



Labour and Social Europe: the right to the guaranteed minimum income

By Basic Income Network Italia



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The right to the guaranteed minimum income in Europe: how to ensure that the costs of the crisis are not paid by the weakest

In this pamphlet Bin-Italia is presenting two documents of technical and political-institutional nature respectively, which as a whole serve as a basis for discussion in order to propose as soon as possible an action by European citizens on the subject of guaranteed minimum income.

We believe that this kind of measure is indispensable for compelling EU member States and bodies to handle the economic crisis, which has hit the whole world and the old continent in particular, in a way that takes into account fairness, social justice and the basic principles of the European social model. Among these principles there is the protection of dignity, which is considered as a fundamental value of the Union in art. 2 of the Treaty on European Union (TEU) and as a fundamental right in art. 1 and art. 34 par. 3 of the Nizza Charter.

We have anticipated and developed the first proposal to be discussed with all associations, political parties, trade unions, NGOs which are interested in this objective referring to the Resolution adopted by the European Parliament in October 2010. We have followed the same structure and the same outline of the Resolution, whose proposals were shared by a very large majority of votes (540 yes-votes, 19 no-votes). As a matter of fact, the European Parliament stressed that all member States must introduce as soon as possible guaranteed minimum income schemes for those risking social exclusion and that they must give every EU citizen at least 60% of the median income calculated for each country (also implementing further measures such as financial support or subsidised bills for gas, light, rents and public transport or support for paying due and extra charges).



Giuseppe Bronzini

Moreover the Parliament strongly reasserted that the guaranteed minimum income is a fundamental right, therefore all forms of control and social stereotypes of the beneficiaries must be avoided because they are inconsistent with individual dignity, which is protected by this measure.

This kind of measures exist in all European countries except for Italy, Greece and Hungary, nevertheless a supranational legislation (directives) is necessary for the following reasons:

- a) firstly, as already said, some countries do not have this crucial form of social protection and, in the absence of mandatory supranational regulations, other countries could give up the measure because of the crisis;
- b) in the legislation of some States a "decent income" is not considered as a primary need of the subject. This situation could soon concern everybody because the seriousness of the economic situation is urging governments to cut down costs on primary needs, which are the basis for civil society and the "first pillar" of social justice;
- c) finally, some national regulations provide for controls and obligations of beneficiaries which are inconsistent with the nature of fundamental social right which is also envisaged in the Bill of rights of the Union. Therefore the guaranteed minimum income becomes a welfare measure instead of an innovative and inclusive welfare measure, in a continent where jobs are being cut and production is slumping.

For this reason we believe that all European citizens are interested in the adoption of a binding directive on this crucial subject, which could be the signal of a more social, inclusive and democratic Europe than that of today.

In this pamphlet we have tried to outline a directive (only in a general way, because after the petition the European Commission will have to transform the popular initiative into a real proposal) by taking into account, as said, the stance of the Parliament and by trying to find in the provisions of the Treaty the necessary legal basis (under penalty of inadmissibility) to launch a European Citizens' Initiative – allowing one million citizens from at least seven member states to present a legislative proposal directly to the European commission – on this issue. We consulted with a network of lawyers in order to examine in depth any objections, including of technical and legal nature. Obviously this is just a basis for discussion to be shared, developed and improved by European democratic civil society over the next few months.

*Giuseppe Bronzini,
Judge of High Court*

The reasons for an action by European citizens on the right to a guaranteed minimum income

by Basic Income Network Italia

In 1992 the European Commission adopted a Resolution (n. 441) where guaranteed minimum income (the availability of minimum resources which are necessary to live a free and decent life) was defined as a fundamental social right. Moreover, it urged member States to set up legal frameworks that guaranteed this right. The adoption of the Maastricht Treaty paved the way for the introduction of the euro on the economic front and of the notion of "European citizenship" on the institutional front. Consequently, the European system became increasingly cohesive and the Commission considered the right to a guaranteed minimum income as a direct consequence of a strengthened internal market as well as a distinctive feature of the newly created supranational citizenship characterised by cohesion and social solidarity.

Nowadays guaranteed minimum income is undoubtedly a fundamental right under art. 34, par. 3 of the EU Charter of Fundamental Rights ("in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources..."). This article refers to art. 10 of the Community Charter of the Fundamental Social Rights of Workers of 1989 and to art. 30 of the reviewed European Social Charter, therefore the above-mentioned right is even recognised in the Council of Europe legislation.

The social aspects of the Union have been appreciably strengthened by the Amsterdam Treaty, which among other things has provided for the adoption of directives enshrining minimum prescriptions in several social sectors. Moreover, these social aspects have been further strengthened

in the general provisions of the Lisbon Treaty, which considers human dignity, equality, respect for human rights, solidarity as the fundamental values of the Union and the fight against social exclusion as one of the main objectives of its action. Finally, social policy is defined as a "shared" competence between the Union and its member States.

On the front of European policies and especially on the front of the open method of coordination, which was re-launched as a general method including the social security sector (welfare and assistance), in the Lisbon Agenda the right to guaranteed minimum income has been continuously mentioned among the European best practices as a measure to fight against poverty and social exclusion. Now the income support (both in job transactions and for people in need) is clearly referred to in the common principles of "flexicurity" (n. 4 and 5) which were approved by the Council on the 7th December 2007; since then these principles have been the benchmark for the economic and social policies of the Union. Moreover, the Commission is working on finding a notion of *precarious worker* which is shared by all European legislations, so as to link to it a minimum platform of social rights also including the right to a

guaranteed minimum income. However, recognizing this right makes the European notion of "flexicurity" more socially-oriented and politically feasible, thus strengthening the second term of the hendiadys.

Finally, with the adoption of the new strategy called "Europe 2020", which has replaced the Lisbon Agenda, a new objective has been added which is directly linked to the fight against social exclusion, that is to have 20 million fewer people in or at risk of poverty in the European Union. The report, prepared in



Elderly, by Carla MASCARO

2010 for the European Commission on the "Re-launch of the internal market" (the so-called Monti Report), stressed the need to build a network of social safety programs which are homogeneous at European level. This would be crucial for pan-European cohesion and solidarity as well as for strengthening the market of "all European citizens" and its efficiency.

After the explosion of the international economic crisis, in 2008 the Commission issued a new Recommendation (COM(2008)0639), where it basically reasserted the same concepts as in 1992. Moreover, the Resolutions of November 2009 and October 2010 of the European Parliament drastically urged all member States to set up effective protection systems for guaranteed minimum income, in order to face up to the new dramatic situations created by the crisis. The Parliament also specified very clearly both quantitative and qualitative aspects of the right. In the first case it pointed out that the income must be equal to at least 60% of the median income for each country. In the second case it underlined that the terms of allocation and assessment of income must be consistent with the nature of fundamental social rights and must respect the dignity of the recipients, avoiding social stereotypes, violations of privacy, forced assignment of jobs which are not in line with the professional experience or the qualifications acquired by the beneficiaries. The Resolutions also bring out the opportunity of combining money benefit with service provision, including through subsidized pricing. The latest Resolution of 2010 was approved by a very large majority (540 yes-votes, 19 no-votes) and urged the Commission to take charge of actions to promote what had been resolved. The Parliament also underlined that in the absence of minimum income schemes, women and old people are subject to some forms of indirect discrimination because it is more difficult for this workforce to be readmitted in the labour market once they have been excluded. Moreover, for young people the guarantee of a minimum wage is sometimes an indispensable means that allows them to assert their right to study, to benefit from primary and secondary education as well as to take part in the productive system and in the job market consistently with their aspirations and school curricula.

It is certainly true that many States have effective guaranteed minimum income (GMI) protection systems (only Greece, Hungary and Italy do not

have any guaranteed minimum income schemes); nevertheless we think that it is in the general interest of all European citizens to make this right certain and recognised by approving an ad hoc directive, thus implementing art. 34 of the Nice Charter. Nowadays we should capitalize on the method of coordination and stabilize it through forms of hardlaw which only provide for minimum standards without preventing States from further experimenting and reforming institutions in coordination with civil society. Respecting the principle of subsidiarity, the States would keep both a relevant discretionary power in establishing their national legislations and the relationship between money benefit and core provision.

From the general point of view of the Union and in the perspective of its consolidation, it is absolutely necessary to avoid dangerous forms of social dumping between the EU member States, in order to defend the internal market and the *acquis communautaire*. This was the reason why the Commission of Jacques Delors proposed a framework directive on the GMI before the introduction of the euro with the Maastricht Treaty and why the Commission of Romano Prodi put on the table the same issue before the Lisbon Agenda was launched. As already mentioned, a more expanded network of social safety programs which are homogeneous in all EU countries is the focus of the so-called Monti Report of 2010 for re-launching and completing the internal market. In view of the terrible difficulties that the economic crisis has brought about, it is thought that the protection of the "basic" dignity of every single EU citizen is one of the fundamental elements of the supranational legislation, consistently with the national and European Charters of rights and the general provisions of the EU Treaty. Moreover, in some countries benefits are either insufficient, because they do not meet the adequacy requirement of recommendations and resolutions, or they are given in a manner that is not compatible with the nature of the GMI as a fundamental social right.

For example, the German Constitutional Court, with an important decision of the 9th February 2010, considered as unreliable the standards on which in 2005 the sums to be paid as GMI were reduced and it as-

serted that when protecting the GMI unexpected expenses should also be taken into account. Finally, also citizens from States protecting the *ius existentia* could lose protection of this right in the absence of a mandatory European legislation. It is therefore a clear and valuable message for Brussels institutional bodies and several Stated: however urgent and crucial adjustments in state budget deficits and public expenditure may be, this adjustment cannot put at risk the dignity of European citizens, as it was clearly reasserted in the above-mentioned decision of Germany's highest court. Through a directive on the right to the GMI the Union could underline, in a visible and symbolically unambiguous way, those aspects of pan-European solidarity and cohesion which nowadays, in a period of crisis, seem to evaporate and have hindered the Institutions in their efforts to respond to the attacks on the euro.

Finally, in the last Councils of the Heads of State and Government in March and June 2011, despite the economic difficulties, the need to go on towards the objectives of the "Europe 2020" strategy was strongly reasserted. Special mention was given to the urgency of facing up to the most serious situations of social unease.



Génération Précaire

We think that without appropriate EU legislation on the GMI, which is the most immediate and effective instrument – at least in the short term – to face up to situations of poverty and social marginalization, it would be difficult for the Union as a whole to reach the ambitious objective of reducing significantly the number of destitute citizens.

Finally, we believe that the directive we are proposing should at least provide for the right of every single citizen or person permanently based in the Union – who risks social exclusion according to the annual indicators drawn up by the European Commission with the help of the European Parliament – to have an income equal to at least 60% of the median income calculated for each country. This income should be estimated on an individual basis, so that nobody would be dependent on their relatives' income. The States should guarantee these people in need subsidized pricing and financial support to pay their rents. Moreover, they should help them with "unexpected expenses", voluntary professional training courses and free assistance by offices specializing in professional training and employment or in the fight against poverty and social marginalization. The recipients of this measure would be the unemployed, people looking for their first job, people excluded from the labour market, self-employed workers or employees whose income is below the poverty threshold (in this case GMI allocations would be added to their incomes). The system of assessment and forfeiture of the right to receive benefits must respect the nature of the right as a fundamental social right enshrined in the directive, take into account the professional abilities acquired by the beneficiaries, prevent privacy violations and avoid any form of direct or indirect discrimination against these subjects.

Our common action

The following text represents a proposal for a European Citizens Initiative on guaranteed minimum income. The European Citizens Initiative, starting with Spring 2012, allows one million citizens from at least seven member states to present the European Commission directly with a legislative proposal. The proposal follows the template given by the European Commission for such initiatives, and makes clear the legal and institutional competences of the European institutions in taking such a demand forward.

Endorsement of an European Directive on the Right to an unconditional guaranteed income

Object of the proposition

We demand the endorsement of a directive ensuring the right to an unconditional guaranteed income for all European citizens in order to combat social exclusion in compliance with the parameters laid out by the European Parliament.

Description of the proposal objectives

The proposal aims at implementing article 34 of the Charter of Fundamental Rights of the European Union conferring a clear and enforceable right to an unconditional guaranteed income that ensures a dignified life for all European citizens at risk of social exclusion, in accordance with the recommendations of the European Commission and the resolutions of the European Parliament. Recipients should be granted an income at least equal to 60% of median income for each country, in a manner consistent with the nature of a fundamental social right and the dignity of persons.

The Treaty regulations considered relevant to the proposed initiative are the following:

General Framework

Article 2 TEU states that the EU "is founded on the values of respect for human dignity... the rule of law and respect for human rights". It adds that "these values are common to the Member States in a society in which "solidarity prevail[s]".

Article 3, third paragraph TEU states that the Union "shall work for [a] sustainable development... based on... a [...] social market economy, aiming at full employment and social progress"; in the next paragraph it states that the Union "shall combat social exclusion and discrimination, and shall promote social justice and protection" and in the fifth paragraph that "it shall promote economic, social and territorial cohesion, and solidarity among Member States".

Article 34 of the Charter of Fundamental Rights of the European Union sets out that "in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources".

The explanations relating to the Charter of Fundamental Rights states that article 34 draws on articles 30 and 31 of the European Social Charter and point 10 of the Community Charter of the Fundamental Social Rights of Workers. Although the Charter doesn't create any new competences, as per article 6 TEU, where a directive on a guaranteed basic income is enacted, the procedures to allocate the benefit, the forfeiture regime and the system of public scrutiny should respect its nature of a fundamental social right, as per article 51 of the Charter.

Article 9 TFEU states that "in defining and implementing its policies and activities, the Union shall take into account requirements linked to... the guarantee of adequate social protection..."

Article 151 TFEU states that "The Union and the Member States, having

in mind fundamental social rights such as those set out in the European Social Charter... and in the... Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives... the promotion of... improved living and working condition, so as to make possible... proper social protection, ... the development of human resources with a view to lasting high employment and the combating of exclusion".

Article 153 TFEU sets out that the European Parliament and the Council may adopt, by means of directives, minimum requirements for gradual implementation of common legislation in the field concerning the integration of persons excluded from the labour market and they may adopt measures designed to encourage cooperation between Member States in the field concerning the fight against social exclusion.

The legal basis specifically refers to:

Article 153, letter h) TFEU that – in light of the general provisions concerning the values and objectives of the Union and the rights established by the Treaty of Nice – provides a firm and solid legal basis for the proposed directive. In fact, the article refers to persons "excluded" from the labour market, thus not necessarily expelled from the labour market. Guaranteeing sufficient basic needs to live a decent life is the first prerequisite for reintegrating people excluded from the labour market as it would allow them not to fall into the trap of desperation and frustration, to rationally



Povertà in divieto di sosta, by **Silvia FRANCO-ELONE**

plan their occupational activity or – for this purpose – to acquire further occupational skills, and to build constructive relations with employment or social services centres. Recipients would receive an adequate benefit in order no to be socially stigmatised and marginalised with crippling effects on any initiative they may take. The European Parliament resolutions bring out the fact that one of the main obstacles for occupational reintegration is just the lack of serenity and lucidity felt by people in difficulty resulting from the pressure put on them by their state of need and the problems they face daily.

Alternatively, in case the legal basis indicated (article 153, letter h) is deemed as being unsuitable to pursue the objectives set out in article 3 TEU, in particular to combat social exclusion and promote social cohesion, it would be necessary to resort to article 352 TFEU with the procedure laid down therein as the legal basis to pass new legislation for the attainment "of the objectives set out in the Treaties". An action of the EU on basic income would thus be necessary, as per article 5 TEU, as only an intervention that gives certainty and enforceability to the right to an unconditional guaranteed income in all Member States can cope with occupational problems and the risk of irremediable fractures to supranational social cohesion that the international crisis is bringing about.



European Alternatives is a civil society organisation devoted to exploring and promoting transnational politics and culture by means of campaigns, conferences, publications, artistic projects, and TRANSEUROPA Festival. We believe that today democratic participation, social equality, and cultural innovation are undermined by the nation-states in Europe, and that transnational forms of collectivity must be fostered to promote these values.

With offices in four European countries and a network of activists and local groups stretching to over twelve, the organisation is unique in being at once a breeding ground for new ideas and proposals for politics and culture at a European level and in being a political and cultural actor with a truly transeuropean activity, staff and support base.

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Money vs Humanity, by Adela NISTORA