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## Provisional version

### The “Turin process”: reinforcing social rights in Europe

#### Report<sup>1</sup>

Committee on Social Affairs, Health and Sustainable Development

Rapporteur: Ms Sílvia Eloïsa Bonet, Andorra, Socialist Group

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<sup>1</sup>Reference to committee: Doc. 13569, Reference 4077 of 3 October 2014 and Doc. 13735, Reference 4125 of 24 April 2015.

## A. Draft resolution<sup>2</sup>

1. Social rights are fundamental human rights. Only the enjoyment of socio-economic rights, and social inclusion, allows people to fully enjoy their civil and political rights. In Europe, many can benefit from social rights guarantees at respectable levels, and protection through strong legal instruments and mechanisms, but yet too many remain trapped in cycles of disadvantage and poverty. Moreover, an overall trend towards downgrading social rights guarantees can be observed across Council of Europe member States and the inequality gap between the rich and the poor is on the rise, in terms of income and wealth.
2. In the light of this evident need for action, the Assembly is concerned by the current level of compliance with major European social rights standards such as the revised European Social Charter (ETS No. 163) and its Protocols. It considers that this social rights instrument and related mechanisms are not used to their full potential, not least due to the outstanding ratifications by several member States.
3. The Assembly is also concerned about a lack of coherence between the legal systems and case-law related to different European organisations, in particular the Council of Europe and the European Union (EU), which has the capacity to undermine the effectiveness of the respective instruments: Thus, decisions by the Court of Justice of the European Union do not always fully take into consideration Council of Europe standards. Moreover, the collective complaints mechanism linked to the European Social Charter treaty system clearly needs to be strengthened and receive wider support from Council of Europe member States including EU member States.
4. The Parliamentary Assembly has always promoted the revised European Social Charter as the most comprehensive social rights standard in Europe. It will continue to do so in close co-operation with other Council of Europe bodies, in particular the European Committee of Social Rights (ECSR). It also commits to stepping up dialogue and co-operation with the European Parliament, as well as further European bodies, such as the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC). It firmly intends further nourishing the dialogue between national delegations and parliaments initiated through the “Turin process” for the European Social Charter which was launched by the Secretary General of the Council of Europe in October 2014 as a political process that is aimed at reinforcing the normative system of the Charter and at improving the implementation of social and economic rights.
5. Beyond the “Turin process” at Council of Europe level and the “European Pillar of Social Rights” as a political statement within the EU, the ambitious objectives of a future, comprehensive and sustainable “European Strategy of Social Rights” should be to achieve equal opportunities for all, less income inequality and social cohesion including the most vulnerable in order to preserve European democracies and the overall peace that Europe has known over the past decades.

6. The Assembly thus calls on Council of Europe member States to support, through their governments and parliaments, debates and co-operation launched under the “Turin process” by taking the following action:

6.1. to contribute to strengthening the European Social Charter as a normative system by:

- 6.1.1. in the case of the thirteen member States which have not yet done so, ratifying the revised European Social Charter (ETS No. 163), to improve levels of compliance with this major social rights standard;

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<sup>2</sup> Draft resolution adopted unanimously on 1<sup>st</sup> June 2017.

6.1.2. in the case of the four countries (Denmark, Germany, Luxembourg and the United Kingdom) which have not yet done so, ratifying the Protocol amending the European Social Charter (ETS No. 142, "Turin Protocol") to allow for the election of ECSR members by the Assembly as already requested in Recommendation 1976 (2011) on "The role of parliaments in the consolidation and development of social rights in Europe";

6.1.3. in the case of the member States which have not yet done so, ratifying the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158), in order to ensure more effective monitoring of social rights compliance;

6.1.4. participating actively in the parliamentary activities aimed at promoting the European Social Charter treaty system and enhancing its implementation, which are regularly organised by the Parliamentary Assembly in co-operation with other Council of Europe bodies, notably the European Committee of Social Rights (ECSR), and providing voluntary contributions to this end;

6.2. to strengthen the pan-European dialogue on social rights and the coordination of legal and political action with other European institutions, notably the European Union and its bodies, by:

6.2.1. stimulating and actively participating in regular exchanges between specific Committees of the Parliamentary Assembly and the European Parliament;

6.2.2. promoting the formal incorporation of provisions of the revised European Social Charter into the "European Pillar of Social Rights" as a common benchmark, and the consideration of rights guaranteed by the Charter in the subsequent implementation process by member States of the European Union;

6.2.3. promoting and supporting a pan-European "Parliamentary Dialogue on Social Rights" to federate European parliamentary bodies and national parliaments in regular debates with other partners (including governments and civil society), including possibly a future high-level conference on social rights in Europe;

6.2.4. based on existing European normative systems, notably the revised European Social Charter and the EU Charter of Fundamental Rights, promoting the development of a pan-European "Strategy of Social Rights" and related policy indicators;

6.3. to improve compliance with the highest social rights standards at the national level, by:

6.3.1. regularly checking national policies against the priorities identified by political processes at the European level, including the "Turin process", the "European Pillar of Social Rights", and relevant Resolutions of the Parliamentary Assembly;

6.3.2. based on various European standards and recommendations, developing targeted national strategies to address specific but complex socio-economic challenges, such as equal opportunities for all, (including by improving rates of youth employment and female participation in the labour market), income equality (thus preventing cycles of disadvantage and reducing child poverty), and social cohesion including for the most vulnerable;

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**B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly recalls its Recommendation 1976 (2011) on “The role of parliaments in the consolidation and development of social rights in Europe”, and its Resolution ... (2017) on “The ‘Turin process’: reinforcing social rights in Europe”;
2. In view of the importance of the “Turin process” for a future common “European Strategy of Social Rights”, the Assembly invites the Committee of Ministers to take steps to ensure more rapid progress with regard to the signature, ratification and implementation of the European Social Charter (revised; ETS No. 163) and its protocols, and make social rights a priority for the 2018-2019 biennium of the Council of Europe;
3. In particular, the Assembly calls on the Committee of Ministers to adopt a unanimous decision to allow the Assembly to fulfil its appointed function in the Charter’s monitoring machinery regarding the election of the members of the European Committee of Social Rights, as foreseen in the Protocol amending the European Social Charter (“Turin Protocol”; ETS No. 142);
4. With a view to preparing the grounds for a closer co-operation with the European Union in the future, notably in the framework of the upcoming implementation of the “European Pillar of Social Rights”, the Committee of Ministers is further invited to:
  - 4.1. Mandate the European Committee of Social Rights (ECSR) to undertake an in-depth study about the possible synergies between the European Social Charter and the “European Pillar of Social Rights” and the ways in which the first could serve as a common social rights benchmark for all European States;
  - 4.2. Ensure high-level participation by the Council of Europe in the upcoming “Social Summit for Fair Jobs and Growth” co-organised by the European Commission and the Swedish government in Gothenburg on 17 November 2017 to debate and endorse the “European Pillar of Social Rights”.

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<sup>3</sup> Draft recommendation adopted unanimously on 1<sup>st</sup> June 2017.

## C. Explanatory memorandum by Ms Sílvia Eloïsa Bonet, rapporteur

### 1. Introduction

1. Social rights are fundamental human rights. Only the enjoyment of socio-economic rights, and social inclusion, allows people to fully enjoy their civil and political rights. This central idea, which I expressed myself at the Interparliamentary Conference in Turin on 17 March 2016,<sup>4</sup> is the basic assumption underlying this report. We can see in many contexts that socio-economic participation, equal opportunities and healthy living and working conditions are important pre-conditions to also accessing other categories of human rights, to create a family or to participate in political processes.

2. To guarantee social rights in Europe in a reliable manner, we need continuous political commitment on the one hand and practicable measures and tools on the other. At the European level, the Council of Europe launched a new political process in October 2014 to combine both – the so-called “Turin process”, which was endorsed by the Parliamentary Assembly from the start.<sup>5</sup> At the level of the European Union (EU), the “European Pillar of Social Rights” was made public in April 2017, and is meant to become the reference framework to screen economic and social performance in member States, to drive national reforms and to reflect convergence in the Eurozone.<sup>6</sup> Against the background of such action plans and following our Committee’s decision to link up normative systems and new tools, such as thematic debates or new social indicators,<sup>7</sup> this report wishes to contribute to bridging the gap between political declarations and concrete measures for improving social rights compliance by coordinating legal and political action taken by different European bodies and stimulating a pan-European parliamentary debate.

3. In response to this challenge, the report notably reflects on the questions of (1) how to strengthen acceptance and implementation of the European Social Charter treaty system in co-operation with other Council of Europe bodies under the “Turin process”?; (2) how to promote the dialogue on social rights and coordination of relevant normative and political action with other European institutions, notably the European Union?; and (3) how to ensure that the main socio-economic challenges identified across Europe for the post-crisis period can be addressed effectively through European normative systems and dialogue and national legislation and programmes?; (4) how to stimulate the debate within different parliaments to strengthen the regulatory system and monitoring of the European Social Charter and its effective implementation in close co-operation with the EU? Through the specific working methods applied, including a limited survey amongst countries that have not yet ratified the revised European Social Charter, and bilateral encounters with some of the respective national delegations, I have also tried to provoke immediate progress in some of the above areas.

### 2. Social rights challenges in Europe in the 21<sup>st</sup> century and means of addressing them

4. Social rights matters are regularly addressed by various stakeholders at European and national levels. Whilst some progress has been made since the crisis according to certain socio-economic indicators and in certain countries, many challenges remain to be addressed, in particular those affecting social rights and European economies in the long-term. These constitute the need for more effective social policy action and instruments at the European and the national levels.

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<sup>4</sup> See news item published on 18 March 2016 on the Parliamentary Assembly website: <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6077&lang=2&cat=133>.

<sup>5</sup> Launched at the High-level conference on the European Social Charter in Turin (Italy) on 17-18 October 2014 where the Assembly was represented by its Sub-Committee on the European Social Charter, more information here: <http://www.coe.int/en/web/turin-process/>.

<sup>6</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: “Launching a consultation on a European Pillar of Social Rights, 8 March 2016 (COM(2016)127final).

<sup>7</sup> At its meeting held on 19 May 2015 in Chișinău (Republic of Moldova), the Social Affairs Committee decided to merge the two motions underlying this report: “The ‘Turin process’ for the European Social Charter” (Doc. 13735) and “Drafting social indicators and issuing an annual report on social rights” (Doc. 13569).

## 2.1. Chances and opportunities of Council of Europe activities and standards

5. As rightly stated by key stakeholders in Turin in 2014 and 2016, and reiterated by the Parliamentary Assembly in various Resolutions and Recommendations over the last years, social rights are more relevant than ever before. Social and economic problems and risks continue to affect the lives of many European citizens and inhabitants, even in wealthier countries, where income inequalities are still on the rise. Whilst the most recent economic crisis has exacerbated such trends, they are also linked to more long-term challenges, including population ageing, technological developments and changes in the nature of work, "cycles of disadvantage" for many families, and widespread population movements (provoked by economic hardship, war or conflict, as well as environmental disasters).

6. For the European Union (EU), the latest reviews of employment and social developments show some encouraging results for the post-crisis period, with millions of jobs created, rising employment rates and decreasing poverty rates. The share of the population at risk of poverty or social exclusion is at its lowest in five years (23.7%).<sup>8</sup> However, even a few years after the crisis, Council of Europe member States continue to face major problems: Many people are still unemployed or have difficulties accessing permanent full-time employment, and income inequalities are at their highest since the mid-1980s, including an increasing number of "working poor" and persistent gender pay gaps.<sup>9</sup> Amongst those affected are not only marginal groups, but also increasingly the middle class. Furthermore, international experts agree that many social security and tax systems need to be reviewed to be more sustainable and equal.<sup>10</sup>

7. Amongst the social rights issues to be addressed most urgently, I would therefore see:

- The consequences of the economic crisis and substantial changes in the world of work which have led to an overall deterioration of social rights and had a direct impact on the economic situation and well-being of the middle-class: decreasing employment rates, decreasing standard employment and working conditions, more limited training and career opportunities, stress at work, etc.;<sup>11</sup>
- The employment situation of young people entering the labour market, who often have to accept non-standard jobs with low employment and working conditions (in terms of salary, working times and safety) and find it difficult to access more stable quality employment;<sup>12</sup>
- More coherence in the application of European legal frameworks relating to social rights (notably between the Council of Europe and European Union instruments and standards).<sup>13</sup>

8. Many organisations, including the Council of Europe and its Parliamentary Assembly, the European Parliament and the International Labour Organization (ILO), in partnership with the European Commission, have already been working on these matters. At Council of Europe level, the European Committee of Social Rights (ECSR), monitoring body of the European Social Charter treaty system, regularly points to situations of non-conformity with the European Social Charter (in its first edition and its revised version) and covers more urgent, collective complaints via its relevant mechanism (see below). The Parliamentary Assembly regularly highlights social rights violations through its reports, for example most recently those leading to the adoption of Resolutions 2139 (2016) on "Ensuring access to health care for all children in Europe, 2033 (2015) on "Protection of the right to bargain collectively including the right to strike", 2024 (2014) on "Social

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<sup>8</sup> European Commission (Employment, Social Affairs & Inclusion): 2016 Review of Employment and Social Developments in Europe highlights more employment, less poverty and a changing world of work, News item of 20/12/16.

<sup>9</sup> See Resolution 2158 (2017) on "Fighting income inequality: a means of fostering social cohesion and economic development", based on a report prepared by my colleague, Andrej Hunko (Germany, UEL).

<sup>10</sup> Darvas, Zsolt and Wolff, Guntram B.: Europe's social problem and its implications for economic growth, Bruegel policy brief, issue 2014/03.

<sup>11</sup> International Labour Organization (ILO)/European Commission (Vaughan-Whitehead, Daniel (ed.): Long-term effects in the world of work: What effects on inequalities and middle-income groups?, Geneva 2015.

<sup>12</sup> See Resolution 1885 (2012) of the Parliamentary Assembly on "The young generation sacrificed: social, economic and political implications of the financial crisis": [<sup>13</sup> European Parliament, DG Internal Policies: The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights, study for the AFCO Committee by Prof. Olivier De Schutter, University of Louvain, January 2016.](http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=18918&lang=EN&search=eW91dGggZW1wbG95bVVudHxjYXRIZ29yeV9zdHJfZW46IkFkb3B0ZWQgdGV4dCl=, as well as data by the OECD and action taken by the European Commission: http://ec.europa.eu/social/main.jsp?catId=1036.</a></p>
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exclusion: a danger for Europe's democracies", 1995 (2014) on "Ending child poverty in Europe", or 1993 (2014) on "Decent work for all". In close co-operation, both bodies have organised, since 2013, yearly capacity-building seminars for national parliaments aimed at identifying means of closing gaps of compliance with the European Social Charter treaties, overcoming remaining obstacles to full ratification and implementation of these texts and possible ways forward to improve national social rights situations in different areas.<sup>14</sup>

9. However, the institutional response to these challenges has not always been sufficient in recent years, at least not in all policy areas and in a geographically balanced manner. For example, at EU level, numerous attempts have been undertaken to strengthen the social dimension of the Economic and Monetary Union (EMU) through targeted action, such as the Youth Guarantee or the Youth Employment Initiative.<sup>15</sup> Despite great commitment to these areas, youth unemployment across Europe is still extremely high (19%, i.e. 4.2 million, of those aged 15-24 in the EU in August 2016).<sup>16</sup>

10. The distinct characteristics of the Council of Europe with its mandate encompassing the promotion of human rights, democracy and the rule of law, its recognition of subsidiarity, and its mission of promoting good practice amongst member States, place the organisation in an ideal position to address the risks and challenges related to social rights at the European level and to uphold the call for action in specific areas, for example in the framework of political processes such as the one initiated in Turin, or the one linked to the "European Pillar of Social Rights". In this context, the Council of Europe's contribution would not consist in participating in the concrete design or implementation of policies, which does not correspond to its function, but rather in promoting and applying, through its own bodies and mechanisms, a "quality check" of European and national policies, verifying that these are comprehensive and complete. In this respect, the European Social Charter offers a comprehensive range of rights, which could be used as a kind of benchmark for European and national policies. However, more in-depth debate and expert work would be needed to "transform" the Charter into a practical list of indicators and conceive the methodology according to which this could be applied to national socio-economic policies.

## 2.2 *Preparing the grounds for more effective socio-economic policies*

11. Initially, and with regard to the different underlying motions, one of the intentions of the present report was to directly and more extensively address the specific matter of social indicators leading to the successful implementation of socio-economic policies.<sup>17</sup> However, I have decided that the attempt of reviewing existing indicators or designing new ones would exceed the scope of the current report firstly aimed at making existing social rights mechanisms more effective. In my view, other European organisations (such as the European Commission or OECD) or indeed academic experts are much better placed than the Assembly to accomplish such an ambitious task. I would nevertheless like to comment on the significance of social indicators and related challenges here, also as a reflection on what could be the contribution by the Council of Europe via its core instruments, e.g. the European Social Charter.

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<sup>14</sup> Parliamentary seminars for all delegations concerned by most recent ECSR conclusions held in October 2013 and November 2014, respectively on "Improving employment conditions of young workers (under the age of 18)" and "Ensuring safe and healthy working conditions"; a more specific seminar for five "Eastern Partnership countries" (Azerbaijan, Armenia, Georgia, Moldova, Ukraine) in May 2015 in Chisinau (Republic of Moldova) on "Fostering social rights in the Eastern Partnership area: focus on the European Social Charter", and latest parliamentary seminar for all delegations concerned by the ECSR conclusions held in October 2016 on "The right of children and young people to social, legal and economic protection".

<sup>15</sup> European Commission: Strengthening the social dimension of the Economic and Monetary Union: frequently asked questions, press communication of 2 October 2013, [http://europa.eu/rapid/press-release\\_MEMO-13-837\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-837_en.htm).

<sup>16</sup> European Commission, DG Employment, Social Affairs & Inclusion: webpage on "Youth Employment", accessible under: <http://ec.europa.eu/social/main.jsp?catId=1036&langId=en>.

<sup>17</sup> See motion on "Drafting social indicators and issuing an annual report on social rights" (Doc. 13569).

12. In 2011, senior researchers, gathered around a project led by the European Policy Centre, recalled that “changing the European social model to fit with interconnected trends like globalisation, the ageing society or rapid technological advances calls for sustained efforts and reforms both at national and EU level, and more than ever, requires evidence-based policy making”. There are policy areas where existing indicators are fully satisfactory. However, there are other areas that could benefit from enrichment.

13. Interesting approaches to improve the state of evidence include the work undertaken by the EU itself, already some years ago, on new and more inclusive indicators for social progress (relating to climate change, resource depletion, health and quality of life), the “Better Life Initiative” developed by the Organisation for Economic Co-operation and Development (OECD) and its biennial reports “Society at a glance”, but also the Parliamentary Assembly’s own work in this field, such as the one leading to Resolution 2023 (2014) on “Measuring and fostering the well-being of European citizens”. Further concepts certainly need to be considered when we are looking for indicators of socio-economic progress. An interesting approach is the European Social Model as described by the ILO, which defines five pillars as the foundations of European economies: (1) workers’ rights and working conditions; (2) labour markets; (3) social dialogue, (4) public sector, (5) social cohesion.<sup>18</sup> Some of these activities contain interesting leads. However, we must not forget that the European Social Charter treaty system, with its large scope of rights and mechanisms facilitating their implementation, is an excellent starting point when it comes to designing modern socio-economic policies.

14. We also need to keep in mind that indicators are shaped by underlying paradigms. Of course, as long as the growth paradigm is the lead concept for our economies, all political and economic stakeholders will want to prove that indicators are positive in terms of economic growth and performance. However, amongst parliamentarians, I can increasingly depict the political willingness to leave the “traditional” growth paradigms of the post-war period to turn to a new understanding taking into account more transversal indicators, such as income inequality, equal opportunities, a given population’s state of health or environmental protection. I would therefore invite all those participating in this debate, to keep in mind the new vision, new obligations and new opportunities offered by the Sustainable Development Goals (SDG) adopted at the UN level in 2015, which are meant to guide political action in all our nations.

15. In order to effectively improve the social rights situation across Europe, I am convinced that action is needed at several levels, and that we should aim at developing:

- A new vision of a social Europe and new tools as, for example, underlined by the Assembly in Resolution 2068 (2015) on “Towards a new European Social Model”;
- A new political agenda to ensure equal access to social rights to all and to be monitored by political bodies, such as the Assembly, through reports and debates;
- Measurable objectives, benchmarks and indicators, making governments accountable for their action in priority areas and monitoring progress made at the national level;
- Complaint mechanisms where at least collective entities such as trade unions and associations may file complaints when social rights standards are breached, such as the collective complaint mechanism linked to the European Social Charter.

16. At Council of Europe level, the “Turin process” is a first step in the right direction in terms of political agendas, but needs to be completed through further targeted action, including within the Parliamentary Assembly. At EU level, the “European Pillar of Social Rights” will hopefully correspond to some of these requirements and show positive effects in the near future. Co-operation between the Council of Europe and the EU needs to be promoted, in order to strengthen the principles of indivisibility and universality of social rights and to preserve the cohesion of social rights protection systems.

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<sup>18</sup> Daniel Vaughan-Whitehead/ILO: The European Social Model in Times of Economic Crisis and Austerity Policies (executive summary), February 2014, [http://www.ilo.org/brussels/information-resources/publication/WCMS\\_236720/lang--en/index.htm](http://www.ilo.org/brussels/information-resources/publication/WCMS_236720/lang--en/index.htm).

### 3. Strengthening the European Social Charter treaty system through the “Turin process”

17. The European Social Charter is a comprehensive social rights treaty system, which has developed over many years. Emanating from the Council of Europe itself and launched by its Secretary General in October 2014, the “Turin process” is aimed at giving a new dynamic to this treaty system, to ensure that the Charter is a lively instrument for upholding and promoting social rights. The Parliamentary Assembly has always supported the promotion of the European Social Charter with a view to extending ratifications and effectively implementing various provisions of the Charter. In the framework of the “Turin process” it wishes to stimulate further progress through parliamentary dialogue at various levels; in this respect, the present report itself should indeed be understood as a contribution to the “Turin process”.

#### 3.1. State of play and functioning of the European Social Charter

18. I would like to recall that the European Social Charter and related monitoring mechanisms are based on different treaties, which receive varying support from member States:

- **The first European Social Charter of 1961:** This original Charter still applies in 10 member States, which have not yet ratified the revised text of 1996. Amongst the rights protected by this first Charter are fundamental social rights such as the rights to work, to social security, to social and medical assistance or to protection and assistance for migrant workers and their families.
- **The Additional Protocol of 1988:** This text extended the corpus of social and economic rights by adding new rights, for example for workers and elderly persons.
- **The Amending Protocol (“Turin protocol”) of 1991:** This Protocol confirms the political role of the Committee of Ministers and the Parliamentary Assembly. To make the system more democratic, the Protocol provides for the election of the ECSR members by the Parliamentary Assembly, along the lines followed for the election of judges of the European Court of Human Rights. However, the Protocol has not yet entered into force, given that ratifications by Denmark, Germany, Luxembourg and the United Kingdom (still bound by the 1961 Charter) are still pending.
- **The Additional Protocol Providing for a System of Collective Complaints of 1995:** Only 15 member States have ratified this text. Therefore, some States are bound by a “single” monitoring system where they only have to submit annual national reports to the ECSR, whilst other States are under a reinforced monitoring system where international non-governmental organisations and organisations of employers and trade unions can lodge complaints against a specific policy, regulation or failure to act by a State. States concerned submit national reports every two years.
- **The European Social Charter (revised) of 1996:** The revised version of the Charter has been ratified by 34 member States (by April 2017). The text regroups all rights and provisions of the above texts, and introduces new rights and amendments adopted by the Parties, such as the right to protection against poverty and social exclusion, the right to housing or the right to protection in cases of termination of employment; it is meant to gradually replace the original text of 1961.

19. The Charter’s monitoring system is also laid down in the Charter’s core texts, which introduce a system of yearly reports to the ECSR concerning national situations of social and economic rights. On this basis, the ECSR examines the conformity of the situation described with the provisions of the text ratified by each State. Subsequently, the ECSR issues a “decision” on conformity or non-conformity with the Charter, the execution of which is supervised by the Committee of Ministers. The non-provision of information by a member State, even on individual relevant articles, may also lead to a decision of non-conformity. Four States have not ratified either of the Charter’s versions and are therefore not bound by this text at all: Liechtenstein, Monaco, San Marino and Switzerland. Whilst the Charter’s monitoring system is very comprehensive and attentive to details, it could certainly be more closely linked to political agendas and action in order to give more political dynamics to the European Social Charter, and even involve those countries that have not yet (fully) ratified the instrument. In some cases, the system could take a view that would be yet more precise and consider the particularities of different countries.

### 3.2. *The “Turin process” and progress made regarding the European Social Charter since 2014*

20. The “Turin process” is a political process kicked-off at the High-level Conference on the European Social Charter in Turin in October 2014. In the spirit of indivisibility and interdependence of fundamental rights, the objectives of this process are to strengthen the European Social Charter as a normative system alongside the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union, to consolidate its foundations (through better synergies between EU law and the ESC) and to incite member States to better implement its provisions. In the final document on the 2014 Turin Conference, presented by the conference’s General Rapporteur Mr Michele Nicoletti (also Vice-President of the Parliamentary Assembly), these objectives are completed by an Action Plan addressed to the Council of Europe, the European Union, national governments and civil society as the main stakeholders.<sup>19</sup>

21. The Action Plan linked to the “Turin process” proposes priority action in the following areas:

- the ratification of the revised European Social Charter and the Protocol on Collective Complaints by all member States of the Council of Europe and the European Union;
- a better implementation of the Charter at national level, taking into account the decisions and conclusions adopted by the ECSR in the framework of the monitoring mechanisms;
- the enhancement of the collective complaints procedure, which allows the direct involvement of social partners and civil society in monitoring activities regarding the application of the Charter and represents a more transparent and democratic system as compared to the one on national reports;
- the strengthening of the position, status and composition of the ECSR within the Council of Europe, also through the election of its members by the Parliamentary Assembly as already set forth in the Turin Protocol of 1991 (which has not yet entered into force);
- the reinforcement of the dialogue and exchanges - which the “Turin Process” has already made possible - with competent bodies of the European Union and to do so in view of the full consideration of the Charter and ECSR decisions within European Union law;
- the implementation by the Council of Europe of a communication policy capable of sending a clear message on the legal nature of the Charter and on the scope of ECSR decisions.

22. Two years later, the initiative taken at the first Turin conference was further debated and concretised in the framework of the “Turin II” events held on 17 and 18 March 2016, namely an Interparliamentary Conference on the European Social Charter and the Turin Forum on Social Rights in Europe, an event gathering academics and politicians in a more informal setting.<sup>20</sup> As rapporteur for the present report, I also represented the Parliamentary Assembly at the interparliamentary conference and was given the honourable task of drawing the conclusions of debates. On this occasion, I reminded all participants of the special responsibility of the Council of Europe for promoting social rights (as one of the first European institutions), as well as of the duty of European parliamentarians to endorse this movement.

23. During the debates in Turin, most parliamentary representatives, including from the Parliamentary Assembly, the European Parliament and national parliaments, agreed that the most urgent social rights challenges included the fight against social exclusion and poverty, the protection of and support to the most vulnerable groups of population (including migrants and refugees, national and ethnic minorities, the elderly, children, young people and others), and the need to strengthen social security systems in certain countries despite a considerable social *acquis* in Europe more generally.

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<sup>19</sup> General Report on the High-Level Conference on the European Social Charter, co-organised by the Council of Europe and the Italian Government in Turin on 17-18 October 2014; report presented by Mr Michele Nicoletti, Vice-President of the Parliamentary Assembly, as General Rapporteur:

[http://www.coe.int/T/DGHL/Monitoring/SocialCharter/TurinConference/Turin-General-Report\\_EN.pdf](http://www.coe.int/T/DGHL/Monitoring/SocialCharter/TurinConference/Turin-General-Report_EN.pdf).

<sup>20</sup> For further information on the “Turin II” meetings, please see the dedicated webpage: <http://www.coe.int/en/web/turin-european-social-charter/conference-turin-2016>.

### *3.3. Issues at stake for the Parliamentary Assembly*

24. The Parliamentary Assembly has always considered itself a safeguard of social rights, and has been promoting ratification and implementation of the European Social Charter through our Committee, the Committee on Social Affairs, Health and Sustainable Development (and the Committee's forerunners), in close partnership with the ECSR for several years. Since 2013, the Sub-Committee on the European Social Charter in particular has promoted parliamentary follow-up of yearly ECSR conclusions by organising specific parliamentary capacity-building seminars, to address specific social rights challenges with stakeholders in member States. Furthermore, in its Resolutions relating to the European Social Charter, the Assembly has always called for further ratification and implementation of the European Social Charter and its Protocols, including the Additional Protocol of 1995 providing for a system of collective complaints, to ensure that the Charter is a living instrument, effectively monitored and implemented in all member States. It has done so explicitly through Resolution 1792 (2011) on "Monitoring of commitments concerning social rights" and Resolution 1824 (2011) on "The role of parliaments in the consolidation and development of social rights in Europe", and more indirectly by referring to the European Social Charter in later resolutions on other subject matters.

25. Of particular importance for the Parliamentary Assembly is the full ratification of the Amending Protocol of 1991, the so-called "Turin Protocol" through which the election of ECSR members would be assigned to the Parliamentary Assembly. The outstanding ratification by Denmark, Germany, Luxembourg and the United Kingdom of this Additional Protocol (or the revised Charter) stands in the way of this election procedure which has already been practiced long since for Judges of the European Court of Human Rights and which would certainly increase the democratic legitimacy of the ECSR, and possibly the acceptance of the Charter monitoring system by member States. It further needs to be underlined that all other provisions contained in the "Turin Protocol" have entered into force by decision of the Committee of Ministers. Rather than waiting for the last four ratifications, the Committee of Ministers could therefore also decide on this last provision as recommended by the Assembly in Recommendation 1976 (2011) on "The role of parliaments in the consolidation and development of social rights in Europe", and this is certainly something to be reiterated by the Parliamentary Assembly in its next text.

26. As a parliamentary forum gathering national parliamentarians from all Council of Europe member States and statutory organ of the Council of Europe, the Assembly has utmost and foremost an interest in seeing full support given to essential Council of Europe instruments, including the revised European Social Charter. For this reason, I have myself taken on to promote this text amongst national delegations concerned and tried to find out more about the reasons for and background of outstanding ratifications.

### *3.4. Reception of the revised European Social Charter in non-signatory countries*

27. The European Social Charter in its revised version, thus the most up-to-date and comprehensive instrument for the promotion of social rights, has an "à la carte" system of ratification that entitles States to accept selected provisions of the Charter and put forward reservations on others. This leads us to a very disparate system of ratifications nowadays, with some States giving full support to the instruments, some putting forward a number of reservations and some not having ratified at all – for various reasons. With a view to gaining a full picture of the state of play and reception of the Charter in different countries, I have launched a limited survey in the framework of the present report, amongst the thirteen countries not having ratified the revised Charter, about the reasons for non-ratification and the remaining obstacles.<sup>21</sup>

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<sup>21</sup> Letters were sent on 8/9 February 2017 to the thirteen national delegations with the Parliamentary Assembly of Croatia, the Czech Republic, Denmark, Germany, Iceland, Liechtenstein, Luxembourg, Monaco, Poland, San Marino, Spain, Switzerland, the United Kingdom; by the extended deadline of 15 May 2017, ten out of thirteen delegations had kindly provided specific replies to survey by consulting their competent government departments.

28. The specific replies provided by seven member States' authorities give us the following picture:<sup>22</sup>
- **Croatia** has seen a temporary halt to the process meant to lead to the ratification of the revised Charter in 2016 when parliamentary elections were held and a new government was formed. Activities aimed at drafting the Act on the Ratification should be resumed and pursued in 2017 to hopefully achieve the adoption later in 2017. Besides, Croatia is providing large support to the Charter treaty system as such, of which it adopted various texts many years ago.
  - **The Czech Republic** does not wish to subscribe to the very broad range of social rights obligations stipulated by the revised Charter and is generally not in agreement with the extensive interpretation of obligations arising from the Charter, which, apparently, is made in the light of the state of ratification of the revised Charter even if a country is not yet bound by this text.
  - **Denmark** has no intention of ratifying the revised European Social Charter in the near future given that (1) this could possibly entail conflicts with the current national labour legislation and interfere in areas which are traditionally left to agreements between social partners, (2) the provision on non-discrimination (Article E) is considered too "open-ended" and liable to interpretation, (3) the interpretation by the European Committee of Social Rights (ECSR) whether a country is in compliance or not does not always seem consistent, especially for countries complying with international social rights standards under the first Charter.
  - **Germany** is still considering some of the obstacles identified with a view to ratifying the revised Charter, and ratification is not expected to happen in the near future. As most problematic, German authorities perceive (1) the comprehensive non-discrimination clause (Article E) which affects a number of material protection rights in a cross-sectoral manner, and (2) the provisions regarding the right to strike (and its impact on respective rights for civil servants). Like other countries, Germany considers that it complies with international human rights obligations by respecting a large range of UN and ILO instruments.
  - **Liechtenstein** currently has no concrete plans to ratify the revised European Social Charter. As a small country, with limited administrative resources, Liechtenstein has to carefully consider subscribing to new international agreements and their extensive reporting obligations. However, the country already provides very high labour standards and therefore respects international and European instruments, according to its own monitoring results along social indicators, which are in line with the European Social Charter.
  - **Monaco**, according to the explanations provided by the National Council, is not in a position to proceed to the ratification of this international instrument, mainly for reasons of technical obstacles. The authorities of the Principality fear in particular that a ratification could present major disadvantages, including in terms of public finances, but also as far as the access to certain rights and privileges is concerned, which is differentiated between nationals and foreigners; a distinction which seems to be excluded by the principle of non-discrimination which is provided for by the Charter. Nevertheless, the government of Monaco considers the Charter to be an undeniable source of inspiration for the relevant national legislation.
  - **San Marino** has not yet started the ratification process for the revised Charter but will soon start analysing what steps are required to comply with the instrument; this is facilitated since the latest elections in November/December 2016 generated a new "enthusiasm" for the European Social Charter. Certain issues related to social security, social and medical assistance and business activities would have to be considered more carefully before passing on to the actual ratification.
  - **Spain** is not considering ratifying the revised European Social Charter in the near future given that its national legislation presents certain regulations that could possibly entail conflicts with the revised ESC. The government considers that its national legislation is often more protective than the revised ESC and that the interpretation by the European Committee of Social Rights (ECSR) whether a country is in compliance or not does not always seem consistent, especially for countries complying with international social rights standards under the first Charter. Particular difficulties are seen in: (1) written information provided to workers concerning the terms of a contract, (2) the promotion of occupational health services amongst self-employed workers, and (3) the rights of migrant workers and their families in order to protect and ensure the right to health in all situations.

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<sup>22</sup> Listed in English alphabetical order.

- **Switzerland** does not see any insurmountable obstacles to join the Charter, just a few matters to be clarified. However, after extensive debates over the past years, both chambers of the Swiss Parliament (National Council and Federal Council) have expressed clearly that there is no political majority to support a formal proposal to ratify the revised European Social Charter. At the beginning of this parliamentary process, doubts had been raised with regard to the compatibility of the Charter with the Swiss system of vocational training, but these could be eliminated through a specific study undertaken in 2015, which had established that there were no legal obstacles for Switzerland to ratify at least six of the nine core provisions of the Charter as required.
- **The United Kingdom** affirms that it continues to support the original European Social Charter of 1961 of which it accepted 60 of the 72 paragraphs. In respect of the revised European Social Charter, signed in 1997, the decision on ratification was deferred for a variety of reasons, including time to await developments on how the various new provisions introduced were to be interpreted. The compliance of UK law and practice with international treaties is regularly kept under review before ratifying any new treaties; however, there are no plans at present to ratify the revised Charter in the near future.

29. In conclusion, we may therefore say that, amongst the main reasons for the non-ratification of the revised European Social Charter by the above countries are the expectation of standards and monitoring obligations exceeding or being inconsistent with national practice or capacities in certain areas, the perception of excessive margins of interpretation regarding some articles (e.g. non-discrimination) and a general disagreement with certain decisions by and procedures related to the European Committee of Social Rights (ECSR). The level of political willingness of tackling the ratification process seems to play a significant role in most countries. Despite the fact that not all countries contacted in the framework of my survey have replied (10 out of 13 have done so), we can say that this is what is reflected by the majority of those not having ratified the revised Charter.

30. In my capacity as rapporteur, I have tried to open up the dialogue with national delegations on remaining obstacles to full accession and implementation of the revised European Social Charter through the above survey and bilateral meetings with individual delegations at the January 2017 part-session. To explore the Spanish situation, I have met with the main representatives of different political parties, including opposition parties, of the Spanish Parliament. However, arranging such bilateral exchanges should only be a first step. Beyond this, the Parliamentary Assembly could also more generally give new dynamics to its role amongst European stakeholders contributing to and animating the dialogue about social rights in Europe, based on the European Social Charter as the central instrument.

#### **4. Fostering European dialogue about social rights in the framework of the “European Pillar of Social Rights”**

31. Over the past years, Council of Europe and its Parliamentary Assembly have regularly promoted social rights as essential human rights. Further opportunities can be seen in different parliamentary contacts and fora as well as the current process leading to the “European Pillar of Social Rights”.

##### *4.1. Fostering social and political dialogue at various levels*

32. The Parliamentary Assembly as such is a pan-European forum aimed at debating challenges of common concern between Council of Europe member States. It is therefore important that some of the socio-economic challenges mentioned above be kept high on the agenda of this body at various levels, through thematic reports and plenary debates, but also through co-operation with different internal partners, such as the European Committee of Social Rights (ECSR) and external partner organisations, such as the European Commission and Parliament, the OECD or the ILO. In this way, visibility is regularly given to social rights as essential human rights, and synergies may be developed. A very positive partnership in this respect is the one with the ILO which often works on similar issues as the Assembly (e.g. both the ILO and the Assembly are currently looking into income inequality) and there is reciprocal participation in events.

33. The decisions adopted by the ESCR in the framework of the collective complaints mechanism may constitute a major input for fruitful political discussions, insofar as this mechanism directly involves social

partners and civil society organisations entitled to submit complaints. In other words, the decisions by the ECSR may be of transversal interest for all Council of Europe member States, not least with a view to increasing the acceptance of the collective complaint procedure itself, but also to, once again, stimulate the political debate on certain topical issues – one of the results of the parliamentary seminars organised by the Assembly on said conclusions for the last five years.

34. It is probably not through political dialogue that the current incoherence between European legal systems and interpretations at Council of Europe and European Union level will be overcome, but political dialogue needs to address this issue to underline the urgency for better coordination of these legal systems in terms of guaranteeing social rights. For example, in the much debated cases of *Viking* and *Laval* back in 2008, fundamental rights guaranteed by the European Social Charter treaty system and the ruling of the European Court of Human Rights were challenged by the Court of Justice of the European Union, as already underlined by the Parliamentary Assembly in 2015.<sup>23</sup>

35. At the parliamentary level, contacts between the Parliamentary Assembly and the European Parliament could also clearly be strengthened, either through bilateral meetings between parliamentarians or more formal arrangements, such as participation in hearings on either side or joint meetings of relevant Committees. However, there seem to be certain obstacles to overcome in this respect: Due to the lack of heterogeneity between the structures and mandates of the European Parliament (EP) and the Parliamentary Assembly, collaboration is far from being regular, but remains very selective. In the framework of the present report, for example, I tried to set up an exchange of views between a member of the European Parliament and the Committee, in order to take into account the EP reaction to the “European Pillar of Social Rights” (see below), but such an encounter was extremely difficult to organise for reasons of agenda and prioritising. However, I managed to briefly meet with MEP Maria Rodrigues, rapporteur of the recently adopted EP report on the “European Pillar of Social Rights”.<sup>24</sup> On this occasion, we agreed that, while waiting for the “Pillar” to be endorsed by all EU member States and the implementation phase to start, the following action could already be initiated in parallel: (1) more closely examining the potential of the European Social Charter to become a common benchmark and identifying possible gaps of the EU “Pillar” in this respect; (2) exploring future opportunities for closer co-operation with a view to institutionalising a more regular dialogue between the European Parliament and the Parliamentary Assembly through various bodies.

36. Another interesting point of contact with EU institutions is, in my view, the bi-annual meeting organised by the COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union) under changing EU presidencies. I attended the meeting organised in October 2016 in Bratislava (Slovak Republic) and, as I found it most inspiring and fruitful for the present cause, will also participate in the upcoming meeting to be held in May 2017 in Valetta (Malta), thus hoping that we will enter a phase of more regular participation by the Assembly in these events. In my view, the COSAC could play a major role in promoting the acceptance of the revised European Social Charter amongst EU member States, in line with the efforts currently undertaken on either side under the “Turin process” and the process leading to the “European Pillar of Social Rights”.

37. Finally, the Council of Europe should contribute to the pan-European dialogue about social rights taking place within the EU. Both the Secretary General of the Council of Europe and the President of the Parliamentary Assembly should participate in the upcoming “Social Summit for Fair Jobs and Growth” co-organised by the European Commission and the Swedish government in Gothenburg on 17 November 2017 to debate the “European Pillar of Social Rights”. Another step forward for the Parliamentary Assembly could be to organise its own high-level event on social rights for Greater Europe involving representatives of Council of Europe and EU bodies, national parliaments and governments, social partners and civil society.

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<sup>23</sup> As outlined in the report leading up to Resolution 2033 (2015) on the Protection of the right to bargain collectively, including the right to strike adopted by the Assembly in January 2015.

<sup>24</sup> European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)).

#### 4.2. Promoting the European Social Charter in the context of the “European Pillar of Social Rights”

38. Since September 2015, and upon special request by its newly elected President, Mr Jean-Claude Juncker, the European Commission has launched the process for the elaboration of a “European Pillar of Social Rights”, as well as a broad consultation across European institutions and organisations.<sup>25</sup> This consultation process was concluded in March 2017, and the new “European Pillar of Social Rights” made public by the European Commission, including a broad range of 22 principles having the nature of political objectives. The intention of the European Commission is to have this “Pillar” politically endorsed by all stakeholders during the above Social Summit to be held in Gothenburg (Sweden) in November 2017.<sup>26</sup>

39. In his own opinion on the process published in February 2017, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, called upon the European Commission to recognise the European Social Charter as the “Social Constitution of Europe” and to consider it as a basis for the “European Pillar of Social Rights”. This call was supported by different organisations.<sup>27</sup> Although the formal accession by the EU to the revised European Social Charter, regularly debated in various contexts in recent years, should be the objective in the long-term, the political approach to the Charter seems to be the right one for now.

40. In his opinion, Mr Jagland also underlined the need to consolidate the synergy between standard-setting systems protecting fundamental social rights across the continent. In this respect, he appreciated the “European Pillar of Social Rights” as an opportunity to give practical effect to social rights within the European Union in a manner consistent with the key texts of the Council of Europe, taking due account of comparative advantages and avoiding duplication, and recognising the European Social Charter as part of the European *acquis* in the human rights field. He recalled that disregarding social rights created fertile grounds for extremist movements and undermined social cohesion and inclusive democracies. He formally called upon the European Commission (1) to formally incorporate the provisions of the revised European Social Charter into the “European Pillar of Social Rights” as a common benchmark for States to guarantee these rights, and (2) to acknowledge the collective complaints procedure for the contribution it has made to the effective realisation of rights established in the Charter to the strengthening of inclusive participatory democracies.<sup>28</sup> The Parliamentary Assembly should definitely support these proposals through its own texts and activities.

### 5. Conclusions and recommendations

41. As underlined above, the Parliamentary Assembly has always considered the European Social Charter as a main reference in the social rights field and central human rights standard. This can be seen in its various texts and promotional activities over the past years. It is currently pursuing the promotion of various Council of Europe standards in the framework of a project entitled “Parliaments and Social Rights” coordinated by the Committee on Social Affairs, Health and Sustainable Development, under the aegis of which specific parliamentary activities are developed in close co-operation with different national delegations. The Assembly should also continue to promote the European Social Charter in close co-operation with other Council of Europe bodies, in particular the European Committee of Social Rights (ECSR), at the following levels:

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<sup>25</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: “Launching a consultation on a European Pillar of Social Rights, 8 March 2016 (COM(2016)127final).

<sup>26</sup> See the Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights, Brussels, C(2017) 2600 final and other relevant publications via the following link: <http://ec.europa.eu/social/main.jsp?catId=1226&langId=en>.

<sup>27</sup> See, for example, the statement made by Caritas Europe on 6 February 2017: <http://www.caritas.eu/news/incorporate-european-social-charter-in-pillar-of-social-rights>.

<sup>28</sup> See opinion by the Secretary General of the Council of Europe, published on 20 January 2017: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dd0bc>.

42. As regards the need to strengthen the European Social Charter as a normative system:
- Continue to promote social rights through dedicated events organised in co-operation with other Council of Europe bodies (e.g. parliamentary seminars);
  - As suggested in Recommendation 1976 (2011) on “The role of parliaments in the consolidation and development of social rights in Europe”, once again invite the four countries which have not yet ratified the Protocol amending the European Social Charter (ETS No. 142, “Turin Protocol”) or the revised European Social Charter (ETS No. 163) – namely Denmark, Germany, Luxembourg and the United Kingdom – to do so to allow for the election of ECSR members by the Assembly;
  - In the absence of these ratifications, once again call upon the Committee of Ministers to adopt a unanimous decision in this respect, thus allowing the Assembly to fulfil its appointed function in the Charter’s monitoring machinery.
43. As regards the promotion of the dialogue on social rights and the coordination of political action with other European institutions, notably the European Union:
- Launch a true “Parliamentary Dialogue on Social Rights”, based on current activities in this field;
  - Organise a high-level conference involving representatives of the Council of Europe, the European Union, national governments and parliaments, social partners and civil society;
  - Ensure regular participation of a representative of the Parliamentary Assembly in future meetings of the COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union) organised twice a year under changing EU presidencies;
  - Organise regular exchanges between Committees of the Parliamentary Assembly and the European Parliament and their respective thematic rapporteurs on future issues of common concern;
  - Contribute to upcoming EU events promoting social rights, such as the upcoming “Social Summit for Fair Jobs and Growth” co-organised by the European Commission and the Swedish government in Gothenburg on 17 November 2017 to debate the “European Pillar of Social Rights”.<sup>29</sup>
44. As regards remaining social rights challenges more generally:
- Based on existing European normative systems, notably the revised European Social Charter and the EU Charter of Fundamental Rights, develop a pan-European “Strategy of Social Rights” and a related list of policy indicators which goes beyond “traditional” growth and performance indicators;
  - Regularly check national policies against such a Strategy and Indicators, taking into account the priorities identified by political processes at the European level, including the “European Pillar of Social Rights”, the “Turin process” and relevant Resolutions of the Parliamentary Assembly;
  - Promote the development of targeted national strategies to address complex and transversal socio-economic challenges, such as youth employment, female participation in labour markets, child poverty, equal opportunities for all young people independent of their social or ethnic background.
45. Beyond the “Turin process”, kicking off the debate on how to better mobilise the potential of existing instruments, the European Social Model pointing towards key action areas and the “European Pillar of Social Rights” as a political statement within the European Union and Eurozone, we need to now enter into a more sustainable “European Strategy of Social Rights”, combing the static model of a “pillar” with more dynamic processes to create an overall movement towards better respect of social rights across Europe, at the European and the national level. At a more practical level, this must be based on equal opportunities for all, income equality and social cohesion including the most vulnerable. These will help us preserve European democracies and the overall social peace that Europe has known over the past decades.

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<sup>29</sup> See press release by the European Commission on 23 January 2017: [http://europa.eu/rapid/press-release\\_IP-17-114\\_en.htm](http://europa.eu/rapid/press-release_IP-17-114_en.htm).