

The design of a European minimum income framework

Opinion on behalf of the German Trade Union Confederation (DGB) and the German National Poverty Conference (NAK)

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Summary

- 1) There is scarcely any EU country where minimum income schemes offer adequate protection against poverty. Benefit levels are even being reduced even further and eligibility requirements tightened. This is not only a problem for needy EU citizens, but it also makes the EU more susceptible to crises and endangers people's acceptance of the European Union.
- 2) European minimum standards in terms of social protection can best be attained through minimum income protection. This opens up the opportunity to substantiate the 'European social model' in the sense of 'minimal harmonisation', and 'be on a sound footing'.
- 3) The creation of a European framework for minimum income protection in EU Member States can not only build on labour market, poverty and social policy debates, declarations and "guarantees" at the national and European levels and on ideological sources, but also on tangible conflicts, such as inner-European poverty migration.
- 4) In particular, Recommendation 92/441/EEC of the Council of National Ministers for Employment and Social Affairs of 1992 and Recommendation 2008/867/EC of the European Commission of 2008 make the concrete design of a European minimum income support framework feasible. It could be founded on Article 153 Paragraph 1 Letter h of the Treaty on the Functioning of the European Union (Art. 153 para. 1 lit. h TFEU), as part of a strategy for the active inclusion of people excluded from the labour market. This provides for the possibility of enacting European directives on minimum requirements through majority decisions, which must gradually be applied.
- 5) Limited territorial coverage (for example: eurozone), the gradual introduction of standards (especially in terms of the benefits level) and "package solutions" of legal provisions and subsidies – as well as other mechanisms – are options to increase both the political and objective chances of implementing a realistic poverty-proof framework (as far as possible) for minimum income protection in the Member States. This leaves the Member States extensive room for manoeuvre and responsibility.
- 6) In addition to legal elements (framework directive) and 'soft steering' (open coordination), an EU minimum income framework should also include a financial component. There are even economic and political facilitation models for moving towards European integration using such "package solutions".
- 7) A European framework for minimum income protection in the Member States also has international dimensions: the achievement of both basic social protection floors and the United Nations Sustainable Development Goals for target year 2030.
- 8) The development and expansion of reliable and poverty-proof minimum income protection in every Member State for all its members is helpful as the 'last safety net' with regard to poverty policy. But one must also focus on preventive issues with regard to primary income (such as minimum wages), secondary income distribution (such as upstream social protection) and household expenditure (e.g. for education and mobility costs). Finally, combating poverty also involves addressing social segregation (such as social housing), successful relationships (e.g. self-efficacy) and, ultimately, political participation (such as the participation of poor European Union citizens in political processes).

Introduction and Preliminary Remarks¹

This report was commissioned by DGB and NAK, funded with DGB's own funds as well as funds from the EU-funded project European Minimum Income Network 2 (EMIN-2). The subject of the report is the question of ‘Developing a poverty-proof European minimum income guarantee’.

To this end, it first explains the background to the issue (Chapter I) and the existing substantive starting points for such an undertaking (Chapter II). Chapter III discusses the political context, which includes the question of enshrining a reinforced European minimum income policy in European Union law, as a further prerequisite for such a policy. Chapter IV builds on this to outline a binding EU framework for a minimum income guarantee in Member States, including specific measures and regulations for further discussion.

In dealing with socio-political needs and risks, “value judgements are inevitable, since the question of a socio-political need cannot be formulated in a scientifically neutral manner. These value judgements are rooted in socio-political values that can only be revealed, but not proven.” (Hauser 1994: 24*). Nevertheless, this does not render socio-political analysis purely a matter of opinion (Benz / Rieger 2015: 91 ff.). The value systems underlying this report reveal a scientific understanding “tending towards *ad hominem*, which consciously extracts values and norms from an interest in helping mankind find its own humanity in order to influence the social structures and processes” that stand in the way of this goal (Huster 2005: 57*). What conclusions can we draw from this? “Enlightenment and emancipation [...] can ultimately be measured by the degree to which we aspire to and facilitate access to resources of a material and immaterial nature in our increasingly (co)formed European society for all and free man from an unworthy object role” not only, but also through, distribution policies and social work (ibid.: 61*).

The report is only able to avoid a “Germano-centric” perspective to a limited extent, since it is most familiar with German social policy in light of its addressees (DGB and NAK). Some topics and examples (e.g. “rent caps”, “child benefit supplement” etc.) will not be comprehensible without explanations, even for readers familiar with German social policy in principle, see, for example, Bäcker et al 2010; Althammer / Lampert 2014 and Boeckh et al 2017. In fact, the space available requires concise argumentation based on presuppositions. This is unfortunate in view of the aim of the DGB and the NAK to involve as many citizens who have (not) experienced poverty as possible in poverty-related political processes and to facilitate access to such processes.

Some ongoing or upcoming processes could not be taken into account, e.g. the adoption of party platforms for the upcoming elections to the European Parliament and the opinion of the Economic and Social Committee of the EU on a minimum income policy (see EESC 2019).

¹ I would especially like to thank Andreas Aust and Ernst-Ulrich Huster for their helpful professional advice as well as Björn Korte for his editorial support. Thank you to Eurideas Language Experts for the English translation (citations marked with “*” are translated by Eurideas). I am, of course, solely responsible for any shortcomings in this study.

1. Problem and Potential

Minimum income schemes, its functions and its potential for reducing poverty

'Employees', 'social security' and 'social protection' are essentially terms that are open to political interpretation politically and not unambiguous legally.² Nor is 'minimum income' a simple term. Essentially it can be used synonymously with 'social assistance', 'needs-oriented basic income' and 'minimum protection', but not with the idea and concept of an 'unconditional basic income' (more on that below).

One can agree on the following definition: "Minimum Income Schemes are defined as, income support schemes which provide a safety net for people, whether in or out of work, and who have insufficient means of financial support, and who are not eligible for insurance based social benefits or whose entitlements to these have expired. They are last resort schemes, which are intended to ensure a minimum standard of living for the concerned individuals and their dependents." (EMIN 2017: 7) However, people who are certainly entitled to social security benefits, but who must supplement this with benefits from a minimum income scheme, must be added here.

According to the EU Mutual Information System on Social Protection (MISSOC), we can assume three variants of minimum income schemes. These are measures "to meet the subsistence needs of individuals and families who otherwise lack (sufficient) income from employment or other sources (including insurance-based social security benefits). Typically, social assistance benefits are financed from taxation and their award is subject to a test of means of the claimant and sometimes of his/her family members. Three categories of social assistance can be specified: general³ or universal assistance, categorical⁴ assistance and tied⁵ assistance. These are all 'benefits of last resort' and exist within the broadly defined portfolio of social protection. Access and entitlement is based on an assessment of assets and means, and benefits will therefore vary according to existing income and individual family circumstances." (MISSOC, cited acc. to European Parliament 2017: 33)

Minimum income schemes perform a variety of functions (Benz 2004: 16 et seq.*):

- ❑ *Compensation or protection function:* They provide cover when upstream instances to ensure livelihood security (family, market, broader state social policy) do not work or are insufficient.
- ❑ *Constitutive function:* They relieve groups of people from an unconditional obligation to work. On the other hand, some of their benefits are certainly not aimed at overcoming dependency on earned income and individual provision against poverty, but rather at their implementation and preservation, based on their integration into the system of paid work. They are an important co-determinant of ingress into and egress from the system of paid work.
- ❑ *Supervisory and penalising function:* This follows from the a.m. rule of the relationship between 'working and eating' or between gainful employment or readiness for it and income.
- ❑ *Redistributive function:* By having a system financed through taxes (or through contributions in the case of poverty-proof capped social insurance systems) to divert primary income to those in need, the welfare state operates a (re)distributive policy.

² Regarding the degree of legal indeterminacy or context-dependency for the concept of "employee", see, for example, Rebhahn/Reiner 2019: 2172, para. 4; on the concepts of "social protection" and "social security", see, for example, Benz 2004: 161 et seq.; Kingreen 2017: 12-17; Rebhahn/Reiner 2019: 2196, para. 45.

³ For example, German social assistance.

⁴ For example, the German Asylum Seekers Benefits Act or basic provision for old age or reduced earning capacity.

⁵ Access to specific goods and services through money or their free use (provision), optionally targeted only to persons eligible for social assistance.

- ❑ *Foundational function*: They provide a foundation for the wage structure and, in part, for fiscal law (subsistence level exemption) and other social security laws (minimum benefits, otherwise social security benefits to maintain living standards).
- ❑ *Legitimacy or loyalty function*: By protecting against impoverishment, they create loyalty, binds the citizens who are (potentially) dependent on them to the state by giving their status as citizens “utility value” (Habermas 1998:118*).
- ❑ *Modernisation function (risk aversion)*: They encourage the willingness of citizens to take risks by countering uncertainty about success and the consequences of flexible professional or relationship biographies with the prospect of protection from complete impoverishment in the event of failure (Klammer / Tillmann 2001: 509).

Minimum income guarantees therefore have different and sometimes contradictory functions with regard to de-commodification and re-commodification⁶, but also functions which go beyond these.

Minimum income schemes exist today in every EU Member State. Some having roots going back centuries (Sachße / Tennstedt 1998) and are relatively well-developed at the national level, but also exist partly as regional or local systems with differing configurations (Spain) and territorial gaps (Italy). Some systems were only introduced a very short time ago (Greece), or are being planned as a nationwide system (Italy) or re-regionalised (Austria). While there are some formal systems, their current accessibility and/or level of performance means they can scarcely be considered adequate as ‘minimum income’ and ‘general’ ‘last resort social safety nets’ (see Annex 1; Van Lancker 2015; Frazer / Marlier 2016; MISSOC 2018).

If this report asks for a *poverty-proof* design of minimum income schemes, then it must also clarify whether and under which conditions they are or would be able to provide this at all. In the first instance, avoiding poverty through one’s own gainful employment, but also, if need be, through minimum income schemes, finds a broad consensus among political decision-makers, the scientific community and European citizens. When and to what extent can minimum income schemes be relied upon to do so? On this question Richard Hauser has collected some helpful points of view. According to him, “income poverty – and thus an essential element of social exclusion – could be completely and permanently eliminated if the following five conditions were met” (Hauser 2012: 618*):

1. Politically and socially, this requires acceptance of the EU poverty (risk) threshold (see below) as adequate for securing the socio-cultural subsistence minimum and avoiding social exclusion.
2. Corresponding increases and constant adjustment of subsistence levels are required in minimum income schemes.
3. Those entitled to minimum income benefits would invariably have to exercise their legal rights (hidden poverty).
4. No additional conditions for the receipt of benefits should be required, only the low income of those in need.
5. The spending behaviour of household members must be organised in such a way that everyone enjoys the same level of welfare.

By calling “income poverty” an “essential element of social exclusion,” Hauser first of all points out that besides (income) poverty, it should be noted that there are other dimensions of social exclusion (such as discrimination based on sexual orientation or ethnicity) on which minimum income schemes have little influence. In this sense, the main function of minimum income schemes can only be to fight income poverty successfully through subsistence support, as a de facto wage floor,

⁶ “De-commodification can refer to either the services rendered or the status of a person, but in any case, it stands for the degree to which distribution issues are decoupled from the market mechanism.” (Esping-Andersen 1998:36*)
Re-commodification refers accordingly, to strengthening the commodity character of goods and services and related market processes and pressures.

and by promoting access to the employment system. In combating other dimensions of poverty (such as education, political participation and social isolation), they can only make important contributions. The fourth criterion does not make it impossible to impose sanctionable entitlements on benefit recipients as long as sanctions only reset the level of their benefits to that of the poverty level, and thus are generally slightly higher. What remains as a systematic restriction are income use within a household, which can only be influenced to a very limited extent, and the possible non-utilisation of claims to benefits. This can only be minimised, but prevented in every case, through education, good administration and social outreach work. Overall, Hauser's remarks make it clear that minimum income schemes not only have the potential to manage and alleviate material poverty, but to largely abolish it as far as possible.

One of the restrictions discussed by Hauser for meeting this potential is of particular importance when considering a European framework for minimum income schemes in the Member States. It is referred to as an “international restriction” on: a) the exportability of (innovative) benefits and b) the possible migration of poverty from countries with poor poverty-protection systems to those with well-documented poverty protection (Hauser 2012: 620 et seq.). It is precisely in this regard that a European framework would provide a starting point if it can substantially reduce the degree of differences between systems, in a reliable and reciprocal manner for the Member States, thus reducing the pressure of migration due to penury not through uncoordinated actions to restrict access conditions in Member States, but through Community guarantees of access to benefits in all EU countries agreed by the Community.

Causes, measurement and development of poverty

There are competing (but rarely exclusive) hypotheses on the (main) causes of poverty, including: “Poor people are poor...”

- ▣ “because they are systemically exploited in capitalism,”
- ▣ “because in a democracy, massive lobbying by the rich worsens the situation of the poor,”
- ▣ “because their culture and religious behaviour create an unsatisfactory work ethic and/or cultural factors classify poverty as God-given and necessary,”
- ▣ “because well-meaning political actors simply lack the knowledge to successfully combat poverty,”
- ▣ “because they are not thrifty and live in a culture of poverty,”
- ▣ “because they suffer heavy losses during economic crises and therefore are particularly vulnerable,”
- ▣ “because social discrimination leads to into exclusion in a complex interaction,”
- ▣ “because social legislation and social welfare authorities provide benefits at too low a level and impose excessively high obstacles,”
- ▣ “because they are wrongly declared as poor by a disenfranchising state” (Schönig 2015: 131 et seqq.*).

This report focuses on the penultimate indent, even though others (for example, in reference to the contribution of minimum income protection to overcome economic crises) are also considered.

Central measurement concepts of (income) poverty can only be named briefly here, and only a few results can be outlined as examples. Regarding for the concepts themselves, their critical appraisal and a wealth of results on the state and development of multidimensionally viewed poverty and social exclusion in various countries, see for example Frazer / Marlier 2016; Atkinson et al 2017; Becker 2017; Deutscher Bundestag 2017; Huster et al 2018. As a central indicator of poverty in poverty research, as well as in EU-European politics, is the concern for a situation in life below the so-called relative poverty line (now increasingly referred to as the ‘at risk of poverty line’). Poverty (or poverty risk) is assumed to mean life at below half the average (arithmetic mean) income, and this is considered plausible since substantial material and intangible deficits result at an income below that level, when opportunities to participate in the ‘normal life’ of a specific society (and enjoy

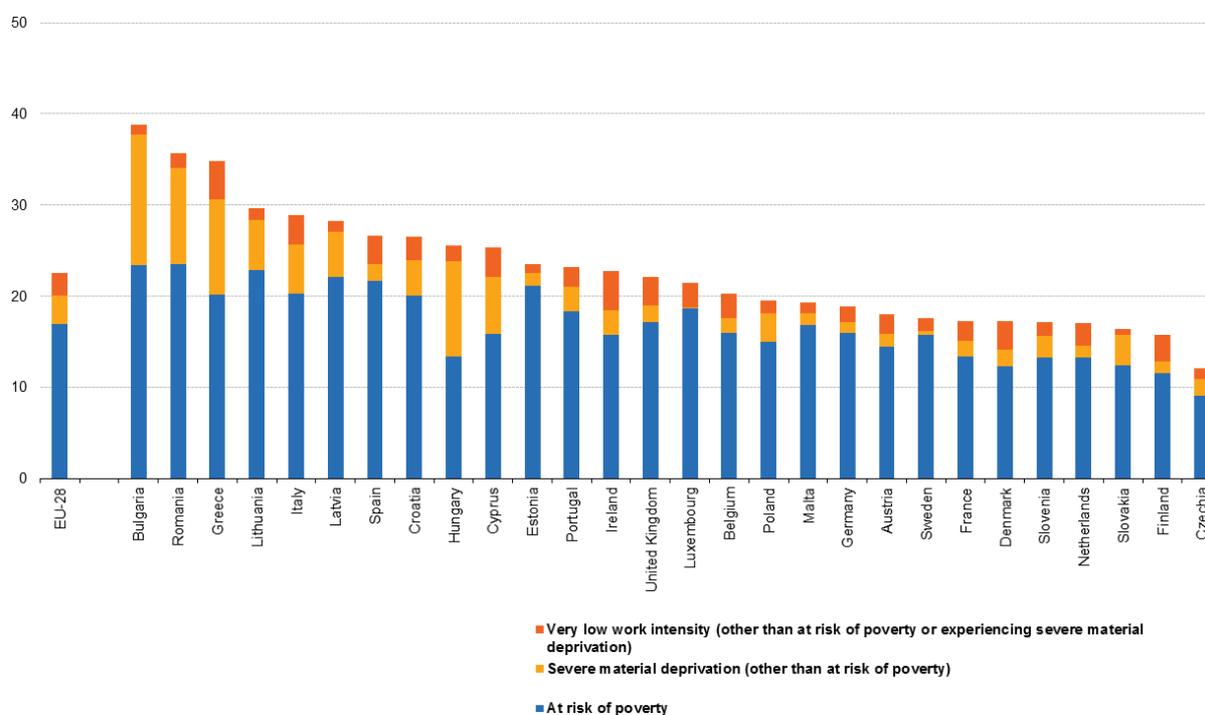
the expectations of normality in such a society) are seriously called into question. This threshold is calculated on the basis of the average income per capita for a given Member State, with the poverty (risk) threshold lying at 60 percent of the average net household income (median).

In order to study the prevalence of poverty and social exclusion, the European Union includes two other indicators (or indicator bundles) in addition to the poverty (risk) ratio:

- People in households with very low participation in paid employment (according to Eurostat – the Statistical Office of the EU – defined for 18-59-year-olds who have worked at less than 20 % of their ‘employment potential’ over 12 months).
- Persons are considered to be living materially deprived lives if they experience deprivation in at least three (‘significantly’ means at least four) out of nine areas: payment problems; lack of heating due to lack of money; unable to cope with unexpected expenses; lack of money for meals or for a one-week vacation per year outside the home; lack of a car, washing machine, colour TV or telephone (Deutscher Bundestag 2017: 401).

The last measurement appears in particular among the economically weaker countries (Bulgaria, Greece, Romania, Hungary) that exhibit frequent material deprivation, even above the poverty (risk) threshold, but hardly ever in other countries (especially in Luxembourg and Sweden).

Fig. 1: Population at risk of poverty or social exclusion, 2017 (Share of total population)



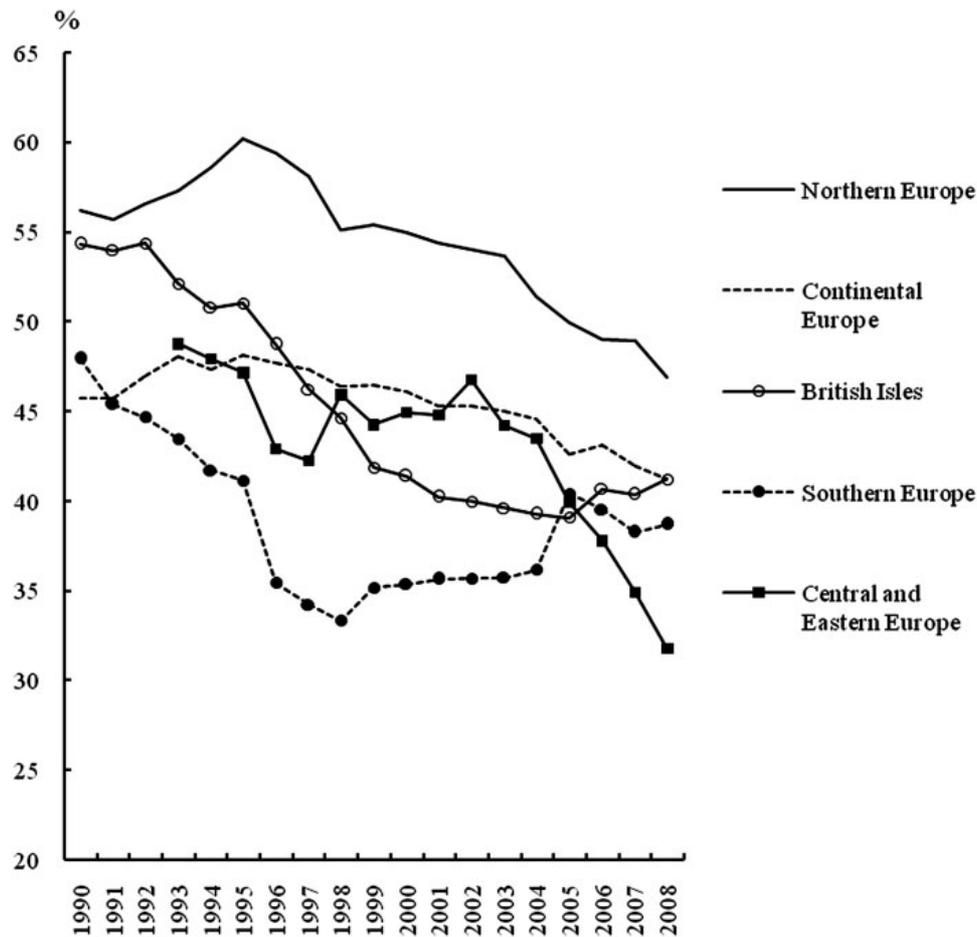
Source: Eurostat 2019

For some years now, attempts have been made to define so-called ‘reference budgets’, beyond the criteria of material deprivation, as the minimum requirements for goods and services (see the former ‘basket of commodities’ – Warenkorb – of the German social assistance), which can be translated into monetary values. Although discussed nationally and worked on intensively elaborated for differing lengths of time (see Storms et al, 2014), methodologically harmonised European reference budgets have not been achieved yet, but proposals already exist (see Goedemé et al, 2015), including the use of reference budgets to assess the appropriateness of minimum income benefits (Van Lancker 2015: 34 et seq.; European Parliament 2017: Nos. 33 and 38). However, to date, the poverty (risk) ratio remains the most widely accepted consensus-based scientific and political reference value, and the most accessible for empirical research in terms of data.

Minimum income, spill-over effects and social dumping

Measured against this relative income poverty level in 2012, most minimum income schemes of Member States did not ensure poverty-proof benefit levels, and in some cases even provided less than half that limit (see Annex 1). In recent years, minimum income schemes have been created in Greece and are currently being planned beyond the fragmented local and regional systems in Italy. Nevertheless, no upward convergence in the area of minimum income protection can be discerned. On the contrary, there are examples and indications of a tendency towards social dumping competition and the grinding down (not only by Member States, but also at the EU level) of so-called ‘passive benefits’ in unemployment and minimum income systems in favour of activation of recipients (Neumann 2016: 68 ff., 92 ff.) – well before the outbreak of the financial crisis in 2008.

Fig. 2: Social assistance adequacy rates in 28 European countries in 1990-2008



Average benefits for three type-cases: single person, lone parent, and two-parent family. *Notes:* Northern Europe includes Denmark, Finland, Norway, Sweden. Continental Europe includes Austria, Belgium, France, Germany, the Netherlands, Switzerland, Luxembourg. The United Kingdom and Ireland belong to the British Isles. Southern Europe includes Spain, Portugal, Italy, Cyprus, and Malta. Central and Eastern Europe includes Slovakia, Hungary, Estonia, Slovenia, Poland, the Czech Republic, Bulgaria, Lithuania, Latvia, and Romania. Adequacy = (equalized net social assistance benefits/equalized median disposable income) x 100. Source: SaMip

Source: Nelson 2013: 396

Fig. 2 shows that benefit levels in the welfare systems of various countries (groups) were increasingly slipping further downwards from the 60 % poverty (risk) threshold between 1990 and 2008. The fact that people do not have to be exposed to the risk of social dumping on a minimum income is illustrated by the exemplary and high-performing Member States Ireland and, with significant limitations, Denmark and the Netherlands (see Annex 1). The similar direction of the trends shown the above figure does give one pause for thought.

The danger of social dumping is not limited to merely the risk of competitive undercutting (motivated not least by the prospect of low wages) in the adequacy of benefit levels but is also a risk relating to the accessibility of the systems. For example, since 1993 Germany has, with the justification of reducing possible pull factors for asylum seekers, been excluding some of these people from the general social assistance scheme and limiting them to a special scheme with significantly limited benefits (Asylbewerberleistungsgesetz (Asylum Seekers' Benefit Act)). In 2011, Germany lodged an objection against the European Convention on Social and Medical Assistance to suppress entitlements to benefits under the Second Book of the Social Code (SGB II) and SGB XII, for job-seeking EU immigrants. Finally, since 2017 – again, justified with 'pull effects' – a portion of Union citizens has been almost completely excluded from the last-resort social safety net (social assistance); a one-month payment of bridging allowance to return to their home country is available.

But neither does social dumping solely threaten unemployment benefits and minimum income schemes, nor are low wages and migration the only arguments for aligned restrictive policies in EU Member States. "Today's single market works with almost no social, fiscal and wage harmonisation; however, it does create pressure to shift social costs (away from mobile income and assets to immobile ones), to tax cuts and to collective wage agreements (...)." (Boeckh et al 2017: 407*) The purpose of European minimum standards is to establish 'stop lines' especially against the risk of or tendency to "social dumping, i.e. providing competitive advantages by lowering social standards" (Eichenhofer 2012: 1627, para. 6*). "Although social protection falls under national competences in terms of its organisation and funding, in the context of the single market and the single currency it will increasingly be confronted with 'European policies' such as the Stability and Growth Pact, the coordination of economic and employment policies, competition law (...) and the single market (...)." (Coen 2013: 1814, para. 42*) These 'long-range effects' from one policy field (such as economic policy) to another (social policy) are discussed as 'spillover'. For example, former EU Social Affairs Commissioner László Andor (2013) points to the cross-border causes and effects of social problems, especially under the conditions of the monetary union.

The importance of minimum income protection for a 'economically strong' and 'social Europe'

Many of the studies and policy documents cited in this report highlight the importance of minimum safeguards in terms of the labour market, budget and economic policy:

- their contribution to safeguarding and *promoting 'human capital'* for example, by allowing people to continue their cultural activities, educate themselves and are not exposed to unmet physical needs.
- conversely, the *consequences of poverty* that are avoided through them, including part of the costs of health care, child welfare, property security and the judiciary.
- their above-mentioned potential to reduce people's '*risk aversion*'.
- the reference to the fact that an *internal market* without them and without border controls, guaranteed *freedom of movement* and a *European labour market* will not function in the long term.
- the contribution they make to *fair competition* within and between Member States by reducing the risk of social and wage dumping.
- their function as '*counter-cyclical stabilisers*' in times of crisis, especially since it can be assumed that one hundred percent of the funds invested will be consumed promptly.

What Hans Zacher said "for the moment" in 1990 is still *systematically* true today: "For the time being it seems clear that there will be no uniform European social benefit law. Even uniform principles are hard to imagine." (quoted from Graser 2001: 364*) Therefore an EU-wide agreement on the respective contributions of state, company and private pensions to growth, employment and social cohesion, as well as a consensus on the necessary characteristics, is unlikely to be achieved. However: "Perhaps it will be possible to say something about minimum standards for a minimum

income protection first.” (ibid.*) Because “the necessary broad agreement on an EU-wide (fundamental) right to a minimum level of protection against poverty and social exclusion is certainly conceivable.” (Benz 2004: 276*)

Basing a progressive, minimal convergence of the social protection systems in the EU specifically on minimum income systems, contributes fundamentally to place the EU on a sound footing in terms of combating poverty, distribution of wealth and social policy. So far it has not been able to achieve this foundation. On the contrary, EU social policy is left dangling in mid-air as long as the vision of a “reliable floor” of a society, which, for example, Ralf Dahrendorf (1965: 96*) attempted to outline as a liberal social policy, does not become a political reality. For example, there are minimum standards for windows in swing doors on business premises (important!), minimum standards for legal protection for working mothers (also important!) and guarantees for the portability of acquired social security claims to other EU countries (this is also undoubtedly important). However, the levels of the claims themselves and also the claims on minimum income protection as a whole are thus far so threadbare under European law (see Chapter 2) that here (at the EU level) it is impossible to speak of a reliable ‘last safety net’ that remains effective when common economic, labour market and social policy no longer are.

Support for European integration

A European minimum income guarantee could have an effect similar to that of the Council of Europe's ban on torture and the death penalty, in that it might create identity and promote loyalty. To be able to associate a substantial right with the project of European integration in the knowledge that a minimum level of basic social protection is individually guaranteed locally and in every other place in the EU would be a positive step of the EU regarding the negative right against the state as a defence against degrading treatment so strongly associated with the Council of Europe. Conversely and formulated rather dramatically: Currently, the institutions of the European Union are still embarrassing themselves with repeated contradictory statements a) about a fundamental right to minimum protection, b) in accordance with Union law [which does not exist] and national laws and practices [which are partly incomplete and insufficient]. What response can be given to opponents of Europe when they cite this?

What we currently have, instead of a European minimum income guarantee as such, is a debt programme for Greece, which prescribes massive privatisation, redundancies, cuts to wages and benefits, but no stop line and no last-resort safety net. And this despite the fact that Greece, as the last remaining EU state where such minimum income protection has largely been missing, is only beginning to establish such a system at all. What we also have is a budget dispute between Italy and the European Commission, which also revolves (not only, but also) around the Italian Government's plan to introduce a nationwide minimum income scheme. Once again, Europe is not ‘demanding and promoting’ such a foundation for the European social model; on the contrary, it feels compelled to expound the problems.

National minimum income schemes are de facto interconnected

Although Member States have been largely free so far to decide their own minimum income policies under Union law, their systems are de facto increasingly interconnected. It was pointed out above that Germany last tightened its minimum income protection rights for EU citizens in 2017 with a view to the a.m. “pull factors”. Nonetheless, this not only creates problems for European Union citizens affected by the withdrawal of benefits, but also for the German towns and cities where these people still live. The Integration Minister for the German (federal) state North Rhine-Westphalia, Joachim Stamp (FDP – Liberal Democratic Party), made the following comments about this in August 2017: “For Roma (...) there is no acceptance at all in Bulgaria. They are treated as fifth-class people. The education of their children is not guaranteed there. (...) It is extremely annoying when (...) subsidies from the European Social Fund are not even accessed by Romania and Bulgaria. These funds should therefore be made available to cities such as Dortmund and Duisburg.”

(Korfmann 2017: 2*). It can also be formulated thus: It should be in the well-informed self-interest of a sufficient number of citizens throughout the Union, among them local, regional, national and EU political decision-makers, to arrive as quickly as possible and on an EU-wide level as far as possible at a binding European framework for minimum standards for minimum income schemes. What can it be built on and what can it be linked to?

First interim conclusion

A (largely) 'poverty-proof' design of minimum income protection in the European Union is possible in principle, but currently there is scarcely any Member State where it is guaranteed. In terms of the level of benefits and their accessibility, insufficient minimum income schemes are not just a problem for (potential) beneficiaries, but also leave the economic and political potential of these systems untouched.

2. European minimum standards (not) achieved so far

There is an entire spectrum of legal connecting factors and (former) policy and communication processes, involving both academics and representatives of civil society, which can be linked to a European framework for minimum income protection in Member States and which can help such a framework to become more effective and credible.

Minimum income protection is a human right (UDHR 1948)

As a lesson drawn from the horrors of fascism and the Second World War, in 1948 the countries of the world assembled in the United Nations agreed on the Universal Declaration of Human Rights (UDHR). Art. 25 para. 1 postulates: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." An individually enforceable legal right does not follow from this statement. However, it serves politically and legally as a central reference for the assessment of human rights issues.

Guarantee of reciprocal access to care (ECSMA 1953)

The European Convention on Social and Medical Assistance (ECSMA), which was agreed in 1953 within the framework of the Council of Europe (for its current members, see Annex 2), legally binds its contracting parties "(...) to ensure that nationals of the other Contracting Parties who are lawfully present in any part of its territory (...), and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance (...)." (Art. 1) How serious this guarantee should be taken was illustrated by the German Government in 2011, when it yet again declared its reservations regarding the agreement before the Council of Europe, this time because it does not guarantee equal access to benefits according to SGB II and SGB XII – a de facto suspension of the ECSMA in Germany. What the agreement was never able to claim to do, however, was the qualitative harmonisation of minimum income protection between the signatory states (see Annex 3). Nonetheless, it is an example of solidarity – and its deterioration – regarding minimum income policy among the European states, which is also possible outside the EU.

Political commitment of the states of the Council of Europe (ESC 1961)

The European Social Charter (ESC) of 1961 (revised in 1996 and extended to include the right to

housing and protection against poverty⁷), which was also agreed to within the framework of the Council of Europe, does not provide any legally enforceable rights. In its introduction, however, the states acceding to it proclaim: “The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised: (...) Everyone has the right to benefit from social welfare services.” Article 13 of the Charter specifies this, inter alia, with regard to necessary care in the event of sickness, counselling and personal assistance in the event of personal or family distress, and that “any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance (...)”. This would include, on the basis of equal treatment and in accordance with the ECSMA of 1953, the nationals of the other Contracting Parties to the Charter (ibid.).

Reasonable and sufficient for what? (ICESCR 1966/1976)

In Article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), which was concluded in 1966 and came into force in 1976, each signatory State (which today include all EU Member States⁸) undertook the following: “to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” (Art. 2 para. 1 ICESCR) According to Art. 11 para. 1, these rights include “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.” An optional protocol on individual complaints, state complaints and investigative procedures, which came into force in 2013, has, to date, been signed and ratified by less than half of the EU Member States.⁹ In this respect, the ICESCR provides a further point of reference for a human right to minimum income security and its content.

Sufficient benefits for employees (CCFSRW 1989)

In 1989, eleven of the then twelve 'EU' member states (with the exception of the United Kingdom) adopted the “Community Charter of the Fundamental Social Rights of Workers” (CCFSRW) as a ‘solemn declaration’, after this project was initially launched as the “Charter of Fundamental Rights and Freedoms” (not limited to workers) in the hope that it would also be possible to involve the government of the United Kingdom (see Däubler 1990). The preliminary draft still contained the following with regard to minimum income protection: “All workers who remain excluded from the labour market without being entitled to unemployment benefits and those who do not have sufficient means of subsistence must be given the opportunity to receive a minimum income and adequate social assistance.” (cited acc. to Schulte 1991: 8*) After negotiations with the participation of the United Kingdom, the a.m. workers' charter by eleven of the twelve Member States, without explicit reference to social assistance, was what remained. Instead it talks of “adequate level of benefits” and “assistance in keeping with their particular situation.” Mention of “social assistance” is now only made in paragraph 25 on social protection for the elderly (Benz 2004: 172*).

Income poverty – a useful indicator for poverty understood in complex terms (Poverty I and II 1981, 1991)

Sustainable consensus on a common understanding of poverty and social exclusion was achieved i.a. within the framework of the initial EU poverty programmes (1975-1980 and 1985-1989). The

⁷ Germany signed the revised version in 2007 but has not yet ratified it; see <https://www.coe.int/de/web/conventions/full-list/-/conventions/treaty/163> [28.2.2019].

⁸ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en [28.2.2019].

⁹ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=_en [28.2.2019].

final report on Poverty I, for example, makes it clear that a relative concept of poverty that includes access to goods and services from public and private sources in addition to income is assumed. Furthermore, poverty is neither purely subjective, nor can it be determined purely objectively. “Impoverished people: Individuals or families whose income is so low that they live below the minimum level of what is considered an acceptable standard of living in the Member State in which they reside. Income: goods, cash benefits, additional services from public and private sources.” (Kommission 1981: 16*) Furthermore, it is already reported here that: “The Commission is already looking into how to build such a minimum income. The exact requirements will have to be developed in the context of the Member States, although this will lead to a different level of minimum rates.” (Kommission 1981: 164*)

The multidimensionality of poverty and social exclusion, for which income is nevertheless an important indicator, is clearly highlighted in the final Poverty II report. “An objective, comprehensive definition of poverty refers to individual or family circumstances that are characterised by shortcomings and inadequacies in various areas: insufficient income, but above all various weaknesses and gaps in non-financial areas such as education, ability to work, health, housing, social integration: Poverty has numerous dimensions, which are combined differently for each individual. (...) Insufficient income is just one of the aspects of poverty. However, it is the common denominator of the various poverty situations and can therefore be a useful indicator for the spread of poverty.” (Kommission 1991: 4*)

Consensus on minimum standards among national Ministers of Labour and Social Affairs (Recommendation 92/441/EEC 1992)

Council Recommendation of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems 92/441/EEC was a milestone on the road to a binding EU framework for minimum income protection. It addresses social assistance and, where appropriate, other minimum income schemes in the Member States and sets out a number of criteria for their appropriate implementation. They are discussed in more detail in Section 4.3. Recommendation 92/442/EEC, on the convergence of social protection objectives and policies, adopted by the Council of Ministers for Employment and Social Affairs on 27 July 1992, also formulates minimum standards, but more specifically refers to social protection during sickness, maternity, unemployment, incapacity to work, old age and family-related events. Both documents are legally non-binding as recommendations and therefore have had scarcely any political effects. However, they are still drawn on as central references in debates and documents concerning the further development of EU social policy.

Recognition and respect of existing law (CFR 2000/2007)

In the year 2000, as a solemn declaration, the EU again adopted a “Charter of Fundamental Rights of the European Union” (CFR), now no longer solely addressed to workers. In 2007, the Charter was added as a separate part to the other individual Treaties in the Lisbon Treaty. Thus Article 34 of the CFR contains a renewed statement under fundamental and primary law on a Europe-wide entitlement to minimum income protection, which even in principle does not guarantee “merely access”, but – only – for minimum income protection also “a certain level of performance” (Rebhahn / Reiner 2019: 2196, para. 45*), when it refers to “sufficient resources” and “ensure”. This provision, however, also ends up with a ‘refrain’, which again places the labour and social rights mentioned in the chapter of the Charter on “Solidarity” so largely subject to reservation that nothing remains of their substance without the corresponding EU or national social legislation. Art. 34 para. 3 CFR postulates: “In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.” However, there are still numerous gaps or shortcomings in the corresponding Union law and,

respectively, Member States' national laws and practices (see the comments made, for example, on Greece, Italy and Germany).

Open Method of Coordination in the framework of the Lisbon Strategy (2000 et seqq.)

In light of the 'modest' experience to date with the instrument of legislation and following on from policy processes at UN level, the European Commission initially opted for a so-called "coordinated employment strategy" from 1998 onwards, and then from 2000 onwards for forms of "soft steering" in more and more social policy areas through the exchange of information and target agreements within the framework of an 'Open Method of Coordination' (OMC). These social policy coordination processes were intended not least to underpin the so-called 'Lisbon Strategy' objective of making the EU the most competitive economy in the world by 2010, capable of more employment and greater social cohesion.

The OMC against poverty and social exclusion (since 2001), which was proposed by the Council and endorsed by the European Council in Nice in December 2000 (Coen 2013: 1810, para. 38), sets out: a) to facilitate participation in working life and access by all to resources, rights, goods and services; b) to prevent the risks of exclusion; c) to combine "measures to help the socially most vulnerable people" as well as d) the "mobilisation of all actors" in the formulation of such integrated policies (Europäische Gemeinschaften 2001b: 5*). Under a) aims, inter alia, "To organise social protection systems in such a way that they help, in particular, to guarantee that everyone has the resources necessary to live in accordance with human dignity" (ibid.: 6*). Under d) last but not least, "To promote, according to national practice, the participation and self-expression of people suffering exclusion, in particular in regard to their situation and the policies and measures affecting them" (ibid.: 7*).

The great potential of the OMC still lies in setting the political agenda and the promotion of political learning. Its Achilles heel is still the willingness of 'all actors' to 'actively participate' in the process of achieving its aims (Benz 2004). "The Council can (...) neither prescribe the outcome to be achieved by the cooperation nor prevent MS [Member States] from enacting provisions which are not consistent with the objectives set." (Coen 2013: 1787, para. 5*)

Active inclusion in the framework of the EU 2020 Strategy (2008)

The formulation of the goals for the EU 2020 Strategy for the decade up to 2020 was more modest in terms of poverty and social inclusion policy, given the 'mixed' experience with the Lisbon Strategy; nevertheless, it was at least possible to keep the issue on the EU's political agenda. The current aspiration is identified as one of the five key targets of the strategy (employment; research and development; climate change and energy; education; poverty and social inclusion). It specifically aims at the protection of at least 20 million people from the risk of poverty or social exclusion, defined as the number of people at risk of poverty or exclusion according to the following indicators: a) poverty risk, b) material deprivation, and c) unemployed households.

With the latest Recommendation 2008/867/EC of the EU Commission "on the active inclusion of people excluded from the labour market", a combined social inclusion strategy for both employable and non-employable persons was recommended. This is intended to systematically link the following: a) "Adequate income support" (with reference to Council Recommendation 92/441/EEC), b) "Inclusive labour markets" (from offering job opportunities and qualifications to publicly funded employment) and c) "Access to quality services", in the sense of intangible minimum security, such as emergency housing advice, but also in the form of social housing and childcare, for example. The Commission recommends that the Member States "[d]esign and implement an integrated comprehensive strategy for the active inclusion of people excluded from the labour market combining adequate income support, inclusive labour markets and access to quality services. Active inclusion policies should facilitate the integration into sustainable, quality employment of those who can work and provide resources which are sufficient to live in dignity, together with support for social

participation, for those who cannot.” (Commission 2008: 12) It is therefore becoming more and more obvious to consider persons who are capable of working and defined as incapable of working in terms of minimum income policies as persons who are excluded from the labour market.

The European Union guarantees an unenforceable right to minimum income (EPSR 2017)

This is also reflected in the minimum income provision of the European Pillar of Social Rights (EPSR): “14. Minimum income. Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market.” Again, it is (as in Commission Recommendation 2008/867/EC) a question of the link between a) the guarantee of a minimum income, b) access to goods and services and c) promoting integration into the labour market – this time jointly declared by the European Council, the European Commission and the European Parliament. Again, the former refers to all persons and the latter to those who are (currently) able to work. This will be revisited in Chapter 3.

As with the ‘Community Charter of the Fundamental Social Rights of Workers’ of 1989 and the ‘Social Protocol’ to the 1992 Maastricht Treaty – this time in an open form – some EU Member States are (specifically) addressed: “A stronger focus on employment and social performance is particularly important to increase resilience and deepen the Economic and Monetary Union. For this reason, the European Pillar of Social Rights is notably conceived for the Euro area, but it is addressed to all Member States.” (European Parliament / Council / European Commission 2017: 11, Preamble Section 13). Again (as with Art. 34 para. 3 of the CFR), the ‘guarantees’ of the EPSR have yet to be substantiated in concrete terms and must first be underpinned by individual legal rights to become more than just another political paper for EU citizens.

Bea Cantillon highlights the particular importance of minimum income security for the EPSR as a whole. “Ensuring adequate minimum incomes is essential to the success of the EPSR itself. The principles on which the Pillar is built are strongly connected and the right to an adequate minimum income is essential, normatively and instrumentally. Appropriate levels of social investment and social mobility, equal opportunities, effective social protection and affordable services presuppose adequate minimum income protection and vice versa.” (Cantillon 2019: 6) Therefore she advocates a minimum income directive to give the pillar actual form (ibid.: 9).

Second interim conclusion

There is absolutely no dearth of European and international declarations, programmes and processes on the fundamental right to minimum income protection, not even in relation to minimum income schemes being designed as poverty-proof. What is lacking is a binding framework that would also guarantee a reliable, poverty-proof design of minimum income schemes.

3. Political context for further steps

The increasing pressure of this problem as a significant political context for further steps was already mentioned in Chapter I. The same applies to the sometimes-contradictory functions of minimum income schemes – which define political controversies – and also to its perceived potential in terms of labour market, budgetary and economic policy. But what support can a (poverty-resistant) European framework for minimum income schemes in the Member States count on, legally (under European law) and politically?

History of consensus on ideas

The fact that there are competing hypotheses on the (main) causes of poverty became clear with the references from Werner Schönig (2015) above. Nevertheless: similar to the European consensus on the rejection of torture and the death penalty, in Europe there are not (yet) any minimum income concepts in place such as in parts of the USA, where minimum income protection is provided for, but is limited to a maximum of five years of a person's life (Wilke 2002). In the USA, help for fellow citizens affected or threatened by poverty is not rejected, but what is called into question far more strongly than in Europe is that this also have far-reaching consequences in form of guarantees for the state community of citizens.

Bernd Schulte, on the other hand, sees precisely this at least as a far-reaching basic consensus in Europe, with the following belonging to the common ground between European welfare states:

- a state system built on a democratic basis,
- a market-oriented economic system based on private property in which the state intervenes with corrective action,
- state objectives aimed at the welfare of citizens,
- a wide range of measures aimed at social integration,
- a well-developed system of preventive and compensatory social protection,
- legal rights to social benefits and measures. (Schulte 1995: 241)

In Europe, of course, we are already faced with an erosion of human rights standards again (even before their general implementation); for example, when homelessness and begging are being criminalised again, and not only in Hungary. On which ideological foundations can the defence and enforcement of the fundamental right to minimum income protection be based?

Older than the major social movements of the eighteenth, nineteenth, and twentieth centuries that shape social policy in Europe are, first of all, religious foundations to which reference can be made, even if they cannot easily be used to derive minimum income policy requirements at the EU level. Thus the social obligation of property (s. years of release) is rooted in the Hebrew Bibel (Tanach), which not only calls upon people to act mercifully towards their fellow human beings excluded from work and income, but also to point out their affected/vulnerable legal status (Book of Proverbs 31, 8-9). The Gospel of Matthew (25: 35-36) points out, for example, that the relationship with God is expressed through the material and immaterial care for and solidarity with people affected by poverty; it cannot be separated from how one deals with one's fellow human beings. Finally, in Islam, the 'Zakat', the social duty of the non-poor to support needy people, is one of the five supporting pillars of the religion (see also Surah 107). In the secular sphere, minimum income protection (in addition to the positions critical of minimum income guarantees that can always be found, and examples of minimum income policy of which only vestiges remain – see USA) finds support in all the welfare regimes, large party families and models of social justice which dominate social policies in Europe (Esping-Andersen 1990; Benz 2004: 33 et seqq.; Neumann 2016: 250 et seqq.).

If the agreement on a European framework for minimum income protection in the Member States should fail, it would certainly not be because of the lack of breadth in the historical consensus on ideas and its starting points for this 'social innovation'. However, at the end of this chapter it will be necessary to take another look at the political resistance which a European framework for minimum income must nonetheless reckon with. This resistance became clear in the search for whether the demand for a directive on minimum income, which has already been mentioned several times, can be based on EU legal instruments at all – and if so, on which regulation exactly?

Current legal basis

The political context for further steps in EU minimum income policy is initially characterised to a great extent by the (socio)political division of competences in the EU Treaties. "Title X: Social Pol-

icy” (Art. 151-161) of the Treaty on the Functioning of the European Union (TFEU) is relevant to questions of social policy and thus to minimum income policy as well.

Art. 153 TFEU [Social Policy: Matters and Competences]

Art. 153 TFEU specifies the objectives of the Union as formulated in Art. 151 TFEU. The “authority” cited in Art. 153 is in part regarded as “all (...) relating essentially to the workforce” (Eichenhofer 2012: 1630, para. 18*) and the legislative powers therein are “always only with regard to gainful employment” regarded as “permissible” (Rebhahn / Reiner 2019: 2172, para. 3*). In contrast, other sources point out, in accordance with the relevant social science literature, that the personal scope of “Art. 153, para. 1, lit. g to k” indicates that this provision (meaning Article 153) “does not cover employees only” (Gassner 2018: 804, para. 2*). “Social policy” (which is in fact the designation of “Title X” of the TFEU), “social protection systems” (Art. 153 para. 1 lit. k) and questions regarding “combating of social exclusion” (lit. j) cannot be adequately addressed when reduced to issues of employment (Althammer / Lampert 2014; Huster / Boeckh / Mogge-Grotjahn 2018). So far in Germany, legal commentaries on the TFEU have only addressed this inadequately, such as when Rebhahn / Reiner (2019: 2183, para. 21*) wrote in the subjunctive: “If one were to accept the OMC and the other treaty provisions, the entirety of all labour and social legislation would be covered.” However, the article is difficult to interpret with its eleven indistinctly delineated regulatory topics (matters). “For Krebber (...), the impression given by the provision is that it is ‘as if the advocates of Union competences in social policy, as well as their opponents, wanted to hide the content of the provision in as confusing a regulation as possible’.” (Kingreen 2017: 11*)

Nevertheless, the article offers various possible starting points for an EU framework for minimum income schemes in the Member States. When choosing them, it should be considered, inter alia:

- that more specific provisions are preferable to less specific ones;
- that when pursuing multiple objectives through a single measure, the act must be established on a legal basis that regulates the predominant purpose or the defining element of the legal act;
- that in the case of objectives or elements of equal rank, the legal act must be based on the relevant (i.e. multiple) provisions;
- but that this is precluded where the decision-making procedures applicable to those provisions are incompatible with one another (Gorjão-Henriques et al 2010: 7);
- in that case priority must be given to the rule of jurisdiction which provides the “broader” legal basis, i.e. “those which are more able to include aspects of the others” (Rebhahn / Reiner 2019: 2187, para. 26*).

Rebhahn / Reiner, for example, also point out: “If the measure can be divided in terms of content, a separate allocation must be made for each part. However, this must not lead to the content being split apart.” (ibid.*) And further: “Separation (...) of previously enacted directives on social policy does not usually appear possible because, as a general rule, the political objectives of the measures do not run parallel to the content of the competency provisions of the Treaty; a different interpretation would lead to politically coherent measures being measured against different standards of competence.” (ibid.*) So it is no wonder that Gorjão-Henriques et al. (2010: 11 et seq.), citing numerous examples, point out that in the case of directives and recommendations on designation, their legal foundation regularly refers only to Treaty articles that are relevant to the case, but not to individual paragraphs, letters and indents.

What starting points does Art. 153 para. 1 offer? The following letters do not appear to be relevant:

- a) improvement in particular of the working environment to protect workers' health and safety;
- b) working conditions;
- d) protection of workers where their employment contract is terminated;
- e) the information and consultation of workers;

- f) representation and collective defence of the interests of workers and employers, including co-determination;
- g) conditions of employment for third-country nationals legally residing in Union territory;
- i) equality between men and women with regard to labour market opportunities and treatment at work;

Even among the objects listed next, there is no letter explicitly referring to questions of minimum income protection to be found; in this regard, there is no 'ideal', and therefore no binding, starting point (see the above explanations for choosing them). Sufficient proximity, however, seems to be at least discussed in letters c), h), j) and k):

Art. 153 para. 1 lit. c: "social security and social protection of workers"

The legal opinion of Thorsten Kingreen (2017) for the German Federal Ministry of Labour and Social Affairs favours this basis for competence for EU-wide action on the question of a binding EU legal framework for minimum income schemes in the Member States. From the perspective of minimum income schemes as social protection systems, this is immediately obvious (see Benz 2004: 178 et seq.; Benz 2018: 774). Thence the report also provides *one* possibility for the enactment of minimum provisions for (but only certain) minimum income schemes or elements in EU treaty law. Kingreen sees this as a concept of the employee under social law, which goes beyond the concept of the employee under labour law and which, within the meaning of the so-called Migrant Workers Regulation (Regulation (EC) 883/2004), also covers non-contributory cash benefits like those provided in Germany under SGB II and the basic provision for old age and reduced earning capacity within the scope of SGB XII. However, this does not cover the other parts of Book XII of the German Social Code, such as Chapter III on general 'subsistence aid' or Chapter VIII on 'aid for overcoming particular social difficulties'. There is no mention of any other separate minimum income scheme, for example for asylum seekers. Rebhahn / Reiner (2019: 2195, para. 45) do not see social assistance (SGB XII) in their role as the central last-resort safety net, being covered by the scope of lit. c.

In view of the compartmentalisation of minimum income policy, it is not surprising that in another legal opinion by Miguel Gorjão-Henriques et al. for the European Anti-Poverty Network (EAPN), Kingreen's preferred letter c is rejected as unsuitable for a minimum income (framework) directive since: "MI [Minimum Income] schemes, however, do not concern the social protection of workers. While in some formulations such schemes might also benefit persons who would fit the concept of 'workers', established in EU case-law, this would be a marginal impact (...) and would not correspond to the Directive's main objective, which would aim primarily at ensuring dignified conditions for persons excluded from the labour market – the main or predominant purpose or component." (Gorjão-Henriques et al 2010: 9). This is already referred to in letter h.

Art. 153 para. 1 lit. h: "the integration of persons excluded from the labour market, without prejudice to Article 166"

First of all, the specification of "integration" as professional integration ("berufliche Eingliederung", see the German language version of lit. h) can't be found in at least several of the 23 official and "equally binding" language versions of the TFEU (Art. 358 TFEU, in conjunction with Art. 55 of the Treaty on European Union (TEU)).¹⁰ According to Rebhahn / Reiner (2019: 2202 et seqq.), "integration" is difficult to interpret here. They themselves tend to focus more on so-called 'active labour market policy' and do not combine this with a discussion on the interaction of such measures with those of income protection (so-called 'passive' benefits). Ales (2018) does not comment on the interpretation of integration or vocational integration. There is not yet a directive

¹⁰ In Danish, there is talk of "integration", in English "the integration", in French "l'intégration", in Italian "integrazione", in Dutch "de integratie", in Portuguese "Integração", in Spanish "la integración", in Swedish "Integrering" (s. <https://eur-lex.europa.eu/legal-content/...> [22.2.2019]).

based on the material introduced by the Amsterdam Treaty (1997) into what was then Art. 137 of the EC Treaty (TEC) (Ales 2018: 162 et seq.).

Kingreen's argument for refusing to support a minimum income directive based on lit. h and his preference for lit. c is not convincing, as it assumes an exclusive function of minimum income schemes, which is unsupported. The legal framework would not be limited to people excluded from the labour market “and thus would not aim at measures of reintegration into the labour market, but rather at the establishment of a system with a social floor that ensures livelihood security. Therefore, only Art. 153 para. 1 lit. c) TFEU can be considered as a legal basis for this” (Kingreen 2017: 10 et seq.*). In Chapter I on the functions of minimum income protection, it was made clear that minimum income schemes refer essentially to the *relationship* between income support *and* the system of paid work.

Van Lancker (2010: 7 et seq.) explains: “There is no formal objection that can be found in the Treaty to legislate on financial support for the integration of people who are excluded from the labour market. (...) It is true that this article has (...) did not even serve as legal base for the Commission’s recommendation on active inclusion of people excluded from the labour market. But this fact in itself does not mean that it cannot serve as a solid legal base for a framework directive on adequate minimum income in the EU. Whether or not such a framework directive will be adopted only depends therefore on political will, not on the question of the legal base!”

Art. 166 TFEU, which is excluded from the regulatory scope of lit. h, regulates EU policy on questions of vocational training “without any harmonisation”; its objectives include the „improvement of initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market”.

“[P]ersons excluded from the labour market” (Article 153 para. 1 lit. h) can be defined as “unemployed persons who are fit for work but not incorporated” (Eichenhofer 2012: 1631 para. 23*) or “marginalised groups in the labour market (disabled, young and older workers, the unskilled and long-term unemployed)” (ibid.*). First of all, these may not actually ‘merely’ be ‘occupationally’ excluded persons, i.e. those who could find an employment relationship, but have not yet found one suited to their profession. Germany, as a rule, usually protects unemployment benefit (I) recipients for one year from the expectation of ‘non-professional’ integration, if necessary, into the labour market. In any case, persons excluded from the labour market can be objectively considered to include in their total persons:

- ❑ who are underemployed (e.g. in involuntary part-time employment); these are often recipients of minimum income benefits that are referred to as ‘supplementary’.
- ❑ who are socio-politically separated from the generation of the employable due to their retirement age; they, too, may be beneficiaries of minimum income, e.g. in Germany via the basic pension benefit for old age in accordance with SGB XII.
- ❑ who are excluded from the labour market due to employment prohibitions, such as those seeking asylum and refugees; they are also beneficiaries of (where applicable, separate) minimum income schemes.
- ❑ who are defined in social benefit law as being particularly remote from the labour market, for example under German social law with the distinction of more/less than three hours of possible daily employment as a criterion for access to benefits under SGB II or SGB XII respectively (the two main minimum income schemes).
- ❑ those who are de facto excluded from the labour market due to special circumstances, for example due to disability, imprisonment, mental or physical illness, long-term unemployment, child care and looking after family members in need of care, excessive debt or homelessness; they are also often dependent on minimum income benefits.

It is not uncommon for individuals to be affected by multiple factors of exclusion from the labour market (e.g. mentally ill, homeless people; the long-term unemployed forced to take retirement).

In the light of this list, ‘inclusion’ can objectively but not exclusively relate to a matter concerning direct occupational integration into the (primary) labour market, but it must also (at least initially and/or additionally) relate to other dimensions of social integration and exclusion. For example, day-structuring offers for homeless people are partly a prerequisite for vocational inclusion measures in the narrower sense, the latter of which can only then be meaningfully addressed (BAG W 2017). ‘Vocational rehabilitation’ or ‘benefits to enable participation in working life’ within the framework of the statutory pension insurance scheme (which will be supplemented in Germany in the future by a minimum income component, see CDU / CSU / SPD 2018: 14 et seq.) are inextricably linked to subsistence security (see transitional allowance, start-up subsidy). Here, too, vocational integration in the narrower sense must go hand-in-hand with any necessary e.g. medical rehabilitation.¹¹ Further examples of the often inseparable link between occupational integration in the narrower sense and subsistence security could be added, for instance in the area of health insurance (sickness benefits for gradual reintegration). Thus, minimum income protection should be considered as a component of vocational integration.

Apart from such specific examples taken from social policy in Germany, it is possible in principle to inquire again about the regulatory objectives of the materials mentioned in Article 153 para. 1. “Art. 153 must in principle be interpreted as enabling the attainment of the objectives of Article 151.” (Rebhahn / Reiner 2019: 2171, para. 1*). According to Art. 153 para. 1, sentence 1, that article seeks “achieving the objectives of Article 151” and support and supplement the Member States in the areas specified below. These objectives are:

- the “promotion of employment”,
- “improved” living conditions,
- “improved” working conditions,

thereby “while the improvement is being maintained” to enable:

- “their harmonisation”,
- a “proper social protection,”
- the “dialogue between management and labour,”
- the “development of human resources with a view to lasting high employment” and
- “the combating of exclusion.”

These objectives are decisive under lit. h for the specific group identified here (persons excluded from the labour market). The fact that minimum income schemes contribute to the improvement of living conditions, to adequate social protection and to combating exclusion is almost never denied in the field of social policy.

With regard to the matter of (occupational) integration of people excluded from the labour market and in light of the objective of “the promotion of employment,” once again the inseparable connection between occupational integration in the narrower sense and minimum income protection is illustrated by examples. Thus, for example, “the development of human resources / die Entwicklung des Arbeitskräftepotenzials” among homeless EU citizens cannot be promoted in the short, medium and, if necessary, long term without sufficient minimum income protection, which includes effective access to housing. Job hunting for the long-term unemployed and refugees will, as a rule, usually be neither affordable nor successful beyond their minimum material (livelihood) and intangible (social services) security. Finally, in the cases of persons excluded from the labour market through

¹¹ See also https://www.deutsche-rentenversicherung.de/Allgemein/de/Navigation/2_Rente_Reha/02_Rehabilitation/02_leistungen/07_berufliche_reha/berufliche_reha_node.html [28.2.2019] and further information to be found there.

retirement, or through the prohibition of employment, minimum provisions for integration cannot logically be limited to narrowly defined occupational integration.

It is clear that the following narrow concept of exclusion formulated by Van Lancker (2010: 8), is not shared here: “A (...) limitation of taking article 153, 1, h TFEU as a legal basis, is that the framework directive will deal only with people ‘excluded from the labour market’, that means people who are likely to work but do not have a job, but not people who cannot work for any reasons (age, caring responsibilities, health difficulties ...), and across the lifecycle.” Because again the question is: Are those EU citizens who are unable to work or defined as unable to work, or not entitled to work, not excluded from the labour market to a special degree (and therefore from the possibility of earning an income in this ‘market’)? Should de-commodifying social benefits not provide them with a ready alternative?

- In its Recommendation 2008/867/EC, on the “active inclusion of people excluded from the labour market”, the European Commission referred to Art. 211 of the TEC (as amended in Nice)¹², which authorises it to make recommendations on areas designated in the treaty. In its first recital, it refers to the need for the Community to support and supplement, “[i]n accordance with Article 137(1)(h) of the Treaty [TEC],¹³ (...) the activities of the Member States in the integration of persons excluded from the labour market. Article 34 of the Charter of Fundamental Rights of the European Union provides for the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.” With these introductory and interrelated references (reference to Art. 153 para. 1 lit. h TFEU and Art. 34 para. 3 of the Charter of Fundamental Rights), the European Commission clearly indicates that it also considers it possible to base minimum income policy on Art. 153 para. 1 lit. h. On the other hand, Social Commissioner Thyssen addressed the European Parliament in 2016 on the question of what measures would be taken to assess and improve the quality of Member States' minimum income schemes, declaring, “the EU has no competence to take legislative action on this matter.” (European Parliament 2017: 41; see also Frazer / Marlier 2016: 11). Really? In the paradigmatic recommendation on the question of the factually appropriate regulatory material from lit. h (2008/867/EC), the Commission – as described above – addresses a) sufficient income support, b) inclusive labour markets and c) access to quality services as an integrated triad of strands for the “active inclusion of people excluded from the labour market” (as the title of the recommendation, probably referring to lit. h, suggests).
- The Council of Ministers for Employment and Social Affairs approved Commission Recommendation 2008/867/EC in December 2008. The Council, in its own Recommendation 2016/C 67/01 “on the integration of the long-term unemployed into the labour market” (Council 2016), also does not take a narrow interpretation of occupational integration as its starting point. In its recitals, it highlights the importance of support services “tailored to individual needs, such as debt-counselling, rehabilitation, social support services, care services, migrant integration, housing and transport support,” for long-term unemployed people in “addressing barriers to work and empowering those persons to reach clear goals leading to employment.” As a final recital, it further emphasises that the Recommendation intends to observe, reinforce and promote fundamental rights, “in particular as established by Article 29 and Article 34 of the Charter of Fundamental Rights (...)”.
- The European Parliament has reaffirmed, regarding the connection between minimum income and inclusion, that “introducing and strengthening adequate minimum income schemes in all Member States, with adequate budgetary, human and material resources, together with active

¹² This Article regulated the tasks of the Commission and was repealed by the Lisbon Treaty, or rather was essentially replaced by Article 17, para. 1 TEU.

¹³ Meanwhile, Art. 153 para. 1 lit. h is identical to the Treaty of Lisbon in this regard.

employment policy for people able to work, is an important and effective measure for combating poverty and inequality, which (...) supporting social integration and access to the labour market” (European Parliament 2017b: Recital S).

- The European Economic and Social Committee emphasised: “the urgent need to guarantee an adequate minimum income in the European Union under a framework directive, with the aim of effectively combating poverty by facilitating labour market inclusion” (EESC 2013: 1).

All considerations taken into account, lit. h also appears to be the appropriate legal basis for a European framework for minimum income schemes in the Member States (see also Gorjão-Henriques et al 2010: 15 and the above critical assessment of Kingreen 2017); this obviates the need for further points of reference where no powers exist (Art. 21 para. 3 and Art. 352 para. 1 TFEU) (Gorjão-Henriques et al 2010: 9). It remains to be asked, however, whether there are not also suitable starting points within the framework of Art. 153 TFEU with “combating of social exclusion” (lit. j) and “the modernisation of social protection systems” (lit. k), which would make the above references relevant when dealing with competing starting points.

Art. 153 para. 1 lit. j: “combating of social exclusion”

Another very important requirement for minimum income schemes is in fact the fight against poverty and social exclusion. In this regard, the creation on this legal basis of a European framework for minimum income schemes in the Member States also stands to reason. In contrast to the OMC on social protection and social inclusion (which also deals with the prevention of poverty and exclusion, access to upstream minimum income security systems, etc.), which is based on this clause, minimum income policy is more specifically concerned with a last-resort social safety net for people excluded from the labour market that is significantly subordinate to gainful employment and – wherever possible – is aimed at reintegration into gainful employment. Minimum income protection includes all variations of minimum income¹⁴, with the exception of pilot projects with an unconditional basic income¹⁵, and presupposes that income derived from them is essentially subordinate to paid work and (insofar as possible and reasonable) support for reintegration into gainful employment.¹⁶ Thus, minimum income schemes do not assume equality of ‘occupational integration’ (see lit. h) and ‘combating social exclusion’ (see lit. j) or – separable from the objective of priority integration into the labour market – a primary purpose of ‘combating social exclusion’, but a more specific – and therefore preferable (see above) – regulatory competence under lit. h as opposed to lit. j. According to Gassner (2018: 805, para. 4*) this can also be assumed: “The fight against social exclusion pursuant to Art. 153 para. 1 lit. j concerns the exclusion of persons and groups of persons from core areas of social participation, such as work and health. The regulation is subordinate to Art. 149, 153 para. 1 lit. a to i, and 166 TFEU.”

Art. 153 para. 1 lit. k: “the modernisation of social protection systems without prejudice to point (c)”

¹⁴ Thus, even the German SGB XII (for persons and groups of persons particularly removed from the labour market) stipulates: “If beneficiaries can earn an income by taking up a reasonable activity, they shall be obliged to do so and to participate in any necessary preparation.”(Art. 11 para. 3 sentence 4 SGB XII*)

¹⁵ Basically, however, even models for an unconditional basic income (BI) refer to gainful employment: neoliberally positive to enforce a de facto obligation to work through the low benefit levels of a BI, negative in social-revolutionary models with high BI benefit levels precisely to circumvent the reference of wage-dependent classes on gainful employment and income (Benz 2009: 217).

¹⁶ No further consideration will be given here to models for a ‘negative income tax’, even though in rare cases these are at least mentioned in documents at the European level relevant to minimum income policy (e.g. in Europäisches Parlament 2012: 15, point 26 and 16, point 34). Unlike models for unconditional basic income, negative income tax models are subordinate to earned income. They also reduce minimum income protection to the minimum means of subsistence and do not take into account the promotion of access to the labour market for those excluded from it, nor their necessary access to social services.

A similar argument can probably also be made in relation to this possible starting point: It is relevant, but in terms of content (“modernisation”) even vaguer than letter j (“social exclusion”). A more specific alternative (lit. h) is therefore preferable to a link to lit. k (see above). This is true even if a European framework for national minimum income schemes can be regarded as a very essential element in the modernisation of social protection. If those who are able to work and those defined as (potential) recipients of minimum income benefits who are not able to do so are correctly and objectively regarded as persons at risk of or affected by poverty and exclusion from the labour market, then lit. h nevertheless offers an appropriate and more specific legal basis; it is therefore preferable to lit. j and lit. k.

Further provisions in Art. 153 TFEU and the TEU

Pursuant to Article 153 para. 2 TFEU, the establishment of an EU policy based on para. 1 lit. h allows

- a) the adoption by the European Parliament and the Council of measures to encourage cooperation between Member States through initiatives “aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States.” Examples of these were the programmes Poverty I to III and the OMC.
- b) adopt, by means of the “ordinary legislative procedure” (majority decision) in the European Parliament and Council, after consulting the EESC and the Committee of the Regions, “by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States”, and avoiding imposition of “administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.”

Also stipulated in para. 4 is that minimum requirements shall not affect “the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof”. Here also, minimum requirements “shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties” – i.e. the TEU and the TFEU.

It would be incompatible with the TEU (Art. 5 paras. 1, 3 and 4) to adopt measures which would contradict the principles of subsidiarity and proportionality of resources. Subsidiarity in sense of EU legislation means, first and foremost, formally the necessary concurrent competence for a regulatory matter that only permits measures if the objectives cannot be achieved (solely) by (sub)national action and can be better achieved at the EU level. Proportionality means that policies at the Union level cannot go beyond what is necessary to achieve the objectives of the Treaties.

If the agreement on a European framework for minimum income schemes fails, then it is not because of its legal foundations. They allow open coordination processes (to promote mutual learning, to agree on objectives, to evaluate experiences); they also allow minimum requirements to be agreed to by means of directives at the European level (strengthening, supplementary side of subsidiary – helpful – assistance; Nell-Breuning 1976: 14). And the legal bases allow this according to Art. 153 para. 1 lit. h by a qualified majority vote. They leave it to the Member States to specify them in national law and also the possibility of higher national standards (self-development of smaller units not unnecessarily restrictive side of subsidiary – helpful – assistance; *ibid.* 14 et seq.).

Political will

Making full use of the legal possibilities therefore will depend on political will. At the end of March 2019, the United Kingdom is expected to leave the European Union. Elections to the European Parliament will take place in May 2019. In the second half of 2020, Germany will assume the presidency of the European Council (currently Romania, then Finland and Croatia, then Germany, and afterwards, Portugal and Slovenia; *Rat der Europäischen Union 2016b*). Not only are there many

international political processes for climate protection and sustainable development to be addressed up to target year 2030; the ten-year EU 2020 process now must also be evaluated. The question remains whether, and if so, which “political vision” the European Union should follow in the new decade after the elections to the European Parliament and with a new European Commission. A potentially favourable time window for a European framework for minimum income schemes in the Member States.

Coalition agreement in Germany

Since the spring of 2018, the political situation has also changed as a result of the intention of the incumbent Federal Government and its parties – set out in the coalition agreement between the Christian Democrats (CDU, CSU) and Social Democrats (SPD) in Germany – for the remaining legislative period up to 2021 following the 2017 elections: “We want to develop a framework for minimum wage regulations and for national minimum income schemes in EU countries. Those who consistently fight against wage dumping and social inequalities in economically weaker countries in Europe will also protect the welfare state and the social market economy in Germany.” (CDU / CSU / SPD 2018: 7*)

Elections to the European Parliament

The elections to the European Parliament can – like any election – change the balance of power in the European Parliament. It is therefore also possible for the newly constituted Parliament not to (as it has done previously) present (or support) the demand for a stronger minimum income policy at the European level. Nonetheless, regarding the European Parliament one must bear in mind that it usually acts as a “natural ally” of the European Commission and tends to engage in form of ‘eclectic collective works’ towards political initiatives (see for example Europäisches Parlament 2012) or pursues them itself. The tendency (so far) is sympathetic toward the use of competences at the EU level.

Insofar as the electoral programmes or their drafts of the parties¹⁷ currently represented as parliamentary groups in the German Bundestag are already known for the European elections on 26 May 2019 (see Appendix 4), links to the question of an EU framework for minimum income schemes can be found in different forms approaches in all parties (see Appendix 4 for details, including sources and without highlighting):

- Alternative for Germany (AfD): The party's electoral programme does not focus on a European framework for minimum income protection, but instead calls for the renationalisation of the systems (for example, the “deportation” of EU citizens “who are a burden on another EU state”, the call for a *10-year qualifying period* to become entitled to benefits and questioning the EU's policy on freedom of movement). Statements on the abuse of freedom of establishment in the EU, on “poverty immigration” and “immigration into national welfare systems” speak of *spillover problems* and statements on the “abuse of the generous German welfare system” address *'social dumping'* topics. The AfD advocates “that there must be reliable welfare protection in Germany for the unemployed and low-paid, which guarantees a decent life and a minimum level of social participation.”
- Christian Democratic Union (CDU) / Christian Social Union (CSU): No election programme has been published yet. However, reference can be made to the *coalition agreement* in the Federal Government (CDU / CSU / SPD 2018: 7), according to which the Federal Government advocates a European framework for minimum income protection.

¹⁷ There is only practical justification for not considering all parties currently represented in the European Parliament with members from Germany (or further afield); therefore see also <http://www.europarl.europa.eu/meps/de/search/table> [28.2.2019].

- Free Democratic Party (FDP): The party does not explicitly address the question of an EU framework for minimum income protection in its electoral programme, but states that (exclusively) in “issues that really have a significant transnational significance for (...) the *freedom of movement*, (...) the EU [is] politically called on to make arrangements”; and “*enhanced cooperation* between individual Member States is an alternative that could be used”. The free movement of workers and self-employed persons must be “defended”. The electoral programme identifies the risk of *loyalty problems* if “young people in other parts of Europe [have] no career prospects”. This jeopardises the promise of the social market economy’s rise to prominence and thus the legitimacy and acceptance of our common economic order in Europe.” Therefore “the promotion of cross-border mobility is needed. (...) Finally, effective systems *should* be set up in Member States which offer or support young people in the short term to find them either a job or a training scheme geared to the labour market (“youth guarantee”) – as already exists in Germany within the framework of SGB II and III.”
- Alliance 90/The Greens: The electoral programme calls for “a European *minimum income directive* that sets minimum standards for each country, adapted to the respective economic situation. Member States are, of course, encouraged to maintain higher standards or to introduce new ones.”
- Social Democratic Party of Germany (SPD): The electoral programme calls for “a framework for poverty-proof minimum wages and adequate minimum standards [to] be implemented for national minimum income schemes in all EU countries. (...) No *full-time wage* in the European Union should be below the national poverty threshold. (...) As a first step, we (...) strive for a *recommendation* by the Council for fair minimum wages and minimum income protection.”
- The Left Party: The draft electoral programme demands that: “All EU countries must be committed to enabling all people to live a life free from poverty.” This can be read as a plea for a binding EU framework for minimum income protection, especially as the programme continues: “This includes *penalty-free* minimum income protection for people who do not have or cannot work. It must be set *above the poverty risk threshold* of the respective country concerned.” And: “The social systems of the Member States are different. It is not necessary to standardise them. One thing must be common to all: the right to a life free of poverty.”

Thus, there are quite different and positions with differing focal points among German parties on issues of minimum income protection issues at the European level. In some cases, they offer very specific points of reference, at least for a not (yet) legally binding framework for minimum income protection in Member States.

Creation/conversion/dismantling – the United Kingdom, Scandinavia and low-level countries

As Portugal in the 1990s, and currently Greece and Italy, Member States are building and expanding minimum income schemes. However, many EU countries have also materially limited their systems or reduced their scope (accessibility) in recent years (see Chapter 1). This may promote the call of some stakeholders for European standards but will not exactly open others up to the idea of expanding their systems again on the basis of EU agreements.

One of the uncertainties is that nobody knows how (maybe even whether) Brexit will actually happen. However, it is a well-known fact that by no means all EU Member States and their governing parties are well-disposed towards social policy ambitions at the Union level. For example, Gerold Ambrosius assessed the divorce between the EEC (the integration project moving towards the EU) and the European Free Trade Area (EFTA, the competing free trade project): At that time “(...) the Labour Government believed that such close cooperation [in the EEC] with countries that were predominantly governed by conservative-liberal majorities meant abandoning Labour’s programme in terms of planning and control and welfare state policy. (...) Particularly in the social democratic Scandinavian countries, influencing national economic and social policies by supranational bodies was fundamentally rejected.” (Ambrosius 1996: 92*) In the United Kingdom, Tory governments

have also struggled with the EU integration project for quite different reasons. After all, Scandinavian countries are not known for their unambitious social policies, but does that mean that such ambitious policies should also be pursued at the EU level? Both the countries of the British Isles and Scandinavia have long been members of the EFTA as a “rival project” to Europe of the EU, relying on free trade and domestic social policy and always fearing possible interference with national socio-political sovereignty behind the Community method. In the United Kingdom, this Community method may will no longer need promoting. But perhaps the creeping erosion of national power to act under national, socio-political sovereignty which still exists formally (Benz 2004: 44 et seq.) will in the future increasingly speak in favour of a European safeguard and use of political power to act – thus guaranteeing reliable ‘upward convergence’.

For the “hypothesis that (...) low-level countries would strive for harmonisation at a low level in order to maintain their comparative cost advantages over high-level countries” could hardly be proven empirically, according to Volker Eichener (2000: 182*). Because, Eichener continues: “The ministers for employment and social affairs of the peripheral countries see European integration as an opportunity to modernise their backward protection systems by importing harmonised European regulations and thus at minimal political cost in their own countries.” (ibid.: 183*). “In both health and safety and environmental protection it has rarely been the southern European or ‘peripheral’ countries that have refused their consent in the Council of Ministers; it was either the high-level countries that did not yet have a high enough level of protection or that had a preference for a different security philosophy (...) or, particularly in the field of environmental protection, social policy and industrial relations, the United Kingdom, which advocates a radical deregulation policy.” (ibid.*) Sometimes even high-level countries must be convinced of the usefulness of a regulation (e.g. through reliable, gradual upward convergence provided for by the regulation).

Variable geometry

Despite the possibility, pursuant to Art. 153 para. 1 lit. h in conjunction with para. 2, even if a majority decision is reached on a European framework directive for minimum income protection in the Member States, it may be that such a project is not sufficiently supported across the whole of the EU. This supports the search for alternative ways to achieve a minimum income policy framework¹⁸ which is binding on all Member States from the outset.

It is a well-known fact that further reaching steps towards integration in Europe of the EU sometimes lack consensus among policymakers under

- the Social Charter (1989, excluding the United Kingdom),
- the Social Protocol to the Maastricht Treaty (1992, excluding the United Kingdom),
- the Schengen Area (in force since 1995; see Annex 2),
- the eurozone (implemented in 2002 with regard to cash; see Annex 2).

The eurozone focus of the “European Pillar of Social Rights” (2017) was already mentioned above.

Within these sub-areas, the EU has had to and has found second-best (because they are not in keeping with Union unity) mechanisms. Even with a binding European minimum income framework, this may represent at least one (possibly necessary) intermediate step. A social Europe à la carte would certainly not be the first choice. At least, however, this would make clear which Member States are not yet prepared for, or not at all capable of, guaranteeing a fundamental right to security of livelihood and minimum social participation (a life in harmony with human dignity). Such a sub-area would have to be based on so-called ‘enhanced cooperation’ in accordance with Art. 326 et seqq. of the TFEU. Strong stakeholders, coalitions among them, and initial spillover problems (objective reasons) were necessary to overcome such blocks (see Eichener 2000: 328) through sub-area

¹⁸ For example, a later British government abandoned the United Kingdom's rejection of the Social Protocol to the Maastricht Treaty (1992); it was initially agreed – via this intermediate step of the Protocol – for 11 out of 12 Member States and integrated into the European Treaties after the block was abandoned.

projects. There are also spillover problems in terms of minimum income protection (see above, for example the North Rhine-Westphalia integration minister quoted, whose problems flagged however would not be remedied by collaboration on minimum income policy congruent with the eurozone – Bulgaria and Romania not being part of the eurozone).

Third interim conclusion

It is possible to adopt a directive for a binding framework for minimum income policy at the EU level in accordance with Art. 153 Para. 1 lit. h through a majority vote in the Council of Ministers for Employment and Social Affairs. Its content would be gradually implemented to become compulsory minimum standards in the Member States. Whether the necessary political will exists or can develop must remain open despite all indications. There are models for the implementation of such a commitment, possibly (initially) only in a sub-area of the EU. However, such a sub-area could – depending on its extent – answer the question of poverty-induced internal migration in the EU only to a limited extent.

4. Specific formulation of an EU framework on minimum income schemes

Minimal harmonisation

The approach of first concretising 'social Europe' by means of European-framed minimum income protection can be described with Richard Hauser as "the concept of minimal harmonisation" (Hauser 1987: 28*). "In light of the diversity and heterogeneity of national social security systems, which is both given and desirable from a political point of view, it is an important aspect that [in this concept] harmonisation efforts could be limited to social assistance regulations as the lowest 'safety net', while the differences in other social benefits, which mostly extend beyond them, would continue to exist." (ibid.*) Over thirty years later, we have not yet achieved this minimal harmonisation and are thus continuing to build a socio-political 'European house' without a social foundation.

In too many of its regions, Europe of the EU is too far removed from its self-imposed goals of overcoming poverty and social exclusion (including from the labour market), for it to be possible to dispense with decentralised policy programs and the testing of different social policy practices. Annex 4 has highlighted this diversity with regard to these programmes and (possible) practices. 'Minimal harmonisation' of social legislation through a framework for minimum income in the Member States respects this social, economic and political diversity in Europe, without leaving its social postulates on fundamental rights (see Chapter 2) as recommendations relating to minimum income protection or 'solemn declarations'.

4.1 Upstream measures: prevention

Investments in an adequate design of minimum income schemes in the Member States are helpful, but insufficient in terms of poverty, social and distribution policy (see, for example, Hauser 2012: 621). Rather, efforts are also needed in the areas of:

- a) primary income (minimum wages) and, where appropriate, maintenance obligations under civil law,
- b) the secondary distribution of income (social security contributions and benefits through upstream security systems), as well as
- c) the expenditure needs of private households (for example: for education and mobility costs).

After all, the fight against poverty also involves

- d) social segregation (example: social housing, local rent caps),

- e) successful relationships (for example: personal experiences with solidarity and self-efficacy) and hence
- f) is also about political participation (for example: (peer) empowerment).

This addresses quite different policy areas and political levels in the Member States as well as significant contributions by non-state actors (see e.g. eaf nrw 2017).

Furthermore, Gøsta Esping-Andersen (1998: 53) points out that only a welfare state from which the middle class also benefits will generate middle-class loyalty. “On the other hand, liberal, residual welfare states, such as those found in the United States, Canada and, increasingly, Britain, rely on the support of a numerically weak and often politically residual social class.” (ibid.*)

4.2 The framework: integrated strategy of active inclusion

The establishment of European minimum income policy within the framework of an integrated strategy of active inclusion based on Art. 153, para. 1, lit. h for the employable (SGB II), formerly employed (basic pension in old age in SGB XII), as well as for non-employable persons (subsistence assistance and help in special circumstances in SGB XII), has already been justified above. This determines whether it is actually a question of debates and guarantees for ‘last-resort safety nets’ or whether these are closely linked with persons defined as employable, for whom Art. 153, para. 1, lit. c can be applied as an alternative (s. Kingreen 2017). The price of this not unattractive alternative (limited group of people, a focus on workers as a strong EU theme) would, however, be no less than the price of continuing to build a European house without a floor for all in terms of social policy.

The concept of ‘active inclusion’ by means of ‘investments’ in ‘human capital’ is linked to the paradigm of an ‘activating welfare state’ (Kleinlercher 2013: 51 et seq.; Neumann 2016: 68 et seqq.), which is also met with much justified criticism. Beyond an affirmative adoption of these concepts and paradigms, their elements by means of signaling (a) a willingness and endeavor to find gainful employment whenever this appears reasonable, (b) income security and (c) access to social services as their building blocks, play already a major role in the old German Social Assistance Act and the former unemployment assistance. Ultimately, only in neoliberal to social revolutionary concepts of an unconditional basic income are a) and c) abandoned and in questions of minimum income and social inclusion reduced to b). Proposals in this regard have thus far played a “marginal role” at the EU level (Kleinlercher 2013: 53*), even though the European election programme of the Left Party in Germany (see Annex 4) at least calls for their discussion.

4.3 Framework directive: minimum standards

Framework directive

A European framework for minimum income schemes, that also bases itself on binding measures next to “soft steering” instruments (OMC-processes), can be attained by applying Art. 153 para. 1 lit. h TFEU via the form a directive. A characteristic of European directives, as compared with other legal acts (see Art. 288 TFEU) is that they a) are not directly applicable EU law, but rather oblige Member States to ensure within a clear period of time that the contents of the directives (objectives) are achieved through measures and regulations at the national level. Therefore, they preserve more autonomy (subsidiarity) than the directly binding instrument of regulations in all the Member States, especially as directives regularly provide implementation deadlines. This also promotes the opportunity to agree on directives. However, unlike so-called recommendations, they have a legally binding effect. The term “framework directive” is sometimes chosen to clarify that the directive is merely a legally binding agreement to set limits on the variance of national policies; the term itself does not constitute a separate legal instrument (Gorjão-Henriques et al 2010: 14). It also seems appropriate to the form proposed here.

Minimum standards: possibilities and limits

It may be a question of a concept of “minimal harmonisation” (Richard Hauser*), but it is not a question of “minimum standards”¹⁹ on the lowest common denominator, so that, for example, only what is already implemented in actual policy in all Member States could be laid down anyway.

Variants of minimum standards

Basically, minimum standards with various (and combinable) ‘characteristics’ are conceivable, such as:

- ❑ *unconditional provisions* (e.g.: exclusion of a final termination of benefits): such a provision cannot be introduced in stages nor in alternative variants.
- ❑ *alternative provisions* (e.g.: regional/national indicators; wage/price/consumption indicators): these allow national states manoeuvre for alternative solutions.
- ❑ *progressive provisions* (e.g.: minimum benefit level, personal scope of application): these relate to upward convergence.
- ❑ *territorially limited provisions* (e.g.: eurozone; country groups): These refer to 'variable geometry' and can also indicate steps toward upward convergence at different speeds or stages.
- ❑ *directory provisions* (e.g.: Integration into the upstream social security system): Such provisions can also be found in European directives.
- ❑ *provisions indeterminate in nature and scope* (e.g.: Inclusion of organisations of EU citizens experiencing poverty): In the case of provisions that are indeterminate in nature and scope, their *form* can be chosen freely; but not *whether*, for instance, the organisations actually addressed in the political process (from problem definition to evaluation) must be heard, included and supported. The minimum standards for a framework directive will have to leave the Member States a certain amount of leeway in the manner in which they implement it (even an objection guarantee could be formulated differently). Conversely, the more specific a provision is, the more likely it is that it shall be complied with. However, reference should also be made to the possibility (or necessity) of leaving the scope undefined.
- ❑ *voluntary provisions* (e.g.: Child benefit supplement/basic child allowance): Such discretionary provisions are often found in EU directives. Monitoring processes can, at least, also be used by the national legislator to explain *whether* and in what manner regulatory matters are dealt with at the national level. Thus, a framework directive may require that Member States must deal with issues of effectively combating child poverty. However, they can also leave open whether this is to be done (as for other beneficiaries) merely within the framework of standard rates for social welfare or preventively through child benefit supplement solutions or a basic child allowance in relation to the general minimum income scheme. For example, the Council of Europe’s European Code of Social Security of 1964 provides suggestions for the instrument of voluntary provisions, according to which (Article 2 para. 1 lit. b) states must apply “at least six of Parts II to X” (Council of Europe 1964).
- ❑ *provisions subject to reservations* (e.g.: age limit): At the international level, the UN Convention on the Rights of the Child provides an example of this in relation to Germany (see Pro Asyl 2010 on this point). Provision for the possibility of a declaration of reservation (rule/exception) may facilitate or enable the possibility for states to give their consent in the first place; on the other hand it makes the international/European expectation clear. In Germany, the declaration of reservations regarding the Convention on the Rights of the Child was

¹⁹ For a social-legal argument on this, see Coen 2013: 1788, para. 10; Gassner 2018: 805, para. 7; Rebhahn / Reiner 2019: 2214, para. 76.

the subject of an ongoing political debate. The opportunity to at least examine the potential for granting the possibility of formulating reservations against certain minimum standards is also given with regard to a European framework directive on minimum income schemes, by which matters are formulated neither as voluntary minimum standards nor of an indefinite type and scope, nor which should be abandoned altogether, but which would so jeopardise the political will to approve them that adoption of the framework directive itself may be threatened with failure even in ordinary legislative procedure.

To name one example: In Denmark, the right to social assistance (kontanthjælp) is only available from the age of 30 (or from the age of 18 upon completion of vocational training). For the remaining age group, between 18 and 29 years of age, there is only the opportunity to obtain an educational grant (uddannelseshjælp) – i.e. a conditional (linked to educational measures) minimum income (MISSOC 2018). Would a Danish declaration of reservation be necessary here regarding an otherwise EU-wide minimum standard of the unconditional, independent receipt of benefits beyond the basic willingness to work from the age of consent? Or does this open the door to a patchwork of exceptions? In any case, the price of obtaining a political majority at the European level for legally (legitimately?) depriving certain people (groups of persons) in certain Member States of their access to the fundamental right to minimum income protection in order to enforce their willingness to enter training would be extremely high (cf. also discussions on the so-called 'total penalisation' of benefit recipients under the age of 25 in the German SGB II and the partial exclusion of EU citizens from minimum income benefits).

Provisions under Art. 153 para. 2 lit. b TFEU must in any case be limited to minimum standards. In addition, however, they should also leave sufficient leeway for matters which, while important to achieve the objectives of the directive, are for good reason handled very differently in the Member States. This concerns questions such as:

- ❑ individualisation versus generalisation of benefits (e.g. one-off needs – for family celebrations, for example; not: so-called 'special needs' – for example for a dietary supplement in the case of a chronic illness) and
- ❑ the relationship of income and expenditure (for example: relevant to standard rates or exemption of fees for public broadcasting services or the use of local public transport).

Catalogues of minimum standard proposals

In the following, relevant recommendations from political decision-makers (Council Recommendation 92/441/EEC) and proposals for EU minimum income standards are given by way of example from the fields of academia (Schulte 1991) and poverty policy advocacy (Van Lancker 2010) respectively, are collated and discussed. In addition, there are other 'catalogues', some of which outline overarching principles for social protection systems (such as the EESC 2015), or which partly leave the legal form – and thus the binding nature – of minimum standards open, but specify those matters deemed possible or necessary. The following are specific to minimum income protection and related to possible policy content:

- ❑ The Social Platform (2014) has made a clear commitment to a minimum income policy and, among ten criteria for its formulation, includes one on adequacy (more precisely: 60 % poverty (risk) threshold, indicators of material deprivation and reference budgets). Apart from the matters specified below, further demands from among the ten criteria are,
 - ❑ "Enable gender mainstreaming, gender impact assessment and gender budgeting" (ibid.: 3); such a provision aiming at the mode of 'enabling' or 'entitlement' or 'empowerment' is not quite plain when setting a minimum standard, but it does make sense as a subject among the recitals preceding the minimum standard catalogue for a directive.
 - ❑ "Ensure minimum income schemes are shaped within a comprehensive active inclusion approach that goes beyond activation and the 'one-stop-shop' idea, and does not include

negative conditionality” (ibid.). Again, a minimum standard is not convincing here, but a formulation in the recitals does.

- The EMIN network (Van Lancker / Farrell 2018: 38) has identified material to design a framework directive on the basis of Art. 153 para. 1 lit. h:
 - “Common principles and definitions of what constitutes adequate Minimum Income Schemes
 - A common methodology for defining adequacy
 - Common approaches on coverage and efforts to facilitate take-up
 - Common information requirements
 - Common requirements for monitoring and evaluation
 - The requirement for systematic uprating mechanisms
 - Requirement for independent bodies and procedures to adjudicate in cases of dispute between the administration and recipients
 - Establishing the principle of the engagement of stakeholders including civil society organizations and people experiencing poverty and on minimum income in the monitoring, mutual learning, evaluation and development of Minimum Income schemes.”

Again, this adds nothing significant to the examples discussed in more detail below.

Bernd Schulte (1983/1991)

In a 1983 report for the Commission, Bernd Schulte (1991: 21 et seq.*) identified ten criteria on the basis of a comparison of the German, French, British and Dutch social assistance schemes, which he proposed as a starting point for further discussions at the national and European levels.

1. *General legal entitlement* (formulated as the subjective right of every citizen): Schulte advocates a universal individual legal claim, which could, however, could “initially” be reserved for citizens from the Member States but should not include any age limits.
2. *Principle of meeting needs*: “The aim of a right to a minimum income should be to enable the claimant to lead a life that is commensurate with human dignity. Living conditions and standard of living should be based on those which are customary in the Member State concerned. Indicators for this ‘social normality’ are the respective national average incomes, respective consumption habits (...) as well as vital needs determined according to a specific, scientifically based demand quantity formula (‘basket of commodities’).”

This already sounds like the question of suitable indicators for measuring benefits now being discussed again under the term reference budget. Linking to the respective national empirical ‘normalities’ of income and consumption is not questioned in the minimum standards proposed by other authors and is certainly preferable to an ‘EU standard’ in light of the heterogeneity of economic power and average income between the Member States. However, the demand quantity formula also shows the limits of a scientific foundation. This is because what need has to be recognised is normatively and continuously dependent on the different value judgements and attitudes named by Hauser. Even attempting to avoid this by switching from baskets of commodities to a statistical method does not remove this restriction. This is illustrated in the debates on reference groups (Becker / Tobsch 2016) and, for example, the withdrawal of the relevance of the standard rate for alcohol and tobacco in Germany. This restriction also affects reference budgets. Nevertheless, developing them seems sensible in order to respond to the problem of the robustness of the poverty (risk) threshold in various Member States, which becomes clear in Fig. 1. Therefore, the proposal is made below that both approaches be linked as soon as the first versions of European reference budgets can be agreed, or compromises found.

3. *Means test*: Since minimum income security is only intended to help needy persons, “in principle the total income and assets” are to be taken into account. “Since the objective of the mini-

minimum income is to exclude income poverty in every case and for everyone, it also follows that even the deliberate non-attainment of income cannot lead to the complete denial of the legal claim.” This allows for limited sanctions for lack of participation in overcoming neediness, but on the other hand it excludes the temporal limitation of benefit entitlements – a fundamental difference between the ‘European social model’ and the ‘US-American model’. In view of the question of ‘poverty-proof’ minimum income protection, which is to be pursued here, the granting of sanctioning possibilities presupposes an unsanctioned threshold, slightly above the poverty (risk) threshold (or possibly reference budget), that can at most be reduced to this threshold. Nevertheless, only the gradual introduction of a minimum European standard for benefit levels up to the poverty (risk) threshold is proposed below.

4. *Subordination*: “The means test also addresses the principle of subordination, which exists in such different forms in all minimum income and social assistance regulations in the Member States that only its fundamental validity can be established to begin with; the exact form of subordination specifically in relation to maintenance payments by private individuals and in relation to other public transfer payments must be made dependent on the specific form of maintenance under the Civil Code on the one hand and the entire code on public transfer payments (law on social benefits, etc.) on the other”. This is an example of the above-mentioned ‘provisions that are indefinite in nature and scope’, which at least link in with the limits of the legislative degree (or will) of specific European minimum standards.
5. *“Family justice”*: This again concerns the indefinite “adequate consideration” of the number of members living in the household/community of dependence.
6. *Integration into primary social security*: This is what should be aimed for. An example of directory provisions.
7. *Public responsiveness of the authorities*: This principle is intended to take account of the fact that non-take up has been widespread in the past. The non-utilisation of benefits remains a serious problem. It cannot be completely and reliably combated by the state (see Chapter 1). Nevertheless, it can be addressed with such a provision.
8. *Legal protection*: This refers to designing the legal entitlement in a manner that allows beneficiaries to assert it effectively and quickly.
9. *Principle of integration*: “Finally, it must be ensured that minimum income laws are consistent not only with other legislation on social protection benefits, but also with Civil Code, labour and tax regulations, in order to avoid benefits being reduced or withdrawn, for example through distraint (...), taxation, etc.” This undoubtedly is an important provision for the poverty-proof formulation of a European framework, but with the restriction that taxation should be permissible only insofar as it does not lead to a net benefit level below the poverty (risk) threshold (possibly modified with the help of reference budgets).
10. *Linking to other assistance*: Minimum income schemes should therefore be supplemented by service benefits, in particular counselling, personal provision of services, rehabilitation and integration at school and work. This is also a core minimum standard and should also take account of the intangible dimensions of poverty and its eradication above and beyond the labour market (see chapters 2 and 3). Only this turns a “minimum income” in the narrower sense into a comprehensive and coherent minimum income scheme. Schulte clarifies further: “However, in light of the unconditional nature of the minimum income as a social benefit aimed at meeting the basic needs for living on the one hand, and as an element of social citizenship on the other, the granting of this monetary benefit should not be made dependent on the utilisation of further assistance (...), but such assistance should be offered in addition (...).”

Bernd Schulte himself describes the ten criteria presented for discussion as a “cautious” proposal. At the very least, they could help to “ensure that divergences (...) do not continue to increase further

but rather converge from the perspective of the 'economic and social cohesion' called for by the EEC Treaty [today: TFEU]." (ibid.: 23*). This approach not only increases the likelihood of consensus, it also reflects the fact that "disparities and divergences in the area of minimum income protection/social assistance remain greater than in the field of social security in its proper sense" (ibid.: 12f*). They are ambitious and go beyond the status quo in some (or many) Member States, particularly with regard to the general legal right and the principle of meeting needs. However, most of the criteria lie beyond these two most problematic thematic constellations, especially with regard to the fundamental nature of the right to minimum income protection. They refer to other aspects of the quality of social protection, "which, however, such as the lowering of benefit levels and the exclusion of beneficiaries (see the creation of separate benefit schemes for asylum seekers), may be subject to dumping competition." (Benz 2004: 276*)

Recommendation 92/441/EEC (1992)

The Employment and Social Affairs Ministers of all the (then) 12 Member States, following a proposal by the Commission in 1992, through Council Recommendation 92/441/EEC, mutually identified and recommended a number of criteria for the minimum income schemes in the Member States. They are listed below according to:

- provisions on the design of minimum income schemes in the Member States,
- provisions on determining the context of minimum income in the Member States,
- provisions on steps toward implementation and evaluation at the level of Member States, and
- provisions on the relevant framework at the European level

(for the structure of the recommendation itself, see Annex 5). It is assumed here that the following subjects of regulation highlighted in green can be incorporated relatively easily in a framework directive. For example, the first statement, according to which the Council recommends that Member States recognise "the basic right of a person to sufficient resources and social assistance to live in a manner compatible with human dignity". The subjects of regulations marked in yellow, however, are seen as requiring explanation, discussion or adaptation.

Fig. 3: Council recommendations (92/441/EEC) on the national design of minimum income schemes

Subject of the regulation	92/441/EEC ²⁰
Subjective legal right of all people/citizens	I. A.
Establishment of this right based on human dignity	I. B. 1.
Ensuring these guarantees within the framework of social assistance (schemes)	I. D.
Determination of personal applicability (residence status; willingness to train/work; full-time employees; students)	I. B. 2 and 3.
Clarification, information about claims	I. C. 6.
Principle: not time-limited	I. B. 4.
Principle: meeting needs (level of prices; standard of living; household type and size; special needs)	I. C. 1. a) and b)
Supplementation: compensatory aid for those households whose incomes fall below the fixed amount	I. C. 2
Adjustment of benefits (indicator-based; regular)	I. C. 1. c) and e)

²⁰ The codes in this column indicate references to the Council Recommendation (see also Annex 5).

Administrative accessibility (low-threshold management, simple procedures)	I. C. 6.
Legal protection (objection, complaint)	I. C. 6.

Source: own representation

For example, the recommendation on personal applicability states that allowing such a “right” to “have access” is “without prejudice to the Member States” right to not extend this right “to persons in full-time employment or to students”. Such a restriction would not be in line with a poverty-proof framework. Politically, however, it could be insurmountable or its scope subject to gradual extension.

On the principle of meeting needs, the recommendation states: the level of support must be determined that is considered “sufficient to cover essential needs with regard to respect for human dignity, taking account of living standards and price levels in the Member State concerned, for different types and sizes of household”. And the level of support must be adjusted or supplemented “to meet specific needs”. The last sentence (the exception) could probably be specified further without much problem and unproblematically and hardly require further clarification to read “adjusted or supplementing [as needed]”. However, the first sentence (of the rule) now looks back on 27 years of experience with this recommendation. In view of the level of benefits (see Annex 1) and its variance, a minimum level of benefits to be introduced gradually should be provided for in a ‘poverty-proof’ (as far as possible) European framework, measured against the poverty (risk) threshold, (if necessary, supplemented by findings from reference budgets) as suggested in the phased model below.

Fig. 4: Council recommendations (92/441/EEC) on the national design of minimum income contexts

Subject of the regulation	92/441/EEC
Coherence (social, tax, civil law)	I. C. 3
Means testing (income; assets)	I. B. 3.
Subordinate (especially to maintenance claims)	[I. B. 3 and C.
Incentive for people capable of working to seek employment	I. C. 1. d)
Complementary character; (re)integration into systems of other social and general rights	I. B. 5.
Other assistance (information; counselling; social, economic, education and labour-related integration; legal aid)	I. B. 6 and C. 4 and 5

Source: own representation

With regard to the subject of the supplementary character and (re)integration into systems of other social and general rights, the recommendation provides for consideration of a) the “auxiliary” character of this right to minimum income “in relation to other social rights” and b) that an “effort should be made in parallel to reintegrate the poorest people into the systems of general rights”. While a) marks an important clarification, b) may go beyond what can be formulated as a minimum standard within the framework of a directive. Here, a voluntary or directory provision, or an opening for the declaration of reservations would have to be discussed or aligning the provision to the considerations preceding the minimum standards catalogue.

Among the legal aspects of ‘other assistance’ (only) one appears problematic. For “persons whose age and condition render them fit for work”, provisions should be adopted, “which will ensure they receive effective help to enter or re-enter working life, *including* training where appropriate”. This certainly makes sense in terms of policy, but would at least, treated as an individual provision, conflict with the restriction in Art. 153 para. 1 lit. h (that Art. 166 TFEU be unaffected).

Fig. 5: Council recommendations (92/441/EEC) on national steps for implementation and on evaluation

Subject of the regulation	92/441/EEC
Gradual implementation, effective immediately; review after 5 years	I. E.
Systematic evaluation of actual access	I. F.
Evaluation of application and effects	I. F.

Source: own representation

Hence the recommendation already provides for the mechanism of a gradual introduction (albeit at the national level, and not at the European level) and considers a five-year horizon for a review of results to be appropriate. This will have to be revisited in light of (not only) the heterogeneity of Member States' minimum income policies, which is growing with the increasing number of Member States, as reflected in the considerations for gradual implementation below.

Fig. 6: Council recommendations (92/441/EEC) on the European level framework

Subject of the regulation	92/441/EEC
Stimulating and organising the exchange of information and experience	II. 1.
Evaluation of national measures	II. 1.
Regular reporting to Parliament, Council, EESC	II. 2.

Source: own representation

These provisions relate to Section 4.4 and should be included in the directive.

Anne Van Lancker (2010)

In 2010, in a working paper for EAPN, Anne Van Lancker prepared proposals for the content and processes for the implementation of an EU framework directive on minimum income, including a specific draft for the structure and – in parts – the drafting of such a directive (Van Lancker 2010: 14-22):

- ❑ The introduction includes references to political and legal documents and academic studies, and the framework directive is based on Article 153 para. 1 lit. h.
- ❑ Chapter 1: General provisions

The first sentence of Article 1 defines the purpose and scope of the framework directive: “The purpose of this framework directive is to set out minimum requirements and provisions for establishing the right of every person, residing within the territory of the Member State, to an adequate income, with a view of putting into effect the objective of integrating people excluded from the labour market.” The personal scope of application is thus broadly defined (“every person”), but the material content of minimum safeguards is (still) narrowly defined here (Income support benefits v. other types of social welfare; see Art. 3 para. 2 and Art. 7 below).

Art. 2 para. 1 defines “Minimum income schemes: last resort schemes which are intended to ensure minimum standards of living for individuals and their dependants when they have no other means of financial support; income support schemes which provide a safety net for those not eligible for social insurance payments or those for which these have expired. In some Member States minimum income payments are complemented with in kind benefits.” Here, too, the interpretation is narrow if only expired social insurance entitlements are designated, but not the necessity of having to supplement any inadequate social insurance (Sozialversicherungsleistungen) and maintenance benefits (Versorgungsleistungen) with minimum income ben-

efits (Fürsorgeleistungen) (however, see Art. 6). Furthermore, the article defines the terms “Specific allowances”, “At-risk-of-poverty threshold” and “Adequacy“. The latter includes, for example, basic needs for health and social participation, which should be determined with the participation of European citizens who have experienced or are experiencing poverty. Adequate benefits should be provided in principle as universally accessible entitlements for an unlimited period and should be determined in relation to the standard of living in a Member State.

■ Chapter 2: Setting up of adequate minimum income schemes

Article 3, para. 1 deals with the gradual implementation of the directive's objectives (more on this below). Paragraph 2 takes as an optional provision a reference to supplementing minimum income schemes with specific allowances related to the particular needs of vulnerable groups. Para. 3 stipulates the annual adjustment of benefits according to unspecified transparent procedures and index values for living standards.

Art. 4, which has not yet been formulated in more detail, describes the procedure for developing an EU-wide methodology on the adequacy of minimum income schemes (see more on this below).

Art. 5 provides for the promotion of transnational measures (including exchange of experience, comparison and monitoring in accordance with the common methodology) through the 'Progress' programme.

Article 6 calls on the Member States to coordinate and ensure the coherence of their minimum income and universal social security schemes in order to ensure universality of access to income support in terms of life cycle and social risks.

Article 7 refers to the active inclusion approach: “Member States will put in place a systematic, integrated approach to implementing active inclusion, targeting active labour market measures at recipients of minimum income schemes and giving them the right to participate in activation measures and developing more personalized and comprehensive systems of support, whilst guaranteeing adequate income. They will ensure affordable access to quality services, particularly social services of general interest.”

Article 8 reaffirms the right of Member States to further regulate and implement measures for the integration of people excluded from the labour market and for higher levels of income support. Conversely, the directive should under no circumstances be used to justify the deterioration of standards.

■ Chapter 3: Remedies and enforcement

Article 9 ensures access to services for persons who consider their rights to have been infringed via administrative and judicial proceedings for mediation, opposition and legal action. Likewise, Member States should ensure that associations acting on behalf of or assisting such persons have the opportunity to be involved in any of these administrative and judicial procedures.

■ Chapter 4: Final provisions

Art. 10 obliges the Member States to adopt laws, regulations and administrative provisions by 31 March 2020 in order to implement the directive and to forthwith inform the Commission thereof. At their request, the Member States may also involve social partners in the implementation, provided they ensure the above deadline is met and support the social partners where necessary.

Art. 11 regulates monitoring and evaluation of the directive, for which it designates the OMC on Social Protection and Social Inclusion, the European Platform against Poverty and the Europe 2020 strategy as a framework. An “EU Participative Stakeholder Forum”, including i.a. expert representatives from local, regional and national political levels, academics, social part-

ners, people experiencing poverty as well as non-governmental organisations supporting them, who are to be key partners in this monitoring process.

Art. 12 governs the entry into force of the directive 20 days after its publication in the Official Journal of the EU.

Art. 13 declares the Member States to be the addressees of this directive.

Van Lancker thus provides a concrete proposal for a directive that essentially coincides with Bernd Schulte's Minimum Standards Catalogue (revisiting the idea of a needs formula in reference budgets) and Council Recommendation 92/441/EEC, but with a specific two-stage process for the gradual introduction of its provisions on the level of benefits over a decade.

When determining the appropriateness of benefits (see also the comments on the implementation process below), Van Lancker explicitly stipulates the participation of recipients of social benefits and persons who have experienced or are experiencing poverty during monitoring and evaluation. In addition to these groups, their support or representative associations are also named. The proposal thus reflects the participative approach also highlighted in the EMIN network and EAPN. This demand is supported, for example, by the European Parliament (Europäisches Parlament 2012: 18, item 49).

Discussion and additions

Some suggestions and in part critical remarks have already been made about the recommendations and proposals discussed above. Overall, all three catalogues that have been examined more closely appear to be good bases for further elaborating a framework directive, which ultimately cannot be done in the context of expert reports but must be negotiated in the political process. Van Lancker 2010 has provided a proposal with a very high degree of detail. The Council Recommendation from 1992 also constitute a catalogue that has already completed the administrative and political process of formally and substantively designing a minimum standard catalogue and its coordination among the national ministers resp. ministries of employment and social affairs. This catalogue was able to build on the fundamental preparatory work carried out by Bernd Schulte, among others, who has already outlined the main contents and limits of European minimum standards for minimum income schemes in the Member States. In each of the recommendations or proposals, questions of 'occupational integration' (see Art. 153 para. lit. h) play a prominent role.

The EU Mutual Information System on Social Protection (MISSOC 2018) provides a comprehensive list of criteria for minimum income schemes; this list indicates whether the criteria discussed above have omitted important and, at the same time accessible, material on European minimum standards.

Fig. 7: MISSOC – Criteria on the design of minimum income schemes

Applicable legal basis
Basic principles
Area of application
Main conditions
1. Nationality and residence
2. Age
3. Other conditions
4. Specific conditions for persons of working age
Means test
1. Income not considered
2. Definition of income and allowable deductions
3. Property and assets taken into account
Minimum income

1. Determination of minimum income
2. Minimum income level
3. Duration and time limit of the benefit

Bonuses

1. Housing allowance
2. Health care
3. Other allowances: cash benefits

Claim verification

Recourse

Adjustment of benefits

Cumulation of benefits with earned income

Cumulation with other social benefits

Taxation and social contributions

1. Taxation of cash benefits
2. Social contributions from cash benefits

Source: MISSOC 2018

Such a comparison does not reveal any significant regulatory issues that would not have been taken into account in the recommendations and proposals for minimum standard catalogues.

Nonetheless, a considerable gap remains between

- ▣ the objective of actual (as far as possible) poverty-proof minimum income security in the Member States (when, with which guaranteed intermediate steps?);
- ▣ the recommended or proposed standards for minimum benefit levels;
 - ▣ to average income, consumption habits and demand quantity formulae as possible indicators for determining the necessities of life, departing from Schulte (1991);
 - ▣ the 'principle of meeting needs' recommended in Recommendation 92/441/EEC;
 - ▣ to the 60 % poverty (risk) threshold to be supplemented by reference budgets as soon as possible according to Van Lancker (2010);
- ▣ and differentiation and variance in the actual benefit claims currently reported via MISSOC.

Therefore, a possible phase model for the time horizon and for interim steps that are mutually reliable for Member States is outlined below. Ongoing work on the development of reference budgets seeks to reliably ensure that differentiated minimum income benefits are tailored to the needs of different case constellations. In light of the apparent discrepancy in the adequacy of existing benefit levels, made apparent in Annex 1, a more detailed determination of minimum standards to be gradually introduced for different case groups should also be considered.

Even if the above comparison between the MISSOC criteria and the minimum standard catalogues, which were examined in more detail, has not revealed any gaps, possible important regulatory issues remain that have not been mentioned above. In the light of historical or current cases of persons experiencing poverty in the Member States being deprived of their rights, and thus possible future exclusion of minimum income recipients, minimum standards should be provided in particular for the following two areas:

- ▣ a *guarantee of the active and passive right to democratic participation* (historically, this reminds us of Prussian electoral census law and the racist denial of the right to vote for Jewish citizens under National Socialism in Germany, for example, as well as the struggle of 'marginalised groups', such as legally supervised people, currently under consideration).
- ▣ *the decriminalisation of socially marginalised groups* (whenever repeated reports arise of cases in various European cities where even 'passive begging' is banned or spending the night outdoors is made a punishable offence or is treated as a misdemeanour).

Even minimum standards for these purposes should meet with broad political support. Here, too, the solution of a reservation would, if necessary, be preferable to exclusion of the subject matter from the regulation. This would at least clarify the normative intent ('European social model') and national responsibility for deviations from the rule.

Finally, nothing has been said yet about sanctioning violations of the Directive. The following applies: "Member States are required to ensure compliance with the Directive via measures (sanctions) (...)." (Rebhahn / Reiner 2019: 2218, para. 87). For this purpose, sufficiently detailed provisions and deadlines are important to enable violations to be identified. Infringement proceedings may be brought before the Court of Justice of the European Union and, if necessary, one-off penalties or penalties by day, which are regulated in detail, may be imposed on defaulting Member States (see European Commission 2019).

Overall, minimum standards display a 'deficiency-oriented tendency' in that they focus on which guarantees must not be undercut in order to achieve a desired goal. This tendency is further encouraged by the filter of assumptions, which can scarcely be avoided, and which in actual political terms may well hold sufficient prospects for consensus or compromise. It is for this reason that open coordination processes are also important in a binding European framework for minimum income. However, even within directives there are opportunities, particularly in terms of the considerations that precede the minimum standard catalogue, and within the catalogue of directory and optional provisions, as well as in the type and scope of undetermined minimum standards, to identify objects and perspectives that, from the perspective of poverty and minimum income policy, tend to address resources, potentials and perspectives beyond the minimum guarantees. Such perspectives resonate, for example, in 'bread *and* roses' in the labour movement and '*satiety* in body and soul' (see eaf nrw 2017) in religious social teachings. They should – along with other guiding principles – be named.

(Sub)national freedoms

In the above proposals and recommendations, analogies can be found to approaches at the national level (Benz 2004: 246 et seq.), such as the Reich's Principles for Social Welfare (Reichsgrundsätze für das Fürsorgewesen) in Germany in 1924: What must, what can be regarded as a standard in the community? What will not be subject to the common standard and thus must be left to democratic debate on the other political levels? The above analysis shows that there are still a number of features to be decided exclusively in the Member States (see Annex 6). This applies not only to issues that affect domestic systems of competence (such as local, regional or national minimum income schemes) but also to questions that are the subject of constant political debates about the favoured structure for systems (such as the relationship between lump-sum benefits and principles of individualisation). Likewise, under a European framework, agreement must be reached on 'in-cash' versus 'in-kind solutions' (Geld- und Sachleistungen), for example in the case of broadcasting fees or local public transport.

Gradual implementation

First of all, what future date is realistic for the adoption of a framework directive on minimum income in the Member States? The final report from EMIN-2 contained the following comments: "If after thorough evaluation of the Europe 2020 strategy, the poverty target would prove to be insufficiently attained, a European framework directive should be developed to translate the right to a decent minimum income into a legally binding commitment for all Member States (...)." (Van Lancker / Farrell 2018: 33) This evaluation of the EU 2020 strategy is now pending.

It is still unclear whether and which 'attractive political project' the EU will formulate after two decades of the Lisbon and Europe 2020 Strategies. Should a vision for guaranteed minimum living conditions for all EU citizens by 2030 provide a building block, it would have to be addressed immediately. Even then, the deadline set in Recommendation 92/441/EEC for drawing up an imple-

mentation report after only five years seems very ambitious. Because gradual implementations require not just European legal foundations, they are also required as regards content, for two corresponding reasons:

- First of all, common minimum standards must be agreed in the first place. Whosoever wants to set particularly high ad hoc standards, they will quickly – put bluntly – end up in the political process at the point according to car mechanics: 'Tight, tighter, broken.'
- Secondly, however, standards at the level of minimal political consensus are unsatisfactory in terms of content (with regard to their actual impact on poverty reduction) and can provoke resistance from Member States with comparatively high standards.

Both aspects – in accordance with the requirements of European law – favour agreement on standards to be implemented gradually. It is possible to provide “transitional provisions” which “may vary in duration depending on the Member State and also on the regions within a Member State” (Gassner 2018: 805, para. 7*). The year 2030, by which the United Nations' Sustainable Development Goals, include overcoming hunger and all forms of poverty, should be achieved, can serve as temporal horizon. EAPN's working paper of 2010 (Van Lancker 2010: 12) also envisaged a ten-year process leading to “every Member State, to introduce by 31st March 2020 at the latest, a minimum income scheme that guarantees the right to an adequate minimum income for all, in line with the 1992 Council Recommendation on common criteria concerning sufficient resources and social assistance in social protection systems and the 2008 Commission's Recommendation on active inclusion of people excluded from the labour market.”

On the one hand, some Member States will have to take rapid strides in order to improve minimum income schemes if – according to the initial question for this expertise – minimum income that is (as far as possible) poverty-proof is actually to be achieved throughout Europe. On the other hand, it is probably a prerogative of political prudence to provide for longer transition periods in order to avoid both substantive distortions (e.g. in comparison with sought-after minimum wage provisions) and defensive political reactions. Hence, similar to Klaus Busch's 'Corridor Model' (Busch 1999, Bsirske / Busch 2013), the formation of several groups of states along their economic strength is to be discussed, for which (as long as they belong to this 'prosperity group') different minimum levels would also be set (and supportive European subsidies would be provided) according to their economic strength. Van Lancker (2010: 12 f.) also stipulates a (parallel) two-step process:

- First of all, compliance with the criteria of Council Recommendation 92/441/EEC and Commission Recommendation 2008/867/EC should be ensured by 1 March 2020. In doing so, the freedom to rely solely on the instrument of the standard rate or its combination with other assistance for specific needs such as food, clothing, housing, etc. would have to be provided for. Timetables should be developed at the Member State level for the gradual establishment of adequate benefit amounts.
- Secondly, by 2012, the process of developing an EU-wide methodology for improving determination of the adequacy of minimum income schemes (including their mechanisms for adequate adjustment of benefits, their scope, improvement of their utilisation, political inclusion of people experiencing poverty), as well as the comparison and monitoring system, should be specified and incorporated into the Directive. Reference budgets are a promising method for this. Until then, the 60 % poverty (risk) threshold should at least be used as a point of reference and intermediate step.²¹ In order to support the development of adequate minimum income

²¹ According to a later study (Van Lancker 2015: 34 et seq.), EU methodology should build definitively on a) the poverty (risk) threshold and b) reference budgets in order to assess the robustness of minimum income benefit levels and the poverty (risk) threshold. These reference budgets should be developed with the active participation of citizens, including those who have experienced, or are experiencing, poverty.

schemes in line with established methodology in the Member States, European funding (the Progress programme) should be provided.

Overall, a phase model for the gradual implementation of minimum standards seems to be obvious – as *one* possibility and a contribution to further discussion – as outlined below:

▣ Preparatory phase (2019, 2020, poss. 2021)

Develop and adopt a framework directive on minimum income protection in the Member States.

▣ Phase I (2021, 2022, 2023): This phase ensures

a) that a 'first bundle' of minimum standards will be implemented in national legislation within its term, (including subjective legal rights; information and clarification of claims; legal remedies), on which the Member States will report to the European institutions.

b) The phase will also include guaranteeing the following minimum benefit levels during its term, according to country-specific groups, on the basis of their current level of minimum income protection and their economic power (see Annex 1):

- Country group 1 (economically strong countries already with comparatively high levels of minimum income protection, e.g. DK, IE, NL): no erosion of benefit levels below the 60 % poverty (risk) threshold; raising minimum benefit levels to the 60 % poverty (risk) threshold by the end of this phase.
- Country group 2 (economically comparatively strong countries with so far comparatively moderate minimum income levels, e.g. DE, FR, UK): no deterioration in benefit levels; benefit levels brought up to the 50 % (median) poverty threshold by the end of this phase.
- Country group 3 (comparatively economically weaker countries with (extremely) low levels of benefits, for example BG, EL, RO): no deterioration in benefit levels; benefit levels brought up to the 40 % (median) poverty threshold by the end of this phase.

c) Furthermore, in the framework of the OMC on Social Protection and Social Inclusion reps. the European Semesters, Member States report the level of benefits, differentiated e.g. for single-person households, persons beyond the phase of employment, for people seeking asylum, etc. in general and, where applicable, in separate minimum income schemes, as well as

d) which policy of active inclusion is applied to households with very low labour market participation.

e) During this period, the OMC will finalise the elaboration of national reference budgets so that they can be used in the following phases as a supplement to the poverty (risk) level for monitoring and evaluating the adequacy of national minimum income schemes.

▣ Phase II (2024, 2025, 2026, 2027, 2028, 2029): This ensures

a) that the minimum income schemes with their individual benefits levels, together with complementary policies providing legal entitlements, education and advice, ensure effective access to minimum goods and services by the mid-point of the phase (turn of the year 2026/27)

- Country group 1: the 60 % poverty (risk) threshold is not undercut.
- Country group 2: the 60 % poverty (risk) threshold is not undercut.
- Country group 3: the 50 % poverty (risk) threshold is not undercut.

b) Define, at the national level in country group 3 (if appropriate, based on recipient group), by when, how and in which steps a performance level equal to the poverty (risk) threshold will be approached by the end of the term at the latest,

c) Explanations to be given by the countries in all groups on when, by what means and in what steps material deprivation is being successfully combated, and

d) What policy of active inclusion is pursued in relation to households with very low labour market participation and in relation to shortages in light of the reference budgets.

■ Phase III (from 2030): From 2030 it is to be ensured that

a) the minimum income schemes of all Member States, with their individual benefit levels, together with complementary policies ensuring effective access to minimum goods and services, through legal entitlements and related information and advice (s. reference budgets), do not fall below the 60 % poverty (risk) threshold; and

b) along with complementary policies, ensure that there is no 'material deprivation'.

It is notable that the European Council of Heads of State and Government of the Member States in Laeken in December 2001 endorsed the 60 % poverty (risk) threshold as a key poverty indicator. In European poverty research (pars pro toto: Van Lancker 2015) and the political sphere (see Europäisches Parlament 2012: 17, point 42), a number of examples of how the poverty (risk) threshold can be set in line with a 50 % and an alternative 40 % limit for extreme forms – for example, to provide evidence of the poverty gap – can be found.

The goal according to the above proposal of a minimum income level to be achieved by *all* Member States from 2030 onwards and which preserves the 60 % poverty (risk) threshold, corresponds to the position adopted by the European Parliament (Europäisches Parlament 2012: 14, point 15), and which consequently talks of a living wage that “must always be above the poverty line” (ibid.: 15, point 26*). In its 2017 resolution, the European Parliament (2017b: point 24) even advocates a minimum level of minimum income benefits “above the poverty line”. The positions of German parties (to the extent they are known) can be found in Annex 4.

A realistic, but ambitious,²² scenario of upward convergence can, by its very nature, foster the ability to agree on a European framework to minimum income security in the Member States, especially among governments that are sceptical of minimum standards if that upward convergence were not to be sufficiently recognisable. All Member States are encouraged to take measures to improve the adequacy of benefits throughout the various phases, but – unlike within the OMC – they also have the guarantee, via the instrument of the Framework Directive, that this applies (at least usually) equally as ambitiously with regard to the other Member States.

Final assessment

How are the recommended/proposed regulatory areas and steps to be re-assessed, after compliance of the principle of limited individual authorisation (Article 5, para. 2 TEU) with the result from Article 153 para. 1 lit. h as the singularly suitable basis of competence for a European framework for minimum income in the Member States above (Chapter 2) have already been approved? This comprises:

1. compliance with the principle of subsidiarity (as set out in TEU Art. 5, paras. 1 and 3),
2. compliance with the principle of proportionality (TEU Art. 5, paras. 1 and 4),
3. taking account of the conditions and technical rules obtaining in each of the Member States (Art. 153 para. 2 lit. b),
4. their character as minimum requirements (Art. 153 para. 2 lit. b),
5. the requirement for gradual implementation (Art. 153 para. 2 lit. b),
6. if necessary, an assessment of administrative, financial or legal constraints on the creation and development of small and medium-sized enterprises (Art. 153 para. 2 lit. b),
7. taking into account the recognised competence of the Member States to define the fundamental principles of their social security systems (Art. 153 Abs. 4, 1st indent) as well as

²² However, in light of Fig. 2, an unambitious alternative scenario could be described as one that would at least prevent a further 'race to the bottom' regarding adequacy of benefit levels.

8. if necessary, the ban on overriding the financial equilibrium of social security systems (Art. 153 Abs. 4, 1st indent),
9. the guarantee that more stringent protective measures are possible in the Member States insofar as they remain compatible with the Treaties (153 para. 4, 2nd indent),
10. if necessary, compliance with the exclusion of matters of remuneration, coalition, strike and lock-out law from the scope of Art. 153 TFEU (153 para. 5).

No relevant player in the field of minimum income (not from academia, not from politics or from welfare authorities, not from social partners or professional welfare practice, nor among the recipients of minimum income and their interest groups) alone has sufficient expertise in the field of minimum income in the 28 EU Member States and their social, political, economic and technical contexts to be able to answer definitively all the issues raised beyond political dialogue. Nevertheless:

- ▣ regarding 1: The serious problem which should be answered by the binding European framework within the framework of a 'concept of minimal harmonisation' (Richard Hauser) in social policy, was made clear in Chapter 1. Chapters 1 and 2 have shown that it has not yet been possible to remedy this situation through a hitherto largely only (sub)national policy or with the instruments of EU policy pursued to date in this area of shared jurisdiction. No European standards can be achieved by action at the Member State level.
- ▣ regarding 2: The compliance with the principle of proportionality is secured, as minimum income schemes only and minimum standards only are envisaged to help achieving the objective of Article 151 TFEU.
- ▣ regarding 3: There is plenty of leeway for this (see Annex 6).
- ▣ regarding 4: No standardisations are suggested, only minimum standards.
- ▣ regarding 5: The core proposal is for a gradual implementation. Among the recommended/proposed minimum standards are also those that can only be introduced or cannot be introduced but are not suitable for gradual introduction. This includes, for example, the possibility of appeal and legal recourse. However, this does not call into question the core, gradual implementation. Other minimum standards, given the diversity of Member State social policies, make a gradual introduction particularly necessary. First and foremost, minimum standards for benefit levels must be considered here.
- ▣ regarding 6: Such requirements are not included in any of the criteria recommended by the Council of Ministers for Employment and Social Affairs itself or in any of the proposals made by the authors used here as examples. Kingreen (2017: 30) also sees no problem here.
- ▣ regarding 7: A European framework for minimum income protection in the Member States does not, in the sense of the concept of 'minimal harmonisation', interfere with the recognised right of Member States to establish the fundamental principles of their own social security systems. To the extent that this framework determines national minimum income schemes via minimum standards, it does so only with a view to the understanding and commitment, which the Member States, on several occasions and over a long period of time, have themselves declared. For example, Kingreen (2017: 31*) does not see the autonomy of decision of Member States going so far "as allowing them to generally decide whether they have a needs-oriented basic income or not. According to Art. 34 para. 3 TFEU, the Union must respect the right to a dignified human existence, and according to Art. 2 TEU, human dignity and solidarity are among the values each state, which joined in accordance with Art. 49 TEU, must permanently respect in accordance with Art. 7 TEU. (...) It should therefore not unduly detract from the competence of the Member States if secondary EU law imposes obligations on them which are

already established in primary law anyway.” Such an intervention, on the other hand, could be represented by demands from the European Parliament

- ❑ that minimum incomes should be tax-free (Europäisches Parlament 2012: 17, point 46), but this remains to be determined within the competence of a nation state (see Annex 6), more precisely: the minimum standard for benefit levels must make it clear that it refers to the net benefit, because that is what the poverty (risk) threshold is all about. This gives Member States the choice of taxing the amount of benefits (as in Denmark and Spain; see MIS-SOC 2018) and setting it at a higher level or setting it, untaxed, at (or above) the level of the minimum standard.
- ❑ to establish criteria for “assessing which institutional and territorial levels (...) are most appropriate for implementing the measures of minimum income systems” (Europäisches Parlament 2012: 16, point 34, second indent*). Again, this is not explicitly proposed here, but should be left to the political struggle for the best solutions in the Member States.
- ❑ regarding 8: Minimum income benefits, which are normally financed by taxes, even with their in some cases necessary, gradual, massive development and expansion, account for a small share of Gross Domestic Product (GDP), national budgets and social budgets in the Member States that they do not jeopardise the financial equilibrium of social protection systems (see for example Neumann 2016: 128). However, problems of sustainability (which Kingreen 2017: 4 also considers possible) can occur occasionally if the benefits are to be financed entirely (or partly, as in Germany) locally, with dependency on benefits being very unevenly distributed at the local level within Member States. For this purpose, of course, the burden to be shared can be adjusted nationally and European financial resources (see section 4.5) can contribute to the support of European minimum standards.
- ❑ regarding 9: The recommended/suggested minimum standards do not affect this guarantee.
- ❑ regarding 10: The matters mentioned here are not affected. At most, the minimum standards for the benefits level will indirectly affect minimum wages.

It cannot be said that any subjects of regulation (apart from those rejected or called into question above) challenge the primary purpose of the directive to support and complement the activity of Member States in the integration of persons excluded from the labour market, leaving them excluded as a result of the directive being based on Art. 153 para. 1 lit. h (see Gorjão-Henriques et al 2010: 15).

4.4 Exchange of information and experience, evaluations and reporting

Above, the voluntary character was identified as the ‘Achilles heel’ in open coordination processes, as was its potential for setting agendas and enhance cooperation beyond minimum standards on minimum income policy issues. Accompanied by a directive, they no longer have to compensate for what only a legally binding instrument can do: set standards. Instead, they can focus on what they are the superior format for: promoting mutual learning of well proven and innovative practices, preparing for the highest standards and problems with both existing minimum standards and future minimum level reforms. For example,

- ❑ the exchange of information and experience,
- ❑ the assessment of national measures
- ❑ and regular reporting to Parliament, the Council and the EESC

have already been identified in Recommendation 92/441/EEC as measures to be taken at the European level. The ‘soft’ instruments of information and agreement on objectives are thus placed alongside the central political steering instruments of law and money (Benz 2004).

Information

The exchange of information and experience is already taking place in OMC processes. The components of the EPSR will be taken up during the European Semester. Reports on and assessments of national efforts will become even more important when a European minimum income directive, containing elements to be gradually implemented, comes into force.

Agreeing objectives

It is certainly helpful to continue to push for agreements on objectives within the framework of the OMC on social protection and social inclusion, including minimum income policy, especially as the instrument of a directive where a canon of minimum standards does not obviate the need to agree on more far-reaching objectives in addition to mutual learning. However, 27 years after the adoption of Council Recommendation 92/441/EEC, which has hardly had any effect in actual political terms, relying on the strength of the instrument for a renewed recommendation (and therefore only 'soft' target formulations) is playing with time that EU citizens affected by poverty and social exclusion do not have, and is unlikely to foster loyalty to the European integration project. On the contrary: The experience of many EU citizens for the past 27 years has probably been that only the nation state, or no level of democratic action, substantially guarantees them minimum socio-political conditions. One EU Member State is also just formally saying goodbye to the EU-European family.

4.5 Financial support: package solutions

The fact that the adequacy of minimum income benefits correlates with economic power on the one hand, but is not determined by it on the other, becomes clear in Annex 1. The fact that, measured against the poverty (risk) threshold, totally inadequate benefit levels for poverty reduction are primarily found in economically particularly weak Member States, speaks strongly in favour of financial measures to support these countries and help them set up poverty-proof minimum income safeguards, at least in the medium term. Nevertheless, there are limits to the willingness of 'net contributor states' to pay and even in the poorest European countries (or of the world) there is internal potential (ILO 2017: 184 et seqq.) and there are also international obligations (AEMR, ESC, ICESCR, etc.) to operate an appropriate form of minimum income themselves.

That a financial component could effectively support the political (and, in very economically weak states, economic) chances of reaching an agreement on a binding, gradual and ambitious European framework for minimum income protection in the Member States has already been mentioned. In principle, co-financing of national benefits legislation would be conceivable here, but alternatively, less closely coupled incentives or compensation would also be possible.

Co-financing variants

Experience with the federal system of the United States, where the central government influences and supports the federal states' financing of welfare systems through three co-financing mechanisms, and hence can at least slow down a 'race to the bottom' under the conditions of a single internal market and the freedom of movement within the USA, could be discussed for variants of EU financial aid (Graser 2001: 180 et seqq.*):

- through pro rata funding by central government of benefits, the amount of which is determined by the federal states (for example: 'Medicaid');
- through a basic amount paid by central government with an optional increase from the federal states (for example: 'Supplemental Security Income');
- through a fixed and conditional base rate set by central government as a subsidy to benefit schemes of individual federal states (for example: 'Temporary Aid for Needy Families').

While one could interpret the logic in the first case as, "You determine, I participate", in the second case it can read, "I provide for a minimum, you can go beyond that" and in the third, "I participate with my own fixed contribution, if your action meets certain criteria".

Graser himself argues for EU co-financing of a basic amount per beneficiary in federal states' minimum income schemes, which would continue to be based on the second logic, at a level set "at the lowest common denominator" (Graser 2001: 365 et seq.*). In the meantime, however, this denominator has reached such a low level (see Fig. 2) that the financial effect would be almost negligible. Perhaps the third, conditional and also less complex variant would be more likely to be discussed further as a matter of priority. The first variant mentioned above is also complex and does not serve the purpose of encouraging Member States themselves to make their systems 'accessible, adequate and enabling' (EMIN). One problem with all possible financial instruments is that the budget volume at the EU level is so small compared with Member States' budgets and social funds that the EU has so far scarcely been able to pursue redistributive policies (cf., however, agricultural policy), but must primarily rely on regulatory policy instruments. Furthermore, the budget is set in a multi-annual financial framework (currently 2014-2020; in the future 2021-2027) and the United Kingdom, an important 'net contributor', intends to leave the EU. Therefore, agreement may be necessary on special funds to financially support the European framework for poverty-proof minimum income schemes in the Member States.

Incentives or compensation

Today, 'European money' is already being used to finance minimum income policy, for example to support scientific studies, practical pilot projects and innovative approaches as well as to promote self-representation and co-determination of people (groups) experiencing poverty at the European level. In a wider sense, EU budgetary funds or special funds could serve to overcome political blockades if necessary. It is well known that it is the prospect of additional funds, not just in the case of material problems, but also in the case of political reservations, which encourages decision-makers to shift the balance of interests in favour of agreement. We can see this in the mediation committee of the German Bundestag (Lower House) and Bundesrat (Upper House) as well as at the EU level, especially since political reservations often also have an economic side, too. Thus, the agreement of the Economic and Monetary Union would scarcely have been politically feasible without commitments to provide financial aid to economically weaker Member States (so-called 'package solutions'). Particularly if provisions adopted under Art. 153 TFEU must "not significantly affect the financial equilibrium" of social security systems (resp. of social protection) (Art. 153 para. 4, 1st indent), minimum standards relevant to benefit levels should be combined with answers to the questions arising as to whether they can be financed. Even though "equilibrium" refers more to the relationship between contribution receipts and social insurance benefits, minimum standards naturally also provoke the interest of cost bearers in the case of minimum income benefits financed through taxes.

For example, Kingreen (2017: 4*) considers an EU regulatory framework to be permissible only if Member States affected by this impairment can receive "financial support for the implementation" of the directive due to a possibly considerable impairment of the financial equilibrium. "However, cost neutrality is not required; a 'matching fund' that makes financial support dependent on one's own efforts would therefore be permissible. Art. 153 TFEU also covers such support (...)." (ibid.*)

Thus, this instrument of financial resources is not only needed politically (for facilitating the ability to agree), but also objectively (economically). For what, according to Dieter Eißel, already applied to the old EU of 12 Member States, has become considerably more relevant in light of the enlargement of the EU and hence local, regional and national disparities within the Union. Without "massive support from the rich countries, there is no chance for catch-up development in the backward regions". (Eißel 1994: 48*) And thus "ensuring the capacity to finance sufficient local or regional minimum income schemes" also depends on the support of European financial assistance (Benz 2004: 280*). Community financial assistance for the introduction of minimum rates in minimum income schemes was therefore already considered in the first European poverty programme (1975-1980) (Commission 1981: 164). Back in the 1980s, Richard Hauser also pleaded for the support of

Community funding within the framework of a European minimum income policy (Hauser 1987: 11).

Today, for example, the European Parliament emphasises “the importance of adequate public funding to finance minimum income schemes; [it] calls on the Commission to specifically monitor the use of the 20 % of the total allocation of the ESF devoted to fighting poverty and social exclusion, and also to examine, in the forthcoming review of the Common Provisions Regulation for the Structural Funds (...), and in particular in the framework of the European Social Fund and the EU Programme for Employment and Social Innovation (EaSI), the funding possibilities for helping every Member State establish a minimum income scheme where it does not exist or improve the functioning and effectiveness of existing systems” (European Parliament 2017b: point 3).

Whether new prospects could open up here with the eurozone budget currently under negotiation depends on to what extent a European minimum income (initially if necessary) would be reduced to a eurozone project, or whether it would be fundamentally created and enforced across the Union. And if a budget for the eurozone is possible, then – assuming sufficient political will – also for further projects of ‘enhanced cooperation’.

4.6 Minimum standards in the EU's external relations

Going beyond the borders of the nation-state in terms of minimum income policy issues is not just an internal European challenge, but also affects the external relations of the European Union and its Member States. Each and every person can – as far as specified by their own clothes – recognise what our living conditions and consumption habits have to do with those in other regions of the world.

Free trade from a fortress?

To further promote this global network of production chains and markets is expressly a policy (not just) of the European Union – most recently expressed in the Free Trade Agreement between the EU and Canada as well as the one between EU and Japan. The following applies: “A European social area, however limited, cannot be an isolated solution or a *fortress*: Rather, it must strive for fair (trade) relations with other economic and social areas. It participates in a world economy that requires a rational approach aimed at balance. This also applies to international regulations on questions of arms exports, securing the participation of many parts of the world in raising world prosperity and the problem of migration.” (Boeckh et al. 2017: 409*, emphasis in original) Nowhere else within Europe and its borders is it as drastically shown as in the Mediterranean with the countless drowned corpses just how much ‘first’ and ‘fortress policies’ have taken hold in this part of the world. The latter at least are amplifications of exclusionary policies in the form of extinction (see Wocken 2010) and thus the most consistent alternative to a policy oriented towards the reconciliation of interests and social inclusion. The UN High Commissioner for Refugees, Filippo Grandi, puts it this way: “There is a competition between countries not to take in people if possible. So, it's a negative race, it's an anti-solidarity race that governments are running for political reasons.” (Recklinghäuser Zeitung 2019: 21*). What are the starting points for a national, European and international policy that seeks to pursue other paths?

Social protection floors

First of all: realpolitik approaches and minimum income schemes can be found worldwide (Leisering et al 2006; ILO 2017). Among the sustainable development goals aimed for at the UN level by the year 2030 is an entire series of targets that are also of importance in terms of minimum income policy and so not just the first two of poverty reduction and the complete eradication of hunger in the world. Which world region should actually lead the way on the issue of reliably overcoming hunger and effectively combating poverty by 2030, if not Europe: Africa? Asia? America?

To ensure this within Europe, a European framework for minimum income protection in the Member States can provide a central building block. Because: “Most countries in the European Union (EU) have already established almost complete national social protection floors, including minimum income programmes and basic social services. However, there are gaps, coordination and consistency problems and overlaps between some social schemes. About 80 million people in the EU are still living at risk of poverty, 25 per cent of them children (...). Paving the floor in the EU means cementing the joints between the paving stones, promoting integration between social policies, particularly between minimum income and active labour market policies.” (ILO 2011: 15 f.).

In the external sphere as well, such efforts are open to social protection floors, which aim at guarantees such as basic health care and minimum income guarantees for old age and disability. They can be supported through ILO conventions, material and immaterial aid for development and social clauses in international trade. Such floors and beyond can be encouraged and exemplified by a European area based on minimum standards for minimum income policy, which can also serve as an example for efforts to achieve the various sustainability goals of the international community for the period up to 2030 in other countries and regions.

But does the EU – beyond its actual external impact – also have the jurisdictional means to take socio-political action beyond its own territory? Yes: “The EU also has external competences in the field of social policy, which in principle coincide with internal competences (Art. 216 [TFEU] (...)). To the extent that the EU itself cannot conclude treaties under international law, such as with the ILO, the Member States at least have a duty to coordinate. Social clauses in other international treaties can be based on Art. 206 et seqq., Art. 208 et seqq., Art. 212 et seqq. and Art. 216 [TFEU]; on the coherence of EU objectives and the objectives of external action Art. 21 et seq. TEU.” (Rebhahn / Reiner 2019: 2184, para. 21*). Here, again, in case of doubt, political will does not fail due to legal possibilities, but rather vice versa.

The UN International Labour Organisation – composed of representatives of employers, workers and Member States – adopted a recommendation affirming the right to social security as a human right in 2012 (ILO 2012). In this recommendation on ‘Floors of Social Protection’, it recommends that Member States “ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level.” (ILO 2012: 3, point 4) Another important consensus that has already been reached, but, as a ‘recommendation’, calls in a special way for practical examples of ‘good practice’ not to remain just a “paper[...] of inconsequential correctness” (Benz 2013: 32*).

Conclusion

The starting point of this expertise was how to design a poverty-proof European minimum income.

- ❑ Chapter 1 clarified the current problem of poverty and minimum income policy, including the potential for a binding EU framework on minimum income.
- ❑ Chapter 2 summarised that there is no binding framework to date, but there are many starting points and at least some political support for it.
- ❑ Chapter 3 explained how and with what limitations a binding framework can be created according to and on the basis of treaties.
- ❑ Chapter 4 discussed exemplary recommendations and proposals for incremental measures and binding regulations and the potentials and limits of ‘soft steering’ as well as supporting financial resources as contributions to further debate and supplemented these in specific terms.

As a result, Richard Hauser's call can be underscored as seeking the nucleus of harmonisation (not standardisation or even comprehensive Europeanisation) for social security legislation in the EU on minimum standards in the area of minimum income protection. The normative demand to ensure the occupational integration of persons excluded from the labour market and the protection of human dignity, if necessary by means of minimum income schemes, cannot be 'proven' or 'refuted' scientifically and objectively, but is an expression of value judgments based on values which can and should only be disclosed (Richard Hauser). However, questions of the internal logic of the demands and practices of political programmes, their effectiveness and efficiency as well as their evaluation according to widely accepted human rights postulates are accessible to assessment by social science (Benz / Rieger 2015: 91 et seqq.). These state that there is no shortage of 'guarantees' found as recommendations and solemn declarations in primary and secondary legislation or codified in international treaties, of a fundamental and human entitlement to welfare, basic/minimum protection or social assistance benefits as the 'last safety net' for the prevention, alleviation and overcoming of poverty and social exclusion, and as a precondition for the occupational and social integration of persons excluded from the labour market.

In some cases, there is a blatant contradiction between these sets of programmes in the pillars, charters and recommendations and minimum income policy in EU Member States. In this respect, a binding European framework for minimum income in the Member States would be a far-reaching 'social innovation' (Millard 2018), not only at the European level, but also in the context of minimum income policy, which would continue to be formulated and justified primarily at the (sub)national level. But above all: This innovation would be effective and discernible in the living conditions, social and democratic experiences of EU citizens, whether affected by poverty or not.

If political decision-makers in Europe were to ask themselves what a project could do for the next decade with sufficient political 'impact' and a substantial contribution to securing the legitimacy of the European integration process, a minimum income guarantee would offer itself as part of such a project to the extent that it would

- ❑ respond to an actual problem,
- ❑ be sufficiently concrete (where its political authors, contents and addressees are concerned),
- ❑ also be of fundamental importance, since it would be the basis for living together in Europe,
- ❑ have been prepared for over a long time in many academic (Poverty I-III, EMIN) and political processes (Council Recommendation 92/441/EEC, Commission Recommendation 2008 (867/EC)),
- ❑ currently find there is a political window of opportunity that increasingly questions the sufficiency of the tools and strategies so far used to deal with minimum income challenges at the local, regional, national, European and international levels.

The effective design of a European framework for minimum income locally in Member States and between them would be a justifiable price for no longer embarrassing the 'European social model' with the "face" ("Antlitz") (Emmanuel Lévinas, see Beck 2007: 115 et seqq.*) of people indispensable begging for help. If one takes the possibility of reservations and the option of 'enhanced co-operation' together, there is no actual reason whatsoever to deprive labour, economic and financial policy-makers of the contribution that a Europe-wide legal entitlement to minimum income protection can make to their interests. Likewise, social and European politicians would no longer need to be expected to blush at the chasm between the numerous 'guarantees' cited and the reality of minimum income policy. The reliable design of an EU framework for minimum income in the Member States, which – provided the necessary political will is there – is possible, would make the 'European social model' concrete and give it footing.

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Annex 1: Net income on social assistance (2012) as % of the national 60 per cent threshold

	GDP in PPS (2012) EU (28) = 100	Single-person household	Household with couple	Couple with two children	Single parent, one child
<i>LU</i>	260	85	83	78	87
<i>NL</i>	134	91	86	72	106
<i>AT</i>	132	74	71	81	85
<i>IE</i>	131	120	120	103	116
<i>DK</i>	127	83	105	95	113
<i>SE</i>	127	61	55	67	70
<i>DE</i>	124	58	59	67	76
<i>BE</i>	121	71	63	61	85
<i>FI</i>	115	68	67	66	76
<i>UK</i>	108	60	54	70	81
<i>FR</i>	107	68	61	58	82
<i>IT</i>	101	59	59	55	72
<i>ES</i>	91	62	47	42	68
<i>CZ</i>	82	67	59	59	81
<i>SI</i>	82	56	55	68	71
<i>SK</i>	76	35	39	43	53
<i>PT</i>	75	43	50	59	58
<i>EE</i>	74	57	51	53	56
<i>EL</i>	72	0	0	0	0
<i>LT</i>	70	43	52	61	60
<i>PL</i>	67	29	26	37	62
<i>HU</i>	66	41	30	53	62
<i>LV</i>	60	29	31	37	47
<i>RO</i>	54	24	30	35	35
<i>BG</i>	46	25	26	37	44

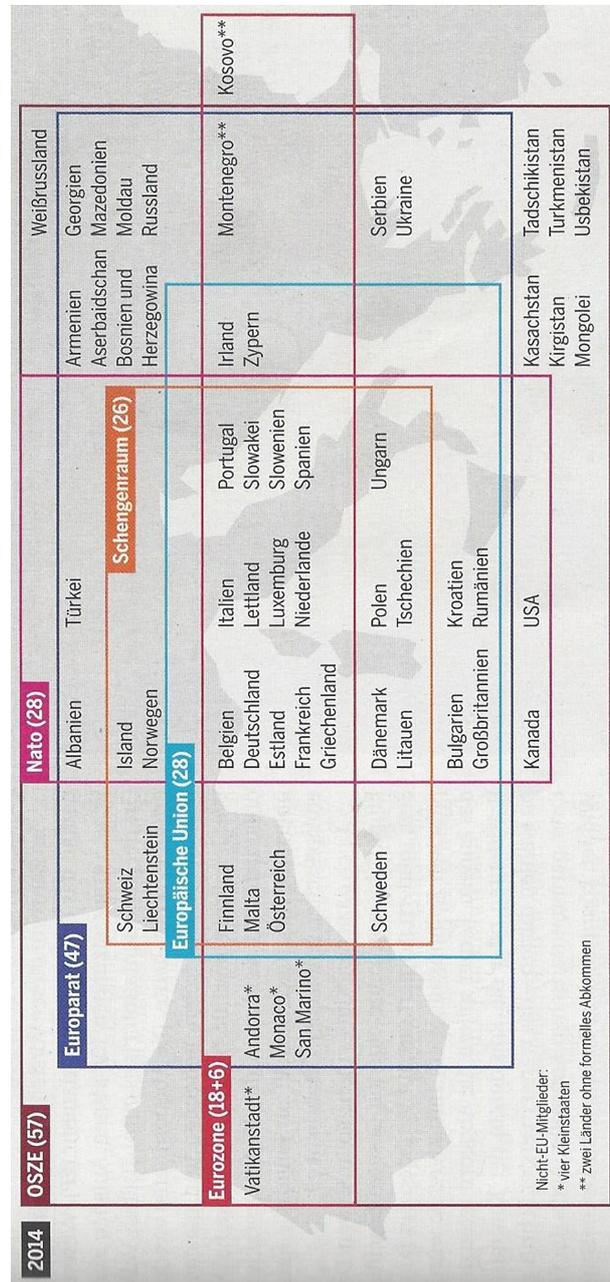
For *CY*, *HR* and *MT* Frazer / Marlier provide no information.

(italics: eurozone countries)

Highlighting
green: ≥ 100 % of the poverty (risk) threshold
yellow: $> 83-99$ % of the poverty (risk) threshold (= higher than the 50 % poverty level)
orange: $> 66-83$ % of the poverty (risk) threshold (= higher than the 40 % poverty level)
red: $> 50-66$ % of the poverty (risk) threshold
purple: < 50 % of the poverty (risk) threshold
black: 0 % of the poverty (risk) threshold

Source: own representation of the economic power according to Eurostat 2018, of poverty/benefits values according to Frazer / Marlier 2016: 41 (without the grouping added here).

Annex 2: Variable geometry of Europe (Council of Europe, European Union, eurozone etc.)



Source: Heinrich-Böll-Stiftung et al. 2014: 13

Annex 3: (Non) members of the 1953 European Convention on Social and Medical Assistance

The following Council of Europe member states (*italics = EU Member State*) have ratified the agreement:

<i>Belgium</i> *	<i>Luxembourg</i> *
<i>Denmark</i>	<i>Malta</i>
<i>Estonia</i>	<i>Netherlands</i> *
<i>France</i>	<i>Norway</i> *
<i>Germany</i> *	<i>Portugal</i>
<i>Greece</i>	<i>Spain</i>
<i>Iceland</i>	<i>Sweden</i>
<i>Ireland</i>	<i>Turkey</i> *
<i>Italy</i>	<i>United Kingdom</i> *

The following Council of Europe member states (*italics = EU Member State*) have **not** ratified the agreement:

<i>Albania</i>	<i>Lithuania</i>
<i>Andorra</i>	<i>Monaco</i>
<i>Armenia</i>	<i>Montenegro</i>
<i>Austria</i>	<i>North Macedonia</i>
<i>Azerbaijan</i>	<i>Poland</i>
<i>Bosnia and Herzegovina</i>	<i>Republic of Moldova</i>
<i>Bulgaria</i>	<i>Romania</i>
<i>Croatia</i>	<i>Russian Federation</i>
<i>Cyprus</i>	<i>San Marino</i>
<i>Czech Republic</i>	<i>Serbia</i>
<i>Finland</i>	<i>Slovak Republic</i>
<i>Georgia</i>	<i>Slovenia</i>
<i>Hungary</i>	<i>Switzerland</i>
<i>Latvia</i>	<i>Ukraine</i>
<i>Liechtenstein</i>	

* Declared reservations (Limitations)

Source: Council of Europe, https://www.coe.int/de/web/conventions/full-list/-/conventions/treaty/014/signatures?p_auth=mSvHar4j [28.2.2019].

Annex 4: Excerpts from the programmes of parties currently represented with parliamentary group status in the German Bundestag for the European elections on 26 May 2019

AfD

“The Free Movement Directive grants EU citizens in Germany a legal status that almost completely corresponds to German citizenship. This means that permanent welfare recipients and even serious criminals are almost never deported. That needs to change. It must be possible to expel EU citizens who are a burden to another EU state or who do not abide by laws easily and permanently from the country. In some cases, EU citizens living in Germany enjoy even more rights than Germans. This so-called ‘discrimination against nationals’ must end immediately. (...) The European free movement of persons has led to massive migratory movements within the EU from the poorer to the richer states, especially to Germany, solely for the purpose of receiving social assistance. The weakly developed and fraud-prone regulations of the freedom of movement directive are not sufficient to prevent the abuse of the generous German social system. Poverty migration and immigration into national social systems must also be prevented at the EU level. We therefore call for a restriction on the EU free movement of persons, with the aim of allowing the receiving countries to restrict EU immigration, which only allows people in who can take care of themselves. In addition, all EU countries must be given the opportunity to make the entitlement to tax-financed social benefits for EU citizens and their family members conditional upon at least ten years of full-time employment, subject to social insurance contributions without state subsidies.” (AfD n.d.: 40 et seq.)

“The AfD is convinced that there must be reliable social protection in Germany for the unemployed and low-income earners, which guarantees a decent life and a minimum level of social participation. However, this can only be achieved if the circle of people to be supported is proportionate to the resources. The uncontrolled mass immigration of insufficiently qualified people not only to Germany, but also to other EU countries, must therefore be curbed. The subsidiarity principle must also be applied within the EU, according to which the respective countries of origin are first obliged to support needy citizens. The premature adoption of countries with significantly lower gross domestic product per capita than the EU average leads to increased internal migration on the basis of the EU Free Movement Directive. The principle of the welfare state in countries such as Germany is therefore in conflict with free choice of residence for workers from the member states, the principle of non-discrimination and social inclusion for all citizens. In the long term, it threatens to overburden the social budget and erode the welfare state. (...) In the common economic area, labour mobility geared to the needs of national labour markets is valuable. With the digitisation of the working environment, skilled immigration to meet the economy’s demand for skilled labour may be necessary. However, labour immigration must always be geared to the labour market in question. Otherwise, there is a risk of wage dumping and the associated slide of parts of the workforce into the social protection systems. (...) Under no circumstances must there be any standardisation of social security systems, such as unemployment insurance, as this would result in a further reduction in social standards. (...) Before EU foreigners are put on an equal footing with Germans in social law, the respective countries of origin should remain responsible in the case of neediness. Asylum seekers in current proceedings and rejected asylum seekers should receive only benefits in kind at the level of the Asylum Seekers Act, and recognised asylum seekers with a temporary right of residence should receive only benefits in kind at the level of the needs-oriented basic income. Refugees who have a temporary right of residence under the Geneva Refugee Convention should receive only benefits in kind on the basis of the needs-oriented basic income. The amount of child benefit payments for children who do not live in Germany must be adjusted to the circumstances (benefits) in their country of residence. (...) The AfD rejects the introduction of a European unemployment insurance and employment agency

(ELA). We are committed to ensuring that foreigners from EU member states and third countries only receive social benefits similar to those of German citizens if they have been able to earn taxable income in Germany for ten years without interruption and have been able to make a living with this income without state assistance or help from third parties. (...) The EU's freedom of establishment should no longer be misused by immigrants to obtain rights to social benefits through bogus self-employment. The freedom to provide services in the EU leads, in particular in the transport sector, to a circumvention of minimum wages, taxes and social security contributions that damages the German welfare state. We want to end this wage and social dumping." (AfD n.d.: 55 et seq.)*

CDU / CSU

The joint electoral programme or a draft is not yet available.
However, see CDU / CSU / SPD 2018: 7.

FDP

"We Free Democrats want equal opportunities for work and prosperity for the citizens of the European Union (EU). This requires a supply-oriented economic policy on the part of the Member States in the EU Single Market. At the same time, however, we do not want a transfer union. Labour market and social policy is and rightly remains a responsibility of the Member States. Social policy in particular must be made as close to people as possible. We therefore reject a European unemployment insurance. Only in matters that actually have significant cross-border implications for the Single Market or the freedom of movement, is the EU politically called upon to regulate. Enhanced cooperation between individual Member States is an alternative that could be used. We Free Democrats welcome the fact that the creation of the European Pillar of Social Rights does not provide for any expansion of EU competences. (...) We Free Democrats support some important demands in the Declaration on the European Pillar of Social Rights. These include the right to education, the right to assistance in returning to employment, the principle of non-discrimination, the emphasis on collective bargaining autonomy and respect for national economic conditions in the setting of minimum wages. Social rights define minimum standards that all Member States should achieve nationally for their citizens. (...) We Free Democrats want to defend the free movement of workers and the self-employed without any 'ifs' and 'buts'. (...) We want to focus European Social Fund resources more effectively on efficacious measures to tackle the causes of unemployment. The shaping of unemployment insurance and minimum wages can only be achieved through national collective bargaining and labour market policy, because the labour market in particular is so dependent on the differentiating economic framework conditions of a country that a uniform European regulation would not be effective. (...) While in Germany the competition for trainees is in full swing, young people in other parts of Europe have no career prospects. This jeopardises the promise of the social market economy's rise to prominence and thus the legitimacy and acceptance of our common economic order in Europe. We need easy access for young people to the training and labour market and the promotion of cross-border mobility. (...) Finally, effective systems should be set up in Member States which offer or support young people in the short term with either a job or a training measure geared to the labour market ('youth guarantee') – as already exists in Germany within the framework of SGB II and III. (...) Competition between funded private pensions should be strengthened by simplifying cross-border access to all offers in the EU. (...) We Free Democrats want to safeguard the free movement of workers within the European Union and prevent the abuse of social security. Immigration to another Member State in order to receive higher social benefits is not the object of the free movement of persons, nor is it subject matter of the European treaties. This must also be enforced in practice, otherwise freedom of movement itself would be politically discredited. The immigration authorities are called upon, in accordance with the European treaties, to consistently end the stays of EU foreigners who have been in the country for more than three months and who

are unable to work, or who have no assets or other means of livelihood. The EU Commission should furthermore immediately introduce a reform of the child benefit regulations, as was already promised by the Heads of State and Government in 2016. The intended purpose of the reform is to allow Member States to adjust child benefit payments to the cost of living of the child's country of residence.” (FDP 2019: 28-30*)

Alliance 90/The Greens

“In fact, it is the nation states that have the competence for social security systems such as pensions, health, care or needs-oriented basic income. But there is one stage the European level can already act on today: it can create common minimum standards and socially protect cross-border work. (...) The social rights enshrined in the European Charter of Fundamental Rights must be enforceable before the European Court of Justice as fundamental rights of all EU citizens vis-à-vis the Member States. For example, unemployed people who are denied the right to job placement can defend themselves against this. Employees who do not receive adequate leave or breaks receive assistance from the EU. And citizens can sue their country if, due to an abysmal national health system, they are denied the right to medical care as set out in the EU Charter of Fundamental Rights. In this manner the European Union will become a guarantor of social rights. We also call for EU law to give at least the same priority to social rights and workers’ rights as it does to the economic freedoms of the Single Market, such as the freedom to provide services. (...) We want to guarantee all people in Europe a dignified minimum subsistence level. This requires a European framework for a needs-oriented basic income in all Member States. The EU must work with Member States to develop effective measures against child poverty. We want no child in the EU to live in poverty. We are strongly committed to a European directive on minimum income, which sets minimum standards for each country, adapted to the respective country’s economic situation. Member States are, of course, encouraged to maintain higher standards or to introduce new ones. The same applies to national health systems. Here, too, a minimum standard of care is needed in all countries. Every European must be able to rely on being well cared for during illness or while in need of long-term care; the exclusion of population groups from access to health care must therefore be subject to sanction. (...) Europe can set standards for security in old age, too. (...) For example, the Commission has made a proposal for a pan-European private pension product (PEPP). Unfortunately, the Commission has been excessively lobbied and guided by insurance companies instead of developing a proposal based on one of the best private pension products in Europe, the Swedish ‘premium pension’. In Sweden, all citizens can pay a percentage of their income into a public pension fund, which on the one hand charges almost no fees and on the other hand, thanks to its investment strategy, also generates a particularly high return. We want people outside Sweden to also be able to make their private provision for old age with such a citizen’s fund. Europe should therefore introduce such a citizens’ fund in line with this concept, which has been tried and tested for more than twenty years.” (Bündnis 90/Die Grünen 2018: 71-73*)

SPD (Draft)

“The practical application of fundamental social rights in Europe has not kept pace with successful economic integration. In order to compensate for this imbalance, we advocate a new balance between economic freedoms and social rights. Only when social rights are equal to the fundamental freedoms of the EU will European laws no longer lead to social deprivation and restriction of participation. (...) The multi-annual financial framework for 2021-2027 should provide the necessary financial resources to make a European social policy a reality for its citizens. (...) we want to set a framework for poverty-proof minimum wages and adequate minimum standards for national needs-oriented basic income schemes in all EU countries. This is the core of the European Pillar of Social Rights (ESSR) proclaimed in November 2017. No full-time wage in the European Union should be below the national poverty threshold. (...) EU Member States must, in

the medium to long term, align levels of protection for their unemployment, pension and health insurance systems. Convergence toward a high social protection level for all will stabilise demand and make Europe's economies more resilient. As a first step, we are aiming for a Council Recommendation for fair minimum wages and minimum income.” (SPD 2019: 6*; see also CDU / CSU / SPD 2018b: 7)

The Left Party (Draft)

“For all people in the EU, basic needs – housing, health, protection against poverty – and social human rights must be secured. (...) All EU countries must be committed to enabling all people to live without poverty. This applies to adults as well as children and adolescents – regardless of origin or nationality. This includes sanction-free minimum income protection for people who do not have or cannot work. It must be set above the poverty risk threshold of the respective country concerned. The social systems of Member States differ. It is not necessary to standardise them. One thing must be common to all: the right to a life free of poverty. This requires: (...) European unemployment insurance: We want a solidarity fund to be set up in the EU, from which, in a crisis, will support the social and unemployment systems of a crisis-stricken country. (...) For the abolition of poverty in Germany, it is necessary to finally replace the Hartz IV system with an unemployment insurance and to introduce individual minimum income protection without sanctions currently amounting to a net level of 1,050 euros. We are fighting for an independent basic child protection scheme that keeps every child, every young person, safe from poverty. (...) Effective in the fight against poverty is also: more social housing, a basic social contingency for energy, investment in better and ticket-less public transport and free education, from kindergarten to college, for all. Parts of The Left Party support the concept of an unconditional basic income in order to decouple the right to a secure existence and social participation for each individual from paid work, and to protect it as a precaution against poverty. Discussion of this concept in the party is controversial. We want to continue this discussion. We support discussion initiatives and review mandates on an unconditional basic income at the European level.” (Die Linke 2018: 52 et seq.*)

Annex 5: The criteria of Recommendation 92/441/EEC at a glance

„I. HEREBY RECOMMENDS MEMBER STATES:

- A. to recognize the basic right of a person to sufficient resources and social assistance to live in a manner compatible with human dignity (...) to adapt their social protection systems, as necessary, according to the principles and guidelines set out below;”
- B. “(...) general principles:”
 - B.1 a right based on respect for human dignity
 - B.2 defined vis-à-vis individuals in accordance with the relevant provisions on residence, with the aim of progressively covering all exclusion situations in that connection as broadly as possible
 - B.3 every person who does not have access individually or within the household to sufficient resources is to have access to such right:
 - (Reservation 1: available for vocational training or employment)
 - (Reservation 2: possible exclusion of claims during full-time employment or studies)
 - B.4 access is not subject to time limits
 - B.5 the right is supplementary in relation to other social rights,
an effort should be made in parallel to reintegrate the poorest people into the systems of general rights
 - B.6 accompanied by those policies deemed necessary for economic and social integration
- C. “(...) practical guidelines:”
 - C.1.a) Benefit measurement: Taking into account
 - standard of living;
 - price level;
 - types and sizes of household;
 - sufficient to cover essential needs
 - C.1.b) supplementing/adjusting to meet specific needs
 - C.1.c) indicator-based adjustment of benefits
 - C.1.d) providing an incentive for employable persons to seek work
 - C.1.e) periodic review of amounts to cover needs
 - C.2 granting aid to people whose (household) income is below these amounts
 - C.3 ensure a life commensurate with human dignity through provisions in relation to tax, social insurance and civil law
 - C.4 taking measures to enable those concerned to receive advice and counselling, information and assistance in obtaining their rights
 - C.5 adopting arrangements aiding (re)entry into working life
 - C.6 measures to ensure the least privileged are informed of their rights
simplifying administrative procedures as far as possible
organising, in so far as possible, easy access to independent bodies for appeal (such as tribunals)
- “D. to guarantee these resources and benefits within the framework of social protection arrangements.”
- “E. to implement the measures laid down in this recommendation progressively as from now in such a way that a report can be drawn up after five years, (...)”
- “F. to take appropriate measures:
 - to collect information systematically on the actual arrangements for access to these measures for the people concerned, and
 - to carry out a methodical evaluation of their implementation and impact;”

“II. AND THEREFORE ASKS THE COMMISSION: “

- 1. to encourage and organise systematic exchange of information, experiences and evaluation
- 2. to submit regular reports to the European Parliament, the Council and the ESC

Source: own representation, according to: Council 1992

Annex 6: (Sub)national freedoms in design minimum income schemes

	Features	Variants
1.	relationship between public sector, free welfare and profit-oriented institutions	state/municipal v. neo-corporatist v. partially marketed
2.	geographical extent	local, regional and/or national schemes
3.	personal application	category (e.g. by age or target group) v. universal system(s)
4.	type of benefit guarantee	income- v. expenditure-related: through targeted benefits, discounts or general provision ²³
5.	financing	at the local, regional and/or national level
6.	benefit utilisation	when an emergency situation is known or only after an application
7.	character of benefit	as a loan (e.g. outstanding pension entitlements or as an advance against future standard rates) in certain cases?
8.	benefit type	money, goods and/or services
9.	range of benefits available	level of benefits equal to or above the EU minimum standard
10.	benefit measurement	geographical: related to regional or national costs of living; content: including an allowance for holidays?
11.	benefit amount/amounts	as a total amount or separate amounts, such as living expenses, rent, heating, electricity, etc.
12.	benefit period	until the emergency is over, but also: paid out as a daily rate, as a weekly benefit or a monthly amount?
13.	one-time needs	individualisation vs. lump-sum
14.	special needs	individualisation vs. lump-sum
15.	adjustment of benefits	(sub)annual adjustment or indexing, according to which criteria?
16.	promotion of labour market participation	type and scope of the measures, incl. degree of income consideration
17.	relationship to social insurance benefits	inclusion in health and/or long-term care insurance or separately, as assistance in illness/care
18.	relationship to social maintenance benefits	inclusion in or crediting of child, maternity, parental and long-term care benefits, for example
19.	security in social insurance and maintenance systems	poverty-proof base benefits e.g. for children, the unemployed, the elderly, for care ²⁴
20.	taxability of benefits	yes or no
21.	asset protection	exemptions, to what amount?
22.	subordinated family support	maintenance priority to what extent and linear only?
23.	community with dependent members	scope of limitation and the question of (re)establishment ²⁵

Source: own representation

²³ E.g. mobility: mobility costs at the standard rate; means-tested discounted tickets; universally free use of public transport. E.g. textbooks: consideration of costs at the standard rate; means-tested subsidy; general teaching aids.

²⁴ See the limit on own contributions to the Swedish long-term care insurance.

²⁵ See the issue of the 'exit permit' for young adults who have not completed vocational training.

List of abbreviations and acronyms

AfD	Alliance for Germany
Art.	Article
AsylbLG	Benefits for Asylum Seekers Act [Germany]
BI	basic income (unconditional)
CCFSRW	Community Charter of the Fundamental Social Rights of Workers [European Community]
CDU	Christian Democratic Union [Germany]
CFR	Charter of Fundamental Rights of the European Union
CSU	Christian Social Union [Bavaria]
DGB	Deutscher Gewerkschaftsbund (German Trade Union Confederation)
EAPN	European Anti-Poverty Network
ECSMA	European Convention on Social and Medical Assistance [Council of Europe]
EEC	European Economic Community [Forerunner to the EU]
EESC	European Economic and Social Committee [European Union]
EFTA	European Free Trade Area
EMIN	European Minimum Income Network
EMIN 1	European Minimum Income Network 1 [EU Project 2013-2014]
EMIN 2	European Minimum Income Network 2 [EU-Project 2017-2018]
EPSR	European Pillar of Social Rights [European Union]
ESC	European Social Charter [Council of Europe]
ESF	European Social Fund [European Union]
FDP	Free Democratic Party [Germany]
GDP	Gross Domestic Product
ICESCR	International Covenant on Economic, Social and Cultural Rights [United Nations]
ILO	International Labour Organization [United Nations]
lit.	Letter
MISSOC	Mutual Information System on Social Protection [European Union]
NAK	Nationale Armutskonferenz (German National Poverty Conference)
OMC	Open method of coordination
para.	Paragraph
PPS	Purchasing power standard
SGB II	Code of Social Law, Book II – Basic support for job seekers [Germany]
SGB III	Code of Social Law, Book III – Employment Promotion [Germany]
SGB XII	Code of Social Law, Book XII – Social Assistance [Germany]
SPD	Social Democratic Party of Germany
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights [United Nations]

Country codes

AT	Austria	FI	Finland	NL	Netherlands
BE	Belgium	FR	France	PL	Poland
BG	Bulgaria	HR	Croatia	PT	Portugal
CY	Cyprus	HU	Hungary	RO	Romania
CZ	Czech Republic	IE	Ireland	SE	Sweden
DE	Germany	IT	Italy	SI	Slovenia
DK	Denmark	LT	Lithuania	SK	Slovakia
EE	Estonia	LU	Luxembourg	UK	United Kingdom
EL	Greece	LV	Latvia		
ES	Spain	MT	Malta		

The **German Trade Union Confederation (DGB – Deutscher Gewerkschaftsbund)** is the umbrella organization for eight German trade unions and stands for a society in solidarity. Work and income need to be distributed fairly and every person independently from its origin, ethnical background or gender needs to receive equal opportunities. Together, the DGB member unions represent the interests of over 5,9 million people. This makes the DGB by far the largest confederation of trade unions in Germany and one of the biggest national confederations of trade unions worldwide. The DGB is a member of the European Trade Union Confederation (ETUC) and a member of the International Trade Union Confederation (ITUC).

www.dgb.de

The **National Poverty Conference (nak)** is an alliance of organizations, associations and initiatives, that commit themselves to active policies combating poverty. It was founded in 1991 as the German section of the European Anti Poverty Network (EAPN). Next to the federal associations and unions, persons with poverty experiences and self-help organizations contribute to the work by adding their personal experiences and perspectives as well as policy ideas in the fight against poverty and social exclusion.

www.nak.de