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**S&D** Group of the Progressive Alliance of  
Socialists & Democrats  
in the European Parliament

# Progressive Lab for Sustainable Development

## From vision to action

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*Affordable and clean energy*

*Decent work*

*Quality education*

*No poverty*

*Reduced inequality*

*Responsible consumption and production*

**PROGRESSIVE LAB  
FOR SUSTAINABLE  
DEVELOPMENT:  
FROM VISION  
TO ACTION**



# PROGRESSIVE LAB FOR SUSTAINABLE DEVELOPMENT: FROM VISION TO ACTION

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Group of the Progressive Alliance of  
**Socialists & Democrats**  
in the European Parliament

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# FOREWORD

**GIANNI PITTELLA**

Chair of Group of the Progressive Alliance of Socialists and Democrats in the European Parliament

**CONNLY REUTER**

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**ERNST STETTER**

Secretary General of the Foundation for European Progressive Studies

Many people have found themselves losing out in recent years, while a handful of others have grown extraordinarily rich. The economic crisis and the austerity policies that followed combined with the failure of liberal promises of globalisation have left millions of people behind. At the same time, tax avoidance by the few – estimated to represent a revenue loss of €50 billion to €70 billion for the EU alone (EPRS, 2015), while Africa is estimated to lose about \$50 billion a year due to Illicit financial flows (UNECA, 2015) – has rendered governments incapable of raising sufficient revenue for social expenditure, condemning them to pursue an Americanisation of the welfare model, only fit for those in most need. These developments have brought growing inequalities and the concentration of wealth in the hands of the top earners, giving rise to a sense of injustice and unfairness amongst a large part of the population worldwide.

Furthermore, the fact that countries globally seem unable to manage the influx of refugees from unstable and conflicted regions has created a sense of insecurity among populations. Because citizens are not being given satisfactory answers or de-



cent prospects for the future, they have been turning their anger against the political system. Indeed, the EU Global Strategy on the European Union's Foreign and Security Policy (EUGS) published in June 2016 refers to a period of 'existential crisis', in which the world is becoming more complex, connected and contested. This is being abused by racist or xenophobic parties taking advantage of the situation to gain electoral support, resulting in hardening public attitudes towards particular groups and fostering protectionist measures. In this context, the European project has become the target of criticism and attacks from Eurosceptic forces. Europe urgently needs a new, transformative narrative that will help achieve social progress and prosperity, and reinforce social cohesion among EU citizens.

In this context, the 2030 Agenda for Sustainable Development, to which World's leaders have committed to at the UN Summit in September 2015, offers a transformational and universal vision of the world's future and provides for tangible objectives to overcome today's challenges, thanks to its holistic approach. By embedding the four dimensions of sustainability, namely economic, social, environmental and governance, it opens a new opportunity for the EU to play a leading role in reorienting policies and strategies in an integrated and comprehensive manner. In the communication on 'the Next Steps for a Sustainable European Future', the European Commission (2016, p. 3) considers that the EU should be fully committed 'to be a frontrunner in implementing the 2030 Agenda and the SDGs [...].' It also recognises the importance of coherence across all EU policies and the need to build new partnerships, new forms of connection with citizens, civil society, organisations and business (European Commission, 2016, p. 17). Indeed, the Agenda for Sustainable Development entails a common journey in which actors from different sectors must work and share energy together.

However, fears that the EU will not be able to live up to its commitment have been shared. In particular, some are worried that the EU's external action vision remains too much rooted in pursuing economic growth and security instead of promoting a qualitative shift in the course of globalisation. What should matter for the EU is to join forces and to take concrete steps to achieve social cohesion, inclusion, fairness and sustainability both internally and externally, particularly in this time of growing populism.

Although development cooperation has achieved significant progress in the last 15 years, there are also new threats, such as growing youth unemployment, increasing inequality, environmental challenges and migration, among others. European development aid is becoming increasingly influenced by the EU's security interests. Furthermore, there is a lack of a clear sense of complementarity between the EU and Member States as regards development cooperation. These concerns are gaining major importance in the context of Brexit, where the EU's aid budget might decrease by about 15%. It seems clear that we have a different set of priorities and challenges than in the past, but the EU has the challenge of defending the role of development policy, which is first and foremost to fight poverty to tackle the root causes of global challenges like migration and instability.

Against this background, the Foundation for European Progressive Studies (FEPS), the Group of the Progressive Alliance of Socialists & Democrats in the European Parliament (S&D) and SOLIDAR have joined forces to set up the Progressive Lab for Sustainable Development (PLSD). One of the main objectives of this initiative is to bring together policy and academic expertise while at the same time connecting and stimulating young researchers. On the other hand, it aims to open a reflection on the role of the EU in embedding the 2030 Agenda into its domestic and external policies as a way to achieve a sustainable development model.

In particular, this edited volume is intended as a contribution to the move towards a sustainable development model, through the input of nine young researchers looking at measures the EU could take in the areas of social justice, economics and education. These nine papers have been developed under the supervision of a high level scientific Advisory Board consisting of Mr. Roberto Bissio (Executive Director of the Instituto del Tercer Mundo), H.E. Carles Casajuana (Writer), Prof. Koen De Feyter (Professor of International Law at the University of Antwerp, PILC and the University of Maastricht), Prof. Stephany Griffith-Jones (Financial Markets Director at the Initiative for Policy Dialogue (IPD) and Associate Fellow at ODI), Prof. Lelio Iapadre (Professor of Economics at the University of L'Aquila), Dr. Markus Loewe (Senior researcher at the German Development Institute), Ms. Fabiana Maglio (Education Specialist), Dr. Annalisa Prizzon (Research Fellow within CAPE), Prof. Liliana Rodrigues (Professor, Researcher and MEP) and Dr. Sahar T. Rad (Political economist).

Through this publication, FEPS, the S&D group and SOLIDAR hope to spur innovative thinking by connecting academic and policy knowledge and to enrich the debate around the achievement of the 2030 Agenda and the role of the EU in this endeavour.

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# **INTRODUCTION**



# TRANSFORMING OUR WORLD, ACHIEVING A SUSTAINABLE DEVELOPMENT MODEL - THE 2030 AGENDA AND THE EU

*With contributions by* ROBERTO BISSIO, CARLES CASAJUANA, KOEN DE FEYTER, LELIO IAPADRE, MARKUS LOEWE, FABIANA MAGLIO, ANNALISA PRIZZON, LILIANA RODRIGUES AND SAHAR T. RAD

## 1. Contextual background

The 2030 Agenda for Sustainable Development sets out the framework for achieving sustainable development by 2030, reducing inequalities everywhere and eradicating poverty. A new feature of this Agenda is its universality. It applies to all countries at all levels of development, while taking into account their different capacities and circumstances.

Implementation will be driven by a new Global Partnership characterised by shared responsibility, mutual accountability, and engagement by all. The Means of Implementation for the new Agenda are outlined in the SDGs and the Addis Ababa Action Agenda, agreed in July 2015. Its implementation will require action at national, regional and global level, mobilising governments and stakeholders including citizens, civil society, the private sector and academia, at all levels.

Following the adoption of the 2030 Agenda - formally adopted by the international community at a dedicated UN Summit on 25th September 2015 - and its 17 Sustainable Development Goals (SDGs), the European Union (EU) committed



itself to a transformative programme, which could potentially turn the current unsustainable 'growth-at-any-cost' economic model into a sustainable one based on the recognition of, and the respect for, planetary boundaries and the clear supremacy of human rights over the economic privileges of vested interest groups .

This will require measures and policies that tackle the current major global challenges. Some of these global challenges are being addressed in this book, including:

- *Growing inequalities*

The full realisation of the human rights approach that is at the heart of the 2030 Agenda requires a massive reduction in inequalities both between and within countries (SDG 10), aiming to ensure that no one is left behind. The EU should insist that attention to reducing inequalities is an inherent element in all the policies related to the implementation of the SDGs. The focus on inequality complements the reiterated goal of the eradication of extreme poverty, as inequality has been on the rise within most countries over the past decades. However, better inequality indicators still need to be agreed.

A more dynamic and all-encompassing approach to the issue of inequality is urgent. Inequality has severe repercussions for health, well-being and social cohesion. It promotes status competition and consumerism, and it increases violence. By not addressing inequalities, any efforts at poverty reduction and economic growth will be hampered. As such, it is important for the EU to emphasise, in its policies and projects, the significance of reducing not only social inequalities, but also income and wealth differences within and between countries. In this regard, the continuation and expansion of the EU initiatives, aimed at for example financial regulation and preventing illicit financial outflows, are essential.

- *Biased trade and investment strategies and growing corporate power over public authorities*

A universal, rules-based, open, non-discriminatory, fair and equitable multilateral trading system can help promote inclusive economic development. Nevertheless, it is essential to reconcile trade policy and development cooperation objectives with a view to achieving policy coherence for sustainable development, as well as the promotion and the protection of human rights.

Economic and financial globalisation have produced a gradual expansion in the rights of corporations. Business entities have gained the right to establish themselves in most countries of the world through investment agreements (bilateral and regional). One result is that they give corporations the right to sue governments (without the governments being able to reciprocate). They can be used to define health or environmental regulations as 'expropriations', thereby putting corporate privileges above human rights. Several countries are starting to revise those treaties. Investor-state disputes in private arbitration panels have been considered illegal and contrary to human rights by many experts. The EU should not undermine such efforts and it should start to think of alternative ways of balancing investor guarantees with human rights.

- *The funding of development cooperation and aid effectiveness is at stake*

Though already funding well below the internationally agreed 0.7% GNI (Gross National Income) development cooperation target, in recent years a number of EU Members States have cut their development cooperation budgets (Barbière and Jacobsen, 2015). In May 2015, Finland's new centre right government surprisingly budgeted to cut its Official Development Assistance (ODA) by 43% (i.e. €300 million). In the same year, the new Danish liberal-conservative coalition decided to cut its ODA

from 0.87% to 0.7% of GNI. The Netherlands aims to reduce its development aid from 0.81% in 2020 to 0.55% of GNI by 2017 (Fic, Kennan and te Velde, 2014; OECD, 2016). Finally, countries worst-affected by the 2008 financial crisis such as Italy, Greece, Portugal and Spain, 'all allocate less than 0.2% of their GNI to development aid' (Barbière and Jacobsen, 2015). Such a reduction in ODA will have serious consequences for developing countries, in particular on the Least Developed Countries (LDCs), which are the poorest and weakest segment of the international community.

At the same time, the involvement of the private sector in development cooperation should not put at stake the aid effectiveness principles that have been 'recognised and accepted by all those involved in development co-operation, from donor and recipient country governments to providers of south-south cooperation, international organisations, civil society, parliamentarians and local government' (OECD, 2012). As highlighted by the Busan Partnership for Effective Development Cooperation, these principles are: '1) Ownership of development priorities by developing countries: Countries should define the development model that they want to implement; 2) A focus on results: Having a sustainable impact should be the driving force behind investments and efforts in development policy making; 3) Partnerships for development: Development depends on the participation of all actors, and recognises the diversity and complementarity of their functions; 4) Transparency and shared responsibility: Development cooperation must be transparent and accountable to all citizens' (OECD, 2012).

- *Illicit financial flows*

Many developing countries are vulnerable to corruption, tax evasion and tax avoidance, as well as losses in other illegal capital flows. The problem needs to be recognised and dealt with at

national, regional and global levels by building stable and fair tax systems. The International Covenant on Economic, Social and Cultural Rights (ICESCR) imposes on all states the duty to “take steps [...] 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” (UN General Assembly, 1966, article 2). This duty is not complied with when the “available resources” are substantially diminished because of the massive illegal transfer of resources to secret jurisdictions. The Report of the High Level Panel on Illicit Financial Flows from Africa concluded in 2015 that 50 billion dollars leave the continent illegally every year, double the total ODA received by Africa (UNECA, 2015, p. 13). Contrary to public perception, the bulk of these illicit flows do not originate in corrupt government figures, smugglers of arms or diamonds or drug traffic (all of which obviously exist) but in transfers originated from the activities of legally established corporations, particularly, but not exclusively, in the extractive sector (mining). Since then, the scandal revealed by the Panama Papers and others have demonstrated that the secret offshore economy and the race to the bottom in tax policies (in an attempt to attract investors) not only hurt developing countries but also hurt the developed countries as well.

## **2. Walking the talk: The EU’s contribution to a sustainable development model**

After the financial crisis of 2008, with its aftermath of either recession or stagnation, those global challenges are not only relevant for developing countries, they are at the top of the international agenda and the concerns of citizens everywhere. The very future of the European Union is at risk as the continuation of “business as usual” pushes those left behind to support narrow, nationalistic, authoritarian alternatives.

The 2030 Agenda represents a window of opportunity for the European Union to regain its lost legitimacy and social cohesion among European citizens and Member States. In the first place, the 2030 Agenda offers the EU the chance to bring together its Member States around a united objective in which People, Prosperity, Planet, Peace and Partnership are put at the core. It is indeed in everyone's interest to overlook differences and achieve agreement on common issues such as social justice, social welfare and environmental protection. If EU Member States fail to cooperate in a timely and efficient manner on joint goals, they will soon become marginalised in the interplay between the US, Russia and China in all policy fields - trade, climate protection, poverty reduction and the promotion of democracy.

There are many areas in which the EU could redirect its strategies and policies in such a way that it achieves sustainable development while simultaneously reinforcing the European Project. The four dimensions of economic, social and environmental aspects of development, as well as good governance, are closely inter-related and sustainability depends on this interconnection. The EU could therefore unite its forces around these four dimensions.

The purpose of this volume is to offer a non-comprehensive selection of case studies offering ideas for EU innovative strategies and policies to move towards a sustainable development model. The book is divided into two main sections: 1) "Towards alternative fiscal and economic policies" looks at how the current economic, fiscal, environmental and trade policies and partnerships should be reshaped to ensure decent work and respect for labour, social and environmental rights; 2) "Towards equality of opportunity and access to quality education" looks more closely at policies aimed at enhancing people's capabilities, empowerment and participation through access to education, integration and equality of opportunity.

The new 2030 Agenda adds a new emphasis on reducing inequalities within and among countries to the traditional development goals of poverty eradication, changing unsustainable production and consumption patterns and promoting justice (from gender and climate justice to accessible court systems to protect human rights). The private sector is being convened, together with governments, civil society and international institutions, to contribute to the implementation of the 2030 Agenda. For that to be possible, many current practices, ranging from the undermining of tax systems to the promotion of informal economies, need to change. In the first chapter, **Leila Adim's** paper ventures into this largely uncharted territory, with in-depth analysis of the current situation and concrete policy proposals for the European Union to implement. The paper's innovative approach challenges the traditional thinking that multinational corporations necessarily increase living standards in developing countries and help formalise their economies. Instead, the article shows that multinational corporations' abusive practices are at the heart of their strategy, seeking profit maximisation and a reduction of costs at the expense of the population and the state economy, and it denounces these multinationals. The author focuses on two indirect consequences of multinational corporations' abusive practices: the corporate tax abuse and the abusive use of an informal labour force. In particular, the article highlights human rights violations that such practices perpetuate and the unfair situations they give rise to.

The second article by **Alexander Krenek** and **Margit Schratzenstaller** is based on the notion that the mobilisation of additional funds should be as efficient as possible, but they should also contribute to a reduction in income inequality. Indeed, increased domestic resource mobilisation is a key prerequisite for all countries to become more active in the fight against poverty, inequality and climate change. Most countries globally suffer chronically

from government budget deficits. Any additional spending on education, income redistribution, greener modes of production or consumption therefore depends on the availability of additional funds. Therefore, the authors suggest the introduction of an EU-wide wealth tax, as a potential sustainability-oriented tax-based own resource to fund the EU budget. This tax would naturally be highly progressive in terms of income redistribution. However, Krenek and Schratzenstaller argue that a wealth tax can be even more efficient than a tax on capital income because it is independent of the rate of return of the capital invested. It forces investors to look for higher rates of return, which tend to be more productive so they create more jobs.

With the 2030 Agenda for Sustainable Development and national development strategies, the pressure for an increase in financial resources to achieve the related goals and targets is even higher. As a result, resource-constrained governments in both advanced and developing economies have increasingly tapped into an array of Public-Private Partnership (PPP) mechanisms for projects that would not have otherwise been implemented due to lack of funding and technical expertise. However, PPP-funded projects are often perceived as a vehicle for the privatisation of public assets, with political stakeholders starting to demand improved social standards in PPP contracts. In her article, **Laura Panades-Estruch** proposes a 'reinforced social clause' in EU procurement policy as a solution to such concerns. It would also be a tool for the EU to protect rights at work and extend social protection, two main pillars of the decent work agenda. This is also in line with SDG 8 which says that all countries are now committed to the promotion of 'productive employment and decent work'. Drawing lessons from a similar social clause first introduced by the WTO in trade agreements, the article recommends that EU procurement policy includes additional awards criteria on quality. The author articulates why a 'reinforced so-

cial clause' in public-private partnerships is a more cost-effective and politically accountable alternative that has lower transaction costs than either public provision, privatisation or public-social-private partnerships. Estruch's analysis does not only offer policy recommendations for EU policy makers to raise labour standards in PPP contracts, it also outlines a feasible 'how-to' action plan to translate the 'reinforced social clause' into EU law.

In line with the objective of ensuring better protection for labour rights in the above paper, **Yentyl Williams's** article outlines an interesting analysis of social and labour standards in Economic Partnership Agreements with the African, Caribbean and Pacific (ACP) group of states, aimed at assessing their consistency with the Cotonou framework and its prospective evolution. Focusing on three African regions – the Southern African Development Community (SADC), the East African Community (EAC) and the Economic Community of West African States (ECOWAS) – the article provides a first insight into the trade-labour nexus in their most recent Economic Partnership Agreements (EPAs) with the EU. The author proposes an empirical investigation based on the comparison of legal texts, enriched with participatory observation in EU-ACP stakeholder meetings. Did African negotiators conclude EPA-light agreements which reflect their priorities by departing from labour provisions outlined in Cotonou, or did African EPA negotiators lose out by not carrying forward the labour (and social) provisions already included in the Cotonou Agreement into the EPAs? These are the questions Williams tries to address in her paper.

Beyond its social aspects, sustainable development also implies the consideration and integration of the economic and environmental aspects of each implemented policy. Although many argue that development is only possible through industrialisation accompanied by the extraction of human and natural resources as it was experienced by the so-called developed countries, the



contribution by **Diana Hanry-Knop** challenges this vision by presenting a case of successful development in which people's well-being and environmental considerations are in the foreground. Costa Rica indeed provides an excellent role model for implementing sustainable resource management and energy transition towards renewable energy sources, in a process where citizens' involvement has been simultaneously ensured. Such policies could provide ample insight into the EU's domestic and international policies in these fields. In particular, the paper highlights where the EU could engage with, and learn from, the successful experiences of sustainable development in developing countries.

The second part of the book looks into approaches, measures and policies that are needed to empower people, fight inequalities, facilitate inclusion and ensure access to education for all. The article by **Sylvain Aubry** and **Zizipho Zondani** critically explores the impact of private schools on the access to education of primary school-aged children in developing countries and acknowledges its complexity. The 2030 Agenda for Sustainable Development renewed the commitment to ensure access to equitable and quality education for all boys and girls as strongly expressed in SDG 4, envisaging a world of universal respect for human rights and dignity, where no child would be left behind. The responsibility of governments to ensure the right to quality public education, and the rapid growth of private schools in the developing world, has attracted considerable critical discussion recently. Will we ever succeed in achieving our ambitious vision of leaving no-one behind if education will not always be free, especially at the point of access? Does private education provision always fill a void created by state failure, or does it instead cause segregation and exacerbate existing socio-economic inequalities? According to the available literature, the evidence as to whether or not private schools provide a better quality of education is questionable, especially in the long run. The article published

here presents a rigorous review of the evidence of the impact of education privatisation in developing countries and on the role of donors in supporting this phenomenon, using the UK as an example. It investigates the topic through an *ad hoc* theoretical framework, which encompasses both SDG commitments and human rights obligations. Last but not least, it gives a serious pause for thought to the EU to strongly defend education as a public good and not as a commodity. The article emphasises the opportunity for the EU to stand out as a role model in the financing of education, by supporting further exploration of innovative sources. The concluding section highlights the urgent need for regulation of the private sector as well as a cautious EU monitoring role in international fora. This would ensure that the support for private schools will not deviate from the overall goal of developing the capacity of national education systems.

While the article mentioned above looks at privatisation in general, the article by **Antoni Verger** and **Mauro Moschetti** focuses on one particular form of non-State provision: the public-private partnership in education. By looking at the interaction between the private and the public, this article shows both sides of the issue. Set up as an innovative policy approach to providing education, especially in developing countries, the authors observe that public-private partnerships in fact face conceptual and practical challenges and limitations. Through their article, they aim to shed light on the concept of public-private partnerships and their implications in the field of education. Based on a 'review-scoping' approach, they assess the impact of public-private partnerships based on indicators such as equality and developed skills. This implicitly demonstrates that performance cannot be reduced to financial analyses only, but it should take the quality of learning, teachers, equity and other educational dimensions into consideration. Although acknowledging the fact that Public-Private Partnership may take education to areas

where public provision is insufficient or non-existent, in the end they propose exploring partnership frameworks other than those involving education privatisation and marketisation. This should promote capacity building in the state sector without generating dependence on the private sector.

Beyond the provision of quality education, the following article by **Juhar Yasin Abamosa** looks at another important problem, namely access to education for refugees in host countries. Indeed, the world is experiencing significant human mobility, part of which is driven by people having been forced to leave their home country. When they reach their host countries, refugees need to access information and acquire new skills to reconstruct their lives and integrate themselves into their new society. As part of their reconstruction, education matters considerably. Not only is education the best tool for developing skills and improving their full potential opportunities, it is also an important driver of equality and economic growth - hence their escape from poverty. Unfortunately, access to education for refugees and migrants is often very difficult due to the presence of several barriers. These barriers may be even stronger when it comes to accessing higher education. The article addresses this issue by exploring the main challenges the refugees face in their trajectories into higher education in their new countries. Based on a literature review, the author highlights the benefits of accessing higher education for both the refugees as well as for host countries. In addition, drawing his analysis from real experiences and cases, the author is able to identify six challenges to refugee's access to higher education, namely lack of information, poor language skills, the difficulty of getting foreign qualifications recognised, discrimination, long waiting times at the camps, and the lack of a flexible curriculum. Accordingly, counter measures are recommended to overcome the problems and help refugees realise their full development.

Finally, is inequality always an obstacle to fair and sustainable economic growth or can it also have a positive impact? Is equity a pre-condition for growth? These questions have haunted economists for a long time. They are still fiercely debated. Some think inequality is an inevitable component of growth, not the lesser of two evils but a necessary evil. Others see it as an obstacle to growth. **Juan Gabriel Rodríguez** contributes to this debate with an insightful proposition: not all inequality is bad. Some forms of it, like some forms of cholesterol in the human body, are good for the economy, or at least impossible to avoid as part of human nature. He distinguishes between inequality of opportunity and inequality of effort. Inequality of opportunity is always an obstacle to economic growth and must be eradicated. A level playing field is the best launching pad for economic growth. Inequality of effort is intrinsic to human nature. Combatting it through redistribution policies can dis-incentivise the best and therefore become an obstacle to economic growth. Some people are prepared to put in more effort than others: they must be encouraged and supported, because they will end up generating opportunities for everyone around them. Policy makers must ensure that all resources used to combat inequality have a positive impact on growth. For this reason, the distinction between inequality of opportunity and inequality of effort is extremely useful, as it clarifies those inequalities which must be eradicated and those which can be disregarded. It also helps to maximise the growth-inducing effects of inequality eradication both in Europe and in developing countries.

Since the adoption of the 2030 Agenda in September 2015, the EU still has to develop a comprehensive EU Sustainable Development Implementation Strategy with a timeline of 2030 that will enable the achievement of Sustainable Development both within the EU and externally over the next 15-year period. This Strategy should incorporate both internally and externally-focused EU pol-

icies and actions, as well as the external impact of those policies on third countries. The European Commission's Communication of November 2016 on 'sustainable European future: European action for sustainability' (COM (2016) 739 final), is a long way off providing clear guidance on how the EU will move towards a more sustainable development model.

We hope the articles selected for this collective book will provide some ideas to help this process.

It is time for the EU to move from vision to action.

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# **PART 1**

## **TOWARDS ALTERNATIVE FISCAL AND ECONOMIC POLICIES**





# TACKLING MULTINATIONAL CORPORATIONS' ABUSIVE PRACTICES TO PROMOTE INCLUSIVE GROWTH

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If the objectives of the 2030 Agenda for Sustainable Development are to be achieved, greater commitment is needed to single out and eliminate the systemic obstacles to inclusive growth and equality within and among countries. Hence, increasing attention should be paid to certain corporate business strategies that are creating mismatches in the global economy and hampering the improvement of the living conditions of millions of people all over the world. In fact, many multinational corporations systematically resort to abusive practices in order to maximise profits and minimise costs, causing direct and indirect damage to the population, especially in developing countries. These practices involve irresponsible exploitation of the territory, intentional negligence of basic safety standards and codes of conduct, as well as tax abuses and the use of informal labour. These last two abusive practices are rarely addressed in the analyses of the negative impact that corporate business strategies have on local populations, and due to the complexity of the schemes through which they are implemented, such practices cannot easily be countered. For this reason,

a country-by-country approach to the issue is necessary in order to stop the abuse. In this regard, the European Union (EU) has the ability and the power to demand information and more transparency from the multinational corporations operating within its borders and can actively contribute to fostering sustainable development.

## **1. Introduction**

Sustainable Development Goals (SDGs) 8 and 10 of 'Transforming our world: the 2030 Agenda for Sustainable Development', specifically address the urgency of promoting inclusive growth and equality within and among countries. The initiative, widely supported by the EU's Development Cooperation Policy, the Agenda for Change, raises awareness of the need to overcome those obstacles which hinder the development of many countries and hamper improvements in people's living conditions. Such obstacles mean that the provision of financial aid and implementation of social programmes may not lead to the effective fulfilment of such objectives, hence more attention must be paid to tackling the systemic causes of the existing economic and social disparities.

The barriers to access to the global market and its low level of regulation are probably the main 'economic' reasons why inclusive growth is not part of the globalisation process (Rosembuj, 2013; Sepúlveda Carmona, 2003). The global economy is, in fact, pervaded by *inequality spirals* arising from the behaviour of powerful economic players who dominate the market and use their expertise and resources to lobby states, bend rules and take advantage of regulatory loopholes (IBAHRI, 2013; Sen, 1998). The inefficiency of a global market which is detrimental to the weakest stakeholders and whose benefits are mainly shared among

a few powerful corporations is not only a cause for concern in economic terms. In addition to the negative consequences that global mismatches have on the economic growth of many countries, there is also the harmful impact that corporate abuses have on the individual (CHRGJ NYU School of Law, 2008).

Abusive corporate practices, which involve noncompliance with fundamental labour and environmental protection standards as well as aggressive tax and financial planning, are copiously used by some multinational corporations (MNCs) in the ambit of their 'race-to-the-bottom' business strategies. Accordingly, in order to maximise profits, MNCs intentionally avoid legal or moral obligations which imply evaluable costs and turn savings made into corporate benefits with no concern for the deleterious effects that these strategies may ultimately have on the population. This form of cost-cutting may damage people directly, when business strategies have the effect of worsening individuals' living conditions, and/or indirectly if, by reducing the available domestic resources, they limit states' ability to provide for citizens' needs.

Direct and indirect damages caused by MNCs will be addressed in depth in the next chapters in order to include corporate abuses among the systemic causes hindering inclusive growth and equality within and among countries and, above all, to determine how their eradication may contribute to the achievement of worldwide sustainable development.

With a view to finding instruments to counter MNCs' abusive practices and, in particular, measures which can be implemented at the EU level, this article focuses on the effects that business strategies involving the use of aggressive tax planning and/or informal labour may have on economic and social development and suggests the adoption of an approach based on global transparency and solidarity to promote inclusive growth and equality.

## **2. MNC's abusive practices as systemic causes of economic and social disparities**

The expansion of many corporations outside the boundaries of the country in which they are headquartered and the establishment of their subsidiaries and branches across more than one continent undoubtedly have their pros and cons. The effects of MNCs' business strategies tend to be favourable to final customers, since the cheapness of products and services sold by MNCs generally increases people's ability to consume, but when the effects are evaluated from other points of view the opposite seems to be true. When the low cost of MNCs' products is derived from responsible and sustainable economies of scale, the MNCs increase profits, final customers save money and there is also a benefit for most of the parties that are directly and indirectly concerned by corporate business strategies (i.e. the labour force, small enterprises, the factories' neighbourhood etc.). Conversely, if the territorial expansion of corporations is aimed at the maximisation of profits and at the indiscriminate minimisation of costs, their business strategies do not have such a positive effect and, as anticipated, they can also be harmful. These MNCs' abusive practices may damage many individuals directly, especially when 'race-to-the-bottom' strategies involve the brutal exploitation of the labour force or the territory in which they operate. In fact, the negligence of some MNCs towards occupational health and safety standards and their waste dumping practices have often led to serious diseases, the destruction of flora and fauna and famine in many developing countries (Hills and Welford, 2005; Watts, 2005).

The above-mentioned negative consequences of MNCs' abusive practices are the most evident and probably the most criticised, because the damages caused, and their corporate liability, are easily detectable. However, other MNC abuses, which are similarly deleterious, are rarely addressed, because their detri-

mental impact on the individual is indirect and results from highly complex schemes: this is the case of tax abuse.

### **Corporate tax abuse**

International concern about the negative impact of MNCs' abusive strategies in the ambit of taxation has increased significantly over the last seven years, ever since the recent financial crisis made national economies more vulnerable to market imbalances and made them particularly careful to safeguard the instruments able to mobilise domestic resources. Taxation has been considered as one of the few means of increasing the revenue of countries affected by economic recession and of gradually replacing international development aid (Actionaid, 2013; House of Commons, 2012; Pfister, 2009). A clear example of this general trend is reflected in the growing commitment that international organisations and states have demonstrated in the struggle against corporate tax abuse. On this point, it is worth mentioning that numerous initiatives involving financial and fiscal transparency, anti-fraud and anti-abuse measures have been recently implemented by many EU and non-EU countries, especially thanks to the impulse given by the Action Plan on Base Erosion and Profit Shifting (BEPS) elaborated by the G8 and the Organisation for Economic Cooperation and Development (OECD) (Murphy, 2012; OECD, 2014; Ruiz & Romero, 2011).

The renewed interest in protecting tax collection is also motivated by the general recognition that, apart from being one of the main sources of revenue for many countries, taxation is a mechanism aimed at contributing to people's wellbeing by virtue of its redistributive potential and its ability to raise funds for financing public expenditure in social programmes (Burgess and Stern, 1993; Gallo, 2007). Hence, affirming that MNCs' practices contrary to the letter and/or to the spirit of domestic and international tax regulations, by reducing states' revenue, are apt to slow

down economic growth, hinder the fair distribution of wealth and limit the possibility to improve individuals' living conditions, does not seem inappropriate (Adim, 2014; IBAHRI, 2013).

These negative impacts, which are undoubtedly deleterious for every state affected by MNCs' tax abuses, become even more worrying when the economies involved are those of developing countries. According to the Report of the High Level Panel on Illicit Financial Flows from Africa of 2014, the underdevelopment of many African countries is, to a large extent, a consequence of corporate abusive behaviours, because 65% of the money which illicitly leaves the continent derives from practices of tax avoidance and tax evasion implemented by big companies in the ambit of their business strategies (HLP, 2014).

The amount of tax revenue lost by developing countries due to corporate abusive practices may vary depending on the assets taken into account in the ambit of specific surveys and estimations, but none of these analyses denies that MNCs' tax abuses have a detrimental impact on developing countries' economies. Conversely, international and civil society organisations as well as economists, widely agree on the fact that developing countries will be much richer and self-sufficient if corporate tax abuses are countered. Global Financial Integrity (GFI), for example, estimates that African countries have lost \$854 billion in cumulative capital flight over the period 1970-2008 and, by considering the assessment made by Oxfam in 2000, this amount may even double if it is assumed that Africa is dispossessed of \$50 billion per year due to corporate profit shifting. The aggregate figure for the capital leaving developing countries through mispricing of international trade and fake transactions is also impressive and confirms the already mentioned analysis: developing countries lose \$350 per year due to tax abuse (GTZ, 2010).

The list of MNCs' abusive tax practices generally includes tax losses deriving from illicit financial flows such as bribery, corrup-

tion and money laundering as well as tax abuses *strictu sensu* involving tax evasion, tax avoidance and shifting of profits to territories offering low or no-taxation on specific assets and bank secrecy. Problems related to these kinds of practices have always been present due to the existing differences among tax systems, however the danger of tax abuse has significantly increased with the advent of globalisation, since it 'extends the range of opportunities to circumvent taxation while simultaneously reducing the risk of being detected' (GTZ, 2010). Some MNCs, aware of their almost unlimited opportunities to take advantage of their presence in several different countries at the same time and to avoid regulations in the territories where the law imposes higher burdens and stricter controls over their activity, have found in the lack of uniform regulations within the global economy their precious ally. Nevertheless, these abusive tax practices, which for the reasons already explained are countered by many countries with the aim of safeguarding domestic resources, are only a part of the harmful strategies implemented by MNCs.

Tax abuse, by affecting the state's ability to provide for the common wellbeing through taxation, causes indirect damage to the population, but the analysis regarding MNCs' abuses also includes practices that are both directly and indirectly detrimental to people.

### **Corporate abusive practices involving the use of informal labour**

There is an argument, strictly related to tax abuse, that has been rarely addressed within the context of MNCs' abusive practices and which deserves specific mention in the discourse regarding the prejudicial effects that corporate strategies have on the individual: informal work. The informal economy, by leading to multilevel evasion of taxes and social security contributions, adds to the impact of tax abuse, in terms of reduction of resources



for financing social programmes and fair income and tax burden distribution, and other negative consequences. According to Cobham, the informal economy deprives developing countries of \$285 billion in tax revenue per year, but its overall damage to people and other enterprises may be dramatically greater (Cobham, 2005). As a matter of fact, capitalising on informal work means keeping unions out of and far from the workplace, minimising corporate costs by eroding labour rights and causing direct damage to the worker who, in most cases, is underpaid, overworked and exposed to health risks (Portes and Haller, 2004). Overwhelming evidence about this kind of practice has been collected since the collapse in 2015 of Rana Plaza, the Bangladeshi garment factory which manufactured, through the labour of many informal workers, the clothes that MNCs sold in the global market. Such a tragedy, involving over 1,000 deaths and more than 2,000 injured people, due to the lack of safety standards at work, shed light on many abusive practices implemented by MNCs in the ambit of their business strategies.

Additionally, it cannot be forgotten that corporations using informal labour create unfair competition and have a negative impact on the growth and the subsistence of other undertakings. However, despite the potential and effective detriment brought about by these practices, it should be highlighted that they are not commonly regarded as 'global abuses'. In fact, the informal economy is generally conceived as a 'national problem', because it undermines the economic growth of those states which, due to its widespread presence, lose a significant amount of revenue. In the context of the global economy, nevertheless, the issues regarding one country always have an impact on others and the presence of corporations which minimise costs by using the informal labour force undeniably alters market balances. By way of example, it can be argued that the elimination or the reduction of the duty to contribute to workers' social security, resulting from

the payment of 'envelope wages' to people formally employed for less hours than those effectively worked, may lead to illegitimate savings in production costs, to decreases in the final price of goods and to illicitly increasing the enterprises competitiveness (Williams, 2013).

The reference to quasi-informal work, highlights that the informal economy's ability to harm the global economic environment depends on its interactions with the formal economy, thus on the fact that informal labour contributes to the production of goods sold in the ambit of the formal economy. The same assumption can be confirmed by taking into account employment relationships which are completely informal and aimed at providing cheaper products and services. Therefore, it can be said that the perverse linkage between the informal and formal economy increases the deleterious effects of the informal economy, because it adds to the direct damage to the worker and to indirect damage to the whole population - by means of the tax revenue erosion - and to unfair competition.

The extent of the problem of unfair competition and the informal economy depends on the characteristics of the market in which enterprises employing informal workers operate and on the number of competitors. Thus, if the activity of such enterprises is limited to the local market their conduct will affect fewer competitors than those undertakings which operate both locally and nationally. This assumption would confirm that, even in the ambit of unfair competition, the informal economy is a 'national problem', but what happens when the enterprise using informal labour is a corporation that operates internationally? By following the same reasoning, the answer seems clear: in this case, the unfair competition affects a higher number of competitors at the global, national and local level. Thus, at this point, recognising that these practices are 'global abuses' would not be improper.

Nevertheless, the discourse is more complicated than it may seem, because undertakings operating in more than one country rarely employ informal workers and use other strategies for saving labour costs. In most cases, MNCs that aim at capitalising on non-compliance with tax payments and other legal duties in order to minimise labour costs and increase their profits in the 'formal' global market, subcontract other enterprises which employ informal workers for producing/extracting the goods or providing the services that MNCs require. Such outsourcing does not exclude the unfair competition that the corporation causes by subcontracting enterprises that employ informal labour. In fact, in the hypothetical situation in which two corporations (A and B) sell the same good and only one of them (B) uses informal labour at some stages of production, the competition between them would not be fair and their impact on the global market may be completely different (table 1).

**Table 1: Differences in labour costs\* for the production of one piece (three hours of work) between two corporations competing unfairly**

	Corporation A	Corporation B
Net wage (per hour)	3	1
Social Security Contributions (per hour)	1	-
Taxes (per hour)	1	-
Subcontractor earnings	2	2
Total labour cost (per hour)	7	3
Total labour cost (per piece)	21	9
Difference in labour costs	12	

\*values expressed in units

According to the example, the net wage per hour established by law is three units and the contribution to social security is one unit, plus taxes. Corporation A uses the labour force provided by a subcontractor which employs all the workers formally and one hour of work costs Corporation A six units, while Corporation B, that behaves as a monopolist, establishes that the total price for one hour of work cannot exceed three units. The second subcontractor cannot afford to employ a formal worker if the maximum that corporation B would pay for labour is three units and, with the tacit acceptance of B, resorts to informal labour. By employing informal workers, the subcontractor of B can earn the same as the subcontractor of A, but the worker will receive only one unit of net wage per hour and no social security contributions or taxes would be paid<sup>1</sup>.

### **The effects of MNC's abusive practices involving the use of informal labour**

By analysing the business strategies of the two corporations, it can be observed that the difference between the labour costs of A and B on the basis of the final good produced (hourly labour cost X three hours of work) is 12 and this value may express the evaluable indirect and direct damage caused by B to states and people. It also shows how B will probably compete unfairly in the global market. The amount abusively saved by B can be directly transformed into profits creating an unjustified enrichment, or can be used in order to increase its competitiveness. This second circumstance does not exclude unjustified enrichment and or postponing it to a future moment; in the meanwhile, the 12 units saved are used for partially decreasing the sales price or are invested in achieving more visibility and market power. Corporation A, which pays 12 units more than B, will sell the same good at a price which is higher than that charged by B in order to cover labour costs, or at the same price of B (table 2).

**Table 2: Consequences of the use or non-use of informal labour in terms of competitiveness**

Sales Price* of A	Sales Price* of B	Earnings	Competitiveness	Consequence
100	88	Same earnings (if A discounts the extra -12-spent in labour costs)	More competitiveness for B	B has a better sales price, thus more chances to sell the good and to grow in the future
100	100	B earns more than A (because B does not have to discount an extra in labour costs)	B has more money to invest in order to increase its competitiveness	If B establishes the same sales price as A, B has more chances to grow in the future
88	88	A earns less than B	Same competitiveness	If A establishes the same sales price as B, A has less chances to grow in the future

\*values expressed in units

In the three cases, B has a competitive advantage thanks to the use of informal labour while A cannot improve its market power due to the abusive practices implemented by B. Consequently, the conduct of B creates unfair competition<sup>2</sup>.

As observed, corporate abusive practices may be characterised by monopsonistic conduct and it is not unusual that MNCs, which dominate the global market, exercise their lobbying power to oblige their subcontractor to - illicitly - reduce prices. Such conduct raises important concerns regarding developing coun-

tries' economic and social growth, since the informal economy, which comprises one-half to three-quarters of non-agricultural employment in these territories (Chen, 2007), represents an obstacle to development and an important source of savings - thus, of wealth - for those MNCs which impose low production prices and oblige their subcontractors to outsource production to informal enterprises and informal workers.

Within the broad ambit of the informal economy, there is a sector that only exists, it could be argued, because of its strong link with MNCs. This is the set of informal activities which serve global supply chains. Informal enterprises and workers, subcontracted by MNCs in territories in which there is deficient surveillance of compliance with tax norms and labour rights, may become important links in the supply chain, especially in the manufacturing sector, because they significantly reduce MNCs' production costs (Carr and Chen, 2002). Overwhelming evidence about the use of informal labour within MNCs' supply chains can be found in the garment industry of Asian and Latin-American countries where, by taking advantage of the special and permissive regulations of Export Processing Zones, MNCs' production of clothes is carried out in sweatshops or at home by informal workers (Amengual, 2010; Anner and Hossain, 2014; Barrientos, Gereffi and Rossi, 2011; Lee, 2016). The use of these practices is also common in other sectors in which the labour force required can be unskilled, such as agriculture (Barrientos and Kritzinger, 2004).

The intervention of the state in countries facing problems related to MNCs' abusive practices plays an important role in the elimination of their deleterious effects at national and at international level. However, in some countries where high levels of informality are estimated, there is often a lenient attitude towards the informal economy, for two main reasons. The first is the low institutional quality; the state is not able to provide for the needs of the population and accepts some compromises in order to

prevent social conflict. One of these compromises is a tacit acceptance of the informal economy which, on the one hand, exempts the state from the responsibility to create formal employment and, on the other, gives citizens a small chance to subsist (Amendola and Dell'Anno, 2008; Chong and Gradstein, 2007). The second reason is the country's economic dependence on the exportation of goods and raw materials. The effects of MNC lobbying in this ambit are evident and the competition among exporting countries is so high that in many cases the lax control over MNCs' activities is the only way to maintain necessary trade relationships (CESR et al., 2015).

A simple assessment of the effects of the informal economy shows that there are few positive outcomes deriving from informality and that its negative impact exceeds the scarce and precarious benefits it brings to the individuals carrying out informal activities. Conversely, the informal economy may provide greater benefits to MNCs and lower overall expenses.

However, the profits obtained by MNCs through the implementation of these abusive practices are immoral benefits, due the detriment caused directly and indirectly to the people. From a stricter "social" point of view, apart from the above-mentioned erosion of labour relations, it should be recalled that in both developed and developing countries, the informal economy absorbs more women than men due to the greater difficulty faced by the female labour force in finding formal occupations (Chen et al., 2005; ILO, 2002; Wick, 2010). The abusive practices of MNCs, including resorting to informal labour, therefore contribute to increasing gender disparities and women's vulnerability in the working environment. Additionally, it is important to highlight that MNCs' abusive conduct leads to the further impoverishment of many countries and that the violation of labour rights caused by aggressive business strategies worsens the precarious living conditions of many individuals who, in the pursuit of bet-

ter opportunities for themselves and/or their families, resort to migration to other countries as the only available way to escape poverty (UK DFID, 2007). Such an assumption suggests not only the existence of a relationship between MNCs' abusive practices, poverty and migration, but also a consequential nexus between corporate abuse and economic migration.

### **3. MNCs' abusive practices and human rights' violations**

The overall impact that corporate abuses have on the individual's living standards leads to the conclusion that some MNCs' conduct creates a series of negative consequences that can affect various parties in different places and timeframes to a lesser or greater extent and that, in any case, it provokes distortions at the global level. The argument necessarily draws attention to breaches of the Economic Social and Cultural Rights - included in the Universal Declaration of Human Rights and endorsed by the Charter of Fundamental Rights of the European Union - which set out the basic standards for guaranteeing a decent existence to every individual. MNCs' abusive practices involving the use of informal labour can be considered as direct violations of the rights related to work and social security, while a broader and deeper interpretation of article 2.1 of the International Covenant on Economic, Social and Cultural Rights, would lead to the conclusion that MNCs which include tax abuses in their business strategies could be considered accountable for the decrease in the "maximum of available resources" that states must employ for realising economic and social rights.

Tax abuses and the informal economy, given the purpose for which they are employed by some MNCs, contribute significantly to worsening individuals' living conditions, while also representing a systemic threat to inclusive growth owing to their clear tendency



to create mismatches in the global economy. However, the recognition that MNCs' abusive practices hinder the equal enjoyment of the benefits of globalisation does not exclude the existence of other factors leading to the rise in economic and social disparities and hampering improvements in individuals' living standards. The inadequacy of legal systems, corruption and the inefficiency of inspection, control and detection mechanisms also stifle inclusive growth, but these factors are more related to the low institutional quality of the state than to the conduct of MNCs. In this regard, it should be pointed out that human rights law offers protection against misconduct of the state which inflicts direct and serious damage on individuals, but not against abuse by third parties, which cannot be held accountable for human rights violations (Taboada Calatayud, Campo Candelas and Pérez Fernández, 2008). Thus, while the human rights' framework could be used in order to promote inclusive growth and to oblige states to invest in 'achieving progressively the full realisation of economic and social rights' (Art. 2.1 ICESCR), the same instrument cannot be used for countering MNCs' abuses. For this reason, the Human Rights Council accepted the proposal of the Ecuadorian government and in June 2014 adopted resolution 26/9 further to which an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was established in order to elaborate an international legally binding instrument for regulating corporate activities in the ambit of international human rights law. During the consultations which followed the resolution, states' representatives, intergovernmental and non-governmental organisations agreed that the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises already provide important guidance for corporations, but that they should be reinforced by a solemn corpus of rules establishing the enterprises' duty to respect human rights law as well as their accountability in

the case of violation of these fundamental standards. The need to elaborate an international treaty with a victim-centred approach has been stressed consistently and calls have been made to establish an international tribunal for investigating and ensuring MNCs' accountability. Some legal systems now include mechanisms for prosecuting the perpetrators of human rights violations before national courts even in cases in which the parties involved do not reside in the country where the trial is carried out and/or the violation is committed outside national territory. These proceedings, founded on the principle of universal jurisdiction, have in some cases led to the punishment of MNCs for human rights' violations, especially in the ambit of the Alien Tort Claim of the United States, but in other cases the lack of binding instruments for the protection of human rights against corporations has prevented the victims of MNCs from accessing judicial remedies. Consequently, the introduction of the aforementioned international treaty would help give protection against MNC abuses, even in the absence of international tribunals.

Nevertheless, it seems that the safeguards that an international binding instrument may give are limited to protection against corporate abuses which can be easily proven by providing the evidence of direct damage to the individual. This excludes the possibility of prosecuting MNCs for the human rights violations perpetrated through complex schemes involving scapegoats and frontmen and reduces their accountability for indirect damage to the population.

#### **4. Tackling MNCs' abusive practices: The EU contribution to sustainable development**

SDG 8, for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, and SDG 10, for the reduction of inequality within

and among countries, both include, as well as a call to support pro-poor policies by favouring domestic resource mobilisation, the demand for fairness in tax issues and the responsible management of supply chains. Every effort aimed at achieving these SDGs may therefore lead to increasing interest in countering business strategies which involve tax abuse and the use of informal labour.

With the Treaty of Lisbon, the European Union has demonstrated a firm commitment to development, which has been confirmed by the European Agenda for Change adopted in 2011 and by the European Commission actions supporting the 2030 Agenda and the SDGs, and many cooperation and financing initiatives aimed at supporting developing countries in the process of enhancing their legal standards have been recently implemented. Accordingly, it is worth mentioning the 'GSP+ scheme', that implies the full removal of tariffs on exports to the EU for those developing countries which ratify and implement international conventions relating to human and labour rights, the environment and good governance, Aid for Trade, aimed at financing developing countries' efforts to develop and expand their trade and reduce poverty, the 'Mineral Production Monitoring Support Project' for enhancing regulation and monitoring of mineral extraction in Zambia and increasing tax collection from mining, and the 'Bangladesh Sustainability Compact', that in response to the Rana Plaza tragedy, helps Bangladeshi authorities to improve labour rights and occupational safety and health in the garment sector. Consistent with this last programme, in 2015, the European Commission started to evaluate the possibility of launching an EU initiative on responsible management of supply chains in the garment industry (the EU Garment Initiative) and is currently undertaking a consultation process on the issue (Binder, 2016).

The implementation of the above-mentioned programmes undeniably proves that the EU's commitment to sustainable

development is far from being a mere declaration of principles. However, whilst praising such initiatives, it should be also highlighted that, although the EU agrees on the need to counter the detrimental business strategies which hinder inclusive growth in developing countries<sup>3</sup>, it does not go beyond support and cooperation. More efforts are needed to counter MNC abuses, and while recognising that the EU institutions cannot enforce specific measures in developing countries due to their lack of jurisdiction outside EU borders, other actions can be taken at the EU level.

Given that, as previously mentioned, the complexity of the abusive strategies implemented by some MNCs makes it difficult to hold them liable for all the damage caused to individuals, revealing the way they really operate is all the more necessary in order to stop the abuses. In this respect, the fact that most MNCs have a stable presence within European territory, may give the EU institutions legitimate cause to require information regarding their business activities in order to shed light on abusive conduct. In fact, obstacles to protecting of the victims of every kind of corporate abuse can be overcome only by accessing information regarding the whole structure of MNCs, the way they operate in every country and the strategies used to maximise their profits.

As said, many states have recently started to take action against corporate tax abuse by monitoring MNCs' activities and by requiring more transparency in their financial statements under the input of the BEPS and it can be even presumed that the expectations related to the achievements of the SDGs may also motivate states to supervise MNCs' activities with the aim of tackling other abuses, beyond taxation.

The progress made over the last five years by EU Member States in combating tax abuse is the result of common policies aimed at increasing financial transparency through the automatic exchange of information between tax authorities and the country-by-country-reporting for extractive and logging industries<sup>4</sup>

and credit institutions<sup>5</sup>. The country-by-country reporting followed the Accounting Directive (Directive 2013/34/EU) of the European Parliament and Council, which establishes the obligation for corporations to send a yearly financial statement to the Member State in which they are located. The quantity of information requested increases with the size of the enterprise and stringent requirements are demanded of public interest entities. The enforcement of the directive is left to Member States which, by following the guidelines of the directive, transpose its content into their legislation in order to stem tax abuses at the national level. Additionally, in accordance with an amendment<sup>6</sup> to the Accounting Directive, enterprises with more than 500 employees are also obliged to report non-financial information on environmental matters, social and employee aspects, and this can be seen as an important step towards the recognition of the corporate social responsibility of some enterprises. However, this directive applies almost exclusively in EU territory and has little influence on many MNCs' abusive conduct.

The European Commission has therefore adopted a proposal for a Directive which will oblige EU and non-EU multinational groups whose turnover exceeds €750 million per year to disclose publicly information on the income tax they pay in each Member State, the aggregate figure on taxes paid for business conducted outside the EU and tax information on a disaggregated basis for operations carried out in those tax jurisdictions that do not abide by tax good governance standards (so-called tax havens). This yearly country-by-country reporting will include information on the nature of the business activities, the number of employees, total net turnover - and the turnover made with third parties as well as between companies within a group -, pre-tax profits, the amount of income tax due in a country based on the profits made there, the amount of tax actually paid during that year, and the accumulated earnings.

The information will be made available in a stand-alone report on the company's website in order to allow people to know how much MNCs contribute to tax revenue. The requirement to make the figures publicly available has been found to be fundamental to giving consumers the possibility of making an informed choice. It has been proven that informed consumers tend to reject products and services deriving from abusive practices and that their decisions are able to positively influence the conduct of MNCs<sup>7</sup>. In addition, due the public availability of these reports, some developing countries' tax authorities will also benefit from financial information that they cannot easily obtain due to their lack of expertise in tax and financial matters, by finding out if MNCs operating in their territories shift profits to offshore jurisdictions, enabling them to take action against tax abuses in a more effective way.

This country-by-country reporting does not replace the financial information that corporations that have a presence in the EU have to provide to Member States' tax authorities in accordance with the Administrative Cooperation Directive<sup>8</sup>, nor the non-financial statement required for enterprises with more than 500 employees. However, it cannot be denied that the application of similar standards to non-financial statements would be useful for guaranteeing higher sustainability in the ambit of MNCs business strategies. Non-financial statements provided on a country-by-country basis and publicly available, in fact, would stimulate fairer corporate governance at the global level and the enhancement of living and working conditions in many developing countries.

The introduction of the duty to provide integrated country-by-country reporting including both financial and non-financial information for every MNC whose turnover exceeds €750 million would be aimed at dissuading MNCs from implementing abusive practices rather than sanctioning them after the fact. Although such a regulation would be enforced through the mechanisms

of the current directives<sup>9</sup>, the main purpose would be that of favouring inclusive growth. Hence, sanctions deriving from non-compliance with standards of fairness and sustainability would be the vehicle for holding MNCs liable for the detriment caused to individuals through abusive practices, thereby ensuring more responsible global corporate governance. Evidently, the costs associated with this kind of disclosure would be higher than those paid by corporations for filing the current financial and non-financial statements<sup>10</sup> especially in cases in which MNCs have never collected similar data, but as reiterated on many occasions by the European Commission most of the information that may be shared on a country-by-country basis is already recorded by MNCs for monitoring their entire business activity or for complying with the standards established by international organisations. Excessive costs would not be a valid reason therefore for not providing an integrated report on an MNC's activities, especially if it is assumed that the benefits for society as a whole would far outweigh MNCs' additional expenses.

## **5. Conclusion**

Throughout the paper it has been observed that the global dimension of corporate abuse simultaneously affects many individuals in different places, making it difficult to monitor the full effects of MNCs' activities.

The EU's lack of jurisdiction beyond its borders cannot be considered as a valid reason for not detecting abusive practices, because even when the abuse takes place far from the EU, it affects the European economy. For this reason, while designing future policies aimed at tackling MNCs' abusive practices, the EU Parliament and Council should not be concerned about exceeding their powers, because monitoring the entire supply chain of the enterprises operating in Europe is within their rights. Wider

surveillance over MNCs' activities including the monitoring of their monopsonistic relationships would undoubtedly reduce their abusive practices and transform the global economy into an environment with more integrity, fairness and opportunities, because most corporate abuses are not directly committed by the parent company, subsidiaries and agents, but by suppliers and subcontractors which, in spite of being external to MNCs are obliged to follow their instructions.

Thus, it can be concluded that, probably, by addressing MNCs' abuses in all their nuances, by identifying their apparent and obscure prejudicial practices, by focussing on substance over form, inclusive growth could finally become a reality and, through the introduction of integrated country-by-country reporting for MNCs, the EU would be the launching pad of a new globalisation era going beyond just free market and trade to include freedom from corporate abuse.

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## Endnotes

- <sup>1</sup> *The example provided focuses on the existing disparities between monopsonistic and non-monopsonistic corporations, for this reason the role of the subcontractor is not analysed in depth. In order to highlight the unfair competition arising from the use of informal labour force, it has been decided to put both subcontractors on the same level in terms of earnings. However, the minimisation of costs of a monopsonistic corporation may also affect the subcontractor, who may earn less than the subcontractor of the non-monopsonistic corporation.*
- <sup>2</sup> *Table 2 shows how abusive practices involving the use of informal labour force may damage competitors and different formal economic markets. In fact, by excluding every reference to the global market, the same table can be also used for observing the impact that this kind of unfair competition may have at the local and at the national level.*
- <sup>3</sup> *In fact, following the example of the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the UN Global Compact, the European Commission is currently working on an EU Action Plan on Responsible Business Conduct.*
- <sup>4</sup> *Directive 2013/34/EU and Decision 2016/1910.*
- <sup>5</sup> *Directive 2013/36/EU and Regulation 575/2013.*
- <sup>6</sup> *Introduced by Directive 2014/95/EU.*
- <sup>7</sup> *Although it does not include tax abuses, the Russell Athletic case is very emblematic in terms of informed choice and publicity, because the cross-border solidarity between trade unions, students and schools led to the re-hiring of 1200 Honduran workers (Anner and Hossain, 2014).*
- <sup>8</sup> *Directive 2011/16/EU.*
- <sup>9</sup> *According to the original proposal of the European Commission “in case of non-compliance, the penalties already provided in the Accounting Directive would apply. National competent authorities or courts would be entitled to impose fines on companies. These penalties would have to be effective, proportionate and dissuasive. In the case of non-EU multinational enterprises, penalties could fall on all of their EU medium-sized or larger subsidiaries; or on their EU branches”(EC, 2016).*
- <sup>10</sup> *According to EU data the costs amount to approximately €5,000 per year for the non-financial statements, while financial statements should not have additional costs for enterprises because they include most of the information required by the Administrative Cooperation Directive.*

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# SUSTAINABILITY-ORIENTED EU TAXES: A EUROPEAN NET WEALTH TAX

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The increase in wealth inequality in many EU countries has spurred renewed interest in wealth taxation. While taxes on wealth for a long time have played only a marginal role in public finance and taxation literature, in the more recent literature a variety of arguments have been put forward in favour of (higher) wealth taxation in general and in Europe in particular. Most of these arguments directly or indirectly refer to the potential of wealth taxes to contribute to various dimensions of sustainability, in particular to economic, social, and/ or institutional/ cultural sustainability. Tax competition has led to an almost complete disappearance of pure net wealth taxes in Europe. EU-wide implementation of a net wealth tax based on harmonised tax provisions may serve as a first step in a longer-term move to a stepwise expansion of net wealth taxes on a global scale in the form of concentric circles. By dealing with non- and underreporting in the Household and Consumption Survey (HFCS) data set provided by the European Central Bank, we are able to estimate wealth distribution within 20 EU Member States.

Applying a progressive tax schedule with a tax rate of 1% for net wealth above €1 million and 1.5% for net wealth above €5 million on these adjusted wealth distributions yields potential tax revenues of €155 billion, taking into account the behavioural responses of individuals triggered by net wealth taxation. Given the positive sustainability properties of a wealth tax with regard to economic efficiency and social inclusion, a European wealth tax offers itself as an interesting candidate for sustainability-oriented tax-based own resources to finance the EU budget.

## **1. Introduction**

The taxation of wealth, although hotly debated in political discourse, has traditionally attracted surprisingly little attention in theoretical as well as empirical public finance and taxation literature (Cremer and Pestieau, 2011). It has moved up the agenda in academic literature (see, e.g., Boadway, Chamberlain and Emmerson, 2010; Cremer and Pestieau, 2011; Kopzcuk, 2013; Piketty, 2014) as well as in more policy-oriented contributions (see, e.g., Iara, 2015), only recently, against a background of increasing wealth inequality (Piketty and Zucman, 2015), which now exceeds income inequality in most industrialised countries (Keeley, 2015; Brys et al., 2016). One driving factor is that tax policy is a determinant of growing wealth inequality, with the continuous erosion over the last decades of progressivity in tax systems (Förster, Llana-Nozal and Nafilyan, 2014). In particular, there is renewed interest in the taxation of net wealth, which currently is practiced in very few countries worldwide.

An argument often put forward against a tax on net wealth is that it cannot be enforced effectively on the national level due to legal and illegal forms of tax avoidance and tax competition

based on the international mobility of assets (Boadway, Chamberlain and Emmerson, 2010). However, as Cremer and Pestieau (2011) rightly point out, this (at least with regard to financial assets) valid argument should not lead to the conclusion that the tax should be eliminated, but rather calls for strengthening international cooperation and coordination. Unfortunately, in the literature, proposals for an internationally coordinated approach to implement a net wealth tax are scarce. One rare exception is Piketty (2014) who suggests the introduction of a progressive global wealth tax, or at least a European wealth tax in a first step, with revenues going into national budgets. In the same vein, Piketty, Saez and Zucman (2013, p. 14) declare '... a coordinated wealth tax [...] a logical response...', particularly in Europe, to counter the ongoing erosion of wealth taxation.

This paper sets out a slightly different proposal aimed at the creation of a framework to support the effective taxation of net wealth in the EU: namely by introducing an EU-wide net wealth tax as one sustainability-oriented tax-based own resource to finance the EU budget. More precisely, the proceeds from a net wealth tax levied by Member States based on a harmonised design should be remitted to the EU to replace – within a fiscally neutral approach – a part of current EU own resources which are to be criticised, *inter alia*, for their lacking sustainability-orientation<sup>1</sup>. The current EU system of own resources hardly contributes to central EU policies (European Commission, 2011; High Level Group on Own Resources, 2016). In particular a link to the overarching goal of sustainable growth and development in its three dimensions, as anchored in the Europe 2020 strategy aiming at 'smart, inclusive and sustainable growth' (European Commission, 2010) or in the 2030 Agenda for Sustainable Development (European Commission, 2016), is missing. Our proposal is intended to serve as an input for the debate about the next Multi-Annual Financial Framework 2021 to 2027 and the adoption of an EU



overarching strategy to implement the 2030 Agenda for Sustainable Development. In particular, it aims at delivering one element for a strategy to mobilise domestic resources for sustainable development.

## **2. Taxing wealth: Why and how?**

### **Rationale for taxing wealth**

While, as indicated above, taxes on wealth for a long time have played only a marginal role in public finance and taxation literature, probably not least due to the generally sceptical attitude of a majority of economists towards these taxes (for an overview see section 2.2), in the more recent literature a variety of arguments have been put forward in favour of (higher) wealth taxation in general and in Europe in particular. Most of these arguments directly or indirectly refer to the potential of wealth taxes to contribute to various dimensions of sustainability, in particular to economic, social, and/ or institutional/ cultural sustainability. Regarding a role for the improvement of environmental sustainability, economic/ public finance literature on wealth-based taxes has so far remained silent. It is impossible to fill this gap within the scope of this paper. However, it is obvious that further research on the question of how wealth taxation may contribute to a more inclusive structure of wealth as the productive base of a society is urgently required<sup>2</sup>.

### **The social dimension of wealth taxation**

A first justification for the taxation of wealth is based on the ability-to-pay-principle, according to which wealth, besides income and consumption, is a central indicator of individual taxpayers' ability to pay (Messere, de Kam and Heady, 2003). According to the IMF (2013), wealth is a better indicator of ability to pay than

income. Piketty, Saez and Zucman (2013) point out that particularly for top wealth holders income flows often cannot be determined easily, which provides an important rationale for a progressive wealth tax. Wealth adds to the ability to pay by increasing prestige, individual security and options for economic and political influence (Iara, 2015). Moreover, returns on assets are characterised by higher reliability and continuity vis-à-vis earned income. The increase in wealth and inheritances as well as their growing inequality which can be observed in many OECD and EU countries (Piketty and Zucman, 2015; Brys et al., 2016) reinforce this argument. Deepening wealth inequality strengthens the call for more redistribution through tax policy in general and through wealth taxes in particular: the more so as the general progressivity of tax systems has declined since the beginning of the 1980s in many OECD and EU countries and has thus weakened tax systems' contribution to social inclusion (Piketty, Saez and Zucman, 2013; Förster, Llena-Nozal and Nafilyan, 2014; Godar, Paetz and Truger, 2016). Limiting wealth inequality is one important precondition to improving equality of opportunity and is therefore one recurring crucial argument for the taxation of wealth which was already brought forward, for example, in the Meade Report (Meade, 1978). Equality of opportunity again strengthens not only social inclusion, but also economic efficiency (Keeley, 2015). Not least, the contribution of the very wealthy to budget consolidation in the aftermath of the financial and economic crisis has been rather limited in EU countries. Considering that the owners of wealth benefited the most from government rescue measures, a particular contribution by this group via wealth taxes, to help consolidate public finances, appears justified against this backdrop (Iara, 2015). Negative social and political externalities of growing income and particularly wealth inequality and concentration are also increasingly attracting the attention of economists (Stiglitz, 2012; Atkinson, 2015) and are being put forward as one

motivation beyond the traditional distributional arguments for taxing wealth (see, e.g., Kopczuk, 2010).

### **The economic dimension of wealth taxation**

Another argument in favour of wealth-related taxes, their relative growth-friendliness, addresses the economic dimension of sustainability. Recent cross-country econometric analyses (e.g. Arnold et al., 2011; Acosta, Ormaechea and Yoo, 2012; Xing, 2012) give strong support to the hypothesis that taxes on wealth and inheritances represent the comparatively least growth-damaging tax category. As their impact on individual decisions about labour supply and investment in (human) capital is rather limited, property taxes should have relatively small growth-inhibiting effects. According to the 'tax and growth-hierarchy', corroborated empirically by these studies, a revenue-neutral shift of the tax burden towards taxes on wealth, in particular away from taxes on earned income, would improve tax systems' growth-friendliness. Related to this is the argument that increasing wealth inequality can be expected to impact negatively on economic growth via various channels (Bagchi and Svejnar, 2013; Ostry, Berg and Tsangarides, 2014; Cingano, 2014; Iara, 2015; Stiglitz, 2016), which strengthens the economic case for wealth taxation: one of these channels being the afore-mentioned contribution of wealth taxes to equality of opportunity.

Wealth taxes may also improve economic efficiency. Besides their potential contribution to equality of opportunity, they may exert additional efficiency-enhancing effects via various other channels. Recurrent wealth taxes include incentives for employing assets productively, as the effective tax burden decreases with returns (OECD, 1988; Norregaard, 2013). Assuming that asset returns reflect the productivity of investments, taxes on wealth may support an efficient allocation of resources. Moreover, in the context of the financial and economic crisis certain wealth taxes have been discussed as corrective taxes. One example are taxes

on the financial sector aimed at decreasing particularly risky and potentially destabilising transactions on financial markets (IMF, 2010): in particular a general financial transactions tax dampening short-term, highly speculative financial transactions (Schulmeister, Schratzenstaller and Picek, 2008), and a banking levy counteracting excessive indebtedness of banks which may endanger financial market stability (de Mooij, Keen and Orihara, 2013). The European Commission identifies the potentially stabilising role of a property tax in the case of real estate bubbles (European Commission, 2012). Also Iara (2015) stresses the positive efficiency properties of (higher) wealth taxes. Furthermore, the potential negative effects of wealth inequality on macroeconomic stability have been pointed out recently (see e.g., Godar, Paetz and Truger, 2015; Iara, 2015).

### **Problems of wealth taxation**

The phasing out of net wealth taxes in most European and OECD countries during the last quarter of the 20th century, as well as the refusal to introduce a net wealth tax in the first place by a number of other countries (see chapter 3 for details), was motivated by a variety of arguments: among them, as illustrated by a survey conducted by the OECD at the end of the 1970s in 21 OECD countries (OECD, 1979), valuation difficulties and costs of tax collection, as well as double taxation issues and the impossibility of enforcing net wealth taxes due to the mobility of the tax base. In the debate of the last few decades these counterarguments have clearly dominated vis-à-vis the potential advantages of wealth taxes discussed in the previous section. In this section we will address in more detail three common objections against recurring net wealth taxes: first, valuation difficulties and the costs of tax collection; secondly, issues of double taxation; and thirdly, tax avoidance and wealth migration.

## Valuation difficulties and costs of tax collection

Evaluation difficulties are one of the most common arguments against a net wealth tax (see, e.g., Boadway, Chamberlain and Emmerson, 2010). The need to regularly obtain and update market values for taxable assets would incur costs that may be substantial, in particular for less liquid assets. Due to evaluation difficulties, but also for other reasons the administration costs for fiscal authorities and the compliance costs for tax payers are expected to be considerably above average for net wealth taxes.

Most interestingly, there is only scant empirical evidence about tax collection costs in general and for net wealth taxes in particular, which does not only have to do with methodological and data problems, but also with the low prevalence of net wealth taxes and their sometimes rather short life span (as in the Irish example). According to a brief survey of three older studies for Germany prepared by the Scientific Advisory Council of the German Ministry of Finance, the collection costs of the German net wealth tax, which was abolished in 1997, in relation to its revenues were substantially higher compared to other taxes (Wissenschaftlicher Beirat, 2013). Sandford and Morrissey (1985) obtained similar results for the Irish net wealth tax which was levied from 1973 to 1975. A recent study for Germany estimates the collection costs for a net wealth tax at 8% of its revenues (Bach, Beznoska and Thiemann, 2016). Piketty, Saez and Zucman (2013) point out that for top wealth holders, net wealth taxes in terms of collection costs may be less costly compared to income taxation if market values are available or can be determined more easily. Moreover, the issue of collection costs is put in perspective if one takes into account that market values are required also for an effective property tax and may reduce the evaluation costs for inheritance tax purposes. Not least, recent progress in ICT should enable a significant reduction of collection costs.

It is often argued that the comparatively high collection costs of wealth taxes are particularly problematic in face of their relatively limited proceeds. Indeed, the data presented in section 3.1 show that wealth taxes in general and net wealth taxes in particular have never raised and are still not raising substantial revenues. This is, however, rather the result of the general reluctance of governments to levy wealth-based taxes at all and to do so at substantial tax rates and without many exemptions as well as of tax avoidance. In principle, considering the large and increasing volumes of wealth (transfers) and their very unequal distribution, wealth-related taxes can be expected to raise substantial revenues even if only the very wealthy are liable for taxation. At the same time, levying wealth taxes on the very wealthy only would keep collection costs moderate.

### **Issues of double taxation**

A second point of criticism against wealth taxes is related to issues of double taxation. A net wealth tax, which in principle is a tax on returns of the taxed assets, will indeed result in double taxation if (and when) these returns themselves are subjected to regular capital income taxes. How severe double taxation issues really are depends on the rates of the net wealth tax on the one hand and of capital income taxes on the other hand (which in most EU countries are rather modest as capital incomes have been taken out of progressive income taxation and are taxed at relatively low flat rates; see Schratzenstaller, 2004). Moreover, for those capital incomes which have not been taxed properly due to exemptions or tax evasion, a net wealth tax will act as a complementary tax closing tax gaps. Not least, double taxation can be mitigated by introducing a cap on the combined tax burden resulting from a net wealth tax and capital income taxes (as in the French example).

## Tax avoidance and wealth migration

One strong objection against a net wealth tax articulated rather recently is the fear that in open economies mobile capital cannot be taxed effectively, as tax subjects relocate their assets to avoid the tax (Owens, 2006; Messere, de Kam and Heady, 2003; Boadway, Chamberlain and Emmerson, 2010). The growing cross-border mobility of financial assets as well as the rise of tax havens, facilitated by the emergence of information and communication technology and the elimination of formal barriers to cross-border capital transfers (e.g. capital controls), have made the effective enforcement of net wealth taxes increasingly difficult. This is one of the main reasons why economists as well as international organisations (see e.g., IMF, 2011) in the majority advocate against the introduction of net wealth taxes or recommend replacing them by taxes on less mobile wealth, in particular by a property tax on real estate.

Generally, there is scant empirical evidence on the economic effects of net wealth taxes (Kopczuk, 2013), neither on the extent and the consequences of international wealth tax competition nor on elasticities of taxable wealth. This is surprising given the strong conviction voiced in many academic and policy-oriented contributions that due to strong avoidance tactics by tax subjects, net wealth taxes are not overly promising in terms of revenues to be expected. In recent years, only a very few studies have undertaken to identify the impact of net wealth taxes on real economic activity (as for example wealth accumulation and entrepreneurship) on the one hand and on taxable, i.e. reported wealth on the other hand. It is still a matter of dispute in the literature whether a net wealth tax primarily affects real economic decisions or just exerts a dampening effect on reported wealth, which is strongly influenced by tax avoidance and/or evasion<sup>3</sup>. Among this small number of recent studies is the analysis by Seim (2015). The author arrives at elasticities of taxable wealth between 0.1 and 0.3 for Sweden, which he explains by tax evasion.

Moreover, studies that disentangle tax avoidance effects which influence reported wealth are missing. Existing empirical evidence on reported wealth is not sufficient to identify and to quantify, respectively, international capital flight as one distinct tax avoidance/evasion channel. There are no econometric analyses directly addressing the question whether net wealth taxes lead to outflows of mobile private or firm capital.

However, two kinds of evidence for some impact of wealth taxation on the relocation of assets exist. First, recent estimations suggest that considerable volumes of private wealth are hidden in tax havens; whereby one central motivation quite obviously is to escape taxation (see e.g., Lane and Milesi-Ferretti, 2010; Zucman, 2014; Johannesen and Zucman, 2014). Secondly, several case studies corroborate the theoretical expectation that wealth taxes cause (illicit) offshore transfers of assets. After the abandonment of all foreign exchange controls in Sweden in 1989, for example, an outflow of large fortunes to tax havens like Switzerland or Luxembourg was observed, which provided strong motivation for the government to discontinue the net wealth tax in 2007 (Henriksen and Du Rietz, 2014). Pichet (2007) found a considerable volume of capital flight out of France since the introduction of the French net wealth tax.

A recent study by Brühlhart et al. (2017) gives support to the plausible assumption that the effect of net wealth taxes on reported wealth is the more pronounced the more integrated the regions involved are. According to the authors' estimations, the semi-elasticity of reported wealth with respect to the net wealth tax rate amounts to 35% in aggregate, i.e. a rise in wealth taxation by one percentage point decreases reported wealth by 35%. Moreover, Brühlhart et al. (2017) find that financial assets seem to be more responsive to taxation than non-financial assets. They also interpret their results as suggesting that wealth holders primarily respond by reducing their wealth holdings, not by moving



to jurisdictions with lower tax rates<sup>4</sup>. It must be noted, however, that these analyses do not uncover the channels via which wealth holdings are lowered. As indicated above, reported wealth holdings may be reduced by real responses (i.e. by lowering accumulation of wealth) or by decreasing reported wealth through hiding it from tax authorities. Which of these mechanisms is working in the Swiss case cannot be determined without further analysis, e.g. by exploring whether there is some relationship between the savings rate and wealth taxation.

Thus, we interpret these empirical results as not contradicting our assumption that tax subjects' reactions make it increasingly difficult to enforce a tax on net wealth in a purely national context. These responses probably take the form of manipulations of reported wealth via various channels including hiding wealth abroad in low- or no-tax jurisdictions rather than moving tax payers' locations abroad. Although there is no systematic and elaborated empirical evidence on international wealth tax competition, the development of wealth taxation in Europe during the last few decades lends some support to the hypothesis that a race-to-the-bottom-type of tax competition based on the international mobility particularly of financial assets has led to the almost complete disappearance of net wealth taxes and the observable shift within wealth taxation towards property taxes on immobile real property (see chapter 3). The tax rate elasticities of tax bases and low mobility of tax payers found in the existing empirical studies suggest that at least part of this specific downward tax competition in the realm of net wealth taxes may be – following Brühlhart and Parchet (2014) – characterised as 'alleged' tax competition. However, in combination with the still extensive options to make use of tax havens worldwide to hide wealth from domestic tax authorities (Zucman, 2014) this tax competition – be it alleged or factual – calls for a supranationally coordinated approach.

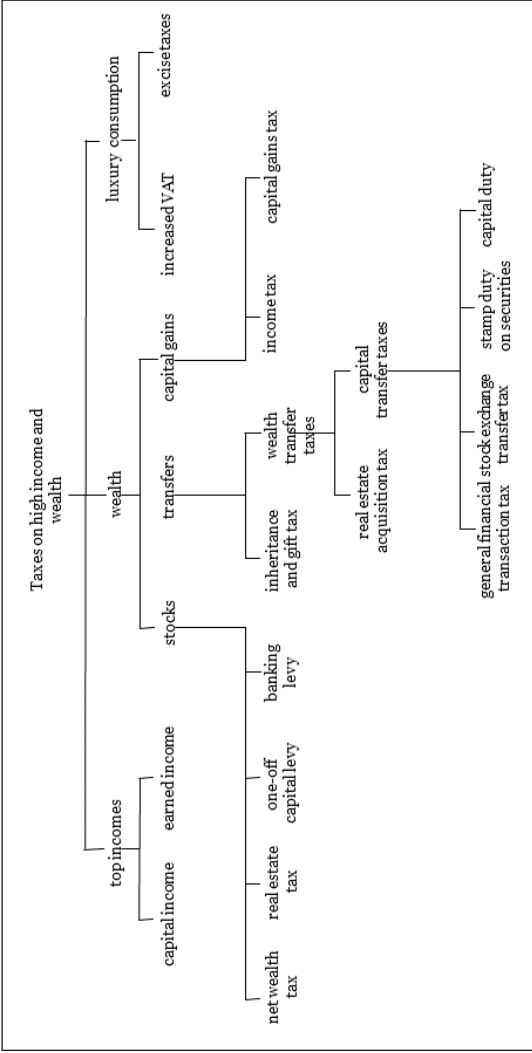
### 3. Options to tax wealth

Wealth taxation can be based on various wealth-related tax bases or activities. Figure 1 illustrates the various design options for wealth taxes and puts them in the more general context of options for the taxation of high incomes and wealth.

Wealth taxes in a narrow sense comprise taxes on the stock of wealth, on its transfer (via inheritances, gifts, or sales), or on increases in the value of stocks. They can tax different kinds of assets (financial assets, real estate, consumer durables, luxury items) and/or different tax subjects (private individuals/households or firms). One option within the taxation of the stock of wealth is a recurrent tax on net wealth, subjecting all kinds of assets to a uniform tax schedule. In tax practice, net wealth tax schedules (which may foresee a uniform tax rate or a progressive tax schedule) include a rather generous basic tax allowance exempting a certain amount of individual wealth completely from taxation regardless of its overall volume<sup>5</sup>.

Without being able to go into the characteristics and effects of individual options for strengthening wealth taxes, figure 1 demonstrates the broad spectrum for possible designs of wealth-related taxes. Two remarks are in order here: first, the general pros and cons of wealth-related taxes presented above apply to differing degrees to these individual tax options. Secondly, their combination within overall tax systems is a non-trivial challenge for policy makers, as the complementarity of some of these options is quite obvious (e.g. the taxation of capital incomes and inheritances), while others appear more substitutive (e.g. taxes on annual net wealth and capital incomes). The approach of an “ideal” combination of taxes on inheritances, net wealth and capital incomes proposed by Piketty, Saez and Zucman (2013) can be justified by the differing functions and effects of taxes on annual net worth, regular capital incomes,

Figure 1: Options for taxing high incomes and wealth



Source: Schratzenstaller, M. (2013). Besteuerung höherer Einkommen und Vermögen – Internationale Entwicklungstendenzen, Möglichkeiten und Grenzen. *Vierteljahresshefte zur Wirtschaftsforschung* 82(1), 13-34.

and wealth transfers; it needs to tackle, however, double taxation issues (see section on issues of double taxation).

## **4. Current situation of wealth taxation in the EU**

### **Revenues from wealth: Size and structure**

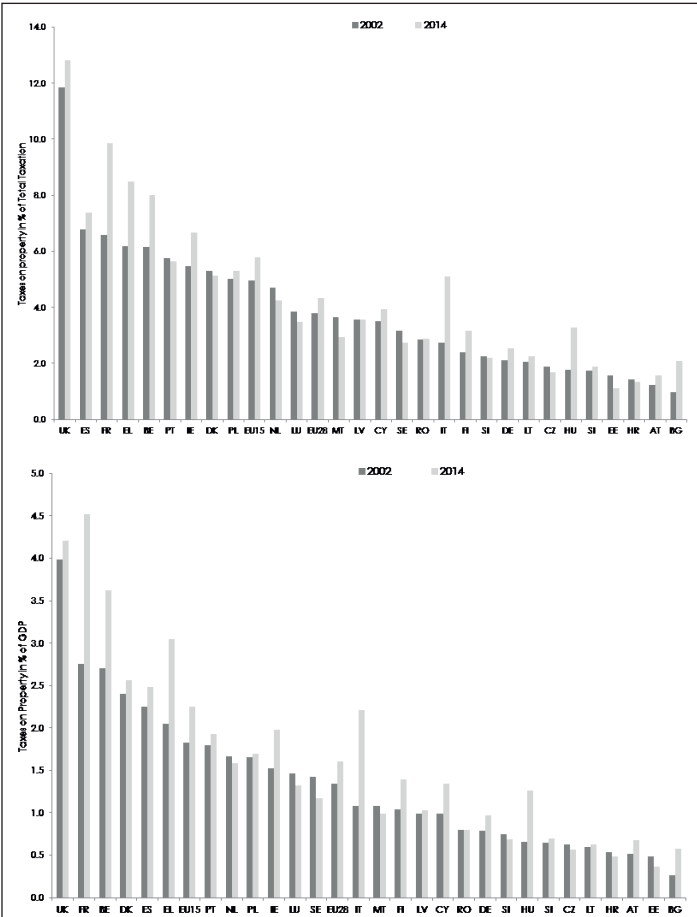
Wealth taxation in the EU plays a minor role within overall tax systems in the EU, gauged by the share of wealth-related taxes in overall tax revenues as well as in GDP (see figure 2).

In 2014, wealth-based taxes yielded 4.3% of overall tax revenues and 1.6% of GDP on average for the EU28. In the euro area (EA19), wealth taxes made up 4.2% of overall tax revenues and 1.6% of GDP, while in the EU15 they amounted to 5.8% of overall tax revenues and 2.2% of GDP. Although their weight slightly increased compared to 2002, the contribution of wealth taxes to financing public budgets remains rather modest. Their long-term quasi-stagnation despite considerably growing volumes of wealth (transfers) appears to mirror the scant academic interest in the subject.

The use of the various options for wealth-related taxes differs considerably in the EU (Ernst and Young, 2014). The property tax on real estate is known in 25 EU Member States. An inheritance and gift tax exists in 20, and a real estate acquisition tax in 21 Member States. A net wealth tax has become an exception in the EU. Accordingly, the structure of overall revenues from wealth taxes has shifted considerably in the longer run (figure 3).

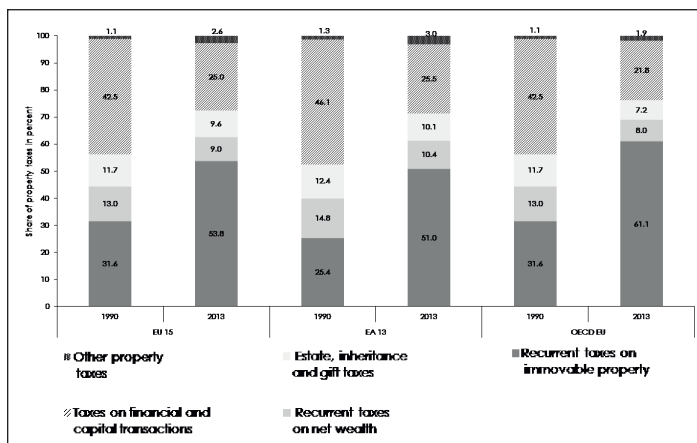
Between 1990 and 2013 the share of net wealth taxes in overall revenues from wealth taxation declined from 13% to 9% in the EU15, from almost 15% to 10.4% in the EA13, and from 13% to 8% in those EU countries for which OECD data are available. In all country groups studied, taxes on financial and capital transactions as well as estate, inheritance and gift taxes have also been losing in importance since 1990. In contrast, recurrent

Figure 2: Wealth taxation in the EU in 2002 and 2014



Source: European Commission. (2016a). Data on Taxation, *Provisional update of data by economic function*, Retrieved July 5, 2016, from [http://ec.europa.eu/taxation\\_customs/business/economic-analysis-taxation/data-taxation\\_en](http://ec.europa.eu/taxation_customs/business/economic-analysis-taxation/data-taxation_en) (Accessed 2016-07-05).

Figure 3: Structure of revenues from wealth taxes, 1990 and 2013



Source: OECD (Revenue Statistics 1965-2014, Paris, 2015. Arithmetic averages. Austria: excluding one-off revenues from tax agreement with Switzerland).

taxes on immovable property (in particular real estate taxes) have been extending their share markedly since 1990, to over 50% of wealth-related tax revenues in the EU15 and the EU13 and to over 60% in the EU-OECD countries.

## 5. Net wealth taxes in Europe: Historical development and status quo

Table 1 gives an overview of the current situation concerning net wealth taxes in Europe. It focuses on recurrent net wealth taxes levied on all kinds of assets, which excludes specific wealth taxes on specific assets, like motor vehicles (as, e.g., in Bulgaria or Denmark) or water vessels (as, e.g., in Slovenia)<sup>6</sup>. With the exception of Norway and Switzerland, existing net wealth taxes are exclusively levied by the federal or national government.

**Table 1: Net wealth taxes in Europe**

Abolished net wealth taxes						
Country	Tax subject <sup>6)</sup>	Tax rates and exemptions	Tax revenues in % of GDP <sup>1)</sup>	Introduced in	Selected modifications <sup>2)</sup>	
Ireland	Personal	1% Tax-exempted amount: £ 70,000 for singles; £ 100,000 for couples; £ 2,500 per child (€ 107,100/€ 153,000/€ 3,800)	0.09	1975	Abolished in 1978	
Austria	Personal  Corporations	1% tax-exempted amount: ATS 150,000 per family member; additionally ATS 150,000 for individuals over age 60 (amounts in Euro: € 10,900/€ 10,900) 1% tax exemption limit <sup>4)</sup> : ATS 150,000 (€ 10,900)	0.14  0.33	1923	Major revisions in 1934, 1939, 1955 Increased in 1977 Abolished in 1994	
Italy	Corporations	0.75%	0.29	1992	Introduced temporarily Abolished in 1995	

Denmark	Personal	2.2% tax-exempted amount: DKR 630,000 (€ 85,600) for adults or couples; DKR 630,000 (€ 85,600) per child	0.06	1903	Abolished in 1997
Germany	Personal	1% tax-exempted amount: DM 120,000 (€ 61,354) per family member	0.11	1893	Major revisions in 1923, 1974 Decreased in 1978 Abolished in 1997
	Corporations	0.6% tax exemption limit <sup>4)</sup> : DM 20,000 (€ 10,226)	0.13		
The Netherlands	Personal	0.7% Tax-exempted amount: € 90,756 for individuals	0.18	1892	Major revisions in 1964, 1980 Abolished in 2001 and replaced by 30% income tax on a fictitious return of 4% on financial assets (corresponds to a net wealth tax of 1.2%)
Finland	Personal	0.8% tax-exempted amount: € 250,000 for individuals	0.08	1920	Major revisions in 1967, 1975, 1976, 1977 Increased in 1978 Decreased in 2005 Abolished in 2006



Luxembourg	Personal	0.5% tax-exempted amount: € 2,500 for adults; € 2,500 per child	0.55	1913	Major revisions in 1919, 1941 Abolished in 2006 for individuals/households
Sweden	Personal  Corporations	1.5% Tax-exempted amount: SKR 1.5 million (€ 160,351) for singles, SKR 3 million (€ 10,474) for couples 0.15% Tax-exempted amount: SKR 15,000 (€ 1,604)	0.19  0.01	1911	Major revision in 1934 Increased in 1938 Increased in 1947, 1972, 1984 Decreased in 1986, 1992 Decreased and replacement of progressive tax schedule by uniform tax rate in 1993 Abolished and re-introduced in 1994 Decreased in 2002, 2003, 2006 Abolished in 2007
Iceland	Personal  Corporations	1.5% - 2% (above ISK 150 million (€ 1 million ) for singles, above ISK 200 million (€ 1.3 millions) for jointly taxed individuals) tax-exempted amount: ISK 75 million (€ 0.5 million) for singles, ISK 100 million (€ 0.65 millions) for jointly taxed individuals 0.6%	0.48	1096/97	Major revisions in 1556, 1874, 1877, 1909, 1921 Decreased in 2003 Abolished in 2006 Re-introduced temporarily as "emergency wealth tax" in 2010 Increased in 2011 Increased in 2012 and replacement of uniform tax rate by progressive tax schedule Abolished in 2015 Abolished in 2006

Existing net wealth taxes					
Country	Tax subject <sup>6)</sup>	Tax rates and exemptions	Tax revenues in % of GDP <sup>1)</sup>	Introduced in	Selected modifications <sup>2)</sup>
Switzerland (Zurich) <sup>3)</sup>	Personal	0.110%-0.657% tax-exempted amount: CHF 77,000 (€ 73,389)	0.89 0.24	1840 (Canton of Basle City)	Gradual introduction by all cantons between 1840 (Canton of Basle City) and 1970 (Canton of Glarus)
Luxembourg	Corporations	0.5%	1.5	1913	Major revisions in 1919 and 1941 Abolished in 2006 for individuals/households
Norway	Personal	0.7% municipal level tax-exempted amount: NOK 1 million (€ 106,200) for individuals 0.15 national level tax-exempted amount: NOK 1.2 million (€ 127,500) for individuals	0.3	1918	Increased in 2002 and replacement of uniform tax rate by progressive tax schedule at national level Decreased in 2007, 2008 Increased in 2009 and replacement of progressive tax schedule by uniform tax rate at national level Decreased in 2010, 2012, 2014

Spain	Personal	0.2% - 2.5% (above € 10.696 million) tax-exempted amount: € 700,000 for individuals	0.11	1977	Abolished in 2007 Re-introduced temporarily in 2011, since then prolonged several times
France	Personal	0.5% - 1.5% (above € 10 million) tax-exempted amount: € 800,000 for individuals	0.24	1982	Abolished in 1986 Re-introduced in 1989 Decreased in 2012 Increased in 2013

Sources: OECD (1979 and 1988); Messere, De Kam and Heady (2003); Bundesministerium der Finanzen (2016); Ernst & Young (2014); own research and compilation. – <sup>1)</sup> For abolished taxes: last year of existence; for existing taxes: 2014. – <sup>2)</sup> Due to the lack of comprehensive information, the modifications recorded here may be incomplete for some countries. Modifications may be in the form of variations of the tax rate or of the size of tax exemptions – <sup>3)</sup> Levied by cantons at differing rates. – <sup>4)</sup> Above this threshold, the whole taxable net wealth was liable for taxation. – <sup>5)</sup> Initially limited to two years; most recent extension until 2016. – <sup>6)</sup> Personal: at individual or household level. – <sup>7)</sup> 2015

At the beginning of the 20<sup>th</sup> century several EU Member States as well as European countries closely associated with the EU introduced a net wealth tax or transformed a formerly existing one into a wealth tax with modern design. Almost all these countries (with the exception of Switzerland, Norway and Luxembourg for corporations) have abolished their wealth taxes, starting at the beginning of the 1990s; often after several reforms cutting tax rates and/ or increasing tax-exempted amounts. Among the last EU Member States to discontinue their net wealth taxes were Finland and Sweden in 2006 and 2007, respectively: both countries had held on to their net wealth tax for a long time as a compensation for the regressive dual income tax introduced in the beginning of the 1990s (Messere, De Kam and Heady, 2003).

Only very few countries adopted net wealth taxes as late as in the last quarter of the past century. Of these countries, Ireland and Italy discontinued their net wealth taxes after a few years, while they still exist in France and (after being re-introduced temporarily in 2011) in Spain only.

The few net wealth taxes still in existence apply either a progressive tax schedule or a single flat rate, mostly at the federal or national level. Norway and Switzerland are exceptions insofar as their net wealth taxes are not a (pure) federal tax, but are levied either both at the municipal and national level (Norway) or by cantons (Switzerland), respectively. Norway, Spain and France tax private individuals/ households only, while Luxembourg exclusively taxes corporations and Switzerland taxes both private individuals/households and (at a considerably lower rate) corporations.

Two European countries introduced a net wealth tax temporarily as one fiscal consolidation measure after experiencing severe budgetary problems as a consequence of the financial and economic crisis; both after having discontinued it shortly before. Spain, which had abolished its net wealth tax in 2007, re-introduced it temporarily in 2011; in the meantime the tax has

been prolonged several times, most recently until 2016. Iceland, which had eliminated its net wealth tax in 2006, re-introduced an 'emergency wealth tax' in 2010 temporarily until 2014.

Overall, countries that have never levied a net wealth tax constitute a majority in relation to those countries that have taxed net wealth in the past or still do so in Europe. In particular, not a single one of the "new" EU Member States which have acceded to the EU since 2004 has ever levied a net wealth tax. Also in the OECD net wealth taxes have never been applied widely: The European OECD countries outside the EU included in table 1 (Iceland, Norway, and Switzerland) are the only OECD countries having had or still having a net wealth tax. Neither the United States nor Japan have ever levied such a tax or consider introducing one<sup>7</sup>. To our knowledge, outside the OECD world net wealth taxes are not common either: India discontinued the tax (which it had adopted in 1957) in 2015; Brazil has been discussing its introduction for the last 30 years without result; and China has never had one.

In terms of GDP, existing net wealth taxes yield rather modest revenues: between 0.11% in Spain and 1.5% in Luxembourg. Also historically, as table 1 shows, net wealth taxes have never contributed much to overall tax revenues.

## **6. A net wealth tax as a sustainability-oriented revenue source for the EU budget**

In recent years efforts have been intensified, in particular in the OECD and the EU, to strengthen international cooperation and information exchange. However, a European net wealth tax based on a uniform design may be an important complement to these cooperative solutions, removing downward pressure on tax rates at least within the EU. Given the positive sustainability properties of a wealth tax with regard to economic efficiency and social inclusion (see chapter 2), a European wealth tax offers itself

as an interesting candidate for sustainability-oriented tax-based own resources to finance the EU budget. Such a sustainability-oriented approach to reform the current EU system of own resources, as suggested by Schratzenstaller et al. (2016), was taken up recently by the inter-institutional High Level Group on Own Resources chaired by Mario Monti in its final report on the future design of the EU's financing system commissioned by the European Commission, the European Parliament, and the European Council (High Level Group on Own Resources, 2016).

Assigning revenues from a net wealth tax to the EU budget may be motivated by two reasons in particular: first, at least part of these revenues are "additional" in the sense that they would not have been realised within an uncoordinated setting in which EU Member States unilaterally try to implement net wealth taxes. Secondly, the wealthy should have benefited disproportionately from the economic benefits provided by the creation of the EU, its single market in general and the free movement of capital in particular. Therefore not only based on the ability-to-pay-principle, but also considering the benefit-principle, a disproportionate contribution by the wealthy to financing the EU budget appears justified (Grüner, 2013; Schratzenstaller et al., 2016). Implementing an EU-wide net wealth tax in a fiscally neutral way may strengthen political and social acceptance of tax regimes in the EU: Member States could reduce their national contributions to the EU budget, which would enable them to reduce less sustainability-oriented taxes, in particular the high labour taxes for lower incomes. Moreover, reversing the trend of eroding taxes for the very wealthy may strengthen the perceived fairness of taxation and thus general tax morale. Thus an EU budget partially financed from an EU-wide net wealth tax could serve as an illustrative example for the potential benefits of stronger cooperation within the EU and would thus bear potential to support EU integration.

## **7. Potential revenues of an EU-wide net wealth tax**

Our estimations are based on the latest Household Finance and Consumption Survey (HFCS) conducted by the European Central Bank for the year 2014. The shortcomings of this survey are the potential non- and under-reporting of wealth by households. To deal with these shortcomings we follow Vermeulen (2014 and 2016), Bach et al. (2015), Dalitz (2016), and Eckerstorfer et al. (2016). As the top end of wealth distribution is not adequately covered in the survey, we include in total 265 individuals on the Forbes rich list (2016) in the sample. With this enlarged data set a theoretical distribution is estimated in order to breach the gap between highest net wealth households in the HFCS and the individuals from the Forbes rich list. This accounts for the non-reporting of the very wealthy. But still, compared to the national balance sheets, for the 20 countries under study, up to 88% of financial assets and up to 75% of liabilities were missing in the HFCS. To account for this under-reporting, the respective positions in the HFCS are reweighted so that their totals match the ones in the national balance sheets. The latest empirical study of behavioural responses triggered by the changes in the taxation of net wealth in the Swiss context (Brühlhart, 2017) provides us with the elasticities necessary to simulate the decrease of the tax base when net wealth taxes are introduced or increased. The authors conclude that an increase in the taxation of net wealth by one percentage point would reduce the tax base by 35%.

The proposed net wealth tax should be progressive, thus following the example of several existing and historical net wealth taxes. Indeed, a progressive tax schedule may be justified above all by the potential negative social externalities of an over-accumulation of wealth, motivated by status effects (Boadway, Chamberlain and Emmerson, 2010). In addition, several other arguments, such as supporting equality of opportunity through a certain extent of

wealth redistribution, the ability of the very wealthy to achieve above-average returns, or differing motives for wealth accumulation in lower compared to higher income/wealth groups, call for progressive wealth taxation. Our estimations of potential revenues from a European net wealth tax are based on a tax design similar to the one suggested by Piketty (2014), applying a simple progressive tax schedule with two tax rates: 1% for net wealth above €1 million, 1.5% for net wealth above €5 million<sup>8</sup>. The effective tax burden on net wealth increases with decreasing returns on the taxed assets; the lower the asset returns, the higher is the effective tax burden. The fiscal drag associated with a progressive tax schedule can be avoided by inflation adjustment of the tax brackets.

As HFCS data on net wealth refer to households, the proposed net wealth tax is levied on a household basis. Therefore, tax exemptions also pertain to the household level. As table 1 shows, usually tax exemptions are granted on an individual basis, for each adult living in the taxed household, and in some cases (though mostly at a considerably lower level) also for children. Our model deviates from this design and corresponds rather to the Swedish model applied until 2002, which granted a household-based tax exemption identical for singles and couples<sup>9</sup>. With a threshold of €1 million, households would receive a rather generous basic allowance so that the tax can be targeted more closely at large wealth holders. The tax should be introduced based on a harmonised design by all EU Member States. As a prerequisite for effective enforcement of the EU-wide net wealth tax a European wealth register combined with some form of information exchange on wealth holdings abroad needs to be introduced.

Our estimations yield potential revenues of €155 billion (1.5% of total GDP) for the 20 EU Member States included (see table 2). Considering the imminent exit of the United Kingdom, this estimate can serve as a good approximation to the potential revenues of a 'true' EU-wide net wealth tax.



**Table 2: An EU-wide net wealth tax – Key figures for 20 selected EU Member States**

Country	Total net wealth in billion €	Revenues in billion €	Revenues in % of GDP	Effective tax rate in % <sup>1)</sup>	Affected households in %
Slovakia <sup>2)</sup>	152	0.1	0.05	0.1	0.3
Austria	1,438	5	1.5	0.3	6.4
Spain	5,774	14.9	1.4	0.3	4.9
Belgium	2,395	7.9	2	0.3	9.2
Italy	8,950	28	1.7	0.3	5.8
France	9,957	31	1.4	0.3	5.6
Ireland	662	2.7	1.4	0.4	6.7
Germany	12,699	47.6	1.6	0.4	4.7
Netherlands	2,757	8.5	1.3	0.3	6.2
Portugal	888	1.9	1.1	0.2	3.1
Slovenia <sup>2)</sup>	142	0.3	0.8	0.2	1.7
Finland	660	1.5	0.7	0.2	3.5
Malta <sup>2)</sup>	68	0.2	2.5	0.3	10.0
Hungary <sup>2)</sup>	286	0.3	0.3	0.1	0.4
Estonia <sup>2)</sup>	70	0.1	0.5	0.1	1.3
Latvia <sup>2)</sup>	61	0.2	0.8	0.3	0.7
Luxembourg <sup>2)</sup>	219	1.1	2.2	0.5	19.0
Poland	1,671	2.1	0.5	0.1	0.8
Cyprus <sup>3)</sup>	155	0.7	4.0	0.4	9.0
Greece	619	1.3	0.7	0.2	1.7
Total	49,623	155.3	1.5	0.3	-

Source: Own estimations and calculations. – <sup>1)</sup> Revenues in relation to total net wealth. – <sup>2)</sup> Estimates without observations from the Forbes rich list. – <sup>3)</sup> Due to insufficient data the financial assets and liabilities of Cyprus could not be matched with the respective national balance sheets.

Potential tax revenues, differentiated for individual Member States, range from 0.5% of GDP or less (Slovakia, Hungary, Estonia, Poland) to 2% or more (Belgium, Malta, Luxembourg, Cyprus). Eight out of the 20 EU Member States considered can expect revenues of between 1.1% and 1.7% of GDP. Not surprisingly, for six of the eight “new” Member States included (with Cyprus and Malta as exceptions) revenue/GDP ratios are estimated at below 0.9% of GDP. Similarly, in the “new” Member States (again with the exception of Cyprus and Malta) the share of affected households (who are liable for taxation as their net wealth is above €1 million) is mostly well below 2% of all households. In comparison, in the group of 12 “old” Member States this share ranges between 3.1% (Portugal) and 19% (Luxembourg).

Effective tax rates, determined as the relation between potential tax revenues and total net wealth, lie below 0.5% in most countries studied.

How much a European approach would in fact reduce the considerable elasticities found by Brühlhart et al. (2017) is of course speculative. Their findings might at first sight be confusing, as the authors conclude that the mobility of people does not seem to be the driving force behind the reduction of the tax base when net wealth taxation is increased. However, this just means that instead of relocating their places of residence, people “adjust” wealth reported to tax authorities when taxation is increased. The mobility of financial assets certainly is an important factor in this “adjustment” process, especially as the findings also indicate that financial assets are more responsive to changes in net wealth taxation than non-financial assets. If an EU wide net wealth tax together with a (financial) wealth registry could reduce the elasticities found by Brühlhart et al. (2017) from 0.35 to just 0.3, the taxation scheme outlined above would yield €173 billion instead of the €156 billion per annum estimated above.

## **8. Conclusion**

EU-wide implementation of a net wealth tax based on harmonised tax provisions may serve as a first step in a longer-term move to the stepwise expansion of net wealth taxes on a global scale in the form of concentric circles. Considering the global dimension of the taxing wealth issue (see, e.g., Hebous, 2014; Zucman, 2014), we are well aware of the limitations of an EU-wide approach. Nonetheless, we regard an EU-wide initiative as an important first step which could be fairly easily implemented within the existing legal and political framework of the EU and could then be widened stepwise regionally. Zucman (2014) emphasises that a coordinated EU-wide approach would be capable of putting non-cooperating countries and particularly tax havens under pressure to eventually join supranational agreements foreseeing measures such as automatic information exchange or the cooperation of fiscal authorities. The EU provides the legal and political framework required for such a tax coordination approach. In particular, the system of automatic information exchange in force as of 2017 could be expanded to include an EU-wide net wealth tax register, as one prerequisite to effectively combat tax evasion within the EU.

An EU-wide net wealth tax can be expected to yield substantial revenues which could be at least partially remitted by Member States to the EU as one pillar of a more sustainability-oriented EU system of own resources. It is important to note that the implementation of EU taxes does not necessarily require own genuine taxation powers, i.e. full legislative and revenue authority for the EU<sup>10</sup>. EU taxes can also be introduced based on a kind of remittance system as suggested in Nerudová, Solilová and Dobranschi (2016), with Member States tax administrations collecting revenues and transferring them to the EU budget. This would reflect the central motivation of a sustainability-oriented EU tax

approach: namely, that certain sustainability-oriented EU taxes are a powerful instrument to close sustainability gaps in taxation in the EU. To provide incentives for effective revenue collection, Member States should be granted the right to keep a share of the proceeds. Such a pragmatic approach would not require an explicit answer to the much more fundamental question of whether the EU should be granted its own taxation powers to support its further development (Büttner and Thöne, 2016). It would also not restrict national tax sovereignty and might thus be more acceptable to (the overwhelming majority of) Member States' governments and parliaments reluctant to give up some of their taxation powers. Moreover, the establishment of an own EU tax authority incurring additional administrative costs would not be required.

By increasing perceived tax fairness through strengthening taxes for very wealthy individuals, whose tax payments are perceived by the general public as rather low, and given the revelations of the Panama Papers and similar recent tax scandals, an EU-wide net wealth tax could be attractive to EU citizens and may thus further EU integration.

## **Acknowledgements**

We are grateful to Andrea Sutrich for careful research assistance, to Markus Loewe and Wilfried Altzinger for helpful suggestions and comments, and to Stefan Bach and Pirmin Fessler for advice concerning the data and estimations. The research leading to these results has received funding from the European Union's Horizon 2020 research and innovation programme 2014-2020, grant agreement No. FairTax 649439.

## Endnotes

- <sup>1</sup> *For a detailed criticism of the current EU system of own resources and a sustainability-oriented rationale for substituting at least part of current own resources by sustainability-oriented EU taxes see Schratzenstaller et al. (2016). The concept of sustainability and its dimensions is presented and discussed in the literature reviews by Nerudová et al. (2016) and Dimitrova et al. (2013). Fundamental deliberations on and key features of sustainability-oriented taxation are provided by Schratzenstaller (2016).*
- <sup>2</sup> *According to a definition by the United Nations provided in its “Inclusive Wealth Report” (UNU-IHDP/UNEP, 2012), inclusive wealth comprises natural capital (local ecosystems, biomes, sub-soil resources), human capital (education, skills, tacit knowledge, health), social capital, and manufactured capital (roads, ports, machinery, buildings, and infrastructure).*
- <sup>3</sup> *See Brülhart et al. (2017) for a review of the very few existing studies and their limitations.*
- <sup>4</sup> *To our knowledge the Brülhart et al. (2017) study is the only one investigating potential effects of net wealth taxes on locational choices of taxpayers. Their finding of low tax-induced mobility corresponds well to the results of the few existing empirical analyses determining the impact of estate or inheritance taxes on locational choices, which generally show very modest effects (see Brülhart and Parchet (2014) for Switzerland, and Smith Conway and Rork (2006) for the United States).*
- <sup>5</sup> *See section 3 for details on existing and abolished net wealth taxes.*
- <sup>6</sup> *For an overview over specific wealth taxes in the EU, see Ernst and Young (2014).*
- <sup>7</sup> *The new US President Donald Trump had pledged to introduce a one-off levy of 14.25% on net wealth for the super-rich to pay back debt in 2000 (Trump and Shiflet, 2000). Trump’s – still vague – tax plans as of the beginning of 2017 obviously do not foresee any tax on net wealth.*
- <sup>8</sup> *Piketty (2014) suggests a two-tier tax schedule with 1% and 2%, alluding to the option to tax very high net wealth, for example above € 1 billion, at even higher rates of maybe 5% or 10%; however, for the sake of simplicity we base our revenue estimations on a two-rate-schedule.*
- <sup>9</sup> *Since then, the tax exemption for couples is twice as high as the tax exemption for singles.*
- <sup>10</sup> *For a detailed presentation and discussion of the legal aspects of implementing EU taxes see HLGOR (2016) and Waldhoff (2016).*

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# LABOUR STANDARDS IN THE EPAS: WEAKENING OR STRENGTHENING THE EU-ACP COTONOU PROVISIONS?

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Although the trade-labour nexus has received a lot of attention, the literature on the newer Economic Partnership Agreements (EPAs) between the EU and the African, Caribbean and Pacific (ACP) group of states concluded between 2014 and 2016 is still in its infancy. This article contributes to this literature by providing an analysis of the most recent EPAs with three African regions: the East African Community (EAC) in 2014, the Economic Community of West African States (ECOWAS) in 2014 and the Southern African Development Community (SADC) in 2016. The empirical investigation based on analyses of the legal texts and participatory observation in EU-ACP stakeholder meetings shows that there is clear evidence of 'ACP exceptionalism' in the EPAs, especially vis-à-vis labour provisions. Despite the weaker trade-labour nexus in the newer agreements, the upcoming negotiations of a post-Cotonou Agreement and the existing UN Agenda 2030 framework both provide opportunities to bring labour provisions back to the table.

## 1. Introduction

The trade-labour nexus has received a lot of attention in the past decades, but literature on the newer Economic Partnership

Agreements (EPAs) between the EU and their former colonies of the African, Caribbean and Pacific (ACP) group of states is still in its infancy. While the EPAs represent a non-negligible shift in EU trade relations with the ACP countries, from a relationship based on asymmetric preferences resulting from a history of colonial relations, to one based on reciprocity, **there is clear evidence of 'ACP exceptionalism' in the EPAs on labour provisions.** *De jure*, each new EPA text that emerges has its own novel trade-labour nexus, from the very first comprehensive EPA with the Caribbean Forum (CARIFORUM) in 2008, to the more recent goods-only EPAs with three African regions: the East African Community (EAC) in 2014, the Economic Community of West African States (ECOWAS) in 2014 and the Southern African Development Community (SADC) in 2016. Although there is still uncertainty as to how the EPAs will fit into a new EU-ACP framework after the expiry of the current Cotonou Partnership Agreement in 2020, we can expect that the new UN 2030 Agenda will provide a framework for the forthcoming negotiations. In particular, in the context of the trade-labour nexus, we can also expect the Sustainable Development Goal (SDG) 8 on decent work and economic growth to become a non-negligible reference point. Yet, the fact that the more recent African EPAs have remarkably less emphasis on the trade-labour nexus than the Cariforum-EU EPA before it raises two hypotheses:

- **Hypothesis 1:** African negotiators concluded EPA-light agreements, which reflect their priorities by departing from the labour provisions outlined in Cotonou;
- **Hypothesis 2:** African EPA negotiators lost out by not carrying forward the labour (and social) provisions already included in the Cotonou Agreement into the EPAs.

This article shows that in comparison to the more recent African EPAs, **the Cariforum EPA is much more ambitious in terms**

of its trade-labour nexus. Additionally, the 'ACP exceptionalism' that becomes evident in this analysis could bring into question commitments to the SDG framework, and particularly in this context, the commitment to 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all' (SDG 8).

Section 1 looks into the de jure labour provisions in the Cotonou Agreement and section 2 looks more closely at these provisions in the Cariforum-EU, EAC-EU, ECOWAS-EU and SADC-EU EPA texts. Section 3 deals with the enforceability of these labour provisions, with particular emphasis on the role of social provisions in the enforcement procedures. Section 4 addresses the actual and expected impact of the EPAs on decent work based on the literature on the effects of reciprocal trade liberalisation. Section 5 draws conclusions and makes policy relevant recommendations for the future of EU-ACP relations in a post-Cotonou context in the broader framework of the 2030 Agenda.

## 2. Labour provisions in the Cotonou Agreement – An overview

From the onset, the preamble of Cotonou includes references to the labour dimensions of the legally binding Partnership between the EU and ACP states. The text underlines that the partners are 'anxious to respect basic labour rights, taking account of the principles laid down in the relevant conventions of the International Labour Organisation' (Cotonou Partnership Agreement, 2000, p. 5). Thereafter, labour is mentioned on issues related to macroeconomic and structural reforms and policies (Art. 22), 'direct labour' (Art. 24),<sup>2</sup> and 'Competition' (Art. 23). Article 50 refers specifically to 'Trade and labour standards' and is worth quoting in full:



Box 1.

1. The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant International Labour Organisation (ILO) Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of worst forms of child labour and non-discrimination in respect to employment.
2. They agree to enhance cooperation in this area, in particular in the following fields:
  - Exchange of information on the respective legislation and work regulation;
  - The formulation of national labour legislation and strengthening of existing legislation;
  - Education and awareness raising programmes;
  - Enforcement of adherence to national legislation and work regulation.
3. **The Parties agree that labour standards should not be used for protectionist trade purposes.**

*(Text in **bold**, repeated in Cariforum-EU EPA, Art. 191).*

Labour is also mentioned with regards to 'regional cooperation and integration' on promoting free movement of labour in ACP countries (Art. 28 (c)), crosscutting and thematic issues, such as gender issues (Art. 31(b)(iv)), and trade in services (Art. 41(5)).

Although this article deals with the labour provisions of the EPAs, it is nevertheless important to highlight how **labour rights and social rights are intertwined**. This is exemplified in the emphasis that the recent ILO 'Assessment of Labour Provisions in

Trade and Investment Arrangements’ places on ‘the impact of labour provisions [which] depends crucially on, first, the extent to which they involve stakeholders, notably social partners’ (ILO Report, 2016, p. 7). This is important for our analysis, as one of the aspects of the Decent Work Agenda that this paper focuses on is how social provisions can ensure enforceability of labour provisions. The ILO’s Decent Work Agenda promotes the objectives of full and productive employment from the local to global level. To this end, it is strategically based on four pillars, namely standards and rights at work, employment creation and enterprise development, social protection and social dialogue. Indeed, Van den Putte explains aptly, ‘[o]ne of the strategic objectives of the Decent Work Agenda is the promotion of social dialogue. In this regard the involvement of civil society in the monitoring of labour provisions in trade agreements may be vital to achieve the objectives set in the Decent Work Agenda’ (Van den Putte, 2015, p. 221). Against this backdrop, the ‘essential elements’ of the Cotonou Agreement is exemplar of the social ambitions of Cotonou, namely that ‘cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development (...) including the respect for fundamental social rights’ (Article 9.(1)). The key point here is that the trade-labour nexus is inextricably linked to social policies, which have not only become an unobjectionable norm in EU trade agreements, (Van den Putte and Orbie, 2015) but also considered as mutually reinforcing pillars of development both in the Cotonou Agreement and beyond it (ILO Report, 2016, p. 57). Nonetheless, as we shall see, the newer EPAs challenge this norm due to the highly variegated inclusion of labour issues across the EPA texts.

### 3. Labour standards in the EPAs – An overview

De jure, provisions on labour vary across the EPA texts, from the ECOWAS-EU text with only the standard reference to a general exception clause relating to the products of prison labour, to the SADC-EU and CF-EU EPAs, which are more detailed. The EAC-EU EPA only has an additional reference to the application of the ILO Declaration on Fundamental Principles and Rights at Work in the fisheries sector (Art. 55(2))<sup>3</sup>. The SADC-EU EPA makes reference to the commitment of the parties to the ILO conventions that they have ratified under Article 8 on 'Multilateral environmental and labour standards and agreements', and the Decent Work Agenda (Art. 11) and vis-à-vis trade and sustainable development (Art. 6). The most extensive reference to labour protection and the safeguarding of domestic labour laws is spelt out in Art. 9 on the 'Right to regulate and levels of protection'.

The Cariforum-EU EPA far outweighs the newer EPAs in terms of references to labour provisions. From its preamble, the CF-EU EPA states, 'the need to promote economic and social progress for their people in a manner consistent with sustainable development by respecting basic labour rights in line with the commitments they have undertaken within the International Labour Organisation' (CF-EU EPA, 2008:5). Indeed, the ILO is referred to in subsequent articles on the behaviour of investors (Art. 72(b) (c)), multilateral commitments (Art. 191 (1)), upholding the levels of protection (Art. 193), cooperation on social and labour issues (Art. 196, in particular Art. 196(2)(b)). Additionally, throughout the CF-EU EPA text there is a continuous linkage with sustainable development and social policies. In contrast, the lack of references to labour provisions in the newer African EPAs can be regarded as a missed opportunity. This is also true of the commitment to the internationally recognised core labour standards of the ILO, especially with regard to the 'freedom of association and the right to

collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour and non-discrimination in respect to employment' (CF-EU EPA Art. 191(1)), which is copied directly from Cotonou Art. 50 (see box. 1).

Interestingly, **there is significantly more general coverage of social aspects of the agreements across all the EPAs than labour aspects.** Similar to the first CF-EU EPA text (Art.195(2)), both the ECOWAS-EU and EAC-EU texts discuss the inclusion of social partners in the framework of establishing the Joint Consultative Committees (JCC), in Articles 97 and 108 respectively. While the SADC-EU EPA text has no reference to a JCC, it does state that monitoring shall be carried out through the 'respective participative processes and institutions' of the Parties (SADC-EU EPA Art. 4). In this regard, it is also interesting that the EAC-EU EPA takes the precautionary measure of including a provision on EPA Adjustment (EAC-EU EPA Art. 99), based on the social challenges that may arise from trade liberalisation. This is a novel introduction to the EPA texts, as it is an explicit reference to the social challenges arising from trade liberalisation, which goes beyond the widespread presumption that benefits of trade opening spread spontaneously across different social groups. Although it is not a recurrent feature across the EPA texts, in a similar vein, the ECOWAS-EU and the SADC-EU EPA preambles also refer to the social development of their respective peoples. The ECOWAS preamble makes reference to the Joint EU-Africa Strategy (ECOWAS-EU EPA, 2014, p. 10), and the SADC-EU EPA links this more directly to the 'deepening regional integration in the Southern African Development Community region' (SADC-EU EPA, 2016, p. 4). While the social provisions are featured throughout the texts, the difference in approaches (e.g. emphasising people or regions) underscores that different tools will need to be used, which are sensitive to the different country, regional and continent-wide specificities that the legal texts define.

#### **4. EPA provisions vis-à-vis the Decent Work Agenda and social participation in enforcement procedures**

An overview of the trade-labour nexus in the EPAs shows the wide variety *de jure* and *de facto*, which is revealing of several nuances. First, the variegated coverage of labour provisions across the EPAs is a double-edged sword. On the one hand, minimal references to labour provisions could leave more room for interpretation of the legal texts. In other words, labour issues do not need to be spelt out as it could be interpreted that it is included under the broader social aspects of the agreements. One reason for this approach may be based on the argument that adopting standards from developed countries could undermine the exploitation of the comparative advantages in labour-intensive production in developing countries. As such, strongly enforcing such labour provisions may not serve the benefits of developing countries, but only those of the import-competing producers in richer developed countries. Certainly, from some of the literature on this topic (Van den Putte, Orbie and Bossuyt, forthcoming) and some African academics (Moyo, 2012), this could be perceived to be the case. It is well-known that developing countries governments were sceptical of the trade-labour linkage at the WTO Seattle summit, however, there are increasing South-South trade agreements containing labour provisions. Nevertheless, even South-South agreements are not exempt from the aforementioned critique that labour provisions could serve as protectionist instruments, favouring the interests of import-competing producers, at the expense of other workers and of economic development. Therefore, on the other hand, the inconsistencies vis-à-vis labour provisions in the newer African EPAs are more likely to be seen as a shortfall. From an EU perspective, this variegated approach to labour rights across the EPAs weakens the EU's promotional approach of including labour provisions in

trade agreements. In turn, it creates policy incoherence vis-à-vis promoting labour standards, which are obligatory for Least Developed Countries (LDCs) in the EU's Generalised Scheme of Preferences Plus (GSP+) but fragmented across other agreements.

**Second, while the labour-trade nexus in the African EPAs may be considered weak, it is linked more broadly to social provisions and sustainable development.** This leaves room for optimism about the *de facto* opportunities to ensure the principles of decent work, even when it is not expressly linked to the ILO's Decent Work Agenda. Indeed, *de jure*, it may rather be referred to in the broader 'social dimensions' of the texts i.e. in the EAC-EU and ECOWAS EPA texts that do not expressly refer to the ILO's Decent Work Agenda. After all, *de facto*, the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work, and social dialogue – have become integral parts of sustainable development. This has been seen most notably, but not exclusively, in SDG 8. For example, full employment is cited in target 8.5, while social protection is featured in SDG 1 on 'ending poverty in all its forms everywhere' (target 1.3), SDG 5 on 'achieving gender equality and empowering all women and girls' (target 5.4) and SDG 10 on 'reducing inequalities within and among countries' (target 10.4). Although 'rights at work' and the 'social dialogue' are not mentioned expressly, they have inspired the framework for the SDGs more generally (for example, see SDG 5, target 5.a or, SDG 10, target 10b respectively). Unsurprisingly, the EPAs do not refer expressly to the SDG framework, which was adopted after the EPA texts were concluded. Although the pillars of the Decent Work Agenda have become inherent parts of the broad sustainable development agenda, the fact that they are not always mentioned outright is exemplar of a broader and less explicit trend, which also forms part of the 'ACP exceptionalism'. This has also been evidenced in participatory observation of EU-ACP stakeholder meetings<sup>4</sup>. For example,

the Final Declaration of the European Economic and Social Committee's (EESC) 14<sup>th</sup> regional seminar of EU-ACP economic and social interest groups does not refer expressly to the ILO's Decent Work Agenda, but does link decent work to sustainable development: "global public goods (such as (...) decent work, (...)) must be addressed through a coordinated global framework and partnership for poverty eradication and sustainable development and must be supported by international commitments, sufficient financing and national action" (EESC, 2015, p. 5).

**Third, literature on the trade-labour nexus confirms that social participation is vital for enforcement procedures, however the future of social participation under the newer African EPAs is nebulous.** Indeed, there is no road map on social participation across the EPAs, rather there is a highly fragmented approach. Unlike other EU trade agreements since the 'Global Europe Strategy', the EPAs do not adopt the inclusion of sustainable development chapters with regular meetings for civil society groups (with the exception of the SADC-EU EPA, see ECDPM Note 97, 2016). Rather, the fragmented approach across the EPAs is evidenced in how each agreement treats civil society participation in particular. For example, the SADC-EU EPA does not expressly foresee the establishment of a JCC, unlike the EAC-EU and ECOWAS-EU EPAs, but it does foresee a functional purpose for the 'respective participative processes and institutions' of the Parties (SADC-EU EPA Art. 4). This brings into question the form and the substance (*le fond et la forme*) of the mechanism of social participation, as well as its purposes. Already, four purposes of social participation have been identified: (i) instrumental – mobilising support for the agreement; (ii) functional – monitoring the implementation of the agreement; (iii) deliberative – promoting dialogue and democratic governance on issues of the agreement and (iv) policy purposes – providing recommendations and feedback for governments (Van den Putte, Orbie and Martens, forthcoming; ECDPM Note 97, 2016).

Yet, even on the purpose of these mechanisms, there is no one easily identifiable purpose of the JCCs. By default, this will have an impact on the establishment, functioning and output of the civil society meetings. Indeed, as the case of the Cariforum-EU JCC shows, both the extent of social participation and its purpose are defined in the process of implementation itself. Or in other words, “despite their growing prominence, there is much confusion on the exact purposes served by these meetings” (ECDPM Note 97, 2016). Therefore, it is of no surprise that EESC report on the future of EU-ACP relations emphasises the issue of participation, but also that of financing the JCCs: “The EESC further recommends that these joint consultative committees (JCCs) include a broad participation of civil society with equal involvement of academia, business and social partners (inter alia, including farmers, women and youth organisations) and that these JCCs are adequately resourced with an accessible budget to facilitate their ability to act effectively and autonomously” (EESC, 2016). This also underscores the importance of funding for CSO participation in the partnership, more broadly, by both partners, in order to fully live up to the rhetoric of a ‘partnership of equals’ between the EU and ACP states. Although it cannot be disputed that social trade has become an unobjectionable norm within the EU, especially within the context of the sustainable development agenda (Van den Putte and Jan Orbie, 2015), the newer EPAs do challenge this. Indeed, only through the implementation of social participation in the EPAs would evidence become available on the enforceability of the social provisions in the EPAs in general, and labour rights in particular.

## **5. Effects of reciprocal trade liberalisation on employment and wages: Expected gains and actual impact**

The vast theoretical and empirical literature on the impacts of trade liberalisation on employment in general reveals sig-



nificant heterogeneity at country and sector levels (ILO Report, 2016). Although there is no 'crystal ball', there are some important critical points that can be drawn from the literature to inform this debate on labour provisions in the EPAs. Broadly, there are two camps in the literature on trade liberalisation. On the one hand, some studies show a positive correlation between liberalising trade and employment destruction, especially in the manufacturing and agriculture sectors. Both of these sectors are not only important for ACP economies, but have also received a lot of attention from the 'Stop EPA' pressure groups (Mutume, 2007). Based on this literature, we can ask if the EPA provisions result in more trade and financial liberalisation, which in turn undercuts legal protections for workers and reduces the power of collective bargaining organisations? From the perspective of Blanton and Peksen's comprehensive research, economic liberalisation does undermine labour rights, as there is "a fairly consistent and negative relationship between neoliberalism and worker rights. This implies a clear contradiction between norms of neoliberalism and labour rights, as the former comes at the cost of the latter" (Blanton and Peksen, 2016, p. 482). However, they do identify that pro-market policies anchored in the rule of law and securing property rights as well as a high level of existing market openness, do not necessarily undermine labour rights, or inflict minimal damage on labour rights (Blanton and Peksen, 2016, p. 474).

On the other hand, the bulk of pro-neoliberal literature shows that trade liberalisation can induce employment creation, which mitigates any losses from a change of labour composition across sectors (DG Trade, 2017). This literature identifies that an enhanced business climate can spur investment and in particular raise the wages of the local population (Wolf, 2004). In this perspective, the resulting economic growth and development forms part of a positive sum game, or as Martin Wolf says, 'Economic life is about beneficial mutual exploitation or, if one wishes to

describe it more benignly, about playing positive sum games' (Wolf, 2004, p. 236). Indeed, in his perspective, and in contrast to Naomi Klein's critique on Export Processing Zones in particular (Klein, 1999, p. 208), Wolf notes, "'industrial slums and low-wage ghettos" may be bad, but being entirely without them, as most of sub-Saharan Africa is today, is worse.' (Wolf, 2004, p. 242). Unfortunately, this seems to be a gross generalisation, which falls into the trap of making workers' rights secondary to business interests. Blanton and Peksen eloquently underscore the fine line between neoliberalism enhancing and damaging labour rights: "neoliberal policies are associated with an array of positive rights, including a higher standard of living and even greater levels of happiness. However, these outcomes are viewed as positive externalities rather than direct goals of neoliberal policies" (Blanton and Peksen, 2016, p. 478). This brings us to the crux of what De Schutter refers to as 'humanising globalisation', and harnessing trade policies to achieve what EU and ACP signatories of the Marrakesh Agreement establishing the World Trade Organisation adhere to, namely, 'raising living standards, ensuring full employment and a large and steadily growing volume of real income' (De Schutter, 2015, pp. 4-5). **Insofar as labour rights are secondary to the economic freedoms that trade liberalisation promotes, there is ample evidence that provisions need to be put in place to find a balance between the economic tenets of state, capital and labour.**

Again, although there is no crystal ball, there is nevertheless a worrying trend in the pro-neoliberal literature which puts the benefits of trade liberalism – higher GDP, higher wages, longer life expectancy, respect of core labour standards – in the spotlight, but leaves the issues of the declining power of labour relative to business in the shadows. Indeed, it is also worrying that research finds that 'ILO convention ratification is negatively associated with labour rights, with the latter imply-

ing that ILO conventions may cause “radical decoupling” from labour commitments’ (Blanton and Peksen, 2016, p. 458). These are issues that EU and ACP partners must engage actively on to avoid returning to a new era of what Walter Rodney referred to as the ‘development-underdevelopment dialectic’, whereby the economic development of one partner is positively correlated to the economic underdevelopment of the other at the expense of labour rights (Rodney, 1972). Already, the outcome of the Cariforum-EU EPA 5-year review does not bode well for EPA implementation in general. It shows that EPA+ related factors, such as the economic and financial crisis, could impact EPA implementation and by extension, net employment gains or losses (CF-EU EPA Review, 2015). These preoccupations are perhaps all the more pertinent in EU-ACP relations, which approaching post-Cotonou negotiations aim for a modern day partnership that can distinguish itself from a long history of colonialism and domination. Indeed, Sir Shridath Ramphal aptly states, ‘[t]he challenge that faces developing countries is not merely the challenge of economic development, but the fact that in failure lies the danger of returning to a new dependency - a new kind of colonialism - deriving from economic weakness’ (Ramphal, 2014, p. 66). Worryingly, it is clear that the EPAs contribute to a fragmentation of the trade-labour nexus, not only at the EU-ACP level, but also internationally.

The actual and expected gains for job creation in the EPAs are evidently both of quantitative and qualitative concern (ILO Report, 2016, pp. 3-4)<sup>5</sup>. Indeed, the recent ILO report, an ‘Assessment of labour provisions in trade and investment arrangements’ provides an overview of literature on the subject, which confirms **the qualitative implications of the EPAs on jobs and wages are equally as heterogeneous as the quantitative aspects**. Two key points can be drawn: (i) there is not a single direct factor that affects wage inequality but rather a multiplicity of factors, and

similarly, (ii) working conditions may be impacted by a number of direct or indirect factors across an undefined period of time. This exemplifies the need for collaborative solutions, or the pursuit of core labour standards through means directly linked to improving outcomes (Blanton and Peksen, 2016, p. 628). Indeed, not only do institutions play a pivotal role in the trade-labour nexus, but also, the implementation of provisions can determine the actual effect of trade on the labour market (ILO Report, 2016). For this reason, in spite of the fragmentation of provisions, factors such as social participation shall be crucial to positively impact the implementation of the EPAs, in such a manner which does not subordinate labour rights to business expectations. This is certainly no easy feat given that some authors' research outlines that "[t]rade policy is an inefficient tool to enforce labour standards" (Blanton and Peksen, 2016, p. 628), and the abundance of mixed evidence with respect to the effectiveness of labour provisions in trade agreements (ILO Report, 2016, p. 76).

**Bearing in mind the importance of domestic factors for the trade-labour nexus, monitoring the agreement's quantitative and qualitative impacts on jobs and wages will be important.** Therefore, it is of no surprise that the European Parliament report on the future of EU ACP relations highlights that a mechanism ensuring that sustainability provisions in existing agreements are made legally binding is needed in order to mitigate any possible harmful effects of the EPAs. The report states that "the EPAs constitute a basis for regional cooperation and that they must be instruments for development and regional integration; highlights, therefore, the need for legally binding sustainability provisions (on human rights and social and environmental standards) in all EPAs, and underlines the importance of creating effective monitoring systems that include a wide range of civil society in order to avoid the negative effects of trade liberalisation" (European Parliament, 2016). This sums up the general concern for the

expected and actual impacts of trade liberalisation on jobs and wages. Indeed, the World Employment and Social Outlook 2015 report also explicitly highlights the risk that trade liberalisation is most likely to benefit firms in global value chains, as opposed to the workers. Thus, despite the general heterogeneity in the literature, both the possible quantitative and qualitative effects of the EPAs should be monitored with scrupulous attention to ensure that labour rights truly are enabling rights.

## **6. Conclusion**

This article aimed to shed light on the trade-labour nexus in the new EPAs between the EU and the three EAC, ECOWAS and SADC regions, with reference to the earlier Caribbean agreement that is currently being implemented with the Cariforum. The article responded to the two hypotheses and showed that:

- **Hypothesis 1:** African negotiators did conclude EPA-light agreements, which do depart from the broader labour provisions in the Cotonou agreement;
- **Hypothesis 2:** The weaker trade-labour nexus in the newer African EPAs can be described as a missed opportunity, not only for the African counterparts but also for the EU's 'promotional' approach of labour provisions in trade agreements.

Yet, the article also showed that the variegated coverage of labour provisions across the EPAs could be a double-edged sword. In particular, the broader linkage to sustainable development and other social provisions *de jure*, can be *de facto* enabling factors. For example, social participation was shown to be a key means to induce enhanced and even enforce labour rights, even in the absence of strong *de jure* provisions or direct references to the ILO's Decent Work Agenda. Furthermore, the fact that there is widespread heterogeneity in the literature on the impacts of trade

liberalisation on employment and wages, both quantitatively and qualitatively, reinforces the importance of social participation for monitoring the effects of the agreements.

In sum, although there is clear evidence of 'ACP exceptionalism' in the EPAs, especially vis-à-vis labour provisions in the newer African EPAs, the proof of the EPAs will be in their implementation. As this article has shown, despite the weak trade-labour nexus, there is still room to enhance labour rights by optimal usage of other social provisions and effective monitoring of the agreement. In this regard, social participation shall be paramount and could be effectively used by both Parties in the agreement to overcome any exceptionalism *de jure* in the African EPAs. Additionally, the negotiations for a post-Cotonou partnership, inspired by the overarching 2030 Agenda, also provides another opportunity to bring labour rights back to the table to ensure that labour rights truly are enabling rights.

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## Endnotes

- <sup>1</sup> *Yentyl Williams is a PhD researcher at CEUS, Ghent University.*
- <sup>2</sup> *Direct labour refers to the labourers who are directly involved in producing goods or supplying services.*
- <sup>3</sup> *Interestingly, this is another case of ACP exceptionalism, as this ILO Declaration on Fundamental Principles and Rights at Work (1998) is increasingly being used as a baseline reference for labour standards. Indeed, only the Cariforum-EU EPA and the SADC-EU EPA refer to these agreements.*
- <sup>4</sup> *The author has been researching EU-ACP relations, with specific focus on the EPA since 2011 and has been involved in a number of key dialogues: as Expert to the EESC for the Opinion on the future of EU-ACP relations; as observer to the Cariforum-EU JCC; as observer at the EU-ACP Joint Parliamentary Assemblies to name a few.*
- <sup>5</sup> *The ILO report states that “[a]ccording to the estimates, a trade agreement with labour provisions increases the value of trade by 28 per cent on average, while a trade agreement without labour provisions increases trade by 26 per cent.” Although the percentage estimate is not greatly different, the importance of the labour provision is more about the qualitative social impact and not necessarily quantified in terms of increased trade.*

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# REINFORCED SOCIAL CLAUSES IN PUBLIC-PRIVATE PARTNERSHIPS AS THE VEHICLE FOR THE PEOPLE'S EUROPE

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Reinforced social clauses would introduce award criteria based on the improvement of working conditions beyond the legal minimum standards in public-private partnerships. This measure seeks to improve social standards through public procurement by reassessing the role of the private sector in public provision. This is an innovative policy proposal which aims at being developed into law. It draws from past experience in international law at the core of the WTO and provides a proposal with an easy fit into current EU law. The chapter lays out further details and a justification of its feasibility, cost-effectiveness and expected success. Starting at the EU level, it has the potential to be extended to EU development policy in third countries. An EU institutions roadmap and a timeline are suggested for implementation, with the aim of integrating this policy proposal into EU law in the next legal overhaul of public procurement.

## **1. Introduction: The problem of pursuing a budget with a positive social impact**

The ultimate European challenge is to combine budgetary restrictions with increasing public demands. Since the 2008 crisis, the European Union has experienced the worst economic downturn in its recent history (FitzGerald, 2011; Hemmelgarn and Nicodeme, 2010; industri All European Trade Union, 2010). Public budgets are under pressure as a result of decreasing revenue, caps on public borrowing and the depoliticisation of monetary policy. Simultaneously, welfare demands are rising due to increasing unemployment, longer life expectancy and the inversion of age distribution pyramids - with a shrinking youth population and an increasing elderly population. This has led to a number of crises in public works, services and goods which have not been fully addressed and progressive political demands that have not been met.

Public-private partnerships (PPPs) have the potential to respond to this challenge. PPPs are innovative contracts between the public and the private sectors based on intense collaboration: PPPs entail the effective transfer of cost and risk to the private partner while retaining control and monitoring in the public sector. However, they are often criticised as benefiting the private sector at the expense of the public party and the final users. To make PPPs practicable while protecting and promoting Social Europe, this paper proposes introducing reinforced social clauses (RSCs) in PPPs.

The RSC in PPPs is a mix of the traditional 'social clause' with a modern twist. The traditional social clause sought to ensure global compliance with minimum labour standards and it failed. The traditional PPPs have been accused of privatising public profits. The modern twist proposed is a change of approach by seeking the advancement of workers' rights in PPPs of higher social calibre within the EU. The RSC enhances the social impact of PPPs,

protects the agents involved (i.e. the public partner, workers and final users) and contributes to building Social Europe.

This policy is focused on improving the role of the private sector in public provision, building on the EU institutions' strategies. Both the European Commission and the European Parliament agree on the potential of private sector involvement, especially via PPPs, in public development projects.

The European Commission has stressed the importance of private sector participation in development, as a substantial driver of inclusive growth and job creation directed towards improving the lives of the poor and delivering sustainable and socially inclusive economic development (European Commission, 2014a). The European Commission communication on 'A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries' provided an outline on the political control shaping private sector intervention in development. The document signals the strategic value of building partnerships and aligning public and private interest through partnerships on areas as varied as employment creation, inclusiveness and poverty reduction and putting strong emphasis on results (European Commission, 2014a, pp. 4–5). PPPs are considered a procurement mechanism which is 'more reliable and affordable [and] can provide innovative solutions [in a variety of areas]' in catalysing private sector engagement in development policy (European Commission, 2014a, p. 14).

The European Parliament, in replying to this Commission communication, agreed on the high potential of PPPs in development policy, subject to the pursuance of political objectives. While it subscribes to the Commission's commitment to encourage the use of PPPs in development, it also highlights the deficiencies in regulation and suggests the approval of a legal framework that would ease PPP implementation and promote the pursuance of socially responsible uses (European Parliament, 2016).

As a response, this chapter sets out the case for an RSC in PPPs, proves its viability and confirms that it is the best alternative available. This proposal draws from the EU institutions' will to involve the private sector in public provision, together with social democrat demands. While private sector intervention is welcome, it should respond to the political objectives pursued.

This chapter covers: i) a detailed explanation of the policy proposal, ii) a critical assessment of its integration into law, iii) the alternatives available, and iv) an implementation strategy.

Reinforced social clauses in PPPs are a feasible, cost-effective policy, with a high chance of success, to establish enhanced obligations for social protection and care for PPP workers. Furthermore, it can be implemented smoothly through the mid-term review of the Multiannual Financial Framework, the overarching 2030 Agenda and the revision of the EU-ACP partnership agreement.

Including the RSC in PPPs also promotes the United Nations Sustainable Development Goal 8 on 'decent work and economic growth'. It deals with decent work and social protection by optimising public spending. It does so by rewriting the rule that better public goods, works and services can be achieved only at the expense of social rights.

## **2. The policy proposal**

The RSC in PPPs is a policy that merges two tools to contribute to building Social Europe. Both proposal elements, RSCs and PPPs, are critically assessed below.

### **Public-private partnerships**

Public-private partnerships are public contracts to provide a public good, work or service through the cooperation of public and private sectors. The European Commission defines them as:

*"forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service"* (European Commission, 2004, p. 3).

Usual features include long-term cooperation, complex funding schemes and risk transfer to the private partner. They are expected to go forward only if resulting in cheaper, better quality projects compared to public provision.

PPPs have been selected among other public contracts because of their worldwide interest and the internal debates they bring to progressive politics.

PPPs have merited the attention of major policy stakeholders worldwide, even in times of austerity. Specific PPP-Units and groups have blossomed in major international organisations and State entities including the World Bank, the United Nations, the OECD, the European Investment Bank and in several countries (World Bank Group PPP Infrastructure Resource Center, 2016b). Although some regulatory proposals have been put forward (European Bank for Reconstruction and Development, 2005; Organisation for Economic Cooperation and Development, 2012; United Nations Commission on International Trade Law, 2001), there are no globally applicable PPP clauses: every contract is regulated primarily on its own bylaws and domestic laws.

In the EU, there is a wide array of PPP types depending on the object of the contract, on the role of the economic operator, or on the extent of private sector participation, among others. Depending on the object of the contract, PPPs can be used for the provision of public goods, works and services: in health, education, transport infrastructures and prisons there is widespread use of PPPs (Yescombe, 2007, p. 1). They can vary according to the role of the economic operator, so it is possible to distinguish



between the continental PPP model, the Commonwealth-born United Kingdom's Project Finance Initiative, franchises or concessions. The extent of private sector participation can include a combination of design, build, own, operate and transfer, represented by their initial letters as D, B, O and T. For instance, a PPP can be defined as a 'Build-Own-Operate' or BOO, 'Build-Operate-Transfer' or BOT, 'Build-Transfer-Operate' or BTO, and 'Design-Build-Finance-Operate' or DBFO (Yescombe, 2007, pp. 4–8).

But PPPs have drawn praise and criticism alike. The advantages of PPPs include their potential as an easier way for the transfer of technology and expertise from the private sector to public projects, benefiting from cheaper and more extensive sources of funding, higher incentives to deliver on time and within budget, better budgetary certainty over all stages of development, the potential to allow local communities to develop by sharing risks and costs with private partners, diversifying the economy and gradually exposing public provision to the private sector while retaining control in public hands and delivering value for money (World Bank Group PPP Infrastructure Resource Center, 2016a; Yescombe, 2007).

Risks associated with PPPs include a greater procurement cost compared to public provision, greater debt costs and repayment in comparison to public financing, limited or ineffective risk transfer to the private partner, ultimate government responsibility, political risk, unfair advantages that private partners could acquire over time (gaining experience and access to sensitive data) and the complexity of the legal framework. The 2015 EURODAD report on PPPs for sustainable development was very critical regarding those risks. According to this report, when compared to fully public provision, PPPs are significantly more expensive, complex to negotiate, expensive to implement, riskier than perceived, place capacity constraints on the public sector and are less efficient and less transparent (Maria Jose Romero, 2015). Among

the main disadvantages of PPPs is the perception that they are vehicles for the privatisation of public profits.

The nature of PPPs is also under discussion in progressive politics. The European Parliament Progressives mostly agree with the advantages of PPPs and have supported PPPs since the first EU PPP experiments (Parliamentary Group of the Party of European Socialists, n.d., p. 11) for a range of policies. For instance, in transport infrastructure (Group of the Progressive Alliance of Socialists & Democrats in the European Parliament, 2009) and in energy grids (Martín de la Torre, 2011). However, progressive politics continues to question the contribution of PPPs to Social Europe. PPPs are often perceived as vehicles that lumber the public sector with all risks and costs, punish workers and users alike and merely transfer profits to the private sector. In Hall's words, 'the private company has a greater incentive to reduce employment to increase profit margins, and has less incentive to maintain "overheads" such as training'. Under this approach, the private sector pockets the benefits without bringing in 'extra money' or taking any risks. This would be to the detriment of the people involved, whether users, workers or ultimately the taxpayer (Hall, 2008a, 2008b, 2015, pp. 30–1).

The European Trade Union Confederation (ETUC) has also demanded PPPs with improved social standards and claimed an EU bias in favour of PPPs and against public investment (ETUC, 2015). In their view, the budgetary restrictions and public borrowing limitations as introduced in the EU have pushed public services and public investment into PPPs. According to the ETUC, this has the potential to increase costs for the public sector over the long term, while privatising profits. Further, the ETUC warned against the use of PPPs and 'call[ed] on the Commission and Member States to evaluate properly the financial risks associated with their use'.

However, the ETUC does not demand the abolition of PPPs, but rather for PPPs to yield positive social impact. Back in 2010, the ETUC

resolution 'Towards a new impetus for public services' demanded 'a serious assessment of PPPs, [as] it is not acceptable for the Commission to push, without any critical assessment of problems and failures, for an increased scope for PPPs, to stimulate unilaterally a greater role for the private sector' (ETUC, 2010, para. 15). PPPs should require independent evaluation and higher transparency because many of the advantages attributed to PPPs have been contested scientifically (ETUC, 2010, para. 15). In 2015, the ETUC declared 'support [for] positive reforms that deliver better public services more effectively, for example through PPPs' (ETUC, 2010, para. 74).

In response to these claims, this paper advocates for a reinforced social clause in PPP contracts in the European Union: this is expected to lead to PPPs of a higher social calibre, delivering decent work and higher service quality for workers, users and the public sector.

### **The reinforced social clause**

The social clause originated in the World Trade Organisation (WTO) as a 'legal provision in a trade agreement aimed at removing the most extreme forms of labour exploitation in exporting countries by allowing importing countries to take trade measures against [those who] fail to observe a set of internationally agreed minimum labour standards' (Lim, n.d.). Its effectiveness relied on the possibility of reprisals: noncompliance would lead to exclusion from arrangements providing preferential status, restrictive quotas, quantitative barriers or import restrictions.

Despite its potential, the WTO's social clause failed. Differences over the role of labour standards in international trade resulted in two antagonistic blocs (World Trade Organisation, 1996)<sup>1</sup>: those who supported international trade to improve labour standards, especially for developing countries; and those that considered lowering labour standards as key in global competition to push prices down (Collingsworth, 1998). Further

causes were its complexity, hurdles in coordinating WTO action with that of the International Labour Organisation, or voting systems that allowed veto (Lim, n.d., pt. 5.2-3). The WTO social clause never succeeded.

This RSC proposal is based on introducing reinforced social demands as award criteria for PPP contracts. The proposed wording for the RSC is inspired by the traditional social clause, but with a modern twist: it seeks to increase workers' standards, instead of guaranteeing compliance with the bare minimum.

The RSC as proposed should be implemented through introducing additional award criteria on quality in public procurement. It is proposed that the additional quality criteria as set by the RSC will be part of the 100 points for quality. This would make the RSC in PPPs compatible with the current EU efforts to implement other social award criteria.

The RSC should be implemented as part of the early stages in a tender. These documents should be the 'invitation to tender' (the document that invites private partners to put their proposals forward and signposts the criteria against which proposals will be evaluated) or the contract notice (setting the basic contract rules, such as the object and the award criteria). Currently, the default wording for contracting with the European institutions is as follows. To begin, the invitation to tender includes a section on 'award criteria'. The default clause states that:

*"The contract will be awarded based on the most economically advantageous tender, according to the 'best price-quality ratio' award method. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points."*

It is then stated how price and quality will be evaluated. Under the quality criteria, there are several subsections defining aspects such as "methodology, management structure, logistical

arrangements and administrative support”, “organisation of local suppliers” or “understanding of the project” (European Commission, 2016b, pp. 16–22)<sup>2</sup>.

The clause would be compulsory for all PPP contracts. Once this measure becomes enforceable, all PPP contracts should include it in their own terms and conditions. This will solve the progressive political concerns on the maintenance of labour standards in PPP agreements<sup>3</sup>. The clause is expected to work towards the improvement of workers’ labour conditions.

The exact wording of the RSC in PPPs would depend on the preferences of the legislator. However, some potential criteria are indicated as guidance:

- Minimum company salary: a comparison between the lowest salary paid in the company against the minimum salary in the jurisdiction where the work takes place or the service is provided<sup>4</sup>. Bidders would be required to fully disclose the salary structure within the company. This would be computed in percentage points paid above the minimum salary that the lowest paid employee receives. Values should be computed in terms of hourly salary after taxes;
- Average company salary of the bidders: bidders will receive a number of points as a function of how high the average salary within the company is in relation to the minimum salary of the jurisdiction where the goods and works take place or where the service is provided<sup>5</sup>. In computing the average salary, all workers would be considered, regardless of their position in the firm scale or whether hired through the company, temporary work agency or equivalent<sup>6</sup>. Bidders would equally be required to fully disclose the salary structure within the company as above;
- Further training opportunities on offer for employers;
- Social benefit programmes or initiatives for work-life balance, including facilities for employees, access to social services or

flexible time schemes available in the workplace.

At the same time, the price criteria would receive the same number of points in the project award process. Maintaining the importance of the price as an award criterion is expected to force private providers to couple competitive prices and better quality standards, thus competing by cutting the private provider margins and avoiding peaks in public sector costs.

It is recommended that the clause has a fixed wording. Despite the initial time investment in negotiating its text, there are many advantages.

First, it facilitates implementation for governments at all levels within the EU to apply it. Not all contracting authorities have the time and the expertise available to draft PPP agreements. Having a social clause with a fixed wording will promote its use across the EU at all levels of government. This will provide trust and security in government business and save resources in contract drafting that would otherwise render the integration of the clause impossible.

Second, a fixed wording has the potential to create a common body of knowledge on its application. A body of interpretation through guidance from administrative bodies, judicial review in Court and international organisations' studies is expected to emerge. This will provide more detailed instructions on how to use and interpret the actual clause without placing an unbearable burden on contracting authorities. It brings a fixed meaning that stakeholders can work on together, it brings more interpretation tools and it brings easy spread and cross-fertilisation on its use.

### **3. Can the reinforced social clause for PPP contracts contribute to building Social Europe?**

The RSC is a legal precept seeking to contribute to the achievement of progressive political goals. It is based on establishing

higher labour protection standards as an award criterion in public procurement. The clause has a high chance of success because of its alignment with current EU law and international law. However, a few aspects would require further research from the European Commission.

### **Compatibility with EU law**

The RSC in PPPs fits with current EU law development. Public procurement is the chosen policy area to act upon. This is justified on the grounds that these are the EU rules that regulate award criteria, including the exclusion of abnormally low bids, health, safety, training, equality and other social clauses in the procurement stage of PPPs across the EU (Hall, 2008a, p. 4). Within procurement, the policy proposal focuses on PPPs as the most controversial procurement vehicle within progressive politics, as set out in the previous section of this work.

Applicable EU legislation on public procurement is the new public procurement package, which includes a set of three Directives enacted in 2014: Directive 2014/23/EU on concessions<sup>7</sup>; Directive 2014/24/EU on public procurement<sup>8</sup>; and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services<sup>9</sup>. The package has implemented some policies aiming to improve public procurement social standards.

The 2014 public procurement package introduced two policies to achieve social objectives through public procurement: a new cross-cutting social clause and social integration through procurement (European Commission, 2016c).

The new cross-cutting social clause establishes the need for compliance with 'applicable environmental, social or labour law obligations under EU and national rules, collective agreements or international law' in all public procurement procedures (European Commission, 2014b). Non-compliance with the clause can result

in exclusion of the bidder from public procurement procedures.

Social integration through procurement is currently done by allowing award criteria seeking higher standards in delivering public services. Examples include the introduction of award criteria on the basis of the process by which the goods, works and services purchased are produced. As a result, contracting authorities can decide to incorporate factors related to the production of the good, work or the provision of a service as award criteria. Those include, for instance, employers of disadvantaged people or those using green – as environmentally sustainable – procedures. Additionally, contracting authorities are allowed to reserve contracts for entities that promote social inclusion, defined as enterprises where 30% of the employees are disadvantaged. The advancement of these criteria eases the pathway towards implementing the RSC in PPPs.

Having said this, the RSC in PPPs should be drafted in a way which is compatible with the achievement of the social integration criteria indicated above. Incompatibility could lead to one set of social rights crowding out the other, whereas making them compatible would enforce the social character of PPPs. The way to do this would be to include both the social considerations above and the RSC in PPPs when calculating how many quality points a bid scores within the public procurement award.

It is suggested that the additional criteria that the RSC brings should not conflict with the promotion of other desirable policy objectives of EU public procurement or with considerations on price. Otherwise, this could lead to an artificial increase in contract prices or to crowding out other public procurement policy objectives. The way to prevent this is to cap the amount of points awarded for better labour standards as described above, with an amount based on the Commission's research. Additionally, PPPs are built on a cost safeguard. They can only proceed if they yield to better cost structures than other forms of procurement, as



defined by the public sector comparator: this is a technique that measures the cost of the project when PPP-procured against the cost of the fully public provision. It is of common understanding among legislators and policy-makers worldwide that a PPP can only proceed as such if the public sector comparator shows that the PPP achieves savings.

Other EU laws that the RSC in PPPs is in line with are the rights of posted workers. These rights comprise minimum rates of pay; maximum work periods and minimum rest periods; minimum paid annual leave; health, safety and hygiene at work; and equal treatment between men and women, according to the laws of the host state.

### **Compatibility with international law**

The RSC in PPPs is also compatible with international law. The arguments below do not intend to be an exhaustive list of legal instruments that the RSC in PPPs touches upon, but rather a collection of experiences that show compatibility with current legal values.

The rationale behind the RSC in PPPs is to comply with the principles of neoliberal economics, as supported by an array of international organisations for economic governance, while seeking to improve labour standards.

The RSC in PPPs satisfies the Progressives' demands to improve social standards through PPPs. Using better labour standards as a public procurement award criterion changes the incentive structure of the private sector bidders. It reverses the incentive of lowering employment costs to increase profit margins that Hall describes (Hall, 2008a, p. 2). Instead, it leads to an alignment of interests between the public and the private partners in a PPP. It also benefits workers: better working conditions are expected to have a positive impact personally and on the performance of their work functions. Ultimately, this will also transform into bet-

ter PPP performance and increased customer satisfaction.

The UN Commission on International Trade Law (UNCITRAL) published a 'model law' for public procurement in 1994. Its articles 34.4.3.c and 39.1.d allow the inclusion of any other "additional criteria, social or otherwise, without restriction" (Hall, 2008a, p. 6). However, they neither encourage nor restrict the implementation of demanding social clauses.

The social clause, which failed in the context of the WTO, is already being implemented in EU law. This is the new 'cross-cutting social clause', as integrated in the 2014 public procurement package. The RSC in PPPs draws from the momentum created in 2014 to move a step forward. The success of the RSC in PPPs is partly thanks to the different nature of the EU compared to the WTO.

To start with, the EU is an organisation based on integration at a European level and shared social values. This differs from the WTO, which has a wider geographical scope and wider heterogeneity among its members, making consensus on social issues a harder goal to achieve. Furthermore, the EU has the capacity to enact laws on public procurement, the legislative area that the RSC in PPPs touches upon. The EU also provides a wider range of forums for discussion and institutional support in which consensus can be achieved more easily than at the WTO level. Perhaps the main reason for its success is that the RSC is based on changing the structure of incentives for the private sector to softly encourage higher work standards.

National experiences have also demonstrated an openness to the RSC in PPPs. At the national level, the UK has developed extensive legislation and guidance for its own kind of PPPs: the Private Finance Initiative (PFI) (Yescombe, 2007, pp. 33–39). The difference between PPPs and the PFI is the way that the project is funded: the PFI is funded with private sector equity and debt funding, and then 'paid for by the public sector "customer"

through monthly payments over the life of the project' (Lexis Nexis, 2016). The Framework Agreement on PFI sets that 'the Government uses PFI only where it can be shown to deliver value for money and where this is not at the expense of employees' terms and conditions' (Lexis Nexis, 2016)<sup>10</sup>. There is a reference to not pushing costs down 'at the expense of employees' terms and conditions'. Yet again, this allows for the introduction of social clauses, but neither encourages nor deters this.

### **Factors for further European Commission research**

Some of the hurdles that the policy implementation can encounter are the initial investment and the possible reluctance from the private sector. These are outlined below.

The implementation of the RSC is expected to require investment in time in negotiating its content, proposing it as a legal instrument with binding force and transforming it into law. However, this investment is expected to be only as onerous as any other policy idea that has the aspiration of becoming law.

This measure is also expected to encounter reluctance from the private sector. This is because its implementation will put pressure on the private sector to deliver better working conditions. However, this is a policy decision that, once made into law, will contribute to the progressive politics goals of fair jobs, better use of public money and delivery of good-quality in public services. The progressive political spectrum prefers to spur private sector competition to deliver better working standards rather than to spur them to lowering the price.

Additionally, it is still uncertain what kind of PPP contracts the RSC should apply to. As noted, PPPs include a wide range of public procurement instruments. Reference has been made to the differences on the object of the contract, the extent of private partner's involvement and the role of the economic operator. The fixed wording of the clause is expected to maximise its use across

different PPP contracts. It is not certain whether the clause would be compulsory and, if so, regarding what kind of PPP contracts. This study advocates for its widespread use among all PPP-suitable projects, regardless of the contract's object or sector, but also encourages the European Commission to perform studies and formulate a recommendation to the European Parliament and Council as EU co-legislators.

Such research should acknowledge the regional differences across the EU, notably the social, economic and labour differences. It could be argued that a uniform wording or a uniform computing system of labour conditions would be limited and would not take into account the regional differences. In response to this, standard criteria have been defined. Yet again, the Commission will need to consider carefully whether it is necessary to apply the clause differently across regions.

It is equally necessary to consider the impact of the measure on SMEs, as this is compulsory in impact assessments for all new legislation. No negative impact has been confirmed for the public procurement package of 2014 for SMEs regarding the current measures of procurement for social objectives. As the RSC in PPPs is in line with those measures, it is reasonable to expect that there would be no negative impact on SMEs. However, the possibility of rising costs and its impact on SMEs can only be outlined here, and further enquiry from the European Commission is encouraged to respond to these questions.

It is reasonable to expect no negative impact for SMEs from the RSC in PPPs. As the RSC in PPPs is intended to make private providers compete for public projects through improvements in social and labour standards, a rise in the cost of public projects could follow. In the short term, the reinforced social clause is expected to have a direct impact on improving labour standards. If better labour standards are a contract award criterion, private partners will have an incentive to improve them to maximise their

chances of contract award. In the medium term, the measure can benefit SMEs. As SMEs are smaller than big corporations, they are also more exposed to changing environmental conditions and have more flexibility to adapt to change. SMEs will have incentives to invest in improving labour standards and in a smoother way than many big corporations could manage. In the long term, workers with improved labour standards should be expected to work more comfortably and deliver a better service to the general public- their ultimate customer.

Having defined the proposal and its expected outcome, is this the best that progressive politics can deliver? The next section compares the policy to alternatives available.

#### **4. Mapping policy: Is the RSC in PPPs the best alternative available?**

Introducing social clauses into PPP contracts is expected to yield significant advantages which outweigh the disadvantages. Given that all decisions imply an opportunity cost, it is necessary to make sure that this is the best policy alternative available. This section briefly compares the RSC to other alternatives available, aiming to state whether it is the best alternative.

Alternatives to the introduction of social clauses in PPP contracts include a variety of procurement forms. These range from public provision to privatisation, with other arrangements in between. In mapping the alternatives, three procurement methods have been selected. These are public provision, privatisation and public-social-private partnership (PSPP). The three alternatives have been chosen to make a complete study, representing procurement forms across the public and private spectrum. Public provision and privatisation are the two extremes. PSPP have been selected as a form of procurement that falls between public and private with a focus on the achievement of social objectives.

These three forms of procurement have been chosen as covering the full spectrum of possibilities that procurement can offer. The extreme sides are represented by public provision and privatisation, either fully public or entirely private provision. The choice of PSPP is justified because it is a close scenario to PPPs, based on social commitment. Concessions have not been chosen given that these contracts are usually short term, which would not justify introducing the RSC.

### **Public provision**

Public provision entails the exclusive role of the public sector in the provision of a good, a work or a service. There is no involvement of private partners. It is advantageous in the sense that it avoids the opening of a procurement procedure, it relies exclusively on public assets and there are no costs of negotiation with external partners.

In comparing public provision with the RSC in PPPs in abstract, the latter is expected to bring better results. This is due to budgetary restrictions and the costs of PPP. First, at a time of tight budgetary restrictions and high social demands, public provision is in many cases not an option. Second, questioning whether the cost of a PPP is higher than the public sector is a key concern of the general public. It is often perceived that a PPP project results in a higher cost than the private sector. However, one of the mainstream tools in their evaluation is the 'public sector comparator'. As indicated previously, public contracts devised as a PPP can only proceed if the public sector comparator shows that the PPP achieves savings in comparison to the fully public project.

### **Privatisation**

Privatisation is the opposite scenario to public provision and an attractive option for bold policy-making. If well managed, it pro-

vides a reasonable sum of funds in the short term. However, it fully transfers responsibility, ownership and decision-making to the private sector and rarely comes back to the public sector.

Privatisation entails inconveniences (Yescombe, 2007, p. 16)<sup>11</sup>. First, privatisation breaks the accountability link: the provider is not directly politically accountable. Second, the citizen is made aware of the involvement of the private partner. Third, ownership of physical assets is transferred to the private partner. Fourth, privatisation usually brings competition to the market, whereas most PPPs continue acting as a public monopoly. Fifth, the scope and cost of services are controlled by licensing or regulation allowing for regular cost changes or pricing according to the rules of competition.

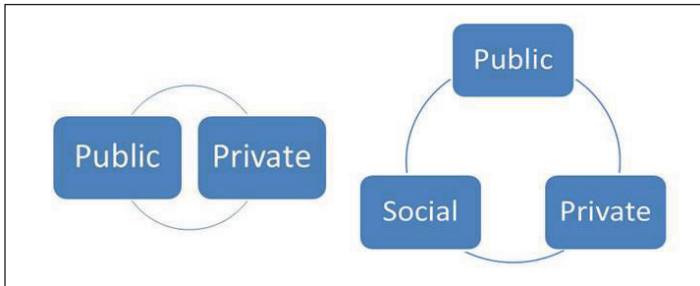
PPPs instead remain directly politically accountable, allow for higher public sector intervention, the ownership of the assets remains (or is often reverted to upon contract completion) in the public sector, and they allow the public sector to fix costs and pricing by a specific contract between public and private partner. While these arguments could also be critically analysed in detail, they intend to dismantle common criticisms of PPPs.

### **Public-social-private partnerships**

Public-social-private partnerships are a new model for the provision of public goods, works and services. They represent a different kind of PPP: they include a third partner. This third partner is, as the name suggests, a social partner (i.e. third sector, NGO or entity with social responsibilities).

From a critical standpoint, the entry of a third entity has the potential to increase time and coordination costs at all stages of the project. When comparing two and three parties in an agreement, a greater number of partners is likely to involve greater coordination costs. This is illustrated in the figure 1: whereas the traditional PPP is based on a two-party agreement, the PSPP of

Figure 1: Illustration of PPPs and PSPPs



three partners leads to more exchanges among the partners and logically the possibility of raising coordination costs. For instance, the number of exchanges in a PPP amounts to two, whereas for a PSPP this is six. The use of PSPP could diminish the benefits that reinforced social clauses can deliver through PPPs. In summary, an additional partner would foreseeably lead to a higher cost of negotiation, higher accountability responsibilities and multiple disagreements. This has the potential to worsen performance, due to higher cost and delays. PPPs instead can deliver the intended results.

Having compared the procurement forms available, it is reasonable to conclude that the RSC in PPPs is the best alternative. However, is it viable? The next sections comment on the viability and propose an implementation roadmap.

## 5. Policy implementation

The reinforced social clause in PPPs makes the provision of public goods, works and services compatible with shrinking budgets. It is in line with the current state of EU laws and policies, helping meet the goals of Social Europe at a reasonable cost. This section comments on how to implement the policy proposal.



## Strategy

This policy proposal is aligned with the progressive policy vision and feeds directly into two ongoing policy streams. It is expected to have a direct impact on the mid-term review of the Multiannual Financial Framework (MFF) 2014-2020 and the EU 2030 Agenda. The following paragraphs elaborate on the viability of the proposal and its specific implementation on the policy processes.

The principle of conferral establishes that EU actions are constrained to ‘the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein’ (Art. 5.1 TEU). Below are outlined the EU competences upon which the policy proposal is substantiated<sup>12</sup>.

Regarding competences, the policy proposal could be implemented using the EU shared competences on public procurement (internal market, Art. 4.2.a TFEU) and those of the programmes discussed: the Multiannual Financial Framework (Art. 312 TFEU), the EU 2030 Agenda<sup>13</sup> and the EU-ACP partnership (Art. 217 TFEU). Complementary competences are the shared competences on social policy (Art. 4.2.b TFEU)<sup>14</sup> and economic, social and territorial cohesion (Art. 4.2.c TFEU)<sup>15</sup>. An account of the synergies between the EU competences above and the implementation of RSC in PPPs is explained below.

Regarding specific policies, this policy proposal is aligned with the progressive policy vision. In terms of implementation, it feeds directly in two policy processes. In the short term, it can be implemented via the review of the MFF and the 2030 Agenda. In the long term, it has the potential to make an impact on the EU consensus for development.

The Multiannual Financial Framework is the EU’s own ‘multi-annual spending plan’ or the outline of the allocation of resources to items. As mentioned before, PPPs can contribute to lower public budget contributions through thorough involvement of the private sector in terms of cost and risk sharing. Introducing PPPs

in general could contribute to expanding the EU's MFF spending capacity. In particular, introducing this policy proposal will also guarantee higher social protection for those involved.

Regarding the EU 2030 Agenda, the EU should consider promoting the RSC in PPPs for the provision of public goods, works and services. The policy proposal could be implemented through conditionality. Conditionality is a legal technique setting a condition *sine qua non* for the performance or the award of a contract. The policy proposed could be based on the inclusion of social clauses in the terms of a contract as a necessary condition for any partner to be awarded EU 2030 Agenda funding.

Indirectly, the introduction of the policy proposal can have an impact on the EU consensus on development. This is based on the understanding of internal and external competence: when the EU gains a competence internally, it is understood that it can also exercise it externally (i.e. towards third countries). Once a competence is acquired internally (i.e. for action within the EU Member States), the EU can exercise the same competence towards third countries. For the case of the EU consensus on development, the suggested policy should be integrated in the 'nationally-led development' stream<sup>16</sup>.

## Roadmap

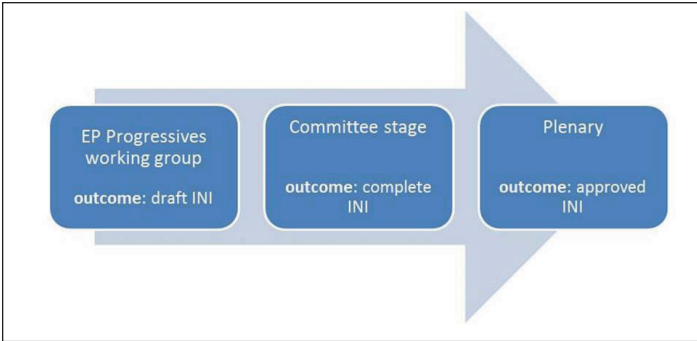
How can this policy proposal be transformed into law? The most effective vehicle to create laws is the European Commission as the holder of the right to initiate legislation. However, progressive politics at the European Parliament has different tools available. There are two paths that the progressive political spectrum can pursue to implement this policy proposal. The paths are applicable to modifications affecting both the review of the Multiannual Financial Framework and the EU 2030 Agenda.

In the short term, the Progressives can put forward this proposal in the evaluation reports issued by the European Parlia-

ment. This should prove a good avenue for legislative change and to transform these ideas into law in the future.

In the long term, the proposed stages are described below.

**Figure 2: Long-term roadmap for successful policy implementation**



First, the Progressives should set up a working group. There should be internal rules in place on how to best to set this up. The Group should identify similar experiences worldwide, identifying whether some existing wording could be borrowed or providing a new wording of its own. It is recommended to explore the World Trade Organisation proposal and to rely on the administrative support of the European Parliament Research Service. Results should lead to a draft non-legislative initiative report (INI).

Second, support for the INI draft text should be sought from the Committees, many of which will have an interest in the proposals. This interest could vary according to the specific wording of the social clause and the content of the draft INI. However, in all cases the Progressives should expect intervention from the Committees on Internal Market and Consumer Protection (IMCO) seeking to become the lead committee and others such as International Trade (INTA), Employment and Social Affairs

(EMPL), Regional Development (REGI) and Legal Affairs (JURI). The Progressives should observe the distribution of committee work closely to avoid institutional deadlocks. Once the document is analysed, debated and approved at the Committee level, it should be brought to the plenary for approval.

Third, the draft INI should seek approval from the plenary. The Progressives, working in cooperation with the Committees involved, should include the draft INI in the plenary's agenda for approval. Once approved, the document will be sent by the regular institutional means to the Commission. The Commission, exercising its right to initiate legislation, would decide whether to accept the proposal and upgrade it to law. Should the Commission support the measure, it could become EU law through the next Public Procurement package. It is EU custom that a new Public Procurement package is produced every ten years<sup>17</sup>. Given that Public Procurement negotiations are usually controversial and lengthy, a timeline of ten years for this policy is adequate.

## **6. Conclusion**

The policy proposed is the introduction of reinforced social clauses in public-private partnership contracts. This is based on the creation of a clause with a fixed wording seeking to promote higher standards of protection for workers as an award criterion for public procurement. The measure seeks to rewrite the rule that competitiveness is always achieved by offering lower prices at the expense of workers' rights, as part of the presumption that PPPs can work only for the advantage of the private sector, and to demonstrate how progressive politics initiatives can become law for the advancement of Social Europe. This is a feasible, cost-effective and successful measure towards achieving Social Europe.

The policy is feasible because it fits with the current development of EU law and progressive values. The procedures in place

that could serve to implement the policy have been identified. It is recommended that the Progressives seek to draft, negotiate and approve a non-legislative initiative document presenting a concrete proposal to the European Parliament that could gain cross-party and cross-committee support.

The policy is cost-effective provided it is carried out as suggested. It requires the following elements: 1) a fixed wording, which eases implementation at all levels of government and for all contracting authorities; 2) its compulsory character, which promotes better working standards across all areas of goods, works and services provided using PPPs; and 3) the possibility of building up a body of knowledge, including administrative guidance and case-law. Assessing the impact on potential rises in the price of public sector contracts or the impact on SMEs remains an open question. According to the evidence, no remarkable rises or worsening terms for SMEs are expected. However, further enquiry at the EU level is encouraged.

This policy is likely to succeed. This is because of its compatibility with current EU law development and optimum integration with future policy development. It has been shown that the applicable EU legislation has taken steps towards the achievement of social objectives through public procurement. Mentions of the new cross-cutting social clause (i.e. compliance with minimum labour standards); award criteria based on the process by which the goods, services and works purchased are produced; and contracts reserved for entities that promote social inclusion. The RSC in PPPs goes a step ahead by adding better labour standards. It also takes account of the existing EU instruments for policy making. It can be considered in the Multiannual Financial Framework (312 TFEU), the EU 2030 Agenda and the EU-ACP partnership (217 TFEU). It triggers small changes leading towards Social Europe.

The policy is expected to be successful. The advantages outweigh its disadvantages considerably. An initial investment is

anticipated, including the cost of researching and negotiating the wording of the reinforced social clause and translating these ideas into law-making. However, the expected impact is an alignment of PPP private sector providers, workers and, ultimately, the taxpayer in supporting a measure where everybody is better off. For the private sector providers, improving workers' conditions would increase their chances of bidding successfully for public projects. PPP workers would receive better working conditions. Ultimately, for the taxpayer, the PPP cost would be invested in promoting better working standards in the workplace.

## Acknowledgements

I am grateful to Dr. Annalisa Prizzon, for her very kind and sensible feedback in strengthening the policy proposal; to Mr. Hadleigh Roberts, who has patiently proofread the article (several times); and to my colleagues at the Truman Bodden Law School in providing an excellent forum to sharpen the ideas contained in this chapter. A very special thank you to the editorial committee for their hard work in organising the Progressive Lab for Sustainable Development.

## Endnotes

- <sup>1</sup> *A social clause did not succeed in the WTO. Developed states supported it to avoid a race to the bottom but developing states wanted to keep the comparative advantage of lower cost structures, heavily based on low labour costs. Negotiations stalled and the social clause was not implemented. The complete report is (World Trade Organisation, 1996)*
- <sup>2</sup> *As an illustration, see an invitation to tender document from the Commission's DG Trade: (European Commission. 2016b, pp. 16–22).*
- <sup>3</sup> *For further information, see (Hall, 2008a)*
- <sup>4</sup> *In line with the posted workers directive.*
- <sup>5</sup> *The use of the jurisdiction where the works take place or the services are*

*provided is justified on compliance to the posted workers' regime. According to article 2.1 of the Posted Workers Directive, posted workers are those 'worker[s] who, for a limited period, carr[y] out [their] work in the territory of a Member State other than the State in which [they] normally work'.*

- <sup>6</sup> *Following the landmark case from the Court of Justice of the European Union C-176/12 Association de médiation sociale (AMS) v Union locale des syndicats CGT, Laboubi and others.*
- <sup>7</sup> *Official Journal of the European Union, 2014a.*
- <sup>8</sup> *Official Journal of the European Union, 2014b.*
- <sup>9</sup> *Official Journal of the European Union, 2014c.*
- <sup>10</sup> *Italics for emphasis.*
- <sup>11</sup> *(Yescombe, 2007, p. 16) This text also comments on the fact that the citizens are aware of the private partner involvement. However, this chapter does not subscribe to the idea of considering informed citizens as a hurdle.*
- <sup>12</sup> *The EU does not have any direct competence on PPPs. This is an issue of great concern in the literature, which hosts the current debate on whether PPPs are subjected to EU competence and to what extent. However, the measure could be implemented using related competences and programmes.*
- <sup>13</sup> *Considering the legal bases of the Europe 2020 strategy as its antecessor, the legal bases for Europe 2030 are expected to be those listed here: 3 TEU on full employment, social progress, the fight against social exclusion, and social protection; 3 TEU on the EU's aims; 9 TFEU on 'promoting a high level of employment, the guarantee of adequate social protection [and] the fight against social exclusion' among others; and 152 TFEU on the recognition and promotion of the role of social partners.*
- <sup>14</sup> *In particular, with a view to improve work conditions and social protection of workers, as set out in article 153 TFEU.*
- <sup>15</sup> *Concretely, to aim at reducing disparities among regions and the backwardness of the least favoured regions, in the terms set out in 174 TFEU.*
- <sup>16</sup> *Outline available at European Commission (2016a).*
- <sup>17</sup> *The current package was created in 2014, with transposition concluding in April 2016.*

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# COSTA RICA: A MODEL IN ENERGY TRANSITION AND SUSTAINABLE DEVELOPMENT?

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The study analyses Costa Rica's sustainable policies in energy (SDG 7) and resource management (SDG 15). The objective of this article is to show that a developing country could serve as an example to the European Union in its sustainable development strategy. With a particular focus on citizens' involvement in the process, the study presents concrete recommendations on how to create a new dynamic in the European Union's (EU) current approach to sustainable development.

## 1. Introduction

*'Older conceptions of the broad structure of world economic geography as comprising separate blocs (First, Second and Third World), each with its own developmental dynamic, appear to be giving way to another vision. This alternative perspective seeks to build a common theoretical language about the development of regions and countries in all parts of the world'* (Scott and Storper, 2003, p. 582).

Sustainable development brings together environmental integrity with economic and social development. It stands for 'meeting the needs of present generations without compromising the ability

of future generations to meet their own needs', according to the definition given in a 1987 United Nations report by the Brundtland Commission<sup>1</sup>. Today, the EU is not alone in putting development at the forefront of its policies. In other parts of the world, some developing countries are aiming at a development model capable of meeting the basic population's needs without depleting the stock of natural resources and with their citizens' participation in the decision-making process. Sustainable development sets out a vision for how society should evolve. It offers a vision of progress that integrates immediate and longer-term objectives, local and global action, and regards three main pillars as inseparable and interdependent components of human progress:

- **Economic** (growth, efficiency, etc.);
- **Social** (equity, participation, cultural values, social mobility, etc.) and;
- **Environmental** (biodiversity, conservation of natural resources, integrity of eco-systems, etc.).

All these three dimensions are interrelated and have equal importance; that is why they must be addressed together. The integration of sustainable components in the European Union's policies was enshrined in the Amsterdam Treaty in 1997. Since 1997, the European Union has integrated sustainable concerns in its internal policies as well as its external development aid. Nevertheless, the current EU approach needs a new dynamic and a more ambitious strategy to achieve the more sustainable economic and energy transformation that the continent needs, while leading the global efforts to implement the 2030 Agenda for Sustainable Development. Social justice incentives, social dynamics and grassroots development components are still relatively underplayed in the mainstream economic discourse, where market-friendly approaches are emphasised. In this article, attention is focused mainly on SDG 7 that ensures access to affordable, reliable, sustainable and modern

energy for all, and on SDG 15, that promotes the sustainable use of terrestrial ecosystems and sustainable forest management, to combat desertification and halt and reverse land degradation and halt biodiversity loss. By studying the case of Costa Rica and the country's successful experience in sustainable resource management and energy transition, the objective of this paper is to show to what extent it could be a role model for the European Union in its sustainable development strategy.

Costa Rica enjoys a significant reputation in Latin America and worldwide for its sustainable commitments, where economic, environmental and social ingredients are carefully mixed and finely balanced in its sustainable development approach. Today, it is perhaps one of the world's most ambitious countries in this sense, striving for a more inclusive and sustainable society in Central America and in the world. Costa Rica is already an example in sustainable resource management. Recently, the country announced its commitment to becoming carbon neutral by 2021. Nearly all of its electricity is generated from renewable sources. In line with the 2030 Agenda for Sustainable Development, ensuring sustainable consumption and production patterns represents one of the biggest challenges for Costa Rica in the coming years<sup>2</sup>. The efforts made by the country in the last few decades are not only closely tied to the objective of achieving 100% renewable electricity production and a more sustainable economy but also, thanks to the will to make the necessary reforms, in coordination with the relevant domestic actors, social and environmental measures are being introduced. In this sense, the transformation of the economy has depended on the crucial coordinating role of the state.

Costa Rica is still facing a lot of structural challenges - in terms of transport, agriculture or waste management - that characterise a small developing country (OECD, 2015). However, Costa Rica has succeeded in combining environmental, economic and social dimensions in its policies and in including community develop-

ment components to engage in the process of achieving a more sustainable country. Costa Rica is not a wealthy and industrialised country, so how could it become a model of energy transition and sustainable development? What are the policies and efforts related to the achievement of sustainable resource management and sustainable energy, which have been successfully implemented by Costa Rica? How can the EU also learn from Costa Rica to increase the success and effectiveness of its sustainable development policies? The first part of the paper is dedicated to the presentation of the principal policies and significant political and economic decisions that have been made by Costa Rica to put it in the forefront of sustainable resource management and sustainable energy transition in the region. The structure of the process is explained to highlight the balance between the social, environmental and economic components in the selected country's policies. Specific attention is given to the citizens' involvement in the process. The second part of the article reviews the EU's approach to sustainable development in its internal policies, mainly in energy and in its external development aid. This part also explores how the EU's sustainable development strategy could be inspired by the Costa Rican experience.

## **2. Costa Rica: A model for sustainable development in the region?**

### **Costa Rica – A role model in Latin America for sustainable resource management**

Costa Rica in facts	
Capital	San José
Population	4.9 million
GDP	\$52 billion
GDP per capita	\$10 796
HDI	0.763 (68. position)

Although Costa Rica is a developing country of middle income (World Bank, 2015), the country is considered as a leader in sustainable practice and policy. The country has proved it can implement environmentally strict and ambitious policies, and 'simultaneously sustainably manage and recover forests, achieving economic growth, and receiving recognition as a leader in sustainable development' (UNEP, 2011). It is the second economy of Central America after Guatemala with a GDP of \$52 billion (World Bank, 2015) for a population of almost 5 million inhabitants. The Human Development Index (HDI) of Costa Rica is the highest in the region (0.763) and its level of poverty is one of the lowest in Latin America (World Bank, 2015).

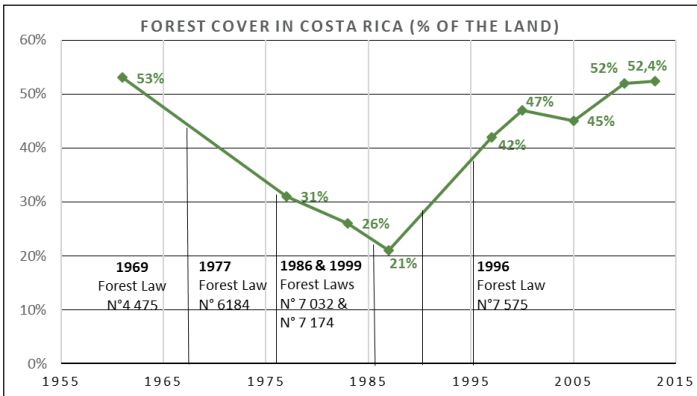
### **Regulatory reforms in Costa Rica**

Government environmentalism is not new (Silva, 2003)<sup>3</sup>. The focus on nature preservation was introduced during the administration of Daniel Oduber (1974-1978)<sup>4</sup>. Daniel Oduber initiated a vast system of national parks<sup>5</sup> in Costa Rica. However, commercial interests and competing land-use pressures have continued to destroy forests in a country without a legal definition of national parks (approx. 400 000 ha) and consequently without protection from the existing legislation (Kishor and Constantino, 1993). To facilitate the conversion of the country to agriculture and ranching, the government continued during that period to use its subsidies to expand cotton, sugar and meat production for export or for future processing. Costa Rica has had the highest rate of deforestation<sup>6</sup> in the world from 1970 to 1989 (WRI, 1991). In 1900, 85% of the country's territory was covered by tropical forests. In 1950 it decreased to 56% and in 1987 to only 21% of Costa Rica's territory (see figure 1). That is why it was crucial for the country to rely on policies and objectives centred on the conservation<sup>7</sup> of national parks and forests with strong commitments to reforestation<sup>8</sup> and afforestation<sup>9</sup>.



Under Oscar Arias (1986-1990), the government started to work on strong legislation and to weave a regulatory framework in forestry policy based on sustainable developments objectives and principles into their nation’s policies and norms. The figure below shows the impact of the normative framework which gradually led to a change from exploitative extraction to forest management based on ecological considerations and on the rising forest cover in the country (see figure 1).

**Figure 1: Evolution of the forest cover in Costa Rica (% of land) related to the changes of the normative framework in the forest sector**



The introduction of fiscal incentives in 1986 (Ley Forestal N° 7 032 de 1986) and its amplification in 1996 through the creation of certificates that rewarded landowners for reforestation, has had determinant influence on the increase of forest cover over the last 30 years (see table 1). Forest Law N°7 575 (*Ley Forestal de 5 de Febrero de 1996*) recognises that ‘forests and plantations are providing us with environmental services benefi-

**Table 1: Key changes to existing legislation in Costa Rica**

1969	1977	1986 & 1999	1996
Costs of reforestation are tax-deductible.	Reforestation is a legal imperative.	Fiscal incentives through the creation of certificates that rewarded landowners for reforestation.	Rational use of all resources and prohibition of land cover change in forests.

Compiled by the author on the basis of existing legislation on the forestry sector in Costa Rica and data provided by Oficina Nacional Forestal de Costa Rica

cial for our society: greenhouse gas (GHG) mitigation, water protection, protection of biodiversity and scenic beauty' (Art. 3, Law N°7 575). Forest Law N°7 575 also provided direct financial incentives for the provision of environmental services, through the Payment for Environmental Services (PSA, *Pagos por servicios ambientales*). The payment is provided to all owners of forests and forest plantations across Costa Rica in recognition of the environmental service that conserving, managing and reforesting forests offers to society. Instead of the conventional model of providing subsidies through the country's budget, the programme of financial compensations applies the principle of 'polluter pays' and relies on the revenue from fuel tax, that was introduced the same year. The programme is administrated by the National Forestry Finance Fund (FONAFIFO, *Fondo nacional de financiamiento forestal*), a decentralised public agency mandated by the Ministry of the Environment and Energy (MINA, *Ministerio de Ambiente y Energía*). Tax on fossil fuels covers around 25% of current revenue and 50% is made up of grants and loans from the international donor community and the rest from voluntary contributions from business and hydroelectric utilities (Perez, 2009).

The introduction of PSA was the response of the government to the International Monetary Fund's pressure to cease its forest

subsidies (ODI, 2015). Instead of using direct government subsidies, payments – through the PSA – came from a tax on fuel consumption. The agreement of conservation organisations (e. g. the US Nature Conservancy) and donor governments to buy a portion of the indebted country's debt obligation in exchange for an investment in conservation programmes contributed significantly to the financial viability of the PSA (ODI, 2015). These reforms were facilitated by well-established property rights, whereby the proportion of landless rural inhabitants is relatively low (De Camino et al., 2000), which is rare for developing countries, especially in Central America.

In addition to the above mentioned law introduced in 1996 and its strict legislation of the eco-systems, other environment-related laws were adopted that called for rational use of natural resources and their sustainable exploitation with benefits for all: Law on the Regulatory Authority in Public Services (*Ley de la Autoridad Reguladora de los Servicios Públicos de 28 de marzo 1996*, N°7 593) in 1996; Environment Law (*Ley Orgánica del Ambiente de 4 de octubre de 1995*, N°7 554) in 1995; Land Use, Management and Conservation Law (*Ley sobre el Uso, Manejo y la Conservación de Suelos de 21 de mayo de 1998*, N°7 779) in 1998; Biodiversity Law (*Ley de Biodiversidad de 27 de mayo de 1998*, N°7 788) in 1998. The Environment Law N°7 554 mandates a 'balanced and ecologically driven environment for all and Biodiversity Law N°7 788 promotes "the conservation and rational use of biodiversity resources" and includes measures to conserve, protect and sustainably exploit biological resources to ensure quality of life for future generations and the survival of natural heritage'.

The legislation has been elaborated since the 1960s, but at the end of the 1980s and in the 1990s it was reformulated and reoriented to take into account international conventions and sustainable development goals, to preserve the country's

existing biodiversity and eco-system. Today, 6% of the world's biodiversity is in Costa Rica. The national parks represent 26% of the territory. After the creation of the National System of Protected areas in the 1980s, the government established the National System of Conservation Areas (SINAC, *Sistema Nacional de Areas de Conservación*) to organise the country into 11 large conservation areas. This institution covers more than 160 protected areas (the 26 national parks included), that are classified as wildlife refuges, biological reserves, national monuments, forest reserves, national wetlands and protected zones. The idea was to define large conservation areas that are generally based around a major national park. This planning made it possible to avoid a situation in which the protected areas became isolated 'green islands', which could lead to improperly managed landscape.

### **Reinforcement of equity-related and community-related measures**

The Payment for Environmental Services (PSA) scheme was progressively adapted by means of various pro-poor reforms and pro-inclusive reforms. It evolved also through recommendations from external donors (e. g. World Bank, Inter-American Bank). The Human Development Index was introduced in 2002 to prioritise forest owners from the least developed regions. It is estimated that 80% of the payments go to the areas with low development indices (FONAFIFO, 2014). Since 2007, territories managed collectively by indigenous communities have specific access. Initially, contracting was only individual, but to facilitate the access of indigenous communities and small cooperatives, collective contracting was introduced. Recently efforts to target female-headed households were added. It is also important to highlight the involvement of local organisations (e. g. agricultural or silvicultural cooperatives) and environmental NGOs in the pro-

gramme to facilitate access to PSA for small property owners (Le Coq and Saenz-Segura, 2016).

### **Governance at the heart of the process**

Costa Rica's success in the sustainable transformation of resource management also reflects the quality of the leadership of its governments in recent decades and the concern for citizen and community involvement in the consultation process. During the process of formulating Forest Law N°7 575 various lengthy consultations were held with a whole host of stakeholders (governmental agencies, NGOs, private sector and academia). The University of Costa Rica and the country's federation for environmental conservation (FECON, *Federación Conservacionista de Costa Rica*) played an important role in the consultation. Private business, trade unions, small farmers and owners were grouped together in a general assembly (*JuntaForca, Junta Nacional Forestal Campesina*).

Cooperation and compromise between domestic and international actors as well as between the government agencies, the private sector and NGOs best characterise the Costa Rican style of policy formulation and implementation (Silva, 2002). The creation of national parks in Costa Rica was negotiated with landowners. But the conservation organisations supported the whole negotiation process by helping and implementing park policies (ODI, 2015).

### **Economic and social benefits of the sustainable resource management**

By reducing deforestation in the country and with more than 5 million trees (1.25 trees per inhabitant) today, the population of Costa Rica benefits from the preservation and protection of biodiversity. The robust forest conservation policy has also had a considerable impact on the country's development model, that

progressively abandoned the initial agro-exports model that is still predominant in Central America.

**Table 2: Relative contribution to total GDP by sector in Costa Rica between 1991 and 2016**

Relative contribution to total GDP by sector in Costa Rica between 1991 and 2016				
Sectors	1991	1997	2012	2016
Agriculture, fisheries and forestry	7.1%	7.1%	5.4%	4.8%
Utilities and mining	0.6%	0.5%	0.29%	0.27%
Manufacturing	19.8%	19%	13.5%	15%
Electricity, water and waste management	2.7%	2.7%	2.78%	2.74%
Construction	4.04%	4.2%	5.35%	4.43%
Trade, restaurants and tourism	20.5%	21.2%	20.96%	20.8%
Transport, warehousing and communication	6.16%	4.8%	7.37%	8.07%
Financial and professional services	0.22%	2.4%	4.69%	5.09%
Public administration (including social security system)	8.18%	6.3%	4.34%	3.95%
Scientific, technical and supportive professional activities	3.9%	4.6%	10.07%	11.5%
Education and health	17.9%	16.9%	13.87%	13.32%
Other activities	4.1%	3.2%	2.82%	3.04%
Taxes on goods and imports	7.4%	9.4%	8.51%	8.42%

Compiled by the author using annual data provided by the Central Bank of Costa Rica (BCCR, 1991 - 2016)

Costa Rica shifted away from agricultural export production towards the service economy with the development of eco-tour-

ism over the last two decades (see table 2). Today, services represent around 41% of total national income and employ 64% of workers (approximately 1.4 million)<sup>10</sup>. The tourism industry corresponds to 20.8% of total national income (BCCR, 2016). In 1994, 685,000 tourists visited Costa Rica, in 1998 they were around 1 million and in 2013 more than 2.2 million (BCCR, 1994-2013). In the case of Costa Rica, nature based tourism is predominant, almost half of tourists spent their time in national parks. That is why the notion of the ‘inviolability’ of the eco-system and the greening of the economy are perceived positively by the population. Forest land is now reported to have more value than cleared land in Costa Rica (Brockett and Gottfried, 2002).

### **Costa Rica – A role model in Latin America for energy transition**

To achieve the aim of SDG 7 of ensuring an affordable and clean energy system, the share of renewable energy in total energy consumption needs to increase. When it comes to renewable energy sources, some observers estimated that Latin America is experiencing a silent renewable revolution (Bloomberg New Energy Finance, 2014; WWF, 2014). Costa Rica represents a role model in Central and South America in energy transformation and in its consistent, coherent and stable implementation (Wilde-Ramsing and Potter, 2006; Vargas, 2009). The country is recognised for its strategy of extending access to electricity in rural areas and its commitment to carbon neutrality, promoting the use of renewable energy sources. As for many countries in Latin America, climate change is the biggest threat to its power system. In 2002, Costa Rica announced the first moratorium on oil drilling and the current government has extended it to 2021<sup>11</sup>. In 2013 Costa Rica generated some 10,100 MWh of electricity out of which 87% were from renewable energy sources and 20% of the total renewable electricity was generated from non-hydro-

power renewables (WEC, 2013). The government decided to go for a target of 100% renewable energy in the country's electricity production by 2021 (MINAE, 2012).

### **Regulatory reforms**

Costa Rica was the first country to join developed and industrialised countries to offset GHG emissions (Martin, 2014). In 2002 and previously in 1998, Costa Rica signed and ratified the Kyoto Protocol as well as the United Nations Framework Convention on Climate Change (UNFCCC) and thereby officially ratified its goal to reduce GHG emissions. During the Bali United Nations Climate Change Conference in 2007, Costa Rica launched its strategy for carbon neutrality by 2021. This initiative has been integrated into the national strategy for climate change (MINAE, 2009). The international commitments made by the Costa Rican government were reflected in the national normative framework: in 1990, there was the Law on the Diversification of Renewable Energy Sources; in 1994, the Law on the Regulation of the Rational Use of Energy (*Ley N° 447, Regulación del Uso Racional de Energía*) introduced tax exemptions for renewable energy equipment<sup>12</sup> and in 1997 a tax on fossil fuel was enacted. The ambitious strategy promoted by Costa Rica was approved through the successive National Energy Plans (*Plan Nacional de Energía 2008-2021; Plan Nacional de Energía 2012-2030; Plan Nacional de Energía 2015-2030*)<sup>13</sup>. Environmental-related taxes account in Costa Rica for 18% of the total tax receipts (MEIC, 2012) and rank the country above the OECD average (OECD, 2015).

In the case of Costa Rica, the choice of meeting demand through renewable energy was very much a question of maintaining security of supply. In comparison with other Latin American countries, Costa Rica has little or no available reserves of fossil fuels. Dependency on imported energy could have a major impact on the country's development. Hydropower represents the



core of the country's electricity production (74.6%). On a much smaller scale, Costa Rica has made use of other renewable sources to produce electricity: geothermal (12.9%), wind (10.3%) and biomass power (0.89%) all contribute to total electricity production. The increased capacity of renewable energy sources was also driven by their abundance in Latin America and by the declining costs of renewable equipment in recent years that have made wind and solar technologies cost-competitive in the region (IRENA, 2015). It is also an attractive option for Costa Rica to fit in with a hydro-dependent electricity matrix (MINAE, 2012)<sup>14</sup>.

### **Financial and regulatory instruments**

Costa Rica is considered as a regional leader in implementing policies that favour renewables (WEC, 2013; Bloomberg New Energy Finance, 2014). The country is promoting renewable energy through an ambitious renewable energy target and through a variety of financial measures and regulatory instruments. Concerning the regulatory instruments, auctions<sup>15</sup> and net metering are very popular for the deployment of renewable energy in Costa Rica<sup>16</sup>. With the auction system, 138 MW of additional clean energy capacity was contracted: 38 MW from small hydro power and 100 MW from wind power (Bloomberg New Energy Finance, 2014). Net metering policies allow consumers to generate their own electricity from renewable energy sources and inject surplus generation into the grid.

Today, a total of five MW of added capacity is available from small producers. The table above shows the increasing capacities of wind and geothermal energy over the last decade in Costa Rica, as well as what is planned for 2021 (see table 3). Solar energy in the country is in its early stages, especially when it comes to market development (IRENA, 2015). However, the country is already considered a leading country in Latin America for non-hydro renewable power generation. In 2013, \$600 million were

**Table 3: Total clean energy capacities (excluding hydro power) in Costa Rica between 2002 and 2012 and planned for 2021**

Periods	Wind capacities	Geothermal capacities
2002	62 MW	145 MW
2012	148 MW	217 MW
2021	363 MW	427 MW

Compiled by the author using data from ICE (2012)

committed to renewables, and \$240 million of them were dedicated to non-hydro renewables (Bloomberg New Energy Finance, 2014).

### Institutional framework and governance

In comparison with other countries in the world, especially with developing countries or countries with the same level of economic development, the statistics on the amount of renewable energy installed in Costa Rica are extraordinary. One of the reasons is due to the large electricity producing capacity of its hydropower plants. The main contributor to electricity production in Costa Rica by far is the state-owned Costa Rican Institute of Electricity (ICE, *Instituto Costarricense de Electricidad*). Created in 1949, ICE is responsible for more than 70% of total net generation of electricity in Costa Rica. Contrary to most Central American countries, which experienced a wave of market liberalisation reforms in the 1990s, Costa Rica preserved its vertically integrated utilities (Hanry-Knop, 2014).

The privatisation of energy companies is politically a very sensitive topic in Latin America. It results from the existence of historically state-owned energy companies on the continent (e. g. Brazil, Mexico) that are in charge of generation, transmission and distribution to private competition. The management of considerable oil and gas reserves in some Latin American countries (e. g. Bolivia, Argentina) by the state-owned companies is integral

to the national imagination (Hanry-Knop, 2015). The distribution of electricity is provided by two state-owned companies: the previously mentioned Costa Rican Institute of Electricity (ICE) and the National Company of Power and Light (CNFL, *Compañía Nacional de Fuerza y Luz*), by two municipal companies and by four rural electrification cooperatives. One of them, the National Smallholder of Electric Services in Cartago (JASEC, *Junta Administrativa de Servicios Electricos de Cartago*) was created in 1964 in response to the popular movement for better electric installations in the region (JASEC, 2016). The electricity market is regulated by the National Regulatory Authority (ARESEP, *Autoridad reguladora de los servicios públicos*). The Ministry of Energy, Environment and Mines (MINAЕ) supervises the energy sector and plays a crucial role in the definition of the prospective and strategic energy policies. Since 1949, few reforms have been adopted to transform the legal and institutional framework of the energy sector in the country, which is one of the main challenges facing Costa Rica in the years to come.

### **Environmental and social benefits**

Costa Rica scores highly on air quality measures. Between 2001 and 2010, no-one in Costa Rica was exposed to air pollution that exceeded the WHO's guidelines (ODI and GIZ, 2014). The use of hydropower and other renewable energy sources to generate energy has had a significant impact, but so too has the decrease in indoor air pollution as households switched from solid primary cooling fuel to electricity (from 23% to 6% between 1990 and 2010, EPI, 2014).

Ensuring universal access to energy services is part of the scope of SDG 7. With an electrification rate of 99.4%, Costa Rica is considered to have, with Chile, one of the highest electrification indices in Latin America (OLADE, 2013). San José and New York City were the first cities in Americas to ensure modern light-

ening at the end of the 19<sup>th</sup> century. Access to electricity in rural areas was a part of a national strategy that had been developed by the country since the 50s. The objective was to facilitate access to energy in rural areas<sup>17</sup>. For this purpose, four cooperatives operate in these regions: Coopelesca, Coope, Alfaro Ruiz, Coope Gunascate and Coopesantos. They represent approximately 15% of the total electricity distribution market in the country and almost 40% of the rural-area service (NRECA, 2016). They are responsible for supplying some 150,000 customers within a supply area across 22% of Costa Rican territory. Three of the country's electricity cooperatives jointly own a wind farm (ILO, 2013). Rural electrification was supported also by external donors, mainly by the United States Agency for International Development (NRECA, 2016). Today, 0.72% of the rural population (8,130 Costa Rican households) are without access to energy. The 8,130 Costa Rican households concerned are living in extreme poverty, in general in the buffer zones of national parks (ICE, 2012)<sup>18</sup>.

Costa Rica is a developing country that is still facing a lot of structural challenges in transport, agriculture and waste-management. But Costa Rica should serve as an example in sustainable development. For a tropical developing country, that was losing its natural forests at an alarming rate, the definition and 'inviolability' of the eco-system in strict legislation was the first inevitable step. As we have shown, economic and fiscal incentives progressively introduced by the government to promote reforestation played a decisive role in changing the country's development path to a more sustainable one.

Throughout the reforms, governance was at the heart of the process, characterised by strong political leadership shared at the highest levels of the government and by a decisive and exemplary consultation process that included local communities and small farmers to define together the means for environmental, economic and social transformation. Putting the community's views

at the centre of adopted reforms had a significant impact on the impressive results in the sustainable resource management of forests. In this sense, we can also highlight the ability of the Costa Rican government to adapt existing programmes, introducing pro-poor, equity-related and community-related measures, to broaden beneficiary share.

Strong political leadership was also key in the definition of ambitious climate objectives and renewable energy targets. With few or no reserves of fossil fuels, Costa Rica is benefiting from the abundance of renewable energy sources in the country to strengthen its energy security supply and has engaged in robust energy transformation. The electrification of rural areas since the 1950s and the development of energy cooperatives have enabled the country to combat energy precariousness. The popular mobilisations demanding improved electricity installations in the country helped reinforce the role of the state in the definition and coordination of the national energy policies. Without substantive changes in the institutional framework of the energy sector, the private sector will continue to play a small role in the generation, transmission and distribution of energy. That is why institutional reforms in the energy sector represent the main challenges for Costa Rica in the coming years.

### **National legislative framework of Costa Rica**

Asemblea Legislativa. Ley de Biodiversidad de 27 de mayo de 1998, N°7 788.

Asemblea Legislativa. Ley de la Autoridad Reguladora de los Servicios Públicos de 28 de Marzo 1996, N°7 593.

Asemblea Legislativa. Ley Forestal de 5 de febrero de 1996, N°7 575.

Asemblea Legislativa. Ley sobre la regulación del uso racional de la energía de 1994, N°7 447.

Asemblea Legislativa. Ley Orgánica del Ambiente de 4 de octubre de 1995, N°7 554.

Asemblea Legislativa. Ley sobre el Uso, Manejo y la Conservación de Suelos de 21 de mayo de 1998, N°7 779.

### **3. New energy is needed in the EU's approach to sustainable development**

#### **The EU sustainable development strategy: Achievements and challenges**

The EU's approach to sustainable development reflects global strategy and the delayed integration of the general principle of sustainable development in its policies. Energy policy is one of the main pillars of the European climate and clean energy strategy. Since the early 1990s the European Union has based its policies in this area on the promotion of energy efficiency and renewable energy, objectives that are also part of the scope of SDG 7. The adoption of advanced regulations on energy is based on the co-decision procedure (Art. 294 TFEU), except for "provisions of a fiscal nature" (Art. 192 (1) TFEU) as well as "measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply" shall be adopted by "the Council acting unanimously" (Art. 192 (2) TFEU). Under these terms, adopting common EU legislation on energy issues remains very challenging. Today, almost 47.6% of the net electricity generated in the EU in 2014 comes from power stations using combustible fuels (such as natural gas, coal and oil) and more than one quarter (27.4%) comes from nuclear power plants (Eurostat, 2014). Among the renewable energy sources, the highest share of net electricity generation in 2014

was from hydropower plants (13.2%), followed by 8.3% from wind power and by 3.2% from solar power (Eurostat, 2014). The discrepancies are more substantial when it comes to each Member State's energy mix. Historically, France has privileged nuclear power plants, the Netherlands has opted for gas, Germany and Poland have chosen coal. At the same time, there are also significant differences in the perception of EU common action related to energy.

### **Sustainable development principle in EU treaties**

The Treaty of Lisbon introduced a new title on energy policy (Title XXI, Art. 194 TFEU)<sup>19</sup> and since the beginning of 2000, the focus of the European institutions on energy-related issues has moved further towards the general principle of sustainable development (Massai, 2012). Today, sustainable development is a fundamental and overarching objective of the European Union, enshrined in the Treaty on European Union (Art. 3 TEU). Article 3 of the Treaty on European Union proclaims that the Union 'shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. (...)'. According to the Treaty on the Functioning of the European Union, the objectives of the Union policy on the environment are: 'the preservation, the protection and the improvement of the quality of the environment, the protection of human health, the prudent and rational utilisation of natural resources' and, with a mention added by the Maastricht Treaty, 'the promotion of measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change' (Art. 191 TFEU, ex Art. 174 TEC). To this end, the EU Sustainable Development Strategy was adopted by the European Council in June 2001 and was renewed in June 2006<sup>20</sup>.

Measuring progress towards sustainable development was an integral part of the EU Sustainable Development Strategy. The indicator on renewable energy is also used to monitor EU policies, in particular the Europe 2020 strategy<sup>21</sup>, the EU energy and climate policies. A significant turning point in the EU and climate strategy was the summit of EU leaders in 2007 that designed a long-term vision and set the first binding targets: a 20% cut in greenhouse gas emissions (from 1990 levels); 20% of EU energy from renewables and 20% improvement in energy efficiency. Member States accepted binding national targets for raising the share of renewables in their energy consumption by 2020, under the Renewable Energy Directive (2009/28/EC). The variety of targets reflected countries' different starting points for renewables and ability to improve on these (from 10% in Malta to 49% in Sweden). In October 2014, the European Council agreed the 2030 framework for climate and energy with the following fixed targets: a 40% cut in greenhouse gas emissions compared to 1990 levels; at least a 27% share of renewable energy consumption and at least 27% energy savings compared with the business-as-usual scenario. On 30 November 2016, the European Commission proposed a binding energy efficiency target of 30% for the EU<sup>22</sup> and a revised Renewable Energy Directive to collectively reach a share of 27% renewables in final energy consumption by 2030.

### **Achievements and challenges in EU energy policies**

With fixed objectives, the EU has contributed significantly to increase the share of renewables in the last decade. The overall share of renewable energy in final energy consumption in the EU is at 16% (Eurostat, 2014). It has almost doubled since 2004 when renewables comprised only 8.5% of final energy consumption. The main drivers of this increase were support schemes for renewable energy technologies and falling renewable energy sys-



tem costs. The share of renewable energy in final energy consumption is widely different among the Member States. Sweden (52.6%), Latvia (38.7%) and Finland (38.7%) have the largest share of renewable energy in final consumption and Luxemburg with 4.5% has the lowest (Eurostat, 2014).

The increase in the share of renewables in final energy consumption is related also to the objective to integrate climate change measures into national policies, strategies and planning, which is part of the scope of climate action (SDG 13). The dominant cause of climate change is the rise in man-made GHG emissions. The EU has reduced its GHG emissions by 23% compared to 1999 (Eurostat, 2014). Once again, there is a discrepancy between the levels achieved by the Member States. However, the EU's intention to improve governance and to continue to spur investments in renewables is an important positive signal to ensure that the 2030 energy and climate targets are met. To this end, the increased focus on consumers and their active involvement in energy production has been the most important turning point of recent years.

'A Resilient Energy Union with a Forward-Looking Climate Change Policy' is one of ten priorities of the Jean-Claude Juncker's political guidelines of his Commission<sup>23</sup>. In February 2015, the European Commission published a Strategy for a European Energy Union<sup>24</sup>. It focuses on energy security, completing the internal energy market, energy efficiency, decarbonisation, as well as research and innovation. The Energy Union Strategy sets out a holistic approach aiming to coordinate and integrate the energy policies of the EU and its Member States. The document opens up the possibility for an ambitious strategy, but contains few proposals. Some of them seem to be conflicted between the decarbonisation of energy supply and the strong focus on gas supplies (e. g. construction of pipelines and other infrastructures to diversify the EU's gas supply). Moreover, the difference in the

positions of Member States concerning the governance needed to achieve the 2030 climate and energy targets (e. g. Czech Republic calls for a non-legislative approach, Germany supports specific governance) remains constant and significant.

That is why, if the EU really wants to be a leader in sustainable development strategy in its policies, the Union needs to be more ambitious and more consistent in its definition of a long-term energy outlook. To reinforce its credibility, the European Union should encourage the phasing-out of fossil fuels and nuclear subsidies over the coming years that are still largely widespread in some Member States (e. g. UK state aid to Hinkley Point in 2015). The European Union should promote the establishment of strong governance with binding national targets in a regional context. A stable regulatory framework should be at the heart of future EU energy policies to avoid retroactive changes such as the ones implemented by the government of Manuel Rajoy in Spain. The differences among Member States remain considerable in achieving more sustainable energy production and unfortunately the weak collective target of a 27% share of renewables will not encourage their efforts.

If the European Union and its Member States are really committed to putting their citizens at the heart of the process, it is not only essential to guarantee consumers' rights and security, but also to facilitate citizen's involvement in small-scale RES development. Direct citizens' involvement through regional and municipal cooperatives or other forms of local cooperation contribute to the acceptability of the construction of small-scale RES development, e. g. wind turbines in Denmark (Adrianssens et al., 2015). It is beneficial environmentally, but also economically and socially, as it helps improve local employment levels (Adrianssens et al., 2015).

## The sustainable development principle in EU development assistance

According to the Treaty on the Functioning of the European Union 'environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development' (Art. 11, ex. Art. 6 TEC). In this sense, EU development policy was clearly subject to the sustainability objective and to the environmental requirement (Art. 208 TFUE). The Lisbon treaty maintains most of these measures. In addition to the Treaty-based linkages, a political commitment to underpin environmental concerns into development policy is embedded in several EU policy documents. One of the most important was the 2001 Environmental Integration Strategy<sup>25</sup> and the European Consensus on Development<sup>26</sup>. The 2001 Environmental Integration Strategy emphasised that 'poor environmental quality undermines the developing countries' efforts to alleviate poverty and it will further jeopardise future prospects for sustainable economic and social development<sup>27</sup>'. The European Consensus on Development called for a stronger commitment to integrating environmental sustainability as a cross-cutting issue in all EU cooperation activities<sup>28</sup>. Both documents contributed to identifying thematic priorities for the EU's actions in development policy as regards sustainable development and environmental concerns (Morgera, 2012). Sustainable rural development and food security, and the sustainable management of natural resources are examples of the EU's thematic priorities in development policy. The integration of the concept of sustainable development in the EU's development aid is closely related also to the adoption of the global strategy promoted at the international level, mainly by the United Nations and its Millennium Development Goals (MDGs)<sup>29</sup> and later its Sustainable Development Goals (SDGs)<sup>30</sup>. The Union was particularly committed to development policy-making related to the

achievement of MDG 7 on environmental sustainability (Durán, 2012). Since the adoption of the 2030 Agenda for Sustainable Development by the international community in autumn 2015, the EU has reiterated its support by means of development assistance that integrates environmental and sustainable concerns with the Proposal for a New European Consensus on Development, presented in November 2016<sup>31</sup>.

### **EU development aid: Achievements and challenges in addressing sustainable development measures**

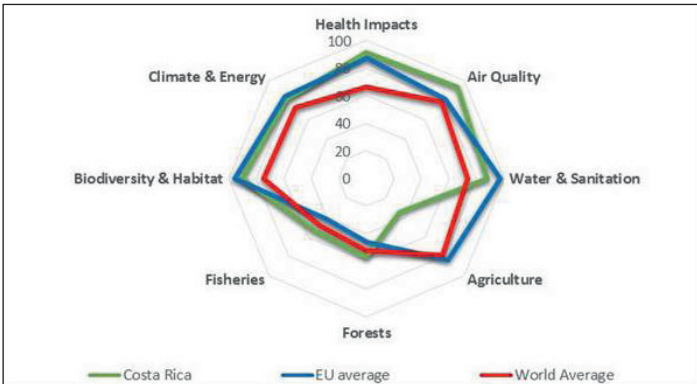
At the political level, there has been a consistent will to integrate sustainable development concerns in EU development aid since the new Millennium. But the European Union should take a politically stronger stand and its response should be more coherent with Member States' priorities in addressing sustainable development measures in its development assistance. Having a concrete vision for long-term development assistance is clearly one of the main challenges for the EU. The EU encouraged Member States to reach the target of spending at least 0.7% of their gross national income on official development aid (ODA) by 2015. Some countries like Luxembourg or Sweden have reached this target, but the majority did not. Moreover, some Member States diverted part of their development aid budgets to helping and housing refugees within their own countries, rather than spending it abroad (ECDPM, 2017). If sustainable and development measures are to be at the heart of the EU's development aid, it is crucial to ensure that the corresponding financial provision is foreseen for environmental and sustainable measures in its various instruments and programmes. EU funding for sustainable and environmental measures in development policy increased considerably from €342 million during the 2000-2006 period to €987 million for the 2007-2013 period. But, as highlighted by Durán, the overall amount of

resources allocated to the environment remains modest: the yearly average financial commitment by the EU for sustainable development and the environment over the period 2007-2013 was around €2.95 million, representing approximately 4.3% of all EU external assistance (Durán, 2012).

### Key lessons from Costa Rica in sustainable development strategy and conclusions

To compare the achievements made by Costa Rica with the European Union, we can refer to the widely recognised Environmental Performance Index (EPI). In many indicators, like climate and energy, or biodiversity and habitat, Costa Rica performs similarly to the EU average. In health impacts or in air quality indicators, Costa Rica was even greener (see figure 2).

**Figure 2: Environmental Performance Index sector scores for Costa Rica in comparison with the EU average and the World average (EPI, 2016)**



Compiled by the author using data from the Environmental Performance Index (EPI, 2016)

In the energy sector, the European Union continues, after small beginnings, in its progressive efforts to transform its energy production and consumption model into a more sustainable one. Recently, EU countries have agreed on a new 2030 Framework for climate and energy, including EU-wide targets and policy objectives for the period between 2020 and 2030. The EU tries to pursue, little by little, to lead and to define a long-term vision for energy and the sustainable development of the continent. However, if the European Union wants to continue to be a global player in climate negotiations and to serve as an example in sustainable energy transformation, clear and consistent political leadership is needed. The example of Costa Rica shows how leadership at the highest levels of successive national governments was crucial in the launching process and decisive in changing the development path trajectory of the country. Reaching a political consensus between the EU Member States is a complex task. However, a clear political consensus among Member States on targets, process and the main policies is a prerequisite if the EU is to play a leading role in a sustainable energy transition and development strategy.

- 1. Clear and consistent EU political leadership at the highest levels in sustainable energy transition and development built on strong political consensus among Member States on targets, process and main policies.**

The progress made by Costa Rica was facilitated by strong political leadership but also by a stable legislative and regulatory framework to introduce sustainable measures and instruments in sustainable resource management and in the deployment of renewable energy. Since its application, the Payment for Environmental Services (PSA) scheme has been slightly modified. At the same, financial measures and regulatory instruments to favour

renewable have remained substantially unchanged. The ambitious binding targets fixed by the Costa Rican government were also crucial to making progress.

**2. Strong governance with binding national targets in a regional context supported by a stable legislative and regulatory framework to introduce sustainable measures.**

The example of Costa Rica showed how people-centred models of sustainable development are environmentally, economically and socially beneficial for local communities. Putting citizens first in the formulation of a future sustainable development strategy means ensuring their participation and involvement. The consultation process with all stakeholders and the strong implementation at local level was essential during the formulation of the new conservation forest laws in Costa Rica. Compromise and cooperation was at the heart of the negotiations that involved local and small cooperatives, indigenous communities, NGOs and the lucrative private sector.

**3. Putting the citizen at the heart of the sustainable development strategy by prioritising a wide and quality based consultation process and by promoting environmentally-friendly and people-centred models in public and private dialogue.**

The progress made by Costa Rica in transforming its economy to a more sustainable one would have been impossible without financial support from EU development aid and various external donors (e. g. the World Bank) and national development agencies (United States, Germany). The EU is already the world's biggest aid donor with almost €56.2 billion spent on development aid in 2013<sup>32</sup>. That is why it is crucial to continue to place appropriate

emphasis on environmental and sustainable concerns in official development assistance.

**4. Environmental and sustainable concerns should receive appropriate attention in the programming of EU development aid with a corresponding financial commitment.**

Today EU development policy operates separately from the Member States' own development policies. The objective of the Proposal for a New Consensus on Development published in November 2016 by the European Commission is to make the EU and Member States' development policies more coherent. At the same document, the EU also affirms its commitment to implementing the 2030 Agenda for Sustainable Development, respecting all three dimensions (economic, social and environmental) of sustainable development in a balanced and integrated manner<sup>33</sup>. The communication serves as a basis for turning the EU's action on development policy in a new direction. However, there needs to be a clear vision for the translation of the 2030 Agenda for Sustainable Development into concrete actions and measures to be implemented and supported by the EU in its development assistance. Costa Rica's success in changing the country's development path to a more sustainable one was thanks to a strong partnership that involved a diversity of domestic and international actors from civil society (conservation organisations, NGOs, trade unions, etc.) from the outset of discussions on designing sustainable policies through external financial aid. A strong political commitment from the EU in leading the 2030 Agenda for Sustainable Development is needed. In this sense, a more concrete vision with precise development assistance measures should be encouraged by the EU for the coming years. The involvement of civil society is crucial for this process.



5. Strong EU and Member States' political commitment in leading the 2030 Agenda for Sustainable Development with concrete actions and measures that are reflected in EU development policy within a detailed time horizon.

The orthodox view that undeveloped and emerging countries can develop only by copying developed countries and only those which are more advanced (Wallerstein, 2000), without trying to identify the specificity of each socio-environmental, socio-institutional and cultural context that characterised each territory in its own development and differentiate between developed and developing countries has had its day. The case of Costa Rica and its ambitious sustainable resource management and sustainable energy transition is an illustration of how developing countries could be exemplary and committed in achieving a more sustainable economy. Many indicators and sectors show the European Union is in the forefront in terms of its sustainable development strategy. However, without more a concrete vision and more ambitious political leadership and commitment, will the EU still be a leader in sustainable development by 2050?

**International treaties**

Agenda 21 (1992)

The Forest Principles (1992)

The Kyoto Protocol (1997, 2005)

The Rio Declaration on Environment and Development (1992)

The United Nations Convention to Combat Desertification (UNCCD, 1994)

The United Nations Framework Convention on Climate Change (UNFCCC)

Transforming our World: the 2030 Agenda for Sustainable Development (2015)

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## Endnotes

- <sup>1</sup> *In Report of the World Commission on Environment and Development: Our Common Future.*
- <sup>2</sup> *Luis Guillermo Solís Rivera (2015). Speech 'Yes we can build sustainable societies'. UN Summit on Sustainable Development, United Nations, New York, 27<sup>th</sup> September 2015.*
- <sup>3</sup> *For a very detailed history of the government environmentalism in forest policy, see Eduardo Silva In Silva, E. (2003), "Selling Sustainable Development and Short-changing Social Ecology in Costa Rican Forest Policy", Latin American Politics and Society, 45(3), 93 – 127.*
- <sup>4</sup> *The emphasis on nature conservation continued during the next presidency of Rodrigo Carazo (1978–1982).*
- <sup>5</sup> *Introduction of the National System of Protected Areas (Sistema nacional de áreas protegidas) in the 80s in Costa Rica. For more details In Hopkins, J. W. (1995), Policymaking for Conservation in Latin America. West-Port: Praeger.*
- <sup>6</sup> *Deforestation refers to the conversion of forested land to non-forested land as a direct result of human activities. In Millennium Ecosystem Assessment, Work Program launched by U.N. Secretary General in June 2001 <http://www.millenniumassessment.org>.*
- <sup>7</sup> *Conservation refers to the prevention of injury or loss of wildlife and other natural resources. Ibid. Op. Cit.*
- <sup>8</sup> *Reforestation refers to planting of forests on lands that have previously contained forest but have since been converted to some other use. Ibid. Op. Cit.*
- <sup>9</sup> *Afforestation refers to the establishment of a forest through tree planting or seeding on land that has lacked forest cover for a very long time or has never been forested. Ibid. Op. Cit.*
- <sup>10</sup> *The industry employs 22% and the agriculture 14% In Central Bank of Costa Rica.*
- <sup>11</sup> *Luis Guillermo Solís Rivera (2015). Speech 'Yes we can build sustainable societies'. UN Summit on Sustainable Development, United Nations, New York, 27<sup>th</sup> September 2015.*

- <sup>12</sup> *The tax exemption on renewable equipment has been withdrawn in 2001 and re-introduced in 2010.*
- <sup>13</sup> *All National Energy strategies are accessible In MINAE.*
- <sup>14</sup> *For more information concerning the energy potential of renewables in Costa Rica In MINAE (2012), VI. Plano Nacional de energía 2012-2030, San José, p. 7.*
- <sup>15</sup> *Auctions refer to competitive bidding procurement process for electricity from renewable energy in where renewable energy technologies are eligible (IRENA, 2015).*
- <sup>16</sup> *Other regulatory instruments exist. For example, Costa Rica is currently developing a new feed-in-tariff system for large-scale solar PV (IRENA, 2015).*
- <sup>17</sup> *The existing legislative framework with the Law on the participation of cooperatives in rural electrification enacted in 2003: Ley de Participación de las Cooperativas de Electrificación Rural y de las Empresas de Servicios Públicos Municipales en el Desarrollo Nacional Ley N° 8 345.*
- <sup>18</sup> *ICE (2012), Análisis de la cobertura eléctrica en Costa Rica, p. 11.*
- <sup>19</sup> *Before Lisbon Treaty, EU energy law was adopted on the basis of environmental protection (ex Art. 175 TEC), competition provisions (Art. 81 – 88 TEC) and internal market provisions (ex Art. 95 TEC).*
- <sup>20</sup> *Council of the European Union (2006), Review of the EU Sustainable Development Strategy - Renewed Strategy, 10917/06.*
- <sup>21</sup> *European Commission, Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 final, Brussels, 2010.*
- <sup>22</sup> *European Commission: <http://ec.europa.eu>*
- <sup>23</sup> *In November 2014, Commission President Jean-Claude Juncker designated Maroš Šefčovič as Vice-President for the European Energy Union.*
- <sup>24</sup> *Strategy for a European Energy Union: <https://ec.europa.eu/energy/en/news/commission-launches-plan-energy-union>*
- <sup>25</sup> *More details In Durán, G. M. (2012), "Environmental Integration in EU Development cooperation: responding to international commitments or its own policy priorities? pp. 204 - 234. Morgera, E. (2012), The External Environmental Policy of the European Union. Cambridge University press, Cambridge.*
- <sup>26</sup> *High-level policy document. Jointly adopted by the Member states and all the main EU institutional actors in December 2005. European Commission: <http://ec.europa.eu>*
- <sup>27</sup> *The 2001 Environmental Integration Strategy (2001), European Commission: <http://ec.europa.eu>*

- <sup>28</sup> *The European Consensus on Development (2005)*, European Commission: <https://ec.europa.eu>
- <sup>29</sup> *The eight Millennium Development Goals*: <http://www.un.org/millenniumgoals>
- <sup>30</sup> *The seventeen Sustainable Development Goals*: <http://www.un.org/sustainabledevelopment>
- <sup>31</sup> *Proposal for a New European Consensus on Development. Our World, Our Dignity, Our Future*: <https://ec.europa.eu>
- <sup>32</sup> *European Commission*: <https://europa.eu>
- <sup>33</sup> *Proposal for a New European Consensus on Development. Our World, Our Dignity, Our Future (2016)*: <https://ec.europa.eu>

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# **PART 2**

## **TOWARDS EQUALITY OF OPPORTUNITY AND ACCESS TO QUALITY EDUCATION**



# LEARNING THE LESSON: WHY THE EU SHOULD DEFEND AN ALTERNATIVE MODEL TO THE PRIVATISATION OF EDUCATION<sup>1</sup>

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The last 15 years have been characterised by a large-scale movement towards the private provision of education, partly with the support of some international institutional donors. This situation led the UN Special Rapporteur on the right to education, Kishore Singh (2014, para. 38), to write ‘soon, it may not be an exaggeration to say that privatisation is supplanting public education instead of supplementing it.’ The question is to assess whether this growth of private involvement in education is positive or negative. The debate is complex particularly as there are many different types of private schools, ranging from non-governmental organisation (NGO) schools to large-scale commercial chains, which all have different impacts. Amongst those actors, the growth of low-quality low-cost private schools, including commercial chains, have raised major concerns. This chapter reviews these concerns from the point of view of the realisation of governmental human rights obligations under international laws, and states’ commitments to the Sustainable Development Goals (SDGs). It argues, drawing from the conclusions of

authoritative human rights bodies, that support for, or the lack of regulation of, low-cost private schools can violate human rights, therefore requiring a high level of caution from institutional actors involved. It then looks at the specific responsibility and obligations of institutional donors. Taking the example of the United Kingdom, whose funding policy in support of commercial low-cost private schools has recently been analysed by various bodies, it seeks to demonstrate that state support for low-cost private schools can constitute a violation of international law. Lastly, this chapter reviews the development aid policies of the European Union (EU) for the last 15 years against this framework, and it concludes that while the EU is traditionally supportive of public and non-profit education actors, it is growing increasingly ambiguous in its funding of private actors in education. This could lead to violate its international obligations, EU law, and its SDG commitments. Some recommendations are made for the EU to develop a development aid approach that, while it is cognisant of the increasingly complex reality and multiplicity of stakeholders in the countries which it serves, it is firmly embodied in the respect for human dignity, the rule of law, and a commitment to develop good quality, free education systems.

## 1. Introduction

The Millennium Development Goals (MDGs) have been described by the UN as ‘the most successful anti-poverty movement in history’ (UN, 2015, p. 3). Significant progress has been made under MDG 2<sup>2</sup> which sought to achieve universal primary education,

and primary school net enrolment has increased from 83% in 2000 to 91% in 2015 (UN, 2015). However, a less known phenomenon since the beginning of the millennium has been the massive increase in the private provision of education at the basic level (primary and lower secondary). Since World War II, education has traditionally been delivered by the state. However, the last 15 years have been characterised by a large-scale movement towards private provision of education. The Global Monitoring Report (GMR) 2015, which is the reference annual report on the state of education - since renamed Global Education Monitoring (GEM) report - considered in its overview of the progress achieved in education between 2000 and 2015 that 'private schooling has proliferated since [the MDGs declaration in] Dakar' (2015, p. 216). The authors added: 'A wide range of private schools, catering for various income groups, has emerged [...] often hidden from government view' (2015, p. 216). The scale of the phenomenon has led the UN Special Rapporteur on the right to education, Kishore Singh (2014, 2015a, 2015b), to dedicate three reports to the topic in 2014 and 2015, and to write in his report (2014, para. 38) that 'one can observe the growth of private providers in the field of basic education, although such education is a core responsibility of governments [...]. Soon, it may not be an exaggeration to say that privatisation is supplanting public education instead of supplementing it.'

The scale and pace of the changes at stake in developing countries' education systems is unprecedented. For instance, in Kenya the number of private schools increased by 2,216.10% between 1998 and 2013, from 385 to 8,917 schools (Economic and Social Rights Centre, 2015, p. 8). In Morocco, the share of private primary school enrolment more than tripled from 4% in 1999 to 12% in 2013 (*Coalition Marocaine pour l'Éducation pour Tous* and Global Initiative for Economic, Social and Economic Rights (GI-ESCR), 2013). This phenomenon has various causes,

but a crucial element has been the growing support of institutional development actors to the various forms of private schools, including commercial private schools. Both bilateral donors, such as the United Kingdom (UK) (Right to Education Project et al., 2015a, 2015b) and the United States (USA), and multilateral donors have funded private schooling in developing countries in the last decade. Multilateral donors include the World Bank (Mundy and Menashy, 2014a, 2014b) and the Global Partnership for Education (GPE) (Menashy, 2015, p. 10), a multi-stakeholder partnership and funding platform supporting education in developing countries,

This rapid *de facto* privatisation in developing countries and the support provided to it by northern countries has raised many concerns, both in terms of the achievement of the successor of the MDGs (the Sustainable Development Goals), and, crucially, in terms of respect for international human rights law. In recent years, there have been several analyses and criticisms of donors' support for privatisation, some arguing that this could violate international law (e.g. the Right to Education Project, 2015a, 2015b).

Nevertheless, some donors remain tempted to support the involvement of private actors in education. The SDGs themselves derive from a narrative of a crisis in public funding. In their 'Goal 17' they ambiguously call for 'a revitalised and enhanced global partnership that brings together governments, civil society, the private sector, the United Nations system and other actors, and mobilises all available resources'<sup>3</sup>; which could be understood as opening the door for support for involving the private sector in the realisation of all the SDGs, including SDG 4 on quality education. In this context, while the European Union has so far been largely neutral on (or absent from) the debate regarding the private provision of education (focusing its development efforts on building recipient countries' public education systems), the re-

peated calls for partnership with the private sector and pressure from various groups has increasingly led to the EU changing its position. This new position could mean the EU risks violating its international obligations, EU law, and its SDG commitments.

This article seeks to provide a critical overview of the available evidence about the impact of privatisation in education in developing countries and the role of donors in supporting this phenomenon, in order to inform a reflection on what can be learnt when the EU considers its development aid action for the education sector. The analysis is conducted by reviewing the human rights obligations and the SDG commitments of donor governments and the EU. It concentrates on formal primary education, which is the most documented area, and the domain where the obligations and commitments of governments are the strongest. It starts by providing an overview of both the privatisation of education and the existing analysis against SDG commitments and human rights obligations. It then reviews the evidence available about donor support for the privatisation of education, questioning its legality under international law, citing the case of the UK as an example. Finally, the third part reviews the evolution of EU development aid policies and it analyses how human rights standards and SDG commitments apply to this evolution.

## **2 A 'human rights and SDG' analysis of privatisation in education**

### **The privatisation and the commercialisation of education in the new Millennium**

In many countries, the rapid growth of private schools has meant dramatic changes in education systems. However, these changes hide a wide disparity of situations. David Archer (2016) proposed a typology of private schools that includes eleven types of non-



state provision. Private schools are thus very diverse: they may be for-profit or charitable, fee charging or free, driven by companies and entrepreneurs or by communities and non-governmental organisations, formal or informal, supported by the state or totally independent. These parameters can be combined in various ways to form the eleven categories described by Archer. The privatisation of education commonly refers to the growth of any of these types of non-state provision as a share of the education system (Ball and Youdell, 2008). However, the diversity of private schools that privatisation may theoretically involve makes the debate particularly complex.

In order to narrow and specify the scope of the discussion, the term commercialisation is often used. Commercialisation in education refers to the growth of a particular form of private schools: the commercial schools. What the concept of commercial schools exactly entails however still needs further clarification. A group of organisations proposed a definition in the 'Call of francophone civil society organisations against commercialisation of education' (*Appel de la société civile francophone contre la marchandisation de l'éducation*). In their definition, commercial schools are 'educational institutions for which one of the primary goals (although not the only goal) is to develop trade in educational services and to protect their own interest rather than serving the common good. They view education as a commodity, which results in a notable willingness to expand their activities and their model by competing with other institutions, increasing their bottom line, and growing their profits'<sup>4</sup> (Coalition Éducation et al., 2016, p. 2). Importantly, commercial schools are defined by their commercial interest, by their practice, rather than their formal legal structure.

In practice, both the privatisation of education, and its sub-category, the commercialisation of education, have increased in the last fifteen years. However, the majority of the growth of

private schools has been among so-called 'low-fee' or 'low-cost' private schools. Srivastava (2006, p. 498) defines these schools as targeting disadvantaged groups, self-financing through fees and charging one day's earnings of a daily wage labourer as the monthly tuition fee at the basic level of education, or two days' earnings at the secondary level. Low-fee private schools may be either non-commercial or commercial schools.

The privatisation of education has evolved over time to increasingly promote commercial forms of private schools, in particular commercial low-cost private schools. During what Srivastava (2016) described as the 'first wave' of low-fee private schooling development, small, individually-owned and operated schools emerged from the 1990s to the early 2000s. More recently, since the mid-2000s, low-fee private schooling is experiencing a 'second wave' (Srivastava, 2016) in which corporate-backed school chains and service providers are capitalising on this still-nascent space in the market place. This second wave comprises part of what is described as the burgeoning 'global education industry' (Verger, Lubienski and Steiner-Khamsi, 2016). At the core of this second wave of low-fee private schooling is the growth of commercial large-scale private primary school providers, the most well-known include Bridge International Academies (BIA or Bridge) (see e.g. Machacek and Riep, 2016) and Omega Schools (Riep, 2014).

Chains of schools such as BIA<sup>5</sup> and Omega Schools<sup>6</sup> claim that they can use scale, foreign investment and foreign technology, and standardisation to deliver better quality at a similar or lower price. Of the chains of 'for-profit' private companies that target low-income households, Bridge is a good illustration of these parameters. It operates over 500 schools in India, Kenya, Liberia, Nigeria, and Uganda, with ambitions to reach 10 million pupils by 2025 (BIA, 2013a). It has received investments from major international investors including Mark Zuckerberg, Pierre Omidyar,

the United Kingdom government, the United States government, the World Bank, and Bill Gates (BIA, 2013b), for a total amount estimated to be over 100 million US dollars. It uses what it calls a 'school in a box' model, which reflects a highly standardised approach to education. Every Bridge school looks the same, the material used is the same in each classroom, and, most importantly, the lessons are the same across all the academies in the same country. Indeed, Bridge uses a system of scripted lessons. Bridge School teachers (who are mostly secondary school leavers without formal teaching qualifications) receive lesson plans on a tablet, which they must follow word by word (Education International (EI) and Kenya National Union of Teachers (KNUT), 2016, p. 9).

The exact measurement of the growth in private schools is difficult. This is due to the scarcity of data and varying definitions, but also to the fact that there is a large non-formal private education sector that is not accounted for. Many private schools are not registered and operate under the radar, meaning that they are not counted in official statistics (Tooley and Dixon, 2005). In addition, research has mostly focused on registered private schools, rather than unregistered private schools (Day Ashley et al., 2014). This appears clearly when comparing household survey and official statistics in some countries. In Nepal for instance, official statistics show that private schools account for 15.9% of total schools, while household surveys indicate 27% of children attend private schools. The likely cause of this large gap between the official statistics and empirical research is the high numbers of unregistered private schools (Nepal Campaign for Education-Nepal, the Nepal National Teachers Association and GI-ESCR, 2016). It is *a fortiori* all the more difficult to have precise figures for low-fee private schools, which generally do not have a specific status, and they often operate informally. Similarly, there's not been a precise tally of commercial schools, besides qualitative

mapping done by pro-private actors such as the Center for Education Innovations<sup>7</sup>.

In any case, all available data shows, without a doubt, an important growth in low-cost private schools. As they have grown at such a high rate, and as they cause major controversy, this paper will focus on the issues related to low-cost private schools, in particular commercial ones – which does not mean that it is not important to also critically scrutinise other models.

As previously mentioned, there are many causes for this growth, including the increased demand for education from parents in wake of the MDGs, the failure of some state schools to respond to the demand (Härmä, 2013), ideological and political decisions from policy makers at the national and international levels (Srivastava, 2016), etc. Proponents of low-fee private schools claim that such schools are affordable, offer better accountability and a higher level of quality education than that found in state schools (Tooley and Dixon, 2006), which would correspond to the demand from parents and the incapacity of governments, particularly in developing countries, to satisfy this demand. It is also argued that private schools are more cost-effective, as teachers are paid less than those in state schools, though they are just as effective (McLoughlin, 2013, p. 5).

However, critics argue that these supposed benefits have not been proven. A review of the literature conducted at the request of the UK's Department for International Development (DFID) found that evidence to support these claims has generally been found to be insufficient (Day Ashley et al., 2014). Renowned academics such as Srivastava (2015) also argue that based on existing research, it appears that low-cost private schools are not affordable to the 'most insecure households', leave out the 'most disadvantaged households' (based on gender, ethnicity, location, etc.), and evidence is mixed on quality. Another literature review from the Global Campaign for Education (2016) made similar

findings with regards to the quality, cost, access, efficiency and innovation, and effect of competition brought by private actors. Criticism is most acute of commercial low-fee private schools, whose scale, standardisation, and strong commercial dimension raise particular issues, as will be seen below.

In order to assess the evidence, one needs to agree on a normative framework to use. Depending on the relative importance given to inequalities, segregation, infrastructures, learning outcomes, etc., the evidence may be read differently (Aubry and Dorsi, 2016, p. 2). This is what is going to be discussed next.

### **An SDG and human rights legal framework relevant for the analysis of the privatisation of education**

This paper will assess the current situation against the international human rights legal framework and governmental SDG commitments. These frameworks are widely accepted, with the human rights framework setting quasi-universal legally binding obligations, with the SDG framework being the reference policy for development policies.

SDG 4 on quality education has 10 targets<sup>8</sup>. The international human rights framework is defined by a number of widely-ratified treaties protecting the right to education, which are legally binding on almost all governments in the world. The most well-known and ratified are the International Covenant on Economic, Social and Cultural Rights (ICESCR, 164 state parties), and the Convention on the Rights of the Child (CRC, universally ratified by all countries except the USA). Article 13 of the ICESCR and Articles 28 and 29 of the CRC protect the right to education<sup>9</sup>. These articles are complemented by other provisions, in particular Article 2 of the ICESCR which requires governments to devote the maximum of their available resources towards the realisation of the rights contained within it, including the right to education, and the duty to eliminate discrimination.

The relationship between the SDGs and the human rights framework is somewhat contested, with governments being reluctant to explicitly indicate that the SDG framework stems from the human rights framework. This would tend to make the SDGs legally binding on them, whereas they currently have no more legal weight than a political declaration. SDG 4 covers similar ground to international human rights law by obliging governments to provide free primary education. As the human rights framework is legally binding, and the SDGs in theory comply with human rights law, references to the human rights framework in the rest of the chapter should be understood to encompass both SDG commitments and human rights obligations.

One element that stands out in the human rights framework is the liberty left to parents to set up or choose a school for their children 'other than those established by the public authorities' (Art. 13-4 of the ICESCR). Human rights law guarantees a certain level of freedom for private schools. Aubry and Dorsi (2016) have argued that this freedom may conflict with the social equality dimension of the right to education, which requires governments to ensure 'quality education for all' without discrimination and segregation. Accordingly, on the basis of the jurisprudence and practice of the human rights framework, they have proposed a five-area framework to assess the role of private actors in education that takes into account these two potentially conflicting dimensions. They consider that 'while private providers of education are permitted, states must ensure that the involvement of private actors in the provision of education' (Aubry and Dorsi, 2016):

1. Does not lead to creating or reinforcing discrimination, inequality, and segregation, including on socio-economic basis;
2. Does not undermine access to free quality (generally state) schools for everyone;
3. Does not undermine the humanistic mission of education;

4. The private actors should be adequately regulated, in law and in practice;
5. The private actors should follow the principles of transparency and participation.

If the existence or the growth of private education provision affects any of these five criteria, it would constitute a violation of the right to education by the state(s) involved in the situation, and, by extension, of their SDG commitment. However, it is important to emphasise that, as mentioned above, the human rights framework (and the SDG framework) do not prohibit the existence of private schools. In fact, human rights standards protect the freedom of individuals to open such schools, under certain conditions. It represents thus a nuanced and balanced framework that recognises the multiplicity of situations that may occur, and leaves governments various possible options to develop their education systems.

This framework, as will be seen, has been applied by a number of quasi-judicial bodies. It will be used as the reference point to analyse the involvement of private actors in this article.

### **Applying the human rights analysis: Kenya as an example**

Several UN and regional institutions have reviewed the situation with regards to the privatisation of education in various countries in the last three years, giving useful guidance on its application and the scope of the human rights framework. Before looking at the example of Kenya, let us start with an overview of the relevant bodies and their positioning.

UN human rights monitoring bodies and the African Commission on Human and Peoples' Rights (ACHPR) have produced over 20 recommendations on specific countries, confirming the concerns raised above (GI-ESCR, 2016). UN human rights moni-

toring bodies are quasi-judicial bodies of experts, chosen by governments to monitor the implementation of specific human rights treaties. There exists a separate body for most treaties. The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights (CESCR), and the CRC by the Committee on the Rights of the Child (ComRC). They periodically review the implementation of their respective treaties by each 'State Party' every four to six years, and issue at the end of the process a body of analysis and recommendations called 'Concluding Observations'. The ACHPR plays a similar role in the monitoring of the African Convention on Human and Peoples' Rights, which also protects the right to education under Article 17.

When reviewing state parties, these bodies have raised concerns ranging from 'high fees in private schools which exacerbate existing structural discrimination in access to education and reinforce educational inequalities' (UN Committee on the Rights of the Child, 2015, paras. 75-76) to the 'the proliferation of so-called "low-cost private schools" at the primary and secondary level owing to inadequacies in the public school system, which have expanded to the senior-high school level through the Senior-High School Voucher Programme'. They have also pointed to the 'the low-quality of education provided by these private schools, the top-up fees imposed on parents to cover the full cost of private education, and the lack of regulation of these schools by state authorities' (UN Committee on the Rights of the Child, 2016a, paras. 55 – 56 ).

The example of Kenya provides further insights. Kenya is a typical example of a Sub-Saharan African country marked by the fast rise of low-cost private schools in the 2000s, partly due to the support of international donors (see also the situation in Uganda - Initiative for Social and Economic Rights and GI-ESCR, 2014; and in Ghana - Ghana National Education Campaign Coalition and GI-ESCR, 2014). A tremendous growth of private schools



has been observed since the introduction of the free primary education (FPE) programme in 2003. As mentioned previously, the number of private primary schools has grown by 2,216.10% between 1998 and 2013. Yet, these statistics do not account for informal schools, particularly low-cost private schools. There could be about 2,000 non-formal schools in Kenya, with over 500,000 pupils, who are not counted in government statistics (Economic and Social Rights Centre, 2015). In urban areas, such as Nairobi, Eldoret and Mombasa, more than 50% of children attend the so called 'low-fee' private schools (Ngware et al., 2013). In Kibera, the largest informal settlement in Kenya, 96% of the available schools are privately owned while only 4% are state-owned (Dixon and Tooley, 2012). The proportion of private education is thus probably much higher than official statistics show.

This growth in private education has been encouraged both by the failure of the Kenyan Government to provide for enough quality public education, particularly in informal settlements, and an encouraging policy framework from the Kenyan Government and international actors (Economic and Social Rights Centre, 2015). At the national level, in 2009 the Kenyan Government introduced (Namale, 2014) the Policy for Alternative Provision of Basic Education and Training (APBET), and further developed it in 2016 (Ministry of Education, Science and Technology, 2015). This attempt to organise the large informal private education sector occurred without the necessary regulatory requirements and enforcement mechanisms. Combined with Government funding to some of these low-cost schools, this policy legitimised the growth of low-cost private schools. In parallel, as will be discussed below, international actors, chiefly the World Bank and the United Kingdom, have also supported the private sector.

The impact has been analysed with regards to both discrimination and inequality, and access to free education (Economic and Social Rights Centre, 2015). The growth of private education

has increased socio-economic segregation, and in turn, inequalities and discrimination. Specific to contexts such as Kenya, the emergence of low-cost private schools has created 'micro-segregation between the poor themselves, whereby the poorest are put together in state schools, while the poor that can afford it put their children in different, private schools, according to how much they can afford' (Ibid., para. 49). It has also been shown that private education is rarely the result of a parental choice for an alternative pedagogical approach, instead it is usually simply the default option of parents who do not have access to free quality state schools. This is particularly true in densely populated urban informal settlements, where the Government has relied on private actors to provide essential social services, which, in the case of education, undermines children's rights to a free quality school.

Kenya has been reviewed by the CESR and the ComRC in 2016. The CESCR (2016, paras. 57-58) concluded that 'inadequacies in the state schooling system have led to the proliferation of so-called "low-cost private schools" which has led to segregation or discriminatory access to education, particularly for disadvantaged and marginalised children'. It recommended that Kenya 'strengthen[s] its public education sector' and effectively regulates its private sector (Ibid.). The ComRC made similar findings, requesting that Kenya 'prioritise[s] free primary quality education at state schools over private schools and informal low-cost schools', and 'regulate[s] and monitor[s] the quality of education provided by private informal schools in line with the Convention' (UN Committee on the Rights of the Child, 2016b, para. 57b).

Kenya provides an example where the growth of private education can constitute a violation of the right to education, and, by extension, of the commitments made under the SDGs. In this case, and in at least 16 others between September 2014 and Oc-

tober 2016, domestic governments have been held responsible for the facilitation, support or failure to address negative human rights impact of the growth of private education, often including commercial low-cost private schools. Against this background, is there a responsibility for institutional donors that have supported this dynamic? This is the question that the next part will examine.

### **3. Challenging donors' funding to commercial schools in developing countries**

Public institutional donors have long preferred to focus on public systems in their development aid for social services, such as education and health, while concentrating their private sector support on areas where it traditionally dominates such as mining, banking, or agriculture. This is particularly true for funds allocated to the delivery of primary education. While the focus of development aid overall is still largely on public education, some governments have started experimenting with increasing their support for private school providers.

Support for private schools can take many forms. Firstly, it can be through the direct use of the development aid money. For instance, the UK Department for International Development (DFID) is funding an £18.5M programme in Nigeria called 'Developing Effective Private Education in Nigeria' (Right to Education Project et al., 2015a), within which Bridge International Academies has been allocated £3.45m (DFID, 2014). Secondly, support may come from a less well-known instrument used by public donors to promote development: a loan, usually with preferential conditions, to private companies that are meant to work towards poverty alleviation. They do so through development finance institutions, which are 'specialised development banks or subsidiaries set up to support private sector development in developing countries'

(OECD, 2016). For example, several development finance institutions such as the UK's Commonwealth Development Corporation or the USA's Overseas Private Investment Corporation (BIA, 2016b) have directly funded Bridge International Academies. Some of the development finance institutions, such as France's Proparco, the Netherland's FMO Entrepreneurial Development Bank, and the Norwegian Investment Fund for Developing Countries, as well as the European Investment Bank, channelled their funding to BIA through a venture firm called Novastar. Support for the privatisation of education has also come from inter-state agencies, such as the World Bank. The World Bank has supported public-private partnerships through its public arm, the International Development Association, but it has also been a 'policy advocate' for the privatisation of education through 'explicitly counsel[ing] governments to expand private provision' (Mundy and Menashy, 2014a). It has also directly funded low-cost private schools such as Bridge International Academies and Curro Holdings, which runs low-fee private schools in South Africa (Results Educational Fund, forthcoming 2017; Mundy and Menashy, 2014b).

### **Sustainable Development Goals (SDGs) and the legal framework relevant for the analysis of donors' support for private education**

Human rights obligations go beyond national borders. State parties to human rights treaties, such as the ICESCR and the CRC, and donor governments in particular, have human rights obligations towards individuals that live outside their territories. They are called Extra-Territorial Obligations (ETOs) and they have been codified in an expert text, the Maastricht Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights (ESCR) (hereafter the 'Maastricht Principles')<sup>10</sup>. The Maastricht Principles summarise legally binding internation-

al law contained in the existing treaties, such as the previously mentioned ICESCR, rather than creating new standards. As their name suggests, they focus on governments' obligations in regard to ESCR, which include the right to education.

A number of the Maastricht Principles are relevant to the analysis of the responsibility of donor governments in their support for private education. Firstly, the Maastricht Principles make clear that governments have an obligation to contribute to the full realisation of the right to free quality primary education through development cooperation (Principle 33). While governments that are able to must provide international assistance for the realisation of ESCR, they must respect certain principles when doing so. In particular, they must prioritise the most vulnerable people and groups (Principle 32). Secondly, and this is a cardinal principle under international law, donor governments must not impair the possibility of development aid recipient governments realising the right to free quality primary education (Principle 21). Thirdly, governments have an obligation to regulate companies based in their territories so that they do not undermine the right to free quality primary education abroad (Principle 24). Finally, and importantly, governments have the obligation to act within international organisations so as to ensure that these organisations do not undermine the right to free, quality primary education (Principle 15).

The above principles have been applied to the analysis of education funding through the practice of human rights treaty bodies, as will be seen next. On the SDGs, the situation is less straightforward. SDG 17, which commits governments to 'strengthen the means of implementation and revitalise the global partnership for sustainable development', has clear links with the dimension of Article 2.1 of the ICESCR which is the basis of governments' extraterritorial obligations (The Danish Institute for Human Rights, n.d.). Put together with SDG 4 on education,

SDG 17 may be considered to require governments to focus their development assistance on the priorities included in SDG 4, in particular free quality primary and secondary education. SDG 17 however also includes a highly controversial target (Muchhala and Sengupta, 2015), SDG 17.17, which commits governments to 'encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships'. Nevertheless, reading the SDGs in the light of states' human rights obligations, provides a robust framework for assessing donors' responsibilities and obligations with regards to their support for education in developing countries.

### **Does UK funding to private schools abroad respect international law and SDG commitments?**

The way the Maastricht Principles, and through them, the SDG commitments regarding development aid, apply in practice, can be illustrated through the recent of example of the UK, which has been reviewed by UN human rights bodies.

In recent years, the UK has funded different types of low-fee schools abroad, ranging from community schools to large multinationals. At least since 2013, DFID has recognised the private sector as a key partner in education and its support as a priority, calling for 'developing new partnerships across the public-private spectrum' (DFID, 2013, p. 7) and committing DFID to promote education 'including through low-fee private schools in at least four countries' (DFID, 2013, p. 19). Part of the funding has come directly out of DFID's grant portfolio. Several projects supporting low-cost private schools have come under DFID's flagship programme, the Girl's Education Challenge (Curtis, 2015). Another flagship project is Developing Effective Private Education Nigeria (DEEPEN). Major additional funding for private education was provided in Kenya and Pakistan. According to the British Gov-

ernment, in response to a Parliamentary Question in the UK, a British Minister said: 'DFID has made direct investments in low-fee schools in Nigeria, Kenya and Pakistan' (Stewart, 2016). In addition, the UK Government has also supported private actors via its development finance institution, the Commonwealth Development Corporation (CDC), which it states invested \$7.1m in 2014 on low-fee private schools, including in Uganda (Stewart, 2016).

Most controversial has been that part of this support, both through DFID grants and CDC investments, has been given to Bridge International Academies (BIA). This has been done partly through a grant in Nigeria as part of DEEPEN, with a grant of £3,450,000 being awarded to BIA<sup>11</sup>. In addition, a 13-year programme worth £75 million managed by the CDC, includes a £15 million investment in venture 'catalyst' fund Novastar, used to support the latter's investment in BIA (Right to Education Project al., 2015a, para. 51).

The human rights impact of this support has been questioned in three ways. Firstly, for the impact it had on Kenya, where BIA operates over 400 schools. As mentioned above, both the Com-RC and the CESCR have raised concerns regarding the impact of the growth of low-cost private schools on the realisation of the right to education in Kenya, therefore indirectly questioning any support for such schools. A number of reports (Machacek and Riep, 2016; Education International and Kenya Union of Teachers, 2016) have highlighted major concerns on the human rights impacts of Bridge International Academies. In particular, a brief by three organisations (the East African Centre for Human Rights, GI-ESCR, and the Initiative for Social and Economic Rights, 2016a) analysing data from Kenya, found that BIA undermined the five dimensions against which to assess private schools. Firstly, the entry cost and the entrance tests lead to segregation and discrimination. Secondly, the company undermines free education while

failing to meet quality standards. Thirdly, its commercial priorities mean that it seeks to achieve large class sizes of up to 60 pupils which runs against a human side to education. Fourthly, it does not respect national norms and standards in education. Finally, it lacks transparency, including intimidating researchers seeking to collect independent data on the company (Aubry, 2017). Particularly problematic is the suggestion that BIA could have been in violation of national laws in Kenya and Uganda, which became more visible after both the Government of Uganda (GI-ESCR, 2012a) and a county in Kenya sought the closure of all BIA schools under their jurisdiction for various failures to meet education and health and safety standards (the East African Centre for Human Rights, GI-ESCR and the Institute for Economic and Social Rights, 2016b).

In line with these concerns, the ComRC more directly addressed the role Bridge International played in its Concluding Observations on Kenya. It expressed concerns with regards to the 'low quality of education and rapid increase of private and informal schools, including **those funded by foreign development aids, providing sub-standard education and deepening inequalities**'<sup>12</sup> (UN Committee on the Rights of the Child, 2016b). Although not explicitly mentioned, informal schools funded by foreign development aid directly relates to BIA, which, according to the Committee, is said to provide low-quality education and deepen inequalities.

Secondly, the ComRC and CESCR both raised clear concerns and recommendations with regards to the UK's support for low-cost private schools more generally, partly on the basis of a series of reports submitted by a large group of civil society organisations (Right to Education Project et al., 2015a, 2015b). In its 2016 Concluding Observations, the ComRC declared: 'In the context of international development cooperation, the Committee is concerned about the State party's funding of low-fee, private and



informal schools run by for-profit business enterprises in recipient countries. A rapid increase in the number of such schools may contribute to substandard education, less investment in free and quality state schools, and deepened inequalities in the recipient countries, leaving behind children who cannot afford even low-fee schools' (UN Committee on the Rights of the Child, 2016c, para. 17). It went on to recommend that the UK 'ensure that its international development cooperation supports the recipient countries in guaranteeing the right to free compulsory primary education for all, by prioritising free and quality primary education in state schools, refraining from funding for-profit private schools, and facilitating registration and regulation of private schools' (Ibid., para. 18).

The CESCR was equally 'concerned about the financial support provided by the State party to private actors for low-cost and private education projects in developing countries, which may have contributed to undermining the quality of free public education and creating segregation and discrimination among pupils and students' (Ibid., para. 14). It was more precise in its recommendations, requesting that the UK 'adopt a human rights-based approach in its international development cooperation' (Ibid., para 15).

These international concerns have led, thirdly, to further domestic inquiry. In 2014, DFID commissioned a 'rigorous' review on the role and impact of private schools in developing countries (Day Ashley et al., 2014). The review notably found inconclusive evidence on quality, due to the lack of control of the socio-economic background of children; relatively negative evidence on equity dimensions; and a lack of regulation of private providers. In November 2016, three Parliamentary Questions were raised on the UK's support of low-fee for-profit schools<sup>13</sup>, including a question on DFID's response to the CRC's recommendation that it prioritise the funding of public education. While noting 'the

recent recommendations of the UN Committee on the Rights of the Child', the UK Government did 'not accept that DFID's funding of private provision of education violates children's right to an education'<sup>14</sup>. Interestingly, the response shows that the Government does not question the legitimacy or the value of the human rights framework, but provides a different interpretation for it, though without explaining its reasoning or conducting an alternative independent assessment.

The British Parliament is also conducting an assessment of the situation. In July 2016, the International Development Committee launched an inquiry into DFID's work on education called 'Leaving no one behind?' (parliament.uk, 2016). The scope of the inquiry includes a question on DFID's support for low-cost private schools, signalling the concerns of the parliamentarians: 'Should DFID support low-fee schools, including private schools, in developing countries? If so, what should this support look like? If not, how can universal access be achieved?' (Ibid.). Previously, a parliamentary inquiry into DFID's programme in Nigeria already raised major concerns. The report from the House of Commons said: 'we are concerned about the affordability of private schooling for the poorest families, and that reliance on for-profit companies to deliver education is not easily reconciled with DFID's commitment to "leaving no one behind"'. One risk is that families who can only send some of their children to school may prioritise the education of boys over girls. Regardless of the public/private sector balance of provision, the responsibility of educating children lies with state governments. While DFID is supporting public sector education in Lagos and Kano through its Education Sector Support in Nigeria (ESSPIN) programme, the extent to which DFID is encouraging the expansion of the sector is unclear' (International Development Committee, 2016, para. 94). As a result, the authors of the report 'urge DFID to ensure that its support for private sector provision of education aligns with its commit-

ment to “leaving no one behind”, and that the children who are furthest behind are prioritised. The furthest behind are not going to be served by “for-profit” companies, therefore DFID should deliver a focused strategy on how it is going to help the Nigerian authorities significantly expand public sector provision and deliver quality education to those who cannot afford school fees’ (International Development Committee, 2016, para. 95).

In addition, the Independent Commission for Aid Impact (ICAI), a body that scrutinises UK aid spending and reports to the UK Parliament, has also expressed reserved its doubts on the effectiveness of UK support for private education. A 2015 inquiry from ICAI to assess ‘how well DFID is working with and through businesses to achieve a range of development objectives that benefit the poor’ found relatively poor effectiveness regarding the engagement with businesses in general (ICAI, 2015). The report warns that ‘clearly there may sometimes be a risk that working directly with businesses to deliver benefits could undermine, or be seen to undermine, government efforts, in particular if they are not aligned’ (ICAI, 2015, para. 2.11).

UK support for commercial low-fee private schools is thus clearly contested by various bodies, from different perspectives that include questions on its effectiveness. Two UN bodies found that the UK’s approach could be violating its extra-territorial human rights obligations, which other inquiries tend to confirm. UK development policy appears to contravene a number of the Maastricht Principles detailed above. Contrary to Principle 33, its approach does not prioritise the realisation of the right to education of disadvantaged, marginalised and vulnerable groups. Neither does it focus on core obligations of the right to education, which includes access to free education. The UK’s approach risks being discriminatory; and by supporting the re-introduction of fee-charging education, it may constitute a retrogressive measure, whereas governments had previously committed to remove

fees. The failure to prioritise free quality primary education in development aid would equally run against SDG 17 in combination with SDG 4. Although not discussed in detail, the UK's policy is arguably also questionable under Principle 21, which requires the UK to not impair the ability of another state to realise the right to education, and under Principle 23, which demands the UK to regulate business based on its territories, in the context where several low-fee private school chains have major shareholders based in the UK (such as Pearson, which is an investor in Bridge International Academies). DFID's policy provides a clear case where support for private education can contravene the human rights and SDG frameworks.

#### **4. What is at stake for EU education development aid?**

##### **Human rights and SDG framework applicable to the EU**

The EU, as such, has not ratified the ICESCR or the CRC, which are the backbone of the human rights framework developed above. The question is thus to determine what the EU's human rights obligations are with regards to its development aid. Although there are debates about the applicability of international law to EU policies (Ahmed and Jesús Butler, 2006), there are, in summary, at least three reasons why the EU must fulfil human rights ETOs in its development policies.

First, all EU Member States are party to the two core international treaties protecting the right to education, the ICESCR and the CRC. Drawing from this observation, in short, the principle is that 'Member States cannot absolve themselves of their responsibilities towards protecting the human rights of their populations by transferring powers to entities such as the EU' (Ahmed and Jesús Butler, 2006, p. 801). As argued by the Office of the High Commissioner for Human Rights (OHCHR) Regional Office for Europe (n. d, p. 31), 'the EU may de facto succeed to the obligations

of its Member States under pre-existing treaties to the extent that it has been delegated powers necessary for their implementation by the Member States'. This means that to the extent that EU Members States have delegated development cooperation powers to the EU, in particular the European Commission (EC), they have also transferred their associated human rights obligations with it. This situation has been anticipated by Principle 16 of the Maastricht Principles which stipulates: 'The present Principles apply to States without excluding their applicability to the human rights obligations of international organisations under, inter alia, general international law and international agreements to which they are parties'.

Second, the EU must respect its own human rights obligations created by internal legal texts and commitments. Article 14 of the Charter of Fundamental Rights of the EU (CFR)<sup>15</sup>, which binds EU Institutions, protects the right to education, and is worded in terms similar to Article 13 of the ICESCR. Furthermore, children's rights, which include the right to education, are particularly well-protected in the EU. Article 24 of the CFR stipulates: 'Children shall have the right to such protection and care as is necessary for their well-being'. Article 3 of the Treaty of the European Union (TEU)<sup>16</sup> explicitly recognises the EU's obligation to promote 'the protection of the rights of the child'. More specifically, with regards to 'its relations with the wider world', Article 5 of the TEU mandates the EU to contribute to 'the protection of human rights, **in particular the rights of the child**, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'<sup>17</sup>. This provision makes the ETO dimension of the child rights clear. It adds to the seminal Article 21 of the TEU, through which the EU commits to respect human rights in its international actions. This provision should be read in conjunction with Article 208 of the Treaty on the Functioning of the European Union, which specifies

that 'Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action'<sup>18</sup>.

Additionally, the EU Institutions have made repeated policy commitments to respect and promote children's rights, as will be detailed below, and is summed up on the website of the European Commission<sup>19</sup>. Again, the external dimension of this EU policy is clear, with the website of the EU External Action Service (2016) further indicating: 'The EU is also committed to promoting the ratification and implementation of the UN Convention on the Rights of the Child and its optional protocols'.

Besides its human rights obligations, the EU firmly supports the SDGs. After having played a leading role in their development, the European Commission indicated in a 2016 Communication that 'the EU is fully committed to being a front-runner in implementing the 2030 Agenda and the SDGs, together with its Member States, in line with the principle of subsidiarity' (European Commission, 2016a, p. 3). Confirming the ETO dimension of the SDGs, the EC specified that 'the 2030 Agenda will further catalyse a joined-up approach between the EU's external action and its other policies and coherence across EU financing instruments' (Ibid.). The EU also took steps to review its education policies in the light of the SDGs: '[i]n relation to development cooperation policy, both the Union and its Member States are obliged to comply with the commitments and take account of the objectives they have approved in the context of the United Nations' (European Commission, 2016b, p. 3).

The EU therefore has clear human rights obligations and SDG commitments to fulfil in this matter. Its existing policies and practices with regards to the role of the private sector in its development aid for education will now be reviewed against these obligations and commitments.

## **EU support for education in developing countries: Overview of policies**

Traditionally, the European Union has supported public education systems in its development cooperation, and has not sought to privatise education systems. When it has funded private actors, this has been through non-profit private actors that complement or fill in gaps in the public systems. This is the position that the EC expressed in 2015 in response to a Parliamentary question in the European Parliament – ‘the European Commission promotes education as a fundamental human right and (it promotes) the right to free compulsory education’ (European Parliament, 2015b). Under the current programming phase (2014-2020), the EU supports partner countries’ governments in the implementation of their national education sector plans in order to achieve universal access in basic education and school completion for all. Budget support remains the EU’s preferred aid modality when it comes to education. Nevertheless, in some cases implementation can also take place through contracts with non-state-actors (e.g. local and international NGOs or UN agencies) to provide education even in a fragile context and/or to hard-to-reach groups<sup>20</sup>. Importantly the EC specified that ‘the EU does not fund profit-oriented private schools’ and that ‘no particular project is currently in place that focuses exclusively on the impact of private schools on national education systems’ (European Parliament, 2015b). The EC even positioned itself as championing the regulation of private schools (Ibid.).

This position, which excludes the funding of commercial actors, promotes regulation, and focuses on public free education where possible. It seems to be aligned with human rights principles related to private education as outlined previously, and its SDG commitments. Nevertheless, the reality appears to be more complex, and the positions could be evolving, with the EU developing a growing ambiguity towards private provision of educa-

tion. A 2010 evaluation of Commission support for education noted that the Commission used different channels to implement its direct support for the education sector: more than half (54%) of the funds went through governments, while development banks were the second most important channel (17%). Other main channels included private actors such as NGOs and private companies/development agencies and UN organisations such as UNICEF or the United Nations Development Programme (Ladj et al., 2010, p. 19). The same paper noted that ‘the position of the EC vis-à-vis support both to public and private actors in education delivery is not crystal clear’ (Ibid., p. 43).

Indeed, back in 2002, a European Commission report said: ‘the importance attached to actors in the education sector also means that account has to be taken of the “private sector” of education which may in some countries make a major contribution to the quantity and quality of education, especially outside the formal education system’ (Commission of the European Communities, 2002, p. 18). In a 2010 Staff working paper entitled ‘More and Better Education in Developing Countries’, the EC developed its view: ‘Private participation in the financing of education infrastructure, service provision, assessment services, teacher training and management services is increasing. [...] Subject to adequate legislation, management and regulation the private sector can be an effective way of extending service provision, improving the quality of education and, if properly targeted, addressing equity issues’ (European Commission, 2010, p. 15). It recommended supporting the ‘exploration of innovative sources of finance for education... and exploring the potential of increased partnerships with the private sector’ (European Commission, 2010, p. 22).

The consideration of the private sector was brought to another level in 2014 with the Communication ‘A Stronger role of the private sector in achieving inclusive growth in developing countries’ (European Commission, 2014). In the document, the



EC (2014, p. 13) supports a growing role for the private sector in EU development cooperation in general, including in the delivery of social services through various forms of public-private partnerships (PPPs). It announced that, 'looking beyond classical PPPs in the infrastructure sectors, the Commission will support new forms of partnerships and multi-stakeholder alliances between national or local authorities, enterprises and NGOs for skills development and the provision of basic services, such as access to sustainable and affordable energy, water, healthcare, and education, as well as in the areas of agriculture and nutrition especially in rural areas, to women and other excluded groups' (European Commission, 2014, p. 13).

The Foreign Affairs (Development) Council of the EU unreservedly endorsed the Commission's framework (Council of the European Union, 2014). It even went further by stressing 'the key role of the private sector in relation to the new global partnership which is being considered in the context of discussions on the post-2015 agenda' (Council of European Union, 2014, para. 4).

When looking ahead at future EU development aid policies, the position of the EU towards the private sector in the delivery of education could become increasingly ambiguous. The EC announced in 2016 that the eradication of poverty, and tackling discrimination and inequality while leaving no one behind, will remain at the heart of EU development cooperation policy (Commission 2016b, para. 24). 'Universal access to quality education and training', 'sustainable provision of essential services', and 'a strong focus on the protection of the most vulnerable' are also mentioned as a priority (Ibid., para. 25), although no mention is made of 'free' or 'compulsory' education, as was the case previously (Commission of the European Communities, 2002, pp. 2, 9, 10). However, the EC has indicated that it wishes to take a new direction in its development cooperation, one which recognises

a more established role for the private sector in its development. The Commission's Proposal for a new European Consensus on Development (2016b, p. 6) notes the changes in development cooperation, particularly in relation to the role of the private sector: 'The development landscape is expanding, encompassing more and new actors and innovative solutions. The private sector is increasingly a key partner in fostering more sustainable models of development. Combining public and private resources to leverage more investments lets engagement step up in challenging environments. A realignment of global resources and investment is needed to achieve sustainable development. Information and communications technology, as well as resilient and efficient infrastructure networks, offer major opportunities for progress across sectors'.

One element to consider when reflecting on the future evolution of EU funding is that a growing part of education aid will be channelled through humanitarian aid. Between 2008 and 2015, the EU spent €264.9 million funding 241 actions under child protection and education in emergencies with international organisations and NGOs as implementing partners (Wilkinson et al., 2016). In July 2015, the Commissioner for Humanitarian Aid and Crisis Management made a commitment to increase the EU's humanitarian spending on education in emergencies from 1% to 4% and from 4% to 6% in 2017 (Wilkinson et al., 2016). Yet, according to an EC Staff Working Document (2016c, p. 34), EU humanitarian aid 'supports multi-stakeholder collaborations, including with the private sector and academia', and the European Commission (2016c, p. 63) 'also supports a more effective involvement of a broader range of actors in humanitarian contexts, including of the local communities, non-DAC (the OECD Development Assistance Committee) donors, the private sector and regional organisations'. While most of the private sector partners of humanitarian aid funding were NGOs in 2015 (Eu-

ropean Commission, 2017), there is a risk that the humanitarian contexts become the entry gate for a commercial private actor, in a context where, for example, global actors such as McKinsey and the Vitol Foundation have been supporting Bridge International Academies providing education to Syrian refugees (McKinsey&Company, 2016).

In parallel to these developments, the European Parliament took an equally ambiguous position, although it was clearer in reaffirming essential principles. In a 2016 resolution on the 'Private sector and development', the Parliament, on the one hand called 'for more public investment in public services accessible for all, especially in the transport sector, access to drinking water, health and education' (European Parliament, 2016, para. 4); it further considered that 'private financing can complement but not substitute public funding' (European Parliament, 2016, para. D). On the other hand, it suggested that the potential of public-private partnerships 'in sectors such as [...] education [...] remain largely untapped' (European Parliament, 2016, para. U). It welcomed the Commission's initiative to endorse the private sector in becoming 'an important partner in achieving inclusive and sustainable development in the framework of the UN SDGs' - where the private sector specifically refers to commercial actors, as it is mentioned 'alongside other governmental and non-governmental development organisations and inclusive business models such as co-operatives and social enterprises' (European Parliament, 2016, para. 1). It also called on the EC 'to promote, support and finance public-public-partnerships as the first option', although after adequate impact assessments (European Parliament, 2016, para. 11). Specifically on education, the European Parliament encouraged a better connection between education systems and the job market, and called on the EC 'to facilitate programmes and support PPPs that involve all the stakeholders concerned, from schools, universities, training centres and private sector actors in

order to offer opportunities for training and education that are relevant to the marketplace’ (European Parliament, 2016, para. 41).

There is therefore an undoubtable progression in the idea that the private sector, including the commercial sector, could receive funding and become a ‘development partner’ to deliver social services such as education. The involvement of the private sector is not necessarily negative: as discussed above, it can be compatible with the realisation of the right to education and SDG 4 under certain conditions. Support for non-commercial schools, as part of a long-term sustainable plan aiming at developing a strong free quality public education system may in some cases be effective and needed. However, the EU must rapidly clear ambiguities on its positions, in order to set up adequate monitoring and safeguarding mechanisms for any potential engagement with the private sector in education.

## **5. Conclusions and recommendations: What the EU can learn from its experience**

There are increasing signals that the European Commission could start funding private actors for the delivery of social services, including commercial ones, against the UN recommendations made to one of its Member States and against a growing body of research showing the ‘negative human rights’ this can cause. The EU is now at a crossroad: will it fulfil its human rights obligations and SDG commitments, or will it yield to the pressure of an indiscriminate involvement of private actors in education? If it followed the latter approach, the EU would seriously risk breaching its human rights obligations and EU law, as well as undermining its SDG commitments. The experience of the UK in funding countries such as Kenya, Uganda, Chile, Pakistan, Nigeria and Ghana clearly demonstrates how development aid can become a

tool that undermines children and communities' right to education in developing countries.

To be able to better inform this discussion, further research should be conducted. The understanding of the extent of the development of the different forms of private schools can be further developed, in particular in non-Anglophone countries. The role and potential positive impacts that non-commercial models can have, as well as how the private sector can fill in short term gaps while encouraging the long-term development of a free quality education system, also need to receive serious additional critical consideration. Lastly, EU policies need to be scrutinised most deeply in the coming years and assessed against EU obligations and commitments, particularly as the funding instruments and sources (blended funding, humanitarian funding, etc.) will make the situation more complex.

In order to address this situation, the EU should rapidly adopt a strong framework that clarifies and frames its engagement in education and its potential engagement with non-commercial actors. In the current political context, the EU should also take action internationally with its Member States and partners, to revert the political trend of support for private schools. To do so, it can build on human rights instruments, and in particular from the forthcoming 'Human Rights Guiding Principles on States' obligations with regards to private schools' (working title), which were being developed at the time of writing and should be finalised by 2018 (GI-ESCR, 2012b)<sup>21</sup>. As with the Maastricht Principles for ETOs, these Principles, which are being developed by a group of experts in international law and education, aim at compiling and unpacking existing human rights legal standards applicable to the role of private actors in education. They could guide the EU on a path towards development cooperation aid that is cognisant of the increasingly complex reality and multiplicity of stakeholders in the countries which it serves. At the same time, it should be

firmly embodied in the respect for human dignity, the rule of law, and a commitment to develop quality, free education systems.

## **Recommendations for all the European Union institutions**

1. Define a clear policy on development aid funding related to the role of private actors in delivering essential social services, which requires the EU:
  - a. To consistently take into account and review its approach against human rights standards, in particular the forthcoming Human Rights Guiding Principles on States' obligations with regards to private schools;
  - b. Never to fund commercial actors;
  - c. Always to fund public education as the first option, with non-commercial actors as a last resort option;
  - d. To be transparent about the options chosen and the actors funded;
  - e. To always pro-actively support the adequate regulation and monitoring of private actors in countries where it is involved;
  - f. To adequately regulate European education organisations operating abroad to ensure that no European private actor undermines human rights abroad;
  - g. To promote domestic resource mobilisation much more firmly, in particular through adequate taxation, to allow the recipient states to build long-term capacities to develop their public education system.
2. The EU should not facilitate the provision of education by private capital that seeks financial returns.
3. The EU should take action in international fora, in particular within the UN, the World Bank and other financial institutions, and the Global Partnership for Education, to block any project involving private actors where it would undermine the

right to education, and instead it should promote support for public education systems, and respect for the forthcoming Human Rights Guiding Principles on states' obligations with regards to private schools.

4. Support research and debate on the impact of the privatisation of social services on human rights, including inequality.
5. Engage with and support civil society organisations working to improve transparency and respect for the rule of law in education systems as well as the realisation of the right to education, including by providing adequate protection to human rights defenders that may be put at risk when working on this issue.

### **Recommendations specifically for the European Commission**

1. Review its approach to the involvement of private actors in the delivery of essential services including education to specify and clarify the scope of the involvement of the private actors in view of the evidence of the impacts on the realisation of human rights. This should ensure that it does not violate its legal obligations and SDG commitments.
2. Communicate transparently about its funding or other support for private actors in the delivery of social services, including by breaking down its funding when it reports to the European Parliament or to the public.

### **Recommendation specifically for the European Parliament**

1. Review EU development aid closely with particular attention to the involvement of private actors in social services, ensuring that each project is assessed against the human rights and SDG framework as above, particularly concerning inequality.

## Acknowledgement

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## Endnotes

- <sup>1</sup> *This article is a shortened version of a briefing paper available at [www.solidar.org](http://www.solidar.org) [forthcoming]*
- <sup>2</sup> *UN. Goal 2: Achieve universal primary education. Retrieved from <http://www.un.org/millenniumgoals/education.shtml>*
- <sup>3</sup> *UN. Sustainable Development Goal 17. Retrieved March 1, 2017, from <https://sustainabledevelopment.un.org/sdg17>*
- <sup>4</sup> *Own translation*
- <sup>5</sup> *See Bridge International Academies. [press kit]. Retrieved February 10, 2017, from [http://www.bridgeinternationalacademies.com/presskit2013/Bridge\\_International\\_Academies-Presskit-2013.pdf](http://www.bridgeinternationalacademies.com/presskit2013/Bridge_International_Academies-Presskit-2013.pdf)*
- <sup>6</sup> *See Omega Schools. Our Pay-As-You-Learn™ Model. Retrieved February 10, 2017, from <http://www.omega-schools.com/payl-model.php>*
- <sup>7</sup> *See Center for Education Innovations. (2015). Distribution of low-cost private schools programs in the CEI database. Retrieved February 8, 2017, from <http://www.educationinnovations.org/topics/low-cost-private-schools/data-visualization>*
- <sup>8</sup> *UN. Sustainable Development Goal 4. Retrieved March 1, 2017, from <https://sustainabledevelopment.un.org/sdg4>*
- <sup>9</sup> *For Art. 13, see UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; For Art. 28 and Art. 29, see UN General Assembly, Convention on the Rights of the Child, 20 November 1989, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [accessed 1 March 2017].*
- <sup>10</sup> *See Maastricht Principles on Economic, Social and Cultural Rights (2011)*
- <sup>11</sup> *See DFID 6496 DFID Support to Innovation in Low Cost Private Education, available at <https://data.gov.uk/data/contracts-finder-archive/contract/1623054/> [accessed on 12 February 2017].*



<sup>12</sup> *Emphasis added*

<sup>13</sup> See *Developing Countries: Private Education: Written question – 52843*, available at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-14/52843/> [accessed 12 February 2017]; *Developing Countries: Education: Written question – 52755*, available at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-14/52755/> [accessed 12 February 2017]; and *Developing Countries: Education: Written question – 52766*, available at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-14/52766/> [accessed 12 February 2017].

<sup>14</sup> See *Developing Countries: Education: Written question – 52766*, available at, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-14/52766/> [accessed 12 February 2017].

<sup>15</sup> See Art. 14 of the *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

<sup>16</sup> See Art. 3 of the *Treaty on European Union (Consolidated Version)*, 26 October, 2012, C 326/13.

<sup>17</sup> *Emphasis added*

<sup>18</sup> See the *Treaty on European Union (Consolidated Version)*, 26 October, 2012, C 326/13.

<sup>19</sup> See *European Commission, Rights of the Child*, available at [http://ec.europa.eu/justice/fundamental-rights/rights-child/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm) [accessed on 12 February 2017].

<sup>20</sup> See *European Parliament (2015a)*

<sup>21</sup> Note that the title of the *Guiding Principles* is tentative and may change after the publication of this article.

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# **PARTNERING WITH THE PRIVATE SECTOR IN THE POST-2015 ERA? THE MAIN POLITICAL AND SOCIAL IMPLICATIONS IN THE EDUCATIONAL ARENA**

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Public-private partnerships (PPPs) are increasingly perceived as an innovative policy approach to provide education for all in many different settings, especially in developing countries. Many international organisations, bi-lateral aid agencies, and philanthropic and corporate organisations have advocated PPPs in education as an appropriate policy solution in the context of the debate defining the SDG4/ Education 2030 Agenda. However, while general PPP frameworks may cover a broad range of policy options and follow very diverse rationales, in education they also face many conceptual and practical challenges and limitations. This chapter aims to unravel the PPP concept as used in education, and to review and reflect on its different implications in this field. Methodologically, the chapter is based on a scoping review approach to identify the main areas of agreement and dissent as well as the main research gaps for PPPs in education. After providing a discussion on the origins, meanings and specific policy interventions

associated with PPPs in education, this chapter offers an overview of the main effects and mechanisms associated with the enactment of such policies. Drawing on this analysis, we suggest that countries and donors explore alternative PPP approaches to those focusing exclusively on education provision, to promote capacity-building in the state sector without generating dependence on the private sector.

## **1. Introduction**

Public-private partnerships (PPPs) are increasingly being portrayed as an innovative approach to providing universal education in many developing countries. Key international organisations such as the World Bank and the Asian Development Bank suggest that, by partnering with the private sector, countries can expand their education systems in a more efficient, flexible and effective way (LaRocque, 2008; Patrinos, Barrera Osorio and Guáqueta, 2009). These and other important players (including bi-lateral aid agencies, philanthropic organisations, and corporate groups) see PPPs as an important tool to advance the achievement of the Sustainable Development Goals (SDGs)<sup>1</sup>. Despite there being no specific words on PPPs in relation to SDG4 – which is the goal focusing on education – PPPs have a specific target in SDG17, namely the means of implementation (specifically, target 17.17). This target, which encourages and promotes effective public-private and civil society partnerships, is expected to be cross-cutting and, accordingly, should cover different policy sectors. However, PPPs are a policy approach that, at least in the education sector, is highly contested, and whose meaning is very much disputed.

There are different sources of controversy for PPPs in education. To begin with, while general PPP frameworks may cover

a broad range of policy options and follow very diverse rationales, in education, PPPs often tend to be used as a vehicle to advocate long-term privatisation and quasi-market solutions (Teisman and Klijn, 2002; Verger, 2012). In this vein, PPPs in education have raised many concerns regarding equity, cost-effectiveness and learning outcomes, furthermore, among other issues, they also raise accountability issues. While some of these concerns have been evidenced in many evaluations and studies of education privatisation and market policies (Morgan, Petrosino and Fronius, 2013; Rose, 2006; Waslander, Pater and Van Der Weide, 2010), others, especially those related to accountability issues, arise from the problematic transposition of the PPP idea to the education sector.

Building on these and other arguments, this chapter aims both to unravel the PPP concept as used in education and to review and reflect on its different implications in this field. Methodologically, the chapter is based on a scoping review approach (Arksey and O'Malley, 2005), which is a literature review methodology that aims to identify the main areas of agreement and dissent within a particular field of research (in this case PPPs in education), as well as the main gaps in the existing corpus of literature in the field. The chapter is organised as follows. First, we explain how the general PPP idea has been translated and enacted in the field of education for development, and the main policy models used. Second, we present and overview and then systematise the main effects of PPPs in education regarding different educational dimensions according to existing research (namely equity, learning outcomes, teachers' work, efficiency, etc.). Finally, we present a series of key considerations for the debate regarding PPPs and we reflect on possible policy recommendations that derive from our analysis.



## 2. Enacting PPPs where education is part of development

PPPs have been an essential part of the public administration reform agenda since the early 1990s. However, the first published reference to PPPs specifically for education is found in a 2000 joint publication of the World Bank and the Asian Development Bank. Titled 'The new social policy agenda in Asia', this publication is a compilation of the presentations of the 1999 Manila Social Forum (Marshall and Bauer, 2000). The following year, a group of consultants and scholars - Norman LaRocque, James Tooley, and Michael Latham - published a handbook on PPPs in education and associated policy implementation in the context of the International Finance Corporation (IFC) (IFC, 2001). At that time, these experts were working together with the World Bank Economics of Education Thematic Group on the research and discussion of 'alternative forms' of education provision.

This narrow but influential network of experts was responsible for the organisation of a series of conferences, meetings and activities with policymakers, donor agencies, international organisations and scholars where the idea of PPPs in education was fundamentally and ultimately shaped (Verger, 2012). The network produced several publications, policy briefs, and tool-kits defining, advocating for, and guiding the implementation of PPPs for education in developing countries. The highly disseminated World Bank report 'The role and impact of PPPs in education' (Patrinos, Barrera Osorio and Guáqueta, 2009) is frequently seen as the pinnacle of this series of publications. In this report, PPPs in education (ePPPs) are portrayed as innovative and cost-effective policy solutions for governments in developing countries. They address educational access and quality issues by partnering with the private sector under a variety of schemes (LaRocque, 2008; Patrinos et al., 2009). In the same vein, as ar-

gued elsewhere, partnerships are depicted as ‘ways in which the public and private sectors can join together to complement each other’s strengths in providing education services’ (Barrera Osorio, Guaqueta and Patrinos, 2012, p. 202).

However, these broad characterisations of PPPs contrast more practical specifications of PPP policy interventions within the education sector, also put forth by PPP proponents. Unlike PPPs in other areas of public administration reform, in education PPPs appear narrowly and exclusively associated with schemes involving public funding and private service provision formulae (Verger, 2012). In fact, proponents operationally define PPPs as ‘contracts made by a government with a private service provider to acquire services of a defined quantity and quality at an agreed price for a specified period’ (Patrinos et al., 2009, p. 31). Table 1 shows the different types of interactions between the public and private sectors according to the provider and the funder of education. PPPs in education, as defined by their proponents, comprise the series of policies resulting from the public sector funding schooling services provided or managed by the private sector. As can be seen, practical modes of intervention – i.e. emblematic PPP policies – closely resemble long-standing privatisation and quasi-market interventions extensively argued for since the 1980s.

Many argue that the inherent ambiguity and generally positive connotation of the ‘partnership’ term has provided some international organisations, policymakers and policy entrepreneurs with a discursive device to bypass the overall exhaustion and increased resistance to the privatisation agenda (Hodge and Greve, 2010; Robertson and Verger, 2012; Schaeffer and Loveridge, 2002). This seems to have been especially the case in the field of education, where proposed PPP interventions do not differ significantly from privatisation and marketisation policies and, in fact, share the most important assumptions about the benefits of private

**Table 1: Areas of public-private mix in education (according to finance and provision)**

		Provision/Management	
		Private	Public
Funding	Private	<ul style="list-style-type: none"> <li>• Private schools and private universities</li> <li>• Home schooling</li> <li>• Private tutoring</li> <li>• Liberalisation of the education sector</li> </ul>	<ul style="list-style-type: none"> <li>• User fees</li> <li>• Student loans</li> <li>• Philanthropy, "Brand Aid"</li> <li>• Corporate social responsibility</li> <li>• Multi stakeholder partnerships</li> </ul>
	Public	<ul style="list-style-type: none"> <li>• Vouchers</li> <li>• Contract schools</li> <li>• Charter schools</li> <li>• Contracting out private schools</li> <li>• Subsidies to the private sector</li> <li>• Tax incentives for private school consumption</li> </ul>	<ul style="list-style-type: none"> <li>• State schools</li> <li>• Public universities</li> </ul>

Source: Adapted from Patrinos et al. (2009) and Chakrabarti and Peterson (2009)

provision and market competition. According to the World Bank: 'The idea [with PPPs] is that parents choose the best school for their children on the grounds of quality, which in turn puts pressure on schools to compete to attract students and to achieve better academic results at a lower cost' (Patrinos et al., 2009, p. 61). Overall, providing people with choice and exit opportunities within PPP frameworks may allow 'marginalised groups and the poor, who are ill-served by traditionally delivered public services', to enrol in private schools (Patrinos et al. 2009, p. 6).

The World Bank and like-minded organisations posit school choice as the preferred policy principle, and vouchers, charter schools (and other pro-competition interventions) as the corresponding policy tools in PPP frameworks (see box 1). Nonetheless, as we show in the next section, this market approach to PPPs and, more generally speaking, to the governance of educational systems, is being challenged by many scholars due to its negative implications for educational equity and social cohesion.

### Box 1. Defining charter schools and vouchers programmes

**Charter schools** are publicly-funded schools, but managed by private entities, under some form of contract with the relevant educational authorities. Usually, charter schools operate with a certain autonomy and independence regarding the requirements and regulations applied to conventional state schools. However, unlike other publicly funded private schools, it is the state that ultimately retains ownership of these schools in most cases.

**Voucher programmes** are the most emblematic demand-side educational funding formula to promote freedom of school choice. In the context of this type of programme, eligible schools receive public funds (i.e. vouchers) according to how many students/families choose them. Voucher programmes are usually exclusively funded by governmental sources. Likewise, these programmes may have a universal or targeted character. In the case of the latter, only students at risk of exclusion, those with special educational needs (and) or students from low income families are granted vouchers.

### **3. PPPs' effects and their implications for education**

One of the most challenging issues in discussing the implications of PPP frameworks lies in the extreme diversity of models that may actually be enacted. The performance of each model is also very context-specific, which makes generalisations on the impact of PPPs almost impossible - or at least inaccurate (Akyeampong, 2009). Overall, there is a general lack of evidence on the effectiveness of PPPs, specifically on whether or not they accomplish their objectives in various dimensions such as access, quality, cost-effectiveness, inequality, innovation, and so on (Robertson, Mundy, Verger and Menashy, 2012). The heterogeneity of policies presented under the PPP umbrella, and PPPs being a relatively recent phenomenon, are certainly at the root of this knowledge gap.

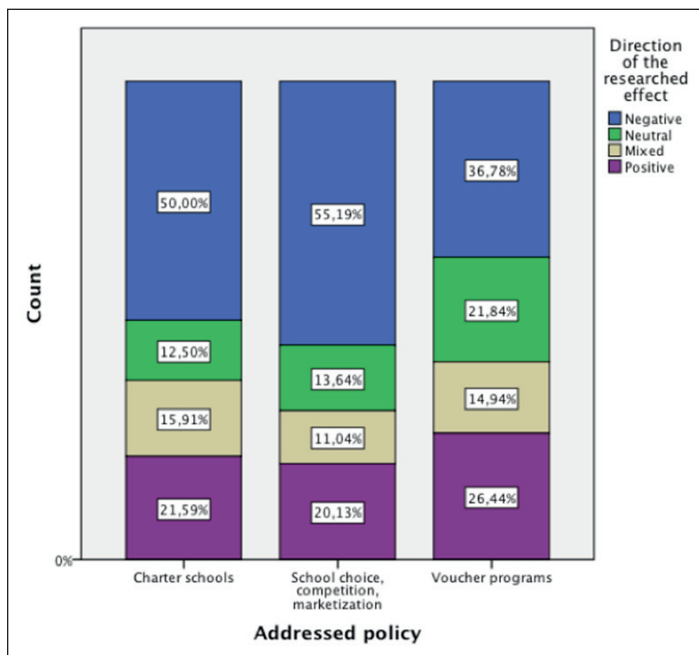
Evidence is slightly more abundant, yet still insufficient, on PPPs involving demand-side funding schemes such as school vouchers (Languille, 2016; Verger, Fontdevila, Rogan and Gurnet, 2017). Despite PPP proponents being quite general in describing the benefits of this kind of educational PPPs (LaRocque, 2008; Patrinos et al., 2009; Pavon, 2008), as we show in this section, much of this evidence challenges conceptions on the expectations and successes of PPPs that are too straight-forward.

#### **The educational effects of PPPs: An overview**

Verger et al. (2017) summarise what all existing academic literature on education PPPs/ school choice from the Scopus academic database (until December 2015) says about the effects of these policy interventions (n=268). This review distinguishes between two of the most emblematic PPP schemes according to the World Bank classification (namely, vouchers and charters), and school competition and choice dynamics (independently of whether these dynamics are developed under a PPP contract or not). Over-

all, in relation to all these three types of schemes, results tend to be more negative than positive (see figure 1).

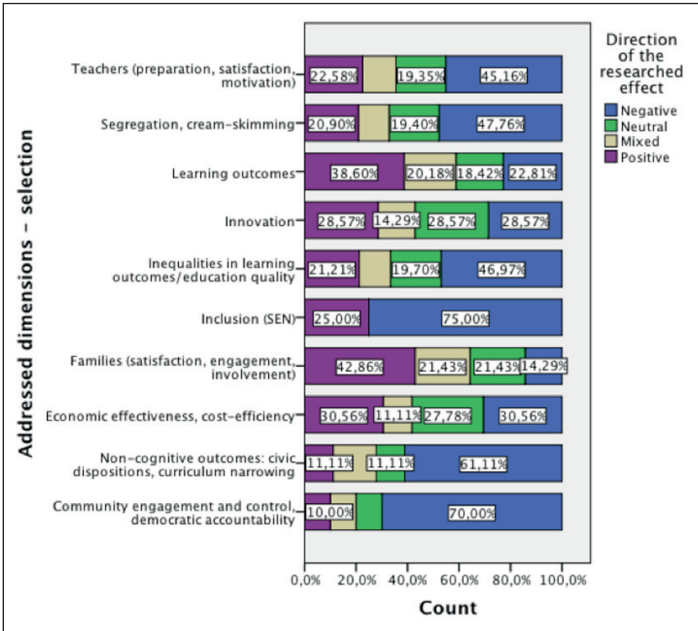
**Figure 1: Direction of the effects according to the policy in question**



Source: Verger et al. (2017)

When looking at the research papers included in the review, these can be classified according to whether they find positive, mixed, neutral or negative effects on the specific impact dimensions they focus on - including the results or effects in terms of teachers' work, learning outcomes, education inequalities, effi-

Figure 2: Direction of the effect according to different educational dimensions



Source: Verger et al. (2017)

ciency, parental satisfaction or innovation. Figure 2 systematises the same data as in figure 1, but instead of organising the data according to types of PPP policies, it organises it according to what the publications say about the specific types of educational effects of PPPs. As can be seen, existing PPP research shows more negative than positive results in most measured impacts. Market-oriented PPPs (including voucher schemes, charter schools and other types of pro- ‘school choice’ programmes) seem to be especially problematic in terms of education inequalities, in-

clusion, and school segregation. Its effects are also quite negative in terms of reinforcing accountability, teachers' satisfaction, and non-cognitive outcomes and skills (i.e. attitudes and behaviours that are important for life, but not necessarily attached to concrete academic subjects). Aggregated results on learning outcomes, efficiency, and innovation are, in contrast, more balanced. Interestingly, the dimension where PPPs seem to perform better relates to families' satisfaction and engagement.

Nonetheless, some words of caution are necessary when attempting to draw conclusions from this data. First, most of the research reviewed (around 80%) has been conducted in western countries<sup>2</sup>, which makes extrapolation of results to developing contexts inappropriate. Second, we are addressing PPP policies in the abstract when, as mentioned above, these policies can respond to very different designs and rationales, and their implementation and impact are markedly context-sensitive and contingent on the specific private actors involved in each partnership. In the following section, we present the main mechanisms that explain the overall direction of the effects of PPPs for some of the most relevant educational dimensions.

## Prevailing effects, evidence and explanatory mechanisms

### ***Inclusion, segregation and stratification***

*Prevailing effect:* Negative

*Evidence and mechanisms:* Despite PPPs being specially promoted as more equitable (i.e. providing vulnerable groups with more school choice opportunities), studies measuring overall segregation show that educational systems that have engaged in market-oriented PPPs have actually reinforced pre-existing school segmentation. This has been extensively studied in the case of Chile, which has the most market-oriented system in the world (Carnoy, 1998; Elacqua, 2012; Saporito, 2003; Valenzuela, Bellei and de los Ríos,



2013). Evidence suggests that the competitive environment that many PPP contracts generate, incentivises schools to try to select the best – and cheapest to educate – students. They also discriminate against the less academically skilled, special needs or students with behavioural issues. Research on the topic for Chile, the United States and England shows that, under different PPP frameworks, schools compete to recruit not just any type of student, but rather those who are more academically able or have a good attitude towards learning and discipline (Contreras, Sepúlveda and Bustos, 2010; Gewirtz, Ball and Bowe, 1995; Jabbar, 2015; Jennings, 2010; Van Zanten, 2009). Ultimately, these selection practices potentially translate into discrimination against ethnic or religious minority students and children from working class backgrounds (Hernández, 2016; Wilson and Carlsen, 2016). Moreover, the greater margin to exercise choice present in most PPP arrangements has been shown to incentivise social closure practices among certain social groups, thus creating a loss of intra-school diversity, and differential and stratified circuits of schooling (Alves et al., 2015; Ball, Bowe and Gewirtz, 1995; Renzulli and Evans, 2005; Roda and Wells, 2013; Vowden, 2012).

### ***Teachers' work***

*Prevailing effect:* Negative

*Evidence and mechanisms:* The efficiency gains attained by PPPs in education are usually the result of a more intense exploitation of teachers' labour (Day Ashley et al., 2014). While some research suggests that lower wages are paid in voucher schools (McEwan and Carnoy, 2000), teacher casualisation is especially the case in the PPP arrangements that some governments have started adopting with so-called 'low-fee private schools' (LFPS) for cost-saving reasons (Srivastava, 2016). This recent PPP development with LFPS in developing countries<sup>3</sup> generates additional concerns regarding educational quality and teachers' welfare, since teach-

ers in these schools are usually poorly trained and paid, and lack job stability (Aslam and Kingdon, 2011). Similarly, worse working conditions for teachers have been found in 'charter schools' in Colombia (known as *Colegios en Concesión*) in comparison with traditional district schools. According to Termes et al. (2015), teachers in *Colegios en Concesión* have lower degree qualifications than teachers in state schools, considerably lower salaries (with unpaid summer holidays), a longer workday, less time to prepare their classes, and they are not allowed to be unionised. As the World Bank concedes: 'In those countries where public sector staff is paid high wages as a result of belonging to strong unions, [in PPPs] there is a cost-saving associated with the contractor being able to hire non-unionised labour' (Patrinos et al., 2009, p. 11).

### ***Learning outcomes***

*Prevailing effect:* Mixed

*Evidence and mechanisms:* Research focusing on students' achievement and learning outcomes shows contradictory results. As Lubienski et al. (2009) point out these contradictory results might suggest limitations inherent in the different methodological approaches that stem from 'the shortcomings of randomisation as an exclusive "gold standard" for research on the issue of achievement in school choice plans' (2009, p. 161). For instance, some studies – mostly World Bank commissioned reports – show positive effects for education voucher and voucher-like schemes, especially on the learning outcomes for Colombia (Angrist, Bettinger, Bloom and King, 2002; Angrist, Bettinger and Kremer, 2006; Barrera-Osorio, 2007), Uganda (Barrera-Osorio, De Galbert, Habyarimana and Sabarwal, 2016), and Sweden (Böhlmark and Lindahl, 2015). However, another important body of literature gets opposite results after applying controls for the socio-economic composition of schools (Alves et al., 2015; Carnoy,

1998; Hsieh and Urquiola, 2006; Mizala and Torche, 2012). In the case of Chile, for instance, Hsieh and Urquiola (2006) find no evidence that choice improved average learning outcomes, repetition rates, or years of schooling. Instead, demand-side funding schemes seem to have increased socio-economic segregation and the stratification of achievement between schools (Mizala and Torche, 2012; Valenzuela et al., 2013) and also within schools (Treviño, Valenzuela and Villalobos, 2016). The loss of a positive peer-effect resulting from greater segregation, as well as the associated inequality of human, financial and material resources, might be at the root of this increasing achievement gap.

### ***Innovation***

*Prevailing effect:* Mixed

Despite being a central element in the PPP advocacy discourse, whether PPPs and competition actually spur innovation is not at all clear either. In fact, PPPs might promote more uniformity in educational processes and pedagogies than their proponents initially predicted. Uniformity might be related in part to the fact that the forms of standardised evaluation that PPPs tend to entail provide schools with the incentive to narrow the curriculum and 'teach to the test'. As a result, schools may put less importance on the transmission of the cognitive and non-cognitive skills that are not measured in standardised tests (Termes et al., 2015). After reviewing numerous international experiences with PPPs and quasi-markets in education, Lubienski (2009) concludes that these policies 'appear to be more successful in creating innovations in marketing and management than in generating new classroom practices' (2009, p. 49), and he adds that there seems to be 'no direct causal relationship between leveraging quasi-market mechanisms of choice and competition in education and inducing educational innovation in the classroom' (2009, p. 45). Recent research on charter schools in the US and academies in

England points in the same direction. It also highlights the prevalence and persistence of ‘cream-skimming’ (selecting the brighter pupils for admission) practices (Jabbar, 2015, 2016; Jennings, 2010; Lacireno-Paquet, Holyoke, Moser and Henig, 2002; West, Ingram and Hind, 2006; Wilson and Carlsen, 2016).

### **Cost-effectiveness**

*Prevailing effect:* Mixed

*Evidence and mechanisms:* PPPs are supposed to trim down costs (when compared to traditional education provision) and provide value for money<sup>4</sup>. In theory this comes from the private sector’s supposed ability to provide both infrastructure and services at a lower cost through economies of scale, more experience, better incentives, and a greater ability to innovate. However, as shown in figure 2, the results are split as to whether there is any gain in efficiency under PPP schemes and market solutions in education. While PPPs may play a role in bringing in funding - or, more accurately, minimising on-budget government expenditure and deferring payments - cost-effectiveness gains are not clear, especially in the long run (Romero, 2015; Rosenau, 1999). The Chilean quasi-market is a good example of the increasing need for state regulation and the monitoring of private providers to attempt to revert unwanted externalities which compromise equity and quality. This ‘hyper-regulated deregulation’ scheme represented by Chile has proven extremely time-consuming and resource-consuming, and it has required establishing strong state management capacities. At the school level, while some research finds marginal efficiency gains in voucher, charter, and low-fee private schools as compared to state schools, these are always attributable essentially to lower teacher wages, fewer regulations, user fees for families, extremely standardised teaching materials, poor infrastructure, and so on (Day Ashley et al., 2014; Gronberg, Jansen and Taylor, 2012; McEwan and Carnoy, 2000).

#### 4. Conclusions and policy recommendations

The World Bank, together with other relevant players in the international aid community, promotes PPPs as a policy approach to address a broad range of problems that educational systems face, especially in developing regions such as Asia, Africa and Latin America. Even international donors and International NGOs that do not have a track record of being market advocates currently see PPPs in education as a lesser evil in some situations, in (post-) conflict or state fragility contexts for example. For many of these stakeholders, PPPs could be a way to address the limitations of state provision and guarantee that the SDG 4 is at least partially achieved. Nonetheless, PPPs require very demanding forms of governance both for governments and private agents, and their implementation is especially challenging in crisis-affected contexts. The reasons for this include a lack of commitment between the partners, and limited governmental administrative and oversight capacities (Rose and Greeley, 2006; Batley and McLoughlin, 2009).

Despite all this, PPPs could represent a step forward – at least in the short run – in contexts where public education provision is insufficient, inappropriate or non-existent. Partnering with private providers should not be seen a way of postponing the necessary improvement in the state sector in education. In fact, as we have shown in this chapter, market and pro-school choice solutions, which are often seen as the ultimate PPP models in education, are not well-suited to promote much-needed inclusive and equitable education. The effects of PPPs involving voucher programmes or charter schools may well vary according to contextual and policy design variables, including the nature of the incentives of private actors (for instance, whether they are ‘for profit’, religious or non-religious, etc.). However, as we have reviewed, existing evidence shows that market-like PPPs introduce a broad range

of challenges from an educational equity perspective and they promote socio-economic segregation and school segmentation. Furthermore, PPPs tend to accelerate the processes of education privatisation – broadly understood as the increased participation of private actors in education provision. These types of effects are particularly relevant if we take into account the fact that, as observed by scholars such as Bellei (2016), for political and economic reasons both education segmentation and privatisation processes are very difficult to reform through public policy.

Does all this mean that partnering with non-state actors is always a bad idea, and that governments should be in charge of all the aspects that make up an educational system? Not at all. Especially in situations of state fragility and serious pauperisation of resources, partnering with non-governmental actors can contribute to advancing educational development goals. However, in these and in other situations, governments could explore implementing partnership frameworks other than those involving education privatisation and marketisation. Specifically, in the context of the SDGs, southern countries could benefit further from building partnerships with a broad range of state and non-state partners including universities, local and international NGOs, grassroots organisations, international aid agencies, etc. These partnerships should focus on training policy makers and key educational stakeholders, supporting the teaching workforce, or creating networks of mutual support and knowledge transfer between schools, teachers and other key stakeholders. Such ‘multi-stakeholder partnerships’ could contribute to improving educational systems without generating dependence on the private sector for educational provision. Ultimately, both in developed and developing contexts, capacity-building oriented partnerships could deliver results without undermining social cohesion in education and the future development of public education systems.

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This work has benefited from the insightful comments and suggestions of Liliana Rodrigues and the discussion in the Progressive Lab for Sustainable Development Symposium (Brussels, December 7<sup>th</sup> 2016) and the Roundtable on Public Private Partnerships in Education in Crisis and Conflict Affected Contexts hosted by the Open Society Foundations (New York, June 27<sup>th</sup> 2016).

## Endnotes

- <sup>1</sup> See, for instance, <http://www.educationpanel.org/brownreport2.pdf> and <https://www.unglobalcompact.org/library/391>
- <sup>2</sup> In particular, the available research on the effects of PPPs has been mainly produced in North America (especially in the US), Europe and Latin America – although it should be noted that the latter two cases, the UK and Chile, account for most research on the matter (see Verger et al., 2017).
- <sup>3</sup> Low-fee private schools have been established in many different countries such as India, Pakistan, the Philippines, Kenya, Nigeria, Ghana, South Africa and Peru, among others.
- <sup>4</sup> See <https://pppknowledgelab.org/ppp-cycle/how-ppps-can-help>

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# **WILLING TO LEARN, BUT FORCED NOT TO: THE CHALLENGES REFUGEES FACE ON THEIR WAY INTO HIGHER EDUCATION IN HOST NATIONS**

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Refugees<sup>1</sup> journeys into higher education<sup>2</sup> in host countries are not as simple and straightforward as it seems. The barriers they face are diverse. This chapter tries to address the question ‘what main challenges do refugees face in their trajectories into higher education in recipient countries?’ Even though refugees’ participation in higher education is useful both for the refugees and the host societies in many ways (such as refugees’ integration into the labour market), refugees are often under-represented in higher education. Lack of information, poor language skills, the difficulty of getting foreign qualifications recognised, discrimination, long waiting times in the camps, and the lack of flexible curricula are identified as the major challenges refugees face. Accordingly, counter measures are recommended to overcome the problems so that refugees can realise their goals through higher education.



## **1. Introduction**

Despite the dearth of literature on refugees' experiences with regards to their participation in higher education in host countries (Harris and Marlowe, 2011), the handful of studies already available show that refugees are generally motivated to attain higher education in host countries (Halpern 2005, Ben-Moshe et al., 2008). Given the positive roles higher education plays in contributing to their qualifications and the development of human resources (Zeus, 2011), it is not surprising to note that refugees are generally willing to attend higher education.

This chapter is largely based on my master's thesis<sup>3</sup>: 'Refugees' path to higher education in a host country: Opportunities and Challenges - A Qualitative study from Norway'. The thesis used qualitative research. Specifically, I used narrative interviews to collect primary data from six refugees who live in Norway. Moreover, document analysis was used to gather secondary data. The data were analysed using thematic analysis and to some extent structural analysis both of which are types of narrative analysis (Riessman, 2005). The study adopted Nan Lin's social capital definition – 'the resources embedded in social networks accessed and used' by refugees for admission to higher education institutions (Lin, 2001, p. 25) – as an overarching theoretical framework<sup>4</sup>.

The chapter contains some real experiences of refugees that I interviewed for the thesis. However, not all of the parts of my thesis are included in this chapter since the focus here is only on the barriers that refugees face on their way into higher education. To put the narratives of refugees in a broader context, the chapter briefly includes the related literature from around the world. By doing so, it addresses the question 'what are the main challenges that refugees face getting into higher education in host countries?' All this makes the chapter worth considering at

international level when it comes to policies dealing with refugees and higher education.

The chapter is organised into six main sections (including the introduction). The next section briefly presents previous studies on higher education and refugees. The importance of higher education for refugees is then highlighted before discussing the main challenges refugees face getting into higher education. The conclusion of the chapter is then presented and finally, the recommendation part gives some suggestions for improving the participation of refugees in higher education in host countries.

## **2. Refugees and higher education in the wider literature**

As indicated in the very first sentence of the introduction part of this chapter, there is little research on refugees' experiences with regard to accessing higher education. Nevertheless, from the literature review it is clear that the studies dealing with refugees and higher education have gained momentum over the last decades (Sladek and King, 2016; Coffie, 2014) but many of the (already available) studies focus on few countries in the Global North (see for instance, Gateley, 2013; RSN, 2012; Dryden-Peterson, 2011; Harris and Marlowe, 2011; Zeus, 2011; Earnest et al., 2010; Ferede, 2010; Morrice, 2009; Hanna, 2008; Kanu, 2008; Stevenson and Willott, 2007; McBrien, 2005; Olliff and Couch, 2005; Banks and MacDonald, 2003; Hanna, 1999). To better understand the challenges refugees face in their journey to higher education, it is crucial to consider contexts from other parts of the world, particularly the refugee camps in developing countries which host the vast majority of the refugee population in the world (UNHCR, 2016a).

Studies from various areas/ camps in developing countries indicate a range of difficulties that hinder the provision of higher

education in those contexts. Zeus (2011) and Wright and Plasterer (2010) indicate that when long-term refugees are viewed as only temporarily displaced, it is highly likely that they will be denied various rights including access to higher education. The main actors (including aid organisations and the authorities in host nations) focus on short-term necessities rather than long-term self-sufficiency and empowerment. In some cases, refugee higher education is not prioritised as primary education is given preference in the refugee camps. Nevertheless, this is not without its consequences, as it can demotivate the younger refugees from completing their schooling if they do not see opportunities for higher education (Sherab and Kirk, 2016). Furthermore, cultural practices that discourage girls' education, poor facilities, a shortage of trained personnel, and, most importantly, the lack of sufficient funding for educational provision or scholarships are identified as challenges to refugee higher education (UNHCR, 2011; Wright and Plasterer, 2010).

### **3. The benefits of refugee higher education**

It is impossible to exhaustively discuss all aspects of the importance of higher education for refugees in this short chapter but it is nevertheless vital to concisely mention some aspect here. Zeus (2011) indicates that some institutions consider higher education as an opportunity reserved for privileged groups. Not long ago, refugees were denied access to higher education because higher education was considered to be a luxury leading towards 'elitism' (Coffie, 2014; Zeus, 2011, p 262). In recent years, however, this trend seems to be changing as there are some initiatives in place to provide higher education for refugees and other minority groups (Crea, 2016; UNHCR, 2011), though the initiatives are far from adequate and sometimes remain symbolic rather than addressing the real issue (Acharya, 2016)<sup>5</sup>.

Providing higher education for refugees can have huge positive impacts for both the refugees and the communities they live in (Coffie, 2014; Marar, 2011; Morrice, 2009). For instance, regarding the overall significance of higher education for refugees, Crea (2016) writes –

*‘[...] higher education can play a critical role in facilitating transitions for refugees by providing skills that increase social capital and (they) are transferable in different contexts.’ (Crea, 2016, p. 12)*

More specifically, refugees should access higher education for a number of reasons. Firstly, through participation in higher education, refugees can rebuild their lives by adjusting to being exiled and increasing their chance of getting employment (Abamosa, 2015; Dryden-Peterson, 2011; El Jack 2010). Olsen (2014) indicates, for example, that refugees who have accessed higher education in Norway have the same employability rate as ethnic Norwegians in the long run. Moreover, by 2025, almost half of all job openings in the EU will require some sort of higher qualification so those with higher education will have better employment opportunities than those without (EC, 2016). Providing higher education for refugees to minimise the possibility of social exclusion is therefore worth considering. This in turn brings about upward social and economic mobility for refugees by creating access to ‘high wages, high-quality positions, social networks, and entry into the middle class’ (Ferede, 2010, p. 80) which may result in their better integration into the host societies.

Secondly, host countries can benefit economically from highly qualified refugees, and the benefit is even more significant when refugees receive their education in host countries (NOU, 2017; Aiyar et al., 2016). This economic benefit can come in many forms - in the short term and in the long term (Aiyar et al., 2016) - some of which are mentioned here. Providing higher education

opportunities for refugees may limit the socio-economic burden for hosting countries by increasing the economic independence of refugees (Lorisika et al., 2015). In the same vein, DeVoretz et al. (2004) contend that educational attainment is crucial for refugees to be able to earn money so as a result, refugees who earn, in part due to the education they received, may not live on government assistances or social benefits for extended periods of time (CEA, 2012; Kerr and Kerr, 2011).

Furthermore, refugees with low education and poor language skills - low human capital (Bevelander, 2016) - are less attractive in the labour market in many recipient countries (Aiyar et al., 2016). Similarly, Parsons (2013) indicates that lack of education is one of the main barriers refugees face in securing a job in a host country. On the contrary, higher education increases the chance of employability for refugees in host countries (NOU, 2017; Bevelander, 2016; Bevelander, 2011). This in turn can help refugees contribute to the public finance of hosting countries in the long-term (Aiyar et al., 2016). This can be done in the form of paying tax (OECD, 2012), better economic growth through for example job creation, or entrepreneurship (Chmura, 2013; Dryden-Peterson, 2011). However, to reap the economic benefits from refugees, receiving countries should focus on long-term adaptation rather than short-term 'crisis-stabilisation' (Potocky, 1996, p. 371).

The other economic benefit of providing higher education to refugees is the supply of human resources to certain professions which demand highly skilled labour force in host nations (Konle-Seidle and Bolits, 2016, p. 11; Bodewing, 2015; OECD, 2014, p. 223). This benefit is even more evident in receiving countries which are going through demographic change due to their ageing population. One of the consequences of such a trend is the possibility of shortage in the labour force that sustains a country's economy (Canon et al., 2015). With relatively younger people arriving to many host nations as refugees (Desilver, 2015),

there are opportunities for investing in the future work-force in the form of providing higher education so that the highly qualified refugees can help the host nations meet the demand for the labour force in the future (Bodewing, 2015). It seems some countries are well aware of the importance of such strategy. For instance, German state governments put it succinctly 'Every euro we spend on training migrants is a euro to avoid a shortage of skilled labour [...]' (Fegebank et al., 2015).

Finally, higher education can enable refugees play a constructive role in the peace-building process across borders (Coffie, 2014). Through accessing higher education, refugees can indeed develop different skills which they can use to reconstruct their countries or regions of origin and avoid criminal activities (Sherab and Kirk, 2016; Dryden-Peterson, 2011, p 15; Ferede, 2010).

Despite all these benefits, it is not easy for refugees to get the opportunity that others (including non-refugee immigrants) get in attaining higher education. This is due to different barriers that can be overcome if all stakeholders do their share of including refugees into the higher education community for the sake of attaining social justice. This would create fairness overall in a society through sharing opportunities and responsibilities (Zajda et al., 2006).

#### **4. Barriers that refugees face in their trajectories into higher education**

It seems paradoxical to mention refugees and higher education at the same time (Zeus, 2011). The former is largely associated with chaos, deprivation, mental illness and the like while the latter represents stability and scholarship. However, in reality refugees are also capable of learning like anyone else, provided they get the opportunities to do so (Hanna, 1999). For instance, one Somali refugee who grew up in a refugee camp and now studies in a host nation puts it as follows,

‘As I grew up I realised that education was only a privilege of the rich, but the UNHCR has spoken loudly and strongly so that even the poor can perform equally... if given a chance.’ (UNHCR, 2015, p. 12)

Unfortunately, the route to higher education is not as straightforward as it should be for refugees (Abamosa, 2015). This is the case even in host countries which otherwise are referred to as developed and where human rights are respected and the rule of law prevails. This is mainly due to the following challenges:

- *Misinformation and lack of guidance*

Refugees are among the most vulnerable groups in the world (McBrien, 2005) in many aspects, not least when it comes to access to information on the availability of higher education opportunities. In their new countries, refugees may not know ‘the rules of the game, the norms and the expectations’ in attempting to attain higher education (Morrice, 2009, p. 664; Ben-Moshe et al., 2008). In addition to the lack of adequate information, refugees are also subjected to misinformation from officers who hold positions and who are supposedly there to help refugees (Abamosa, 2015; RSN, 2012; Hanna 1999). In most cases, the consequences of misinformation and a lack of information are far-reaching as refugees may make ill-informed decisions with adverse impacts on their life (Stevenson & Willott, 2007). For example, a lack of information on how to access higher education can result in indecision and delay entry into university programmes (CSA et al., 2011).

Murata’s experience:

*One day I was with a consultant on higher education. She asked me ‘What kind of education are you planning to have in the future?’ I answered simply ‘History’. She said, ‘Do you*

*know how long it takes?’ I said, ‘Yes’. She said, ‘It takes three years at university, then two years’ practice...’ She tried to divide things and make it complicated for me. Then she even asked me ‘Do you know what ‘history’ is by the way?’ I said, ‘Yes.’ Then she answered it herself in a way I didn’t understand. (Murata, a refugee in his 30s living in Norway)*

- **Language skills**

The difficulty of mastering host nations’ language(s) is obviously one of the challenges refugees face when they want to study at a college (Ben-Moshe et al., 2008). The language problem is actually very serious as it can negatively influence the full participation of refugees in other socio-economic aspects of the host community (Watkins et al., 2012). McBrien (2005), for example, reports that refugees with deficient language skills in their new country often suffer from a high level of alienation which can in turn exacerbate their exclusion from higher education. It is important to remember here that the challenge is not lack of access to the language courses in host countries *per se*. It is actually how the courses are delivered and the extent they equip refugees with the necessary language skills for higher education (Abamosa, 2015; Cheung & Phillimore, 2014; RSN 2012). For instance, in some cases, refugees with higher education from their home countries are placed in the same classes as others who have had little education and when the former ask for the right course placement they are ignored. Such problems have a dire negative impact on motivating refugees to go to college (Abamosa, 2015).

Darartu’s experience:

*...when I went to the preparation course for the higher level test [B2 level], I met one teacher who was not qualified enough for that level. First, we discussed this with the teacher. But nothing happened. Then we complained about it many*



*times to the school. But nobody would hear us. At the end, the whole class failed the test. That was the teacher's fault, not our fault.* (Darartu, a refugee in her 30s living in Norway)

Murata's experience:

*When I went to learn the language, I was put in a class with students who had different educational backgrounds, some were illiterate and others were fast learners. So I told the teachers to help me by placing me in the right class. I told them many times, but they did not listen to me.* (Murata)

- ***The difficulty of getting foreign qualifications recognised in the host countries***

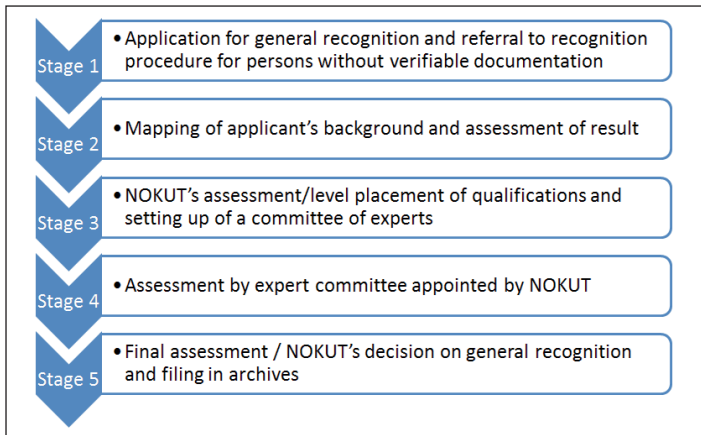
Last year, in 2016, the European Commission came with a well-deserved contemporary agenda 'The New Skills Agenda' (EC, 2016) which aims to work together to strengthen human capital, employability, and competitiveness in the European Union Member States. The focus of the agenda is to uplift various skills, particularly for people who are at risk of exclusion from the labour market. The report states, 'People need a broad set of skills to fulfil their potential both at work and in society' (EC, 2016, p. 4). It is very important, therefore, to focus on the recognition of the (formal and informal) qualifications that people - including refugees - have so that they can more easily make use of their skills.

By ratifying the Lisbon Convention (about the recognition of qualifications concerning higher education in Europe) (UNESCO, 1997), many countries in Europe have established certain systems for recognising qualifications gained in foreign countries. The Convention, in addition to focusing on the recognition of education of non-refugee people, also includes the recognition of qualifications held by refugees, displaced persons and persons in a refugee-like situation (see Art. 7). These days, the recognition and validation of skills, their competences and their knowledge

allows refugees to continue further education and/or participate in the labour market. It is among one of the main agendas related to refugees' education in various nations.

In Norway, refugees have full rights to get their qualifications recognised by applying to the appropriate authorities. The Norwegian Agency for Quality Assurance in Education (NOKUT) handles the applications for the *general* educational recognition of refugees (NOKUT, 2016a; Liebig 2009). However, one of the most significant achievements in NOKUT's recognition activities is the development of a *five-stage recognition procedure* for refugees without verifiable educational credentials. The process is focusing mainly on refugees from Afghanistan, the Democratic Republic of the Congo, Iraq, Liberia, Sierra Leone, Somalia and Yemen. However, refugees from other countries can also apply to get their qualifications recognised using the special procedures (NOKUT, 2016a).

**Figure 1: NOKUT'S five stage model for recognising qualifications for people without verifiable documents**



Source: NOKUT, 2015, p. 2, [eaie.org/blog/refugees-qualifications/](http://eaie.org/blog/refugees-qualifications/)

In Germany which, like Norway, ratified the 1997 Lisbon Convention, different systems apply for qualification recognition for 'academic' and 'professional' purposes. The system in Germany seems more complex than the Norwegian system. This is mainly due to the clear difference between academic and professional institutions, and the legal framework in which they operate. Universities deal with the recognition of qualifications for academic purposes, so they do not have to abide by the Recognition Act that covers the recognition of qualifications for other professions (Fohrbeck, 2013). Therefore, in principle, refugees with sufficient educational credentials can directly apply to a university for both recognition and continuation or start of their studies in their new country (Bosswick, 2013). However, the decentralised recognition process for academics (across higher education institutions), may have some drawbacks such as irregular or non-standardised outcomes of applications of the same type, particularly for refugees (NOKUT, 2015).

In Sweden, the recognition of foreign education is the responsibility of the Swedish Council for Higher Education (UHR). The recognised qualifications by UHR can serve as academic documents for further studies or for labour market participation. However, since the Council only considers fully completed education, people with incomplete education may get their foreign education assessed by individual higher education institutions (Dingu-Kyrklund, 2013). As in Germany, this may result in different outcomes for the same educational achievements.

Despite the presence of recognition activities, refugees who have obtained a university degree in other countries (including in their home countries) face a huge problem getting their qualifications recognised in host countries. Many refugees may arrive in the host countries without taking their educational credentials (e.g. Egner, 2006) and therefore they cannot easily document their qualifications. This in turn makes the recognition process very difficult, if not impossible (Dryden-Peterson, 2011). In addi-

tion to this, refugees may not have adequate information on how to get their qualifications recognised (EC, 2016; Banks and MacDonald, 2003). The result of such problems is not only exclusion from higher education, but also fewer employment opportunities and acceptance of low-skill jobs (Banks and MacDonald, 2003).

Jara's experience:

*When I gave the certificates to my contact person, she said, 'Ok, we have to fill in some forms from NOKUT and then we will send them to them.' Then we sent them to NOKUT. But after only a short time a negative decision came from NOKUT. My certificates were not accepted. It was disappointing. I was disappointed because my papers were original and I was ready to begin my study at a university as I had already taken and passed the Norwegian B2 level test. After that we tried many times with my contact person but they did not accept my papers. Where could I go then if they didn't accept my papers? (Jara, a refugee in his 30s living in Norway).*

But a new model, which NOKUT co-developed, called the 'Qualification Passport for Refugees' is reported to be successful, and Jara's narrative could have been different had NOKUT adopted such a scheme earlier.

The Qualification passport for refugees is designed for refugees who cannot get their qualifications recognised under the ordinary recognition process or under the model described in figure 1 (NOKUT, 2016b).

- ***Discouragement and discrimination***

Not surprisingly, in addition to discrimination in the labour market (Colic-Peisker and Tilbury, 2006), refugees encounter serious discrimination and discouragement in schools. These problems mostly result from the baseless perceptions others have about

refugees, such as seeing refugees as real or symbolic threats (McBrien, 2005) and/ or perceiving them as too inferior to go to colleges (Earnest et al., 2010) despite the absence of evidence for such claims. McBrien (2005) writes:

*'[...] many teachers and administrators perceived the immigrants and refugee students as having low intelligence and learning disabilities, although the researchers noted that school personnel, including the school psychologist, could not diagnose the presumed disabilities.'* (McBrien, 2005, p. 350)

In addition to this this general evidence about discrimination against refugees in schools, refugees also encounter discrimination at university level irrespective of their educational background. For instance, Earnest et al. (2010) write:

*'Some participants felt that they had experienced some form of prejudice from academic staff who assumed that students from refugee backgrounds possess basic or little knowledge, skills and education, despite some refugees having degrees in their former countries.'* (Earnest et al., 2010, p. 167)

Hardworking refugees are often discouraged by discrimination and other negative treatments in the schools and such things may eventually lead to drop out (Kanu, 2008). This may lead to social injustice against refugees by denying them the right to education. While sometimes discrimination and discouraging refugees are subtle, indirect and more systemic (Khawaja et al., 2008), concerned authorities are often well aware of the problems but they do little to solve the problems. In other words, refugees are ignored when they raise the problem of discrimination and bullying from teachers and other officials such as programme advisers who are working with refugees (Abamosa, 2015). It is worth remembering the fact that refugees get protection from both physical and psychological abuses.

Baredu's experience:

*When I discussed my plan together with my contact person and a teacher, the teacher asked me what my plan was. I told her, 'My plan is to go to a university.' Then the teacher said, 'There are many refugees who came from their country without completing their upper secondary school but they have this big plan to go to a university to be a doctor in Norway. But most of them end up doing nothing.' The teacher continued 'Since you have a child and you are a grown up woman, it is difficult for you to attend a university.' My answer was that even if I was not good at the Norwegian language, I was not so stupid that I could not attend a university. I knew that I could. So I didn't listen to the teacher's advice because I knew education was the key to everything (Baredu, a refugee in her 30s living in Norway).*

Na'ol's experience:

*When you want to study to become an engineer or a doctor, they will tell you, 'You can't. Why do you need to study? You can take one year courses to work in the elder people's nursing homes.' Those who tell you this know exactly what they need for the coming 20 years and they know exactly where they get it from. Then they ask you, 'How old are you?' then you will say, 'I am 35.' Then they say, 'It is not fair for you to just waste another four or five years studying. It is better to just take a one year course and then start to work as a cleaner because you can make money that way.' That can turn your idea away from education, but I advise everybody to learn the [Norwegian] language and get the certificate even if they have to pay for it and to go to higher education [institutions]. You learn for yourself not for them (Na'ol, a refugee in his 30s living in Norway).*

- *Long waiting time at asylum seekers reception centres/ camps*

Waiting in asylum seekers' reception centres for an unreasonably long period of time with valid residence permits is another challenge refugees have to face in some host countries. For example, in Norway, the Convention refugees (i.e. refugees who get international protection after applying for asylum) who live in the camps say that the waiting time between a positive decision on their applications for protection and moving to the municipalities is longer than they expected (Abamosa, 2015). Sometimes, they have to wait for more than two semesters without any good schooling. This has without doubt a negative impact on the refugees' participation in higher education because there is a negative correlation between staying in camps for a longer period of time and mastering a host country's language (Bakker et al., 2014, p. 435; van Tubergen, 2010, p. 531). Moreover, the refugees may not get the possibilities of getting their qualifications assessed at an early stage of their integration process into the host society if they stay in camps for extended duration, and this can hinder a successful integration. EC (2016) states,

*'Identifying migrants' skills early on can help determine the first steps needed to integrate them into their host society and the labour market.'* (EC, 2016, p. 10)

- *Lack of a flexible curriculum in higher education institutions*

Absence of curricula that can best serve the needs of refugees in both the short term and the long-term can be identified as a barrier to refugees' participation in higher education (Chatty, 2016). Even in situations where higher education is designed particularly for refugees, for example in long term refugee camps, studies

recommend the transformation of mainstream curricula (e.g. Crea and McFarland, 2015). The main challenge in this regard is the lack of adaptation of the curriculum to the local contexts by taking into account the refugee students' experiences and reflections (Crea, 2016; El Jack, 2010; Majhanovich, 2008). At the lower level of the education system, UNICEF (2015) identifies the need for an 'enriched curriculum that addresses the psychological trauma' of refugee students in refugee camps or city-based educational establishments (UNICEF, 2015, p. 22). In addition to (higher) education provisions at refugee 'hot spots', the curricula in higher education institutions in developed nations (or host nations) are mainly based on old-fashioned norms which usually do not incorporate issues of 'inclusion, integration, diversity, equality and discrimination' (Acharya, 2016, p. 493). The curriculum in this sense includes both the course content and the teaching and learning styles (Hurtado et al., 2013).

Nevertheless, there are some encouraging trends in some areas when it comes to recognising the benefit of a curriculum tailored to refugees' needs. In line with this, a recent research report from Norway encourages all stakeholders to develop curricula that can help immigrants (refugees) to complete and/or continue (higher) education in Norway. The starting point for this is the inadequacy of the current system which delivers less in the area of refugee education (NOU, 2017, p. 22). Moreover, the University College of Oslo and Akershus helps refugees who were teachers in their home countries complete their study through a special curriculum (hioa.no). Similarly, the UNHCR used to provide education that incorporated peace education into curricula for Liberian refugees in Guinea in the early 2000s as a gesture of inclusive education in Guinea (Coffie, 2014). A customised English language curriculum - called participatory curriculum though not fully developed - in South Korea for North Korean refugees is also a good example which shows that it is possible to design a par-



ticular curriculum for refugees to help them realise their dreams (Lee, 2014).

## **5. Conclusion**

The route to achieving a goal is as important and decisive as the goal itself. Given the barriers that refugees face in host countries mentioned above, it is possible to argue that granting a residence permit to refugees is not by itself an assurance for their inclusion in the host society. Furthermore, it is compelling to argue that the availability of resources (in the form of free language courses, for example), or even access to them, does not guarantee success if refugees wish to access higher education. In fact, what matters most is the refugees' meaningful utilisation of the necessary resources. In fact, some of the challenges which refugees face such as discrimination are antitheses of social inclusion as evidenced in access to favourable opportunities in society to enhance one's life chances (Kelly, 2010). On the other hand, the fact that refugees become successful in accessing higher education in host countries, sometimes in very difficult circumstances such as protracted negotiations, indicates that refugees will indeed learn and can learn but barriers need to be removed to let them utilise their full potential at all levels of study (undergraduate, graduate, and post-graduate).

## **6. Recommendations**

Host nations should devise and execute clear policies explicitly aimed at including refugees in the higher education community at different levels. Setting up scholarships and special programmes designed for refugees in collaboration with higher education institutions can help refugees get access to higher education by utilising these programmes.

Refugees' previous education should be recognised in the most flexible ways even in cases where they cannot present full documentation of their qualifications. Using experts' assessments can be a starting point. It is also important to look at the 'Qualification Passport for Refugees' (NOKUT, 2016b) to possibly expand the service in other countries.

Host nations should also make sure that waiting times in asylum seekers' reception centres are as short as possible. Similarly, any discriminatory practice should be challenged openly and systematically in ways which help refugees get their voices heard in matters which concern them.

The preparatory language course where refugees can learn the language of instruction in a more academic way with a good quality should be developed. Moreover, language schools such as adult education centres should have rather clear and transparent teaching-learning processes (curricula) which can help highly educated refugees get the relevant language training.

Organisations working with refugees should balance their focus on refugees' access to higher education and jobs rather than just focusing on pushing refugees into the low-skilled and less secure job market. Furthermore, the role of programme advisers in those organisations needs to be scrutinised to bring about good practices by challenging the *status quo* and practices which may result in the exclusion of refugees from higher education.

Higher education institutions - and other stakeholders in the host countries - should do their fair share through, for example, developing and/or expanding curricula which take into account refugees' experiences, their background, and future plans to help them get included in higher education communities.

Due to its massive importance, refugee higher education in protracted or city-based camps in developing nations should also get much more attention than at the current time, and higher education should be treated as a basic human right<sup>6</sup>.

Finally, agencies at national level (e.g. Research Councils) and beyond (The European Commission) should initiate and fund projects or programmes designed to get refugees into higher education communities both as students and academic staff. Explicitly, this can be done for instance by announcing scholarships or funding opportunities designed solely for refugees in host countries and effectively communicating these opportunities to the right audiences.

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## Endnotes

- <sup>1</sup> *A refugee may be defined in this chapter as a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNHCR, 2010, p. 14). In Norway, people residing in Norway after they have been granted residence permits on applications for asylum or who have arrived as part of the annual resettlement quota for refugees, or who have been granted permits to stay on humanitarian grounds and those who arrived as family members of the above mentioned groups are categorised as refugees (Thorud et al., 2012, pp. 37-38, ssb.no).*

- <sup>2</sup> *In this chapter, higher education refers to University and other professional/technical courses where a major admission is the completion of secondary or high school (Coffie, 2014, p. 116).*
- <sup>3</sup> *The master's thesis was submitted in December 2015 in partial fulfillment of the requirement for the degree of Master of Philosophy in Higher Education at the Institute for Educational Research, University of Oslo, Norway. The thesis has 7 chapters and 148 pages including appendices.*
- <sup>4</sup> *Social capital theory in the master's thesis is operationalised by using three specific types of social capital: Bonding social capital, bridging social capital, and linking social capital. Bonding social capital, in the study, refers to the informal ties or networks which refugees have based on a common identity, mainly, on the basis of family and kinship, ethnicity, religion, and nationality (Knorringa and van Staveren, 2007, Cheung and Phillimore 2014). Bridging social capital refers to informal relationships which refugees have with different (local) non-governmental organizations (Putnam, 2000). Linking social capital formal social relationships with officials at different public organizations such as schools and refugee resettlement agencies (Häuberer, 2011; Woolcock, 2001; Stanton-Salazar, 1997).*
- <sup>5</sup> *According to the UNHCR, as of 2015, just 1% of the world's refugees attend university compared to 34% general university attendance (UNHCR, 2016b, p. 4). This huge gap (33%) indicates a long way to go to achieve fair distribution of opportunities to refugees.*
- <sup>6</sup> *There are many good examples regarding the provision of higher education to refugees in different context – especially in camps situated in developing countries, though the supply is quite well behind the level of demand for higher education. For example, the UNHCR supports higher education for refugees through DAFI (created in 1992, the Albert Einstein German Academic Refugee Initiative) scholarship so that they can study in host countries though the demand is absolutely greater than the available opportunities. Moreover, World University Service of Canada (WUSC) helps refugees in different camps across developing nations to study in universities in Canada. In addition to this, Jesuit Commons Higher Education at Margins (JCHEM, launched in 2009/2010) helps refugees access higher education including online courses.*

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# EQUALITY OF OPPORTUNITY AND INCLUSIVE GROWTH

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The impact of inequality on future economic growth is a fundamental question in economics. However, theoretical and empirical studies reach a disappointing inconclusive result because overall inequality affects growth through a large variety of opposite routes. This ambiguity with the phrase 'total inequality' could be eliminated by 'decomposing' (distinguishing between) inequality of opportunity (due to factors beyond an individual's control like family background, race or gender) and inequality of effort, as the empirical literature finds robust evidence that inequality of opportunity is harmful for growth. Accordingly, policies that equalise individual opportunity can promote inclusive growth by enhancing economic performance while improving fairness in society. In this respect, the main practical problems that equality-of-opportunity policy faces are accessibility in developing countries and education in developed countries.

*'Poverty is, in principle, reduced by economic growth.  
No such simple relationship exists between  
economic growth and inequality.'*  
Milanovic (2016)

## 1. The question

Are equity and growth compatible economic objectives for development? That is, would the reduction of overall inequality favour future economic growth? A major discussion on this issue is currently underway. On the one hand, if the root cause of inequality is technological change, then talented individuals prompt not only inequality but also growth (Goldin and Katz, 2008). In this case, high incomes grow faster than average because they make significant economic contributions and, therefore, higher equality deters economic growth (Mankiw, 2012). On the other hand, if rent-seeking (seeking to increase one's share of existing wealth without creating new wealth) and institutional deterioration are the fundamental factors behind the growth of top incomes (Stiglitz, 2012), then lowering inequality will be positive for economic performance (Piketty et al., 2011). Some scholars have also recently pointed out that higher inequality may hurt growth by hampering intergenerational mobility (Krueger, 2012; Corak, 2013; Bishop et al., 2014).

In this article, we maintain that to properly address this debate on the impact of inequality on economic performance, it is key to make the distinction between the different types of inequality. In particular, building on a literature that distinguishes between inequality of opportunity (due to factors beyond the individual's control) and inequality of effort (due to factors that an individual can make decisions about), we show that promoting equality of opportunity (instead of overall inequality) enhances inclusive economic growth.

## 2. The inequality–growth debate

The effect of inequality on future economic growth is probably one of the most important issues in the economics of develop-

ment. A huge amount has been written on the subject and there is no doubt a great deal more to come. Two main alternatives face each other in this literature: models where inequality is harmful for growth and models where inequality is beneficial for growth. On the one hand, we find three main reasons for a positive effect of inequality on growth. First, if one assumes that economic growth is related to the proportion of national income that is saved then inequality is fundamentally good for growth since the rich have a higher marginal propensity to save than the poor (Kaldor's hypothesis) (Bourguignon, 1981). Second, rewarding employees with a constant wage, which is independent on output performance, will discourage them from investing any further effort since effort is typically unobservable (Mirrless, 1971; Rebelo, 1991). Third, investment projects in physical or human capital often have to go beyond a fixed degree to affect growth in a positive manner. In this case, income needs to be sufficiently concentrated in order for an individual to be able to initiate a new industrial activity (Barro, 2000).

On the other hand, we find three main reasons for a negative effect of inequality on growth. The first proposal comes from the literature on economic development: the poor suffer from lower levels of human capital, nutrition and health (Dasgupta and Ray, 1987); unproductive investment by the rich (Mason, 1988); and a biased demand pattern of the poor towards local goods (Marshall, 1988). The second proposal is related to fertility, domestic market size and imperfect capital markets. According to the fertility approach, inequality deters growth because of the positive effect that inequality exerts on the rate of fertility (De la Croix and Doepke, 2003). As the production of manufactured goods is only profitable if domestic sales cover at least the fixed set-up costs of plants, redistribution may increase growth by inducing higher demand for manufactured goods (Mani, 2001). Moreover, a large fraction of investments that are beneficial at individu-



al and aggregate levels cannot be undertaken because access to credit is limited to the non-poor population (Banerjee and Newman, 1993; Galor and Zeira, 1993). Finally, the third proposal refers to the political economy literature. First, a more unequal distribution of income leads to a larger redistributive policy which deters growth through more tax distortion (Alesina and Rodrik, 1994). Second, strong income inequality may result in political instability (Keefer and Knack, 2002).

From the last two paragraphs, we observe that income inequality may affect growth through a large variety of opposite routes. As a result, the prevalence of a positive or negative effect of overall inequality upon growth depends on the channel that predominates. Unfortunately, the vast empirical evidence is generally inconclusive. Depending on the data (cross-section, panel), econometric techniques (Ordinary Least Squares, Fixed Effects, Differential and System General Method of Moments) or model specification, the researchers find either a positive or a negative relationship between economic growth and income inequality (Panizza, 2002). After all, income inequality has distinct simultaneous offsetting avenues affecting subsequent growth in different ways.

### **3. Inequality of opportunity and growth**

A recent proposal has claimed that the internal structure of overall inequality produces the observed complex relationship between growth and inequality. Assuming that individual income and implied inequality is mainly determined by two factors: firstly, circumstances, that are beyond the individual's control like family background, race, gender, or place of birth; and secondly, effort, factors that are partially or totally under individual's responsibility like the number of hours worked or the occupational choice. The part of total inequality explained by individual circumstances is inequality of opportunity (IO), while the other part

is called inequality of effort (IE). According to this view, equality of opportunity requires not only the absence of barriers to access education, and all positions and jobs, but also the compensation for a variety of circumstances beyond one's control. Background, gender and race should have no bearing on the merit of the individual so equal-opportunity policies should create a 'level playing field', after which individuals are on their own (Roemer, 1993; Fleurbaey, 2008)<sup>1</sup>.

Reducing inequality of opportunity could promote, however, not only social justice but also economic growth. It is possible that the above types of inequality, IO and IE, affect growth in an opposite way. Inequality due to individual circumstances could reduce growth as it favours human capital accumulation by individuals with better social origins, rather than by individuals with more talent. The stronger the role that background, gender and race play, rather than responsibility, the lower the economic growth. On the contrary, inequality due to different individual efforts could stimulate growth because it encourages people to invest in education and effort. If inequality of effort increases due to technological change or better economic institutions, not only inequality but also growth could increase.

### **Measurement of inequality of opportunity and econometric model**

Consider a finite population of individuals indexed by  $i \in \{1, \dots, N\}$ . The individual income,  $y_i$ , is assumed to be a function of the amount of effort,  $e_i$ , and the set of circumstances (factors beyond individual's control),  $C_i$ , that the individual faces, such that  $y_i = f(C_i, e_i)$ . For each individual  $i$ , circumstances are exogenous - they cannot be affected by individual decisions, while effort is influenced, among other factors, by personal circumstances. Then, the population is partitioned into a mutually exclusive and exhaustive set of groups or types  $\Gamma = \{H_1, \dots, H_M\}$ , where all indi-

viduals in each type  $m$  share the same set of circumstances. Accordingly, the distribution of income is partitioned into  $M$  groups,  $y = (y^1, \dots, y^M)$ , and an  $N$ -dimensional smoothed distribution where each individual in type  $m$  receives that type's mean income  $\mu^m$  is obtained,  $\bar{y} = \{\mu_i^m\}$ . Finally, inequality of opportunity is obtained as  $IO = I(\bar{y})X = (x_1, x_2, \dots, x_n) \in D$ , where  $I$  is an inequality index. In this manner, whenever total inequality can be additively decomposed by population groups according to a set of circumstances, the between-group inequality component can be seen as the inequality-of-opportunity term, while the within-group inequality component can be interpreted as the inequality-of-effort term<sup>2</sup>.

Among all the possible inequality indices, the mean logarithmic deviation ( $MLD$ ) is typically adopted because it belongs to the Generalised Entropy class of inequality indices, therefore it is additively decomposable (Bourguignon, 1979), and its decomposition is path-independent (Foster and Shneyerov, 2000). The  $MLD$  is exactly decomposed as follows:

$$MLD(y) = MLD(\bar{y}) + \sum_{m=1}^M p_m MLD(y^m)$$

where  $MLD(\bar{y})$  is the IO component, and the second term is the IE component  $-p_m$  is the frequency of type  $m$  in the population.

The empirical strategy relies on the estimation of a reduced-form growth equation with a set of inequality indices (IO and IE) added to an otherwise standard set of growth determinants:

$$\ln Y_{jt} - \ln Y_{jt-s} = \alpha_j + \phi' T_t + \beta \ln Y_{jt-s} + \Theta' IO_{jt-s} + \Theta' IE_{jt-s} + \rho' X_{jt-s} + \varepsilon_{jt}$$

where  $\ln Y_{jt} - \ln Y_{jt-s}$  is the growth rate of real per capita income in a state (country)  $j$  between years  $t-s$  and  $t$ ;  $\alpha_j$  and  $T_t$  are state- and time-specific effects, respectively  $\ln Y_{j,t-s}$  is real per capita lagged income (in logs), which controls for conditional convergence across states;  $IO_{j,t-s}$  and  $IE_{j,t-s}$  represent the inequality indices (IO and IE, respectively);  $X_{j,t-s}$  groups a set of controls including variables on education, employment and demographics; and  $\varepsilon_{jt}$  is an error term.

The easiest way to estimate this panel data model is to ignore any unobserved state (country) specific heterogeneity – i.e., set  $\alpha_j = \alpha$  for all  $j$  – and then apply Ordinary Least Squares to pooled data. However, this strategy may result in serious biased estimates where regional heterogeneity exists. The standard alternatives are the Fixed Effects and Random Effects estimators, which wipe out the  $\alpha_j$  term by transformation. However, there is a problem of endogeneity because at least the lagged transformed income variable is correlated with the transformed error term. Another potential issue is the simultaneous determination of inequality (IO and IE) and growth. To reduce this problem IO, IE and  $X$  are typically measured at the beginning of each decade ( $s = 10$  years). To address all these potential problems in the absence of suitable external instruments, scholars employ the system-GMM estimator which uses internal instruments - lagged levels of regressors - to estimate a system of equations in both first-differences and in levels (Arellano and Bover, 1995; Blundell and Bond, 1998).

### **Empirical results**

The first people to test this hypothesis were Marrero and Rodríguez (2013). Using refined data at state level in the US, these authors decomposed total inequality into inequality across groups classified by parental education and race, and inequality within groups (a proxy for inequality of effort). They found that the impact of overall inequality on growth was positive, although it was non-robust to alternative specifications. More importantly, it was found that the impact of IO on growth was negative and significant, while the impact of IE was positive and significant. Also, the magnitude of these effects was important. For instance, reducing IO by one standard deviation raised economic growth between 1.1 and 1.7 percentage points. In addition, these authors observed that the effects were highly robust to alternative

econometric techniques and model specifications. This result offers a unified explanation for the ambiguous relationship found in the inequality-growth literature: the overall impact of total inequality on economic growth is positive, negative or zero depending on which of the two sources of inequality, IO or IE, dominates in the economy.

The previous result has received increasing support from other studies. Thus, Hsieh et al. (2013), while adopting a completely different approach, have found that changes in occupational barriers facing women and blacks potentially explain 15% to 20% of growth in the US between 1960 and 2008. Using measures of absolute and relative inter-generational mobility as proxies for equality of opportunity, Bradbury and Triest (2016) examined the relationship between inequality of opportunity and growth in a cross-section of US commuting zones. They show a strongly positive effect of absolute mobility on economic growth, while the impact of relative mobility is also positive but weaker. After developing an alternative and less data-consuming strategy to estimate IO at a country level, Marrero and Rodríguez (2016) found that for a medium- and long-run cross-country analysis that total inequality has an unclear impact on subsequent growth, while inequality of opportunity always harms economic performance. Likewise, Teyssier (2016) focusing on the Brazilian *municípios* finds the same result, i.e. IO harms growth. Finally, by isolating gender and race as the only factors, Marrero et al. (2016) obtain that IO in the acquisition not only of income, but also of education and occupation, is harmful for growth. Also, they find that the negative impact of IO on growth is not distributed equally since it is mainly concentrated at the bottom of the distribution.

The lesson from these studies is clear: initial heterogeneity in certain circumstances lead the economy into an undesirable state of high inequality and low economic growth. The access to high-quality education only by those individuals with high initial

levels of parental education or income, and the existence of large barriers for ethnic groups, migrants and women, not only undermine social cohesion and justice, but also economic growth. By equalising individual opportunity, the policymaker can promote not only fairness in society, but also growth in the economy. Better still, the economic growth that results from reducing IO is inclusive since it benefits all social groups, in particular those collectives with almost no economic empowerment.

#### **4. Inequality of opportunity in the world**

Economic policy can promote inclusive growth by reducing inequality of opportunity. But, how can this policy be implemented? To answer this question, we need first to know how IO distributes across the World. For this task, we need comparable homogeneous micro-databases with sufficient information because the estimation of IO requires not only comparable measures of individual income but also information on individual circumstances. Unfortunately, there are still few micro-databases with such information. For this reason, IO measurement has mainly focused on developed countries (Europe and the US). Next we show a homogeneous analysis of IO for 26 European countries in 2004 and 2010. Then, we present the best available estimates of IO for developing countries despite the fact that the databases from which these estimates are obtained present differences in quality, the applied methodology is not always the same and the number of circumstances differs.

##### **Inequality of opportunity in Europe**

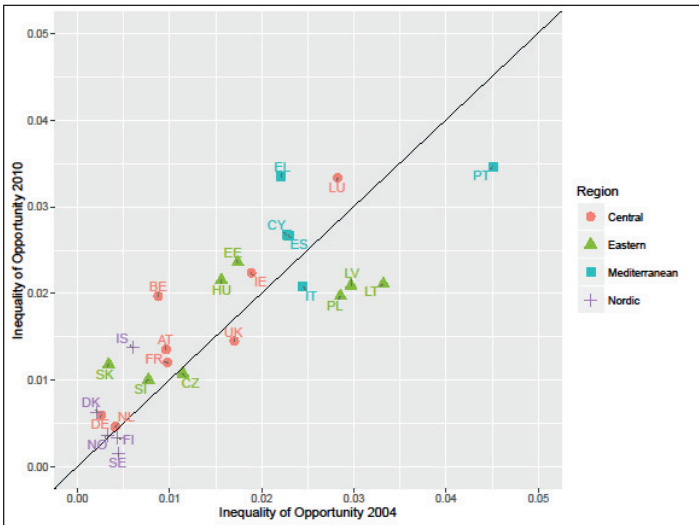
Using the European Statistics of Income and Living Conditions database (EU-SILC), Palomino et al. (2016) have recently measured IO for 26 European countries in 2004 and 2010 in a homogeneous way. The set of individual circumstances considered

include: gender, country of birth (local, from another European Union (EU) country, or from another country outside the EU), the highest level of parental education attained from both father and mother, father's occupational category and the perceived financial struggle in the household when the respondent was about 14 years old. The levels and changes of IO in Europe between 2004 and 2010 are shown in figure 1.

Nordic countries are placed at the bottom of the ranking with Iceland as a 'Nordic outlier' in 2010. Among the Central European countries, Germany and Netherlands have levels of IO that are comparable to those of the Nordic countries, while France, Austria and the UK have higher IO ranking positions, just above Slovenia, Slovakia and the Czech Republic in 2010. Next, we observe a mixed group that includes Ireland, Belgium, Italy and most of the other East European countries (Hungary, Estonia, Poland, Lithuania and Latvia), while Spain and Cyprus are at the higher end of this group. Finally, Greece, Luxembourg and Portugal occupy the top of the IO ranking in 2010. As for the dynamics of IO over this period, most of the countries show an increase in IO, above all, in Greece, Belgium, Iceland, Slovakia, Estonia and Hungary. On the contrary, only Portugal, Poland, Latvia and Lithuania show a significant decrease in IO, with Italy and Sweden also presenting minor decreases. Despite the fact that its relative situation has improved, Portugal is still among the countries with the highest levels of IO. Countries that show a small increase are Denmark, Germany, Slovenia, France, Austria, Ireland, Spain and Cyprus.

In addition, Palomino et al. (2016) find that the level of education attained by the individual can mediate about one third of IO in Portugal and Luxembourg, almost one quarter in Greece and Hungary, and more than 20% in Italy and Poland. Most of the other countries are in the 8% - 20% range, with the Nordic countries - except Norway - showing the lowest share of IO chan-

Figure 1: Inequality of Opportunity in Europe - 2004 and 2010



(Palomino et al., 2016).

nelled through education. These percentages are remarkable since relevant information on school quality is not available. The occupational category is also a potential candidate to channel IO, since it is related both to income and circumstances. However, once education is controlled for, the share of IO channelled by the occupational category is relatively small in most countries, amounting only up to between 1% and 5% in most countries and only around 8% in Cyprus and Austria in 2010. Moreover, these researchers find that EU countries where a larger share of population have benefited from tertiary education have a smaller share of IO channelled through education.

In sum, there are large differences of IO between European countries, and the levels of IO increased in general after the Great



Recession. A great deal of IO across Europe derives from the different levels of education that people with distinct circumstances are able to reach. In contrast, occupation has limited significance explaining IO across Europe.

### **Inequality of opportunity in developing countries**

For developing countries, we consider the sample of Latin American countries (Brazil, Colombia, Ecuador, Guatemala, Panama and Peru) in Ferreira and Gignoux (2011), and the IO estimates for Chile in Baéz et al. (2011) and Turkey in Ferreira et al. (2011). For less developed countries with high poverty rates, we use the IO estimates of African countries (Ghana, Ivory Coast and Uganda) in Cogneau and Mesplé-Somps (2009), South Africa in Piraino (2012), Egypt in Belhaj-Hassine (2012) and India in Singh (2012). Although the databases from which these estimates are obtained present important differences in quality, methodology and number of circumstances, we use all of them in order to have as many countries as possible<sup>3</sup>. In addition to the IO estimates, table 1 shows the information on per capita real income (in US dollars, 2005) obtained from the UN Statistics Division.

Looking at the values in table 1, some illustrative comparisons between countries can be made. First, we observe that there is a clear-cut division between western and eastern EU countries (see above) and developing countries because the latter present a significant higher level of IO. In fact, only Portugal (2004) among the European countries shows a higher IO estimate than Uganda, the developing country with lowest IO in the sample. Second, among the regions under consideration, the Latin American one presents the highest level of IO. In particular, Brazil, Guatemala and Panamá are the countries with the largest IO estimates in the sample. Third, there is not a clear relationship between income per capita and IO. For example, the richest and poorest countries in the sample, Chile and Uganda respectively, possess similar indi-

**Table 1: Inequality of opportunity and income per capita in developing countries**

Country	Year	Income per capita	IO
Brazil	1995	5,109	0.2230
Colombia	2002	2,268	0.1330
Ecuador	2005	3,058	0.1500
Guatemala	1999	1,530	0.1990
Panama	2002	4,138	0.1900
Peru	2000	2,057	0.1560
Chile	2008	10,179	0.0542
Turkey	2002/03	5,833	0.0948
Egypt	2005	1,426	0.0477
India	2003/04	735	0.0837
Ghana	1997	656	0.0450
Ivory Coast	1984/87	893	0.0500
South Africa	2007/09	5,689	0.1690
Uganda	1991	179	0.0400

Data source for the per capita real income (in US dollars, 2005): the UN Statistics Division; Data source for IO: Ferreira and Gignoux (2011); Piraino (2012); Ferreira et al. (2011); Baéz et al. (2011); Belhaj-Hassine (2012); Singh (2011); and Cogneau and Mesples-Somps (2008).

ces of inequality of opportunity. In contrast, three countries with similar income per capita, Brazil, Turkey and South Africa present very different levels of IO. In this respect, it is also remarkable to note that, when looking at the poorest region (African countries and India), South Africa and Egypt present both high values of per capita real income and IO, which contradicts the empirical evidence for developed countries.

These findings clearly call for different policies to reduce IO. Social and economic policies designed to promote inclusive growth by enlarging the range of individual opportunities must consider the particular economy where they will be implemented.

## 5. Policy ahead

It is clear from the discussion above that policies that equalise individual opportunity for the acquisition of attributes necessary to compete for jobs and careers may promote not only equity – above all for poor kids, women and minorities- but also inclusive economic growth.

One natural proposal for equalising opportunity is so-called ‘affirmative action’. For instance, Roemer (1998) proposes spending more educational resources, per capita, on children from disadvantaged groups. In the same vein, Bourguignon et al. (2007) propose four measures, firstly cash transfers conditional on specific behaviours, such as school attendance, secondly interventions to increase learning rates at state schools, thirdly health interventions to increase basic knowledge of nutrition and hygiene and finally the promotion of sports and arts to reduce the appeal of violence. These are, however, only general proposals that must be adapted to the particular country under analysis since the practical problems that policy implementation faces are significantly different in a developing country from those in a developed country.

In a developing economy, the main problem is accessibility. For example, despite major progress in increasing access to primary education (enrolment has reached 91%), 57 million children still remain out of school (United Nations, 2016). Likewise, the world has achieved equality in primary education between boys and girls, but only a few countries have achieved this target at all levels of education. For this reason, the United Nations has considered inclusive and quality education as one of the 17 goals for sustainable development (see goal 4). In order to reduce inequality of opportunity and, therefore, promote future economic performance in these economies, three changes are fundamental. First, substantial proportions of population, both

men and women, should achieve numeracy and literacy. Second, gender and ethnic disparities in education should be eliminated. Finally, the quality of education should be improved by, among other measures, increasing the supply of qualified teachers and expanding the number of scholarships available.

Nonetheless, potential goals are not restricted to education. Thus, children from the poorest 20% in a developing country are up to three times more likely to die before reaching five than children in the top quantiles. Likewise, women in rural areas of developing countries are up to three times more likely to die while giving birth than women living in urban areas. The varied list of problems in developing countries bring to light the necessity of dealing with the multi-dimensional nature of individual opportunity. After all, opportunities are related not only to educational attainment but also to health status and labour functioning so the more the design of the policy has evolved, the higher the probability of being successful in raising opportunity. For this reason, eliminating discriminatory laws and practices is only the first step; later, action needs to be taken such as empowering and promoting the social inclusion of minorities and the disabled, redesigning institutions and fiscal systems to facilitate social mobility irrespective of gender, ethnicity or religion, and facilitating access to a better health system.

Real examples of these multifaceted policies to reduce inequality of opportunity are the programmes *OPORTUNIDADES* (formerly *PROGRESA*) in Mexico and *Bolsa Familia* in Brazil. These conditional cash transfer (CCT) programmes were designed to reduce poverty and, more importantly, to break the cycle of poverty that is often passed on from one generation to the next. Despite the small overall outlay and modest transfer amounts involved, these programmes have succeeded in improving the health of children and their mothers and bolstering literacy rates. For instance, according to data from the Brazilian Secretariat of

Social Information (SECOM), *Bolsa Familia* participants under age five are 26% more likely to have healthy height-to-weight and weight-to-age ratios than those not in the programme. At the same time, half a million beneficiaries of *Bolsa Familia* became literate in 2006 and 2007. More recently, in the wake of these programmes, many CCTs have sought to connect participants with the following four categories of valuable support services: 1) improvements to housing or neighbourhood infrastructure; 2) counselling, educational talks and workshops; 3) the support of livelihoods through basic skills development, vocational training, micro-credit and job creation; 4) home visits to provide psycho-social support and monitor compliance.

A last comment on the potential policies to reduce inequality of opportunity in developing countries is worth mentioning. Typically, inequality of opportunity is higher in absolute and relative (as a percentage of total inequality) terms in these economies. However, the most relevant aspect of IO in these countries is not the quantitative size, but the qualitative nature of it. As stated above, individual circumstances like socio-economic background, gender, ethnicity and place of birth affect individual opportunities in both developed and developing countries. As developing countries, in particular, still experience significant barriers to access positions, education and jobs, based on the economic class, gender and race, the range for economic policies that promote both equality of opportunity and economic performance is significantly larger where the room for improvement is greater.

In a developed economy, a different set of policies to reduce IO must be implemented. Focusing on the European arena, empirical findings highlight educational policies first and foremost. In particular, a reduction in the academic drop-out rate creates a fundamental tool for increasing the opportunities available to individuals in Europe (Marrero and Rodríguez, 2012). Reaching

secondary education levels also helps to significantly reduce IO indices. Meanwhile, fomenting tertiary education has two opposite effects. On the one hand, making tertiary education more broadly accessible to the population decreases the role of education in explaining IO. On the other hand, tertiary education, by complementing innovation and technological change, promotes overall inequality because it increases the dispersion of returns to effort. Accordingly, the associated effect of tertiary education on IO is positive but small (Marrero and Rodríguez, 2012).

In addition, educational opportunity can be improved in three complementary ways. First, the increase in individual opportunities requires an increase in the quality of schools across the board. Otherwise, children from initially rich families will stay rich because they attend high-quality schools, while children from initially poor families will stay poor because they attend low-quality schools (Ferreira, 2001). Second, access to good education should be more equal. This equalisation would permit more talented children from poor parents to compete with less talented children from rich parents (Chiu, 1998). For example, to compete for a given job in an increasingly globalised world, a deep knowledge of foreign languages and high computer skills are fundamental. Accordingly, the equalisation of individual opportunities requires, among other things, a greater public provision of good education in foreign languages and computer programming for children with bad circumstances (Machin et al., 2007 and Barrow et al., 2009). Third, public scholarship programmes in some European countries tend to favour the number of recipients at the cost of the quality and size of the scholarship (Escardíbul and Oroval, 2011). As a result, this educational policy covers a wider range of students but does not provide enough funding for highly talented students in worse circumstances. Accordingly, scholarships should be less homogeneous across students and more focused on the most deprived children.

A second pillar on which any policy aimed at reducing IO should be based is social protection spending, though not all items of expenditure would have the same effect. Public spending on social protection is the most direct way open to the public sector to reduce IO but what is not as obvious is whether the various outlays (unemployment benefits, child care, health care, disability payments, etc.) have the same effect on it. Spending to reduce social exclusion and spend on children and health care would have the greatest effect in terms of reducing IO. Hence to reduce IO a proper change in the composition of social expenditure could be a better policy than a uniform increase or decrease in public expenditure.

Finally, it is observed that the relationship between the labour market and inequality of opportunity is complex. On the one hand, better functioning of the labour market involves less exclusion, and therefore less IO if the labour market favoured the inclusion of those population sectors that had worse circumstances. On the other hand, labour inclusion could place pressure on less-qualified employees as a whole, increasing salary differences between this group (presumably with bad circumstances) and those of more qualified workers (Topel, 1994). The empirical literature finds that variables associated with the structure of the labour market have a greater effect on IO than the aggregate variables. Thus, increasing female employment and reducing long-term unemployment have a higher positive effect on IO than reducing the unemployment rate (Marrero and Rodríguez, 2012).

Also in relation to the functioning of the labour market, two policies are worth noting. First, public examinations for higher positions in the public administration should be drastically changed. Public servants at the highest level are typically from wealthy families because the preparation of the corresponding public examination requires a lot of time, resources and skills (such as foreign languages). As an example of this, Bagües and Esteve-Volart (2009) find that in Spain relatives are on average about 44 times

more likely to apply for these positions than non-relatives. Second, innovation and entrepreneurship by highly talented people from bad circumstances is deterred when sufficiently large initial funds are needed. Measures that promote (public and private) credit to potential good ideas should be adopted.

## **6. Concluding remarks**

The Great Recession brought inequality to the forefront of the economic debate again. Does the recent rise in inequality bode well for future growth prospects? We argue in this article that it matters what type of inequality we are concerned with. In particular, we defend the principle here that affording individuals, with different socioeconomic backgrounds, race and gender, distinct opportunities may lead to a sub-optimal allocation of talent and a wasting of human resources. As a result, income allocation based on unequal individual circumstances will be inefficient and will harm growth. On the other hand, equalising opportunity will enhance inclusive economic growth. The United Nations notes in its 10<sup>th</sup> goal for sustainable development - the reduction of inequality within and among countries - that there is nothing inevitable about growing income inequality because several countries have managed to reduce overall inequality while achieving strong economic growth. We would like to add to this that the most secure way to conciliate equality and growth is by eliminating the impact of individual circumstances on the merit of the individual.

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## Endnotes

- <sup>1</sup> *The necessary shift in the focus of economic inequality, from inequality of outcome to inequality of opportunity, has been also proposed by the capability approach (Sen, 1985). According to Sen, individual overall advantage should not be assessed in terms of resources or utility but in terms of the person's capability to do things he has reason to value. Thus, the capability approach proposes a serious departure from concentrating on the means of living to the actual opportunities of living (Sen, 2009).*
- <sup>2</sup> *To measure inequality of opportunity there are two main alternative approaches, the so-called ex-post and ex-ante procedures (Fleurbaey, 2008). For the ex-post approach there is equality of opportunity if all individuals who exert the same effort obtain the same outcome, while for the ex-ante approach there is equality of opportunity if all individuals face the same set of opportunities regardless of their circumstances. Following the empirical literature on the relationship between inequality of opportunity and growth, we focus on the ex-ante approach.*
- <sup>3</sup> *All them applied the parametric technique proposed in Ferreira and Gignoux (2011) except for Baéz et al. (2011) and Cogneau and Mesplé-Somps (2009). With respect to the inequality index, they considered the Mean Logarithmic Deviation, except Belhaj-Hassine (2012) and Cogneau and Mesplé-Somps (2009) who used the Theil index and Ferreira et al. (2011) who used the variance. Finally, Ferreira et al. (2011) and Cogneau and Mesplé-Somps (2009) used consumption instead of income. The indices of IO used for India and Egypt are those referring to the first three cohorts (21-50 years old for India and 20-49 years old for Egypt) as is usual in this literature.*

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# **CONCLUSION**





# THE 2030 AGENDA AND THE EU: FROM VISION TO ACTION

## 1. Introduction

Without pretending to provide a comprehensive list of answers to the question ‘how the European Union could contribute to advancing sustainable development’, throughout its nine chapters this book shows that there are meaningful changes in design, attitudes and policy rules that could have meaningful impacts. These examples show that there is room for change in many areas where the EU could rethink its policies with the objectives of achieving fairness, inclusiveness and sustainability, both inside and outside its borders.

In 2017, the EU’s foundation Treaties celebrate their 60 years in a context where the European integration model is put into question. From inside the EU and outside the EU, the idea is raised that a return to nation states would work better. The 2030 Agenda, which the EU Member States supported by the European Union, have signed up to, could significantly benefit and revamp the European Project. It offers the framework and the vision around which the EU Member States could be united. They could take the lead to achieve a better and sustainable future for a Europe where no one is left behind and planetary boundaries are respected.

## 2. State of play: EU actions to implement the 2030 Agenda?

The EU was at the forefront of setting up the 2030 Agenda for Sustainable Development and it was very active during its nego-

tiations and adoption in New York. It contributed to shaping it and ensuring that EU core values such as the promotion and the protection of human rights, the rule of law and good governance were integrated. Moreover the EU, and in particular the European Parliament, insisted that this new agenda includes an effective, participatory and transparent process for its implementation and review (Lerch, 2015). Since its adoption, both the European Commission and the European Parliament have provided their preliminary views on the implementation of the 2030 Agenda. This section reviews and discusses the key actions the EU has so far undertaken or actions that it intends to take.

### **European Parliament**

On the 12<sup>th</sup> of May 2016, the European Parliament adopted a resolution on ‘the follow-up and review of the 2030 Agenda’ (2016/2696(RSP)). In this resolution, the European Parliament (2016, para. 5) ‘stresses that the 2030 Agenda and the Sustainable Development Goals (SDGs) represent a renewed international commitment to eradicating poverty, to redefining and modernising [EU] development strategies for the next 15 years and to making sure that [the EU] delivers’. In addition, it invites the Commission:

- ‘To come forward with a proposal for an overarching sustainable development strategy encompassing all relevant internal and external policy areas, with a detailed timeline up to 2030, a mid-term review and a specific procedure ensuring Parliament’s full involvement, including a concrete implementation plan coordinating the achievement of the 17 goals, 169 targets and 230 global indicators and ensuring consistency with, and delivery of, the Paris Agreement goals [...]’ (European Parliament, 2016, para. 6);
- To consult all stakeholders, including national parliaments, local authorities and civil society with regards to a new EU Sustain-

- able Development Strategy and its related implementation;
- To produce a ‘Commission Communication on the follow-up and review of the 2030 Agenda, with clear information on the implementation structure of the Agenda at EU and Member State level [...]’ (European Parliament, 2016, para. 8);
  - To ensure that ‘the review of the European Consensus for Development [...] fully reflects the new 2030 Agenda, which includes a paradigm shift and a fully-fledged transformation of EU development policy [...]’ (European Parliament, 2016, para. 9);
  - ‘[...] To present concrete proposals on how to more effectively integrate policy coherence for development into the implementation of the 2030 Agenda, and it calls for this new approach to be mainstreamed across all EU Institutions in order to ensure effective cooperation and overcome the “silos” approach’ (European Parliament, 2016, para. 12);
  - ‘[...] To develop effective monitoring review, and accountability mechanisms for the implementation of the 2030 Agenda, and to report back to Parliament on a regular basis [...]’ (European Parliament, 2016, para. 14).

## **European Commission**

On 22 November 2016, the European Commission released an important package of policy proposals “setting out a strategic approach for achieving sustainable development in Europe and around the world” (European Commission, 2016a). The policy package included three Communications on ‘the next steps for a sustainable European future, on the new European consensus on development and on a renewed partnership with African, Caribbean and Pacific (ACP) countries.’

In its communication on ‘the next steps for a sustainable European future’, the European Commission shared its commitments and plans with regards to the implementation of the 2030 Agenda. From its perspective, the European Commission

foresees two work streams. The first work stream is to evaluate the current situation and identify concerns linked to sustainability aiming to fully embed the Sustainable Development Goals into European policy framework and Commission priorities. A second work stream is planned to think beyond the 2020 perspective and prepare a 'long term implementation of SDGs' (European Commission, 2016a, p. 3).

Moreover, the communication offers - in an annex - a map of European Policies which already contribute to the SDGs. Without any references to possible weaknesses, it does however highlight the fact that the 17 sustainable development goals can be all found among current EU policies. Next to this mapping, the Commission also stresses the existing connection between the Sustainable Development Goals and the ten priorities of the Juncker commission. By linking the SDGs and the ten priorities, the Commission seeks to ensure 'strong political ownership and (to) avoid a situation where implementation of the SDGs takes place in a political vacuum' (European Commission, 2016a, p. 7). Although these two exercises make sense as a way to assess the current state of play of EU policies in relation to the SDGs and the interlinkages between them, they do not lead to a proper assessment of the policy areas in which the EU should be more focused, nor do they lead to the establishment of a concrete plan of action.

On the implementation side, the communication highlights the fact that 'the SDGs are a collaborative agenda between all levels of public governments and civil society, signed up to by all UN Member States. Implementation needs to be taken forward in partnership with all' (European Commission, 2016a, p. 16). As a result, the communication is planning to set up a multi-stakeholder platform which would aim to create a space for following up and exchanging best practices with different stakeholders including the business sector and civil society. Indeed, it says 'sus-

tainable development will not be brought about by public sector policies alone. It is a joint agenda of citizens, civil society, organisations and businesses' (European Commission, 2016a, p. 17).

Finally, the Commission is planning to provide regular reporting and reviewing of the EU's contribution to implementing the 2030 Agenda, especially in the context of the United Nations High Level Political Forum for Sustainable Development. In addition, it also foresees, 'from 2017 onwards, [...] more detailed regular monitoring of the Sustainable Development Goals in an EU context, developing a reference indicator framework for this purpose, and drawing on the wide range of ongoing monitoring and assessment across the Commission, Agencies, the European External Action Service and Member States' (European Commission, 2016a, p. 16).

Overall, the communication on 'the next steps for a sustainable European future' does not provide a clear answer as to how to implement the SDGs in EU internal and external policies by 2030 as stressed by SDG Watch Europe<sup>1</sup>. Instead, SDGs seem to have been squeezed into Juncker's priorities, which themselves only hold for limited time period, i.e. until 2020. Moreover, it does not propose a paradigm shift in EU policies, instead it follows a kind of 'business as usual' agenda which does not reflect the transformative nature of the 2030 Agenda. Beyond this communication, the 2030 Agenda would need to be integrated into a wider range of policies and institutional commitments that are being revised such as the European Consensus on Development, the Cotonou Agreement and EU relations with different regions of the world. Indeed, the European Union Global Strategy (2016 p. 26) claims that 'Echoing the Sustainable Development Goals, the EU will adopt a joined-up approach to its humanitarian, development, migration, trade, investment, infrastructure, education, health and research policies, as well as improving the horizontal coherence between the EU and its Member States'.

In a second communication on 22 November, the European Commission came up with its proposal for a 'new European Consensus on Development', laying down the basis for discussion on the future of EU development cooperation. As requested in the Resolution presented above, the Commission intended to integrate the 2030 Agenda as a part of the development cooperation policy of the EU and Member states. The communication says "the EU and its Members States must respond to current global challenges and opportunities in the light of the 2030 Agenda" (European Commission, 2016b, para. 11). In order for the 2030 Agenda to be embedded, the communication refers to the implementation of a rights-based approach in development cooperation, contributing, among other priorities, to ensuring that no-one is left behind. Moreover, gender equality will be a priority in all actions undertaken under the umbrella of the development cooperation.

In addition, the development policies will be framed around the five Ps of the 2030 Agenda, namely people, planet, prosperity, peace and partnership. For each of the five priorities, the communication highlights different actions in line with the objectives of the 2030 Agenda. It includes:

- Eradicating poverty in all its dimensions, which remains the main objective of the EU development cooperation;
- Ensuring better health and access to quality education as drivers for long term development;
- Reducing inequality of outcomes and opportunity as a way of achieving inclusive economic growth;
- 'Combining immediate humanitarian support to refugees and internally displaced persons and more structural support in relation to migration through development policy' (European Commission, 2016b, para. 57);
- Improving effectiveness as well as coordination and coherence among Member States' approaches to development and;

- Ensuring ‘stronger, more inclusive multi-stakeholder partnerships’ including civil society organisations, businesses and multilateral organisations (European Commission, 2016b, p. 21).

Although the Proposal for a new European consensus was written based on the vision and objectives of the 2030 Agenda for sustainable development (for example the five Ps), some weaknesses remain. Firstly, although recognising the multi-dimensional nature of poverty, the current narrative around development remains fairly coupled to the idea of economic growth. Secondly, while acknowledging the importance of multi-stakeholder partnerships, it does not spell out how it is planning to concretely consult civil society organisations, local actors or other stakeholders. Thirdly, given the political circumstances, migration has become a high priority on the political agenda and it now has an important place in the Commission communication. While stressing the importance of providing immediate and structural support through development policy, the Commission communication does however have a tendency to make development policy deviate from its primary objective which is - as the Lisbon Treaty declares - the eradication of poverty.

In its recent communication, the European Commission presented ideas for ‘a renewed partnership with the countries of Africa, the Caribbean and the Pacific.’ Making fewer references to the 2030 Agenda on sustainable development, it did however highlight specific priorities which all fall under the 2030 Agenda. Indeed, EU priorities towards partner countries include:

- Promoting peaceful and democratic societies, good governance, the rule of law and human rights for all;
- Spurring on organisations to create inclusive sustainable growth and decent jobs for all;
- Turning mobility and migration into opportunities and addressing challenges together;



- Promoting human development and dignity;
- Protecting the environment and fighting climate change;
- Joining forces in the global arena on areas of common interest (European Commission, 2016c, p. 7).

### **3. Conclusions and recommendations**

As time flows and two years have already passed, it is more than urgent for the EU to live up to its responsibilities, to acknowledge the gaps, and to start implementing sustainable policies. From the discussion above, current EU actions appear to remain insufficient when put next to the 2030 Agenda's ambitions. Since June 2015, a wide range of European civil society organisations have gathered together as SDG Watch Europe to call on the European Commission to develop an overarching EU Sustainable Development Strategy for 2030, as suggested in the resolution of the European Parliament. For this to happen, the EU and its Member States must first and foremost adopt a comprehensive implementation strategy with a timeline that goes on till 2030. In parallel, the EU needs to mainstream the 2030 Agenda into its external and internal policies and put solidarity at the heart of its actions.

In particular, we would like raise the attention of the EU to the following policy areas, which reinforce some of the ideas and recommendations that have already emerged throughout the articles.

#### **Recognise the positive impact of migration**

The 2030 Agenda recognises 'the positive contribution of migrants for inclusive growth and sustainable development' (UN General Assembly, 2015, para. 29). It also recognises 'that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses' (UN General

Assembly, 2015, para. 29). However, there is now a tendency to restrictively consider migration as an issue of border control and security. At the same time, migrants have had difficulties accessing the basic human rights that are necessary for their personal development and to help them become active citizens. Against these trends, the EU should avoid diverting development cooperation funds for migration management to counterpart readmission agreements, for border control and for military security purposes. Development cooperation should focus on the root causes of forced migration and keep 'eradicating poverty' and 'fighting inequality' as its primary objectives. Moreover, the EU approach should build on existing relevant policy frameworks, such as the EU Action Plan on Human Rights and Democracy and it should better coordinate internal and external policies.

At the same time, the EU should step up its efforts to implement internal human rights-based policies that promote integration, inclusion and equality. It should be done based on a more efficient responsibility-sharing system and improved harmonisation of protection standards among Member States. In this vein, the positive contribution of migrants for inclusive growth and sustainable development should be recognised.

### **Make trade and investment policies work for people**

The 2030 Agenda aims to move towards fair and sustainable trade and investment policies. It includes a shift in production and consumption patterns, putting labour, social and environmental rights at the centre. For this to happen, trade and investment policies must be reconciled to development cooperation with a view to achieving greater policy coherence for sustainable development. They should be a vehicle for promoting respect for human rights.

In addition, both communications on 'the new European consensus on development and on the next steps for a Sustain-

able European future' promote the inclusion of the private sector in the implementation of the 2030 Agenda. However, the EU should recognise that the private sector has been in many cases responsible for human and environmental rights abuses, and ensure that adequate safeguards, accountability mechanisms and redress mechanisms are in place. This is a necessary precondition to ensure that the private sector plays a positive role in the 2030 Agenda.

To this aim, legally binding instruments such as a UN Treaty on business and human rights should be adopted to oblige companies to mandatory Human Rights due diligence. Moreover, measures to fight tax havens, tax dodging and promote fair taxation should be developed in order to mobilise the resources necessary to meet the 2030 commitments.

### **Empower people and invest in education**

With the Millennium Development Goals (MDGs) as the driving force, the number of out-of-school children almost halved from 107.5 million in 1999 to 57.2 million in 2011. The 2030 Agenda, especially its goal 4, has significantly enlarged the concept of education. Indeed, it goes beyond simple access to primary education which was one of the MDGs. Instead, the 2030 Agenda aims to provide "inclusive and equitable quality education at all levels [...]. All people [...] should have access to life-long learning opportunities that help them to acquire the knowledge and skills needed to exploit opportunities and to participate fully in society". The broader concept of education will then require new indicators for measuring progress. It should be done against achieving both the right to education and the aims of education, as set out in the Convention on the Rights of the Child.

The remaining issue concerns the lack of funding. Indeed, if national governments and donors do not considerably raise their education budgets, it will be impossible ever to accomplish

a more ambitious education goal under the 2030 Agenda. In that sense, the EU has become the global frontrunner and since 2016 it has allocated over 4% of the annual EU humanitarian budget to education in emergencies. In 2017 the allocation went up to 6%. Furthermore, the first-ever World Humanitarian Summit, held in Istanbul in May 2016, was the occasion to launch the 'Education Cannot Wait' fund, which seeks to provide access to education for 75 million children by 2030. This fund should be a critical step towards ensuring that education is prioritised during and after a conflict or disaster. It seems there is now a common acknowledgment of the need for a new approach to address the educational needs of children, especially the most vulnerable ones. However, the content of that new approach still seems to be unclear. More commitment is needed to ensure the systematic inclusion of education and protection of children in the emergency response cycle to recognise that protection is a life-saving intervention and that education can increase the effectiveness of the overall humanitarian response. The EU, as the main international donor on education, should lead this process and ensure that the promises made in Istanbul are held to account.

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Finally, the EU should promote and strengthen the space for civil society to participate in the planning, implementation and monitoring of the 2030 Agenda. It is only with the engagement of civil society organisations, decision-makers and academia that we will be capable of moving towards a more sustainable Europe able to regain its citizens' trusts.

## Endnotes

- <sup>1</sup> *SOLIDAR is part of SDG Watch Europe, a European, cross-sectoral, civil society alliance committed to supporting the implementation, monitoring and follow up of the 2030 Agenda by the EU and its Member States. SDG Watch Europe positions and statements are available online at [www.sdgwatcheurope.org](http://www.sdgwatcheurope.org).*

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**Fabiana Maglio** is an Education Specialist. She has recently conducted a regional Case Study on Access to Safe and Protective Learning Environments in Lake Chad Region (Nigeria, Niger, Cameroon and Chad) on behalf of UNICEF in order to improve the regional evidence on context-specific protection issues as well as school safety and security measures in line with the INEE Minimum Standards. She has substantial experience in the Middle East and North Africa (MENA) Region (Iraq, Lebanon, Syria, Libya and Jordan), and South East Asia (Philippines) having worked for nearly a decade as Adviser for the Italian Ministry of Foreign Affairs - Development Cooperation Agency, in which capacity she was responsible for designing and coordinating education programming in both humanitarian and development contexts. Previously Fabiana worked as EiE Programme Manager for an INGO in the southern Philippines, as part of the UNICEF-funded emergency response to Super Typhoon Haiyan. Her key skills include comparative educational research, programme design and planning, M&E (Monitoring and Evaluation) and capacity development; she also has relevant field experience in fragile states, and man-made and natural disasters. She completed the Global Education Cluster Needs Assessment training in 2015, and followed other humanitarian trainings throughout her career. Fabiana holds a Master's degree in Education, Gender and International Development with a focus on refugee education from the Institute of Education at the University of London.

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**Yentyl Williams**, a dual national of the UK and Trinidad and Tobago, is a Researcher on EU affairs with the African, the Caribbean and the Pacific (ACP) countries at the University of Gent, and Founder and President of the ACP Young Professionals Network (ACP YPN). She has several years of work experience on EU relations with the ACP group of states, in both the public (European Commission, CTA, European Economic and Social Committee – EESC/ECOSOC) and private sector (consulting). In 2015, Yentyl was appointed Expert to the EESC for the Green Paper on ‘The Future of the EU’s relations with the ACP group and the successor to the Cotonou Partnership Agreement’. She has been researching the EU-ACP Economic Partnership Agreements since 2011 and has numerous publications on the topic. In December 2014, she founded the ACP YPN to urge the EU and ACP countries to utilise Article 26 of the legally binding Cotonou Partnership Agreement on youth issues. She has pioneered the inclusion of ACP youth in several dialogues, notably with the African Union, the Commonwealth, the European Commission, the European Parliament and the European Youth Forum. For this, Yentyl is a Commonwealth Champion for advancing the values of inclusion, recognised as an Ambassador for Diversity by the European Parliament and featured by the European Commission as one of three youth driving change for more inclusive societies for International Youth Day 2016. Yentyl is a graduate of King’s College London, Sciences Po Paris and post-graduate of the College of Europe, Bruges. She has researched, published and travelled widely in Europe, Africa and the Caribbean, and also in Asia and South America.

**Zizipho Zondani** is currently a Legal Fellow with the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), where she assists with research and advocacy on privatisation in education and human rights. She holds an LLM in Economic, Social and Cultural Rights from the University of Essex. Zizipho is currently based in Nairobi, Kenya.



**T**he 2030 Agenda for Sustainable Development, adopted in September 2015, sets out the framework for achieving, by 2030, a sustainable development model where no one is left behind and where planetary boundaries are respected. The 2030 Agenda and its 17 Sustainable Development Goals are universal as they apply to all countries at all levels of development.

**F**ollowing its adoption, the European Union committed itself to a transformative programme, which could potentially turn the current unsustainable 'growth-at-any-cost' economic model into a sustainable one based on the clear supremacy of human rights over the economic privileges of vested interest groups. This will require measures and policies that tackle the current major global challenges such as growing inequalities; the biased trade and investment strategies and growing corporates' power; the shrinking funding for development cooperation.

It is time for the EU to move from vision to action.

*This publication is the result of the Progressive Lab for Sustainable Development, a joint initiative of the Foundation for European Progressive Studies, the Group of the Progressive Alliance of Socialists & Democrats in the European Parliament and SOLIDAR. It is a collection of articles aiming to offer a space for young researchers, experts and policy-makers to reflect on the role of the EU in embedding the 2030 Agenda into its domestic and external policies.*

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