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Fighting social exclusion under the Europe 2020 strategy: Which legal nature for social inclusion recommendations? ☆

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ABSTRACT

In this paper, we take a closer look at the promotion of social inclusion in the framework of the Europe 2020 strategy, in particular the legal consequences of the incorporation of the social inclusion guidelines under the European Semester. Since the employment guidelines under the Europe 2020 strategy are now connected in a structural way to the economic guidelines, we first look at the monitoring procedures that accompany the implementation of these economic guidelines. Furthermore, we test the potential legal consequences of the integrated approach by unravelling (the formulation of) the social inclusion-related Country Specific Recommendations, and look at to what extent they answer to the economic, employment or social inclusion objectives.

The first legal consequence relates to the question of whether and to what extent the harder sanctioning tools, which have been developed for controlling the EU's economic-oriented Country Specific Recommendations, can be similarly applied to the guidelines relating to social inclusion (such as the application of sanctions in cases when the recommendations are not followed by states). In our opinion, there is a spillover effect only in relation to social inclusion recommendations that have sufficient economic or budgetary relevance ('social inclusion recommendations of the negative kind', supporting economic or budgetary goals). In other words, social inclusion recommendations that support only social objectives (or only employment objectives) do not enjoy the stronger legal effects of the integrated monitoring approach.

From analysing the concrete Country Specific Recommendations, we demonstrate that the incorporation of social inclusion into the employment guidelines has two additional consequences. On the one hand, social inclusion recommendations are nowadays formulated mainly in terms of employment objectives. On the other hand, the link with social inclusion also has implications for recommendations in the field of employment and economy that should not be to the detriment of social inclusion

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1. Introduction

With the Europe 2020 strategy, the European fight against social exclusion was given fresh impetus. In contrast with the Lisbon strategy, the objective of promoting social inclusion has been closely tied up with the employment and economic monitoring policies. Concretely, ten integrated guidelines for implementing the Europe 2020 strategy have been adopted: six broad guidelines for the economic policies of the member states and the EU, and four guidelines for employment policies. The guideline on social inclusion is the last of the employment guidelines.²

In this contribution, we first assess whether and to what extent, this new approach of incorporating social inclusion into the economic and employment guidelines has legal consequences. In particular, we try to answer following research question: Can we consider the new social monitoring strategy developed within the Europe 2020 strategy as a step forward from the previous social OMC, as applied in the Lisbon Strategy, when it comes to (legal) enforceability? In other words, we address the question of whether the decisions and recommendations that derive from the social inclusion guideline enjoy stronger enforceability than those of the past, when social inclusion was an integral part of the (non-legal) policy coordination method as established by the Social Policy Chapter in the TFEU (better known under the acronym OMC – Open Method of Co-ordination). In order to do so, we apply the new EU socio-economic governance framework to a sample of Country Specific Recommendations enacted by the Council during the last four years within the economic monitoring process of the EU. The sample is chosen on the basis of their relevance for social inclusion.

In that way, this contribution builds upon previous research done by the authors (Schoukens, 2013) and (Schoukens and Beke Smets, 2014), but also on other (previous) research, such as Armstrong (2010), Bekker (2014), Cantillon, Verschueren, and Ploscar (2012) in which, respectively, an overview has been provided of the current social inclusion recommendations and an analysis of to what extent these recommendations changed in nature under the Europe 2020 strategy (2010–2020) compared to the previous Lisbon strategy (2000–2010). In a similar way to the previous publication (Schoukens and Beke Smets, 2014), we categorise the Country Specific (social inclusion) Recommendations, taking into account the specific objectives they pursue. By addressing the legal consequences of the recent incorporation of social inclusion into the employment economic monitoring guidelines, this contribution differs from other papers on this topic which mainly focus on the governance structures and the institutional arrangements underlying the EU socio-economic monitoring of the Europe 2020 strategy.³

This paper will not provide an overview of the Memoranda of Understanding and the financial assistance measures. Although here as well, we see that the financial assistance measures and the conditions attached to receiving loans entailed several drastic social policy reforms, they are not part of the European Semester. Furthermore, these financial assistance measures have already received large scholarly attention (Kilpatrick and De Witte, 2014; Schoukens, De Becker and Beke Smets, 2014).

Before looking at a sample of the Country Specific Recommendations, we first provide an overview of the present competences in the field of social inclusion⁴ that are to be found within the Chapter on Social Policy in the TFEU⁵. This overview will then be followed by a legal assessment of the new approach where social inclusion is embedded in the employment and economic monitoring processes of the European Union (Article 121, resp. 148 TFEU). In doing so, we take the relevant treaty provisions into account, as well as secondary legislation and regulatory documents and the relevant literature. For the sample of the Country Specific Recommendations, we looked at the recommendations of 2015, 2014, 2013 and 2012, and the EU documents relevant in this regard.⁶

2. Promoting social inclusion (within the EU Social Policy Chapter)

The main competences in the promotion of social inclusion are to be found in Title X TFEU (Social Policy Chapter). This title groups together the competences of the EU in the field of social policy. In it, reference is made to social inclusion in two ways: as a (social) objective and as a ground for competence.

As to the objectives, Article 151 TFEU explicitly refers to the combatting of social exclusion. As European objectives provide the framework within which the concrete competences of the EU can be applied, they are crucial for the development of European (legal) measures.⁷ The EU can thus only make use of its powers if it positions its actions in terms of the

² Since 2010 the following integrated employment guidelines have been approved by the council: (1) increasing labour market participation and reducing structural unemployment, (1) developing a skilled workforce responding to labour market needs, (2) promoting job quality and lifelong learning, (3) improving the performance of education and training systems at all levels and increasing participation in tertiary education and (4) promoting social inclusion and combatting poverty. For more information about the integrated guidelines see: http://europa.eu/legislation_summaries/employment_and_social_policy/eu2020/em0028_en.htm:

³ See for example the work of J. Zeitlin and B. Vanhercke (2014).

⁴ In this paper, we refer systematically to the promotion of social inclusion in line with the integrated EU guidelines. Occasionally, reference will be made to the combatting of (social) exclusion. For the purpose of this contribution, both concepts are interchangeable and no legal value has been attributed to the distinction.

⁵ Treaty on the functioning of the European Union.

⁶ The Country Specific recommendations are available online, see the European Commission website.

⁷ Art. 5 (1) TEU.

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