

**Irish Human Rights and
Equality Commission**

Submission to the
European Commission on
the *First preliminary
outline of a European Pillar
of Social Rights*

December 2016



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

1 Introduction

1. The Irish Human Rights and Equality Commission is an independent public authority that was established by the Irish Human Rights and Equality Commission Act 2014. Among the Commission's functions under that Act are:
 - protecting and promoting human rights and equality;
 - encouraging good practice in intercultural relations and promoting acceptance of diversity; and
 - working towards the elimination of human rights abuses and discrimination.¹In particular, the Act provides that one of the ways in which the Commission may implement its functions is by consulting with such national, European Union or international bodies or agencies having a knowledge or expertise in the field of human rights or equality as it sees fit.²
2. The Commission is the national equality body for the purpose of the Union's equality directives³ and is the body designated for the purposes of the 2014 directive on the freedom of movement of workers⁴. The Commission is the Irish national human rights institution and has been accorded 'A status' under the 'Paris Principles' that were adopted by the General Assembly of the United Nations in 1993.⁵
3. In its 2016–2018 Strategy Statement, the Commission has identified as a strategic priority 'promoting the indivisibility of equality and human rights', and in particular, delivering 'enhanced support for expanded protection measures for socio-economic rights'.⁶

1 Section 10(1) of the Irish Human Rights and Equality Commission Act 2016 (<http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>).

2 Section 10(2)(h) of the Irish Human Rights and Equality Commission Act 2016.

3 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of the European Communities*, L180, 19 July 2000, p. 22–26; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, *Official Journal of the European Union*, L373, 21 December 2004, pp 37–43; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), *Official Journal of the European Union*, L204, 26 July 2006, pp 23–36.

4 Section 10(2)(i) of the Irish Human Rights and Equality Commission Act 2016; Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, *Official Journal of the European Union*, L128, 30 April 2014, pp 8–14.

5 United Nations General Assembly resolution 48/134 of 20 December 1993, 'National institutions for the promotion and protection of human rights' (http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/134).

6 Irish Human Rights and Equality Commission Strategy Statement 2016-2018 at <https://www.ihrec.ie/download/pdf/strategystatement.pdf>. See also the Commission's Parallel Report to the UN Committee on Economic, Social and Cultural Rights for Ireland's third examination under the International Covenant on Economic, Social and Cultural rights, available at:

4. The Commission welcomes the opportunity to contribute to the development of the European Pillar of Social Rights.

2 Equality

5. The Irish Human Rights and Equality Commission notes that a number of the policy domains and principles in the *First preliminary outline of a European Pillar of Social Rights* address specific equality issues. These are:

- Principle 5: Gender equality and work life balance,
- Principle 6: Equal opportunities,
- Principle 16: Disabilities,
- Principle 17: Long-term care, and
- Principle 18: Childcare.

The Commission believes that the specific focus on these equality dimensions provides a valuable basis for the further development and improvement of the European Pillar of Social Rights.

6. The Commission notes that Principle 6 on equal opportunities addresses discrimination in employment. The Commission considers that if the European Pillar of Social Rights is to be effective, it is essential that it also address the question of discrimination and inequality in areas other than employment, including
 - (a) in the provision of goods and services,
 - (b) in the experiences of disadvantaged groups in the broader public sphere, including through misleading propaganda, violence, hate speech, and representation in the media, and
 - (c) state and official support for civil society organisations of people who experience inequality, including advocacy organisations and social and cultural organisations.
7. The Commission notes that the approach to the incorporation of the rights of different groups differs across the twenty principles and policy domains in the *First preliminary outline*. For example, a separate policy domain (no. 16) is dedicated to people with disabilities, but there are no separate policy domains, for example, dedicated to the social rights of Roma, Travellers, or other ethnic minorities, or dedicated to the social rights of the elderly. The Commission acknowledges that a number of the rights of other groups are addressed in other policy domains.⁷ However, the Commission notes that equality concerns are not consistently examined across all policy domains – for example, the policy domain on housing (no. 19) does not address the inequalities experienced by groups such as Roma and Travellers or people with disabilities, or

https://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf

7 For example, in Policy domain no. 1, on 'Skills, education and life-long learning' the introductory explanatory narrative notes that, among other things, increased immigration and population ageing require additional actions for up-skilling and life-long learning.

migrants in accessing social housing.⁸ The Commission considers that the inconsistent approach in the *First preliminary outline* gives rise to two significant weaknesses in the European Pillar of Social Rights as currently drafted:

- (a) the social rights of most of the groups that experience inequality are not set out in a systematic way as has been attempted with persons with disabilities, and
- (b) the principles/policy domains do not systematically address the social rights of all groups that experience inequality.

For example, persons with disabilities and Traveller and Roma people have a right to be included in and benefit from actions taken under policy domain no. 1 on ‘Skills, education and life-long learning’ and it is known that both of these groups experience significant barriers in many Member States to securing their social rights in this policy domain/principle. However, their experiences are not addressed in the text of this principle in the *First preliminary outline*.

8. **The Irish Human Rights and Equality Commission recommends that the next iteration of the European Pillar of Social Rights undergo an equality mainstreaming evaluation to ensure:**
 - (a) that each of the groups protected under the anti-discrimination and equality laws of the Union and the Member States are identified and their social rights are set out in separate principles, and**
 - (b) that the principles or policy domains that have as their focus a social right or an area of social policy have been equality proofed and explicitly address the particular needs of all of the groups protected by anti-discrimination or equality laws in the Union or its Member States.**

8 The Court of Justice of the European Union, in *Kamberaj* (Case C-571/10), examined the issues of unequal treatment of third-country nationals, housing and the application of Article 34 of the Charter of Fundamental Rights of the European Union.

The Commission notes further that the jurisprudence established by the European Committee of Social Rights in respect of the Revised European Social Charter has given greater consideration to the right to housing. This includes:

- (a) jurisprudence on the condition and quantity of accommodation for Travellers in Ireland – see *European Roma Rights Centre (ERRC) v Ireland*, Complaint No. 100/2013 (<http://hudoc.esc.coe.int/eng/?i=cc-100-2013-dmerits-en>),
- (b) jurisprudence on the right to a dwelling which is safe from a sanitary and health perspective, and where specific dangers such as lead or asbestos are under control – see *Conclusions 2003, France, Article 31.1* (<http://hudoc.esc.coe.int/eng/?i=2003/def/FRA/31/1/EN>), and
- (c) jurisprudence on the right to non-discrimination in the provision of housing and accommodation – see: *European Roma and Travellers Forum v France* (Complaint No. 64/2011) (<http://hudoc.esc.coe.int/eng/?i=cc-64-2011-dmerits-en>).

In addition, a decision on merits is awaited in the collective complaint *International Federation for Human Rights (FIDH) v Ireland*, Complaint No. 110/2014, concerning, among other matters, the adequacy, habitability and suitability of some local authority housing in Ireland.

3 Social Rights

3.1 Social rights are human rights

9. The Irish Human Rights and Equality Commission draws attention to the distinction between social policy and social rights. Social policies are the legislative, funding, programmatic and other implementation tools that are designed to secure the realisation of social rights. The success or otherwise of a social policy depends not only on whether the policy achieved the objectives that are stated for it but also – vitally – whether the stated objective is itself in conformity with social rights.
10. Social rights are human rights. In particular, they are a subset of the full set of human rights, alongside civil and political rights.
11. Social rights are obligations on, variously, the European Union and its Member States, and by which the Member States and the Union have agreed to be bound through a variety of mechanisms. These mechanisms include:
 - their domestic law constitutional arrangements;
 - the ratification of global international human rights instruments such as the UN International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of the Child, and a number of other core UN instruments⁹ and the eight ‘core’ ILO conventions¹⁰;
 - the ratification of the Council of Europe’s European Social Charter of 1961¹¹ or the Revised European Social Charter of 1996.¹²

The European Union has adopted and agreed to respect, both at the level of the Union and at the level of the Member States,¹³ a wide range of the social rights set out in these and other instruments by the mechanism of integrating, recasting or reflecting those obligations, in their original form or in a modified form, in the provisions of the Charter of Fundamental Rights of the European Union.¹⁴ Furthermore, the European

9 These include the UN’s International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women, and the UN Convention on the Rights of Persons with Disabilities.

10 These are: The Forced Labour Convention 1930; the Freedom of Association and Protection of the Right to Organise Convention 1948; the Right to Organise and Collective Bargaining Convention 1949; the Equal Remuneration Convention 1951; the Abolition of Forced Labour Convention 1957; the Discrimination (Employment and Occupation) Convention 1958; the Minimum Age Convention 1973; and the Worst Forms of Child Labour Convention 1999.

11 Available at: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035>.

12 Available at: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163>.

13 Article 51, Charter of Fundamental Rights of the European Union, *Official Journal of the European Union*, C326, 26 October 2012, p 406.

14 See: ‘Explanations relating to the Charter of Fundamental Rights’, *Official Journal of the European Union*, C303, 14 December 2007, pp 17–35 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:303:TOC>).

Union is obliged to accede to the European Convention on Human Rights, which contains provisions relating to a number of social rights.¹⁵

12. The main source of law on social rights in Europe is the Council of Europe's European Social Charter.¹⁶ The Charter of Fundamental Rights of the European Union draws extensively on the European Social Charter as a source of norms for social rights, as is clear from the *Explanations relating to the Charter of Fundamental Rights* that were prepared under the authority of the praesidium of the Convention that drafted the Charter of Fundamental Rights of the European Union.¹⁷
13. The obligations of duty bearers in respect of a right are typically described as obligations of respecting, of protecting, or of fulfilling the right concerned.¹⁸ In the context of the European Union, the provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union delineate the division of responsibilities and competencies between the Union and the Member States. It would be useful if the revision that the European Commission makes to the European Pillar of Social Rights on foot of the public consultation were to identify for each principle the nature of the obligations it gives rise to – of respecting, protecting or fulfilling – and the allocation of those responsibilities between the Union and the Member States.

3.2 Clarifying and enhancing the link to social rights

14. The Irish Human Rights and Equality Commission notes that a number of the policy domains in the *First preliminary outline of a European Pillar of Social Rights*¹⁹ refer to provisions in the Charter of Fundamental Rights of the European Union. The Commission considers that this provides a valuable basis for the development of the proposed Pillar as an instrument that can meaningfully integrate a commitment to

15 Article 6(2) of the Treaty on European Union provides: 'The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.' Provisions in the European Convention on Human Rights that contain social rights include: Article 8 on the right to respect for private and family life; Article 11 on the right to freedom of assembly and association; Article 14 and Protocol 12 on the prohibition of discrimination; and Article 2 of Protocol 1 on the right to education.

16 For the rest of this submission the Commission for convenience uses the term 'European Social Charter' to refer to both the 1961 Charter and the 1996 Revised Charter and distinguishes between those instruments only when it is necessary to do so because the specific content between them differs.

17 'Explanations relating to the Charter of Fundamental Rights', *Official Journal of the European Union*, C303, 14 December 2007, pp. 17–35.

18 It is beyond the scope of this submission to set out a detailed analysis of this trichotomy, but it is central to the legal assessment of the compliance of states with international human rights instruments. One of the earlier statements of the trichotomy is found in the jurisprudence of the UN Committee on Economic, Social and Cultural Rights in *General Comment No. 12: The Right to Adequate Food (Art. 11)* (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en).

19 COM (2016) 127 Final Annex 1 (http://eur-lex.europa.eu/resource.html?uri=cellar:bc4bab37-e5f2-11e5-8a50-01aa75ed71a1.0004.02/DOC_2&format=PDF).

respecting, protecting and fulfilling the social rights of Union citizens and those legally resident or, in certain circumstances, those present²⁰ in the Union's Member States.

15. However, the Commission is concerned that the principles set out in the twenty policy domains in the *First preliminary draft* do not consistently reflect the substantive content of the rights that are provided for in the Charter of Fundamental Rights of the European Union or in the European Social Charter. For example, some of the principles set out proposed obligations on citizens or legal residents rather than rights²¹ or set out positions that would serve as constraints on the exercise of rights.²²
16. The Commission is also concerned that the *text* of the twenty policy domains in the *First preliminary outline* does not consistently refer to applicable rights in the Charter of Fundamental Rights of the European Union. Further, the Commission notes that in no case does the explanatory note accompanying each principle in the *First preliminary draft* refer to the rights set out in the European Social Charter or in the other human rights instruments that are the basis of the rights set out in the Charter of Fundamental Rights of the European Union.²³
17. **The Irish Human Rights and Equality Commission recommends that each of principles be reviewed to ensure that they demonstrate how the principle ensures that the European Union or Member States, as appropriate, shall respect or protect or fulfil the social rights in the Charter of Fundamental Rights of the European Union and the corresponding rights set out in the European Social Charter.**
18. **The Irish Human Rights and Equality Commission recommends that the *First preliminary outline of a European Pillar of Social Rights* be strengthened by ensuring that in the next iteration of the proposed Pillar, including any additional policy domains that the Commission may add to the Pillar on foot of the public consultation, be recast**
 - (a) **for each proposed policy domain²⁴ to set out all of the provisions of the Charter of Fundamental Rights of the European Union that are applicable to that policy domain (and not just the primary articles that are applicable), and**

20 Some social rights, such as a right to emergency medical assistance, are also applicable to those whose presence in the Member States is not grounded on citizenship or a legal right of residence.

21 For example, in Principle no. 14, on unemployment benefits, the principle proposes two obligations, for active job search and for participation in active support, before identifying the provision of adequate unemployment benefits, which are not described in the principle as a right (although the supplementary information does refer to Article 34 of the Charter of Fundamental Rights of the European Union).

22 For example, paragraph b of Principle no. 2, on flexible and secure labour markets, prioritises and names the ability of employers' to swiftly respond to shifts in demand, and casts secure employment ('open-ended contracts') as a 'transition' rather than a right.

23 In Appendix 1 below, the Commission sets out the provisions in the Charter of Fundamental Rights of the European Union and of the European Social Charter that it believes may have relevance to each of the principles set out in the *First preliminary draft*.

24 Including for any new policy domains that may be added to the European Pillar of Social Rights as it is revised on foot of the dialogue and public consultation.

- (b) for each proposed policy domain²⁵ to set out the provisions in the European Social Charter that contain a right which underpins that domain.

3.3 The 'Turin Process' and addressing divergences between EU law and the protection of social rights

19. The Irish Human Rights and Equality Commission notes that European Union law and the jurisprudence under the European Social Charter have diverged in a number of areas.²⁶ This divergence has been the focus of action under the Council of Europe's 'Turin Process'.²⁷ At the launch of the Turin Process, Secretary General of the Council of Europe, Thorbjørn Jagland, warned 'we need strong synergies between the Charter and European Union law to avoid any legal conflict'.²⁸ The then First Vice-President of the European Parliament, Antonio Tajani MEP, also identified the need to 'ensure that Community law does not conflict with the European Social Charter from a legal standpoint – not just future law but the law as it stands at present – and we also need to assess whether the legal standards we have been applying according to certain of our rules are in line with the values we recognise'.²⁹ The European Committee of Social Rights has identified the interests of citizens as a motivation in seeking to improve the co-ordination between the European Union and Council of Europe systems.³⁰ In the 2015 *Brussels' Document*, produced as part of the Turin Process under the aegis of the Belgian Chairmanship of the Council of Europe's Committee of Ministers, academic

-
- 25 Including for any new policy domains that may be added to the European Pillar of Social Rights as it is revised on foot of the dialogue and public consultation.
- 26 European Committee of Social Rights (2014) *The Relationship between European Union Law and the European Social Charter: Working Document* (available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806544ec>). For a broader discussion of the implications of continuing divergence of the two legal systems, see: Olivier De Schutter (2016) *The European Social Charter in the Context of Implementation of the EU Charter of Fundamental Rights: Study for the AFCO Committee*. Brussels: European Parliament ([http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU\(2016\)536488_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf)).
- 27 The 'Turin Process' was launched by the Secretary General of the Council of Europe at the High-Level Conference on the European Social Charter in Turin on 17-18 October 2014. The 'Turin process' "aims at reinforcing the normative system of the Charter within the Council of Europe and in its relationship with the law of the European Union. Its key objective is to improve the implementation of social and economic rights at the continental level, in parallel to the civil and political rights guaranteed by the European Convention on Human Rights." See <http://www.coe.int/en/web/turin-process/home>
- 28 Thorbjørn Jagland (2014) Speech to the High-Level Conference on the European Social Charter, 17 October 2014, Turin http://www.coe.int/en/web/secretary-general/speeches-2014/-/asset_publisher/gFMvI0SKOUrv/content/high-level-conference-on-the-european-social-charter
- 29 Statement by Antonio Tajani MEP, First Vice-President of the European Parliament, at the High-Level Conference on the European Social Charter, 17 October 2014, Turin (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048acf8>)
- 30 European Committee of Social Rights (2014) *The Relationship between European Union Law and the European Social Charter: Working Document*, at paragraph 4 (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045ad98>)

experts on European social law also highlighted the ‘risk of conflict between the two sets of norms’.³¹

20. The divergences arise from a number of sources:³²
- (a) the failure of Member States when implementing EU law to do so in a way that is in conformity with the rights set out in the European Social Charter,
 - (b) the provisions of European Union primary legislation not being compatible with the rights of those who are subject to the provisions of that legislation,
 - (c) the jurisprudence of the Court of Justice of the European Union giving higher accord to other economic rights over the rights of workers, or
 - (d) Member States and the institutions of the Union acting in *extra-treaty* fora such as the Eurogroup or a Troika with the IMF in a way that requires a Member State to act in breach of social rights.
21. The Commission notes a number of areas have been identified by the European Committee of Social Rights in which divergences between EU law and the jurisprudence under the European Social Charter have occurred.³³ These have occurred in the following areas:
- (a) levels of compensation in cases of discrimination,
 - (b) excessive working hours and rest periods,
 - (c) overtime pay,
 - (d) collective bargaining and cross-border ‘wage dumping’,
 - (e) the protection of health,
 - (f) the right of migrant workers to family reunion, and
 - (g) the right to social security.
22. Although the *First preliminary draft* refers to the social rights where divergences have arisen, the Commission notes that neither the *First preliminary draft* nor the European Commission’s staff working document on the EU social acquis³⁴ that accompanies it refer to the fact that divergences have emerged.
23. The Commission considers that the proposed European Pillar of Social Rights may have the potential to give meaningful effect by the Union to respecting, protecting and

31 Group of Academic Experts chaired by the General Coordinator of the Academic Network on the European Social Charter and Social Rights (2015) *Brussels’ Document on the Future of the Protection of Social Rights in Europe: Belgian Chairmanship of the Council of Europe* (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045ad98>)

32 For a recent analysis of the legal situation see: Olivier De Schutter (2016) *The Implementation of the Charter of Fundamental Rights in the EU Institutional Framework: Study for the AFCO Committee*. Brussels: European Parliament ([http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU\(2016\)571397_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU(2016)571397_EN.pdf)).

33 See Appendix 2.

34 *The EU social acquis: Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Launching a consultation on a European Pillar of Social Rights*, SWD/2016/050 final (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1458294283747&uri=CELEX:52016SC0050>).

fulfilling social rights in the EU. It believes that the observation by the Union of social rights must be comprehensive, and in particular that social rights must be observed by its institutions and by the Member States, whether they are implementing the Treaties or acting in respect of the Union's functions through *extra-Treaty* mechanisms and structures. However, to achieve this goal the *First preliminary outline* will need to be revised (a) to acknowledge the divergences between Union law and the jurisprudence under the European Social Charter and (b) to set out how the Union and its Member States will reform the Union's *acquis* to ensure that the social rights of its citizens and residents will be respected by the Union and its member States.

24. **The Irish Human Rights and Equality Commission recommends that, in keeping with the aims of the 'Turin Process', the *First preliminary outline of a European Pillar of Social Rights* be strengthened by setting out the steps that will be taken to reform the European Union's social *acquis* to reduce and eliminate the divergences between that *acquis* and the jurisprudence under the European Social Charter.**
25. **The Irish Human Rights and Equality Commission recommends that in taking steps to reduce and eliminate the divergences between the European Union's social *acquis* and the jurisprudence under the European Social Charter, systematic and regular *ex-ante* human rights impact assessments are introduced for all social policy measures, in particular those in the realm of austerity policy.**

APPENDICES

Appendix 1

Links between the policy domains / principles of the *First preliminary outline of a European Pillar of Social Rights* and social rights set out in the Charter of Fundamental Rights of the European Union and in the Revised European Social Charter

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
CHAPTER I: EQUAL OPPORTUNITIES AND ACCESS TO THE LABOUR MARKET			
1. Skills, education and lifelong learning	Art. 14 Right to education	Art. 26 Integration of persons with disabilities Art. 32 Prohibition of child labour and protection of young people at work	Art. 17 The right of children and young persons to social, legal and economic protection Art. 15 The right of persons with disabilities to independence, social integration and participation in the life of the community Art. 10 The right to vocational training Art. 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex Art. 30 Right to protection against poverty and social exclusion

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
2. Flexible and secure labour contracts	None cited	<p>Art. 15 Freedom to choose and occupation and right to engage in work</p> <p>Art. 30 Protection in the event of unjustified dismissal</p> <p>Art. 31 Fair and just working conditions</p> <p>Art. 28 Right of collective bargaining</p> <p>Art. 29 Right of access to placement services</p> <p>Art. 5 Prohibition of slavery and forced labour</p> <p>Art. 27 Workers' right to information and consultation within the undertaking</p>	<p>Art. 1 The right to work</p> <p>Art. 2 The right to just conditions of work</p> <p>Art. 6 The right to bargain collectively</p> <p>Art. 5 The right to organise</p> <p>Art. 25 The right of workers to the protection of their claims in the event of the insolvency of their employer</p> <p>Art. 18 The right to engage in gainful occupation in the territory of other Parties</p> <p>Art. 19 The right of migrants workers and their families to protection and assistance [paragraphs 4–7 and 10]</p> <p>Art. 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex</p> <p>Art. 22 The right to take part in the determination and improvement of the working conditions and working environment</p> <p>Art. 24 The right to protection in cases of termination of employment</p> <p>Art. 27 The right of workers with family responsibilities to equal opportunities and equal treatment</p>

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
3. Secure professional transitions	None cited	<p>Art. 15 Freedom to choose an occupation and right to engage in work</p> <p>Art. 30 Protection in the event of unjustified dismissal</p> <p>Art. 31 Fair and just working conditions</p> <p>Art. 28 Right of collective bargaining and action</p> <p>Art. 29 Right of access to placement services</p> <p>Art. 5 Prohibition of slavery and forced labour</p> <p>Art. 27 Workers' right to information and consultation within the undertaking</p>	<p>Art. 1 The right to work</p> <p>Art. 2 The right to just conditions of work</p> <p>Art. 12 The right to social security</p> <p>Art. 14 The right to benefit from social welfare services</p> <p>Art. 25 The right of workers to the protection of their claims in the event of the insolvency of their employer</p> <p>Art. 18 The right to engage in gainful occupation in the territory of other Parties</p> <p>Art. 19 The right of migrant workers and their families to protection and assistance</p> <p>Art. 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex</p>
4. Active support for employment	None cited	<p>Art. 29 Right of access to placement services</p> <p>Art. 5 Prohibition of slavery and forced labour</p>	<p>Art. 1 The right to work</p> <p>Art. 2 The right to just conditions of work</p> <p>Art. 9 The right to vocational guidance</p> <p>Art. 10 The right to vocational training</p> <p>Art. 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex</p>

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
5. Gender equality and work life balance	Art. 33 Family and professional life Art. 24 The rights of the child	Art. 23 Equality between women and men Art. 31 Fair and just working conditions Art. 30 Protection in the event of unjustified dismissal	Art. 4, paragraph 4 The right of men and women workers to equal pay for work of equal value Art. 7 The right of children and young persons to protection Art. 8 The right of employed women to protection of maternity Art. 16 The right of the family to social, legal and economic protection Art. 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex Art. 26.1 The right to dignity at work: sexual harassment Art. 27 The right of workers with family responsibilities to equal opportunities and equal treatment
6. Equal opportunities	Art. 21 Non-discrimination	Art. 22 Cultural, religious and linguistic diversity Art. 26 Integration of persons with disabilities	Art. E Non-discrimination Art. 19 The right of migrant workers and their families to protection and assistance – including, paragraphs 1, 8 and 11 concerning misleading propaganda, expulsion, and teaching of the national language of the receiving state
CHAPTER II: FAIR WORKING CONDITIONS			
7. Conditions of employment	Art. 30 Protection in the event of unjustified dismissal	Art. 31 Fair and just working conditions Art. 27 Workers' right to information within the undertaking Art. 28 Right of collective bargaining and action Art. 12 Freedom of assembly and of association Art. 26 Right of persons with disabilities Art. 33 Family and professional life	Art. 2 The right to just conditions of work Art. 3 The right to safe and healthy working conditions Art. 4 The right to a fair remuneration Art. 19.4 The right of migrant workers and their families to protection and assistance Art. 24 The right to protection in cases of termination of employment Art. 27 The right of workers with family responsibilities to equal opportunities and equal treatment

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
8. Wages	None cited	Art. 31 Fair and just working conditions Art. 28 Right of collective bargaining and action Art. 15 Freedom to choose an occupation and right to engage in work Art. 26 Right of persons with disabilities Art. 23 Equality between women and men Art. 33 Family and professional life	Art. 4 The right to a fair remuneration Art. 19.4 The right of migrant workers and their families to protection and assistance: remuneration Art. 8 The right to bargain collectively
9. Health and safety at work	Art. 31 Fair and just working conditions	Art. 35 Health care Art. 16 Freedom to conduct a business	Art. 3 The right to safe and healthy working conditions Art. 22 The right to take part in the determination and improvement of the working conditions and working environment Art. 26 The right to dignity at work Art. 2 The right to just conditions of work

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
10. Social dialogue and involvement of workers	Art. 12 Freedom of assembly and of association Art. 27 Workers' right to information and consultation within the undertaking Art. 28 Right of collective bargaining and action		Art. 6 The right to bargain collectively Art. 5 The right to organise Art. 22 The right to take part in the determination and improvement of the working conditions and working environment Art. 19.4 The right of migrant workers and their families to protection and assistance: trade unions and collective bargaining Art. 21 The right to information and consultation [within the undertaking]
CHAPTER III: ADEQUATE AND SUSTAINABLE SOCIAL PROTECTION			
11. Integrated social benefits and services	Art. 34 Social security and social assistance		Art. 12 The right to social security Art. 13 The right to social and medical assistance Art. 23 The right of elderly persons to social protection Art. 14 The right to benefit from social welfare services Art. 15 The right of persons with disabilities to independence, social integration and participation in the life of the community Art. 16 The right of the family to social, legal and economic protection Art. 17 The right of children and young persons to social, legal and economic protection Art. 19 The right of migrant workers and their families to protection and assistance Art. 30 The right to protection against poverty and social exclusion Art. 31 The right to housing

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
12. Healthcare and sickness benefits	Art. 35 Health care Art. 34 Social security and social assistance	Art. 25 The rights of the elderly Art. 26 Integration of persons with disabilities	Art. 11 The right to protection of health Art. 12 The right to social security Art. 13 The right to social and medical assistance Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 23 The right of elderly persons to social protection Art. 30 The right to protection against poverty and social exclusion Art. 31 The right to housing
13. Pensions	Art. 34 Social security and social assistance	Art. 23 Equality between women and men Art. 21 Non-discrimination Art. 25 The rights of the elderly Art. 26 Integration of persons with disabilities	Art. 23 The right of elderly persons to social protection Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 12 The right to social security Art. 13 The right to social and medical assistance Art. 30 The right to protection against poverty and social exclusion Art. 31 The right to housing
14. Unemployment benefits	Art. 34 Social security and social assistance	Art. 5 Prohibition of slavery and forced labour Art. 26 Integration of persons with disabilities Art. 16 Freedom to conduct a business Art. 15 Freedom to choose an occupation and right to engage in work	Art. 1 The right to work Art. 12 The right to social security Art. 13 The right to social and medical assistance Art. 14 The right to benefit from social welfare services Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 16 The right of the family to social, legal and economic protection Art. 30 The right to protection against poverty and social exclusion

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
15. Minimum income	Art. 34 Social security and social assistance	Art. 31 Fair and just working conditions Art. 5 Prohibition of slavery and forced labour Art. 33 Family and professional life Art. 25 The rights of the elderly	Art. 4 The right to a fair remuneration Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 16 Freedom to conduct a business Art. 23 The right of elderly persons to social protection Art. 12 The right to social security Art. 30 The right to protection against poverty and social exclusion
16. Disability	Art. 26 Integration of persons with disabilities	Art. 5 Prohibition of slavery and forced labour Art. 15 Freedom to choose an occupation and right to engage in work Art. 14 Right to education Art. 16 Freedom to conduct a business Art. 31 Fair and just working conditions Art. 29 Right of access to placement services Art. 34 Social security and social assistance Art. 35 Health care Art. 36 Access to services of a general economic interest	Art. 15 The right of persons with disabilities to independence, social integration and participation in the life of the community Art. 4 The right to a fair remuneration Art. 30 The right to protection against poverty and social exclusion Art. 31 The right to housing Art. E Non discrimination

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
17. Long-term care	Art. 34 Social security and social assistance	Art. 25 The rights of the elderly Art. 3 Right to the integrity of the person Art. 26 Integration of persons with disabilities Art. 4 Prohibition of torture or inhuman or degrading treatment or punishment Art. 6 Right to liberty and security Art. 12 Freedom of assembly and association	Art. 23 The right of elderly persons to social protection Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 12 The right to social security Art. 13 The right to social and medical assistance Art. 30 The right to protection against poverty and social exclusion Art. 31 The right to housing
18. Childcare	Art. 24 The rights of the child	Art. 23 Equality between women and men Art. 33 Family and professional life Art. 34 Social security and social assistance Art. 35 Health care Art. 32 Prohibition of child labour and protection of young people at work	Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 16 The right of the family to social, legal and economic protection Art. 17 The right of children and young persons to social, legal and economic protection Art. 27 The right of workers with family responsibilities to equal opportunities and equal treatment Art. 30 The right to protection against poverty and social exclusion

Pillar policy domain	CFREU article cited in the <i>First preliminary outline</i>	Further articles of the CFREU that appear to be applicable	Relevant provisions in the European Charter of Social Rights
19. Housing	Art. 34 Social security and social assistance	Art. 1 Human dignity Art. 26 Integration of persons with disabilities Art. 21 Non-discrimination Art. 22 Cultural, religious and linguistic diversity Art. 25 The rights of the elderly Art. 4 Prohibition of torture and inhuman or degrading treatment or punishment	Art. 31 The right to housing Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 23 The right of elderly persons to social protection Art. 16 The right of the family to social, legal and economic protection Art. 17 The right of children to social, legal and economic protection Art. 30 The right to protection against poverty and social exclusion
20. Access to essential services	None cited	Art. 36 Access to services of general economic interest Art. 25 The rights of the elderly Art. 22 Cultural, religious and linguistic diversity Art. 26 Integration of persons with disabilities	Art. 23 The right of elderly persons to social protection Art. 15 The right of persons with disabilities to independence, social integration, and participation in the life of the community Art. 16 The right of the family to social, legal and economic protection Art. 19 The right of migrant workers and their families to protection and assistance Art. 31 The right to housing [water, electricity and telephone; <i>Conclusions 2003</i>]

Appendix 2

Divergences between EU law on social rights and the jurisprudence of the European Social Charter.

The content of this appendix is drawn from: European Committee of Social Rights (2014) *The Relationship Between European Union Law and the European Social Charter*.


RESC/ESC article	EU law	Explanation	References
1.2 protect effectively right of worker to earn living in occupation freely entered upon	Directive 2006/54/EC recast gender employment directive	Maximum compensation of €500 in Austria in certain circumstances for discrimination not sufficiently dissuasive to the employer or commensurate with loss suffered	<i>Conclusions XIX-1 (2003) – Austria</i>
2.1 right to reasonable daily and weekly working hours...	Directive 2003/88/EC – certain aspects of organisation of work	Directive permits working week of up to 72 hours in fishing industry and this exceeds the limit of 60 hours Directive limits average working week over 12 month period to 48 hours, and the reference period can lead to working weeks at certain times of over 60 hours	<i>Confédération Générale du Travail (CGT) v France, Complaint No. 55/2009</i>
	Directive 1999/63/EC – organisation of working time of seafarers	An upper limit of 72 hours is not compatible with ESC	<i>Confédération Française de l'Encadrement CFE-CGC v France, Complaint No. 56/2009</i>
	Directive 93/104/EC – certain aspects of the organisation of working time	In certain circumstances directive allows working week of up to 72 hours, which is excessive and therefore not in conformity with the ESC	

RESC/ESC article	EU law	Explanation	References
2.5 right to weekly rest period	Directive 2003/88/EC – certain aspects of organisation of work	Domestic staff and seamen are not covered by the legislation guaranteeing a weekly rest period	<i>Confédération Générale du Travail (CGT) v France</i> , Complaint No. 55/2009
4.2 right to increased remuneration for overtime work	Directive 2003/88/EC – certain aspects of organisation of work	Directive provides for many exceptions and exemptions which may adversely affect respect for the Charter by states	<i>Confédération Générale du Travail (CGT) v France</i> , Complaint No. 55/2009
6.2 right to bargain collectively: machinery for voluntary negotiations	Directive 96/71/EC – concerning the posting of workers Article 45 TFEU (Freedom of movement of workers) Article 52 TFEU (exemption for foreign nationals for reasons of public security, etc.)	Divergence is on foot of CJEU judgment in the <i>Laval</i> case C-341/05. CJEU found that Swedish unions could not take industrial action to oppose Laval's use of lower Latvian wage levels to pay workers it posted to Sweden	<i>Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v Sweden</i> , Complaint No. 85/2012
6.4 right to bargain collectively: right to collective action in cases of conflicts of interest	Article 56 TFEU (Freedom of movement of services) Article 57 TFEU (Freedom of movement of services)		
19.4 right of migrant workers and their families to protection and assistance:	Article 151 TFEU (Social policy) Article 153 TFEU (EU supporting and complementing member states in social policy)		
(i) remuneration and working conditions and	Directive 2008/104/EC – on temporary agency work		
(ii) enjoyment of benefits of collective bargaining	Directive 2006/123/EC – on services in the internal market		

RESC/ESC article	EU law	Explanation	References
11 right to protection of health	Directive 2003/87/EC – a scheme for greenhouse gas emission allowance trading within the Community	Greek National Allocation Plan for emissions for the whole country and all sectors combined to rise by 39.2% in excess of the 25% binding target	<i>Marangopoulos Foundation for Human Rights (MFHR) v Greece</i> , Complaint No. 30/2005
	Directive 2001/81/EC – on national emission ceilings	[Re Directive 96/61/EC breach appears to have been national implementation – not clear if Directive itself is divergent]	
	Directive 96/61/EC – concerning integrated pollution prevention and control		


RESC/ESC article	EU law	Explanation	References
19.6 right of migrant workers and families to protection and assistance: family reunion	<p>Directive 2003/86/EC – on the right to family reunification</p> <p>[The CJEU also ruled against aspect (b) in column 3 on income of the Directive – <i>Chakroun v Minister van Buitenlandse Zaken</i>, C-578/08]</p>	<p>Provisions of the directive allow states infringe Art. 19.6:</p> <p>(a) length of residence requirement</p> <p>(b) exclusion of social assistance from calculation of income of migrant worker to assess their means</p> <p>(c) requirement that members of migrant workers’ family sit language or integration tests in order to be allowed enter the country</p>	<i>Conclusions 2011, Statement of Interpretation</i>

RESC/ESC article	EU law	Explanation	References
12.3 The right to social security: progressive raising the system to a higher level	Council Decision 2010/320/EU – on deepening fiscal surveillance... measures for deficit reduction		<i>Federation of Employed Pensioners of Greece (IKA –ETAM) v Greece</i> , Complaint No. 76/2012
	Article 126(9) TFEU (deficit reduction – council giving notice to member state to take measures)	Under Troika programme cuts to pensions (approximately 50 percent in some cases) were imposed on existing payments under a range of pension schemes	<i>Panhellenic Federation of Public Service Pensioners v Greece</i> , Complaint No. 77/2012
	Article 136 TEFU (coordination and surveillance of budgetary discipline in Eurozone)	[Legal basis for Troika programme not set out in ECSR’s decisions on merit as it responds to domestic Greek laws implementing the Troika programme]	<i>Pensioners’ Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v Greece</i> , Complaint No. 78/2012
	[Also, in <i>Pringle</i> C-370-12, the CJEU ruled that implementing the ESM was not implementing EU law and therefore fell outside scope of EUCFR.]		<i>Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v Greece</i> , Complaint No. 79/2012 <i>Pensioners’ Union of the Agricultural Bank of Greece (ATE) v Greece</i> , Complaint No. 80/2012



**16-22 Sráid na Faiche,
Baile Átha Cliath 7, D07 CR20**
16-22 Green Street,
Dublin 7, D07 CR20

Idirlíon/Web www.ihrec.ie

 **@_ihrec**