

Submission by Amnesty International on the implementation of the European Pillar of Social Rights

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Reference: B2012

Amnesty International welcomes the opportunity to make this submission concerning an **Action Plan to implement the European Pillar of Social Rights ('EPSR')** in response to the European Commission's public consultation. The submission focuses on four major issues.

1. Align the EPSR as far as possible with international human rights law and standards

- As a policy instrument the EPSR does not create legally enforceable social rights. However, bearing in mind the EU's commitment to respect and incorporate fundamental rights through all of its legislative processes¹, it should still be aligned as far as possible with relevant international and regional human rights law and standards that EU member states have ratified. This includes but is not limited to the UN International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the Council of Europe's European Social Charter ('Social Charter').²
- Consequently, the interpretation of the EPSR's provisions should be informed by authoritative guidance from relevant human rights treaty monitoring bodies and experts including UN treaty body General Comments and Concluding Observations, together with jurisprudence under the respective communication procedures and UN Special Rapporteurs' reports. It should also take into account the decisions and conclusions of the European Committee of Social Rights bearing in mind the strong synergy between the Social Charter and the EPSR.³

2. Reflect international human rights law in the scope of protection offered by the EPSR

- One of the fundamental principles of human rights law is that rights should be enjoyed by everybody without discrimination and regardless of their circumstances or status including nationality and socio-economic status.⁴
- However, the EPSR currently states that it only applies to citizens and third country nationals with legal residence.⁵ It therefore excludes groups such as asylum seekers and undocumented migrants. This is particularly significant given that these groups are amongst the most vulnerable in the EU, including the vast majority of undocumented migrant workers in precarious employment without adequate employment and social protection. This exclusion is contrary to international human rights law and standards including UN and ILO treaties and the European Social Charter.⁶
- Beyond this omission certain of the EPSR's provisions are also limited in scope. For example, the EPSR only makes reference to social protection for workers.⁷ Yet, the right to social protection and security in international human rights law, as well as under Art 34 of the EU Charter of Fundamental Rights, is not restricted to those in employment but covers everyone residing in a given territory including asylum-seekers and refugees, unemployed people, and people who are not of working age.

¹ https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/incorporating-fundamental-rights-eu-legislative-process_en

² Other relevant UN treaties include the Convention on the Elimination of All Forms of Racial Discrimination; the Convention for the Elimination of All forms of Discrimination against Women; the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

³ See study on synergies between the EPSR and the Social Charter <https://www.coe.int/en/web/european-social-charter/-/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-european-social-charter-in-the-european-union-legal-order>

⁴ <https://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination.aspx>

⁵ "The principles enshrined in the European Pillar of Social Rights concern Union citizens and third-country nationals with legal residence." Preamble EPSP para 15 at https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf

⁶ https://files.elsa.org/AA/LRG_SocialRights/Marvt.pdf

⁷ Principle 12 states that "Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection."

- A practical and topical example of how the EPSR can be informed by other human rights instruments is how states should effectively address the COVID-19 pandemic. In this respect Principle 16 in guaranteeing the right to affordable, preventive and curative health care of good quality for everybody should be interpreted in the light of Article 11(3) of the Social Charter and Art 12(a) (c) of the ICESCR both of which require States to prevent, treat and control epidemic, endemic and other diseases. In turn these obligations can be interpreted to ensure that any practical measures taken by states are human rights compliant including being non-discriminatory and proportionate.⁸

3. Take international human rights obligations into account in law and policy development and implementation

- Due account needs to be taken of the EPSR as interpreted in the light of international human rights law and standards with respect to the development and implementation of all EU laws, policies including external actions.
- Practically this means incorporating the EPSR, together with the full range of international social rights as contained in other instruments ratified by EU member states, in any impact assessments⁹ prepared with respect to draft legislation and policy initiatives put forward by the European Commission including fiscal consolidation measures given their potential significant impact on social rights.
- As part of policy harmonisation the EU should develop appropriate regulatory frameworks and guidance for member states in line with international human rights in order to effectively implement the EPSR emphasising the nature of social rights as essential public goods and services rather than just commodities.

4. The need for stronger accountability, transparency and participation

- Accountability, transparency and participation are all fundamental cross cutting human rights principles.
- Reflecting the importance of effective accountability implementation of the EPSR's action plan needs to be accompanied by an independent and robust monitoring mechanism with human rights compliant indicators and benchmarks
- In line with transparency and participation civil society should be able to play a meaningful role on the implementation of the EPSR both with respect to genuine consultation with all stakeholders but also monitoring human rights impacts

⁸ See Amnesty International *Responses to COVID-19 and State's human rights obligations* (12 March 2020) at <https://www.amnesty.org/download/Documents/POL3019672020ENGLISH.PDF>

⁹ See guidance by the UN Independent Expert on foreign debt in 2018: 'Guiding Principles on Human Rights Impact Assessments of Economic Reforms'.