

Call for submissions: Visit to the European Union by the UN Special Rapporteur on extreme poverty and human rights

ENNHRI Submission

ENNHRI, the European Network of National Human Rights Institutions, welcomes the visit of the UN Special Rapporteur on extreme poverty and human rights to the the European Union. We are delighted to contribute to your [call for submissions](#) related to this visit.

The ENNHRI submission' presents our network's views on the following issues:

- The constitutional architecture of the European Union and the added value of the European Pillar of Social Rights;
- The potential of the various social protection tools;
- EU's COVID-19 response and its impact on the rights of people living in poverty.

The submission is based on the *ENNHRI Statement: The EU must put economic and social rights at the heart of its economic response to COVID-19* and the *ENNHRI Submission to the Consultation for an Action Plan to Implement the European Pillar of Social Rights*. The full text versions of both statements are included as annexes to this document.

Responses to the selected questions of the call relevant to ENNHRI's work

- 1) *The protection of social rights in the constitutional architecture of the European Union, and the added value of the European Pillar of Social Rights for addressing poverty, inequality, and social exclusion.*

ENNHRI welcomes the proclamation of the European Pillar of Social Rights. We agree that this is a step in the right direction and it can have a potential to equalise EU social policies with its macroeconomic policies.

However, in line with [the ENNHRI Statement submitted to the consultation on the Action Plan to implement the European Pillar of Social Rights](#), we recall that all actions stemming from the Pillar and its Action Plan should be human rights-based and be anchored in the applicable human rights law. In line with the [Council Conclusions on EU priorities for cooperation with the Council of](#)

[Europe in 2020-2022](#)¹, we further recommend to link the Action Plan/ the Pillar to the (Revised) European Social Charter. in line with the Council Conclusions on EU priorities for cooperation with the Council of Europe in 2020-2022.

The European Pillar of Social Rights and actions stemming from the Action Plans should endorse a human rights-based approach (HRBA) to poverty and its measurement. This means that EU strategies in this area will not only focus on monetary poverty but address structural causes including existing human rights violations. This approach is endorsed by the 2030 Agenda for Sustainable Development.

The planned Action Plan should set a clear objective of the Pillar to contribute to the [2030 Agenda for Sustainable Development](#) while referencing the SDG indicators as tools to monitor implementation of the Social Pillar.

- 2) *The potential of the various social protection tools under present or future EU competence to address poverty, inequality, and social exclusion.*

The recent [Council Conclusions on “Strengthening Minimum Income Protection to Combat Poverty and Social Exclusion in the COVID-19 Pandemic and Beyond”](#) call on the Commission to update the EU framework to support and complement the policies of Member States on national minimum income protection. This proposal would be one of the key EU initiatives in the Action Plan to implement the Pillar and we recommend that it includes the human rights obligations applicable to EU Member States.

We recommend that any social security schemes should meet the criteria of availability, adequacy, affordability and accessibility and comply with an adequate framework of [participation, transparency, and accountability](#). Therefore, any legislative or policy measure proposed in the area of social protection, including the minimum income, under the Action Plan should reflect and integrate these criteria, and monitor how they are integrated.

- 3) *The expected impacts of the EU’s COVID-19 response on the rights of people living in poverty and on improving socioeconomic equality within and between Member States.*

As highlighted by ENNHRI members in [the ENNHRI Statement](#), human rights impact assessment of the EU economic recovery tools – such as the [Regulation](#) establishing the Recovery and Resilience Facility and the [Next Generation EU recovery plan](#) – can help to protect people against discrimination and widening inequalities.

¹ The Council of Europe’s European Social Charter of 1961 and Revised European Social Charter of 1996.

European NHRIs reported and confirmed that the health and economic impacts of the pandemic are disproportionately felt by people experiencing poverty, racism or other forms of discrimination, such as Roma people, people with disabilities, refugees and migrants. The proposed recovery plans could either alleviate or widen inequalities. Therefore, social security nets must be expanded to ensure that “no one is left behind”, while a thorough [human rights impact assessment](#) of recovery measures can help protect people against discrimination and a widening of existing inequalities.

Also, when generating revenue, states should consider forms of progressive taxation, such as the financial transaction tax, taxation on climate change-related emissions or tax increases in the digital economy, to avoid a disproportionate burden on disadvantaged and low-income families.

[ENNHRI](#) is a network of 46 National Human Rights Institutions (NHRIs) in Europe, covering 26 of 27 EU Member States.² We work to enhance the promotion and protection of human rights, including economic and social rights, in Europe. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level. Economic and social rights are one of our main priorities areas of work.

[NHRIs](#) are state-mandated bodies, independent of their governments, with a broad constitutional or legal mandate to promote and protect human rights at the national level. NHRIs are accredited against the [UN Paris Principles](#) and address the full range of human rights, including civil, political, economic, social and cultural rights.



² As no NHRI exists in Malta or Italy, ENNHRI does not have a member in those two EU Member States. ENNHRI is supporting the establishment of an NHRI in compliance with the UN Paris Principles in both EU Member States.

Annex 1

Statement

The EU must put economic and social rights at the heart of its economic response to COVID-19

6 May 2020

ENNHRI, the European Network of National Human Rights Institutions, welcomes the EU's steps to stimulate the economy and support livelihoods in the context of the COVID-19 pandemic. However, it is crucial that all human rights, including economic and social rights¹, guide the implementation of such measures, as we underlined in our recent [statement](#). By keeping human rights at the heart of COVID-19 responses, we can overcome this economic and public health challenge while protecting human dignity.

However, partly due to the [legacies](#) of austerity policies from the global financial crisis of 2008-09, which deepened inequalities within and between countries in Europe, health and social security systems are often not adequately equipped to respond to the COVID-19 emergency. It is essential to provide public budgets with sufficient resources to implement fiscal policies that are based on human rights and "[leave no one behind](#)".

In accordance with human rights standards, states must use their maximum available resources to fully realise economic and social rights as [expeditiously and effectively as possible](#). They must avoid retrogressing in service standards, and ensure [substantive equality](#) by mitigating disproportionate impacts on those most at risk. This should be carried out transparently and with the meaningful participation and consultation of those affected. Both states and the EU's economic response must keep in line with these human rights principles.

In particular, we underline the following points:

- 1. Criteria for the EU's recovery fund must be guided by and aimed at realising economic and social rights**

Beyond providing loans, the EU recovery fund should provide grants to Member States in need so that people across the EU can enjoy minimum essential level of socio-economic rights, including the right to housing, health, food, water, sanitation, education, social security and work. While the activation of the 'general escape clause' under the Stability and Growth Pact allows Member

States to depart from budgetary constraints under the European fiscal framework, some states' domestic capacities to increase public expenditure need to expand to prevent retrogression in the provision of basic public services. The recovery funds should also enable EU Member States to work towards the Sustainable Development Goals and climate commitments under the Paris Agreement.

2. Financing for COVID-19 response measures must not discriminate

While the health and economic impacts of the pandemic are disproportionately felt by people experiencing poverty, racism or other forms of discrimination, such as Roma people, people with disabilities, refugees and migrants, recovery plans could either alleviate or widen inequalities. Therefore, social security nets must be expanded to ensure that "no one is left behind", while a thorough [human rights impact assessment](#) of recovery measures can help protect people against discrimination and a widening of existing inequalities

Also, when generating revenue, states should consider forms of progressive taxation, such as the financial transaction tax, taxation on climate change-related emissions or tax increases in the digital economy, to avoid a disproportionate burden on disadvantaged and low-income families.

3. European Stability Mechanism (ESM) loans should secure an adequate standard of living more broadly

We welcome that loans provided to states in need under the Enhanced Conditions Credit Line of the ESM are not conditioned on economic reforms by recipient states. When financing direct and indirect [healthcare, cure and prevention related costs](#) due to COVID-19, as envisaged under ESM loans, health needs to be understood more broadly and holistically. As certain preconditions beyond medical care are needed to ensure good health, public health spending related to COVID-19 under the ESM should include broader social welfare investments that support an adequate standard of living, including access to housing, food, water and sanitation. This would help contribute to containing the pandemic's impacts while enhancing resilience to future crises.

4. Implementation of the 'Support to mitigate Unemployment Risks in an Emergency' (SURE) instrument must consider [informal economy workers](#)

Many people belonging to certain groups, including women, migrants and low-paid workers, carry out precarious work without contractual social protections or trade union representation. EU Member States must prioritise the social protection of such groups when requesting financial assistance through the SURE instrument. The European Commission should make sure that

national schemes are non-discriminatory in their design and implementation, and include targeted measures to address those most vulnerable and ensure their access to justice.

5. Funding for small and medium-sized businesses should prioritise companies that respect human rights

In the implementation of the [pan-European guarantee](#) fund to support small and medium-sized businesses, the European Investment Bank and EU Member States should prioritise companies operating in line with the [UN Guiding Principles on Business and Human Rights](#) and environmental sustainability standards. To take an [example from Denmark](#), businesses that evade taxes or pay dividends and bonuses in 2020-21 and that do not comply with human rights due diligence (domestically and in their supply and value chains) are excluded from financial support.

6. Technical and financial assistance must support the realisation of socio-economic rights abroad

We welcome the European Commission's announcement to provide €15.6 billion to partner countries facing challenges in coping with the impacts of the pandemic and mitigating the socio-economic consequences. In this context, the EU and its Member States should draw on lessons from past health pandemics, such as HIV/AIDS and Ebola, where locally-adapted and community-based solutions proved effective. Meaningful participation and consultation of the most vulnerable in local communities remains central to external pandemic assistance.

7. As a transnational threat, the COVID-19 pandemic demands coordinated global responses

EU Member States should strengthen the capacities of international organisations like the World Health Organization to fulfil their mandates and to implement a human rights-based approach. They must also cooperate to extend testing capacities and foster drug and vaccine research, while making medical equipment, vaccinations and essential medicines accessible for countries and populations most at risk. [Coronavirus Global Response](#) pledging event to kick-start funding for the development and deployment of diagnostics, treatments and vaccines was an important first step. Moreover, to [enable all countries to mobilise their maximum available resources](#) to fight the pandemic, Member States should consider debt restructuring, debt forgiveness and debt moratoriums on all interest payments for countries most in need.

In line with these points, we call on the EU and its Member States to envision a socially-cohesive and sustainable society after the COVID-19 pandemic, achieved through a recovery that is based

on human rights. By putting human rights at the heart of the COVID-19 response, we can bring about outcomes that are just and fair for all.

Consultation for an Action Plan to Implement the European Pillar of Social Rights

ENNHRI Submission

30 November 2020

ENNHRI, the European Network of National Human Rights Institutions, welcomes the [commitment](#) of the new European Commission leadership to ensure that the European Pillar of Social Rights has real impact on the enjoyment of economic and social rights in the EU. We are delighted to contribute to the [consultation](#) for an Action Plan to implement the Pillar. A number of ENNHRI members will submit their individual contributions which will be available on ENNHRI's website.

ENNHRI and NHRIs: Defending economic and social rights in Europe

National Human Rights Institutions (NHRIs) monitor and investigate the economic and social rights situation in their country. They report to parliaments and governments, as well as to European bodies, such as the [European Committee of Social Rights](#) and UN treaty bodies like the [UN Committee on Economic, Social and Cultural Rights](#). Their findings, research and advice inform the design and implementation policies impacting on economic and social rights. Through complaints handling, interventions before courts and legal assistance, NHRIs contribute to individuals' access to justice. When economic and social policies have an adverse impact on individuals' rights, NHRIs can provide information about available remedies.

Through ENNHRI's [Economic, Social and Cultural Rights Working Group](#), we have focused on human rights in times of [austerity](#) and a [human rights-based approach to addressing poverty](#), and created [tools](#) to strengthen European NHRIs' impactful work on economic and social rights.

In the framework of the [CoE-FRA-ENNHRI-Equinet Collaborative Platform on Social and Economic Rights](#), we [supported](#) the Turin Process to strengthen social rights in Europe and enhanced European NHRIs' work towards the ratification and implementation

of the [\(Revised\) European Social Charter](#).³ We also [contributed](#) to a public consultation on the Pillar in 2016, [studied synergies](#) between the Pillar and the European Social Charter, and [involved](#) the European commission in the preparation of this submission.

An increasing role of NHRIs in the EU

The EU Agency for Fundamental Rights [recalls](#) that all EU Member States should have independent, effective and impactful NHRIs that comply with the [UN Paris Principles](#) to deliver and promote human and fundamental rights more effectively. All EU Member States either [have an NHRI or are working towards the establishment](#) of one - including with a support of ENNHRI.

NHRIs provide a credible insight into human rights realities on the national level including in relation to the socio-economic context. The EU will need trusted national partners to assist in the implementation of the Action Plan on the Social Pillar. As independent, state-mandated bodies, NHRIs support the EU in achieving its objectives through providing human rights expertise on EU policies and reporting to the EU on the national context and developments. An example of this is NHRIs' recent participation in the [EU's first rule of law monitoring cycle](#).

The EU has recognised NHRIs' role in number of recent policy-documents and processes.⁴ Through formal cooperation with the EU, and provision of adequate resources, NHRIs and ENNHRI can help increase the impacts of EU actions.

Towards a Europe of social rights: Key recommendations

Embed the Action Plan in international and regional human rights frameworks and SDGs

All the principles of the Pillar echo rights already enshrined in [the EU Charter of Fundamental Rights](#) and other international and regional human rights frameworks. All [EU Members states are party](#) to the [UN International Covenant on Economic, Social and Cultural Rights](#), part of the Council of Europe Social Charter treaties system⁵ and bound by the EU Charter of Fundamental Rights when implementing EU law.

ENNHRI recommends the Action Plan to recall that the EU Member States have obligations under international human rights law, including economic and social rights frameworks. In line with the

³ The Council of Europe's European Social Charter of 1961 and Revised European Social Charter of 1996.

⁴ [Council Conclusions on the Charter of Fundamental Rights after 10 Years](#) (2019), [European Commission's first annual report on rule of law](#) (2020), [European Parliament's 2020 draft proposal on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#).

⁵ The Council of Europe's European Social Charter of 1961 and Revised European Social Charter of 1996.

[Council Conclusions](#) on EU priorities for cooperation with the Council of Europe in 2020-2022, we further recommend to link the Action Plan to the [\(Revised\) European Social Charter](#). Similarly, the Action Plan should reference the [UN International Covenant on Economic, Social and Cultural Rights](#) and take into account the findings and recommendations of the international and regional human rights mechanisms.

At the EU level, we recommend the Action Plan to be interconnected [with the New Strategy for the Implementation of the Charter of Fundamental Rights](#). This Strategy should develop a pathway for ensuring the inclusion of the Charter in the development of the Action Plan on the Pillar. All policies stemming from the Pillar should not only refer to, but also comply with, the Charter. A fundamental rights impact assessment of EU policies (while using the social provisions of the Charter) can help to avoid adverse impacts of these policies on people's fundamental rights. Additionally, the European Semester, with its country-specific recommendations and annual growth survey recommendations, should take into account the social rights enshrined in applicable international and regional human rights frameworks including the social provisions of the EU Charter.

Moreover, the Action Plan should set a clear objective of the Pillar to contribute to the [2030 Agenda for Sustainable Development](#) while referencing the SDG indicators as tools to monitor implementation of the Social Pillar. The European Semester's Country Reports and Country Specific Recommendations should reference relevant specific principles of the Pillar, articles of the EU Charter, and Sustainable Development Goals.

NHRIs play a role across all these frameworks and can contribute to the coherence and create interlinkages among them. NHRIs are well placed to advise the EU and its Members States on human rights compliance of policies related to the Pillar. NHRIs should also be included in the European Commission's [Impact Assessment Methodology](#) and be consulted during the drafting of new legislative acts arising from the Pillar, especially considering [compliance with the Charter](#).

Integrate a human rights-based approach across the Action Plan and its application

The human rights-based approach includes principles of equality, participation and accountability. The Action Plan should underline the equality principle and ensure that the most vulnerable are able to enjoy the Principles of the Pillar. We also recommend that the Action Plan puts in place a mechanism to guarantee meaningful participation of rights-holders and organisations enabling their participation (including NHRIs). In order to achieve greater accountability, the EU Commission should regularly review the implementation of the Action Plan while [the Social Scoreboard](#) can be improved by using human rights indicators and a [human rights-based approach to data](#) which disaggregates data along the recognised grounds of discrimination.

Put in place a systematic and regular human rights impact assessment of EU policies as a part of the Action Plan to avoid retrogression and discriminatory impact

EU Member States may face [conflicting obligations between EU structural reform](#), macroeconomic governance, and regional and international human rights standards. For instance, they may be subjected to EU fiscal consolidation measures that are in conflict with their obligation to prevent retrogressive and discriminatory policies.

In this regard, we welcome the proclamation of the Pillar by the EU as an attempt to equalise social policies with macroeconomic policies. The Pillar can provide a solid framework and guide processes such as the European Semester.

Impact assessments have been recognised as obligatory procedural requirements at both the UN and Council of Europe levels.⁶ We recommend that the Action Plan puts in place systematic and regular [human rights impact assessments](#) (beyond the EU Charter) on all legislative and policy proposals and measures by the EU and Member States. To avoid potential negative impacts of economic policies, especially on disadvantaged individuals and groups, inspiration can be drawn from the [UN Guiding Principles on Human Rights Impact Assessment of Economic Reforms](#).

As we mentioned in our [statement on the EU's economic response to COVID-19](#), recovery plans could either alleviate or widen inequalities. Human rights impact assessment of the EU economic recovery tools – such as the [Regulation](#) establishing the Recovery and Resilience Facility and the [Next Generation EU recovery plan](#) – can help to protect people against discrimination and widening inequalities. At the national level, NHRIs should be recognised as valuable actors in advising governments on the HRIA of their national recovery plans and in ensuring that they contribute to the 2030 Agenda.

Ensure that the updated framework on Minimum Income Protection is based on human rights

The recent [Council Conclusions on “Strengthening Minimum Income Protection to Combat Poverty and Social Exclusion in the COVID-19 Pandemic and Beyond”](#) call on the Commission to update the EU framework to support and complement the policies of Member States on national minimum income protection. This proposal would be one of the key EU initiatives in the Action

⁶ The UN CESCR has [underlined that](#) both borrowing and lending states should carry out human rights impact assessments to examine whether loan conditionalities have a negative impact on human rights. The European Committee of Social Rights [found Greece in violation](#) of the European Social Charter because it failed to conduct impact assessments of the austerity measures it introduced back in the crisis of 2010.

Plan to implement the Pillar and we recommend that it includes the human rights obligations applicable to EU Member States.

We recommend that any social security schemes should meet the criteria of availability, adequacy, affordability and accessibility and comply with an adequate framework of [participation, transparency, and accountability](#). Therefore, any legislative or policy measure proposed in the area of social protection, including the minimum income, under the Action Plan should reflect and integrate these criteria, and monitor how they are integrated.

We recommend that the European Commission involves NHRIs and ENNHRI in EU-level legislative and policy- initiatives and EU recommendations to Member States when implementing the right to an adequate minimum income as an action under the Action Plan.

Include NHRIs and ENNHRI as allies in reinforcing Europe of Social Rights

In the framework of the Action Plan, ENNHRI recommends that NHRIs next to the civil society and social partners are directly and independently consulted on the implementation of the European Pillar of Social Rights. NHRIs can monitor the national implementation of the Principles of the Pillar and promote awareness of the Pillar at the national level. NHRIs can thereby contribute to the coherence of the Pillar's actions at the national level with regional and international human rights standards and SDGs. Adequate resources and capacity strengthening should be provided, enabling NHRIs to ensure the effective execution of their broad mandate

Additionally, the Action Plan should consider engaging NHRIs and ENNHRI during the European Semester process as with their expertise and adequate resources, [NHRIs can advise on human rights impact assessments](#)⁷ of proposed policies and underline potential negative effects, especially on vulnerable groups. Well-resourced NHRIs can carry out human rights impact assessments transparently and with the meaningful participation and consultation of those most affected. This way, they can prevent and mitigate potentially negative effects of policies, especially on marginalised and vulnerable groups in the EU.

NHRIs and ENNHRI can report to the European Commission on implementation of the [Country Reports](#) and [Country Specific Recommendations](#). The added value of NHRIs' inclusion in the European Semester process lies in their capacity to provide informed human rights-based advice to the European Commission, tailored to the situation in each individual Member State. The Commission should engage with NHRIs to benefit from their human rights expertise and

⁷ The inclusion of NHRIs in human rights impact assessments [was also stressed](#) by the former UN Special Rapporteur on the Right to Adequate Housing.

knowledge of the situation on the ground. NHRIs and ENNHRI's input should be considered when drafting both Country Reports and Country Specific Recommendations.

ⁱ Human rights with a socio-economic dimension and the right to equality and non-discrimination are laid out in the EU Charter of Fundamental Rights, the European Pillar of Social Rights, the European Convention on Human Rights and UN human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights.