

Social Rights Monitoring in the Council of Europe: Ways Forward

**Report of the High Level Group of Experts on Social Rights (SGAs)
prepared at the request of the Secretary General of the Council of Europe**

Strasbourg, 19 March 2021

The High Level Group of Experts on Social Rights was appointed by the Secretary General of the Council of Europe on 2 February 2021. Its task was to propose concrete actions to strengthen the Council of Europe's impact in terms of protection and promotion of social rights in Europe. It was composed of the following persons:

- *Mrs Marie-Caroline Bonnet-Galzy, Inspector General of Social Affairs, French Councillor of State in extraordinary service*
- *Mr Olivier De Schutter, Professor of Law, University of Louvain, Belgium; United Nations Special Rapporteur on Extreme Poverty and Human Rights*
- *Mr Joseph Faber, President of the Governmental Committee of the European Social Charter*
- *Mr Morten Kjærum, Director of Raoul Wallenberg Institute, former Director of the European Union Agency for Fundamental Rights*
- *Ms Monika Schlachter-Voll, Professor of Labour Law, University of Trier, Germany, former Vice-President of the European Committee of Social Rights*
- *Mr Michele Nicoletti, University Professor, former President of the Parliamentary Assembly of the Council of Europe, former General Rapporteur of the Turin Process for the European Social Charter*
- *Mr Giuseppe Palmisano, General Rapporteur of the European Committee of Social Rights*
- *Ms Monika Schlachter-Voll, Professor of Labour Law, University of Trier, Germany, former Vice-President of the European Committee of Social Rights*
- *Mr Yuri Voronin, Commissioner for Finance and former Deputy Minister for Health and Social Development, Russian Federation*

Mr Olivier De Schutter acted as General Rapporteur and chaired the work of the High Level Expert Group. The report was adopted by consensus. Mr Voronin, however, dissociates himself from the conclusions reached.

Ambassador Ivan Orlić, in his capacity as Chairman of the Group of Rapporteurs of the Committee of Ministers on social and health questions (GR-SOC), followed the work of the group as an observer.

EXECUTIVE SUMMARY

The High Level Group of Experts on Social Rights (SGAs) was appointed by the Secretary General of the Council of Europe to make proposals to improve the contribution of the Council of Europe to the promotion and protection of social rights in Europe. Their main conclusions are as follows:

A. **The European Social Charter is a unique mechanism to ensure upwards social convergence across Europe. However, sixty years after the initial adoption of the Charter, and thirty years after the adoption of the Turin Protocol of 1991 reforming the supervisory mechanism, it has yet to realise its full potential.** The commitments of the Council of Europe Member States under the European Social Charter remain highly uneven, and there is a gap between the ideals expressed in the Charter and the obstacles it faces in its implementation. In order to overcome these obstacles, political support is crucial: the Charter's relevance in the future, and its ability to ensure that social progress benefits all groups of society, will depend on the commitment of States to contribute to this endeavour.

The supervisory mechanisms of the European Social Charter

B. **The submission by States Parties to the Charter of periodic reports is the main tool for supervising compliance with the Charter.** However, the reforms made to the reporting procedure in 2007 (dividing the Charter into four thematic groups of rights to cover a full cycle every four years) and in 2014 (with the introduction of simplified reports for States Parties that have accepted the collective complaints procedure) are sometimes perceived to have led to a reporting system that is unnecessarily cumbersome and complicated. The SGAs believe that the supervisory system of the Charter could become more targeted in order to better contribute to the effective protection of social rights and ensure a more efficient use of the resources available. They recommend three changes:

(i) the generalisation of a **simplified reporting procedure** based on the preparation by the European Committee of Social Rights of a list of questions, limited in number, focusing on the most important challenges faced by the State concerned under the accepted provisions of the Charter;

(ii) a reporting calendar according to which the States Parties would present **thematic reports** every four years, covering the full range of the provisions of the Charter they have accepted;

(iii) the presentation by States Parties, also every four years, in the interval between two thematic reports, of an **interim special report** covering emerging issues, based on a short questionnaire allowing an in-depth examination of these issues.

C. The SGAs also recommend that each State be requested to identify a **focal point within the national administration** specifically tasked with providing the Committee, at short notice if necessary, with the information required to allow the Committee to adopt its conclusions of conformity or non-conformity. They propose that **statements of interpretation** adopted by the European Committee of Social Rights to provide

guidance to States as to the scope of their obligations under the Charter be in the future developed through a transparent process allowing for the presentation by States of their views. To improve the **follow-up to the conclusions** adopted by the European Committee of Social Rights, the SGAs propose that the Committee of Ministers more systematically address individual recommendations to the States Parties which have been found to have failed to act in conformity with the Charter. The Ministers in charge of employment and/or social affairs could also be convened on a biennial basis to examine the Charter monitoring outcomes, and the Steering Committee on Social Cohesion could be re-established.

D. The collective complaints procedure introduced in 1998 has significantly improved the effectiveness of the European Social Charter as a human rights instrument, particularly insofar as this procedure provides an opportunity for unions and employers' organisations and international non-governmental organisations to contribute to the supervision of the implementation of the Charter. The SGAs note the importance of the **adversarial character of the proceedings** to ensure the quality of the decisions adopted by the European Committee on Social Rights on collective complaints. They also note that the **follow-up to the decisions adopted by the European Committee of Social Rights** on collective complaints could be further strengthened if, consistent with article 9, para. 1, of the Additional Protocol on Collective Complaints, the Committee of Ministers were to take full responsibility to ensure the follow-up to the decisions of non-conformity adopted on the basis of collective complaints on a systematic basis, based on the presentation by States parties of **action plans** describing the measures they intend to adopt in order to ensure that they are in conformity with the Charter.

E. The circumstances specific to each State should be carefully considered by the European Committee of Social Rights in the examination of collective complaints. In addition to strengthening the **adversarial character of the proceedings**, the most effective way to achieve this is to **increase the number of meeting days of the Committee as well as the resources of the Secretariat assisting the Committee**. More systematically **requesting from national human rights institutions that they contribute observations** to inform the Committee's views would also help.

The substantive commitments under the European Social Charter

F. States Parties to the Charter may, within certain limits, accept only a limited range of commitments under this instrument. While this *à la carte* system is a useful temporary flexibility device, the States parties should be encouraged to gradually increase the extent of their commitments. This can be achieved by strengthening the review by the European Committee of Social Rights of the reports submitted by States Parties on non-accepted provisions, and by **involving the Committee of Ministers more closely in the review**. In order to reduce the uneven implementation of the Charter across States, another option, albeit one that would require amending the Charter, would be to **expand the number of the Charter's 'core provisions'** and to **increase the minimum number of such provisions to be accepted by States parties**.

G. Whereas the Appendix to the Charter limits its personal scope of application, the European Committee of Social Rights has taken the view that third-country nationals,

including unlawfully present foreign migrants, should be allowed to invoke the Charter's rights in exceptional circumstances. It therefore assesses on a case-by-case basis whether specific differences in treatment based on nationality or residency status resulting in depriving certain categories of persons from the protection of the Charter are acceptable, or not. This pragmatic approach is consistent with the evolution of international human rights law. It allows to take into consideration a variety of factors such as the length of the duration in the host State or the nature of the right or benefit at stake. **If the Charter were to be amended in the future, the SGAs would favour aligning the definition of the scope of application *ratione personae* of the Charter with its nature as a human rights instrument, and with the current state of international human rights law.**

The implementation of the Charter at domestic level

H. Implementation of the Charter at domestic level is key to its effectiveness. In addition to further dissemination efforts about the Charter, the SGAs recommend considering the possibility of complementing the system of the European Social Charter with an **advisory opinion procedure** permitting national courts to obtain interpretations of the relevant provisions of the Charter by the European Committee on Social Rights. **European Social Charter compatibility assessments** prior to the adoption of legislation or policies could be made more systematic. And, perhaps even more urgently, each State Party could be encouraged to put in place a **national mechanism to follow-up on the conclusions and decisions of the European Committee of Social Rights.**

The relationship to the European Union

I. The synergies between the European Social Charter and European Union law should be further strengthened. The Charter could play a greater role in impact assessments accompanying the legislative proposals of the European Commission. The EU Member States could also be encouraged to align the range of their undertakings under the European Social Charter, in order to improve the uniform application of EU law. And the process of accession of the EU to the European Social Charter could be initiated.

A Conference of the Parties

J. While additional resources will be required to support implementation of a number of the recommendations outlined in the report, the changes proposed can be achieved more or less swiftly, depending on their nature. Some of the changes proposed relate to the **working methods** of the supervisory organs of the Charter or of other organs of the Council of Europe, or to those of national administrations within the States Parties. Other changes recommended will require a **decision of the Committee of Ministers**. Still other changes however require an **amendment of the Charter texts**, in particular to expand the number of the 'core provisions' of the Charter and the minimum number of provisions States Parties should accept in the à la carte system of the Charter; to align the Appendix of the Charter on the personal scope of application with the requirements of international human rights law; to introduce the possibility for domestic courts to request an advisory opinion from the European Committee of Social Rights, when faced with questions of interpretation of the Charter; or to allow for the

accession of the European Union to the Charter. **The SGAs therefore propose that, at this stage of the development of the European Social Charter, an *ad hoc* Conference of the Parties should be convened to give a new impulse to the reform process.** In addition to the amendments referred to above, the Conference could launch negotiations on a new Additional Protocol adding rights to the existing list of rights of the Charter, in order to make the Charter fit for the 21st century.

Background

1. The Council of Europe was established in 1949 to achieve "greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress", in particular by "the maintenance and further realisation of human rights and fundamental freedoms".¹

The initial ambition of the European Social Charter was to fulfil this pledge in the field of economic and social rights. When, sixty years ago, the Charter was adopted, the member States proclaimed their intention to "make every effort in common to improve the standard of living and to promote the social well being of both their urban and rural populations by means of appropriate institutions and action",² so as to contribute to the aims of the Council of Europe as expressed in its Statute. Thus, as noted by the European Committee of Social Rights, the European Social Charter "was envisaged as a human rights instrument to complement the European Convention on Human Rights".³ Its interpretation, as well as the future reforms that should strengthen the effectiveness of the Charter and the supervisory mechanisms, should be guided by its nature as a human rights instrument. It should also take into account that individuals' rights under the Charter should be read taking into account the national context and the specificities of the societies in which they live.

2. Yet, the commitments of the Council of Europe Member States under the European Social Charter remain highly uneven. The 1961 European Social Charter⁴ or the 1996 revised European Social Charter were ratified by all but four of the 47 Council of Europe member States.⁵ The revised version of the European Social Charter was opened for signature on 3 May 1996.⁶ It entered into force on 1 July 1999 and has been ratified by 34 Member States. Although the revised European Social Charter was intended to eventually replace the original Charter,⁷ nine States Parties to the 1961 Charter still have not ratified the revised Charter.⁸ The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints entered into force on 1 July 1998.⁹ To date, it has been ratified by 15 member States. The latest ratification dates from 2012¹⁰ and only one State, Finland, has made a declaration in accordance with Article 2 of the Additional Protocol that it also recognises the right of any representative national non-governmental organisation within its jurisdiction which has particular competence, to lodge complaints against it. Moreover, the levels of commitments vary widely even among the States Parties to the European Social

¹ Statute of the Council of Europe (C.E.T.S. n° 1), article 1, a. and b.

² Preamble to the European Social Charter, para. 5.

³ E.C.S.R., *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, para. 27.

⁴ C.E.T.S., n° 35.

⁵ The exceptions are Liechtenstein, Monaco, San Marino and Switzerland.

⁶ C.E.T.S., n° 163.

⁷ Explanatory Report to the revised European Social Charter, para. 8.

⁸ Germany and Spain however, which signed the revised Charter in 2007 and 2000 respectively, are now taking steps to accelerate the process of ratification.

⁹ C.E.T.S., n° 158.

¹⁰ Spain has signed the Additional Protocol on 4 February 2021 and is taking steps towards ratification.

Charter, since they may choose, within certain parameters, which of the articles and numbered paragraphs of part II of the Charter they shall accept as binding.

3. The Charter, as a mechanism for upwards social convergence across Europe, has yet to realise its full potential. The disparity in the level of commitments, both in terms of engagement vis-à-vis the Charter and also of acceptance of and reliance upon the Charter as a governance tool to inspire positive change, reveals a gap between the ideals expressed in the Charter, and the obstacles it faces in its implementation. In part, this reflects a collective action problem. In an increasingly interdependent Europe, it is in the interest of all States that at least a minimum floor of social rights be protected across Europe, in order to ensure that States' choices and social dialogue as regards the improvement of working conditions and progress in social protection will not be excessively constrained by considerations of external cost competitiveness. At universal level, it is this idea -- to create a "level playing field" -- that was expressed in the 1944 Declaration of Philadelphia concerning the aims and purposes of the International Labour Organisation, which recalled that "poverty anywhere constitutes a danger to prosperity everywhere".

Yet, while it is in their common long-term interest to facilitate economic and social progress on the continent by complying with economic and social rights, each State may individually consider that it is in its short-term interest not to accept far-reaching commitments that may have budgetary implications and negatively affect the cost competitiveness of businesses within its jurisdiction. The wrong but widespread perception of social expenditure -- in healthcare, education, early childhood care and education, lifelong training or adequate and affordable housing -- as costs, rather than as an investment essential for sustainable development and for long-term growth and competitiveness, further contributes to this conundrum.

4. Sixty years after the initial adoption of the Charter, thirty years after the adoption of the Turin Protocol of 1991 reforming the supervisory mechanism,¹¹ and twenty-five years after the adoption of the revised version of the Charter, it is time to draw the lessons from what has been achieved and to provide a new impetus. Building on the results of the Turin process launched by the High-Level conference on social rights convened in Turin on 17-18 October 2014 and on the proposals explored by the Steering Committee on Human Rights (CDDH),¹² the High-Level Expert Group of Social Rights Advisors (SGAs) wishes to put forward a number of proposals that could encourage States to overcome these obstacles.

5. Most of these proposals can be implemented by a change in working methods of the organs involved in the supervision of the Charter. Some would require decisions by the Committee of Ministers, the organ responsible under articles 21 and 22 of the Charter for defining the Form for Reports to be submitted by States. Only a limited number of the proposals would require the negotiation of a new Amending or Additional Protocol. Whatever the means of implementation, for the Charter to deliver all its potential for the benefit of the 47 member States and their combined population of more than 830 million people, political support is crucial: the Charter's relevance in the

¹¹ C.E.T.S., n°142.

¹² *Improving the Protection of Social Rights in Europe*, vol. II: *Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe* (adopted by the CDDH at its 91st meeting (18-21 June 2019)) (hereafter referred to as the "CDDH 2019 Report").

future, and its ability to ensure that social progress benefits all groups of society, will depend on the commitment of States to contribute to this endeavour.

6. The proposals listed below are guided by a sense of urgency. The financial and economic crisis of 2008-2009, which led to a sovereign debt crisis on the European continent, already served to highlight the essential stabilizing role of social rights in the context of economic downturns, and their role in guiding the economic recovery. The major economic recession resulting from the Covid-19 pandemic has again brought to light the need to further strengthen social resilience of European societies, by increasing investment in sectors such as healthcare and education that are essential to the well-being of the European population, and by improving the protection of workers and families to allow them to better withstand economic shocks. Changes in the world of work, including the increase in precarious and non-standard forms of employment and the gig economy, also require a rethink of the role of the Charter in order to ensure its continued relevance. The Charter is the instrument the member States of the Council of Europe have adopted to help them achieve common progress in this fast-changing environment, while taking into consideration the differences between the member States and the specificities of the national context of each.

The SGAs believe that the proposals listed in this report can strengthen the confidence in the Charter's mechanisms of protection, reinforce the system of the Charter and improve its effectiveness, and encourage States to further extend their commitments under the system of the Charter. The ultimate objective is to strengthen the protection of the full range of rights guaranteed in the Charter, recognising that all these rights are interconnected and mutually supportive, and that the Charter can improve democratic governance at domestic level, not least by increasing the opportunities for social partners and for civil society to be involved in designing and assessing the policies that contribute to the fulfilment of social rights.

7. With these objectives in mind, the report is divided in five chapters. Chapter I of the report addresses the supervisory mechanism of the European Social Charter (I), considering in turn the reporting system (1), the collective complaints mechanism (2), and the composition of the European Committee of Social Rights (3). Chapter II considers the substantive commitments of the States parties to the Charter, examining how to ensure that the *à la carte* system of the Charter does not impede upwards social convergence across Europe (1), and addressing the question of the personal scope of the Charter (2). Chapter III brings together proposals that could improve the implementation of the Charter at domestic level. Chapter IV presents the views of the SGAs concerning the future relationship of the European Social Charter with the European Union. The report closes with some final considerations.

I. The supervisory mechanism of the European Social Charter

1. Reporting under the Charter

8. The submission by States Parties to the Charter of periodic reports is the main tool for supervising compliance with the Charter, allowing the European Committee of Social Rights to assess whether States are in compliance with their social rights obligations under the Charter. It should not be seen as a bureaucratic, or "box-ticking", exercise. Rather, it provides an opportunity for States to enter into a dialogue with the

social partners and with civil society to assess the situation of the country under the Charter. It encourages different departments across government to ensure appropriate coordination with a view to realising the Charter's rights, allowing synergies to emerge and putting an end to inconsistencies -- for instance, between macroeconomic and fiscal policies and health, social protection or education objectives, or between the creation of a business-friendly environment intended to attract investment and a reinforced social dialogue ensuring that general economic progress is more equally spread. Reporting is also a condition for a fruitful exchange to develop with the European Committee of Social Rights, which can contribute to ensure upwards social convergence across Europe, by ensuring that remaining gaps are addressed and that States find inspiration in the good practices they highlight in their respective reports. In turn, the conclusions adopted by the Committee can feed into the democratic debate at domestic level, allowing full ownership of the Charter's aspirations by national parliaments and other actors, including social partners and civil society.

There is therefore considerable potential in State reporting. Properly conceived, reporting encourages self-assessment by governments. It improves policy coherence. It supports collective learning across countries. And it empowers national actors. The current organisation of reporting, however, fails to fully tap that potential.

9. Since October 2014, the States Parties report on the implementation of the Charter following along two tracks. The States Parties which have not accepted the collective complaints procedure submit annually a report indicating how they implement the Charter in law and in practice. Each report focuses on a subset of the accepted provisions of the Charter, on the basis of the division of these provisions in four thematic groups of rights.¹³ States Parties which have accepted the collective complaints procedure have to provide a national report every two years only, covering one thematic group of rights. These reports alternate with the presentation by these States, also every two years, of a simplified report explaining what follow-up action has been taken in response to the decisions of the Committee on collective complaints.¹⁴

The SGAs note that the reforms made to the reporting procedure in 2007 (dividing the Charter into four thematic groups of rights to cover a full cycle every four years) and in 2014 (with the introduction of simplified reports for States Parties that have accepted the collective complaints procedure) are sometimes perceived to have led to a reporting system that is unnecessarily cumbersome and complicated. The SGAs believe that the supervisory system of the Charter could become more targeted in order to make a better contribution to the effective protection of social rights and ensure a more efficient use of the resources available.

10. In order both to ease reporting and to improve the relevance of the procedure and its ability to adapt to new trends, the SGAs recommend to distinguish between regular reports and interim special reports; to generalize a four-years reporting cycle; and to move towards a simplified reporting procedure. They propose the following:

A simplified reporting procedure for regular reports

¹³ This approach was inaugurated in 2007, following a decision of the Committee of Ministers.

¹⁴ In the past, States parties also submitted additional reports on conclusions of non-conformity for repeated lack of information one year after the adoption of such conclusions by the ECSR. This practice has now been abandoned.

11. The SGAs support introducing a **simplified reporting procedure** for the ordinary thematic reports presented by States.

This would be based on the preparation by the European Committee of Social Rights of a list of questions, limited in number, focusing on the most important challenges faced by the State concerned under the accepted provisions of the Charter. The questionnaires drawn up by the European Committee of Social Rights could be sent to the States six months in advance of the examination of the State's response, such response constituting the State report for the purposes of article 21 of the Charter. The thematic reports would therefore provide the European Committee of Social Rights, not with a systematic examination, paragraph by paragraph of the Charter, of the implementation in the State party considered, but with a set of responses to the questions raised by the Committee, on the topics most relevant for that State. In order to allow the Charter's supervisory system to be more adaptive, thus increasing its relevance, the thematic reports submitted by States could provide the most up to date information possible, rather than remaining within a specified period of reference.

The current practice is already for the Committee to prepare a questionnaire to guide the States in the preparation of their reports. The simplified reporting procedure, however, would consist in the drawing up of a questionnaire containing, in addition to questions addressed to all States Parties, a limited set of questions specific to each State, based on the identification of the most significant challenges faced by the State in the areas covered by the Charter. The simplified reporting procedure would thus allow the thematic reports to be more focused, and to go in greater depth on the most salient issues.

12. For the States Parties having accepted the collective complaints procedure, the simplified reporting procedure would also avoid the risk of duplication, since the list of questions addressed to those States would not include questions addressed in collective complaints, whether these are pending or whether they have already been decided. This would constitute an encouragement for States to accept the collective complaints procedure, since their regular reporting obligations would be made lighter as a result.

Regular thematic reports: towards a generalized four-years cycle of reporting

13. The SGAs favour a reporting calendar according to which **the States Parties would report, every four years, on the full range of the provisions of the Charter they have accepted.** This would increase the readability and the visibility of the reporting process. It would better reflect the interdependence of all the rights of the Charter. It would facilitate engagement of employers' and workers' organisations, non-governmental organisations, and national human rights institutions, in the reporting process.

For the purposes of reporting, the States Parties would be placed in four groups, the Committee examining one group of States each year, allowing meaningful comparisons between States.¹⁵ The collective learning function of State reporting,

¹⁵ Indeed, this function is greatly facilitated by the "general introduction" section introducing the conclusions adopted by the European Committee of Social Rights, as well as by the "statements of

based on comparisons across countries, would thus be maintained. Graphically, the reporting system would appear as follows:

	Group A	Group B	Group C	Group D
year 1	Full report		Interim special report	
year 2		Full report		Interim special report
year 3	Interim special report		Full report	
year 4		Interim special report		Full report

14. While, as a rule, each State Party would report every four years on the full range of accepted provisions of the Charter, as regards the provisions of the Charter for which the European Committee of Social Rights has adopted a conclusion of conformity of the legislation and practice of the State concerned, the report presented during the next cycle could include only any significant developments in legislation or practice that might affect the finding of non-conformity; no systematic presentation of the situation of the State Party under the concerned provision would be required.¹⁶

15. At the same time, the SGAs acknowledge the advantages associated with the current reporting system in which States Parties report annually on a thematic group of rights. This allows an in-depth examination of certain thematic issues, based on the comparison between evolutions across States. It facilitates the identification of general trends and issues of interpretation. And, for States Parties that have accepted the collective complaints procedure, which report every two years under a particular thematic group of rights (so that the full cycle is covered in eight years), the reporting burden is lighter (though this was until recently in part compensated by the fact that these States reported every two years on the follow-up given to the decisions adopted on the collective complaints lodged against them.) Ultimately, it will be for the Committee of Ministers to weigh the pros and cons associated with each formula, in accordance with its functions under article 21 of the Charter.

Interim special reports

16. In the interval between two thematic reports each covering the full range of rights of the Charter, the Committee would request from each State Party an **interim special report covering emerging issues**, based on a short questionnaire allowing an in-depth examination of these issues.

Such interim special reports would allow the Committee to react swiftly to new developments, such as for instance an economic crisis, a sudden rise in migratory flows, or a pandemic, thus providing guidance to States Parties as these new developments occur. It would ensure that the cycles approach does not create an

interpretation" which provide much needed guidance on the interpretation of the Charter. The SGAs encourage the continuation of this practice, which supports the efforts at domestic level of governments, courts, social partners and civil society to contribute to the implementation of the Charter (see further below, paragraph 19).

¹⁶ This, in effect, is already the practice since 2008, in the Form for Reports.

obstacle to the Committee fulfilling effectively its monitoring function in times of crisis, a particularly important consideration for the States Parties that have not accepted the collective complaints procedure. It also would be consistent with article 21 of the Charter, which refers to the presentation by States Parties of biennial reports.

Facilitating exchanges of information between the European Committee of Social Rights and States Parties

17. To avoid situations in which a lack of sufficient information impedes the possibility for the European Committee of Social Rights to make an assessment, each State could be requested to identify a **focal point within the national administration** specifically tasked with providing the Committee, at short notice if necessary, with the information required to allow the Committee to adopt its conclusions of conformity or non-conformity. This would be in conformity with the spirit of article 24 § 3 of the Charter, as amended by the 1991 Turin Protocol, which provides that the European Committee of Social Rights "may address requests for additional information and clarification directly to Contracting Parties" in the course of the examination of State reports. These focal points could also play an important role in the follow-up to the conclusions and decisions of the European Committee of Social Rights (see further below, paragraph 45).

18. The SGAs also note that the Rules of the European Committee of Social Rights provide for the possibility of holding **meetings with representatives of the State examined**, and of involving national organisations of employers and trade unions in such meetings, with the agreement of that State.¹⁷ They would encourage a more systematic use of that possibility. Such meetings would provide an opportunity for the European Committee of Social Rights to improve its understanding of the national situation under examination. It could take the form of in-person meetings, or of virtual meetings relying on video-conferencing.

The role of statements of interpretation

19. The European Committee of Social Rights could develop further its practice of adopting **statements of interpretation** to provide guidance to States as to the scope of their obligations under the Charter and thus to further contribute to legal certainty.¹⁸ Such comments could in the future be developed through a transparent process allowing for the presentation by States of their views. The topics for such interpretative comments could be identified either by the European Committee of Social Rights itself, at its own initiative, or upon the suggestion of States parties. Consistent with the role entrusted to the European Committee of Social Rights, which article 24 § 2 of the Charter as amended by the Turin Protocol describes as being to "assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter for the Contracting Parties concerned",¹⁹ and with article 8 § 1 of the

¹⁷ Rule 21(3) of the Rules of the European Committee of Social Rights.

¹⁸ Another practice which contributes to legal certainty is for the European Committee of Social Rights to take into account findings by the other monitoring bodies of the Council of Europe, including the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). The SGAs welcome this practice, which they view as facilitating the implementation of the Charter by the States Parties.

¹⁹ Also reflected in Rule 2(1) of the Rules of the European Committee of Social Rights.

Additional Protocol on Collective Complaints, which provides that the Committee "present[s] its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint", the Committee is tasked with interpreting the nature and scope of the requirements of the Charter. The quality of the information on which it would base its statements of interpretation however, as well as its ability to address any concerns raised by the States as regards certain implications of the Charter for specific features of domestic legal systems, could be further improved by developing such a transparent process of adoption of statements of interpretation.

The follow-up to the conclusions adopted by the European Committee of Social Rights

20. As regards the follow-up to the conclusions adopted by the European Committee of Social Rights, the SGAs make the following recommendations:

(i) Consistent with articles 27 and 28 of the Charter and with the spirit of the Turin Protocol, the Governmental Committee and the Committee of Ministers should be encouraged to address individual recommendations to the States Parties which have been found to have failed to act in conformity with the Charter, unless information is provided by the State that provides assurance that the conclusions reached by the European Committee of Social Rights have been appropriately implemented. The supervisory role of the Committee of Ministers under the Charter should reflect the nature of the European Social Charter as a human rights instrument complementing the European Convention on Human Rights and the interdependence and indivisibility of all rights.

(ii) Consistent with article 29 of the Charter as amended by the Turin Protocol, the Parliamentary Assembly of the Council of Europe could also contribute to the implementation of the Charter by holding a debate on the annual conclusions of the European Committee of Social Rights and on the report of the Governmental Committee, as well as on the resolutions and recommendations adopted by the Committee of Ministers.

(iii) Similarly, to further encourage the States Parties to ensure adequate follow-up of the conclusions adopted by the European Committee of Social Rights on the basis of the regular and interim special reports they submit to the Committee, the Ministers in charge of employment and/or social affairs could be convened to regular meetings, for instance on a biennial basis, at which the annual conclusions of the European Committee of Social Rights could be presented, together with the report of the Governmental Committee and the resolutions and recommendations adopted by the Committee of Ministers. The re-establishment of the Steering Committee on Social Cohesion, together with the organisation of meetings at ministerial level, would constitute a welcome development in this regard.

2. Improving the collective complaints proceedings

The role of the European Committee of Social Rights in the examination of collective complaints

21. The entry into force of the collective complaints procedure in 1998 has significantly improved the effectiveness of the European Social Charter as a human rights instrument. It provides an opportunity for unions and employers' organisations and international non-governmental organisations to contribute to the supervision of the implementation of the Charter. It also constitutes a powerful encouragement for national human rights mechanisms, including courts and national human rights institutions, to contribute to the implementation of the Charter at domestic level, within their respective competences.

The SGAs have noted the strong support expressed towards the collective complaints mechanism by the 15 States Parties having accepted the procedure, in the collective statement they adopted on 19 September 2019, on the occasion of the seminar organised by the French Chairmanship of the Committee of Ministers. The CDDH however notes "a desire on the part of the States for more legal certainty as regards both the conduct of the collective complaints procedure and the interpretation of the provisions of the (revised) Charter in the decisions taken on collective complaints".²⁰ Concerns about legal certainty are cited among the main reasons by States for not accepting the collective complaints procedure or for not increasing the level of their commitments under the European Social Charter.

22. The **adversarial character of the proceedings** is important to ensure the quality of the decisions adopted by the European Committee on Social Rights on collective complaints. The Rules of the European Committee of Social Rights already provide for ample possibilities for the parties to the proceedings to comment on questions of admissibility of complaints and on third-party interventions, as well as for each party to respond, including through oral hearings (which could take the form of videoconferencing), on questions of fact and law raised by the complaint. These possibilities could be used more systematically in the future.

The follow-up to the decisions adopted by the European Committee of Social Rights on collective complaints

23. The follow-up to the decisions adopted by the European Committee of Social Rights on collective complaints could be further strengthened. It would be consistent with article 9, § 1, of the Additional Protocol on Collective Complaints if the Committee of Ministers were to **take full responsibility to ensure the follow-up to the decisions of non-conformity adopted on the basis of collective complaints on a systematic basis**. This would allow the European Committee of Social Rights to focus its work on the examination of the collective complaints filed under the complaints procedure, and on the examination of the thematic reports by States, leaving follow-up to the intergovernmental organs of the supervisory system of the Charter.

This requires the presentation by States parties of **action plans** describing the measures they intend to adopt in order to ensure that they are in conformity with the Charter. It also requires the establishment within the Committee of Ministers, with appropriate support from the Department of the European Social Charter, of an *ad hoc* procedure for the supervision of the implementation of the decisions adopted by the European Committee of Social Rights.

²⁰ CDDH 2019 Report, para. 95.

24. Until recently, the practice has been for the States Parties having accepted the collective complaints procedure to present simplified reports on a biannual basis describing the follow-up to the collective complaints having led to a finding of non-conformity. This practice should be abandoned in the future, as the Committee of Ministers exercises its supervisory role more systematically. Until this happens, should the European Committee of Social Rights decide to request from the States Parties concerned that they present simplified reports on the follow-up to the collective complaints which have led to a finding of non-conformity, this could be limited to a maximum of two cycles for each finding of non-conformity, after which the situation could be presented to the Committee of Ministers in order to allow it to adopt a recommendation addressed to the State concerned.

3. The composition of the European Committee of Social Rights

25. Thirty years ago, the 1991 Protocol amending the European Social Charter (Turin Protocol) anticipated that the members of the European Committee of Social Rights would be "elected by the Parliamentary Assembly ... from a list of experts of the highest integrity and of recognised competence in national and international social questions, nominated by the Contracting Parties".²¹ Ten years ago, the Parliamentary Assembly of the Council of Europe recommended to implement this proposal pending the ratification of the 1991 Protocol by all the States Parties to the European Social Charter.²² The SGAs strongly support this recommendation. In the interim period, at the very least, candidates to the European Committee of Social Rights could be screened and interviewed by an independent panel of experts appointed by the Parliamentary Assembly of the Council of Europe to provide additional elements ahead of the election by the Committee of Ministers and ensure at least minimal transparency. In addition to assessing the suitability of individual candidates, the screening process should take into account gender balance, an equitable geographical representation across European regions, and the need for the Committee to include experts with different backgrounds, including an appropriate balance of academics, members with judicial experience, and practitioners.

26. It has sometimes been suggested that, in order to allow it to cope with an increasing workload, the number of members of the European Committee of Social Rights should be increased, for example from the current 15 to 18 members. In the view of the SGAs however, the crucial point is not the number of Committee members, but rather their ability to dedicate themselves to the work of the Committee during the term of their mandate. The increase in the number of meeting days (as mentioned further below) should go hand in hand with allowing the members to be compensated for their work, which will be more demanding in the future, as both the number of ratifications of the Additional Protocol on Collective Complaints and the number of complaints lodged will rise.

27. Different proposals have been made to ensure that the domestic situation be fully considered, in all its complexity, when examining collective complaints. One proposal,

²¹ Article 3 of the 1991 Protocol amending the European Social Charter, amending Article 25 of the European Social Charter.

²² PACE Recommendation 1958 (2011), Monitoring of commitments concerning social rights, para. 4.5.

considered by the Committee of Ministers, was to provide the European Committee of Social Rights with the assistance of an *ad hoc* expert, who would satisfy the requisite criteria for membership in the European Committee of Social Rights, in proceedings concerning a specific collective complaint where no national of the respondent State is a member of the Committee at that time.

28. The SGAs have carefully considered this possibility as well as other proposals made in a similar vein. They arrived at three conclusions:

(i) First, the single most effective way to ensure that the circumstances specific to each State are carefully considered by the European Committee of Social Rights in the examination of collective complaints is to **increase the number of meeting days of the Committee as well as the resources of the Secretariat assisting the Committee**. This is indispensable in order to allow the European Committee of Social Rights to cope with its increased workload in the future, and to ensure that the national situations are considered at the level of detail that the States have a right to expect.

(ii) Secondly, the **adversarial nature of the procedure for the examination of the complaint**, both at the admissibility and at the merits stages, provides the possibility both for the complaining organisation and for the State concerned to inform the views of the Committee. Resources allowing, a more systematic organisation of oral hearings, as allowed under article 7(4) of the Collective Complaints Protocol, would further strengthen this. Videoconferencing facilities could be relied on where in-person hearings either are impractical or cannot be organized within the limits of available resources.

(iii) Thirdly, Rule 32A of the Rules of the European Committee of Social Rights provides that, at the suggestion of the Rapporteur, "the President may invite any organisation, institution or person to submit observations" on the merits of a complaint. More systematically **requesting from national human rights institutions that they contribute observations** to inform the Committee's views would not only further improve the quality of the information provided to allow the Committee to assess a particular situation brought to its attention; it would also encourage a greater involvement of national human rights institutions in the implementation of the Charter at domestic level.

II. The substantive commitments of the States Parties

1. Extending the scope of commitments of the States Parties to the European Social Charter

29. Article 20 of the European Social Charter provides that States Parties may, within certain limits, accept only a limited range of commitments under the Charter. On the one hand, this is a useful flexibility device, allowing States to accede to the Charter even if certain aspects of their domestic legislation are not in line with the Charter's requirements. On the other hand however, by joining the Charter, the States agree to be bound by the principles of Part I of the Charter, and the non-acceptance of certain paragraphs or articles of the Charter was intended to be a temporary device, introduced to encourage States to join the Charter, but that should not lead to a

permanent inequality between States: it is clear from article 20 § 3 that States Parties are encouraged to gradually increase the extent of their commitments.

30. Article 22 of the Charter provides that States shall report on the provisions of Part II of the Charter that they did not accept. The submission of reports on non-accepted provisions of the Charter is consistent with the undertaking of the States Parties under Part I of the Charter, to "accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the [full range of] rights and principles [listed in Part I] may be effectively realised". To encourage States Parties to reduce the number of paragraphs or articles of the Charter they do not accept because objective factors beyond their control impede them from doing so, **the review of the reports on non-accepted provisions could be strengthened.**²³ The SGAs considered two means of achieving this, that could operate in combination:

31. First, in expressing its views on the basis of the reports submitted by States Parties on the non-accepted provisions, the European Committee of Social Rights should continue and further strengthen its existing practice of considering in its assessment, *inter alia*, that : (i) a discrepancy between the prescriptions of the Charter and administrative practice within a State does not, taken alone, justify non-acceptance of a specific provision of the Charter; (ii) while an incompatibility between the state of domestic legislation and a provision of the Charter may justify that a State party does not initially accept that provision, this alone cannot justify the continued non-acceptance, after the State concerned has had a reasonable time to amend the concerned domestic legislation; a period of five years following the initial accession to the Charter should generally be considered reasonable; (iii) while budgetary constraints or the inability of the State to mobilize sufficient resources to fulfil the rights of the Charter may justify non-acceptance of certain provisions compliance with which may have significant budgetary impacts, such a justification should in principle only be acceptable if the State demonstrates that it would not be in a position to guarantee the right in question, even with reasonable efforts, taking into account the totality of the rights listed in the European Social Charter.

32. Secondly, **the Committee of Ministers could be more closely involved in the review.** When adopting the annual resolution covering the supervision cycle (accepted provisions) and containing recommendations to the States Parties concerned (in accordance with article 28 of the Charter as amended by the 1991 Protocol), it could also address recommendations to those States whose reports on non-accepted provisions have been examined that year by the European Committee of Social Rights. Such recommendations could explicitly recommend the State concerned to consider accepting the non-accepted provisions for which the ECSR has expressed a positive view.

33. In order to reduce the uneven implementation of the Charter across States, another option, albeit one that would require amending the Charter, would be to **expand the number of the Charter's 'core provisions'** and to **increase the minimum number of such provisions to be accepted by States parties.** For example, the acceptance

²³ In accordance with article 22 of the European Social Charter and the decision of the Committee of Ministers of 11 December 2002 (decision adopted at the 821st meeting of the Ministers' Deputies), States parties report on the non-accepted provisions every five years following ratification.

of all the Charter's core provision could be made mandatory, or/and the right to a fair remuneration (art. 4), the right to protection of health (art. 11) or the right to housing (art. 31) could be added to the list of 'core provisions'.

2. The personal scope of the Charter

34. Under the first paragraph of the Appendix to the Charter, the (revised) Charter applies to nationals, but to "foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned". As a consequence, States Parties are not obliged to ensure the social rights laid down in the (revised) Charter notably to nationals of non-States Parties even if these persons are lawfully resident or working regularly within the territory of the State concerned, unless they are refugees as defined under the Geneva Convention of 28 July 1951 on the status of refugees or stateless persons as defined in the 1954 New York Convention on the Status of Stateless Persons.

35. The European Committee of Social Rights has taken the view, however, that, since "[h]uman dignity is the fundamental value and indeed the core of positive European human rights law", and since "health care is a prerequisite for the preservation of human dignity", "legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter".²⁴ The European Committee of Social Rights has thus extended the personal scope of application of the (revised) Charter also to third-country nationals and to unlawfully present foreign migrants in exceptional circumstances, namely if excluding such foreigners from the protection afforded by the Charter would affect the most basic rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health).²⁵

The States Parties to the (revised) European Social Charter have expressed doubts about this interpretation of the Charter. They have also not accepted the suggestion, expressed in a letter of the President of the European Committee of Social Rights of 13 July 2011, to unilaterally abolish the limitation on the personal scope of the Charter as specified in paragraph 1 of the Appendix in order to extend the application of the (revised) Charter to everyone within their jurisdiction.²⁶

36. The position adopted by the European Committee of Social Rights is consistent with the nature of the European Social Charter as a human rights instrument. Under international human rights instruments ratified by all the member States of the Council of Europe, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, differences of treatment on grounds of nationality or on residency status are a form of prohibited discrimination unless they are based on legitimate objectives and

²⁴ E.C.S.R., *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, paras. 31-32.

²⁵ E.C.S.R., *Defence for Children International v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, paras. 28–39; E.C.S.R., *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, para. 19.

²⁶ Para. 1, second sentence, of the Appendix to the European Social Charter provides that the restriction to the coverage of the Charter *ratione personae* "would not prejudice the extension of similar facilities to other persons by any of the Parties".

are not disproportionate.²⁷ The Convention on the Rights of the Child has also been interpreted as prohibiting such discrimination.²⁸ In its general recommendation No. 30, the Committee on the Elimination of Racial Discrimination took the view that, under the International Convention for the Elimination of All Forms of Racial Discrimination, "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim".²⁹

37. Under the European Convention on Human Rights itself, the non-discrimination clause of Article 14 has been successfully invoked in a wide range of situations involving social rights to prohibit discrimination on grounds of nationality, for instance in the area of social security³⁰ or parental leave allowances.³¹ Indeed, the European Court of Human Rights has taken the view that "very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention."³² Nationality is thus considered to constitute a "suspect" ground, requiring that any difference of treatment grounded on nationality be justified by particularly strong reasons, which must be strictly necessary to achieve the objectives pursued. Discrimination on grounds of residency status is also prohibited under Article 14 ECHR,³³ although the level of scrutiny applied is less strict.³⁴ The European Court of Human Rights does acknowledge that States may have "legitimate reasons for curtailing the use of resource-hungry public services – such as welfare programmes, public benefits and health care – by short-term and illegal immigrants, who, as a rule, do not contribute to their funding" and that they "may also, in certain circumstances, justifiably differentiate between different categories of aliens residing in its territory", for instance to extend to citizens of the EU advantages granted to nationals, in

²⁷ See, for the International Covenant on Civil and Political Rights, *Ibrahima Gueye et al. v. France*, Communication No. 196/1985, Views of 3 April 1989, CCPR/C/35/D/196/1985 (1989); Communication n°516/1992, *Simunek v. Czech Republic*, Views of 19 July 1995, CCPR/C/54/D/516/1992; Communication n° 586/1994, *Adam v. Czech Republic*, Views of 23 July 1996, CCPR/C/57/D/586/1994. For the International Covenant on Economic, Social and Cultural Rights, see Committee on Economic, Social and Cultural Rights, Statement on the Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1, 13 March 2017).

²⁸ Committee on the Rights of the Child, Concluding Observations: France (UN doc. CRC/C/FRA/CO/5, 23 February 2016), paras. 61-62; Committee on the Rights of the Child, Concluding Observations: Ireland (UN doc. CRC/C/IRL/CO/3-4, 1 March 2016), para. 68.

²⁹ Committee on the Elimination of Racial Discrimination, General Recommendation XXX on discrimination against non-citizens, adopted at the sixty-fifth session of the Committee (2005), para. 5.

³⁰ Eur. Ct. H.R., *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1141; *Koua-Poirrez v. France* (Appl. No. 40892/98), judgment of 30 September 2003.

³¹ Eur. Ct. H.R., *Petrovic v. Austria* (Appl. No. 20458/92), judgment of 27 March 1998, §§26–7.

³² *Gaygusuz v. Austria*, cited above, para. 42; *Koua-Poirrez v. France*, cited above, para. 46; Eur. Ct. HR (GC), *Andrejeva v. Latvia* (Appl. No. 55707/00), judgment of 18 February 2009, para. 87; Eur. Ct. HR (GC), *Biao v. Denmark* (Appl. No. 38590/10), judgment of 24 May 2016, paras. 93-94; Eur. Ct. HR (2nd sect.), *Dhahbi v. Italy*, judgment of 8 April 2014 (Appl. No. 17120/09).

³³ Eur. Ct. HR (2nd sect.), *Anakomba Yula v. Belgium* (Appl. No. 45413/07), judgment of 10 March 2009.

³⁴ Eur. Ct. HR (4th sect.), *Bah v. the United Kingdom* (Appl. No. 56328/07), judgment of 27 September 2011 (concerning access to social housing).

accordance with the requirements of the EU Treaties.³⁵ However, a case-by-case examination of the legitimacy and the proportionality of the difference in treatment remains required, to ensure that it does not result in discrimination.

38. It would certainly be odd if the States Parties to the European Social Charter were authorised under the Charter to maintain or to introduce differences of treatment on grounds of nationality or of residency status, that are prohibited under international human rights law: the mere fact that the States parties have agreed among themselves, in 1961, to exclude nationals from States that are not Parties to the Charter from its scope of protection cannot be considered, in and of itself, as a justification for such a difference in treatment.³⁶ The European Committee of Social Rights currently assesses on a case-by-case basis whether specific differences in treatment based on nationality or residency status resulting in depriving certain categories of persons from the protection of the Charter are acceptable, or not. This pragmatic approach allows to take into consideration a variety of factors such as the length of the duration in the host State or the nature of the right or benefit at stake. However, if the Charter were to be amended in the future, the SGAs would favour aligning the definition of the scope of application *ratione personae* with the nature of the Charter as a human rights instrument, and with the current state of international human rights law.

III. The implementation of the European Social Charter at domestic level

39. Strengthening the implementation of the European Social Charter at domestic level would reinforce the subsidiary character of the monitoring mechanisms of the Charter envisaged by Part IV of the 1961 European Social Charter (referred to in Article C of the Revised European Social Charter), as well as the effectiveness of the Charter within the territory of the State Parties. This requires increased efforts to teach the Charter in universities and in the training of judges. The SGAs also make the following recommendations:

The application of the Charter by domestic courts

40. A variety of initiatives could be taken in order to encourage domestic courts to apply the Charter's provisions in the cases they are presented with. They include regular exchanges organised between the European Committee of Social Rights and the judges of the supreme courts of the member States of the Council of Europe, the training of these judges where necessary, and the dissemination of good practices. The Council of Europe's HELP programme (Human Rights Education for Legal Professionals), which has been enriched in recent years with a greater emphasis

³⁵ Eur. Ct. HR (4th sect.), *Ponomaryoni v. Bulgaria* (Appl. No 5335/05), judgment of 21 June 2011, para. 54 (concerning the duty of aliens without a permanent residence permit to pay school fees). The Court found however, taking into account the role of secondary education and the fact that the applicants had not illegally entered the country in order to benefit from its educational system, that in the specific circumstances of the case the requirement for the applicants to pay fees for their secondary education on account of their nationality and immigration status was not justified, and that there had therefore been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 guaranteeing the right to education.

³⁶ As stated by the Human Rights Committee in *Karakurt v. Austria*, 'there is no general rule to the effect that such an agreement in itself constitutes a sufficient ground with regard to the requirements of article 26 of the Covenant. Rather, it is necessary to judge every case on its own facts.'

on social rights, could be strengthened to include the full range of the Charter's guarantees.

41. Consideration could also be given to the possibility of completing the system of the European Social Charter with an **advisory opinion procedure** permitting national courts to obtain interpretations of the relevant provisions of the Charter by the European Committee on Social Rights. This would constitute a powerful encouragement for domestic courts to take the Charter more systematically into consideration, either to apply its provisions directly, or to guide the interpretation of domestic law.

42. A delegation of the European Committee of Social Rights could also be provided with the possibility to conduct **visits in a State Party**, at the invitation of that State, in order to have direct exchanges with national and sub-national authorities, as well as with social partners and non-governmental authorities, to promote the understanding of the Charter in the country.

Taking the Charter into account in law- and policy-making

43. **European Social Charter compatibility assessments prior to the adoption of legislation or policies could be made more systematic**, in order to ensure that the bodies responsible -- whether these are parliamentary committees, national human rights institutions, or specialized bodies tasked by parliamentary assemblies with such assessments -- take the Charter systematically into account when assessing the compatibility of legislative or policy initiatives with the human rights obligations of States. The members of the Parliamentary Assembly of the Council of Europe have a unique role to play in this regard, to ensure that national legislative assemblies fulfil their role in accordance with the Charter.

Establishing a national follow-up mechanism

44. Each State could be encouraged to put in place a **national mechanism to follow-up on the conclusions and decisions of the European Committee of Social Rights**, involving in this mechanism representatives from all relevant ministerial departments, to ensure the full range of areas covered by the Charter are represented. Independent national human rights institutions could facilitate this process. In countries organized as federal systems, both the federal and the regional levels should be represented within such a mechanism, to ensure proper coordination in the implementation of the Charter's requirements.

45. The Committee of Ministers could consider adopting a recommendation identifying how States could best establish such a national mechanism.³⁷ The continuity of the staff involved in the implementation at domestic level of the conclusions and decisions adopted by the European Committee of Social Rights contributes to the effectiveness of such implementation,³⁸ and this mechanism could also fulfil the role of a focal point within the national administration to respond to questions of information of the

³⁷ Comp. for the European Convention on Human Rights Recommendation Rec(2004)6 of the Committee of Ministers to Member States on the improvement of domestic remedies, adopted by the Committee of Ministers on 12 May 2004 at its 114th session.

³⁸ CDDH 2019 Report, para.189.

Committee, when such questions arise in the examination of State reports (see paragraph 17 above). Regular exchanges, for instance on an annual basis, could take place between the European Committee of Social Rights and these focal points.

Facilitating access to the interpretation of the Charter by the European Committee of Social Rights

46. In order to support the national authorities' role in taking into account the Charter, ensuring that they have easy access to the guidance provided by the European Committee of Social Rights is essential.

The ECSR Digest of the Case Law, provided it is regularly updated, ideally on an annual basis, should play an important role in this regard. The conclusions and decisions of the European Committee of Social Rights should also be made available in the language of the State Party to which they are addressed, in order to facilitate its use by domestic authorities and to serve as a reference in the public debate.

These proposals again raise the question of the resources available to the Department of the European Social Charter, to maintain the continued relevance of the Digest and ensure its dissemination. The SGAs encourage each State Party to commit to translating the conclusions and decisions addressed to it in the national language(s).

IV. The relationship of the European Social Charter to the European Union

47. The SGAs also believe new initiatives are warranted to improve the synergies between European Union law and the European Social Charter. They are aware, of course, that this question concerns only 27 States Parties, and is of little relevance to the others. For those 27 States Parties however, this is an issue that is too important to be ignored, and there exists at this juncture in time a new momentum allowing to make progress.

48. As a result both of the strengthening of social rights in the European Union legal order and of the improvements to the original 1961 Charter, the interactions between the ESC and the EU have become more common. EU secondary legislation inspired a number of provisions that were included in the 1988 Additional Protocol to the European Social Charter and in the 1996 Revised Charter, which updated and extended the list of guarantees included in the original instrument. The European Committee of Social Rights is routinely led to assess whether national measures implementing EU law comply with the requirements of the European Social Charter. This occurs both under the standard reporting procedure, but also in the examination of collective complaints, since 14 EU Member States have accepted the Additional Protocol on Collective Complaints.

49. Unfortunately, some developments concerning the protection of fundamental rights in the EU legal order have largely ignored the European Social Charter. Although the European Social Charter is referred to in the EU treaties, the EU Charter of Fundamental Rights initially proclaimed in 2000 borrowed only selectively from the

Council of Europe Social Charter as a source of inspiration for its social provisions.³⁹ The impact assessments accompanying legislative proposals of the European Commission, although they refer to the EU Charter of Fundamental Rights since 2005,⁴⁰ do not refer directly to the European Social Charter. The Court of Justice of the European Union has not compensated for this: although it has occasionally referred to the European Social Charter as providing guidance for the interpretation of EU law,⁴¹ it has not aligned the European Social Charter with that of the European Convention on Human Rights as a source of inspiration for the development of fundamental rights as general principles of law that it ensures respect for, in accordance with Article 6(3) of the Treaty on the European Union.

50. While the cooperation between the EU and the Council of Europe in the field of social rights has been growing in importance in recent years -- as also illustrated by the establishment in 2015 of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on social and economic rights --, this has not fully compensated for these structural deficits. Even the proclamation of the European Pillar of Social Rights in November 2017 is not a substitute for strengthening the links between the EU legal order and the European Social Charter. While a significant event in its own right -- since the EU institutions clearly acknowledged the need to balance macro-economic objectives and budgetary and fiscal disciplines imposed on EU Member States against the requirements of social rights --, the European Pillar of Social Rights is not a new catalogue of rights, complementing the rights of the EU Charter of Fundamental Rights in the areas insufficiently covered by this instrument: the principles of the Pillar are not enforceable in the absence of implementing measures.⁴²

51. **The current situation is therefore unsustainable.** The lack of coordination creates the risk of conflicting obligations imposed on the EU Member States, respectively as members of the EU and as States Parties to the European Social Charter. The failure to take better into account the European Social Charter within the EU's law- and policy-making is also the source of tensions that result from the prescriptions addressed to the Euro Area Member States, under the European semester or for Euro Area Member States under financial assistance.

52. The EU Member States have "confirm[ed] their attachment to fundamental social rights as defined in the European Social Charter" in the Preamble to the Treaty on the European Union,⁴³ and they further committed to build on the European Social Charter in Article 151 of the Treaty on the Functioning of the European Union, as well as in the Preamble of the EU Charter of Fundamental Rights. Moreover, the 2007 Memorandum

³⁹ OJ C 364 of 18.12.2000, p. 1. For the current version of the EU Charter of Fundamental Rights, following adaptations to allow its insertion in the European Union Treaties, see OJ C 303 of 14.12.2007, p. 1.

⁴⁰ See SEC(2005)791, 15.6.2005.

⁴¹ See, e.g., Case C-116/06, *Sari Kiiski*, judgment of 20 September 2007 (EU:C:2007:536), paras. 48-49; Case C-341/05, *Laval un Partneri Ltd.*, judgment of 18 December 2007 (EU:C:2007:809), para. 90; Case C-268/06, *Impact*, judgment of 15 April 2008 (EU:C:2008:223), paras. 113-114; Case C-579/12 RX-II, *European Commission v. Strack*, judgment of 19 September 2013 (EU:C:2013:570), paras. 26-27.

⁴² See the Commission Staff Working Document: Monitoring the Implementation of the European Pillar of Social Rights, SWD(2018) 67 final of 13.3.2018, p. 4.

⁴³ See 5th preambular paragraph of the EU Treaty, OJ C 83 of 30.3.2010, p. 13.

of Understanding between the Council of Europe and the European Union⁴⁴ stipulated that, when developing its standards in the field of human rights, the EU will refer to the relevant Council of Europe norms and will take into account the decisions and conclusions of its monitoring bodies, although this should not prevent the Union from providing a higher level of protection.⁴⁵

53. Consistent with these pledges, **the European Social Charter could play a greater role in impact assessments accompanying the legislative proposals of the European Commission**: such impact assessments could include explicit references to the European Social Charter in the guidelines for impact assessments of legislative proposals prepared by the European Commission. This would go a long way towards reducing the risk that the EU Member States are faced with conflicting international obligations, imposed respectively under EU law and under the European Social Charter.

54. **The EU Member States could also be encouraged to align the range of their undertakings under the European Social Charter, in order to improve the uniform application of EU law**. At a minimum, the EU Member States could be recommended to accept all the paragraphs listed in the (revised) European Social Charter among the core rights of this instrument.⁴⁶ In addition, the European Commission could list the provisions that are most closely connected with EU secondary legislation, and which, if accepted by all EU Member States, would strengthen the effectiveness and the uniform application of EU law.

55. Finally, **the process of accession of the EU to the European Social Charter could be initiated**. Such accession has been envisaged on various occasions, ever since the "Spinelli" Treaty on the European Union of 1984, and the European Parliament has unequivocally expressed itself in favor.⁴⁷ Considering the large number of areas covered by the European Social Charter in which the EU has been attributed certain powers by the Member States, as well as the potential for further legislative instruments to be adopted in these areas, the EU could accede to the European Social Charter on the basis of Article 216(1) TFEU: the relationship of the EU to this instrument would be very similar to that it has developed with the UN Convention on the Rights of Persons with Disabilities, which the EU acceded to in 2009.⁴⁸ Moreover, the objections raised by the Court of Justice of the European Union in Opinion 2/13 of 18 December 2014 concerning the accession of the Union to the European Convention on Human Rights either would not apply to the accession to the European Social Charter (due to the differences between the supervisory mechanism established by the European Convention on Human Rights and the collective complaints mechanism),

⁴⁴ Memorandum of Understanding between the Council of Europe and the European Union, adopted at the 117th Session of the Committee of Ministers held in Strasbourg on 10-11 May 2007, CM(2007)74 (10 May 2007).

⁴⁵ See Memorandum of Understanding, cited above, paras. 17-19.

⁴⁶ Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 of the (revised) European Social Charter.

⁴⁷ European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078 (INI)), doc. P7_TA-PROV(2014)0173 para. 8 (a); European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)), P8_TA(2017)0010, para. 32.

⁴⁸ Council decision (2010/48/EC) on 26 November 2009 concerning the conclusion by the European Community of the UN Convention on the Rights of Persons with Disabilities, OJ L 23 of 27.1.2010, p. 35.

or could be met by the insertion of appropriate stipulations in the agreement providing for the accession of the Union to the European Social Charter.

Final considerations

56. The SGAs believe that the recommendations made in this report can significantly strengthen the monitoring of social rights in Europe and ensure the continued relevance of the European Social Charter. Some of the changes proposed relate to the **working methods** of the supervisory organs of the Charter or of other organs of the Council of Europe, or to those of national administrations within the States Parties. These changes relate to the improved collaboration between the European Committee of Social Rights and the States Parties by the establishment of focal points within the national administration (para. 17), by the holding of meetings with States Parties' representatives (para. 18) or of oral hearings in the examination of collective complaints (paras. 22 and 28(ii)); to the form of the reports presented by States Parties (paras. 14 and 16); or the facilitation of the implementation of the Charter at domestic level by the elaboration of statements of interpretation (para. 19) or the regular updating of the ECSR Digest of the Case Law (para. 46).

Other changes recommended in this report will require a **decision of the Committee of Ministers**: they include in particular the introduction of a simplified reporting procedure (paras. 11-12), the distinction between the regular thematic report following a four-years cycle and interim special reports (para. 16). Still other changes may require an **amendment of the Charter texts**, in particular to expand the number of the 'core provisions' of the Charter and the minimum number of provisions States Parties should accept in the à la carte system of the Charter (para. 33); to align the Appendix of the Charter on the personal scope of application with the requirements of international human rights law (para. 38); to introduce the possibility for domestic courts to request an advisory opinion from the European Committee of Social Rights, when faced with questions of interpretation of the Charter (para. 41); or to allow for the accession of the European Union to the Charter (para. 55).

57. Strengthening social rights in accordance with the recommendations above requires additional resources. Both the number of meeting days for the European Committee of Social Rights and the support provided by the Secretariat and the Department of the European Social Charter may have to increase, to allow for the preparation of targeted questionnaires in a simplified reporting procedure (para. 11), for meetings with States Parties' representatives to take place in the examination of States' reports (para. 18), and for oral hearings to take place more frequently in the examination of collective complaints and to ensure appropriate follow-up of the decisions of the Committee (paras. 22, 23 and 28(ii)). More resources would also be required for statements of interpretation to be prepared based on a consultation with States Parties (para. 19), and for the updating of the ESCR Digest of the Case Law (para. 46).

58. Most of the proposals outlined above could be implemented swiftly, by a change in the working methods of the bodies involved in supervising compliance with the European Social Charter or by the adoption of a decision or a recommendation of the Committee of Ministers. The SGAs believe however that, at this stage of the development of the European Social Charter, thirty years after the initial establishment

of an *ad hoc* committee on the European Social Charter (Charte-Rel), an *ad hoc* Conference of the Parties should be convened to give a new impulse to the reform process. The Conference could seek to achieve agreement on (i) amendments to the Charter and the Additional Protocol on Collective Complaints (see paragraph 56); (ii) launching preliminary discussions on the accession of the European Union to the European Social Charter (para. 55); and (iii) launching negotiations on a new Additional Protocol adding rights to the existing list, in order to make the Charter fit for the 21st century. Among the most obvious candidates are the right to a healthy environment; the right to an adequate standard of living (including adequate access to food and water); the rights of workers in non-standard forms of employment (including gig economy workers); as well as the safeguards that could accompany the rise of digitisation and artificial intelligence.