and social exclusion as one of the elements that may justify keeping the concerned State under monitoring.

7. CONCLUSION

The creation of the European Semester may be seen as an attempt to fill what has been rightly identified “as a major institutional gap at the heart of European integration”, by creating, at least *in nuce*, an institutional space for taking decisions “about political priorities and choices among competing social values”.⁸⁰ The new framework reaches across the entire spectrum of Member States’ economic and social policies, by putting them under supranational control. This is amplified by the fact that Member States’ failure to comply with the recommendations issued under the Semester may lead to the adoption of hard law measures, and even financial penalties, under the reinforced SPG and the newly created macroeconomic imbalance procedure. The whole system works in a way that goes beyond just setting quantitative constraints to Member States spending capacities, as it gives EU institutions unprecedented capacity to take part and influence the decisions adopted by national authorities even in domains that the Treaty reserves to Member States’ competence.

The new coordination framework aims to ensure a smooth functioning of the EMU, by strengthening budgetary discipline and promoting growth and competitiveness. In this context, structural reforms, which touch upon key aspects of Member States’ welfare and labour systems, are primarily geared toward reducing the burden of social provisioning on public finances or enhancing their efficiency, by forcing States to introduce greater competition in the management of their welfare schemes. These recipes have traditionally paid little attention to the effects that these reforms may have on fundamental social objectives that lie at the core of the EU social dimension. Such a one-sided approach raises doubts as to its compatibility with a number of Treaty provisions, which impose to EU institutions to find a balance between the pursuit of economic objectives and the safeguard of the European social dimension.

To this regard, it is worth observing that there are signs of a progressive reorientation of the strategy adopted at supranational level. The recommendations adopted in the 2013 cycle of the European Semester pay greater attention to social objectives, as a number of States have been specifically required to adopt targeted measures to reduce poverty and social exclusion. The Commission itself has

⁷⁹ Commission Report, *Alert Mechanism Report 2014*, 13 November 2013, COM(2013) 790 final, pp. 6-19.

⁸⁰ Snyder, above n. 19 at 55.

recently recognised the need for a more balanced approach, calling for a sort of re-embedding of the European social dimension in the EMU.

On the one side, these signs are certainly promising, showing that the mechanism is flexible enough to accommodate interests and objectives that go beyond those considered so far. On the other side, they are still far too limited. The strengthening of the European economic governance, through the creation of steering mechanisms that go to the core of States' social systems, postulates a deep re-configuration of the role and status of the European social dimension, so to re-establish the balance between the "economic" and the "social" at supranational level. This step, which might entail a strengthening of EU social competences and financial capabilities,⁸¹ is as challenging as it is necessary to safeguard the social identity of the integration process and, ultimately, its very *raison d'être*.

LIST OF ACRONYMS

AGS	Annual Growth Survey
CJEU	Court of Justice of the European Union
EMU	Economic and Monetary Union
NRP	National Reform Programmes
SCP	Stability or Convergence Programmes
SGP	Stability and Growth Pact
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on the Stability, Coordination and Governance in the Economic and Monetary Union

⁸¹ M Poiares Maduro, *A New Governance for the EU and the Euro: Democracy and Justice*, RSCAS Policy Paper No. 2012/11, pp. 11-21.