



September 2016

Submission to the European Commission' consultation on a European Pillar of Social Rights

1. On 8 March 2016, the European Commission (EC) put forward its initial proposal for a European Pillar of Social Rights (EPSR). According to the [EC's consultation](#), the EPSR should build on the EU regulatory body on social protection (so-called *social acquis*)¹ in order to guide labour and welfare policies. The principles of the EPSR are not meant to replace existing rights, but to offer a way to evaluate national performance of national employment and social policies.
2. Throughout 2016, the EC has engaged in a conversation with EU authorities, national governments, civil society organisations and citizens at large, with a view to finalising the proposal in 2017. The EPSR outline is structured around three main headings: a) equal opportunities and access to the labour market, b) fair working conditions, and c) adequate and sustainable social protection and access to high quality services. Under these three headings, the EC identifies 20 policy domains, to which different principles are attached.²
3. In its questionnaire, the EC sought answers in relation to: a) employment and social priorities and the modernisation of the *social acquis*, b) the future of welfare and work, and c) the principles and scope of the EPSR outline.³ **Just Fair's submission focuses on this third part, and in particular the scope, principles and general approach underpinning the EC's proposal for an EPSR.**

¹ Commission Staff Working Document, [The EU social acquis](#), SWD(2016) 50 final, 8 March 2016.

² European Commission, [First preliminary outline of a European Pillar of Social Rights](#), COM(2016) 127 final Annex I, 8 March 2016.

³ European Commission, [Launching a consultation on a European Pillar of Social Rights](#), COM(2016) 127 final, 8 March 2016, p. 11.

4. This submission is structured as follows. The first part introduces Just Fair. The second part defends the need to take International Human Rights Law (IHRL) as the main normative framework in the design of European labour and welfare policies. And thirdly, after years of austerity-led policies, Just Fair calls for the EC to become an advocate of human rights and socio-economic equality.
5. The EC's initial proposal is territorially limited to the Eurozone. Just Fair is based in the UK, and the UK is not fully integrated into the European Monetary Union. However, the EPSR could become a social convergence framework across Europe. The EPSR could therefore trigger important changes in the welfare protection regime of all European countries, including the UK. This is the reason why Just Fair, devoted to the defence and promotion of economic and social rights in the UK, submits this first contribution to the EC's consultation.

Just Fair

6. Registered as a charity since 2011, Just Fair works **to realise a fairer and more just society in the UK by monitoring and advocating the protection of economic and social rights**. Just Fair is committed to increasing public awareness of IHRL and the capability to use it. Just Fair is also devoted to the advancement of high-quality thinking, training and practice to ensure that economic and social rights are respected, protected and fulfilled.
7. Just Fair's core activities include monitoring economic and social rights in the UK, following up on the implementation of international human rights legal obligations, advocating better legal recognition and respect for economic and social rights, and enhancing general awareness of economic and social rights, via capacity building sessions, social media, conventional media and university events.
8. Between 2014 and 2016, Just Fair coordinated a consortium of more than 70 national organisations and local community groups working on social justice, welfare and human rights. On behalf of this consortium, Just Fair submitted a [parallel report](#) and a [response to the list of issues](#) of the UN Committee on Economic, Social and Cultural Rights (CESCR). These reports brought together the analysis carried out in [four thematic reports](#) produced in 2014 and 2015:
 - a. *"Going Hungry? The Human Right to Food in the UK"*: Welfare reforms, benefit delays and the rising cost of living have pushed an unprecedented number of people into a state of hunger, malnutrition and food insecurity.
 - b. *"Dignity and Opportunity for All: Securing the rights of disable people in the austerity era"*: Comprehensive analysis of the extent to which austerity-led policies meet the UK's international obligations to realise the rights of people with disabilities.

- c. *“Protecting the Right to Housing in England: A Context of Crisis”*: The housing crisis in England in two of its starkest forms: homelessness, and the insecurity of tenure and lack of adequate housing in the private rental sector.
- d. *“The Right to Health in the UK”*: Focussing on the retrogression suffered by asylum seekers, undocumented migrants and people with mental health conditions.

The EU and European countries must meet the highest international standards on economic and social rights

- 9. All EU countries have ratified the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right to work, the right to social security, the right to water, food and housing as part of an adequate standard of living, the right to health, education and participation in cultural life.⁴ All EU countries have also ratified either the 1961 European Social Charter or its Revised version of 1996, which includes rights related to employment and working conditions, housing, health and social security.⁵
- 10. The preliminary outline of the EPSR makes several references to the 2000 EU Charter of Fundamental Rights. However, it is well known that most economic and social rights proclaimed in the Charter are to be protected “under the conditions established by national laws and practices”.⁶ In other words, the Charter does not enable judicial enforceability of these rights. Furthermore, at the time of the adoption of the Treaty of Lisbon, the UK and Poland demanded (and the rest of Member States accepted) the attachment of Protocol No. 30, which confirms that these rights will not be justiciable unless they have been recognised as such by the laws and practices of both countries.
- 11. Article 151 of the Treaty on the Functioning of the European Union calls on EU authorities and Member States to “have in mind” the rights set out in the European Social Charter. On this note, it is written in one of the background documents of the EPSR that this Charter, as well as other documents stemming from the Council of Europe and the International Labour Organisation, “can be a source of inspiration” for EU authorities.⁷

⁴ <http://indicators.ohchr.org/> This paper focuses on the ICESCR, but other UN human rights treaties that have been ratified by all EU countries also proclaim economic and social rights, for example, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of the Child.

⁵ <http://www.coe.int/en/web/turin-european-social-charter/signature-ratifications>

⁶ This or similar jargon is used in Articles 27 (workers’ right to information and participation), 28 (collective bargaining), 30 (protection in case of unjustified dismissal), 34 (social security) and 35 (health). No such specification was deemed necessary for civil and political rights, or for the right to private property (Article 17).

⁷ Commission Staff Working Document, *The EU social acquis*, 2016, p. 17.

12. However, IHRL must be more than a mere source of inspiration. The EPSR must show a clear commitment with the highest economic and social rights standards of IHRL. The EU and its Member States should abide by the ICESCR, as interpreted by the UN Committee on Economic, Social and Cultural Rights (CESCR), and by the European Social Charter, bearing in mind the interpretation of the European Committee of Social Rights. **The EU and European countries must recognise that economic and social rights are human rights and give them full implementation in EU secondary law and in national law, enabling individuals to seek enforcement of their rights before national courts and tribunals.**
13. The recognition of economic and social rights is not merely rhetoric and symbolism. The human rights frame has specific implications for the design and implementation of public policies on welfare. At the very least, a human rights approach to social policy means the following:
- a. *Respect of minimum core obligations and immediate obligations to act. Authorities must ensure the satisfaction of* “at the very least, minimum essential levels” of economic and social rights. “If the [ICESCR] were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*. [...] In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.⁸ The obligation “to take steps” towards the fulfilment of economic and social rights is also of immediate effect. Steps must be concrete, deliberate and targeted.⁹
 - b. *Equality and non-discrimination.* Another immediate obligation of state parties to the Covenant is the obligation of non-discrimination on any ground.¹⁰
 - c. *Particular attention to most vulnerable groups.* “Even in times of severe resource constraints, whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes”.¹¹

⁸ CESCR, *General Comment 3: The nature of State parties’ obligations*, 1990, UN doc. E/1991/23, para. 10.

⁹ Article 2(1) ICESCR; CESCR, *General Comment 3*, 1990, para. 2.

¹⁰ Article 2(2) ICESCR; CESCR, *General Comment 20: Non-discrimination in economic, social and cultural rights*, 2009, UN doc. E/C.12/GC/20.

¹¹ CESCR, *General Comment 3*, 1990, para. 12.

- d. *Obligations to respect, protect and fulfil.* The guarantee of economic and social rights has three layers of obligations: obligation to respect, which means that authorities must abstain from interfering in the normal enjoyment of these rights; obligation to protect, meaning that authorities must ensure that non-state actors do not prevent individuals from enjoying economic and social rights; and obligation to fulfil, that is, authorities must overcome obstacles to the full satisfaction of economic and social rights.¹² Even if a public authority decides to privatise a public service, such as prisons, schools or hospitals, the State remains the ultimate responsible for the protection of all human rights.
- e. *Progressive realisation of economic and social rights.* Public authorities must take measures, “to the maximum of [their] available resources, with a view to achieving progressively the full realisation” of economic and social rights.¹³ The State bears the burden to prove that its policies are moving forward expeditiously and effectively towards the ultimate fulfilment of these rights.
- f. *All appropriate policies.* Public authorities must use the most suitable tools to fulfil economic and social rights, including legislative measures and judicial enforceability, but also international cooperation and progressive taxation, among others.¹⁴
- g. *Non-retrogressive measures.* The obligation to fulfil economic and social rights means that public authorities cannot take measures that constitute a step back in the level of economic and social rights of the population.¹⁵ This obligation is of immediate effect, so it is also applicable in times of economic recession, and authorities bear the burden of proof. “If the adoption of retrogressive measures is unavoidable, such measures should be necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights; they should remain in place only insofar as they remain necessary; they should not result in discrimination and they should mitigate inequalities that can grow in times of crisis, ensuring that the rights of the disadvantaged and marginalized individuals and groups are not disproportionately affected; and they should not affect the minimum core content of the rights protected under the [ICESCR]”.¹⁶

¹² CESCR, [Statement on the obligations of States Parties’ regarding the corporate sector and economic, social and cultural rights](#), 2011, UN doc: E/C.12/2011/1.

¹³ Art. 2(1) ICESCR.

¹⁴ CESCR, [General Comment No. 9: The domestic application of the Covenant](#), 1998, UN doc: E/C.12/1998/24; Special Rapporteur on extreme poverty and human rights, [Report on taxation and human rights](#), 2014, UN doc: A/HRC/26/28.

¹⁵ CESCR, [General Comment 3](#), 1990, para. 9.

¹⁶ CESCR, [Public debt, austerity measures and the ICESCR](#), 2016, UN doc: E/C.12/2016/1, para. 4.

- h. *Accountability and right to remedy.* IHRL provides a set of mechanisms that allow for the monitoring of public policies and, in some instances, empower individuals to lodge complaints and have access to effective remedies in case of violation of their rights. At the national level, judicial enforceability is both an accountability mechanism and an appropriate policy to protect economic and social rights. Accountability also includes periodic independent monitoring of the progressive fulfilment of these rights.
- i. *Access to information, impact assessment and active participation.* As a corollary of all of the above, governments are obliged to provide information about the way in which they are getting the population closer to the ultimate goal of the fulfilment of all human rights. This requires authorities to institutionalise impact assessment and facilitate active participation to monitor State practices.

Austerity should not lead to the neglect of economic and social rights

- 14. Judging from the consultation document, it is clear that the EC is attempting to frame the EPSR as a policy response to the economic crisis Europe has been going through for nearly a decade: “Every Member State and the EU as a whole are struggling with the political, economic and social consequences, while seeking to anticipate future developments.”¹⁷
- 15. One of the background documents notes that “in particular, a number of Southern European countries and Baltic States, where the crisis hit hardest and initial conditions were more fragile than in other parts of Europe, *had to tighten* eligibility conditions for cash benefits, freeze indexation and limit in-kind benefits/social services” (italics added).¹⁸
- 16. Welfare indicators have indeed shown a negative trend in recent years in most countries, but this has not only been the result of economic recession, but more importantly, the product of specific policies inspired by austerity dogmas advocated, among others, by EU institutions.
- 17. Austerity measures have undermined human rights, and the EC must be self-critical. As noted by the Commissioner of Human Rights of the Council of Europe, “many of these austerity measures – characterised by public expenditure cuts, regressive tax hikes, reduced labour protection and pension reforms – have exacerbated the already severe human consequences of the economic crisis marked by record levels of unemployment. [...] In some cases, the economic

¹⁷ European Commission, *Launching a consultation on a European Pillar of Social Rights*, 2016, p. 3.

¹⁸ Commission Staff Working Document, [*Key economic, employment and social trends behind a European Pillar of Social Rights*](#), SWD(2016) 51 final, 8 March 2016, p. 8.

crisis is undermining the very capacity of central and local authorities to deliver on the basic promises of a social welfare state and ensure human rights protection for all”.¹⁹

18. The CESCR has also denounced the disproportionate adverse impact of austerity measures on the enjoyment of economic and social rights in Spain, the Czech Republic, Slovenia, Romania, Portugal and the UK.²⁰
19. Although not a full member of the Economic and Monetary Union, the UK has also implemented abrasive austerity measures since 2010, which have been correlated with rising overreliance on food banks. On the one hand, the UK has made remarkable savings at the expense of welfare expenditure. Total spending on UK social security and tax credits will be £218.4 billion in 2016-17, 28.3% of total managed expenditure; measures announced since 2010 will save around £26 billion in the same year, roughly 10% of what welfare spending might otherwise have been; the greatest savings are from tax credits, **£4 billion lower**, and child benefits, 22% lower.²¹ On the other hand, research shows that a large number of households have seen their level of enjoyment of the rights to social security and adequate standard of living diminished (Articles 9 and 11 ICESCR). 3 million working families will no longer be entitled to any in-work support; and a further 1.2 million are set to receive the so-called universal credit, but with an average of £41 a week worse off.²² Delays and suspensions of welfare benefits are two of the biggest causes of social exclusion and referral to food banks. The Church Action on Poverty estimated in 2013 that over 500,000 people were reliant on food aid.²³ The number of 3-day emergency food supplies given by Trussell Trust has exceeded 1.1 million (2015-2016), up from 26,000 in 2008-2009.²⁴
20. The EU must commit to the protection of economic and social rights. **The protection of human rights, especially for most vulnerable groups, must trump economic policy preferences or any other consideration.** In particular, the EC must seize the opportunity of the EPSR to promote a **universal social protection floor, sufficient to ensure an adequate standard of living for all throughout the European Union.**

¹⁹ Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, 2013, p. 7.

²⁰ CESCR, *Concluding Observations: Spain*, 2012, UN doc: E/C.12/ESP/CO/5; *Concluding Observations: Czech Republic*, 2014, UN doc: E/C.12/CZE/CO/2; *Concluding Observations: Slovenia*, 2014, UN doc: E/C.12/SVN/CO/2; *Concluding Observations: Romania*, 2014, UN doc: E/C.12/ROU/CO/3-5; *Concluding Observations: Portugal*, 2014, UN doc: E/C.12/PRT/CO/4; *Concluding Observations: UK*, 2016, UN doc: E/C.12/GBR/CO/6.

²¹ House of Commons Library, *Welfare savings 2010-11 to 2020-21*, 26 July 2016.

²² Resolution Foundation, *Universal Challenge: making a success of Universal Credit*, May 2016.

²³ Church Action on Poverty, *Walking the Breadline*, May 2013; House of Commons Library, *Food Banks and food poverty*, 9 April 2014.

²⁴ The Trussell Trust, *“Foodbank use remains at record high”*, 15 April 2016.

Equality is a human rights goal

21. The EC's consultation document states from the outset that reducing inequality must be a policy target for public authorities. "Action at EU level reflects the Union's founding principles and builds on the conviction that economic development should result in greater social progress and cohesion and that, while ensuring appropriate safety nets in line with European values, social policy should also be conceived as a productive factor, which *reduces inequality*, maximises job creation and allows Europe's human capital to thrive" (italics added).²⁵
22. However, OECD data echoed by one of the background documents suggests that "there is a broad trend toward rising inequality and declining labour income share over recent decades in Europe, as well as in most other industrialised countries [...]. In many advanced economies, there is increasing concentration of income at the very top of the distribution".²⁶
23. Inequality is clearly connected to human rights, particularly economic and social rights. Empirical research shows that inequality can be a cause and a consequence of human rights violations, and that inequalities, political capture and the exercise of civil and political rights are closely connected. In this sense, socio-economic inequality can also be a threat to human rights insofar as it constrains access to political participation.²⁷ Furthermore, public authorities are expected to guarantee the minimum core content of all economic and social rights, devoting the "maximum available resources" without discrimination to their progressive fulfilment (Article 2 ICESCR). Taking this requirement seriously would result in public policies that lead to greater socio-economic equality.
24. In the UK, top public officials have made disturbing statements against equality. The government itself stands by a position announced in 2010 by the then Home Secretary and now Prime Minister Theresa May, according to which the "socio-economic duty" established in Section 1 of the Equality Act was to be "scrapped".²⁸ Section 1 sets out the duty of certain public authorities to "have due regard to the desirability of exercising [their functions] in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".

²⁵ European Commission, *Launching a consultation on a European Pillar of Social Rights*, 2016, p. 2.

²⁶ Commission Staff Working Document, *Key economic, employment and social trends behind a European Pillar of Social Rights*, 2016, p. 16-19.

²⁷ Special Rapporteur on extreme poverty and human rights, [Report on extreme poverty and inequality](#), 2015, UN doc: A/HRC/29/31; Independent Expert on the effects of foreign debt and other related international financial obligations on human rights, [Report on income and wealth inequality and financial crises](#), 2016, UN doc: A/HRC/31/60. See also the fruitful [debate](#) hosted by Open Global Rights.

²⁸ Theresa May, "[Socio-economic duty to be scrapped](#)", 17 November 2010.

25. After years of austerity-led policies, there is a growing concern about socioeconomic inequality in the UK. On the one hand, average income seems to be getting back to pre-crisis levels thanks to growing employment and longer working hours by poorer workers.²⁹ On the other hand, about 70% of families had a flat or falling income between 2005 and 2014,³⁰ and real wages fell by 10.4% between 2007 and 2015, one of the worst rates in OECD countries.³¹ The richest 10% of the UK population owns over half of the country's total wealth, and the richest 1% owns more than 20 times more wealth than the poorest 20% of the population.³² There are also deep territorial imbalances between South East England and the rest of the country in terms of public investment.³³ More than 76% of the people believe there is a wide divide between social classes, and the share of people who disagree with the idea that the government should spend more money on welfare for the poor went down from 43 to 31% between 2009 and 2015.³⁴

26. EU authorities and European governments should recognise that inequality puts economic and social rights at risk by seriously hampering their progressive realisation and access to an adequate social protection floor for those in the lower end of the scale. **Equality must be a priority goal** of the EPSR.

Summary of recommendations

- The EPSR consultation represents a timely opportunity to reinforce Europe's commitment with economic and social rights.
- The European Union and European countries must give economic and social rights full implementation in EU secondary law and in national law, enabling individuals to seek enforcement of their rights before national courts and tribunals.
- The EPSR must set clearly that the protection of human rights for all, especially for most vulnerable groups, trumps economic policy preferences or any other consideration.
- The European Commission must seize the opportunity to promote a universal social protection floor sufficient to ensure an adequate standard of living for all throughout the European Union.
- Equality must be a priority goal of the EPSR.

²⁹ Institute for Fiscal Studies, *Living standards, poverty and inequality in the UK: 2016*, July 2016.

³⁰ McKinsey Global Institute, *Poorer than their parents? Flat or falling incomes in advanced economies*, July 2016.

³¹ TUC, "[UK workers experienced sharpest wage fall of any leading economy](#)", 27 July 2016.

³² Oxfam GB, "[How to Close Great Britain's Great Divide](#)", 13 September 2016.

³³ [IPPR North](#) 2016.

³⁴ [British Social Attitudes Survey](#) 2016.