

Social policy in the European Union: state of play 2022

Policymaking in a permacrisis

Edited by

Bart Vanhercke, Sebastiano Sabato and Slavina Spasova

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Twenty-third annual report

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Preface

At the beginning of 2022, hopes were high that the Covid-19 pandemic was on the ebb and that the European Union (EU) would be able to focus again on the main challenge of this century: how to proactively tackle the green and digital transition in a socially fair and inclusive way. But the Russian invasion of Ukraine dashed these hopes. Realpolitik was back on the agenda, with the EU having to figure out how to deal with its Eastern neighbour. Overnight, EU dependence on Russian fossil fuels became a major headache. With energy and food prices soaring, double-digit inflation reared its ugly head throughout the world, resulting in a cost-of-living crisis which has pushed millions of people into poverty as well as generating popular discontent and mobilising trade unions.

Obviously, all this had a major influence on EU policymaking: while the Russian military aggression in early 2022 prompted the EU to respond with decisions and actions that effectively deepened the process of European integration, it also highlighted some weaknesses in the EU governance system. A health crisis, an economic and financial crisis and a climate crisis are unfolding in parallel, while full-scale war is back on European soil. The question is now whether ‘normal times’ will ever return or whether we will find ourselves living in a state of ‘permacrisis’.

With this as background, we asked our contributors not only to analyse key developments in the EU social agenda in 2021, but also to describe EU and domestic policies between January and July 2022. We are deeply indebted to the authors, all of whom managed to combine both angles.

‘How has the invasion of Ukraine affected the process of European integration?’ This question is raised in **chapter 1** by Federico Fabbrini who analyses the EU response to the Russian invasion of Ukraine. The chapter underlines both progress and setbacks in the response, explaining these in light of the current governance features and financial resources of the EU. The chapter also explores proposals to reform the EU resulting from the Conference on the Future of Europe, underlining how these address the shortcomings resulting from the EU response to the return of war to the European continent.

The analysis of the first Recovery and Resilience Plans (RRPs) submitted to the EU is at the heart of **chapter 2** by David Bokhorst. One of the key innovations of the EU Recovery and Resilience Facility (RRF) is performance-based financing, an approach assigning the European Commission an enhanced monitoring role. This approach may well become the ‘new normal’ in EU governance: social stakeholders should be

aware of both the efficiency gains and evident risks. The Commission is pursuing a ‘social investment’ approach in the RRF – primarily understood as investing in human capabilities and allowing work to be reconciled with family – but leaving the potential conflict with fiscal rules unresolved.

The RRFs are analysed from a different angle in **chapter 3** by Sebastiano Sabato and Sotiria Theodoropoulou: the authors scrutinise the ‘socio-ecological dimension’ of the RRFs of six Member States using an original analytical framework. They find that, while the RRFs do have a socio-ecological dimension, it seems, overall, rather limited and somehow unbalanced. The authors conclude that a ‘just transition’ requires more comprehensive and coherent policy frameworks to simultaneously pursue the social and green objectives. And yet, the need to adapt the traditional welfare state to ensure adequate and sustainable buffers for citizens during the green transition is becoming increasingly pressing.

In the second half of the book, we analyse new initiatives providing further building blocks for the EU’s (post-Covid) social agenda.

The politics behind the European Commission proposal for an ambitious Directive on improving the working conditions of people working through platforms are at the heart of **chapter 4** by Slavina Spasova and Matteo Marengo. The authors highlight the key role played by the European Commission, acting as a policy entrepreneur in setting the policy agenda on platform work. The European Parliament equally played a key role in politicising the issue. The politics surrounding the proposed Directive demonstrate that regulating digital work is possible, while emphasising the extent to which EU social dialogue mechanisms need to be reformed.

The ambitious social policy agenda of the present European Commission is also reflected in **chapter 5** by Petra Debusscher: gender equality has been put firmly back on the EU’s political agenda. Significant steps have been taken to move forward with implementing the EU Gender Equality Strategy 2020-2025, supported by gender advocates within and outside the institutions. While the EU’s gender mainstreaming strategy continues to be implemented in a patchy fashion, the real question is whether the Commission will be able to sustain its ambition in this area in the coming years in view of radical right populist opposition to gender equality in several Member States.

Chapter 6 by Angelina Atanasova and Zane Rasnača addresses the recent rule of law backsliding in certain EU Member States, a development constituting an existential risk to the EU’s institutional survival. The authors describe rule of law dismantling from a social policy perspective, illustrating it with two country cases (Hungary and Poland) and discussing the various institutional tools used in the EU response to this development. A key question is to what extent the EU’s conditionality mechanisms can be used to discipline Member States overrule of law issues.

The **Conclusions** by Bart Vanhercke, Sebastiano Sabato and Slavina Spasova summarise the book’s key findings and briefly discuss recent social policy initiatives such as the Directive on adequate minimum wages, the new EU Strategic Framework on

Health and Safety at Work and the implementation of the Action Plan of the European Pillar of Social Rights. They also track the debate on reforming the EU economic governance framework – including the prospect of an EU Social Imbalance Procedure – and take a glance at next year’s EU social policy agenda. Finally, the Conclusions raise the question whether the EU’s revamped ‘open strategic autonomy’ framework could provide a window of opportunity to sustain the EU’s economic, social and environmental ambitions in the longer run.

The **Chronology 2021** by Angelina Atanasova and Federico Moja summarises the key events in the EU’s social, ecological and economic affairs, beginning with Portugal inaugurating its fourth Presidency of the Council of the EU on 1 January 2021 and ending with the Committee of Permanent Representatives rejecting the interinstitutional agreement on the revision of EU social security coordination. The chapter discusses several ground-breaking decisions by the Court of Justice of the EU, including a landmark case which may result in weakening the position of the social partners in future institutional negotiations at EU level.

The European Social Observatory has again worked closely with the European Trade Union Institute (ETUI) and renowned external scholars to draw up this year’s edition of the *Bilan social*. Through this collaborative publication, we aim to contribute to the debate between policymakers, social stakeholders and the wider research community, while providing accessible information and analysis for practitioners and students of European integration. This year’s *Bilan social* in many ways complements the ETUI’s *Benchmarking Working Europe 2022* with its up-to-date analysis of the current polycrisis on the social fabric of the EU.¹

We look forward to engaging in a dialogue with you over the crucial issues addressed in this volume.

Bart Vanhercke, Sebastiano Sabato and Slavina Spasova (OSE)
Nicola Countouris and Philippe Pochet (ETUI)

1. ETUI and ETUC (2023) *Benchmarking Working Europe 2022. Europe in transition – Towards sustainable resilience*, Brussels, ETUI.

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Bart Vanhercke, Sebastiano Sabato and Slavina Spasova
Editors

Chapter 1

The war in Ukraine and the future of the EU: prospects for reform

Federico Fabbrini

Introduction

The purpose of this chapter is to explore how the war in Ukraine has affected the process of European integration and to reflect on the prospects for the future of the European Union (EU). The Russian military aggression against a sovereign and independent nation in early 2022 represented a shock, prompting the EU to respond with unprecedented steps forward in integration, particularly in the fields of defence and energy. Nevertheless, the first large-scale conventional war on the European continent since the end of World War II has also exposed some ongoing weaknesses in the EU governance system, power structure and financial architecture. Like other crises in the past decade, including the Covid-19 pandemic, the war has revealed several constitutional shortcomings in the EU, such as the lack of adequate supranational competences, the difficulties of decision-making under the unanimity rule, and the limited financial resources that the EU is able to deploy to back up its actions.

From this point of view, this chapter argues that the war in Ukraine has increased the urgency to reform the EU. In particular, the war has strengthened the case for improving the EU system of governance to make it more effective and legitimate, and for increasing its powers, including by boosting its fiscal capacity. This is also the conclusion emerging from the Conference on the Future of Europe (CoFoE), an innovative deliberative process which the EU institutions established in May 2021 and which came to an end in May 2022. The CoFoE was a bottom-up engagement with EU citizens which served to channel popular expectations on the future outlook of the EU. In fact, as the chapter points out, the CoFoE clearly identified the existing weaknesses of the EU and unequivocally mapped a path to address them, including recommending treaty changes in a number of areas.

As the chapter highlights, while the CoFoE's original mandate to reflect on the future of Europe was ambiguous, its operation was profoundly influenced by the outbreak of the war in Ukraine in late February 2022. Occurring in the midst of the CoFoE, the war shaped its outcome, prompting participants to reflect on how to strengthen the EU in the face of unprecedented geopolitical challenges. The CoFoE charted a route to strengthen the EU by reforming it, including through treaty changes. As is suggested, while several challenges cloud this prospect, the EU should move in this direction – particularly as the war in Ukraine rages on.

The chapter is structured as follows. Section 1 examines both the advances in European integration following the outbreak of the war in Ukraine and the setbacks where the EU

struggled to act effectively. Moreover, it provides a structural explanation for this state of affairs, highlighting the weaknesses in the current EU constitutional system. This paves the way for Section 2, which assesses the operation of the CoFoE and discusses its reform recommendations. In particular, this section overviews the main outcome of this experimental process, the results emerging from the European citizens' panels and the plenary, and the steps ahead, including the potential for treaty changes in the EU, arguing that this is what the citizens called for, and that this would go a long way towards addressing the existing weaknesses of the EU. The conclusions summarise the key argument of this chapter and further reflect on the prospects for the EU.

1. The war in Ukraine and European integration

1.1 Advances

The Russian military invasion of Ukraine on 24 February 2022 has forced the EU to deal with its illusion of perpetual peace on the European continent. As stated by EU High Representative for Common Foreign and Security Policy (CFSP) Josep Borrell on 27 February 2022, 'we are currently witnessing a full-fledged war directly on our borders. The war is again on the borders of Europe' (Borrell 2022). Nevertheless, the return of war in Europe has also prompted EU institutions and Member States to respond in unprecedented ways. Since the beginning of the war, the EU has acted with resolve, adopting between February and May 2022 several rounds of sanctions financially targeting President Vladimir Putin and his inner circle of oligarchs, politically deterring Russia, and economically weakening its ability to continue the illegal war of aggression. At the same time, the EU has taken important steps to deepen integration in the areas of Common Foreign and Security Policy and Common Security and Defence Policy (CSDP), asylum and migration, as well as energy.

First, in the field of CFSP, the EU adopted in March 2022 its new strategic compass (Council of the European Union 2022a) – an official document designed to outline its foreign policy strategy towards the rest of the world. The strategic compass had been long in the making, and largely hampered by diverging Member States' external relations interests. In response to the war in Ukraine though, the strategic compass was decisively revised and quickly approved by the Council of the EU on the understanding that 'Russia's war of aggression constitutes a tectonic shift in European history' (Council of the European Union 2022a). To this end, the strategic compass identified four strands of EU foreign policy, committing the EU to develop a rapid deployment capacity; to enhance its ability to anticipate threat through greater intelligence sharing; to invest in technological capabilities and the military-industrial base; and to reinforce strategic partnership. In this regard, the compass acknowledged more explicitly the geo-strategic challenges posed by the rise of China, and the importance of cooperation with the United States (US) and the North Atlantic Treaty Organization (NATO) in view of the 'competition of governance system' between democracy and autocracy (Council of the European Union 2022a).

Moreover, in the field of CSDP, the EU has deployed for the first time the European Peace Facility, a novel financial instrument established in connection with the new Multiannual Financial Framework (MFF) 2021-2027 which allows Member States to pool resources to finance either the common costs of military operations and missions under CSDP, or actions to improve the capacities relating to military and defence matters of third states and regional and international organisations (Council of the European Union 2021). In particular, in February 2022 the Council of the EU approved a disbursement of 450 million euros to provide weapons to the Ukrainian army (Council of the European Union 2022b), which was subsequently doubled in March 2022 (Council of the European Union 2022c), and tripled in April 2022 to a total of 1.5 billion euros (Council of the European Union 2022d). The war in Ukraine also prompted EU Member States to close ranks and deepen their commitment to mutual defence, with Finland and Sweden applying on 18 May 2022 to join NATO and Denmark voting in a referendum on 1 June 2022 to abandon its opt-out on CSDP.

Second, in the field of asylum and migration, the EU responded to the massive exodus of Ukrainian refugees fleeing their war-torn homeland with a ground-breaking open-door policy based on solidarity which diametrically contrasted with the approach taken to address the migration crisis in 2015-2016. In particular, in March 2022 the Council of the EU decided to resort to a never-used 2001 Directive for the common EU management of a sudden influx of refugees (Council of the European Union 2001) – a measure adopted as part of the 1999 Tampere agenda to build a genuine Area of Freedom, Security and Justice (AFSJ). The Council granted temporary protections to Ukrainian nationals and third-country nationals benefiting from international protection in Ukraine who resided in Ukraine before the outbreak of the war on 24 February 2022 (Council of the European Union 2022e). On the basis of this decision, individuals fleeing Ukraine were granted temporary protection status for an initial period of one year, extendable for another year. One of the key goals of this temporary protection is to allow displaced persons to enjoy harmonised rights across the EU, including an important set of social rights. These include residence, access to the labour market and housing, medical assistance, and access to education for children, as well as the right to circulate freely across the EU, hence facilitating a better burden-sharing between Member States. Moreover, the Council adopted legislative amendments making it possible for Member States to redirect resources from cohesion policy funds and the Fund for European Aid for the Most Deprived (FEAD) to assist the refugees, hence strengthening refugees' welcome in line with the principles of 'Social Europe'.

Lastly, in the field of energy, the EU took steps to reduce its dependence on Russia, promote transnational interconnections and support a transition to clean energy. While European Commission President Ursula von der Leyen and US President Joe Biden had already signed a joint statement on energy security in January 2022 (von der Leyen and Biden 2022), the war in Ukraine prompted an acceleration of this cooperation, with a US commitment in March 2022 to significantly increase its supply of natural gas to the EU to boost Europe's energy security (European Commission and United States 2022). In a special summit of heads of state and government hosted in Versailles in March 2022 under the French Presidency of the Council of the EU, leaders of the EU Member States and institutions committed to phase out the EU's dependence on

Russian coal, oil and gas (EU Head of States and Government 2022). And in May 2022 the European Commission put forward an ambitious plan – known as RePowerEU (European Commission 2022a) – to boost energy saving, diversify energy imports, ensure sufficient levels of gas storage, enhance connectivity of energy grids within the EU and between the EU and its neighbours, and financially support the clean energy transition.

1.2 Setbacks

As with prior crises in earlier moments of EU history, the war in Ukraine has prompted advances in European integration. Nevertheless, besides several lights, the response of the EU and its Member States to a military conflict on its Eastern border also revealed several shadows. To begin with, in the area of Common Foreign and Security Policy, the new EU strategic compass' action plan provides only a partial response to the geo-strategic challenges facing the EU (McDonagh 2022). In particular, the objective of establishing a 5,000-strong EU Rapid Reaction Force deployable in hostile environments by 2025 (Council of the European Union 2022a) smacked of too little too late – especially considering that in the early 2000s the EU had already envisaged the creation of much larger EU battlegroups, which however were never made operational (Moro 2018). The EU ambitions in common security and defence policy, therefore, did not seem to match the size of the military threat posed by Russia, confirming that the strategic compass suffers from a strong reluctance on the part of the EU Member States to fully deepen their cooperation in the field of defence, with NATO being perceived as Europe's true defence union. This matched further challenges in Common Foreign and Security Policy, which, given its strong intergovernmental outlook, remained an area of diverging interests for Member States.

Similarly, in the field of migration and asylum, the response of the EU and its Member States to the war in Ukraine left much to be desired. Certainly, the EU decision to use the temporary protection scheme, as well as the action by frontline Member States such as Poland and Hungary to welcome Ukrainian refugees, positively contrasted with the authoritarian approach adopted by the Visegrad countries during the 2015-2016 migration crisis. Nevertheless, the open-door policy was not applied evenly, with border officials in Poland and other borderline Member States committing grave and illegal acts of racial discrimination, denying entry and asylum to people fleeing Ukraine simply on racial grounds (Pronczuk and Maclean 2022). While the European Parliament (EP) 'condemn[ed] the racism experienced by African and Middle Eastern students who have been [...] stopped at the border and thus prevented from seeking safety' (European Parliament 2022a) – the discriminatory treatment of refugees by police authorities in the Visegrad countries was a stark reminder of the fault line that divides the EU in this field (Tsourdi 2021). In fact, notwithstanding the biggest influx of migrants in the EU's history, still no progress has been made on the EU Pact on Asylum and Migration (European Commission 2020) – a plan put forward by the European Commission in 2020 and designed to improve migration management in the EU, including through better external border controls, more effective return policy, but also greater burden sharing among Member States (Silga 2022).

Similarly, also in the area of energy supply and security, EU action fell short of what was required. On the one hand, the ambition to leverage the collective force of the EU on the international energy markets did not take off the ground. Contrary to what happened during the Covid-19 pandemic – when the Commission was tasked to negotiate advance procurement agreements of vaccines from pharmaceutical companies (McEvoy and Ferri 2020) –, Member States in the European Council did not empower the Commission to negotiate purchase contracts on behalf of all and only agreed ‘to work together on *voluntary* common purchase of gas, [liquefied natural gas] and hydrogen’ (European Council 2022a, our emphasis). Moreover, no agreement was reached between Member States to introduce price caps on energy (European Council 2022b). On the other hand, strong economic and political interests delayed and diluted the Commission’s efforts to phase out Russian crude oil, with the European Council compromising on the indefinite continuation of oil imports via pipeline, despite the ban on seaborne imports, to appease Hungary (European Council 2022b).

Finally, disagreements between Member States also limited the ability of the EU to continue its policy of financial sanctions against Russia. Due to a veto by Hungary, the sixth package of sanctions, including a ban on oil imports, was held ransom for weeks in May 2022 because Prime Minister Viktor Orbán, a staunch friend of Russian President Vladimir Putin, sought to leverage approval of the sanctions to secure funds owed to Hungary under the post-pandemic recovery plan but currently frozen due to the rule-of-law crisis in that Member State (see Atanasova and Rasnača, this volume). In fact, while the war in Ukraine drew a wedge between Hungary and Poland, a country which embraced a strong anti-Russian stance, thus weakening the alliance between these illiberal democracies, the state of democratic decay and rule-of-law backsliding in these two Member States continued unabated (Pech and Scheppele 2017). In the midst of the war, the Hungarian government amended the constitution, allowing it to rule by emergency decree, with effective full circumvention of parliamentary scrutiny (Dunai 2022).

In sum, the EU and its Member States reacted to the first war on the European continent since 1945 by taking several steps advancing integration in a number of areas. Nevertheless, EU action fell short of expectations of a global player in a number of dimensions, proving either ineffective or watered-down by the need for compromise. How can we explain this state of affairs? Why have the EU and its Member States faced mounting challenges in, for example, imposing sanctions or developing a common energy union, despite the clear and present danger posed by the Russian war of aggression in Ukraine? It is submitted here that this has to do with the limited competences and financial resources of the EU, and its unsatisfactory governance structures, increasingly dominated by intergovernmental decision-making. Admittedly, these weaknesses are not new and have been emphasised over the years – and exposed by other recent crises. The war in Ukraine has merely made them more visible.

First, the effective competences of the EU remain somewhat limited. While a string of treaty revisions have over time enlarged the powers that Member States have delegated, shared or pooled at supranational level, the EU’s competences in important fields remain subject to constraints.

Second, and closely connected to the previous point, even in areas where the EU has competence, governance rules often vest decision-making powers in intergovernmental institutions and subject decision-taking to unanimity rules. This means that action is conditioned to the continuing consent of all 27 EU Member States in the Council and European Council, with the possibility therefore for each national government to veto and block common action.

Third, a further weakness in the current EU setup are its limited financial resources, due to a lack of fiscal capacity. While the EU put together an ambitious 800 billion euros (NGEU) recovery fund in response to the Covid-19 pandemic (Fabbrini 2022), the overall size of the Multiannual Financial Framework remains small, as is the EU's ability to use it flexibly in light of changing circumstances. Moreover, pursuant to Article 41(2) TEU, 'expenditure arising from operations having military or defence implications' cannot be charged to the EU budget. This is why the European Peace Facility is designed as a purely intergovernmental financing mechanism, built off-budget and funded through state contributions. Moreover, the overall size of the facility is negligible: with a preset budget of 5.6 billion euros for the period 2021-2027, the facility essentially exhausted 1/3 of its resources in the first three months of the Ukraine war. Moreover, the May 2022 proposal by the Commission and the High Representative to address investment gaps and boost defence spending across the EU also appeared financially underwhelming: to incentivise the joint procurement of military equipment, the Commission offered to invest 500 million euros between 2022-2024 (European Commission and High Representative of the Union for Foreign Affairs and Security Policy 2022).

The limited financial resources of the EU have pushed the Commission to find creative solutions. With its RePowerEU plan, the Commission proposed raising 20 billion euros in additional resources through auctioning Emission Trading Scheme (ETS) rights and allocating the revenue to the energy transition. Moreover, the Commission proposed to redirect up to 225 billion euros from the NGEU recovery fund to finance energy transition measures in Member States affected by soaring energy costs and retaliation by Russia (European Commission 2022b). Because not all EU Member States had requested their shares of loans to which they were entitled, a sizable share of resources remained available in NGEU coffers, leading to the Commission tabling a motion to reuse this money for the benefit of other Member States in the field of energy. Yet, this short-term solution highlighted the structural shortcomings of the EU constitutional framework in the area of fiscal capacity and the EU's difficulty to mobilise resources in case of need. As pointed out by the European Parliament in May 2022, the EU capacity to act must be reinforced, using the model of NGEU to create a new budgetary instrument designed to cushion the socio-economic consequences of the war in Ukraine (European Parliament 2022b).

2. The Conference on the Future of Europe and its potential

2.1 Process

While the weaknesses of the EU resulting from limited competences and financial resources and a cumbersome governance structure are well known, a number of solutions to address them recently emerged in the framework of the CoFoE. This innovative process – originally envisaged by French President Emmanuel Macron in March 2019 (Macron 2019) – kicked off on 9 May 2021 and ended one year later on 9 May 2022. The CoFoE was very much a response to a decade of crises in the EU and was specifically proposed in light of Brexit (Fabbrini 2020a) – the first case of a Member State leaving the EU – to relaunch the project of integration. The exercise was organised as a citizen-focused, bottom-up exercise designed to gain input from citizens on the key questions facing the EU. While the CoFoE built on the examples of citizen assemblies convened at national and local level in some Member States, it attempted to achieve something unprecedented, namely to create a forum for participatory democracy on a transnational scale. From this point of view, the CoFoE constituted a novel experiment for the EU, going beyond prior models of technocratic or deliberative constitutional change.

As explained in more detail elsewhere (Fabbrini 2021), the mission and governance structure of the CoFoE were outlined in a Joint Declaration, adopted in March 2021 by the three Presidents of the EP, Council and Commission, which agreed to act as co-guarantors of this initiative (Joint Declaration 2021). With regard to its remit, the Joint Declaration struck a compromise and maintained a constructive ambiguity: it stated that the aim of the CoFoE was ‘to give citizens a say on what matters to them’ (Joint Declaration 2021) and reported a wide-ranging, non-exhaustive list of topics to be considered. In practice, however, also on the basis of the input received through a multilingual digital platform, the CoFoE came to address a broad set of topics.

In terms of organisation, the CoFoE unfolded through a multi-layered structure, designed to channel and filter bottom-up the output of the democratic deliberations. The core of the Conference was represented by four European citizens’ panels of 200 participants each, selected randomly to reflect the socio-demographic reality of the EU. The European citizens’ panels were thematically divided along four cross-cutting clusters – focusing on (a) a stronger economy, social justice, jobs; education, youth, culture and sport; digital transformation; (b) European democracy; values and rights, rule of law, security; (c) climate change, environment; health; and (d) EU in the world and migration. In this framework, European citizens convened for three panel sessions, both in person and online, over a span of six months between September 2021 and March 2022, deliberating – also with the support of experts invited to speak as witnesses – on the topics at hand and advancing a number of orientations for future debate.

In addition to the European citizens’ panels, Member States were encouraged to establish within the framework of the CoFoE national citizens’ panels, again designed to facilitate deliberation and exchange. Admittedly, the national commitment proved

uneven, with just six Member States (Belgium, France, Germany, Italy, Lithuania and the Netherlands) – i.e., including five of the six founding members of the EU and the three largest EU countries – actually hosting national citizens’ assemblies, while the others limited themselves to organising more traditional engagement and dissemination events. By far the most articulate national citizens’ panel on the Future of Europe was organised in France, the Member State whose president championed the whole initiative. In autumn 2021, the French authorities organised 18 panels of randomly selected citizens, involving over 700 participants and providing input (in the form of 101 aspirations and 1301 specific proposals) for a National Conference (*Conférence Nationale de Synthèse*) in Paris in October 2021, which drafted a final list of 14 priority recommendations.

The input from the European citizens’ panel – together with that resulting from analogous national panels – was then reported to the Plenary of the CoFoE. This large 449-member body – made up of representatives from the European Parliament, national parliaments, the Council, the Commission, as well as representatives from the European and national citizens’ panels, and delegates from the Committee of the Regions, the European Social and Economic Committee and civil society organisations and social partners – met seven times over a 12-month period. At its final meeting in April 2022, it endorsed 49 proposals with a list of 326 detailed recommendations which were then submitted to the Executive Board (Conference on the Future of Europe 2022a). This body, composed of three Commissioners, three Members of the European Parliament (MEPs) from the main political groups and three representatives from the Council Presidency troika, was tasked by the Joint Declaration to steer the work of the CoFoE and to ‘draw and publish the conclusions of the Conference Plenary’ (Joint Declaration 2021). The Executive Board accepted the input from the Plenary and, in a final report published on 9 May 2022, reaffirmed its commitment to follow it up.

A question that quickly came to the fore concerned whether the outcome of CoFoE compelled EU treaty changes. In a speech delivered at the CoFoE’s concluding event on 9 May 2022, French President Emmanuel Macron explicitly endorsed the convening of a convention to revise the treaties, expressing himself in favour of a treaty amendment (Macron 2022). This echoed the statement made a week earlier by Italian Prime Minister Mario Draghi who, in a speech before the EP, openly stated that ‘We not only need pragmatic federalism; we need a federalism based on ideals. If this means embarking on a path that leads to a revision of the Treaties, then this must be embraced with courage and with confidence’ (Draghi 2022). In fact, calls to start a new treaty revision process were also forcefully made by the EP in its resolution on the Conference’s follow-up (European Parliament 2022c), as well as by Commission President von der Leyen, who spoke of ‘using the full limits of what we can do within the Treaties, or, yes, by changing the Treaties if need be’ (von der Leyen 2022).

Nevertheless, the enthusiasm for this prospect was quickly chilled by a joint non-paper signed also on 9 May 2022 by 13 Member States: Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden: the national governments of these countries, all from Eastern and Northern Europe, indicated that they did ‘not support unconsidered and premature attempts to

launch a process towards Treaty change' (Government of Sweden 2022). Admittedly, this split simply echoed the diverging Member States' preferences as they had emerged before the start of the CoFoE – with some countries seeing this initiative as the launching pad for a broader reform of the EU, while others interpreted it as a purely cosmetic exercise (Avbelj 2021). In fact, as mentioned, the Joint Declaration launching the CoFoE had been highly ambiguous on its ultimate constitutional mission. Nevertheless, the outcome of a year of participatory deliberations left no doubt that European citizens were calling for a profound overhaul of the EU which inevitably required treaty changes. While there will be pressure to follow up on the European citizens' recommendations, the prospect remains wide open (Lehne 2022; Maurice et al. 2022).

2.2 Outcome

The final recommendations of the Conference on the Future of Europe (2022b) explicitly address the main structural weaknesses of the EU, which were identified in Section 1 and emerged in the context of the war in Ukraine. To begin with, from a substantive point of view, the Conference called for an expansion of EU powers, for instance in the field of health – *inter alia* by 'includ[ing] health and health care among the shared competencies between the EU and the EU Member States' (proposal 8, recommendation 3) – as well as in the field of social policy. In particular, the Conference proposed ensuring statutory minimum wages (proposal 13, recommendation 1), and 'reinforcing the competences of the EU in social policies and proposing legislation to promote social policy and ensure equality of rights, including health, harmonized for the EU' (proposal 14, recommendation 1), including 'not compromising on welfare rights (public health, public education, labour policy)' (proposal 14, recommendation 2). At the same, the Conference recommended a greater role for the EU in the field of climate – including by 'increas[ing] EU's leadership and taking a stronger role and responsibility to promote ambitious climate action, a just transition and support to address the loss and damages' (proposal 3, recommendation 11) – and in the digital space, among other by strengthening the capacity of Europol to combat cybercrime (proposal 33, recommendation 1), and by establishing a common European digital identity (proposal 35, recommendation 10).

Moreover, the CoFoE strongly pushed for a more prominent role of the EU in foreign affairs, security and defence – not only by 'reduc[ing] dependencies from oil and gas imports' (proposal 3, recommendation 3 and proposal 18), but also by expanding its capacity for action, and its ability to speak with one voice (proposal 24, recommendation 1).

Similarly, the CoFoE acknowledged that important changes were needed in the field of migration. The proposals approved by the CoFoE Plenary included the request to 'develop[...] EU-wide measures to guarantee the safety and health of all migrants' (proposal 43, recommendation 1); to 'increas[e] EU financial, logistical and operational support, also for local authorities, regional governments and civil society organisations, for the management of the first reception which would lead to a possible integration of refugees and regular migrants' (proposal 43, recommendation 2); and to 'adopt[...] EU

common rules concerning procedures for the examination of claims for international protection in Member States, applied uniformly to all asylum seekers’ (proposal 44, recommendation 1). In this context, the CoFoE also explicitly called to ‘revisit[...] the Dublin system in order to guarantee solidarity and fair sharing of responsibility including the redistribution of migrants among Member States’ (proposal 44, recommendation 2).

The CoFoE recommendations for greater EU power were also matched by ambitious proposals in the field of finances, effectively acknowledging the limitations resulting from the current EU fiscal arrangements. In this respect, the preface to the CoFoE’s final input on ‘A stronger economy, social justice and jobs’ stated that ‘Outstanding transnational challenges, such as inequalities, competitiveness, health, climate change, migration, digitalisation or fair taxation, call for proper European solutions’ (Conference on the Future of Europe 2022b: 53) and clarified that ‘[s]ome elements of this strategy can be found in already existing policies and can be achieved by making full use of the existing institutional framework at European and national level; others will require new policies and, in some cases, treaty changes’ (ibid.). Concretely, in addition to the abovementioned proposals on inclusive labour markets (proposals 13 and 14), the CoFoE proposed to ‘take into account the example [...] of Next Generation EU [...] by strengthening [the EU] own budget through new own resources’ (proposal 16) including by ‘introducing a common corporate tax base’ (proposal 16, recommendation 2) and by ‘giv[ing] further consideration to common borrowing at EU level’ (proposal 16, recommendation 5).

Otherwise, from an institutional viewpoint, the CoFoE also explicitly tackled the governance shortcomings of the EU, calling for reforms of its decision-making processes to enhance Europe’s democracy and its capacity to act with one voice, especially in the field of common foreign and security policy.

Also from an institutional viewpoint, the CoFoE proposed – unsurprisingly, given its participatory nature – to periodically convene citizens’ assemblies (proposal 36, recommendation 7), and to ‘conceiv[e] an EU wide referendum, to be triggered by the European Parliament in exceptional cases on matters particularly important to all European citizens’ (proposal 38, recommendation 2). Moreover, the CoFoE echoed some widely known proposals, such as the creation of transnational lists for the election of the EP (proposal 38, recommendation 3), and either ‘the direct election of the Commission President, or a lead candidate system’ to select the head of the European Commission (proposal 38, recommendation 4). Crucially however, the CoFoE pleaded for ‘reopening the discussion about the [EU] constitution’ (proposal 39, recommendation 7) on the understanding that ‘[a] constitution may help to be more precise as well as involve citizens and agree on the rules of the decision-making process’ (proposal 39, recommendation 7).

In conclusion, the proposals of the CoFoE identified the sources of weaknesses of the current EU – including its limited substantive powers and fiscal means, and its byzantine governance structures – and advanced clear recommendations on how to address these. Undoubtedly, the application of these recommendations requires changes to the EU treaties, as neither the expansion of EU competences nor the revision of the EU decision-

making processes can occur *à traité constant*. In light of this, the abovementioned stance by 13 Member States manifested on 9 May 2022 against the prospect of treaty changes seems to be inconsistent with the outcome of the CoFoE and to undermine its results. As mentioned beforehand, however, it remains to be seen whether political efforts to move in the direction of treaty changes – including initiatives by the EP (European Parliament 2022d), and the French Presidency of the Council of the EU (Council of the European Union 2022f) – will succeed. In this context, therefore, earlier proposals for alternatives may return to the foreground: one idea advanced before the CoFoE was for Member States willing to deepen integration to do so by concluding a separate treaty, called Political Compact, that would not require unanimous ratification by all 27 EU Member States to enter into force (Fabbrini 2020b). Such an option may once again become palatable if EU reform prospects are stalled by a limited group of laggard Member States.

3. Conclusions

As this chapter has pointed out, the war in Ukraine represents yet another turn in the process of European integration. The return of war to the European continent has prompted the EU to react, advancing cooperation in the fields of security and defence, foreign affairs and energy, as well as migration and social affairs. Nevertheless, the war has also exposed ongoing structural weaknesses in the EU constitutional arrangements, limiting the capacity of the EU to act effectively. In particular, it has revealed how the EU decision-making system, based on unanimity rules and the logic of consensus that dominates in areas of core state powers, can lead to paralysis when a single Member State exercises its veto right. Moreover, the war has also highlighted how the EU lacks autonomous financial resources to live up to the internal and external challenges that the Russian aggression has provoked. From the need to support the Ukrainian government in the defence and reconstruction of the country, to the need to cushion the worst side effects of the sanctions within the EU, especially the unprecedented increase in energy prices, the EU has struggled to deploy adequate responses, given its limited budget.

Admittedly, these weaknesses have long been identified by EU observers. Nevertheless, the war has made more people aware of them. In fact, the unprovoked and illegal Russian war of aggression in Ukraine weighed heavily on the CoFoE. This innovative year-long deliberative exercise kicked off on 9 May 2021 with the aim to involve European citizens in reflecting on the future of the EU. By the time it came to an end on 9 May 2022, it had identified the shortcomings currently afflicting the EU. The final proposals of the CoFoE point towards the need to improve the EU decision-making system, remove Member State veto powers, and strengthen EU competences and financial resources, including by reproducing the successful model of the NGEU recovery funds in other areas.

While the war in Ukraine has revealed the dynamism and resolve of the EU, it has also highlighted a number of structural problems which will have to be fixed soon. In particular, the process of European integration is in need of a changed institutional setting, giving more competences to the EU institutions and removing vetoes. The CoFoE has identified the same institutional and governance challenges and already

proposed some solutions. To implement them, however, treaty changes are ultimately inevitable. The responsibility of the EU institutions and Member States is now to fully follow up on the CoFoE's recommendations. The challenge for Europe is whether there will be sufficient political willingness to do what has to be done.

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Chapter 2

Steering national social reforms through the EU's recovery plan

David Bokhorst

Introduction: a first glimpse at the functioning of EU recovery¹

In May 2021, fourteen European Union (EU) Member States submitted their national Recovery and Resilience Plans (RRPs), detailing hundreds of policy initiatives planned for the next years in the context of the Recovery and Resilience Facility (RRF). A significant subset of these policy initiatives focuses on the EU's green and digital transitions, though there is also a strong social orientation. To gain access to the funds, Member States need to show how their plans address the challenges set out in the Country-specific Recommendations (CSRs), many of which concern the adequacy of social provisions and the longer-term challenges facing the welfare state. The submission of the plans marked an important event of the first half of 2021 in terms of EU social policy (see the Chronology by Atanasova and Moja, this volume) and can be seen as a significant milestone for 'Social Europe'. This was followed in summer 2021 by the European Commission's (EC) assessment and the adoption of the plans in the Council of the EU, thus setting the stage for the first disbursements under the RRF, with 13% pre-financing for the plans. These steps allow a first insight into the content of the plans and into the way RRF governance is working in practice, allowing us to formulate expectations for the future.

This chapter analyses the governance and content of the RRF based on the most recent empirical literature, combined with a close reading of the RRF Regulation and the Commission's assessment of this first set of RRFs submitted by 14 Member States – Austria, Belgium, Croatia, Denmark, France, Germany, Greece, Italy, Latvia, Luxembourg, Portugal, Slovakia, Slovenia and Spain – which also happen to represent a fair geographic and socioeconomic cross-section of Member States. Looking at governance, the chapter first focuses on the principle of performance-based financing, where fund disbursement is linked to results as formulated in the plans' milestones and targets. This *modus operandi* has further strengthened the link between CSR implementation and EU funding and as such enhances monitoring possibilities for the EU institutions, including on the more politically sensitive issue of welfare state reforms. I try to anticipate what this means for the driving mechanisms in terms of CSR implementation and potential issues of legitimacy. Based on the Commission assessments, this chapter shows that there is wide variety in CSR implementation, while

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the RRF Regulation gives the Commission sufficient leeway to negotiate the right level of ambition with Member States. When it comes to monitoring reforms, on paper the RRF allows for a more intrusive governance style, though there are also good reasons to assume that the Commission will be flexible in practice.

The chapter goes on to take a closer look at the content of the first series of RRFs in terms of welfare state recalibrations. The RRFs contain a wide range of measures and investments that touch upon the welfare state². Many of the CSRs that Member States should address in their plans indeed involve welfare state policies. Given the wide variety of plans and the many hundreds of milestones and targets proposed, a full structured analysis of all welfare-related measures and investments goes beyond the remit of this chapter. However, the Commission assessments do indicate the priority investments and reforms that governments have proposed on various dimensions of the welfare state. As such, a more modest qualitative content analysis of the assessments allows us to determine patterns in terms of prioritisation and key reforms.

To gauge and interpret these patterns, this chapter uses the conceptual and theoretical framework of the social investment literature. In particular, it draws on Hemerijck's (2013) distinction between three core functions of the welfare state: 'stock', 'flow' and 'buffer'. Buffer policies are designed to guarantee inclusive safety nets through income protection, economic stabilisation and social assistance: examples are collective insurance programmes such as pensions and unemployment benefits, but also social assistance or minimum wage provisions. Flow policies are designed to ease the 'flow' of gendered labour market and life course transitions by providing work-family reconciliation services or job-search assistance, such as active labour market and parental leave policies. Stock policies, in turn, are designed to raise human capital and capabilities throughout the life course through education and training policies from early childhood to active ageing. According to this literature, the challenge for mature welfare states is to ensure that buffers are inclusive in coverage whilst maintaining long-term financial sustainability, that flow policies are gender-balanced and that stock policies are lifelong in nature. The second part of the chapter argues that this perspective fits in relatively well with the reform and investment priorities typically found in the RRFs.

All in all, this chapter provides a broad overview of the key issues of discussion in terms of governance and of some of the main trends in terms of content, allowing us to better understand what this new development in EU economic governance means for EU – Member State relations and the advancement of Social Europe.

2. The Commission itself argued in a briefing for the European Parliament that 150 billion euros of the RRF funding is dedicated to social and healthcare spending, i.e., around 30% of total expenditure (Euractiv 2021). As pointed out by Vanhercke et al. (2021), this figure has been contested as overly optimistic and is yet to be confirmed by background analysis. The first example in the literature on coding socially oriented expenditure does however show that many of the big recipient countries such as France, Italy and Portugal are earmarking between 30 and 40% of their allocated share for socially oriented expenditure (Corti and Vesan forthcoming). However, one should not overinterpret coding exercises, as their outcome is heavily reliant on relatively arbitrary assumptions. For example, do investments in hospitals' IT infrastructure count solely as 'digitalisation', or, since they also allow for better performance of social services, as 'socially-oriented' investment?

1. RRF governance: performance-based financing and enhanced monitoring

1.1 In search of ways to harden reform commitments

The key novelty of the RRF in terms of governance is the anchoring of the principle of performance-based financing. Only after Member States have satisfactorily achieved the milestones and targets defined in their plans can they request a tranche payment of their share of the funds (European Parliament and Council of the EU 2021). The goal is to create stronger conditionality between EU funding and structural reforms³, encouraging Member States to be precise about achievable targets and expected costs up front, since budget overshoots will have to be borne by the Member State and RRF disbursements are conditional on the defined goals and targets being fully achieved. The RRF's performance-based financing has transformed the Semester process, moving it from a Commission examination of the output of a general macroeconomic forecasting exercise with summaries of the major measures introduced to a detailed Commission scrutiny of thousands of pages of concrete proposals, milestones, targets and justifications. At face value, this is a significant development in the history of EU economic governance, as it potentially changes the mechanisms driving CSR implementation in the European Semester. Interpreted positively, the change means that Member States are now rewarded for their actions and can receive fiscal resources to achieve their goals. However, an alternative interpretation is equally valid. Member States have given an external body the possibility to withhold funds from them in case they do not deliver on major economic and welfare state reforms. As such, governments willingly commit to a series of detailed milestones, targets and deadlines linked to disbursement tranches. The idea is to harden the commitment to structural reforms by enhancing the element of external constraint (Moschella 2020; Wieser 2020). Despite such constraint, it should be clear that this is not the Troika: for starters, Member States themselves formulate the plans. However, the Commission is endowed with enhanced monitoring possibilities, judging whether plans – or, more importantly, future deviations from the plans – are in line with the CSRs and follow the milestones and targets. Especially in the case of social reforms where outcomes may differ significantly from proposed plans, this is no straightforward, purely technocratic exercise. We know from the monitoring of the Semester that a lot of politics is about hiding behind a facade of numbers and rules (Merand 2021; Bokhorst 2022). This section thus seeks to unpack the politics behind the RRF rules.

The ambition to harden the commitment to reforms by linking financial resources to CSR implementation has long been in the making. Policy coordination based on non-binding recommendations has traditionally been viewed by economists as a rather weak mechanism for incentivising countries to institute structural reforms (Pisani-Ferry 2006; Deroose et al. 2008; Wyplosz 2010). The Semester's set-up, with its Macro-

3. Performance-based financing had already been introduced in the European Structural and Investment Funds. However, this constituted a more flexible form of performance-based financing where Member States were allowed to change metrics and indicators along the way, which was therefore seen as not seriously altering budgetary practice (European Court of Auditors 2021).

economic Imbalance Procedure and tougher fiscal rules, was in part an answer to such criticism (Bokhorst 2019). However, it quickly became clear that the possibility of sanctions, or the threat thereof, was no ideal mechanism when it came to structural reforms. In 2013, the Commission instead proposed Competitiveness and Convergence Instruments (European Commission 2013), based on Chancellor Merkel's idea of having all countries sign reform contracts to gain access to EU funds. The Five Presidents' Report of 2015 suggested introducing standards of a legal nature in the Semester, linked to a stabilisation function (Juncker et al. 2015b). Meanwhile, Juncker proposed a structural reforms clause in the interpretation of the Stability and Growth Pact (SGP), granting governments fiscal leeway to introduce reforms (European Commission 2015). This was followed by the Commission proposal for a Structural Reform Support Programme, again linking money to reforms (European Commission 2018), which the Eurogroup initially turned into a proposal for a Eurozone budget and later into the Budgetary Instrument for Convergence and Competitiveness (BICC).

Irrespective of the proposal, the question has always been how to reconcile the wish for economic solidity through structural reforms with the long-wished solidarity between Member States in the form of new shared fiscal resources, a red line for the more 'frugal' Member States (Austria, Denmark, Sweden, the Netherlands and to some extent Finland). The BICC was the only proposal ever to make it to an agreement after almost a year of monthly negotiations in the Eurogroup, albeit downsized to a mere 25 billion euros over seven years and assigned an allocation methodology leaving less space for redistribution than existing ESI funds (Eurogroup 2020). At the onset of the Covid-19 crisis, the BICC proposal was quickly shelved, never to be touched again. Instead, it was decided to open up the precautionary credit lines of the European Stability Mechanism (ESM) by dropping any reform conditionality. But, as is well known, the ESM was considered, notably in Italy, as a politically toxic instrument based on the anti-crisis philosophy of the past rather than on any real solidarity. Indeed, the very next day after the Eurogroup reached agreement on ESM support, policymakers started working on a new instrument, the RRF, which includes grants rather than mere loans as with the ESM, but is also coupled with more reform conditionality than the ESM credit lines.

To ensure a true commitment to reforms, RRF governance had to reflect the views of those most opposed to introducing solidarity (de la Porte and Jensen 2021; Verdun 2021). As an example of the expectations raised, this is how Dutch Prime Minister Rutte defended the RRF in his national parliament:

The fastest route to more competitiveness are structural reforms of your pension system and your labour market. [...] Green investments are also useful, but they are not reforms. Without also including pension reforms and labour market reforms you won't get a structural strengthening of your economy [...]. If we in the Netherlands cannot immediately have full trust in the Brussels system *not* saying 'well, the reform hasn't really happened, but here's your money anyway', then we need something in the governance to ensure the Netherlands has very tight control over the process (Tweede Kamer 2020).

In response to this wish, the RRF includes the possibility of an emergency brake. In case any Council member considers that the Commission is too soft in its assessment of whether a milestone has been achieved and thus payment is justified, it can trigger an emergency brake procedure by referring the matter to the heads of state or government in the European Council. Though this does not constitute a legal veto, it is a political form of escalating the matter. Peer pressure in the Council is often seen as soft, or, in the famous description of Wyplosz, as a process of ‘mutual congratulations’ (2010). The emergency brake is intended to ensure that Council members can do away with diplomatic friendliness in closed-door committees, with the European Council spotlighting potential issues.

1.2 The RRF and policymaking efficiency

Despite the tough talk, when looking at the first RRFs and their assessments, it quickly becomes clear that assigning the Council a prominent role in monitoring will in practice be very difficult⁴. Indeed, the operation of the RRF is very much driven by the Commission, the only player able to absorb and process the plans in all their dimensions. The Greek plan alone comprises 175 reforms and investment projects covering the whole economy. The plans were carefully negotiated with the Commission in many dozens of meetings between central teams directly reporting to the Prime Minister (e.g., in Croatia) or the Minister of Economic Affairs (e.g., in Spain) and the European Commission. In an empirical assessment of the negotiations in five Member States, Bokhorst and Corti (forthcoming) find that the Commission used its leverage to push Member States to provide more details in the plans, to be more ambitious, to ensure that plans were in line with the RRF philosophy and that milestones were concrete. Monitoring under the RRF goes much further than the more indirect influence seen under the pre-pandemic Semester. During the period of negotiation (mostly between November 2020 and April 2021), this effort involved almost the entire scope of the Commission’s bureaucratic capacity. The RRF not only provides money to make reforms and investments happen. The drafting of an RRF is also to be seen as an event creating a lot of momentum. Especially those Member States set to receive larger sums knew that all eyes would be on them. As such, while the Commission’s role has certainly been enhanced, the level of ambition in the plans can mainly be ascribed to Member States’ internal drive to deliver, rather than from any type of hierarchical steering from the Commission. The drafting of the RRFs and the negotiations with the Commission ensured centralisation, while streamlining processes within national bureaucracies. Priorities were set in a process very much steered by a central team, as seen in Member States such as Croatia, Italy or Spain (ibid.). As such, we should consider the RRF as a mechanism set to enhance the efficiency of public policymaking through overcoming domestic obstacles and hurdles

4. A telling example in this regard is the Dutch parliament, which had initially demanded an independent appraisal of each RRF, together with the respective government’s voting intentions, so that it could debate and scrutinise these. But when the 14 plans had to be approved, real scrutiny proved to be difficult, given the quantity of data and the limited amount of time. The government sent short notes to parliament on each plan, simply summarising the Commission’s assessment and without deviating from the Commission’s point of view on a single issue (Ministerie van Financiën 2021). Parliament itself did not know how to properly question the Minister on voting intentions or make any kind of independent judgement, so decided to cancel the planned debate and deal with the matter in a written procedure.

(see also Vanhercke and Verdun 2022). The performance-based approach offers exciting prospects in that it may strengthen the output legitimacy of governments, but may also prove challenging to combine it with due process and inclusive decision-making. In the same vein, the question remains as to what happens when governments change colour and want to renegotiate the plans.

The principle of performance-based financing implies that the measures introduced in the plans have to be concrete and fulfil a specific goal. Governments cannot just promise to propose a reform, but must detail entry into operation, implementation and result. For example, when the Italian government promised to train 750,000 civil servants by 2026⁵, they also promised that at least 70% of them would successfully complete their training (Annex IT). Similarly, with regard to its commitment to reforms in the justice sector and to simplifying administrative procedures, its milestone will only be deemed to have been achieved when all secondary legislation including delegated acts and ministerial decrees relating to 200 critical bureaucratic procedures are implemented (ibid.). This means that the RRP is not just a government commitment but a commitment of the entire state apparatus, including national parliaments. Commission official Céline Gauer, the Director General heading the Recovery and Resilience Task Force, has stipulated that if parliaments do not adopt the proposals, governments will not receive the funds, since the Commission will only look at actual implementation – the RRF is ‘no free lunch’ (Follow the Money 2022).

The collective commitment represented in the milestones and targets also includes issues where governments usually negotiate with social partners, meaning that these are also bound by the agreement. The Croatian government in its plans has committed to introducing a new labour law, including new provisions in employment protection legislation, work-life balance and the regulation of undeclared work, by the end of 2022 (Annex HR). While this deadline may boost policymaking efficiency, it acts as an external constraint possibly tilting the balance of power in favour of the executive, as parliaments and social partners are only given limited time for due process to meet the deadline or risk delaying billions in the next tranche of payments. In the case of Croatia’s labour law, the Commission itself admonished the Croatians to ensure that social partners and other stakeholders were able to play their part in the process, as their involvement could enhance the success of the reform (SWD HR). In general however, social partners were not very much involved in the drafting of the RRP, which may be problematic in terms of diffusion of ownership (Vanhercke et al. 2021). The same argument is true for parliaments. Belgium has committed to a comprehensive pension reform, including measures to improve the long-term financial sustainability of the pension system. In its milestones the government undertakes not only to propose the pension reform, but also to have the entire reform adopted by parliament within 2.5 years, namely by the first quarter of 2024 (Annex BE). The Belgian parliament now has a deadline to deal with a controversial issue and the European Commission has the ability to decide to withhold funds in case the deadline is not met. In a similar vein, the Portuguese and Spanish

5. All examples in this chapter are taken from the Staff Working Documents (as indicated with SWD + country code) and the Annexes to the Council decisions approving the plans (indicated with Annex + country code). An overview of these documents is provided in Annex 1. Unless otherwise specified, the opinions and considerations on those measures are those of the author, based on the Commission assessment.

governments have undertaken to build tens of thousands of social housing and student housing units by 2026 (Annex PT, ES). This is a tough deadline, since under the RRF regulation no payments are allowed after 2026.

Looking at these extensive lists of concrete plans, several aspects have to be borne in mind. First, tranche payments are ‘all or nothing payments’. Milestones and targets have to be fully achieved before any payment is made; i.e., there is no partial payment for partially met milestones. For the more comprehensive programmes, this implies that every part of the policymaking machinery has to deliver for payments to be forthcoming. This generates discipline, as nobody wants to be the last to deliver and risk delaying billions in funding. Second, programmes are ambitious and implementation times short. From what we know from the performance-based funding under the European Structural and Investment Funds, where Member States are allowed to alter milestones, many milestones were set overambitiously. France, Italy, Portugal and Spain in particular revised more than half of their milestones primarily to reset the level of ambition (European Court of Auditors 2021). Finally, the Commission will be tasked with assessing whether goals have been achieved or whether flexibility is needed. This gives it the possibility to be intrusive, i.e., withholding – or threatening to withhold – funds. But we may also expect that in practice the Commission will remain aware of domestic political red lines and use its discretion to prevent a more mechanical, rules-based approach. A first indication of this becomes clear when looking at how CSR implementation in the RRFs has been assessed up to now by the Commission, as charted in the next subsection.

1.3 The assessment of CSR implementation in the RRF

From the side of the Commission, it is argued that Member States have risen to the occasion, using the momentum drummed up by the introduction of the RRF to address the more deeprooted issues in their economies. Director General Céline Gauer argued (in the interview cited above) that many of the CSRs left untouched for years have now been included in the plans; ‘for 90% I’d say’ (Follow the Money 2022). The Commission granted every Member State an ‘A-grade’ for implementation of CSRs in their plans. However, on taking a closer look at these assessments we note significant differences in the plans’ levels of ambition and the limits to the influence exercisable by the Commission. The method used by the Commission to assess whether Member States address the CSRs is to look at whether the measures ‘address a significant subset of CSRs’. But both the notions ‘address’ and ‘significant subset’ are open to interpretation. Looking at the Commission assessment of the German RRF, it quickly becomes clear that the issue of the fiscal sustainability of pensions is not addressed, tax measures on avoiding disincentives to work are not included, measures regarding the taxation of labour and the tax wedge are seen as insufficient, no measures are introduced on regulated professions and the measures on competition in rail and freight services fall short of what is needed. These are just some of the more important areas repeatedly addressed in its CSRs, yet Germany is still seen as addressing ‘a significant subset of CSRs’ (SWD DE).

For other Member States set to receive lower amounts from the RRF, views on CSR implementation are equally mixed. For example, Austria, France and Luxembourg do not seem to have taken the opportunity to sufficiently address thornier CSRs on liberalising professions or increasing the retirement age in their plans, although the French government has promised to put a pension reform on the agenda at a later stage (SWD AT, FR, LU). Ensuring the fiscal sustainability of pensions and liberalising regulated professions are typically reforms where governments are confronted with organised interest groups, meaning these are by nature more difficult to implement and have long featured in the CSRs. Another core contentious issue directly affecting other countries are the CSRs on aggressive tax planning. In this respect, Luxembourg has merely proposed to implement a measure on outbound royalties and interest payments to non-cooperative tax jurisdictions, but this constitutes nothing more than the necessary transposition of a related EU-level agreement, while the Commission assessment states clearly that this does little to adequately address the CSR in question⁶ (SWD LU).

The plans for Member States receiving relatively larger sums (as a percentage of their GDP) from the RRF are in general considerably more ambitious and are also praised as such in the assessments. Member States such as Croatia, Portugal and Spain have committed themselves to the more difficult task of liberalising regulated professions, while Slovakia and Slovenia will be undertaking in-depth pension reforms (SWD ES, HR, PT, SI, SK). But this does not mean that these plans fully address all CSRs. An interesting case in this regard is Spain, where the Commission notes that the public pension expenditure is projected to increase for the next 30 years, leading to sustainability issues (hence the CSR), but that the pension reform included in the RRP further increases pension expenditure in the medium to long term by re-linking pensions to the consumer price index and dissociating initial pension levels from changes in life expectancy (SWD ES). As such, the key reform is detrimental to fiscal sustainability. At the same time, Spain is instituting a series of measures to boost the effective retirement age, partially offsetting this further increase in expenditure. These offsetting measures are grouped together with several others as ‘partly addressing the challenge’, despite overall pension expenditure being expected to rise and the assessment noting that ageing in Spain will cause a very substantial dependency ratio.

Generally speaking, however, there are good reasons to be optimistic about the level of ambition in terms of CSR implementation. The examples above illustrate that, while the Commission’s influence has certainly been enhanced to ensure CSR implementation, the authority it has gained is not of such nature as to ensure CSR implementation across the full spectrum. Especially for Northern Member States set to receive relatively less

6. Other Member States not included in the case selection have introduced more ambitious reforms on this CSR, although to varying degrees of satisfaction in the eyes of the Commission. The Irish measures, for instance, are assessed by the Commission as being unclear, incomplete and not affecting current structures and therefore only partially addressing the CSR (SWD IE). Malta goes slightly further than Ireland, but on the crucial issue of citizenship and residence schemes allowing for double non-taxation, the proposed measures are seen as only partly mitigating the risk of aggressive tax planning and will only apply to future applicants, not current ones (SWD MT). Cyprus, on the other hand, is introducing a wider-ranging series of measures seen as contributing to a fairer tax system (SWD CY). The most positive example is the Netherlands, where by now measures have been implemented, resulting in the CSR on aggressive taxation being deleted (European Commission 2022a).

from the RRF, there are clear limits to the level of Commission influence to ensure a sufficient level of ambition. However, for those Member States set to receive more funds, the assessments contain critical remarks and some CSRs are seen to be only partially implemented. But on the whole these plans receive considerable praise for their level of ambition and the wide range of issues addressed. Indeed, the real challenge will rather be whether Member States are not over-ambitious, as a subsequent challenge will be to absorb all the RRF funds within the given timeframe and precisely as formulated in the milestones.

2. How do the plans address 'resilience' through social reforms?

Given its governance and the fact that money only really starts flowing in 2022 and 2023, the RRF should be seen as an instrument fostering the long-term resilience of national economies, rather than as a recovery instrument. Because of their distance from domestic political arenas, the EU institutions have always been well-placed to confront Member States with long-term sustainability questions concerning the welfare state in the policy recommendations. Typically, these concern the question of how to reconcile the welfare state with the challenge of demographic ageing, high public debt, transitions to a service-based economy, changing industrial structures and disruptive technological and ecological change. Given the experience of the first years of the euro crisis, long-term resilience through addressing Semester CSRs has long been viewed with suspicion among social policy scholars (Costamagna 2013; de la Porte and Heins 2014; Crespy and Menz 2015). It was only a few years ago that EU leaders propagated a policy recipe where resilience was primarily understood in terms of cost competitiveness (Juncker et al. 2015a), with structural reforms mainly defined in terms of price and wage flexibility (Draghi 2015). This slowly started changing with the progressive 'socialisation' of the CSRs (Zeitlin and Vanhercke 2018). However, not everyone has bought into this narrative: some have maintained the position that, while social CSRs have increased in number, they have in practice always been subordinate to the goal of balanced budgets and neoliberal welfare retrenchment (Copeland and Daly 2018; Crespy and Vanheuverzwijn 2019). With the RRF, the welfare state has not been put on a par with climate change and digitalisation in terms of spending quotas⁷, even though social reforms and investments are very much present.

As the previous section indicates, anyone hoping to find an abundance of structural reforms in the RRFs linking retirement age to life expectancy or liberalising services might end up somewhat disappointed (with a few notable exceptions). Similarly, only few policies directly focus on social retrenchment, labour market flexibilisation or a decentralisation of wage bargaining to take better account of productivity trends. The image that emerges from reading the 14 programme assessments discussed in this chapter is that long-term resilience, including the fiscal sustainability of the larger social

7. Each RRF has to include a minimum of 37% of expenditure related to climate policies and a minimum of 20% for digital initiatives. While no such hard quota exists for social expenditure (despite considerable debate in the Council on this issue (Vanhercke et al. 2021), social issues belong to the policy themes that Member States are asked to address (which include elements such as social cohesion and policies for the next generation). Moreover, social policy issues feature extensively in the CSRs.

spending programmes, remains very much a key challenge. However, it is primarily addressed through policies not focused on reducing the cost of social provisions, but through policies aimed at broadening the tax base of the workforce bearing the costs of these welfare programmes. In the social investment literature this is known as enhancing the ‘carrying capacity’ of the welfare state (Hemerijck 2013, 2017).

The idea is that policies should focus on increasing the stock and flow functions of the welfare state, i.e., allowing families to better combine work and care or investing in skills development to allow smooth labour market transitions and higher productivity. A higher quality and quantity of employment is seen as a way of sustaining the popular big welfare spending programmes, such as pensions, healthcare and social protection, known as buffer policies. Those Member States that have long transitioned to this balanced stock, flow and buffer welfare state model – typically the Nordic countries – manage to combine the most generous welfare state provisions with long-term fiscal sustainability. Similarly, during the euro crisis they even outperformed the United States in terms of both equality and employment, despite the more supportive monetary and fiscal policy stimuli in the US (Hemerijck and Matsaganis forthcoming). By contrast, for those Member States largely relying on compensatory welfare models combined with low female participation, there is still an awful lot to be learned and done, both in terms of shock resilience and social equity.

When reading the Commission’s RRP assessments, especially those for Southern and Eastern Member States, the philosophy of social investment appears very much present. RRPs include a wide range of policies that can be seen as stimulating the stock and flow functions of the welfare state in order to enhance long-term resilience. One can find many examples of active labour market policies: France in particular puts a lot of emphasis on hiring subsidies for specific disadvantaged groups (SWD FR). Italy, in turn, plans to introduce a gender equality certification system (SWD IT). Training and investments in skills can be found in all programmes, although the overall comparative size of the investment in adult learning and vocational education and training is relatively small⁸. Few countries have taken the opportunity to introduce universal lifelong learning provisions as part of their plan, though Latvia introduces a pilot project on individual learning accounts (SWD LV).

Two policy areas that stand out in the plans are education and childcare. Most RRPs prioritise education as a key area for investment and reform. Many plans go beyond investing in digitalising education and training systems – an aspect present in all plans –, often addressing access to quality education for vulnerable groups. Looking specifically at Latvia, the Commission considers the reforms related to higher education as the plan’s most ambitious measures, and expected to have a lasting impact on both access and quality (SWD LV). Belgium proposes an ‘Education 2.0’ plan to improve the performance and inclusiveness of the education system, with a specific focus on early school-leavers and vulnerable groups and curriculum reform to match the digital age

8. According to the European Commission’s RRF monitor, 8% of funding under pillar III (Social and Territorial Cohesion) is dedicated to adult and vocational education. For the first 22 RRPs, this would amount to around 15.5 billion euros (numbers as on 7 July 2022; the figures on the dedicated RRF website are continuously being updated).

(SWD BE). The Greek plan introducing a unified and comprehensive curriculum for preschool units is considered by the Commission as a key reform (SWD EL). Slovakia – seen as suffering from long-standing challenges with regard to the quality and inclusiveness of education – is introducing a series of reforms and investments (worth 11% of the total plan) focused on students with special educational needs, on reducing segregation, on providing access to higher education for disadvantaged students, on the inclusion of Roma communities and on curricular reforms (SWD SK). In the Portuguese plan, nearly one third of all elements are related to education, training and children (SWD PT). The only plan not containing any significant measure on the social side, apart from lowering energy costs for households through green investments, is Denmark, already a top performer in most social indicators (SWD DK).

Another element featured in many plans is the focus on early childhood education and care (ECEC) facilities. These are investments that only have an effect in the long term, i.e., with little political gain in the short term, and thus low on policy agendas. External RRF funding with a view to strengthening long-term resilience is thus well placed to stimulate action in this policy area. Interestingly, it was the European Parliament that pushed for the inclusion of a specific category, ‘policies for the next generation’, to be addressed in all plans. The need to ensure sufficient childcare facilities is also one of the priorities of the European Pillar of Social Rights, whose social scoreboard is used in the assessment of the RRFs. Eleven of the 14 Member States included in this study (Denmark, Luxembourg and Slovenia excluded) have taken up the opportunity to include ECEC investments under this heading, both as an investment in the development of children and to stimulate female employment. Croatia, Greece, Italy, Slovakia and Spain are all at the bottom of EU rankings in terms of female employment (Eurostat 2020), while Croatia, Italy and Slovakia also have some of the lowest childcare participation rates (OECD 2021). In their respective RRFs, both Croatia and Slovakia link investments in the training of ECEC teachers and in ECEC facilities to reforms, such as compulsory pre-primary education and legal entitlements to a place in a kindergarten (or other pre-primary education provider) from the age of three in Slovakia and a guaranteed place in an ECEC institution for children between the age of four and the primary school starting age in Croatia (SWD SK, HR). Italy sticks to childcare infrastructure investments to create 264,480 new places, without linking it to a reform. However, the relative size of the Italian investment is by far the largest of all plans, with an expected increase in public childcare capacity of no less than 122% (Corti et al. 2022). Slovenia, which already scores high on childcare capacity, will instead invest in institutional care and nursing homes for the most complex needs, to both enhance social inclusion and stimulate female employment by reducing the burden of informal care (SWD SI).

Whilst investments related to the stock and flow functions of the welfare state take up the largest percentage of the plans’ social expenditure, one can also find reforms and investments related to strengthening the adequacy and coverage of income protection schemes. In the social investment literature, this is known as the buffer function of the welfare state, a side that critics sometimes describe as being overlooked in the supply-side focus of the social investment approach (Cantillon and Van Lancker 2013). It should be noted that RRF funds can only be used for capital expenditure, not for current expenditure. In other words, Member States can invest in training or service

infrastructures, but cannot use RRF funds to pay salaries or directly fund protection schemes. This limits their ability to use the RRF directly for buffer policies. Despite this constraint, Member States have collectively earmarked 13.4 billion euros for spending on social protection and inclusion in their plans, an important slice of which is spent by Italy to improve access to social and health services (European Commission 2022b). Perhaps more importantly is the inclusion of buffer policies on the reform side of the RRFs, in response to CSRs addressing the adequacy and inclusivity of protection schemes. For example, Latvia plans to both increase and index minimum income benefits (SWD LV). Croatia plans to improve the adequacy of its pension system for lowest-level beneficiaries and will set up a new service to support the integration of socially vulnerable groups such as Roma (SWD HR). Portugal will roll out several programmes to combat poverty and strengthen social inclusion in disadvantaged metropolitan areas and communities (SWD PT). Studies have also found that the Commission has actively propagated a socially inclusive approach in the RRFs, for example in the case of Latvia (Eihmanis 2021), or Croatia (Bokhorst and Corti forthcoming).

A challenge possibly arising from the RRFs is that, while investments in childcare and education are expected to lead to economic gains in the medium to long term and thus to improved resilience, they also create new short-term budget entitlements. While many authors are speculating about a potential permanent status for the RRF (e.g. Carnago and Springford 2021; Demertzis 2022), for now it remains a one-off instrument, with the Commission trying hard to ensure that no current expenditure is included in the plans. The principle of performance-based financing in this sense should therefore be understood as applying to the creation of output (schools, tenders, training programmes), and not to outcomes (lower segregation, higher take-up). For many of the issues addressed in the plans, a longer-term horizon exceeding the two or three years covered by the RRF would make sense. This might be an issue for those Member States set to receive larger sums. For Spain, the Commission notes that new entitlements are created in the pension reform, in the healthcare reform, and through the investments in vocational training and public childcare. Interestingly, for Spain the Commission suggests that support from the EU's Structural and Investment Funds could alleviate part of the burden on the national budget, allowing investments to be maintained in the medium term. This would give the EU an even more direct role in the longer-term financing of national welfare states.

Conclusions

With the RRF, the EU is directly investing in national welfare state policies and reforms, with enhanced monitoring capabilities through performance-based financing. Money buys power and creates a need for accountability, meaning that it is important to understand the political dynamics behind the myriad of documents making up the RRF and the assessment of the RRFs. After spending months negotiating with the Commission, Member States are now committed to reforms anchored in plans with concrete milestones and targets. Looking to the future, we can expect that this performance-based financing style of governance will be the new governance design for EU funds. For example, in its proposal for a new Social Climate Fund linked to the

income derived from the Emission Trading Scheme, the Commission is proposing that, to gain access to funds, Member States should draw up results-oriented plans with clear targets, milestones and deliverables (European Commission 2021). Performance-based financing is a way to inject much greater detail into the Semester in an ex-ante way, with tranche payments acting as both a stick and a carrot. In this way, the RRF can be expected to streamline policymaking processes and ensure efficiency. At the same time, it will be important to keep an eye on how this affects policymaking inclusivity. Drafting an RRP is a process mainly involving discussions between bureaucrats, but it now involves the messier world of politics, parliaments and implementation. Past experience tells us that it is unlikely that all milestones will be fulfilled exactly as proposed, especially given the RRF's rather tight timeframe. As for monitoring, on paper the RRF has the potential for both the Commission and Council to adopt a more intrusive governance style, though so far there is little evidence that things are heading that way. The analysis of the Commission assessments of the plans in this chapter shows that RRF governance also provides the Commission with considerable interpretational leeway and that there are limits to its influence. Despite statements of senior Commission officials to the contrary, we may continue to expect a flexible approach in the future. The level of detail in the RRP assumes a predictable world where policymakers know ex-ante what can be expected from policies. But the world of policymaking and politics is deeply uncertain: new challenges such as dealing with the fallout of the Ukraine war, the subsequent cost-of-living crisis, inflation and the need to accelerate the transformation of energy markets all lead to shifting political priorities over time. When political attention shifts or wanes, so does the Commission's ability to take a tough line on implementation. We can thus expect that in practice RRF governance will remain inherently political.

The discussion on governance cannot be seen separate from the discussion on content. When the Commission took a more hierarchical approach to Semester governance in the first years of the euro crisis, there was significant outcry in certain academic circles over a fear of neoliberal subordination of domestic social policymaking. With the RRP, even if the Commission may have pushed for more ambition, the outcomes point to more inclusive and enhanced welfare states. Social investment principles are centre-staged in the RRP's social chapters, especially for those Member States that have drawn up more ambitious plans and are set to receive more funds. The hope is that strengthening welfare state provisions, for instance with regard to education and childcare, will help release the untapped potential of Member States in terms of the quality and quantity of the workforce, especially with regard to female labour market participation. While these policies may not fully offset the need for difficult structural reforms such as linking the retirement age to life expectancy, they can be seen as a well-proven recipe for fostering long-term resilience. All in all, while there may still be challenges ahead when fiscal rules are unfrozen, the RRF seems to confirm the hypothesis that we are witnessing a progressive socialisation of the policy recipe propagated in EU economic governance.

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Annex

	Cited European Commission documents
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Annex HR	European Commission (2021) Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Croatia, ST 10687/2021 ADD 1.

Annex IT	European Commission (2021) Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Italy, 10160/2021 ADD 1.
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Chapter 3

The socio-ecological dimension of the EU's recovery: further traction for the European Green Deal?

Sebastiano Sabato and Sotiria Theodoropoulou

Introduction¹

The setting up of the Recovery and Resilience Facility (RRF) can be considered a quantum leap in the process of European integration (Vanhercke and Verdun 2022). First, in order to finance this instrument, the European Union (EU) has issued debt of unprecedented size and scope. Second, the RRF relies on strong mechanisms of conditionality and monitoring of the usage of funds, thus potentially enhancing the EU's influence on national policies and priorities (Bokhorst, this volume). Resources provided to the Member States are to be used to finance investment and reforms – to be proposed by the Member States in national Recovery and Resilience Plans (RRPs) – enabling recovery from the Covid-19 crisis and in line with EU priorities set out in the RRF Regulation. One top priority is to promote the transition towards environmentally sustainable economies and societies (the so-called 'green transition'). As made clear by EU institutions in several documents, the stated ambition is not simply to promote a green transition: this transition should be 'just', ensuring that both the risks and opportunities deriving from the transition are fairly distributed across social groups and territories, 'leaving no one behind'. To achieve a just transition, a certain degree of consistency and integration between green transition policies and social policies is needed, making them compatible and mutually reinforcing.

Against this background, recent studies have investigated the 'socio-ecological dimension' of the RRF through analysing its constitutive documents, assessing whether, to what extent and how this instrument could promote the integration of green and social policies (Sabato et al. 2021). Other studies have looked at RRF implementation at national level, providing a macro-analysis of the relationship between the social and green dimensions of the national RRFs submitted to the European Commission and exploring, in a small number of plans, cases in which the two dimensions are interconnected (Theodoropoulou et al. 2022). In this chapter, we go one step further: a) proposing an analytical framework suited to identifying specific measures constituting the socio-ecological dimension of national RRFs and their key features; b) applying this analytical framework to the study of the RRFs of six countries, with a view to providing

1. This chapter draws on and further develops analyses by Sabato et al. (2021) and Theodoropoulou et al. (2022). We would like to thank the co-authors of those papers: respectively Matteo Mandelli (University of Milan) and Bart Vanhercke (European Social Observatory), as well as Mehtap Akgüç (European Trade Union Institute) and Jakob Wall (Dondena Centre-Bocconi University). We would also like to thank Milena Büchs (University of Leeds), Matteo Mandelli, Slavina Spasova and Bart Vanhercke (OSE) as well as Richard Lomax for their precious feedback on an earlier draft. Last but by no means least, we are grateful to Federico Moja (University of Milan and OSE) for his valuable contribution to the empirical research for this chapter. Any remaining errors and misinterpretations are the sole responsibility of the authors.

concrete illustrations of policies for the socio-ecological transition proposed by the Member States; and c) shedding light on the functions that welfare states are expected to perform in the green transition.

The chapter is structured as follows. Section 1 discusses how the notions of ‘green transition’ and ‘just transition’ have been used in key EU policy documents and strategies, notably the European Green Deal (EGD) and the RRF. Section 2 presents the analytical framework for the research. Section 3 provides an overview of the relationship between the social and green dimensions of national RRP, based on available data covering 25 national plans. In Section 4, we apply our analytical framework to the study of six RRP, illustrating specific measures foreseen by the Member States and identifying the main features of the socio-ecological dimension of these plans. The concluding section summarises the key findings, reflects on policy implications and highlights open issues for future research: since this is one of the first studies analysing the national RRP from a socio-ecological angle, it should be considered as exploratory. As a result, in Annex 1 we discuss the implications of our methodological and analytical choices, highlighting key aspects to be investigated in future research.

1. A just, green transition for the EU?

In December 2019, the European Commission published the European Green Deal, an overarching strategy for transforming the EU’s economy and societies with a view to achieving climate-neutrality by 2050 and to protecting, conserving and enhancing the EU’s natural capital (European Commission 2019: 2). While the EGD is primarily an economic strategy aimed at fostering gross domestic product (GDP) growth and competitiveness in the EU, more explicitly than in previous EU overarching strategies, it also aims to make economic objectives compatible with environmental objectives, in particular the fight against climate change. The EGD is indeed presented as an integral part of the EU strategy to implement the United Nations’ 2030 Agenda for Sustainable Development and – together with the Climate Law and the Paris Agreement – is considered the key EU policy framework for achieving the so-called ‘green transition’ (Bruyninckx et al. 2022). The latter is defined as ‘the transition of the EU economy and society towards the achievement of the climate and environmental objectives [of the EU²] primarily through policies and investments [...]’ (European Commission 2021a: 24). Indeed, the EGD is based on the assumption that, if well designed, the policies for the green transition have the potential to bring simultaneous economic and environmental gains, in particular through decoupling economic growth from resource use (for criticism of the feasibility and desirability of this approach, see Fronteddu 2020, Laurent 2021, Haberl et al. 2020, Parrique et al. 2019).

2. The phrase ‘climate and environmental objectives’ refers to the six objectives laid down by Regulation (EU) 2020/852, namely: climate change mitigation; climate change adaptation; the sustainable use and protection of water and marine resources; the transition to a circular economy; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems (European Parliament and Council of the European Union 2020: art. 3b). In the present chapter, the expressions ‘green objectives’ or ‘objectives of the green transition’ refer to those objectives.

In the EGD, the European Commission also refers to socio-ecological challenges, showing awareness that the transformations envisaged to achieve the green transition will have significant social impacts: besides opportunities (e.g. the creation of new 'green' jobs), the green transition is indeed expected to entail severe social challenges, including job losses and redeployment related to industrial restructuring, issues connected to the (re)distribution of the costs of the transition (for instance, energy poverty and the regressive impacts of taxes on home energy), and challenges related to overall changes in lifestyles (including, for example, the financial difficulties of low-income households to adopt low-carbon technologies). To prevent and address these challenges, the European Commission refers to the need to achieve a 'just transition'. Originally put forward by the trade union movement in the 1980s, the notion has been used over time by a number of societal players and international organisations (Galgóczy 2018; Sabato and Fronteddu 2020)³, inevitably resulting in just transition becoming a contested concept (Stevis et al. 2020) with somewhat blurred boundaries and with various possible interpretations and usages.

In the EGD, the notion has been used with a twofold meaning (Sabato and Fronteddu 2020). On the one hand, just transition has a strong territorial connotation, emphasising social investment policies to ensure worker employability in those territories hardest hit by economic restructuring. This is, for instance, the main objective of the Just Transition Mechanism (JTM) proposed in the EGD. On the other hand, more generally, the 2017 European Pillar of Social Rights (EPSR) was identified as the EU reference framework to ensure a just transition for *all* European citizens. This role of the EPSR was restated in the European Commission's (2020a) Communication on 'A strong social Europe for just transitions', without however providing specific indications of policies to be implemented to achieve the EPSR objectives in the context of the green transition⁴. After the outbreak of the Covid-19 pandemic, the European Commission made it clear that recovery measures should be in continuity with the EGD, including its ambition to promote a just transition (Sabato and Mandelli 2021).

Pursuit of the green transition also characterises the main instrument for EU recovery from the Covid-19 pandemic: the Recovery and Resilience Facility. Totalling 672.5 billion euros – 360 billion in loans and 312.5 billion in grants (2018 prices) –, the RRF is intended to support reforms and investments undertaken by EU Member States, with a strong emphasis put on promoting the green transition. The latter is the first of the RRF's six 'pillars'⁵, and Member States are asked to allocate a minimum of 37 per cent of expenditure in their RRFs (i.e. the largest mandated share across the six RRF pillars)

3. From a theoretical angle, the notion of just transition is based on principles of both distributional justice (fairly sharing the costs of the transition and addressing current and potential inequalities) and procedural justice (ensuring the participation of citizens and stakeholders in the decision-making process and in policy implementation) (McCauley and Heffron 2018; Newell and Mulvaney 2013). In an attempt to use this notion in a more systematic way and to develop a comprehensive policy framework to guide policymaking, in 2015 the International Labour Organisation (ILO) drafted a set of concrete guidelines on just transition (ILO 2015).
4. For a critical view of the overall 'EU framework for just transition', in terms of both consistency and sufficiency, see Akgüç et al. (2022).
5. The RRF 'pillars' refer to European policy areas deemed as key to achieving recovery from the Covid-19 crisis and enhancing the long-term resilience of the EU and of its Member States (European Parliament and Council of the European Union 2021: recital 10).

to investments and reforms supporting this objective (in particular, the EU climate objectives). Other RRF pillars have more marked ‘social’ objectives, including pillar 4 (social and territorial cohesion), pillar 5 (health, and economic, social and institutional resilience), and pillar 6 (policies for the next generation, children and youth)⁶. Thus, at least from the text of its constitutive documents, one can conclude that the RRF has both a green and a social dimension. While these dimensions often appear as separate (pertaining to different pillars), in some cases they interact, to the extent that Sabato et al. (2021) refer to the RRF’s ‘socio-ecological dimension’. According to their analysis, this dimension consists mainly of two elements. First, when implementing reforms and investments related to the green transition, Member States are asked to consider their social dimension and their impact on equality, while also justifying how their plans will ensure a just transition (ibid: 41)⁷. Second, emphasis is placed in the RRF on the role that education and training policies can play in enhancing worker employability in a greener economy, thus making an explicit link between the green transition and social policies.

More concrete EU guidance on policy packages to be implemented by the Member States to ensure a ‘fair’ transition has been provided only recently (well after the submission of Member States’ RRFs), through a Council of the European Union (2022) Recommendation on ‘ensuring a fair transition towards climate neutrality’, adopted in June 2022. This Recommendation calls on Member States ‘to adopt and implement, in close cooperation with social partners as relevant, comprehensive and coherent policy packages, addressing the employment and social aspects to promote a fair transition across all policies, notably climate, energy and environmental policies [...]’ (Council of the European Union 2022: (2)). To do so, the Recommendation indicates actions to be taken in four domains: a) active support for quality employment; b) quality and inclusive education, training and lifelong learning, as well as equal opportunities; c) fair tax-benefit systems and social protection systems, including social inclusion policies; and d) access to affordable essential services and housing.

2. Exploring the socio-ecological dimension of EU recovery: analytical framework

From the discussion above, it emerges that a just transition approach requires a degree of coherence and integration between different economic, social and environmental policies, in order to make their respective objectives compatible and, wherever possible, mutually reinforcing. While both the EGD and the RRF call for a just transition

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6. The other pillars of the RRF are digital transformation (pillar 2) and smart, sustainable and inclusive growth (pillar 3).
 7. Besides establishing this principle at a general (and rather generic) level, however, the RRF only mentions that social and distributional implications need to be carefully taken into account in relation to a few specific green transition policies, including reforms aimed at ‘greening’ fiscal policies, measures for the renovation of buildings and the promotion of energy efficiency, and the need to pay particular attention to marginalised communities with regard to their access to environmental services such as waste prevention and management and water re-use infrastructure.

approach, indications on the types of policies to be implemented for such a purpose are relatively limited and rather vague. Against this background, the two objectives of this chapter are: a) to understand whether the RRP's effectively contain measures with an explicit ambition to simultaneously promote social goals and the environmental – and climate-change-related goals of the green transition – i.e., in our terminology, whether they have a socio-ecological dimension; and b) to understand what role national welfare states are expected to play in this context. To do this, we first need to develop an analytical framework for empirically analysing the RRP's, allowing us to determine their socio-ecological dimension.

To identify the concrete measures to be analysed, we start out from Matteo Mandelli's (2022:8) definition of eco-social policies (or socio-ecological policies): 'public policies *explicitly* pursuing both environmental and social policy goals in an *integrated* way' (italics in the original). In this definition, two main dimensions for an empirical identification of eco-social policies are highlighted: a) *explicitness*, meaning that the ambition to simultaneously pursue social and environmental goals should be made clear in the declared objectives and expected outputs of the policies at stake; and b) *integration*, i.e. the establishment of concrete policy measures allowing the simultaneous pursuit of environmental and social goals, tackling the interconnections between these two policy domains either by directly unifying or by coordinating different policies. Importantly, the integration between social and environmental policies can proceed in two directions, related to the core rationale of the policy in question (Mandelli 2022): a) environmental-to-social policies, i.e., adding a social dimension to environmental policies with a view to addressing the social implications of environmental issues and policies; and b) social-to-environmental policies, i.e., adding an environmental dimension to social policies.

Drawing on the framework proposed by Sabato et al. (2021: 21), we then identify four functions that welfare states could be expected to perform in the green transition:

1. *Benchmarking function*. The principles and rights embedded in welfare states can affect policies for the green transition by defining social criteria and objectives to be considered and respected while designing and implementing these policies. In this case, the reference is to the need to design policies that – while primarily aimed at achieving objectives related to the green transition – are also consistent with the achievement of social objectives. For instance, the need to protect vulnerable households, ensuring adequate and affordable access to clean energy, should be taken into account in the design of low-carbon energy policies, while the distributional consequences and the impact on the most vulnerable should be carefully considered when designing environmentally friendlier fiscal systems through carbon pricing and environmental taxation.
2. *Enabling function*. In this case, welfare policies – while pursuing primarily social objectives – are made compatible with the climate and environmental objectives of the green transition, with a view to facilitating the achievement of the latter. Welfare policies could act as enablers of the green transition in two respects. First, the emphasis is on the *social investment* function of the welfare state,

i.e., on its role in fostering the development of capabilities and human capital, and, if targeted, in providing the skills needed in a greener economic model and facilitating the transition of workers between economic sectors. Examples are policies such as education and training, re-skilling, and active labour market policies, when explicitly linked to the provision of competences for the green economy.

Second, welfare policies can contribute directly to some of the objectives of the green transition when these policies (and the related social infrastructure) are purposely designed in a way reducing their ecological footprint. One example of this are policies and practices for affordable (social) housing incorporating an ecological dimension, for instance to meet energy performance goals (see Machline et al. 2018). Examples in the field of labour market policies may include working time reductions, seen by some scholars as a solution simultaneously bringing social gains (in terms of improved wellbeing and quality of life) and environmental gains (limiting rises in energy consumption and emissions and reorienting household budgets in a lower carbon direction) (Gough 2017: 186-191). Importantly, while social investment proponents usually highlight the contribution of these policies to enhancing economic competitiveness and GDP growth, policies aimed at reducing the welfare state's ecological footprint are proposed in the literature on sustainable welfare (Büchs and Koch 2017; Hirvilammi and Koch 2020), a strand of the literature usually relying on the notion of de-growth.

3. *Buffering function.* The focus here is primarily on social protection and assistance policies (e.g., unemployment and minimum income schemes, healthcare and pensions). These policies can act as buffers, ensuring that all citizens are protected during the transition and tackling any increases in inequalities deriving from the transition process. Examples of measures explicitly linked to the green transition range from income support schemes for workers affected by economic restructuring (e.g., European Commission 2021b: 30) to forms of basic income schemes such as transition incomes or various types of vouchers (Bohnenberger 2020; Büchs et al. 2022). Besides cash benefits, buffers may also take the form of in-kind provisions. In this respect, part of the literature on sustainable welfare emphasises the role that universal basic services (Institute for Global Prosperity 2017; Coote and Percy 2020) could play during the green transition (Büchs 2021)⁸.
4. *Consensus builders or conflict management function.* In this case, welfare state institutions could be used to build a consensus on the green transition or to manage the conflicts inevitably deriving from it. Established social dialogue

8. Universal basic services refer to 'an unconditional provision of public services that address needs satisfaction to everyone in society' (Büchs 2021: 1). Some of these services could be explicitly linked to the achievement of environmental objectives (for instance, the provision of basic amounts of (green) electricity or water to everyone for free or the provision of social housing) (ibid.: 2). While these services would undoubtedly have a buffer function, in our analytical framework many of them would be included under the benchmarking or enabling function (see Annex 1).

structures and practices – involving employer and trade union organisations, and public authorities – would be key in this respect. In line with the notion of just transition, civic dialogue practices involving a broader array of players would also play an important role in ensuring consensus or managing transition-related conflicts.

Importantly, these four functions relate to different dimensions of public policies: a) the normative dimension (welfare states as benchmarks for the green transition); b) policy programmes and instruments (welfare states as enablers of or buffers in the green transition); and c) the procedural dimension (welfare states as consensus builders or conflict management tools).

The discussion above allows us to identify a number of elements for an analytical framework that could be used to: a) single out measures in the RRP relevant to the socio-ecological transition ('explicitness'); b) shed light on the relationship between their social and the green dimensions ('direction'); and c) understand their implications in relation to the role of welfare states in the green transition ('functions').

Collecting information on the existence of planned policy interventions integrating the ecological and social dimensions, and on the extent and nature thereof along the lines suggested by Mandelli (2022) across the entire set of RRP, would be a formidable task. The vast majority of RRP have hundreds of pages and are in most cases available in the national language(s) only. Moreover, while the RRF Regulation imposed several conditions to be respected to access funding, national administrations still had considerable freedom in choosing which investments and reforms to propose and how to structure their national programmes into components, i.e., sets of policy interventions under different headings. The latter also depended on which national policies already existed or were planned in the context of national recovery and/or transition plans for the aftermath of the pandemic. Thus, there is a trade-off between analysing the information provided in the national RRP to get an idea on whether and how integrated the green and social dimensions of proposed policies are, and the capacity to draw conclusions for the RRF as a whole by covering as many countries as possible.

The RRF Scoreboard – launched by the European Commission in December 2021 to help monitor RRF implementation – has not been particularly helpful in easing this trade-off, as it contains only one indicator reporting on the joint progress made towards green and social objectives, namely the 'population benefiting from protection measures against floods, wildfires, and other climate related natural disasters', measured in terms of the number of people (European Commission 2021c).

We thus take a two-pronged approach to gauge the socio-ecological dimension in the RRP. We start by providing some basic data on spending and a qualitative assessment of the joint contribution of different policy bundles targeting green and social objectives to obtain a crude but across-the-board picture of the planned intentions of the Member States submitting RRP (Section 3).

We then add (Section 4) further details from specific country case studies illustrating whether and in which ways there are explicit plans to integrate green and social goals and policies, in line with the insights of the analytical framework presented above. We apply this analytical framework to six countries, selected according to two criteria: a) countries belonging to each of the six clusters of ‘eco-welfare states’ identified by Zimmermann and Graziano (2020); and b) since the RRP are usually available only in the national language, countries with plans written either in English or in a language spoken by the authors. Our sample of RRP thus includes Belgium (cluster 1 in the classification developed by Zimmermann and Graziano (2020)), Italy (cluster 2), Denmark (cluster 3), Ireland (cluster 4), France (cluster 5) and Spain (cluster 6).

3. Pursuing green and social objectives in the EU recovery: macro-level analysis

In this section, we provide data from the RRP of 25 Member States⁹ on certain metrics indicating policies combining both green and social objectives. We rely on two sources: a) information from the assessments made by the European Commission of the RRP submitted by Member States from spring 2021 onwards; and b) a dataset compiled by Bruegel, assigning the proposed funding to the different RRF pillars.

Covering the criteria introduced in the Regulation setting up the RRF, the European Commission assessments of the RRP were published as Staff Working Documents (SWD). One of these criteria was ‘relevance’, i.e., whether an RRP ‘contributes in a comprehensive and adequately balanced manner to all six pillars referred to in Article 3 considering the specific challenges of the Member State concerned and taking into account the financial contribution of the Member State concerned and the requested loan support’ (European Parliament and Council of the European Union 2021: L57/56).

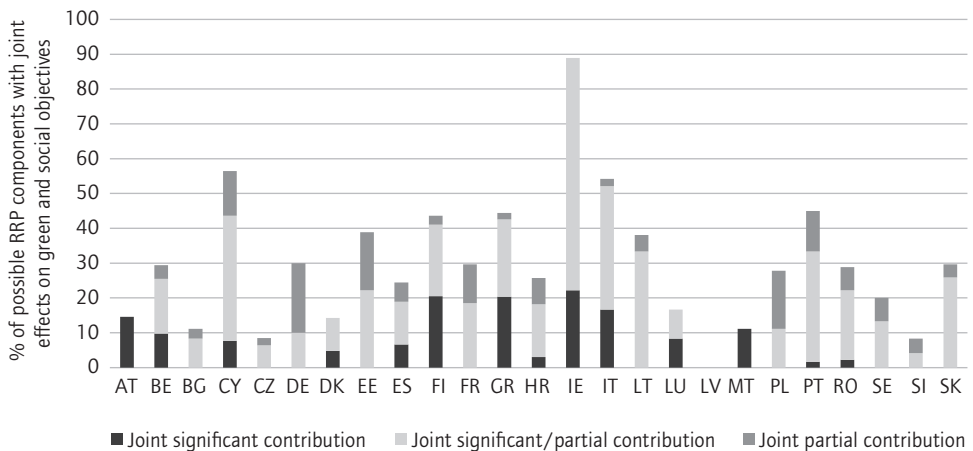
To that end, each SWD provides a table with the expected ‘contribution’ of each RRP component – that is, of each set of policy interventions (investments and reforms) bundled under different headings – to each of the RRF policy pillars, stating additionally whether this contribution is expected to be ‘significant’ or ‘partial’. The accompanying text in the relevance section explains these assessments by presenting the proposed RRF amounts to be spent by component, i.e., one of the policy inputs, and the policy outcomes as mentioned in the RRP. It is not entirely clear, however, what the relative weights of policy inputs (amounts to be spent) or contributions have been in determining the assessment of relevance and whether any additional assessments beyond those mentioned in the national RRP have been undertaken. RRP received an overall rating for their relevance, covering all components. Moreover, this information clearly does not expressly address whether and how policy interventions are integrated, i.e., whether they explicitly aim to jointly tackle green and social objectives.

9. By June 2022, all 27 Member States except the Netherlands had submitted a national RRP. By that date, 25 of these had been fully assessed by the Commission, with the assessment of the Hungarian RRP still outstanding at the time of writing this chapter.

For lack of better information and notwithstanding the above caveats, we have used the tables showing which contribution each RRP component is expected to make to each pillar to gain a preliminary idea of whether any balance is struck between green and social objectives in the RRP, i.e. between pillar 1 of the RRF (green transition) and pillars 4 (social and territorial cohesion), 5 (health and economic, social and institutional resilience), and 6 (policies for the next generation, children and young people)¹⁰. We assume that RRP components with a jointly significant contribution to both the green transition and one of the social pillars suggest a greater balance than RRP components with a significant expected contribution to one of these pillars but only a partial contribution to the others (or only a partial contribution to any of them).

Figure 1 shows, by national RRP submitted and assessed by June 2022, the extent to which the proposed RRP components are expected to have jointly significant or partial contributions to the green transition objective and to at least one of the social objectives.

Figure 1 Shares of RRP components (by national RRP) making a joint (significant, significant/partial or partial) contribution to the green transition and to one of the social pillars of the RRF



Note: Each share is calculated by counting the number of RRP components for which it is expected that there will be a joint (significant/partial) contribution to the green transition pillar and one of the three social pillars over the total number of RRP components where such joint contributions are observed. Each RRP component can have at most three joint contributions to the green and to one of the three social pillars. Thus, the total number of possible components is dictated by the number of components in an RRP x the maximum number of possible joint contributions.

Source: Authors' elaboration based on the European Commission's formal assessments of 25 national RRP submitted and assessed by June 2022.

10. We chose to omit the pillar on smart, sustainable and inclusive growth from this calculation as its 'social' character is more ambiguous. This is because measures set to promote smart growth, for example promoting R&D and innovation (especially radical, as opposed to incremental, innovation) or through reforms promoting an easier reallocation of labour across firms, may, without targeted policy interventions, be associated with greater inequality and thus less inclusive growth. While there can be policy synergies between smart and inclusive growth, they are by no means to be taken for granted. Given that the European Commission assessment of the contribution of each RRP component to each of the RRF policy pillars does not distinguish between policy interventions included in each component, we chose not to consider this pillar among those referring to social objectives.

Figure 1 shows that, while most Member States have proposed RRP components expected to contribute significantly to both the green transition and one or more of the social pillars, these components are relatively scarce. RRP components expected to contribute significantly or partially to the green transition and to one of the social pillars are more common. The above data suggests that, at least ex-ante, the balance between the contribution of RRP components to the green and one of the social pillars of the RRF is relatively weak in most RRFs.

The European Commission assessments of any expected joint contributions of RRP components to the RRF's green and social policy pillars are not always easy to dissect, as they often refer to sets of measures included under a specific RRP component, in many cases containing several investments and reforms. It is not always clear whether and to what extent all measures included in a component have been assessed as jointly contributing to the different pillars. To get an idea, however, the Belgian RRP – thanks to the concise structure of its components in comparison to other RRFs examined – allows us to gain a certain understanding of the Commission's assessment of the expected contribution of different measures to the green and social pillars. For example, 'Renovation of buildings' (component 1.1) is expected to improve the energy efficiency of buildings, thus contributing significantly to the green transition pillar. Some of these buildings are used for the provision of social services, such as social housing, education, sport, youth, cultural and training facilities, thus contributing 'significantly' to social cohesion. Others are used as schools, universities, sports facilities and youth infrastructure in the French community, thus expected to partially contribute to the pillar of policies for the next generation, children and young people, such as education and skills (European Commission 2021d). The 'social infrastructure' component (4.3) is expected to significantly contribute to social cohesion by addressing the shortage of – among others – early childhood care, especially for vulnerable households, and to partially contribute to the green transition through the 'energy-efficient' renovation of childcare facilities (European Commission 2021d).

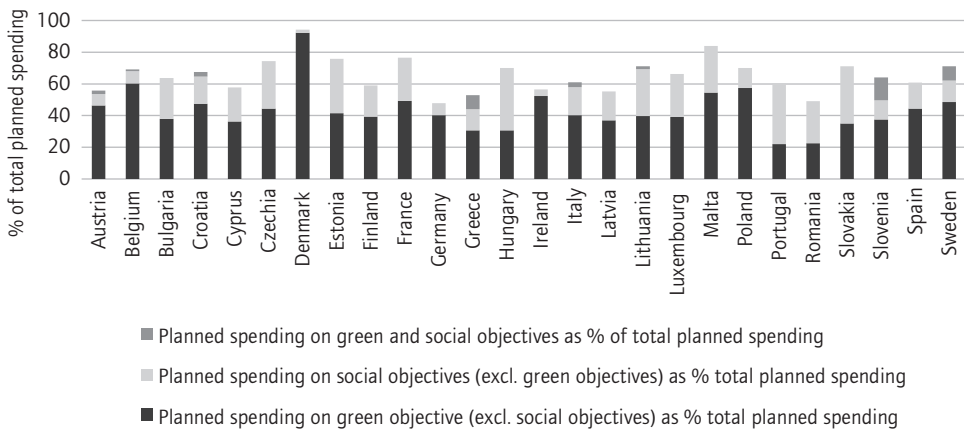
Moving on to the next set of macro-indicators of a balance (or lack thereof) between green and social objectives in national RRFs, we examine a) the share of planned spending on measures relating to the green transition objectives compared with spending on measures for social objectives; and b) the share of planned spending jointly targeting green and social objectives as a share of total planned spending. Proposed measures in the latter category include investments in education and training to fill skill gaps or needs in green sectors and technologies, the improvement of energy efficiency by promoting the renovation of buildings, or other measures combating energy poverty, investments in waste prevention or management (boosting circular economy models) and in water re-use infrastructure, and the provision of environmental services to marginalised communities.

Using data from Bruegel (2021), Figure 2 shows, for the national RRFs submitted to the European Commission, a) the share of RRF costs wholly or partly targeting the green

pillar, excluding spending on any of the social pillars¹¹; b) the share of planned spending wholly or partly targeting one of the social pillars, excluding any spending on the green pillar; and c) the share of spending simultaneously targeting the green and one or more social pillars.

As mentioned by the dataset's authors, assigning planned spending to single pillars is particularly difficult. However, one can see that, in most cases, planned expenditure targeting the green pillar, excluding any spending on the social pillar, is greater than that targeting one or more social objectives, excluding any spending on the green pillar, although there are also several country exceptions with more balanced figures, such as Estonia, Hungary, Portugal, Romania and Slovakia. Moreover, in only eight of the 25 countries – Austria, Belgium, Croatia, Greece, Italy, Lithuania, Slovenia and Sweden – were the dataset's authors able to assign spending to policy interventions jointly targeting the green and one or more social pillars. Even in these cases, the share of planned spending simultaneously targeting both objectives is relatively tiny compared to the other categories, apart from Slovenia where the joint green and social spending amounts, in terms of the planned costs, to almost the same share as the spending on solely social measures. Greece and Sweden also have some of the highest shares of such 'integrated' green and social planned spending compared to the rest.

Figure 2 Distribution of planned national RRP costs among actions targeting green and/or social objectives



Source: Authors' calculations using data from Bruegel (2021).

11. The authors of the Bruegel dataset assigned planned spending to single pillars (objectives of the RRF) and also to joint pairs of pillars. For the purposes of Figure 2, we have calculated the share of joint spending on the green and one or more of the social pillars (i.e. pillar 1 and pillar 4, 5 or 6) as one category; planned spending on the green pillar alone and either of the non-social pillars (pillars 2 and 3) as a second category; and planned spending on one or more of the social pillars and the remaining pillars other than the green as a third category.

Again, there are several caveats. The data in Figure 2, even in the category of planned spending jointly targeting green and social objectives, do not tell us much about the way in which the green and social aspects of the interventions are integrated. The data pertaining to the planned spending on the green (excluding social) and the social (excluding green) pillars similarly does not necessarily provide a full picture of the actual balance between green and social policies in Member States, as their starting positions, most notably in respect of their welfare states and their environmental policies (and therefore their needs but also their own capacity for spending), vary quite substantially.

4. The welfare state and the green transition: evidence from six countries

In this section based on a more in-depth analysis of 52 measures identified in the six countries under scrutiny¹², we illustrate the policy areas linked to those measures constituting the socio-ecological dimension of the RRP, and the welfare state functions they refer to.

4.1 Welfare states as a benchmark for the green transition

Most of the identified measures explicitly combining a green and social dimension (see Table 1 in Annex 1) are *primarily* aimed at achieving the objectives of the green transition (for instance, energy efficiency). However, they are *also* framed in a way attempting to take account of the principles of social fairness and justice. According to our analytical framework, these measures pertain to the benchmarking function of welfare states in relation to the green transition. This is the function to which we most often assigned policy measures in the RRP under scrutiny. Such measures were found in five of the countries examined: Belgium, Denmark, France, Italy and Spain. The most common type in this category were investments aimed at improving the *energy efficiency of buildings*, both residential and public buildings. While such programmes often concern the population as a whole, measures with a more marked benchmarking role for the welfare state usually involve a) the provision of specific energy efficiency incentives and subsidies for the most vulnerable households; and b) a focus on the energy-saving renovation of social infrastructures such as social housing, schools and universities, or healthcare facilities.

Other measures attributable to a benchmarking function include *reforms of tax systems* aimed at making the systems environmentally friendlier and supportive of the green transition. Environmental taxes are typically regressive as they are imposed on consumption, irrespective of income. Measures countering this regressive character are thus often necessary, if anything to avoid political opposition to them. These reforms include both the ‘greening’ of the taxation system and the introduction of green budgeting (Belgium and Spain) to make tax systems more progressive and/or increase taxes on

¹² Information has been taken from the RRP of the six countries under scrutiny (Government of Belgium 2021, Government of Denmark 2021, Government of France 2021, Government of Ireland 2021, Government of Italy 2021, and Government of Spain 2021). More details on the measures selected are provided in Annex 1 (Table 1).

polluting activities with a view to reducing taxation on labour. In both the planned Belgian and Spanish fiscal reforms, there is some awareness of the possible negative distributional implications of these reforms and a commitment to address these implications in a socially fair way. The same applies to the Green Tax Reform envisaged by Denmark.

Other measures primarily concern the *management of natural resources*. However, special attention to marginalised or vulnerable communities seems to characterise their design. These measures range from the management of forests with a view to revitalising rural areas facing the risk of depopulation (Spain), to managing drinking and other water infrastructure in areas where populations face a high risk of poverty (for instance, French overseas territories).

A few measures concern *transport systems*, with a view to making them more effective and environmentally sustainable, and more accessible for vulnerable groups. Examples of these types of measures were identified in Belgium, where for instance the 'modal shift' component, in particular towards rail, is expected to contribute significantly to the green transition pillar through more sustainable mobility, as well as to social cohesion, by decreasing reliance on the personal use of motor vehicles where costs may be associated with poverty.

4.2 Welfare states as enablers of the green transition

The enabling function of the welfare state is the second most frequent function addressed in the RRP's examined. All the Member States included in this analysis proposed 'enabling' policies akin to social investment and related to the acquisition and development of *green skills, education and training* and activation policies for those impacted by the green transition.

In some cases, the proposed interventions focused specifically on providing 'green' skills and activation support to programme beneficiaries, with women possibly over-represented (for example, the SOLAS Green Skills Action Programme in Ireland). In the majority of cases, however, education and training policies in the RRP's have a broader scope, including – but not limited to – the provision of skills and competences for the green transition. In some cases, the focus is on acquiring digital skills and competences deemed to be useful for the digital and green transition. Examples include a) Spain's national digital skills plan, investment in the acquisition of new skills for the digital, green and productive transformation, and the digital transformation of vocational training; and b) Belgium's upgrading of the advanced training infrastructure in Wallonia.

Activation policies often build on (or extend) existing policy frameworks. For example, in France, additional spending from the RRP has been earmarked for the 'Associations of Professional Transition' to facilitate transitions in sectors likely to be impacted by the green transition, and for 'France Competences', a structure financing a growing number of contracts aimed at professionalisation, apprenticeships and promoting work-study contracts. Facilitating the mobility of workers across sectors (including green sectors)

is also an objective, for example, of the Belgian reform aimed at permitting workers who find less than full-time employment to combine benefits.

While the examples listed above mainly facilitate the green transition by providing workers with the skills and competences for a greener economy, other measures do so by ‘greening’ the welfare state and, notably, the *social infrastructure*. We thus also find in this category interventions for renovating buildings providing social services (for example, education) and for extending facilities for the housing of vulnerable persons in line with energy efficiency and environmental sustainability criteria. Examples include the development of public utility housing and housing for vulnerable persons in Wallonia (Belgium). Similar activities – the construction and renovation of public buildings with social functions – are to be found in the Italian RRP. The construction of social housing with adequate energy performance, with the aim of addressing energy poverty but also of regenerating otherwise possibly declining areas and improving quality of life, is also proposed in Italy and Spain.

Last but not least, we came across an intervention aimed at strengthening culture and awareness of climate challenges, educating and promoting sustainable lifestyles, and practices aiming to develop *educational material* for use in schools and involving schoolteachers (Italy).

4.3 Welfare states as buffers in the green transition

Measures related to the buffer function of the welfare state are rare in the RRP examined. The only example coming close to our definition was found in the Spanish RRP, in its component 23: ‘new public policies for a dynamic, inclusive and resilient labour market’. That programme component plans investment to promote inclusive growth by linking social inclusion policies to the Minimum Living Income (*Ingreso Mínimo Vital*). The labour market policies component in which this measure is included aims *inter alia* to orient activation policies towards upskilling workers and thus enabling them to work in emerging sectors, including the green one in which labour demand is increasing as the Spanish economy transforms. The link between the measure and green transition is somewhat loose, as the latter is just one of the transformations – but obviously not the only one – that the Spanish economy needs to undertake.

4.4 Welfare states as consensus builders or conflict management tools for the green transition

Few interventions in the RRP relate to welfare states acting as a consensus-building or conflict management tool for the green transition. In most cases, governments stated that reforms and investment in *labour market policies and skills development* systems aimed at enabling the green transition (see Section 4.2) would be designed following consultations with the social partners. For example, the Belgian RRP mentions that social partners will be involved in programmes enhancing mobility and skills acquisition,

as consensus is important for fostering labour market reform, while the Spanish RRP envisages that the planned labour market reform will be accompanied and supported by a modernisation of collective bargaining and social dialogue. Similarly, the strategic plan for vocational training in Spain is to be accompanied by social dialogue on such training, thereby consolidating the strategic alliance supporting the plan.

A more direct link between green transition policies and social dialogue can be found in Component 10 of the Spanish RRP on just transition. It foresees the creation of *Just Transition Agreements* in territories particularly affected by the green transition (namely, coal-mining regions and territories affected by power plant closures), with a view to supporting redundant workers and their communities and promoting the development of these territories. These agreements would include trade union and employer representatives.

Other measures involve a broader array of stakeholders in addition to the social partners, thus promoting *civic dialogue*. For instance, energy communities are to be developed in Spain to empower citizens in the energy transition and to support participative, formative and constitutional processes within communities. Furthermore, France established a Citizens' Convention consisting of 150 randomly selected citizens, which provided 149 legislative proposals to the government for the RRP. The Convention also identified six climate-related themes which have been taken into account in the July 2021 law on Climate and Resilience.

Conclusions

Given the magnitude of the social challenges deriving from the green transition, since the 2019 EGD, the European Commission has stressed the importance of ensuring that such a transition is 'socially just'. Apart from underlining the need to conjugate and pursue simultaneously the green and social objectives of the transition, the EGD contains few indications on concrete actions to be implemented for such a purpose, while the role to be played by welfare states during the transition remains unclear. Since the RRF is expected to represent a key instrument for both pursuing the green transition and ensuring a socially fair recovery from the Covid-19 crisis, we have tried in this analysis to identify if and how the Member States have proposed concrete policies integrating social and green objectives, thus concretising the just transition notion proposed in the EGD.

Both our macro-analysis and our case studies show that the national RRFs present a socio-ecological dimension to varying degrees, containing measures explicitly aimed at integrating social and green transition objectives and policies. However, the macro-evidence presented in Section 3 shows that these measures are still relatively scarce, suggesting that the socio-ecological dimension of the RRFs is, overall, limited.

Our more in-depth analysis of six RRFs allowed us to shed light on the specific policy measures constituting the socio-ecological dimension of the plans and on the functions that welfare states are expected to perform during the green transition. These measures largely correspond to the indications provided in the RRF Regulation (European

Parliament and Council of the European Union 2021) and Guidelines. Most of the measures identified in the six countries pertain to the benchmarking and enabling functions of welfare states, while measures related to the conflict management/consensus building and buffer functions are limited.

We find a prevalence of measures linking the promotion of energy efficiency in buildings to social concerns, setting up schemes and incentives for the most vulnerable households or focusing on the renovation of social infrastructure such as social housing or schools. Other measures aim principally at creating or improving social infrastructures, but doing so in an environmentally sustainable way and thus reducing their ecological footprint. Finally, measures aimed at linking education, training and skill development policies to the needs of the green transition emerged in all the RRP examined, together with other measures to increase 'skills intelligence' and adapt employment services.

In the country cases where the benchmarking function of the welfare state involved changes in the tax-benefit system, planned increases in environmental taxes take precedence over and/or are presented more concretely than changes in taxes on labour or the launch of subsidies to support more socially vulnerable groups or those affected by the tax increases. For example, in the cases of Spain and Denmark, their RRP provide for the setting-up of expert committees to consider such socially oriented changes in the tax-benefits systems. There is, therefore, an 'aspirational' element in these plans, with governments seeming to be more resolute in increasing environmental taxes than in reducing labour taxes, possibly revealing cautiousness given uncertainties about the future form of the EU's fiscal rules.

All in all, also taking into account some biases possibly deriving from our analytical choices and the specific features of the RRF (see Annex 1), our analysis shows that, while the national RRP have a socio-ecological dimension, this seems rather 'unbalanced', in the sense that measures providing citizens and workers with buffers against the possible negative consequences of the green transition are underdeveloped, while the role to be played by social dialogue in the framework of the transition is not always evident in the measures proposed. To ensure a just transition, more comprehensive and coherent policy frameworks to simultaneously pursue the social and green objectives of the transition are needed. The 'Recommendation on ensuring a fair transition towards climate neutrality' adopted by the Council of the European Union (2022) in June 2022 could represent a step in this direction. A preliminary analysis of the Recommendation, however, shows a lack of details when it comes to suggesting actions to ensure that social protection and social inclusion systems – the ones more directly linked to the buffer function of the welfare state – are adapted to the needs arising from the green transition (Council of the European Union 2022: point 6(b)). Against the complex and interrelated backgrounds of the green transition and the social and economic implications of the war in Ukraine – let alone the challenges of a seemingly unending pandemic – the need to adapt traditional welfare provisions to ensure adequate and sustainable buffers for citizens is becoming increasingly pressing. Finding innovative, fair and structural solutions in this respect should indeed be among the key priorities for both policymakers and researchers.

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Annex 1 Methodological choices

The national RRP's were analysed using qualitative text analysis, following a number of steps agreed in advance by the authors to ensure consistency in the process used to identify and interpret national measures.

To understand the overall context, each of the authors first read, in those RRP's available in a language they understood, the parts containing a general introduction to the plan and overviews of the measures included. Using this as a basis, specific components of the RRP's were identified as likely to include reforms and investments simultaneously linked to social policies and policies for the green transition. These components were further examined, with measures fulfilling the explicitness and integration criteria of our analytical framework selected for in-depth analysis. The measures selected were summarised in English and assigned to one of the four functions of the welfare state identified in the analytical framework. Finally, to ensure a consistent interpretation of the measures selected, all of them were collectively discussed between the authors.

Our final sample included 52 measures, distributed as follows among the six Member States studied: 15 measures in Belgium, 4 in Denmark, 8 in France, 1 in Ireland, 10 in Italy, and 14 in Spain (Table 1).

Table 1 Measures included in the analysis (by country and function of the welfare state)

Country	Measure	Measure ID/page (in RRP's)	Benchmarking	Enabling	Buffer	Consensus- building/ conflict- management
Belgium	Renovation of social housing (Flemish government)	I – 1.01. / 56	X			
Belgium	Renovation of social housing (Brussels-Capital Region government)	I – 1.02. / 58	X			
Belgium	Renovation of social housing (government of the German community)	I – 1.03. / 60	X			
Belgium	Improved energy subsidy scheme (Flemish government)	R – 1.01. / 49	X			
Belgium	Renovation of public buildings - schools (Government of the Federation Wallonia-Brussels)	I – 1.09. / 75	X*			
Belgium	Renovation of public buildings – universities (Government of the Federation Wallonia-Brussels)	I – 1.11. / 82	X			
Belgium	Fiscal reform for fossil fuels (Federal government)	R – 1.05. / 101	X			
Belgium	Rail - Accessible and multimodal stations (Federal government)	I – 3.09. / 302	X			
Belgium	Modal transfer subsidy (Brussels-Capital Region government)	I – 3.14. / 320	X			
Belgium	Fiscal reform – tax burden on labour (Federal government)	R – 5.02. / 444	X			
Belgium	Development of public utility housing and housing for vulnerable persons (Government of Wallonia)	I – 4.12. / 421		X		
Belgium	Creation and renovation of early childcare infrastructure (Government of Wallonia)	I – 4.13. / 424		X		
Belgium	Scheme for cumulation and mobility towards sectors with labour shortages (Federal government)	R – 5.01. / 441		X		(X)**
Belgium	Upgrading of advanced training infrastructure (Government of Wallonia)	I – 5.03. / 471		X		

		1 – 5.04. / 478		X	(X)**
Belgium	Learning and career offensive (Flemish government)				
Denmark	Replacing oil burners and gas furnaces	2.3.3 / 93	X		
Denmark	Energy savings in public buildings	2.3.5 / 100	X		
Denmark	Energy efficiency in households	2.3.7 / 106	X		
Denmark	Green tax reform	2.4 / 113	X		
France	Renovation plan for private buildings	C1.I1 / 65	X		
France	Energy renovation and major renovations of social housing	C1.I2 / 71	X		
France	Renovation of public buildings	C1.I3 / 76	X		
France	Reform of housing policy to make it more equitable, more efficient and more ecological	C1.R1 / 88	X		
France	Enhancing the security of the drinking water infrastructure and of rainwater purification and management in large cities and the overseas territories	C2.I5 / 144	X		
France	Additional funding for Associations of Professional Transition for the financing of professional transitions	C8.I19 / 580	X	X	
France	Increasing the funding of France Competences to finance rapid growth in work-study contracts	C8.I21 / 585		X	
France	Citizens' convention for the climate	C2.R1 / 177			X
Ireland	SOLAS Green Skills Action Programme	3.2 / 26		X	
Italy	Culture and awareness of environmental topics and challenges	M2C1-I3.3 / 124		X	(X)**
Italy	School building replacement and energy upgrading plan	M2C3-I1.1 / 140	X		
Italy	Bonus for energy efficiency and safety of buildings	M2C3-I2.1 / 141	X		
Italy	Investments in primary water infrastructure for the security of water supply	M2C4-I4.1 / 149	X		
Italy	Investments in sewerage and purification	M2C4-I4.4 / 151	X		
Italy	Creation of women's enterprises	M5C1-I1.2 / 204		X	

Italy	Universal Civil Service	M5C1-I2.1 / 206				X		
Italy	Investment in urban renewal projects aimed at reducing social exclusion	M5C2- I2.1 / 213				X		
Italy	Integrated urban plans	M5C2-I2.2 / 213				X		
Italy	Innovative programme for quality housing	M5C2-I2.3 / 214				X		
Spain	Rehabilitation programmes for economic and social regeneration in residential environments	C2.I1 / 145		X				
Spain	Programme for the construction of social housing apartments in energy efficient buildings	C2.I2 / 145		X				
Spain	Sustainable forest management	C4.R3 / 147		X				
Spain	Development of energy communities to increase the participation of citizens in the energy transition	C7.R3 / 150 and 250						X
Spain	Just transition agreements in energy transition zones	C10.R1 / 153 and 253						X
Spain	Investments in just transition	C10.I1 / 153		X				
Spain	National digital skills plan	C19.R1 / 162				X		
Spain	Digital transformation of vocational training	C20.I2 / 163				X		
Spain	Investment in the acquisition of new competences for the digital, green and productive transformation	C23.I3 / 166				X		(X)**
Spain	Promotion of inclusive growth by linking social inclusion policies to the Minimum Living Income (linked to the necessary changes that the Spanish economy will have to undertake)	C23.I7 / 166					X	
Spain	Improving the efficiency of public spending to, among other things, better align it with the SDG2030	C29.R2 / 172		X				
Spain	Alignments of the general government budget with the ecological transition (green budgeting principles)	C29.R3 / 172		X				

Spain	Reform of fiscal measures contributing to the ecological transition (increased tax rates on various environmentally detrimental activities and changes to promote sustainable mobility and the use of hydrogen as a fuel)	C28.R4 / 171	X				
Spain	Tax measures to be adopted in the short-term on personal incomes to increase revenues but also to make the tax system more progressive, redistributive and just	C28.R8	X				
TOT			32	17	1	7	

* In some cases, policy interventions seem to be equally motivated by the need to renovate social infrastructure buildings in bad condition and to improve their energy efficiency. In such cases, we have classified these interventions as fulfilling the 'benchmarking' rather than the enabling function of the welfare state based on whether they were included under a 'green transition' component of the RRP.

** In some cases, measures aiming to enable citizens affected by the green transition to take advantage of the opportunities that it will offer will be shaped in concertation with social partners. They thus also present an 'indirect' consensus-building dimension and are listed in brackets in this table.

The analytical framework developed and tested in this chapter allowed us to analyse the socio-ecological dimension of the RRP, identifying and classifying specific policy measures from national RRP. While this analytical framework could be useful for future empirical research on eco-social policies and on the future of the welfare state in the green transition, our research should be considered as exploratory, with certain aspects and possible limitations to be highlighted and explored further. These are related, in part, to our analytical choices and, in part, to some specific features of the RRP.

First, our choice to focus on practices with an explicit socio-ecological dimension meant that we excluded measures that, in terms of policy outputs, would achieve this integration *de facto*, even though they were not designed for such a purpose. One example would be a country providing generous unemployment or minimum income benefits that, even if not explicitly aimed at cushioning the consequences of restructuring due to the green transition, would in practice act as a buffer for those citizens and workers concerned.

As mentioned earlier in the chapter, measures assigned to the buffering function of the welfare state were rare. This is explained by the fact that RRF funds can only be used for capital expenditure, whereas income benefits are a current expenditure. This means that Member States can only include in their national RRP reforms not involving spending classified under the buffering function (Bokhorst, this volume). Nevertheless, Member States (some not examined in our chapter) have included a total of 13.4 billion euros of policy interventions classifiable under this buffering function (*ibid*). The European Commission's guidance to Member States on writing up their national RRP indeed allows current expenditure to be included under certain conditions, most notably if a Member State can demonstrate that the measures involved will produce longer-term effects in line with RRF objectives, that their financing will be sustainably ensured after RRF expiry and that the negative effect on the government balance will be only temporary (European Commission 2020b: 13).

Second, we chose to consider the direction of the integration between social and environmental policies – i.e., the core rationale and objective of the various measures – as a key dimension for classifying concrete measures under one of the four functions of the welfare state. While this choice proved useful to navigate through long and complex documents such as the RRP, it may have entailed an over-representation of what we defined as the benchmarking function of the welfare state, especially at the expense of the buffer function. Indeed, some measures that we included in the former function (for instance, incentives and subsidies for low-income households to improve energy efficiency) obviously play a buffer role during the transition and, under a different operationalisation strategy, might have been included in the buffer function. However, since the main rationale of those policies and measures was primarily related to achieving 'green objectives', while also taking into account and addressing their social implications, we classified them under the benchmarking function. Similarly, different appreciations of the main rationale of each specific measure meant that measures related to the same policy area may have been classified under different functions. This is for instance the case with measures related to social housing, classified under the benchmarking category when their main objective was to improve a building's energy efficiency (including social housing), but under the enabling category when the primary

objective was 'social' (for instance, to increase the availability of social housing while also ensuring that the new housing solutions were energy efficient).

Third, while several RRP measures explicitly refer to both social and green objectives, it is not possible to clearly identify the strength of this linkage and the relative importance of each set of objectives. For instance, when reporting on a measure with a clear 'social' rationale, the text of an RRP sometimes briefly mentions that the measure also pursues objectives linked to the green transition (or the other way round). However, the RRP documents do not always make it clear how far this is really the case, since these documents often contain relatively succinct descriptions of complex reforms and investments. Examples include measures related to training and skill development, where national governments briefly mention the fact that these policies should be aimed at – among other things – facilitating the green transition, for instance by providing workers with the necessary skills. In-depth analysis of the formulation and implementation of national initiatives linked to the plans is needed to understand to what extent this is actually the case.

Fourth, while in their RRP documents the Member States report the total amount of financial resources for each measure with an explicit socio-ecological dimension, the distribution of these financial envelopes between social and green objectives cannot be calculated. For instance, many RRP measures foresee investments to improve the energy efficiency of public buildings, with some of them explicitly mentioning social infrastructures. However, it is usually not possible to infer, from the text of the RRP documents, how much of the total financial envelope is earmarked for social infrastructure and how much will go to other types of public buildings. Here again, in-depth analysis is needed, looking at how the related national legislation is formulated and implemented.

Chapter 4

The politics behind EU legislation on platform work: institutional synergies and a novel constellation of players

Slavina Spasova and Matteo Marengo

Introduction¹

Often depicted as the epitome of the future of work in the digital society, working through digital platforms has triggered heated political and scientific debates in the field of labour relations and social protection. The business model of one specific type of platform, namely ‘on-location’ platforms such as Uber and Deliveroo, has been widely questioned (Casilli 2020; Srnicek 2017). Such platforms rely on self-employment to link the supply and demand of services (De Stefano and Aloisi 2019). The employment status of platform workers², i.e., whether they should be classified as self-employed or employees, has become a highly contested terrain where a wide array of players ranging from governments and social partners, platforms and platform workers to national courts have become involved. In this context, some Member States (France, Greece, Italy, Portugal and Spain) have introduced legislation tackling the issue of the status of platform workers, while others are on their way to doing so (European Commission 2021a). Moreover, there has been a spate of court rulings classifying platform workers as employees (Supreme Courts of France, Germany and Spain).

Due to their organisational structure and practices, national social partners have found it difficult to respond to the development of platform work (Doherty and Franca 2020). Employers have generally been supportive of the innovative nature of platforms, stressing the importance of flexibility in their business models (Eurofound 2018). Trade unions have warned against an overuse of flexibility that undermines protection and have called for stricter regulation (Vandaele 2018).

Due to the transnational character of platforms, the political debate surrounding platform workers’ employment status and working conditions travelled rapidly from the national to the EU level. While discussions were already ongoing under the Juncker European Commission, the political guidelines of the von der Leyen European

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1. The authors would like to thank Silvia Rainone, Richard Lomax, Sebastiano Sabato and Bart Vanhercke for their valuable insights as reviewers as well as the interviewees for their essential input. Any remaining errors and misinterpretations are the sole responsibility of the authors.
 2. The terminology used in the Proposal for a Directive on improving working conditions in platform work is ‘people working through platforms’. In the European jargon as defined by the Court of Justice of the European Union, a ‘worker’ is ‘a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration’, although there is no single definition of ‘worker’ in EU law (for a discussion on the terms, see Kilhoffer et al. 2019). For the purpose of this chapter, we use the commonly used expression ‘platform worker’ to generally indicate an individual earning income through a digital platform, regardless of their employment status. When necessary, we distinguish between a) ‘employee’, i.e., a person having a contractual relationship with an employer (in the sense of the definition above) and ‘self-employed’, a person working on their own account, with or without employees (ILO 2016).

Commission (hereafter, ‘the political guidelines’) signalled an official EU ambition to take action on the matter, proposing a Directive on improving working conditions in platform work (hereafter, ‘the Proposal’) in December 2021. While research has focused on the nature of platform work, the employment status of platform workers and their labour and social protection (Behrendt et al. 2019; Drahokoupil and Fabo 2016; Rahman and Thelen 2019), no assessment has been made of the political and policy process at EU level which led to the Proposal, i.e., how the Commission tabled an unexpectedly ambitious piece of legislation.

The purpose of this chapter is to look into this process of drafting the Proposal, focusing on three main elements: a) the issues at stake and how they became the cornerstones of the Proposal; b) the role of the EU institutions and the balance of power in the area of social policies; c) the demands of the different parties involved and the political interplay between them. The methodology is qualitative, mainly based on 12 semi-structured in-depth interviews with representatives of the interested parties: EU institutions (European Commission, European Parliament and the Council of the EU), representatives of the EU social partners and of platform workers as well as a legal scholar involved in research on the Proposal (see Annex 1 for further details). The only stakeholder not responding (at least formally) to our numerous attempts to contact them were platform companies and their umbrella organisations at EU level. This was surprising as we knew (through the interviews) that EU officials and Member States’ representatives within the Council have been subject to an unprecedented number of demands for meetings by platform companies (see also the Uber files’ affair³). As far as possible, the results of these interviews were triangulated against official institutional and stakeholder documents (including policy papers and amendments to European Parliament reports) and public statements.

The chapter is structured as follows: after a brief explanation of the building blocks of the Proposal (Section 1), we discuss the role played by the European Commission as a ‘policy entrepreneur’ in setting the policy agenda (Section 2). Section 3 looks at the role of the European Parliament in politicising the issue and pushing through the idea of legislation on the matter. Section 4 focuses on the role of ‘traditional’ social partners but also of platform workers and platform companies which emerged as a novel but essential constellation of stakeholders. Finally, Section 5 briefly describes the ongoing negotiations. We conclude by reflecting on the balance of power between EU institutions and stakeholders and more generally on the significance of the Proposal in the discussions around the future of work.

3. The Uber Files represent a leaked database of Uber’s lobbying activities targeting national (in about 40 countries) and EU officials from 2013 to 2017. It was investigated by the International Consortium of Investigative Journalists and published by *The Guardian* in July 2022 (for more information see, ICIJ 2022 and ETUC 2022).

1. The cornerstones of the Proposal

The ‘Proposal for a Directive on improving working conditions in platform work’ is made up of three pillars: ‘Employment status’ (chapter 2), ‘Algorithmic management’ (chapter 3) and ‘Transparency on platform work’ (chapter 4). Chapter 2 requires Member States to introduce appropriate procedures to avoid misclassification of platform workers. The Commission’s starting point is that people working through a platform *are legally presumed to be in an employment relationship* if a number of conditions are met⁴. Thus, there is ‘*legal presumption* that an employment relationship exists between the digital labour platform and a person performing platform work, if the digital labour platform controls certain elements of the performance of work’ (European Commission 2021a:15). Criteria verification would occur at national level. Moreover, the Proposal stipulates that ‘the burden of proof that there is no employment relationship will be on the digital labour platform’ (European Commission 2021a:16).

The Proposal’s third chapter, ‘algorithmic management’, establishes ‘human monitoring’ of the effect algorithmic systems have on working conditions. Such ‘monitoring’ would also require information and consultation of workers and would promote social dialogue on matters related to automated algorithmic decision-making. Chapter 4 on ‘transparency on platform work’ provides for platforms being required to communicate essential data to Member States, such as the number of people performing work and the general terms and conditions applicable to those contractual relationships. In the following, we focus on the political and policy proposal that led to the adoption of the chapter on ‘Employment status’, as its provisions were clearly the most contested in the debates and it was not expected that the Commission would go so far on the matter (for an in-depth analysis of the provisions, see De Stefano and Aloisi 2021; Ponce Del Castillo and Naranjo 2022; Hooker and Antonucci 2022; Raucent 2022).

2. The Proposal’s difficult birth: the Commission as a policy entrepreneur

The European Commission has been at the heart of putting the issue of platform workers’ social and labour conditions on the EU agenda. As De Stefano and Aloisi (2021) note, the Commission ‘adopted a bold posture’, bringing to an end the ‘platform exceptionalism’ in the European regulatory labour and social landscape. This is especially interesting when one considers that the Proposal concerns the sensitive area of the digital transition, the social dimension of which was previously absent in the Commission’s discourse (Ponce Del Castillo 2022).

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4. Two of the five following criteria should always be fulfilled to trigger application of the presumption: (a) effectively determining, or setting upper limits for the level of remuneration; (b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work; (c) supervising the performance of work or verifying the quality of the results of the work including by electronic means; (d) effectively restricting the freedom, including through sanctions, to organise one’s work, in particular the discretion to choose one’s working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes; and (e) effectively restricting the possibility to build a client base or to perform work for any third party (European Commission 2021a:34).

According to our research, such a ‘bold posture’ became possible thanks to the social legacy of the Juncker Commission (2014-2019), the spur of the Covid-19 crisis which was crucial for spotlighting the social situation of these workers, and the political support of the European Parliament. In this context, the European Commission acted as a policy entrepreneur⁵, a) displaying social acuity (i.e., ‘reading the political pulse of the EU’; Copeland 2022:4); b) defining the problem; and c) building coalitions, in this case with the European Parliament. The von der Leyen Commission has continued the social ambitions of the Juncker Commission which revived the EU social dimension (Vanhercke et al. 2021; Tholoniati 2022) after years of ‘debasement of Social Europe’ under the Barroso I and II Commissions (Crespy and Menz 2015)⁶. Among the main merits of the Juncker Commission in the social area was the elaboration of the European Pillar of Social Rights (Sabato et al. 2018; Sabato and Corti 2018). However, the Juncker Commission has been assessed to be a ‘politicising bricoleur’, focused on revising non-contentious policies but with few legislative and innovative initiatives, as it felt that proposing new policies was a high-risk strategy that would most likely fail and should wait until a political and policy momentum had been established (Copeland 2022). The von der Leyen Commission has proved more ambitious, putting forward legislative initiatives including the notable Minimum Wage Directive, the proposal for a Directive on Platform Work, the revision of legal provisions linked to work-related health and safety as well as innovative ‘soft law’ initiatives such as the Child Guarantee, a Council Recommendation on minimum income, the Gender Equality Strategy 2020-2025 and the new European Long-term Care Strategy (see Vanhercke et al. this volume).

The issue of the working conditions of platform workers was enshrined in the political guidelines of the von der Leyen Commission, which aimed at proposing policies to improve platform workers’ ‘labour conditions’ by ‘focusing on skills and education’ (von der Leyen 2019). The idea, therefore, was initially approached in a rather general and uncontroversial fashion, as skills and education would not give rise to strong objections. In its January 2020 Communication, ‘A strong Social Europe for Just Transitions’, the Commission discourse became more specific, emphasising improving the working conditions of platform workers, particularly with reference to their employment status, working conditions and access to social protection, access to collective representation and bargaining, as well as cross-border aspects of platform work. A year later the Commission launched a two-stage consultation⁷ which ran between February and June 2021 (see Annex 2).

The von der Leyen Commission was, therefore, the ideational agenda-setter (alongside its statutory initiator role), displaying social acuity and defining the problem. It did that in continuity with the Juncker Commission – and especially in the context of the Covid-19 pandemic which should be highlighted as an essential element raising political

5. For a more in-depth discussion of the European Commission as a policy entrepreneur in the social area, see Crespy and Menz (2015) and Copeland (2022).
6. It should be noted that the social dimension was not completely absent under the Barroso I and II Commissions, as seen by the launch of the Social Investment Strategy or the first-ever EU anti-poverty target (see Vanhercke 2020).
7. Under Article 154(2) TFEU, before submitting proposals in the social policy field, the Commission must consult the social partners representative at EU level.

awareness of platform workers' social conditions throughout the EU (Interviews COM1 and 2, EP1 and 2, ETUC).

Defining the main issues, and especially the most prominent provision of the Proposal, 'the presumption of employment', was first and foremost subject to discussions within the Commission itself, as the political guidelines only provided general indications. Discussions were needed on the actual shape of the initiative. It should be noted that important work had already been performed by Directorate General (DG) for Employment, Social Affairs and Inclusion (DG EMPL) before the von der Leyen Commission took office, in parallel with the adoption of the 2019 Council Recommendation on access to social protection and the Directive on transparent and predictable working conditions. In 2020, the Commission launched a study⁸ (Interview COM1) to improve understanding of the situation of platform workers. Moreover, platform work had already been identified as a growing challenge in 2019 when the Commission adopted the platform-to-business relations (P2B) Regulation⁹, which defines the relationship between self-employed workers, business users and platforms (Interview COM2). At that time however, although a lot of technical work was done, there was not enough political support within the European Parliament (Interview COM1). During the establishment of the new von der Leyen Commission, the Secretariat General asked the other DGs to provide contributions on potential political priorities for the next College of Commissioners. Among the top priorities identified by DG EMPL were social issues around platform work (Interview COM1).

To understand the genesis and development of the Proposal, it is also important to consider that, while the Commission acts as a unitary player, proposals for initiatives stemmed from inter- and intra-service political discussions (Cram 1997; Hartlapp et al. 2014). While there was general support in the Commission for an initiative on platform work, various Commission's services had differing views on its form and content.

Prior to and during the consultation, several inter-service discussions took place to ensure compatibility and consistency between the future Proposal and various digital initiatives (Interviews COM1 and 2; on the various initiatives see Ponce del Castillo and Naranjo 2022), notably between services in DG EMPL but also with a) DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) on the 'presumption of employment', the costs for employers, flexibility, and compatibility with innovation; b) DG Communications Network, Content and Technology (DG CNECT) on the links and compatibility with the Artificial Intelligence Act; and c) DG Justice and Consumers (DG JUST) on the General Data Protection Regulation (GDPR) (Interviews COM1 and 2). Importantly, contentious issues emerging during the inter- service discussions were overcome, among others, thanks to the high-level political commitment to such an initiative between the cabinets of Social Affairs Commissioner Nicolas Schmit,

8. See Kilhoffer et al. 2019.

9. Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services platform-to-business relations (P2B Regulation) is the first ever set of rules for creating a fair, transparent and predictable business environment for smaller businesses and traders on online platforms (for more information see: <https://digital-strategy.ec.europa.eu/en/policies/platform-business-trading-practices>).

Commissioner for Competition Margrethe Vestager, Internal Market Commissioner Thierry Breton and Executive Vice-President of the European Commission Dombrovskis (Interviews COM1, EP1, ETUC; Politico 2021, Euractiv 2022a). The Covid-19 pandemic further influenced the discussion within the Commission (Interviews COM1 and 2).

In this context, the Commission also acted as a builder of coalitions, especially with the European Parliament. As one of our interviewees put it, the drafting of the Proposal reflected a true ‘symbiosis’ (Interview COM1) between the two institutions. There were very frequent and fruitful exchanges between Commissioner Schmit and the Committee on Employment and Social Affairs (EMPL Committee) in the European Parliament (Interviews COM1, EP1 and 2), with the two institutions taking up each other’s ideas (Interviews COM1, EP1 and 2). One of the Proposal’s cornerstones, the ‘presumption of employment’, was proposed at an early stage by DG EMPL and the Schmit cabinet, while the European Parliament’s own-initiative report helped confirm it, in turn strengthening the internal discussions within the Commission (Interview COM1).

3. The European Parliament: raising political awareness on the social conditions of platform workers

The European Parliament (henceforth ‘the Parliament’) was a key player in politicising the need for an EU measure on platform work and calling for the employment status of platform workers to be addressed (Interviews COM1, EP1 and 2, ETUC). On 16 September 2021, the Parliament, in a landslide vote¹⁰ covering all political groups (except for the far right: European Conservatives and Reformists, ECR, and Identity and Democracy, ID), voted in favour of a ‘Resolution on fair working conditions, rights and social protection for platform workers – New forms of employment linked to digital development’. This broad consensus on an initially controversial topic mirrored what had already happened during the vote in the EMPL Committee on the so-called ‘Brunet own-initiative report’ (European Parliament 2021a). It should be mentioned that the issues of employment status and presumption of employment had already been discussed in the Radtke¹¹ - Jongerius¹² own-initiative report in 2020 on a strong social Europe for Just Transitions.

Our evidence shows that this broad consensus was due to two factors. First, as in the case of the Commission internal discussions, Covid-19 played a key role in the progress of this dossier. Due to the pandemic, the debates in the EMPL Committee were less politically harsh. Without the crisis, the rapporteur would certainly have had more difficulty promoting this issue which initially divided the left and the right of the political spectrum but also displayed divisions within political groups (Interviews EP1 and 2; see also the amendments to the ‘Brunet report’, European Parliament 2021b).

10. European Parliament resolution of 16 September 2021 (2019/2186(INI)): For 524; Against 39; Abstentions 12. The abstentions and votes against came only from the ECR and ID groups and some non-attached (NA) MEPs. [https://parltrack.org/dossier/2019/2186\(INI\)#/votes](https://parltrack.org/dossier/2019/2186(INI)#/votes) ([https://parltrack.org/dossier/2019/2186\(INI\)#/ams](https://parltrack.org/dossier/2019/2186(INI)#/ams))

11. European People’s Party, EPP.

12. Socialists and Democrats, S&D.

MEP Brunet took clear advantage of the pandemic context and of a growing awareness towards protecting these workers. Indeed, this context was essential, as some Liberal and EPP MEPs saw the ‘uberisation’ of the economy as an opportunity for those having difficulty finding a job, without really focusing on the social issues surrounding this work (Interview EP2). Covid-19 acted thus as an eye-opener, heightening awareness within the Parliament that the issue of the social condition of platform workers should be taken seriously through a legislative initiative (Interviews EP1 and 2). Second, following the publication of the political guidelines, the Parliament was particularly active in pushing for the Schmit cabinet to be allocated the platform work dossier within the Commission (Interviews EP1 and 2). Indeed, at that time, discussions were also ongoing about the prospect that platform work would be addressed by DG GROW within the context of its initiative on collective bargaining for the self-employed (the Draft Guidelines were adopted in December 2021). Some MEPs thus feared that the issues linked to the social and the labour market conditions of platform work would be reduced to competition and internal market consideration (Interview EP1, ETUC).

A central reason why the Parliament was able to steer the Proposal in the desired direction has to do, we claim, with the crucial role played by the personality and social commitment of certain MEPs. Three main protagonists emerged from our interviews. Sylvie Brunet (the rapporteur of the own-initiative report) of Renew Europe and Dennis Radtke, the EPP shadow rapporteur, played a crucial role in uniting their respective political groups around the issue, something that was far from self-evident given the respective political positions of their groups. Within The Left¹³, a group generally not committed to further EU integration (Bakker et al. 2015), MEP Leila Chaibi played a key role in pushing the issue within the group and raising general awareness among MEPs by making the voice of platform workers heard in the Parliament. It should be highlighted that the role of the S&D group was essential to put the issue on the EU agenda (also on their political agenda), particularly with regard to the ‘presumption of employment’ issue (European Parliament 2021b; S&D 2021a,b). The Greens too were united on this issue (European Parliament 2021b). However, the focus of the chapter is to show the role of protagonists from political groups in which a consensus on the issue of platform work was difficult to reach.

During the negotiations on the ‘Brunet report’, Renew Europe and the EPP were initially quite divided on the topic of regulating platform work (Interviews EP1 and 2). The report was attributed to Renew Europe mainly because this group is very much engaged in the digital transition, one of its key priorities (Interview EP2). Importantly, it is quite uncommon for the Parliament to initiate an own-initiative report while the Commission is conducting a two-stage consultation. MEP Brunet was also personally interested in heading this report as she had accumulated considerable experience in social issues through her previous career as human resources manager and as president of the Employment Committee in the French Economic Social and Environmental Council (Interview EP2).

13. Previously called the Confederal Group of the European United Left/Nordic Green Left (GUE/NGL), the grouping has been called The Left since 2021.

Her position at that time was not easy. She had to walk a political tightrope as her party *En Marche!* largely supported the position taken by the French government, which had long been against any regulation of the employment status of platform workers (Interview EP1, Gomes 2022, see also ETUC 2022). The draft text of the ‘Brunet report’ was strongly inspired by the Commission’s first-stage consultation document, the 2019 Recommendation on access to social protection, the Directive on transparent working conditions and Regulation 2019/1150 on fairness and transparency of online intermediation services (Interview EP2). Presented in February 2021, the draft was quite prudent in clearly stating the issues surrounding the social protection, low pay and algorithmic dependency of platform workers, without touching on their employment status. Given the diversity of situations and sectors in the platform economy, MEP Brunet did not wish to reduce the question from the outset to the status of workers. Indeed, she would have preferred the discussion to revolve around the reversal of the burden of proof. However, the opposite happened: given the Covid-19 context and the fact that the S&D, the second-largest European Parliamentary group, had the issue on its political agenda, the question of employment status was immediately tabled in the EMPL Committee discussions, pushed also by the shadow rapporteurs from S&D, The Left, the Greens, and a good part of the EPP. On the other side, some MEPs from the EPP, part of Renew Europe as well as the far right of the ECR were diametrically opposed to it, claiming that such workers were all self-employed and should remain so (European Parliament 2021b). One point on which all disagreed from the outset was the creation of a ‘third status’ (Interviews EP1 and 2). From then on, given the broad consensus on the issue, rapporteur Brunet had no choice but to continue in the direction of making employment status a cornerstone of the discussions (Interviews EP1 and 2). While accepting the idea, she worked towards the rebuttable presumption not being automatic (the position of S&D) (Interview EP2).

The final text of the Resolution is, indeed, an example of compromise on the two highly topical issues: first, the ‘presumption of employment’ is enshrined in the final text (it was not there in the draft report) due to strong lobbying from the S&D, The Left, the Greens and part of the EPP¹⁴. However, second, the report states that ‘an employment relationship must not lead to an automatic classification of all people working through platforms as workers’, as this demand was unacceptable to some Liberals and the EPP.

Another MEP who played an important role in bringing the centre-right together on the issue was MEP Dennis Radtke who, before joining the Parliament, had had a long career as a trade unionist. Importantly, in 2020 Radtke was co-rapporteur, together with S&D MEP Agnes Jongerius, of the Parliament Report entitled ‘A Strong Social Europe for Just Transitions’, the first to highlight the social issues surrounding platform work and to push for a clarification of the ‘employment status of platform-based workers through

14. The text states ‘whereas a rebuttable presumption of an employment relationship would facilitate the correct classification of platform workers in combination with the reversal of the burden of proof, which means that where workers dispute the classification of their employment status in legal or administrative proceedings, it is for the party who is claimed to be the employer to prove that there is no employment relationship in accordance with national definitions as set out in the legislation or collective agreements of the respective Member State; whereas the rebuttable presumption of an employment relationship must not lead to an automatic classification of all platform workers as workers’ (European Parliament 2021a).

the rebuttable assumption of an employment relationship’ (European Parliament 2020). Moreover, he was one of the signatories of the European Trade Union Confederation (ETUC) Open Letter to the European Commission (see Section 4). He is, indeed, perceived to have played a strong role in the EMPL committee and in his group, and also to have conveyed within the Parliament the view of the European trade unions that there could only be two work statuses, workers or self-employed (Interviews BusinessEurope, EP1 and 2) and pushing for a presumption of employment (European Parliament 2021b).

The third influential MEP was Leila Chaibi (The Left), who pushed the issue, and especially the presumption of an employment relationship, within her group but also – importantly – brought the voice of platform workers to the Parliament (see below, Interviews EP1, ETUC). After publication of the political guidelines, the main goal pursued by The Left was for the issue to be handled from the perspective of workers’ rights as they feared they would otherwise ‘end up doing what Macron was doing’, viewing the dossier only in terms of collective bargaining for self-employed workers (Interview EP1). In this context, MEP Chaibi, together with other experts and with the support of the ETUC, promoted the drafting of a text similar to a proposal for a directive to give visibility to their political stances, a kind of a ‘shadow directive’ (Chaibi 2020).

Moreover, MEP Chaibi played a key role in organising the ‘Transnational Forum on Alternatives to Uberisation’ in December 2019 (just after the publication of the Commission’s political guidelines)¹⁵ and two consecutive events (Forum Stop Uberisation #1 and #2, see also Section 3) which took place in the European Parliament. Her idea from the beginning was to start building a ‘popular lobby’ as a counterforce to the interests of the platforms (Interview EP1). The forum was strongly supported by European and national trade unions (see also Section 4; Interviews EP1, NTU1 and Delivrance). A meeting with Commissioner Nicolas Schmit was also organised and, according to one of our interviewees, these events were to have an influence on the Commission, helping it in the internal balance of power, notably in the discussions with the Vestager cabinet (Interview EP1). The Left also showed its satisfaction with the Proposal, expressing its relief that the workers who had come together in Brussels had been heard by the European Commission (Interview EP1).

Finally, our interviewees from the European Parliament also confirmed the close cooperation between the Parliament and the Commission, notably the Schmit cabinet. In frequent hearings in the EMPL Committee, MEPs, especially from S&D, pushed strongly to get Commissioner Schmit to propose a directive. It should also be noted that, although Commissioners are supposed to be nationally and politically neutral, Commissioner Schmit has social-democratic credentials, having been an S&D MEP. In addition, meetings between the rapporteur and Commissioners Schmit and Vestager nurtured the process towards a legislative proposal and encouraged inclusion of the ‘presumption of employment’ (Interviews EP1 and 2).

15. Transnational forum of Alternatives to Uberisation. <https://left.eu/events/transnational-forum-of-alternatives-to-uberisation/>

4. EU social partners: a novel player constellation

As previous research has shown, the rise of platform work has brought challenges to in-place mechanisms of social dialogue at both national and EU level (Lenaerts et al. 2018; Haidar and Keune 2021). Because most platforms see themselves as intermediaries between demand for and supply of services, traditional social partners have had a hard time exercising their representativeness function (Vandaele 2018; Rainone and Countouris 2021). In this context, platform workers have set up independent groups to advance their interests¹⁶, while platforms have joined together to strengthen their voice and re-state their distance from employer organisations¹⁷. This has given rise to a novel constellation of players whose relationships with the traditional social partners are under construction.

These developments, mostly at national level, have had inevitable repercussions on the EU social dialogue system. As soon as the political guidelines of the von der Leyen Commission were published, the traditional EU social partners and novel platform economy players started discussing whether and how the EU should take action to address the working conditions and social protection challenges stemming from platform work. In February and June 2021, these players took part in the consultation organised by the European Commission¹⁸. Access to the consultation process was by definition imbalanced: since the traditional social partners are recognised as formal interlocutors in the field of social policy (Articles 151-156 TFEU)¹⁹, they had access to the formal consultation. By contrast, platforms and platform workers were involved in the process indirectly and via informal meetings when they were not part of respective trade unions or employer organisations. Such imbalances show the extent to which the current institutional European social dialogue is struggling to keep up with changes in the labour market.

In the formal consultation process, the traditional EU social partners recognised from the outset the need for an EU instrument to tackle the challenges stemming from platform work (interviews BusinessEurope, ETUC). Their positions nonetheless differed dramatically on the desired legal nature as well as on the content of such an initiative. From a legal standpoint, the discussion revolved around whether platform work would require a directive or a recommendation. Content-wise, the most heated debate centred on employment status: as had happened at national level, the question of whether platform workers ought to be classified as employed or self-employed arose as a major dividing line between EU social partners.

16. Numerous groups were set up in different national contexts (e.g. the Collective des Livreurs Autonomes de Paris (CLAP) in France, Riders X Derechos in Spain, the Riders' Union in Italy).

17. Some national examples are Assodelivery in Italy and Associations des plateformes d'indépendants (API) in France. At EU level, one example is Delivery Platforms Europe.

18. Eight trade union organisations and six employer associations responded to the consultation. The Commission held meetings with 20 digital labour platforms and three associations of platforms, as well as with 24 organisations representing platform workers (European Commission 2021b).

19. This was not the case in the public consultation on the Guidelines on collective bargaining (see above) as these come under the competition field. Thus, there is no formal obligation to consult the social partners. They provided their opinion as any other stakeholder taking part in the consultation process.

4.1 Traditional social partners

4.1.1 Workers' representatives

In February 2021, ahead of the launch of the two-stage consultation with the European Commission, the ETUC stated that ‘we must move towards a presumption of employment status and a reversal of the burden of proof’ (ETUC 2021). In so doing, the ETUC highlighted how such a move could only be done via a binding measure, namely a directive. As previously noted, the first-stage consultation document was rather general in character and only slightly touched upon the question of employment status. However, the influence of the ETUC and the European Parliament in addressing employment status could be seen in the content of the second-stage consultation document (Interview ETUC), which indicated the ‘presumption of employment’ as the preferred way to enhance the working conditions and protection of platform workers. Indeed, the ETUC document published after the second phase of the consultation welcomes such an approach and reiterates the urgent need to adopt a directive based on Article 153(2) TFEU, establishing a rebuttable presumption of employment with the burden of proof on companies. The status approach contrasted with an approach aiming to improve working conditions via the introduction of new rights, without interfering with the legal determination of the work relationship. In the words of the ETUC, this would have led to the *de facto* creation of a third status, ushering in further legal uncertainty and ultimately undermining working conditions and protection (Interview ETUC).

In promoting its status-centred approach, the ETUC was helped by the overall EU political and institutional context that had developed around the question of platform working conditions (see Sections 2 and 3). Despite not being expressly in favour of a presumption of employment, the Schmit cabinet expressed a ‘willingness to act on the matter’ that turned out to be a breeding ground for ETUC proposals (Interview ETUC). Even more importantly, the support given by the Parliament (see Section 3) to the presumption of employment solution turned out to be crucial in strengthening the political feasibility of a status-centred regulation.

The Open Letter²⁰ sent by the ETUC in November 2021 to Commission President von der Leyen, calling for an ‘ambitious European legislative initiative on improving the working conditions in platform work’, exemplifies well the broad coalition around the question of platform work. The ETUC initiative was signed by MEPs from the EPP, S&D, The Left and the Greens and by ministers of employment from Belgium, Germany, Italy, Portugal and Spain. The letter aimed to influence the debate at a moment when decisive internal discussions were ongoing in the Commission on the content of the Proposal (see Section 2). And it was meant to be a way to build a coalition of pro-presumption States with a view to the future negotiations in the Council (Interview ETUC).

While generally satisfied with the adoption of the Proposal, the ETUC expresses discontent with the nature of the presumption of employment as outlined in the

20. <https://www.etuc.org/en/document/open-letter-president-european-commission-ursula-von-der-leyen-ambitious-european>

Proposal. According to the ETUC, the use of criteria (see Section 1) significantly weakens the presumption of employment. More precisely, the unions note how, instead of verifying whether a worker's activity meets certain subordination criteria, workers should be presumed employees by looking at how different platforms work in practice (Interview ETUC).

4.1.2 The position of the employers

The position of BusinessEurope diverged dramatically from the ETUC demands, which is why, early in the consultation, the parties decided not to enter into official negotiations on the matter. According to the BusinessEurope representative, 'it was clear from the beginning that negotiation would not be feasible' even though both parties acknowledged the importance of EU action on the matter (Interview BusinessEurope). From a legal standpoint, BusinessEurope warned against the use of a directive as a 'one-size-fits-all' rule that would hamper innovation and put a brake on employment creation in the digital age. It added that the most problematic all-encompassing rule would be the introduction of a rebuttable presumption of employment, which would pointlessly level out the diversity of needs of platform workers.

The urgent need to consider the variety of platform work was a point on which BusinessEurope insisted throughout the consultation. BusinessEurope was pushing for 'platforms to commit to do something themselves: a kind of code of conduct with proper reporting and oversight, so that they actually act to improve working conditions and access to social protection' (Interview BusinessEurope). Moreover, BusinessEurope, highly committed to subsidiarity, highlighted that the best way for the EU to act was to encourage those Member States where there were issues related to the classification of employment status to assess the different characteristics of workers to determine whether they were more appropriately classified as employees or self-employed (BusinessEurope 2022). This meant that the employment status was to be determined at national level. To this end, BusinessEurope suggested the establishment of a quadripartite mutual learning approach (European Commission, Member States, social partners) aimed at exchanging views and information on the question of contract classification. All in all, BusinessEurope did not consider the consultation process to be satisfactory, as it addressed too narrow a segment of platform work, thereby risking erroneous conclusions. When the Proposal was finally adopted, BusinessEurope regarded it as 'the wrong policy orientation to improve legal certainty' (BusinessEurope 2022).

4.2 New players on the ground: platforms and platform workers

Generally speaking, platforms have had stronger relationships with traditional employer organisations, while platform worker organisations are closer to traditional trade unions. This does not mean, however, that their demands are always aligned (Interviews BusinessEurope, ETUC, NTU2, Deliverance).

The relationship between traditional employer organisations and platforms emerges as ambiguous. On the one hand, platforms do not consider themselves as employers and therefore refuse to be part of existing EU social dialogue mechanisms at national level. To our knowledge, two associations of platforms – MoveEU and Delivery Platforms Europe (DPE) – exist at EU level, working as pressure groups to advance platform interests. Most importantly for platforms, regulations should not seek to impose rules on contract classification. On its website, DPE expresses its disappointment with the Proposal, stressing how rules on employment status would threaten platforms' business models but also go against the wishes of flexibility-seeking workers (DPE 2021). On the other hand, platforms are in discussion with traditional employer organisations and generally share the same opposition to employment status-centred regulation. One telling example is the relationship between BusinessEurope and Uber. While BusinessEurope has an informal relationship with Uber, the latter is not a formal member of the EU confederation. In the words of the interviewee, this is 'to make sure that whatever we are proposing does not go against them, but at the same time making it clear that we are not their representatives at the European level: we represent the whole business community' (Interview BusinessEurope). The nuances in the position between platform companies and BusinessEurope, but also among big platforms and small start-ups, (e.g., on the need for an EU framework) were also highlighted by some policymakers (Interviews COM1, EP2, NOF1).

Nevertheless, it is important to note that, despite a certain ambiguity in their relationship, BusinessEurope and the big platform companies were aligned in their opposition to regulating employment status. Platforms and employer organisations also had similar – though not always identical – positions on algorithmic management. Overall, they stressed that the regulations pertaining to the digital area (e.g., GDPR, P2B, AI) were adequate instruments to deal with algorithmic management challenges and that measures on working conditions should only take the form of guidelines (Interviews COM1, BusinessEurope).

As for platform worker organisations and their relationship with trade unions, our evidence suggests that they were aligned in stressing the need for more protection in platform work. Platform worker organisations were not necessarily always in favour of transforming the self-employment status into an employed status as this would completely rule out the flexibility inherent in platform work (Interviews NTU1 and 2). For its part, the ETUC showed more general support for the classification of platform workers as employees. This is not because the ETUC *a priori* prefers subordination to independence. Rather, it has to do with the fact that, when platform worker independence is not genuine, self-employment-based contracts should be converted into employment contracts (Interviews ETUC, NTU2).

Coalitional alignments between the trade unions and platform worker organisations were reflected in the documents detailing the outcomes of the consultation, where platform worker organisations and trade unions agreed 'that a clarification of an employment relationship is needed' (European Commission 2021b). Among trade unions and platform worker representatives, there was broad consensus around the fact that platforms should hire workers if they meet the criteria of an employment

relationship. Some pushed for applying a rebuttable presumption to all platforms, whereas others asked that such a rule be applied solely to on-location platforms, where bogus self-employment is more widespread. Like employers and platforms, platform worker organisations and trade unions also had similar – but not always identical – positions on algorithmic management, with both supporting a hard law approach via a directive (European Commission 2021b).

The interactions between the ETUC and national-level platform worker organisations or representatives within national trade unions differ depending on the country (Interviews ETUC, NTU2, Deliverance). Generally speaking, the ETUC has been active in organising platform workers at the national level via its national federations. Trade union renewal through a more structured unionisation of platform workers – and atypical workers in general – is indeed a key topic in the ETUC Action Programme 2019–2023 (ETUC 2019). Due to the nature of platform work, however, it has been challenging for national trade unions to collectively represent the interest of such workers. In this respect, a member of an Italian riders' group notes how food delivery couriers who were union members seem to have had a closer relationship with the ETUC (Interview Deliverance).

In Belgium too, contact between platform workers and the ETUC was mainly through trade unions which had created sections representing platform workers (Interview NTU1). It seems therefore that the ETUC emerged as the primary channel through which platform workers' voices are communicated to the EU, especially when such workers are union members. As for non-unionised workers, other channels emerged. For instance, the Deliverance representative stated that the group came to take part in the regulatory debate at EU level through three main channels: first, the local office of the Italian (centre-left) Democratic Party had contacted them and in turn put them into contact with an S&D MEP; second, a think tank tasked with collecting their views on the Commission's behalf reached out to them for a technical conversation; and third, MEP Leila Chaabi contacted them via the transnational networks of platform workers.

5. The black box of ongoing negotiations

As this chapter focuses only on the process which led to the drafting of the Proposal, we only briefly discuss the ongoing negotiations in the Council of the EU and the European Parliament. As expected, the most difficult points are the ones on the employment status and the burden of proof (Interviews NOF1 and 2, EP1). This comes as no surprise, given the statement of one Council member that the Commission had 'kept the proposal very secret' (Interview NOF2) until 9 December 2021, with its main elements being unclear even to the Member States. Moreover, in the aftermath of the adoption of the Proposal there were fears (Interview NOF1) that the French Presidency of the Council of the EU (henceforth 'French Presidency') would slow down the negotiations as it tried to lobby the Commission in its opposition to the employment status provisions (Interview COM1; Euractiv 2022b). In hindsight, this fear was justified, given French President Macron's position on regulating platform work which was recently exposed in the Uber files affair (Interviews EP1; ETUC 2022). However, our interviewee stated that the French Presidency remained neutral, not delaying the work and working quite

actively from the beginning (Interviews NOF 1 and 2). The Proposal seems to have been generally welcomed in the Council, as the future directive is expected to harmonise the regulatory landscape across Europe (Interviews NOF1 and 2). Moreover, it should be mentioned that the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council favours tackling the social situation of platform workers at EU level (Interviews COM1, NOF1, EP1; EPSCO 2020). Finally, the ‘data’ aspect, i.e., requiring platforms to disclose to the Member States data on the people working through them, is motivating the Council to move forward, as Member States have little idea of the economic activity taking place on their territories (Interviews NOF1, EP2).

A first draft compromise text within the Council was presented in mid-May 2022, while the progress report on the topic was published by the French Presidency on 30 May 2022, confirming the positive reception of the Proposal in the Council: ‘the majority of delegations welcomed the proposal in principle’ (Council of the EU 2022: 2). Interestingly, the progress report states that the majority of delegations held no strong views on employment status and especially on the five criteria. Thus, Member States do not seem to reject the criteria and apparently, as also predicted by our interviewees (Interviews NOF1 and 2), the changes took account of more substantial requests for amendments relating to the competence of Member States. The compromise provided clarifications of a mainly technical nature, such as definitions and the types of platforms excluded from the Proposal. The French Presidency proposed focusing on the ‘restriction of freedom, including through sanctions, to organise one’s work and control its execution’ to determine the subordination link between a worker and a platform, instead of concentrating on the ‘control of the performance of work’ (Council of the EU 2022: 5). The concept of restriction of freedom was added to the ‘chapeau’ of the amended text – and not as a criterion as initially asked – to ensure that it applies to all criteria (ibid).

On the other side, the European Parliament is trying to go much further than the Proposal, especially on the issue of employment status. In early May 2022, a draft report, the so-called ‘Gualmini report’ on the Proposal (named after its S&D rapporteur Elisabetta Gualmini) proposed notable amendments, *inter alia* that verification of the existence of an employment relationship would not use the five criteria initially proposed, but would use an expanded and non-exhaustive toolbox of 11 criteria (listed in the recitals), thereby giving the criteria a stronger role. Other proposed amendments pertained to strengthening the mechanism of presumption and restricting subcontracting (for a discussion of the draft report, see Hooker and Antonucci 2022; Raucent 2022). In light of these proposed changes, several MEPs from the European People’s Party signed an article expressing their concerns with the ‘Gualmini report’, noting how it was putting the coalition underpinning the more ‘balanced Brunet report [...] at risk’ (Politico 2022). Indeed, the possibility of uniting EPP and Renew Europe around this report seems much less plausible than during the negotiations on the ‘Brunet report’. At the same time, the ETUC continues to be very active in pushing for an effective presumption of employment, ideally with no criteria. It has also warned about the progressive ‘emptying’ of the presumption during the negotiations. From their side, European employers and especially platform companies are also actively lobbying the Council and the Parliament, with our interviewees (Interviews NOF1 and 2) confirming

that since December 2021 they have been frequently contacted by platforms expressing discontent with the Proposal.

Conclusions

This chapter examined the politics of the Proposal for a Directive on improving the working conditions of people working through platforms. Our analysis allows us to draw three main conclusions.

First, the European Commission has played a key role as a policy entrepreneur, showing social acuity in line with the political context of the post-Juncker Commission and the social situation of platform workers exacerbated by the Covid-19 pandemic. It provided a key contribution to defining the problem, putting the issue of employment status and in particular the ‘presumption of employment’ at the heart of the consultation and the final Proposal. Moreover, it acted as a coalition builder in close collaboration with the European Parliament. This ‘symbiosis’ with the Parliament was of key importance, with both institutions fruitfully taking up each other’s ideas. This joint work may also reflect the aim of the von der Leyen Commission to improve cooperation with other EU institutions (in this case with the Parliament), adopting a more inclusive and open approach by strengthening the role of the Parliament as ‘the voice of citizens’ (Anderson and Heinz 2020). More generally, our findings on this particular case confirm previous analyses that the von der Leyen Commission has taken the social policy momentum started by the Juncker Commission to an even more ambitious level.

Second, the role of the Parliament has been essential in politicising the issue, and especially in pushing for the legal instrument of a directive and the ‘presumption of employment’. This in turn put strong pressure on the Commission during its consultation with the social partners. The Parliament’s role was also essential in making the voice of platform workers heard at EU level. According to our analysis, the fact that the own-initiative ‘Brunet report’ was endorsed by all political groups (except the far right) was especially due to the efforts of socially committed centre/right MEPs able to unify their political groups. By shedding light on the need to strengthen the protection of platform workers, the pandemic favoured such a process. This far-reaching support was not clear from the beginning of the process, particularly because it transcended political divides: the traditional left/right cleavage, or liberals versus regulators (Crespy and Gajewska 2010) as well as some more specific to the 2008 crisis, such as creditors/debtors (Vesan and Corti 2019), on a topic with economic and social implications. The only visible traditional cleavage was ‘pro’ versus ‘contra’ European integration. The Eurosceptic parties opposed further EU interference in this social policy issue, which in their view should have remained strictly in the hands of national governments. This was not true, however, for The Left which by contrast was one of the driving forces behind this directive, despite being traditionally considered as Eurosceptic (Bakker et al. 2015). Their approach, however, was not that surprising, given that the issue touches upon a vulnerable category of workers and a set of platform companies whose activities are unregulated. Such a strong commitment to social policy has also been seen

in the past in votes on the resolution relating to the European Pillar of Social Rights (see Vesán and Corti 2019).

Third, the mobilisation of stakeholders, i.e., traditional social partners and newly emerging players, was crucial in this dossier. The major dividing line between the social partners arose around the question of employment status. We found that (despite some intra-front divisions) the traditional trade unions were aligned with the representatives of platform workers in their views of the main provisions of the Proposal, as were employer organisations and platform companies. Indeed, the Proposal was deemed satisfactory by trade unions and platform worker organisations and inadequate by employer organisations and platforms. Furthermore, our findings suggest that the emergence of platforms has accentuated the contradictions stemming from the mismatch between the core interests of traditional social partners (i.e., standard employment) and an increasingly differentiated labour market structure. The novel constellation of players engaged in negotiating the Proposal represented to such contradictions. Not only has this situation shown that regulating digital work is possible, but it has also once again emphasised the extent to which social dialogue mechanisms need to be reformed.

In conclusion, our chapter shows that the initial Commission text proved quite robust and that the broad political coalitions built up during the process of drafting the Proposal continue to play a key role in the negotiations between the Council and the European Parliament. We see clearly that the ‘platformised’ future of work’ described by platforms and their supporters has triggered political and policy action. The same coalitions have again been mobilised, with even more fervour, demonstrating that the ideational effect of the arguments in favour of regulating this area has grown deep roots. While it would be imprudent to make predictions on the final content of the Directive, one important question remains open: whether and to what extent an unexpected Uber files scandal will influence it. Just like the pandemic served as an accelerator for the Proposal’s adoption, the Uber files may impact the political equilibria underlying the negotiations.

Lastly, and more generally, the social situation of platform workers has triggered broad support for the labour and social protection *acquis* in the EU. Indeed, this question extends well beyond platform work, touching on such issues as the unravelling of labour law, the expansion of various forms of non-standard work, and the fragmentation of labour markets.

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Annex 1 Interview details (in chronological order)

Interview code	Institutional affiliation	Date
COM1	European Commission	18/03/2022
BusinessEurope	BusinessEurope	21/3/2022
COM2	European Commission official	22/03/2022
NOF1	Member State delegate in the Council	23/03/2022
NOF2	Member State delegate in the Council	11/4/2022
EP1	European Parliament	13/04/2022
EXP	Research Institute	13/04/2022
EP2*	European Parliament	22/04/2022
ETUC	European Trade Union Confederation	28/04/2022
NTU1	National trade union	2/05/2022
NTU2	National trade union	12/5/2022
Deliverance	Platform workers' independent organisation	30/05/2022

* Two people (MEP and assistant) were present at this interview.

Annex 2 The two-stage consultation process

Section 2 stated that the European Commission launched a two-stage consultation process regarding the Directive on improving working conditions in platform work, which ran between February and June 2021. This Annex briefly describes the main contents of the two-stage consultation documents.

As is usually the case, the first-stage document was quite broad and general, with its boundaries consisting of what the Commission 'definitely would not do' (Interview COM1). Indeed, the Commission identified a wide array of issues. Nevertheless 'employment status' was a key issue (topping the list) and was discussed in the context of misclassification and an increasing number of national court cases reclassifying platform workers as employees (the options of legal presumption and the burden of proof were mentioned but not developed). Further issues identified included working conditions, access to social protection, access to collective representation, skills, training and professional development, the cross-border dimension of platform work (including social security contributions and tax collection) and algorithmic management.

The question of employment status remained central and was reinforced in the second-phase consultation document, which stated clearly that '[t]he key challenge in platform work relates to employment status. It is a key determinant of the access of people working through platforms to existing labour rights and protection' (European Commission 2021d: 6). In order to correctly establish a classification of employment status in line with national definitions, the Commission considered two options: a) a rebuttable presumption of an employment relationship incumbent on the platform company; or b) a shift in the burden of proof or a lowering of the standard of proof required for people engaged in platform work or for their representatives in legal proceedings.

Chapter 5

The EU Gender Equality Strategy 2020-2025: the beginning of a new season?

Petra Debusscher

Introduction¹

After the 2019 European elections, the issue of gender equality made it back firmly onto the political agenda, with unparalleled support from the first-ever female European Commission President, Ursula von der Leyen, and the nomination of a dedicated Commissioner for Equality, Helena Dalli². Von der Leyen's first speech to the European Parliament invoked a strong and unambiguous pledge to make gender equality a key priority of her programme (von der Leyen 2019). Not long afterwards, on 5 March 2020, the European Commission published 'A Union of Equality: Gender Equality Strategy 2020-2025' as part of its wider agenda on equality and democracy³, striving for a European Union where women and men, girls and boys, in all their diversity, are free to pursue their chosen path in life, with equal opportunities to thrive and to participate in and lead European society (European Commission 2020a and b).

Almost halfway into its implementation, it is time to take stock of the new Gender Equality Strategy's achievements and provide a critical assessment of its performance to date. Some authors have raised questions as to whether the strategy is 'fit for purpose', as its few legislative initiatives include many long-existing ones blocked in the Council for years, while also arguing that the Strategy's performance can be evaluated critically in view of the fact that women have suffered significantly more from the consequences of the pandemic (Vanhercke and Spasova 2022). Others have been more positive, calling the Strategy 'the beginning of a new chapter' (Iratxe et al. 2020) and stressing von der Leyen's success in 'claiming a leadership position for herself, for the Commission and for the EU' in the area and her determination 'to advance women's descriptive and substantive representation' (Abels and Mushaben 2020).

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1. The author would like to thank Mary Collins of the European Women's Lobby for the insightful discussion on the EU's gender equality policy which greatly contributed to this chapter. My gratitude also goes out to Sophie Jacquot, as well as to Bart Vanhercke and Slavina Spasova from the European Social Observatory, for their tremendously helpful insights and detailed comments on earlier versions of the chapter. The usual disclaimer applies.
 2. Dalli (Malta) is the Commissioner for Equality, strengthening Europe's commitment to inclusion and equality, and leading the fight against discrimination.
 3. The Commission aims to build a 'Union of equality' and create 'the conditions for everyone to live, thrive and lead regardless of differences based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation' (European Commission 2020b). Other key initiatives include the EU anti-racism Action Plan 2020-2025, the LGBTIQ Equality Strategy 2020-2025 and the EU Roma Strategic Framework for Equality, Inclusion and Participation 2020-2030.

1. Gender equality policies in the European Union

The promotion of gender equality can be traced back to 1957 when the principle of equal pay for equal work was taken up in the Treaty of Rome. Equality between women and men is defined as a core value in the Treaties of Amsterdam and Lisbon, with research highlighting its importance in the ‘foundational myth’ of the EU (Fiig 2020; MacRae 2010).

Over the past decades, gender equality policies in the EU have developed into a solid policy field, moving from a single Treaty article to a comprehensive legal and political framework dealing with multiple sources of discrimination (Fiig 2020). With their evolution characterised by fluctuations between progress and stalemate, gender equality policies continue to be met with resistance. Nevertheless, most authors agree that the EU has been an important catalyst ‘in shaping women’s economic, political, and social equality in Europe’ and in putting gender equality and women’s rights into effect (Fiig 2020: 1; Debusscher and van der Vleuten 2017).

The continuous development of EU gender equality policies over the past decades has been well documented in the literature, with three stages beginning with the 1957 adoption of Art. 119 EEC on ‘equal pay for equal work’ outlined (Abels and Mushaben 2012; Jacquot 2015; Debusscher and van der Vleuten 2017; Ahrens 2019; Fiig 2020) from the EU’s inception to the 1970s (associated with women’s civil and economic rights and equal treatment), the 1980s (equal opportunities and positive action), and the 1990s (gender mainstreaming). With the entry into force of the Treaty of Amsterdam in 1999, the EU constitutionally committed itself to a new approach to achieve gender equality through gender mainstreaming all policy processes and policy areas, and through making gender equality and non-discrimination guiding legal principles of the Union. Since the 2000s, a fourth phase of new policies combating various forms of discrimination and including an intersectional perspective has slowly but surely emerged. These different stages of EU gender policy continue to coexist and should ideally be mutually reinforcing. Throughout this policy evolution, the Commission has promoted multi-year action plans, strategies and roadmaps, moving from equal treatment to positive action, to gender mainstreaming. While authors agree on the significance of these developments for women and gender equality in Europe, they also point out that what happens in practice often fails to live up to stated ambitions (Abels and Mushaben 2020).

In the past, gender equality policies rarely enjoyed the priority status now seen among European Commissioners, despite their often ‘lofty speeches’ and ‘boasting’ about the EU’s status as ‘one of the most gender-equal’ institutions in the world (Abels and Mushaben 2020: 124; Fortin-Rittberger and Rittberger 2014: 496). Commitments by previous Commission presidents were minimal and ‘modest at best’, with the notable exception of Jacques Delors (1985–1995) whose presidency saw a flourishing of equality initiatives linked to the single market project, as well as the creation of the

European Women’s Lobby (EWL) at the initiative of Commission femocrats⁴ (Abels and Mushaben 2020: 124). While Commission President Romano Prodi at least spoke ‘the rhetoric of balanced participation’ and explicitly encouraged Member States ‘to put forward women’s names for consideration’ when forming his Commission (MacRae 2012: 31), his successor José Manuel Barroso ‘downsized’ women’s strength in the Commission by issuing several ‘administrative reforms’ weakening existing gender equality institutions, including shifting the equality portfolio from the Directorate-General (DG) for Employment, Social Affairs and Inclusion (EMPL) to DG Justice and Consumers (JUST) (Jacquot 2015; Abels and Mushaben 2020).

The European Parliament’s continuous efforts over the past two decades to (re-)kickstart the EU gender equality agenda were met with consistent Member State opposition. Pressured by the European Parliament, Commission President Jean-Claude Juncker tried unsuccessfully to raise the number of female Commissioners, due to resistance from Member State governments. Furthermore, Juncker’s austerity policies proved to be gender-blind, bluntly undermining earlier initiatives – for instance on childcare provision (Abels and Mushaben 2020). While he launched ideas for a road map involving equal pay, public consultations and pay transparency in his Action Plan for 2017-19 and aimed to recast the Maternity Leave Directive, most of his initiatives were blocked by the Council. The work-life balance proposal (European Commission 2019) was his only real success story in this area. While Juncker’s ideas for the future of gender equality in the EU were in essence limited and minimal (Ahrens and van der Vleuten 2019), some authors point out the significance of this Commission in strategically ‘tilling the policy field’ (Hartlapp 2017; Abels and Mushaben 2020). All in all, however, the past two decades can be characterised by limited progress combined with diverse legislative and budgetary changes and cutbacks inhibiting substantial advances in gender equality policy and legislation (Jacquot 2015). Especially over the last decade, strong resistance from Member States has eroded the policy field (Hartlapp et al. 2021).

With this background information in mind, the importance of von der Leyen’s appointment in 2019 should not be underestimated. Prior to 2019, women accounted for 35 of 183 Commissioners, i.e., less than 20 per cent of the seven-decade total (Abels and Mushaben 2020). Or to put it the other way round: male overrepresentation exceeding 80 per cent created a ‘gender-specific environment moulded by [masculine] norms and expectations’ (Sykes 2014: 691). Indeed, in relation to women’s descriptive representation the Commission was no ‘women-friendly organization’ over the past decades (Abels and Mushaben 2020: 122; Hartlapp et al. 2021). Von der Leyen’s declaration that her Commission would consist of equal numbers of women and men was immediately thwarted by two Member States refusing to designate female nominees. As a result, her Commission falls just short of parity, consisting of 12 women (44 per cent) and 15 men. Nevertheless, von der Leyen’s election as the European Commission’s first woman president, combined with the fact that she heads the first-

4. The EWL was founded to coordinate among European women’s organizations, facilitate communication with the Commission, and establish a permanent representation for women at EU level. Although the EWL was formed with the active support of the Commission, it was not merely top-down or entirely new. Even in the 1980s, women activists had been actively seeking to develop participatory mechanisms to lobby for women’s interests in the EU (Pudrovska and Ferree 2004).

ever Commission to boast near-parity, is tremendously significant as it ‘confirms the fundamental transformation of the Union’ towards more social justice for women, both in its politics and policies (Abels and Mushaben 2020: 121).

2. A Union of Equality: Gender Equality Strategy 2020-2025

Promoting ‘a Union of Equality’ is one of the key priorities of Ursula von der Leyen’s Commission, as outlined in her political guidelines (von der Leyen 2019). Consequently, in March 2020 the European Commission presented its EU Gender Equality Strategy 2020-2025, setting out its policy objectives and actions to advance towards gender equality by 2025. The Strategy is a notable step-up from previous EU-level commitments to tackling gender discrimination. It recognises the promotion of equality between women and men as ‘a task for the Union, in all its activities’ and foresees a dual approach, combining targeted measures with effective gender mainstreaming. The strategy also explicitly puts forward ‘intersectionality’ as a crosscutting principle to take account of the interplay between gender and such characteristics as age, ethnicity, sexual identity and orientation, and disability. Other crosscutting priorities include the role of men and boys in achieving gender equality and the cumulative impacts of gender inequalities throughout lifecycles.

The new strategy is a clear break with the past. The previous four-year programme, the Commission’s ‘strategic engagement for gender equality 2016-2019’, was heavily criticised by gender advocates from the European Parliament and civil society for its weak legal status – being issued as a staff working document rather than a full communication – as well as for its lack of concrete benchmarks and a dedicated budget, without which progress on targets and indicators was neither measurable nor achievable.

Supported by allies in the Council and from civil society, the Parliament continued to highlight the standstill in political action for gender equality at EU level over the last decade, calling for a new strategy containing concrete action to strengthen women’s rights and promote gender equality, accompanied by new EU legislation.

The new Gender Equality Strategy is structured around six themes: a) being free from violence and stereotypes; b) thriving in a gender-equal economy; c) leading equally throughout society; d) gender mainstreaming and an intersectional perspective in EU policies; e) funding actions to make progress in gender equality in the EU; and f) addressing gender equality and women’s empowerment across the world. In what follows I critically discuss EU progress in each of these areas.

2.1 Being free from violence and stereotypes

In her political guidelines and 2021 State of the Union address, the Commission President undertook to prioritise preventing and combating violence against women. In its Gender Equality Strategy and annual work programmes, the Commission has

accordingly set out concrete measures and pledges to take action to end gender-based violence and cyberviolence against women as well as to challenge gender stereotypes.

The key priority in this area has long been the EU's accession to the Council of Europe's Istanbul Convention, which would help provide more equal protection for women across Europe against all forms of violence. Having signed the Convention in 2017, the next step is the EU's formal accession, requiring the Council to adopt a decision after having obtained the consent of the European Parliament. However, the road to formal accession has been very bumpy, with several EU Member States blocking accession. Governments in Bulgaria, Croatia, Hungary, Poland and Slovakia, often supported by conservative and religious groups, have undermined further progress by questioning the concept of 'gender', with some Member States even arguing that the Convention jeopardises 'traditional family values'.

Anticipating this stalemate, the Commission set out other options to achieve the goals enshrined in the Istanbul Convention in its 2020 Gender Equality Strategy. The Commission – urged and supported by the European Parliament – has therefore been exploring alternative legislative options to make progress in this area. Indeed, in October 2021, the Court of Justice of the European Union (CJEU) issued its long-awaited opinion on the EU's accession to the Istanbul Convention and its legal basis. The Court notably confirmed that the EU has competence to accede to the Convention on the basis of Articles 82(2) and 84 of the Treaty on the Functioning of the EU (TFEU) concerning victims' rights and crime prevention. As to the accession process, the CJEU clarified that there was no legal requirement for unanimity in the Council for acceding to an international convention, even if that convention was covered only partially by EU competences. The Court thus affirmed that the EU may accede to the Istanbul Convention and proceed with ratification even without all EU Member States being party to it or consenting to it. Based on the Court's opinion, the French Presidency of the Council of the EU 2022 – which made 'the fight against sexual and gender-based violence' one of its priorities – relaunched negotiations on the conclusion of the Convention in the Council Working Group, in close cooperation with the Commission (European Commission 2022a; Trio Presidency 2022).

Subsequently, on 8 March 2022, the Commission launched its long-awaited proposal for a directive on combating violence against women and domestic violence (European Commission 2022b). Sharing the objectives of the Istanbul Convention, the proposal addresses the fragmentation of the current legal framework and fills gaps in protection at Member State and EU level. It introduces minimum standards for protecting the fundamental rights of victims and brings the relevant EU rules up to date with recent societal developments, including digital offences not explicitly included in the Istanbul Convention (European Commission 2022a). For the first time, the Commission is proposing a comprehensive framework to effectively combat violence against women and domestic violence. This includes EU-wide criminalisation of the most egregious forms of violence against women and of certain forms of cyberviolence, thereby ensuring that the most serious forms are sanctioned. Such criminalisation will notably contribute to addressing challenges in the online space and to better protecting users from illegal gendered online content. Furthermore, the proposed directive contains

targeted measures to ensure victims of violence against women and domestic violence are granted access to justice, adequate protection and support and that measures are taken to prevent such violence from happening in the first place (European Commission 2022a).

All in all, the EU proposal for a directive on combating violence against women and domestic violence is a strong compromise, addressing violence against women in a way never done before in a binding legal EU instrument (De Vido 2022). While critics might point out it could have been even more ambitious, it could certainly have also been a lot less ambitious. The proposal is strategic in that it aims to force a breakthrough in a dossier blocked for years and, if successful, would allow the Istanbul Convention to be implemented without the EU having yet ratified it. Indeed, even without such ratification, the directive, once adopted by a qualified majority, would oblige all EU Member States to respect its provisions, several of which reflect the Istanbul Convention. This ratification ‘bypassing’ thus constitutes a strategic move by gender advocates in the institutions to overcome the resistance shown by conservative Member States. While the ongoing legislative process will require the votes of both the European Parliament and the Council and will most likely be slowed down by a large number of amendments, the symbolic value of having the Commission proposal on the table should not be underestimated (De Vido 2022). After decades of lobbying from women’s rights organisations and gender activists from the European Parliament, this proposal historically recognises violence against women ‘as a systemic problem at the EU level and does not diminish it to the private sphere’ (EWL 2022: 1).

2.2 Thriving in a gender equal economy

The new Strategy proposes measures meant to close gender gaps in the labour market, achieving equal participation across different sectors of the economy, addressing the gender pay and pension gap and closing the gender care gap. Key actions outlined in the Strategy include enforcing the Work-Life Balance Directive, supporting women as investors and entrepreneurs through the European Innovation Council and the InvestEU programme, addressing the digital gender gap in the updated Digital Education Action Plan, and notably the promise to propose a directive on pay transparency.

Indeed, in her 2019 political guidelines, Ursula von der Leyen announced that she would introduce a proposal on binding pay transparency measures in the first 100 days of her term of office to address the gender pay gap and ensure application of the principle of equal pay for equal work. Surprisingly, the announced directive disappeared off the political agenda for over a year, most likely due to pressure from employer organisations including BusinessEurope, SMEunited and CEEP who ‘passionately oppose’ (Hofman et al. 2020: 32) binding pay transparency measures as being administrative burdens for companies and distorting market mechanisms (see for instance BusinessEurope 2021). The unexplained disappearance of this key proposal led to strong criticism from civil society and active campaigning from the European Trade Union Confederation (ETUC) which, in a bid to end the delay, took the unusual step of commissioning legal experts

to draft a 3,000-word model directive on pay transparency the Commission could use (Vanhercke and Spasova 2022).

The campaigning proved successful and the Commission's legislative proposal on pay transparency was ultimately adopted on 4 March 2021. The proposed directive focuses on two aspects of equal pay: measures ensuring pay transparency and better access to justice for victims of pay discrimination. First, jobseekers would gain a right to information on the pay range of posts they apply for, while employers would be prohibited from asking about an applicant's pay history. Similarly, employees would have the right to ask their employer for sex-disaggregated information on the average pay of other workers doing the same work or work of equal value. Employers with at least 250 employees would have to report on their gender pay gap and carry out a pay assessment if the gap exceeds five per cent and cannot be justified. Second, under the access to justice measures, compensation would be available to victims of pay discrimination, with the burden of proof put on the employer and infringements of the equal pay rule sanctioned. Workers' representatives would have a role to play in pay assessments and legal proceedings, including the possibility of leading collective claims on equal pay.

The proposal moved forward swiftly after being adopted by the Commission, with the Council reaching agreement on a general approach to the proposed directive on 6 December 2021. The European Parliament, which had been calling for stronger measures on pay transparency for several years, also quickly reached agreement and adopted its negotiating position in April 2022 with a view to informal trilogue negotiations with the Council (European Parliament 2022a). Negotiations between the Council and the Parliament are ongoing at the time of writing (June 2022). The 2022 French Presidency stated in its programme that it would move forward negotiations through trilogue, while the succeeding Czech Presidency pledged to support the negotiations leading towards the adoption of the directive (Trio Presidency 2022). If the directive is approved, it would be a major breakthrough as it gives advocates additional tools to fight the pay gap by providing evidence of its existence and to improve enforcement. However, despite its strengths, the proposal is also limited in its outreach due to the Commission's decision to limit gender pay reporting to organisations with over 250 employees. According to an ETUC estimate, this would mean that just a third of European employees would be covered, with the impact even weaker in those Member States with the largest gender pay gaps, such as Estonia and Latvia, where just one in five workers would be covered (ETUC 2022). Furthermore, transparency is only the first step. Alongside measures to make information on pay more readily available, it is key to introduce further measures helping address the insufficient recognition and remuneration of crucial work performed predominantly by women – most notably care work.

In this respect it is noteworthy that – for the first time – the Commission has put a European Care Strategy on the table. Although not part of the original Gender Equality Strategy issued in 2020, the Covid-19 crisis has made the importance of paid and unpaid care work abundantly clear to society. The package envisaged for the second half of 2022 will address both carers and care recipients, from childcare to long-term care.

Highlighting the gender dimension of necessary changes, it has been warmly welcomed by a number of stakeholders including the EWL, ETUC, AGE Platform Europe, Eurochild, the Platform for International Cooperation on Undocumented Migrants and Eurocarers. It will include a Commission Communication on a European Care Strategy, a proposal for a Council Recommendation to revise the Barcelona targets on childcare and a proposal for a Council Recommendation on long-term care. It builds on a Long-Term Care Report prepared jointly in 2021 by the Social Protection Committee and the Commission, and on a broad consultation process launched by the Commission in January 2021 involving trade unions, employers, national administrations, civil society and the public at large (European Commission 2022a).

2.3 Leading equally throughout society

The measures proposed in this section of the Strategy push for the adoption of the 2012 proposal for a directive on improving the gender balance on corporate boards, promoting the participation of women as voters and candidates in the 2024 European Parliament elections, aiming to reach gender parity (50 per cent) at all levels of Commission's management by the end of 2024, and increasing efforts towards reaching a larger share of female managers in EU agencies.

The flagship measure in this area of the Strategy is the Commission's longstanding proposal for a directive on improving the gender balance among non-executive directors of companies listed on stock exchanges (also called the 'Women on Boards' directive) which has been stalled in the Council for nearly a decade (since November 2012) despite the European Parliament's tireless push for progress. While von der Leyen stated in her political guidelines that she would seek to build a majority to unblock the proposal, it has proved to be a thorny matter as not all Member States support EU-wide legislation, with several Member States (Croatia, Denmark, Greece, Hungary, Poland, Slovakia, Sweden and the Netherlands) arguing that binding measures at EU level are not the best way to pursue the objective. Similarly, employer organisations such as BusinessEurope have actively opposed the proposal since its inception, arguing that self-regulation by businesses is sufficient to address the issue of gender imbalance on boards (BusinessEurope 2012). In June 2021 the proposal seemed to have reached yet another stalemate as the EU ministers of employment and social affairs reviewed progress at the end of the Portuguese presidency, noting – perhaps symbolically under 'any other business' – that a qualified majority remained out of reach (Vanhercke and Spasova 2022).

However, in January 2022, both the Commission president and the French Presidency expressed their determination to move forward with the dossier, explicitly including it in the EU Legislative Priorities for 2022 (European Parliament 2022b). In February 2022, the new Dutch and German governments announced their intention to support the proposal for a 'Women on Boards' directive. Under Chancellor Angela Merkel, Germany had been one of the major countries blocking the directive, but with the new coalition led by Olaf Scholz change is in sight. The Party of European Socialists (PES) had urged Merkel to unblock the directive, as the group's women's organisation wrote in 2020.

According to the PES, Merkel had been supportive of pushing for gender equality on corporate boards at national level but was opposed to EU-level legislation. Olaf Scholz' SPD-led coalition government has now allowed it to pass to the next stages (Preiss 2022). With these government announcements, a breakthrough seems to be within reach for a proposal blocked in the Council for ten years. Indeed, an agreement on a 'general approach' was reached in the Employment and Social Affairs Council in mid-March 2022. The active French Presidency has much helped matters by centre-staging the promotion of gender equality and the realisation of the Gender Equality Strategy commitments in its programme (French Presidency 2022; Trio Presidency 2022). The general approach in the Council is a crucial step forward with a view to the final adoption of this directive, which will help address the glass ceiling which many women still face in the world of work. Since its original publication in 2012, the Parliament has strongly supported the proposed directive and has continued to push for progress, for instance by adopting a resolution in January 2021 calling on the Commission 'to urgently break the deadlock in the Council and adopt the proposed Directive on "Women on Boards"' (European Parliament 2021).

The proposed directive sets a target to include 40 per cent of the 'underrepresented sex' (typically women) on the boards of companies⁵. Companies that fail to reach these targets would have to apply clear, unambiguous and neutrally formulated criteria when appointing or electing directors. Member States would also have to ensure that companies give priority to candidates of the under-represented sex when choosing between candidates equally qualified in terms of suitability, competence and professional performance. Member States with measures already in place such as national targets to achieve more balanced representation of women and men may suspend application of the requirements. Eight EU countries, including France, already have quotas at national level, meaning that they could opt out of the bloc-wide rules. Other Member States that have moved towards the targets through other means could do the same.

Although progress has been made towards greater gender equality on corporate boards, it remains uneven. In October 2021, only 30.6 per cent of board members and just 8.5 per cent of board chairs were women. In addition, gaps between European countries are extensive⁶. What is clear however is that Member States with binding legislation on quotas for boards have experienced much faster progress (European Parliament 2022b). Quota laws have been very effective in increasing the share of women on boards, with recent research demonstrating profound and lasting effects: following their introduction companies made substantive changes to policies addressing leadership and pay gaps as well as childcare and workplace flexibility (Latura and Weeks 2022a). This is because the introduction of (additional) women members creates a 'critical mass' in the boardroom able to bring up gender issues like family leave and childcare support, flexible work schedules, and leadership training and mentorship for women.

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5. Companies would have to take steps to reach, by 2027, the minimum target of having 40 per cent of non-executive director positions held by members of the under-represented sex, or 33 per cent if all board members are included. It is up to the Member States (and not companies) to choose between the two targets.
 6. France — having adopted quota laws — remains the only Member State with at least 40 per cent of each gender on its companies' boards while countries such as Cyprus, Estonia and Hungary have rates below than 10 per cent (European Commission 2022a: 35).

Additionally, adoption of a quota law itself draws attention to the issue of gender equality in the workplace, cuing both men and women in senior leadership to change their views about the importance of solving problems related to gender inequality. In addition, in many companies, quotas also trigger new policies for identifying ‘ready for board’ women in the talent pipeline, in turn creating a sustainable and reinforcing effect (Latura and Weeks 2022b).

Growing support among Member States to back the proposed directive has kickstarted negotiations between the Council and the European Parliament with a view to reaching a final agreement on the text. The first two trilogue sessions were held in March and May 2022 and negotiations are ongoing. The von der Leyen Commission remains determined to unblock this important legislation, and it seems that it is finally succeeding, thanks to changes in government in some EU countries and pushed by civil society, the French Presidency and the European Parliament.

2.4 Gender mainstreaming and an intersectional perspective in EU policies

Under the fourth priority the Commission explicitly acknowledges that the ‘core challenges affecting the EU today – including the green and digital transitions and demographic change – all have a gender dimension’ (European Commission 2020a: 15). Accordingly, as codified in the 1997 Amsterdam Treaty, the Commission pledges to integrate a gender perspective in all major initiatives during its mandate (explicitly mentioning amongst others, the European Green Deal, the EU Beating Cancer Plan and the EU Drugs Agenda 2021-2025). The Commission also recognises that ‘women are a heterogenous group [that] may face intersectional discrimination’ and aims to address the ‘intersectionality of gender with other grounds of discrimination [...] across EU policies’ (European Commission 2020a: 16).

The Commission’s 2022 implementation report on the Gender Equality Strategy features several good practices of EU initiatives launched in 2021 with an important gender dimension, including initiatives linked to key topics such as the green and digital transition, agriculture, health, and media policy (European Commission 2022a). However, critics have pointed out that adoption of gender mainstreaming has been patchy and ad hoc, and that the commitment has not been accompanied by sufficient resources to ensure systematic and effective implementation and institutionalisation across all policy areas. Gender mainstreaming requires continuous investments, not only to support the creation and maintenance of the necessary structures and processes, but also to ensure that ‘the actors normally involved in policy-making’ (Council of Europe 1998: 15) are equipped to mainstream gender in their day-to-day practice (Mergaert and Minto 2021). Indeed, there is little evidence of consistent efforts to systematically build the capacity of staff to understand and promote gender mainstreaming in all policy areas and phases of the policy cycle (Mergaert and Minto 2021).

It is thus unsurprising that there has been ample criticism both from civil society players, such as the EWL or the European confederation of relief and development NGOs (CONCORD 2021) and from the Parliament, pointing out that that the Commission

is not walking the talk on gender mainstreaming. A number of key policy initiatives, such as the European Green Deal published in late 2019 and the Farm to Fork Strategy published in May 2020, entirely lack gender considerations, despite the fact that women and girls in the poorest communities globally are often those hardest hit by the effects of climate change, food insecurity and malnutrition, while being key actors of change in these sectors (CONCORD 2021). One of the main reasons why gender is absent from core policy documents such as the Green Deal is a lack of coherence between policy domains. Gender equality and climate change action are put forward as two of the Commission's top priorities, but 'are kept separate' from each other (Allwood 2021). While the Gender Equality Strategy contains a section on climate change which points out some of the ways in which climate change is gendered, the major climate framework remains largely gender-blind (Allwood 2021) and needs a stronger social dimension, as highlighted by the ETUC (2021).

In a similar vein, a 2022 European Parliament report stressed that the EU is finding it difficult to systematically apply gender mainstreaming and gender budgeting to all EU policies. Although these concepts have a strong legal basis and have been reaffirmed in many EU documents, including the agreements on the EU Multiannual Financial Frameworks for 2014-2020 and 2021-2027, Parliament highlights the fact that 'so far not much progress has been made in their practical application' (European Parliament 2022c: 2). Indeed, as concluded by the European Court of Auditors (ECA) in a special report, 'the Commission has not yet lived up to its commitment to gender mainstreaming in the EU budget'. Furthermore, it concluded that the Gender Equality Strategy has 'stepped up the Commission's commitment to gender mainstreaming', but that fundamental prerequisites and 'specific actions aimed at systematically taking gender equality into account in all EU policy areas, internal and external' are lacking (ECA 2021). By contrast, the European Commission's DG for International Partnerships (INTPA) – and more recently DG Research and Innovation (RTD) headed by the supportive Commissioner Mariya Gabriel – provide a more positive example where there has been investment in developing institutional gender equality structures as well as internal capacity. However, there is little to indicate that this practice is widespread or systematic in the Commission (Mergaert and Minto 2021).

To remedy this situation and undo the previous dismantling of institutional gender equality structures by previous Commissions, the von der Leyen Commission has aimed to establish a stronger institutional framework for gender equality, appointing not only the first-ever Commissioner with a dedicated equality portfolio but also a Task Force on Equality at the beginning of her mandate. The Task Force is composed of representatives from all Commission services and the European External Action Service and is supported by a secretariat based in the Secretariat-General of the Commission. According to the Commission, this Task Force plays a key role in mainstreaming equality (not just gender equality) in all policies, from their design to their implementation. In February 2021, the Task Force issued guidance for all DGs on equality mainstreaming when drafting, implementing and evaluating EU policies and programmes. The von der Leyen Commission has moreover set up a wide network of equality coordinators responsible, *inter alia*, for the screening of all upcoming policy initiatives for which their

DG is *chef de file* from an equality point of view at an early stage of preparation and design, to ensure the inclusion of a meaningful equality perspective (ECA 2021).

At this stage, it is too early to assess the effectiveness of these developments and of the Task Force in the systematically mainstreaming gender across all policy areas. Whilst there are indeed many good practice examples within the Commission, significant work remains to be done for application to be consistent, with this work encompassing not only the Commission's policymaking activity but also the Commission as an organisation itself. Ultimately, one of the key ingredients for successful gender mainstreaming is political will (Mergaert and Minto 2021) – and this willingness and energy seem to be present in the von der Leyen Commission, boding well for the chances of having more systematically gender-mainstreamed EU policies in the (near) future.

With regard to the introduction of intersectionality in the Strategy however – new at EU level –, the picture is more ambivalent. Despite the novelty and beyond a reference in the gender mainstreaming section, an intersectional approach is not really applied to the rest of the Strategy. This criticism is also voiced by relevant civil society players, such as the Equinox Initiative for Racial Justice which calls out a superficial engagement with the term, stating that, despite formally acknowledging intersectionality as an implementing principle, in practice EU gender equality policy treats intersectionality more as an afterthought or 'add-on' (Equinox 2021: 20). Meaningfully engaging with the intersectionality of gender with other grounds of discrimination would require additional funding to gain the analytical capacity and human resources to collect and analyse data and design and implement targeted policies.

2.5 Funding actions to make progress in gender equality in the EU

As outlined in the Strategy, budgetary policy and funding are an integral part of the dual approach to gender equality, including both gender mainstreaming EU policies and targeted measures to address persistent inequalities. To ensure this, the Multiannual Financial Framework (MFF) integrates 'a gender dimension throughout the financial framework, and more specifically in various EU funding and budgetary guarantee instruments' such as the European Social Fund Plus, the European Regional Development Fund, Creative Europe, the European Maritime and Fisheries Fund, the Cohesion Fund and the InvestEU Programme (European Commission 2020a: 16). Furthermore, the Strategy stipulates that 'dedicated funding for projects benefiting civil society organisations and public institutions that implement specific actions, including preventing and combating gender-based violence, will be available through the Citizens, Equality, Rights and Values Programme' (European Commission 2020a).

In the Commission proposal for the 2021-2027 MFF, gender equality was embedded in the programme design both as a horizontal principle and through specific programme objectives, with a view to promoting gender-focused and gender-responsive policies – but only after active lobbying by gender activists from the European Parliament and civil society (among others the EWL). Gender activists were also successful in gaining the commitment of the European Commission to develop a methodology for tracking

gender-equality-related expenditure, now to be tested and rolled out progressively. Furthermore, the Commission is working on updating its guidelines for a deeper analysis of the impact of EU funding programmes on gender equality.

In 2021, on top of the MFF for 2021-2027, the EU agreed to fund a large temporary recovery instrument referred to as NextGenerationEU (NGEU) (Bokhorst, this volume). Backed by funds totalling €806.9 billion, this stimulus package is designed to help repair the economic and social damage caused by the pandemic, generate high-quality jobs, combat social exclusion, and support the Union's green and digital transitions. The bulk of the NGEU budget is earmarked for the Recovery and Resilience Facility (RRF), with funds to be spent on selected reforms and investments in Member States defined in national Recovery and Resilience Plans (RRPs). The RRF is an important litmus test for the EU to put into practice its commitments in the areas of gender mainstreaming and gender budgeting and is being followed closely by gender activists from within and outside the institutions. Although gender mainstreaming and budgeting have a strong legal basis and have been reaffirmed in key EU documents, including in both the 2014-2020 and 2021-2027 MFFs, little progress has been made in practice. Similarly, the EU's budget cycle does not take gender equality adequately into account (ECA 2021).

To improve the situation and make EU recovery measures gender-sensitive, the European Court of Auditors called for gender equality to be properly taken into account in the regulation establishing the RRF and in the RRFs. These concerns were widely shared and voiced by various stakeholders, experts and MEPs (European Parliament 2022c). However, the first Commission proposal on implementing the RRF, put forward on 28 May 2020, completely lacked a gender perspective, not even mentioning women as a specific social group to be supported. During the legislative process, largely due to pressure from civil society organisations and the European Parliament, a gender dimension was added to the provisions and became part of the RRF Regulation approved on 12 February 2021 (European Parliament 2022c). It was only as a result of the Parliament's 'strong bargaining' that the final text 'recognises that women have been particularly affected by the Covid-19 crisis' and explicitly requires Member States to explain how the measures in their RRFs are expected to contribute to gender equality and gender mainstreaming (Vanhercke and Verdun 2021). Furthermore, due to pressure from gender advocates the Commission adopted a methodology for reporting social expenditure, inter alia on measures targeting children and young people and improving gender equality (European Commission 2021). This can be considered an important win as it will – hopefully – provide, in a transparent and accountable manner, summary information on social expenditure under the Facility (Vanhercke and Verdun 2021: 13).

While the inclusion of gender equality provisions in the RRF Regulation can indeed be called a political success and a crucial step towards gender mainstreaming, concerns remain among stakeholders and experts about their implementation and monitoring (European Parliament 2022c). Gender advocates and experts from within and outside the institutions have been closely following the process of the Commission assessing the RRFs and are monitoring implementation of the plans. Some have launched their own analyses of the RRFs to find out if and how the situation of women is to be tackled by the Member States (European Parliament 2022c).

Elomäki and Kantola (2021) for instance consider that the gender obligations in the RRF are vague and insufficiently specific. Moreover, they were introduced into the RRF Regulation decision-making process too late, meaning that the key spending priorities and measures had already been fixed and agreed at national level in some Member States and that gender could only be an add-on instead of an inherent part of the RRF.

Gender experts have also warned that the spending priority on the green and digital transitions will create jobs mainly for men (in such sectors as IT, transport, energy and construction) and could aggravate existing gender segregation and inequalities on the labour market (Klatzer and Rinaldi 2020). They add that the care, health and education sectors, traditionally dominated by female employment and worst hit by the pandemic, are not sufficiently supported by the RRF (Tostado 2021). Instead of an add-on approach, gender equality should have been a central feature of the RRF (Barry and Jennings 2021).

The trajectory of the MFF for 2021-2027, as well as the RRF, clearly demonstrates that gender mainstreaming the EU budget is not yet a systematic process in the Commission, but rather incidental and very much dependent on constant scrutiny by gender experts and advocates from civil society, trade unions and the Parliament. As the watchfulness of gender experts and advocates has proved indispensable, it can be considered a missed opportunity that the EU's funding for women's organisations remains at the same level under the new MFF and continues to be precarious and fragile. Moreover, EU funding for organisations advancing women and sexual minorities has come under increased fire from conservative Member States, as well as being hit by 'shifting priorities during and after the financial crisis' (Lang 2021: 225). What is more: without additional resources, the EU's broad and ambitious diversity agenda is producing increased competition among the different diversity claims and players (Lang 2021).

2.6 Promoting gender equality and women's empowerment across the world

Under the Strategy's sixth priority, the Commission stipulates that gender equality is 'a core objective of EU external action', with the EU 'promoting gender equality and women's empowerment in its international partnerships, political and human rights dialogues with third countries, EU trade policy as well as in its neighbourhood and enlargement policies, including in the context of accession negotiations and the Stabilisation and Association Process. Moreover, gender-related actions are included in the EU's actions in fragile, conflict and emergency situations' (European Commission 2020a: 17).

EU external action is guided by the objectives set out in the EU Action Plan on Gender Equality and Women's Empowerment in External Relations 2021-2025 (Gender Action Plan (GAP) III) and in the EU Action Plan for Human Rights and Democracy 2020-2024. GAP III was presented by the Commission and the European External Action Service (EEAS) in a Joint Communication in November 2020 and aims to accelerate progress on empowering women and girls through a transformative and intersectional

approach. It is significant, as it is the first time that the Commission has adopted a Communication on the GAP. Moreover, in both form and content, it represents a significant improvement over previous GAPs (CONCORD 2021). While its predecessors were only 'Staff Working Documents' with a limited outreach and a weaker legal status, the aforementioned 'Joint Communication' gives the strategy much greater political weight and visibility.

GAP III has generally been welcomed by gender activists in Europe and across the world. Its progressive and ambitious outlook dispels fears that the von der Leyen Commission, with its distinctively more geopolitical agenda, would subordinate the EU's role as a promoter of human and women's rights to its own interests, such as economic or migration interests. Quite the contrary, the EU seems to be stepping up its game by explicitly focusing on changing its own institutional culture and aiming for gender-responsive leadership at top levels. The EU's thinking can be considered transformative and progressive, as the roadmap aims to involve all policy areas (including such traditionally difficult policy areas as trade or security) and to include women and men in all their diversity, addressing all intersecting dimensions of discrimination, such as age, disability, sexuality, or racial, ethnic, and religious inequalities.

However, some critical observers point to a superficial engagement with these intersecting dimensions: instead of treating the concerns of marginalised women and people at the core of gender policy, it includes them on an ad hoc basis (Maes 2021). Similarly, concerns have been raised by civil society players such as CONCORD about GAP III's vague targets. For instance, the stated target of '85% of all new actions throughout external relations will contribute to gender equality and women's empowerment by 2025' does not say anything about the actual and total amount of funding earmarked for gender equality. A clear and ambitious EU target on actual funding would have been much more powerful – especially since recent United Nations figures have shown that Sustainable Development Goal (SDG) 5 to 'Achieve gender equality and empower all women and girls' is among the three least financed SDGs globally.

Despite its drawbacks, support for GAP III in the Council has proved a thorny and divisive issue. Most significantly, in December 2020 the EU failed to issue Council conclusions on GAP III, as three Member States refused to endorse the notion of gender equality (as opposed to a binary approach to equality between women and men). The German Presidency of the Council of the EU 2020 was forced to shelve its draft Council conclusions because it could not count on the support of Bulgaria, Hungary and Poland. The Commission invited the Parliament and Council to endorse GAP III, but the Council failed to reach the necessary consensus, again due to disagreements over the term 'gender'. Instead, Presidency conclusions were adopted with the support of 24 Member States (European Parliament 2022d). Civil society criticised the policy failure as 'astounding and noteworthy', reflecting 'a rolling back of previous EU commitments' as the Council traditionally issued an official endorsement of the GAP (CONCORD 2021). The lack of GAP III Council conclusions, as well as inconsistencies on women's rights and gender equality in the Member States and in the Commission, do not look good for an EU positioning itself as a global leader on gender equality, despite its strong policy documents and existing global commitments (CONCORD 2021).

This prompted the European Parliament to approve a report in March 2022 on GAP III. Prepared jointly by the Parliament's Committees on Development and on Women's Rights and Gender Equality, the report welcomes the EU Action Plan, but outlines several areas in which the EU needs to do more, not least given the negative impact of the pandemic. In it, the Parliament deplores the fact that the Council has failed to achieve unanimity on conclusions, thereby obstructing the formal endorsement of the Action Plan. The Parliament also points out that the EU has an important role to play in achieving a gender-equal world through supporting partner countries in addressing gender discrimination, and calls on the EU to lead by example (European Parliament 2022e).

Conclusions

The current European Commission has shown more ambition than any of its predecessors combined – with the notable exception of Jacques Delors –, and perhaps more than it will be able to maintain over the coming years. In its quest for a 'Union of Equality', the von der Leyen Commission has encountered 'major structural constraints' and will most likely encounter many more (Abels and Mushaben 2020). Over the past years, several Member States 'have experienced unprecedented processes of de-democratisation' with negative consequences for (gender) equality and social justice (Lombardo et al. 2021). On the one hand, this threatens to roll back commitments on gender equality and even on democratic values. On the other hand, this often emboldens gender advocates from civil society, trade unions, political parties, and political institutions to become increasingly vocal in favour of the gender equality agenda, as gender politics is often central in de-democratisation's polarised discourse (Lombardo et al. 2021). Indeed, in the past two years, the governments of Hungary and Poland, sometimes supported by Bulgaria and Slovakia, have been systematically attempting to remove the words 'gender' and 'gender equality' from key EU policy documents previously agreed by Member States, thereby undermining the gender equality agenda's progress. Furthermore, administrative reforms undertaken by von der Leyen's predecessors have weakened the Commission's institutional structure with respect to gender equality policy. The past two years have also been marked by the Covid-19 pandemic which demonstrated not only the importance of both formal and informal care for our societies, but also how differences in women's and men's employment, social protection and unequal contribution to unpaid household work result in socio-economic gender inequality, both in Europe and elsewhere.

Despite the challenges arising from consistent conservative Member State opposition, structural constraints and a succession of crises, over the past two years the Commission has made significant progress in implementing the Gender Equality Strategy. It has stepped up its fight against gender-based violence with the support of gender advocates within and outside the institutions. In the area of leadership, the changes in government in some Member States have brought a breakthrough in negotiations on the 'Women on Boards' proposal, with its adoption finally seeming within reach after ten years. While consistent gender mainstreaming in all EU policy areas in all phases of the policy cycle is still far off – despite it being a constitutional EU obligation for over two decades – there

are grounds for optimism. Led by Ursula von der Leyen, the Commission has provided strong leadership under crisis conditions, including resurgent refugee waves and the corona pandemic, and is strategically advancing the gender equality agenda. In doing so, von der Leyen has the backing of a Commission where 40 per cent of top positions are held by women, and of a host of allies from the EU institutions and from civil society. After two decades of legislative blockades, budgetary cutbacks and disastrous administrative reforms undermining the policy field, it might be time to revise the more pessimistic analyses on the fate of gender equality in the EU, while gender advocates might start dreaming of a new season finally begun.

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Chapter 6

The rule of law crisis and social policy: the EU response in the cases of Hungary and Poland

Angelina Atanasova and Zane Rasnača

Introduction

Beyond an economic union, the European Union (EU) is an entity based on common values. One of the foundational articles in the Treaties¹, Article 2 (TEU) declares that ‘the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights [...]’. While the history of the rule of law in the EU framework has been a process of gradual entrenchment and formalisation (Pech 2020), there is a common understanding, in line with the long-standing case law of the Court of Justice of the European Union (CJEU), that the Union is a ‘community based on the rule of law’².

The definition of the rule of law is constantly being contested and questioned, defined and redefined, but is generally seen as a set of guiding principles, or ideals, for ensuring an orderly and just society where no one is above the law, everyone is treated equally and is held accountable to the same laws. The rule of law concept has multiple elements, of which the separation of powers, an independent judiciary, a transparent law-making process and the presumption of innocence are the most well-known and discussed.

In the last decade, however, rule of law backsliding has been taking place as part of the consolidation of dominant-party regimes in both Hungary and Poland, as well as in a more limited form in other EU Member States such as Bulgaria, Malta, Romania and Slovakia (Hegedüs 2019). While the EU has faced various institutional and political crises throughout its lifetime, this one has been described by some scholars as ‘arguably the only truly existential risk’ to the EU’s institutional survival (Kelemen 2019: 247). Of the several facets of this crisis, the one most discussed is the independence of the judiciary.

While there is already a vast amount of research and literature on the rule of law crisis in Europe, hardly any of it explores the ‘social policy’ context of the crisis. The research strand on judicial reforms and the lack of an independent judiciary has always been in the limelight (Moliterno and Čuroš 2021). This chapter aims to underline the linkages between rule of law backsliding and social policy by looking at the EU responses to the rule of law crisis. We also raise the question of its unintended effects on social policy. While, as already mentioned, rule of law breaches are geographically much broader phenomena, for space reasons we will only consider rule of law backsliding

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1. Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU).
 2. CJEU, Judgment in C-294/83 *Les Verts v Parliament*, ECLI:EU:C:1986:166, para 23.

in Hungary and Poland, and only insofar as this helps readers to better understand EU-level responses. The focus is on those responses between 2018 and 2022, exploring the key legally-binding and judicial enforcement paths, such as the judicial actions taken by the CJEU both under the preliminary ruling procedure (Article 267 TFEU), as well as in application of three tools from the rule of law toolbox³: 1) triggering Article 7 TEU (allowing a Member State's rights, including its voting rights, to be suspended in the event of a serious breach of EU values such as the rule of law); 2) initiating infringement procedures (Articles 258 and 259 TFEU); and 3) applying the new rule of law conditionality mechanism.

The chapter unfolds as follows: Section 1 focuses on defining the rule of law as a concept, giving examples of rule of law crisis manifestations in Hungary and Poland. Section 2 describes the EU response to the rule of law crisis via existing mechanisms, namely the administrative and judicial enforcement of the tools available to the European Commission (hereafter referred to as 'the Commission') and to the CJEU. The last part of Section 2 focuses more specifically on the rule of law conditionality mechanism, the latest tool adopted in the EU response to the rule of law crisis, as well as on its potential implications for social policy. The chapter concludes by generalising the findings and raising a few questions for further research.

1. The rule of law crisis and its manifestations

Dating back to Socrates and Confucius, the rule of law concept has evolved and revived over the centuries, trending in the late 1990s and ever since (Licht et al. 2007). Scholars link its revival to the democratic opening of many countries and the consolidation of democracy in different parts of the world, as well as the developed respect for human rights in the second half of the 20th century (Carothers 1998). Given that the rule of law concept is more than 2000 years old (Burgess 2020), a vast amount of literature on it exists (ibid; Dickinson 2020; Pech 2022).

The rule of law can be defined in many different ways, depending on the approach and the angle from which it is looked at – whether from an economic, legal or political point of view (Møller and Skaaning 2014). In legal terms, Carothers (1998: 96) defines the rule of law along the following lines: 'a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century'. The author further outlines several of the key elements regarding the state institutions which transpose the rule of law concept into a concrete domestic context:

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3. The EU rule of law toolbox contains the following instruments: initiation of the infringement procedure, the triggering and application of Article 7, the rule of law conditionality mechanism and the rule of law framework. In addition, the EU Justice Scoreboard, the European Semester, the Cooperation and Verification Mechanism, and the withdrawal of EU funding in support of civil society or for structural reforms, are further tools aimed primarily at promoting the rule of law and detecting emerging problems at an early stage. Source: The EU's Rule of Law toolbox, Factsheet, April 2019, [https://ec.europa.eu/info/sites/default/files/rule_of_law_factsheet_1.pdf].

The central institutions of the legal system [...] are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. [T]he government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding. (Carothers 1998)

More broadly, the rule of law principle is closely tied to democracy and human rights; without one of them, the other cannot exist⁴ (Pech et al. 2020). Figure 1 sets out the core contents of the rule of law concept – an open, independent and impartial judiciary, the presumption of innocence, no legislative retroactivity, and open and transparent law-making are among its main elements. Hence the rule of law is certainly much more than independent courts and accountable, democratically elected governments. However, not all elements have received the same amount of scrutiny in recent public and scholarly debates focused on EU Member States.

Figure 1 Rule of law elements



Source: Rule of Law Education Centre, 2022.

4. See Recital 6 of the Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council: 'While there is no hierarchy among Union values, respect for the rule of law is essential for the protection of the other fundamental values on which the Union is founded [...] Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights. There can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.'

The rule of law concept has been vigorously revived in the last decade within the scholarly literature on EU governance and legal principles (Closa 2019; Kochenov and Pech 2016; Müller 2015; Pech 2020; Pech and Scheppele 2017; Smith 2019; Van Elsuwege and Gremmelprez 2020; von Bogdandy and Ioannidis 2014), provoked by the rule of law crisis first in Hungary, then in Poland and other EU Member States. However, the rule of law foundational value did not emerge from the crisis but was developed alongside the understanding of the EU as a constitutional order and the general principles of direct effect⁵ and supremacy of EU law⁶. In 1986, the CJEU for the first time explicitly mentioned the concept in its landmark judgement *Les Verts v Parliament*, arguing that ‘the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty’⁷. The rule of law has been explicitly anchored in the Treaties since 1992 (although it was already there implicitly before), while the post-Lisbon-Treaty Article 2 TEU counts it among the values upon which Union is founded.

Being an ‘essentially contested concept’, the rule of law scope, content and limits are not always clear-cut. This relative ambiguity is however, characteristic of practically all legal concepts and does not *per se* mean that the principle is difficult to apply. In the context of the EU, the CJEU has for example emphasised that the rule of law is a fundamental EU value, whose content can be determined by the EU legislator, and that it is a notion to be defined at EU rather than national level, with a common understanding across EU Member States (C-156/21 *Hungary v Parliament and Council*⁸ and C-157/21 *Poland v Parliament and Council*⁹).

The European Commission has defined the rule of law along the following lines:

Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law includes principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law. (European Commission 2020)

The common importance of the rule of law concept to all EU Member States, and how it was to be upheld, first became a pertinent issue in the scholarly work of EU legal scholars and political scientists in the early 2010s when the first signs of democracy

5. Judgment in C-26/62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*. ECLI:EU:C:1963:1.

6. Judgment in C-6/64, *Flaminio Costa v E.N.E.L.* ECLI:EU:C:1964:66.

7. Judgment in C-294/83 *Les Verts v Parliament*, ECLI:EU:C:1986:166

8. Judgment in C-156/21 *Hungary v Parliament and Council*, ECLI:EU:C:2022:97.

9. Judgment in C-157/21 *Poland v Parliament and Council*, ECLI:EU:C:2022:98.

backsliding in Hungary emerged (Bozóki 2011, 2012; Gyongyi 2012; Halmai 2012; Morlino and Palombella 2010; Pech 2012; Rupnik 2012; Uitz 2010).

Over the last decade, charges of breaching the rule of law have been levied against both Hungary and Poland by the European Commission, European Parliament, representatives from other Member States, CJEU and individuals bringing cases before the CJEU. The most discussed accusations were the amendments to and later replacement of the Hungarian Constitution introduced by the incumbent government¹⁰ which went against major constitutional definitions, such as the concept of ‘life’ and ‘family’ (in the case of Hungary) (Jakab and Sonnevend 2013; Kovács and Tóth 2011; Varju and Chronowsk 2015); the changes to the electoral framework in Hungary introduced in the run-up to the 2014 parliamentary elections, to the advantage of the then current majority in the Parliament (Scheppele 2014); the establishment of new judiciary chambers (in the case of the Polish Supreme Court) (Duncan and Macy 2020; Pech 2021; Spieker 2022; Zechenter 2019), as well as interference with judicial independence through the forced early retirement of judges and their substitution with judges close to the executive powers both in Hungary (Uitz 2019) and in Poland (Mastracci 2019; Kovács and Scheppele 2018); restricted funding for civil society organisations (Bárd 2020; Buyse 2018; Stanley 2022) and even the disruption of academic freedom in the case of Hungary (Halmai 2017a, 2018; Bugaric 2019), both of which were aimed at curbing all critical voices in the country.

Many of the illiberal reforms introduced by the incumbent governments in Hungary (Fidesz since 2009) and Poland (Law and Justice (PiS) since 2015) look alike and were aimed at undermining key democratic principles of country governance: the separation of powers and the impartial application of the law, i.e., rule of law principles. These constitutional and institutional changes, which at first sight may have looked inconsequential for average citizens in both countries, have substantially impacted individual and social rights as well as equality, as witnessed by Poland’s restrictive abortion law, the publicly proclaimed LGBT-free zones announced by Polish municipalities in Lublin, Łódź, Małopolska, Podkarpacie and Świętokrzyskie, protection of the institution of marriage as the union of a man and a woman in the amended Hungarian Constitution, the downgraded political representation of women (Ilonszki and Vajda 2019) in both countries, and overall the reduced rights of women (Fodor 2022). Examples with a social dimension include the pension reforms in Hungary (Szikra 2018; Zoltán and Simonovits 2019), the criminalisation of homelessness in Hungary¹¹, as well as reforms targeting specific professional groups, as in the case of the early retirement of judges in both Hungary and Poland.

Implemented reforms have also disrupted the work of civil society players and social partners, in favour of the government’s sole authority over default policy processes.

10. The amendments to the Hungarian Constitution under the Fidesz government were adopted by parliament on 18 April 2011 and entered into force on 1 January 2012.

11. The Seventh Amendment of the Fundamental Law criminalises homelessness by banning the use of public premises for habitation as part of the right to adequate housing. After the amendment of the Act on Misdemeanours, regularly sleeping in the streets becomes a misdemeanour, possibly leading to imprisonment for up to 60 days.

As Szikra (2018: 489) outlines, ‘while civil society, experts and trade unions found it increasingly difficult to follow legislation, tripartite negotiations and civil consultation have been cancelled altogether’. In addition, public employment security has been decreased in favour of nepotism (Ombudsman of Fundamental Rights, 2012 in Szikra 2014).

The Hungarian government has further operated beyond the law by declaring a state of emergency for an excessively long period, extended well beyond the Covid-19 pandemic peak. The latest state of emergency, in place as of 25 May 2022 (AFP 2022), was introduced to counter the economic crisis caused by the war in Ukraine. It allows the Prime Minister to rule by decree, bypassing Parliament. Last but not least, adjudication processes and law enforcement in both countries have been largely compromised by the judicial reforms.

The examples above illustrate how the rule of law crisis has impacted various aspects of individual and social rights in both countries, as would happen in any other country following the same model of rule of law backsliding. And yet, one could argue that these developments are a choice largely legitimised by the electorates of the respective countries, as witnessed by the high electoral support for Fidesz in Hungary and PiS in Poland. Nevertheless, these countries’ membership in the EU, which implies close relations with the other EU Member States, is also bound by a set of Treaties requiring respect of the rule of law and democratic principles as one of the foundations for the Union.

In the following section, we provide an overview of the EU response to the rule of law crisis from the perspective of social policy, raising questions about the intended and unintended effects of the adopted EU response on the social domain.

2. EU responses to rule of law backsliding from a social perspective

In recent times, one can distinguish between two key approaches by EU-level players to the threats to the rule of law in EU Member States. The first is enforcement (both administrative and judicial) via already existing processes and mechanisms; the second, the creation of new tools and mechanisms. Both approaches are aimed at keeping in check national-level developments. While the former is how the EU has traditionally approached breaches of EU law at Member State level (see Section 2.1), the latter is much more unusual. It is quite rare for the EU to create new control and enforcement tools specifically targeting concrete breaches of EU law (potentially limited in time and space) within such a comparatively narrow area of EU law as the rule of law¹². One example illustrating this more creative approach to the rule of law crisis is the recently adopted Rule of Law Conditionality Regulation¹³ (hereafter the ‘Regulation’; see Section 2.2).

12. In fact, this is the only case we can recall where a whole enforcement mechanism has not been created for a whole area of EU law, or for certain groups (workers, posted workers, consumers), but rather for one, albeit central element of EU primary law. It would have been less unusual if the Conditionality Regulation had been adopted for all values embedded in Article 2 TEU rather than only for the rule of law.

13. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1-10.

While we focus on the actions of the Commission and the CJEU, other institutional players, such as the European Parliament, have also been vocal in condemning the rule of law breaches both through their participation in the enforcement mechanisms and in establishing rule of law conditionality, as well as through their own opinions and hearings (European Parliament 2021; European Parliament 2022a; European Parliament 2022b)¹⁴. However, here we have decided to look at the legal pathways used for enforcing the rule of law and at identifying links with the social policy domain (hence, looking at the actions taken by the Commission and the CJEU).

2.1 The use of existing tools for administrative and judicial enforcement

2.1.1 Administrative enforcement

Two main mechanisms have been employed to deal with rule of law breaches. The first is the triggering of the Article 7 TEU process, while the second is the use of infringement procedures.

- Article 7 TEU

Article 7 TEU sets out a process whereby, on a reasoned proposal from the European Commission, the European Parliament or one third of the Member States, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, can determine that there is a clear risk of a serious breach by a Member State of the values set out in Article 2 TEU (for example, the rule of law). Following such a decision, the Member State in question is invited to explain its actions and the Council can address recommendations to rectify or prevent the serious breach. The second option (under Article 7(2)-(5) TEU) is for the Council to unanimously determine the existence (as opposed to mere risk) of a serious breach and to ask for explanations. If such a decision is reached, the Council, acting by a qualified majority, can suspend certain rights (i.e., voting rights) of the Member State until the breach has been rectified (Sadurski 2010).

This process is a sort of emergency brake, up to now little used due to its gravity and also the significant quorums and unanimity needed. While its use has been discussed several times (for example, against the right-wing populist government in Austria in the early 2000s or in response to the French government's expulsion of thousands of Roma in 2009), it was triggered for the first time ever by the European Commission against Poland on 20 September 2017 and against Hungary by the European Parliament on 12 September 2018 (Michelot 2015).

However, besides hearings before the General Affairs Council¹⁵ and certain recommendations (Michelot 2015), any further action to deprive Poland or Hungary of their voting rights would require a unanimous Council decision, a step not taken due

14. MEPs recognise Hungary as no longer being fully democratic.

15. The General Affairs Council is mainly made up of European home affairs ministers from all EU Member States.

to the expected vetoes of Poland and/or Hungary and possible opposition from other Member States.

As part of the implementation of Article 7 TEU, the European Commission introduced a new annual rule of law reporting process in 2020. This is ‘a yearly cycle to promote the rule of law and to prevent problems from emerging or deepening and to address them, looking at all Member States equally’ (European Commission 2021). These reports assess four aspects: a) a country’s justice system; b) its anti-corruption system; c) media pluralism and freedom; and d) other institutional issues linked to checks and balances. The first report was issued in 2020 (European Commission 2020), followed by reports in 2021 and 2022. They seem to be aimed at taking stock of rule of law developments in the Member States and identifying potential challenges rather than addressing these.

In the published national assessments, aspects related to labour law and social policy are difficult to find. If present, they are looked at through the lens of constitutional aspects of the rule of law, for example, the increase in judges’ salaries to promote their independence in Hungary (European Commission 2020a), the obligation for judges in Poland to disclose their membership in associations (including trade unions) as a breach of the right to private life rather than of the collective right to association (European Commission 2020b). Finally, the reports considered at length the consequences of the Covid-19 pandemic and the accompanying measures, with an emphasis on the ‘states of emergency’ introduced in many Member States and the way these measures were adopted (rushed political process) (European Commission 2021). The reporting leads to a yearly general overview of national-level developments associated with the rule of law. The objective seems clearly to monitor and recommend rather than assess in detail, prosecute, or punish. The process is a form of soft law, with the outlined recommendations not legally binding. However, there is a distant possibility of the information contained in the reports being used for taking decisions under Article 7 TEU to limit a Member State’s voting rights.

- Infringement procedures

The second mechanism the European Commission has in its arsenal to prosecute any breaches of EU law by Member States are infringement procedures. These essentially consist of three stages – an informal, formal and judicial stage. The first stage involves the Commission requiring an informal explanation from the EU Member State in question. If the response is unsatisfactory, the second stage is triggered. A letter of formal notice requesting further information is sent. Here again, if the response is unsatisfactory, a reasoned opinion, i.e., a formal request to comply with EU law, is sent. Finally, if the Member State does not take action to rectify the breach alleged by the Commission, the third stage involves the Commission referring the matter to the CJEU (Articles 258 and 259 TFEU)¹⁶. While the European Commission has broad political

16. The judgments handed down by the CJEU in infringement procedures are discussed in the following section. They constitute an inherent part of CJEU case law.

discretion regarding application of the procedure, it has been used very actively against rule of law violations¹⁷.

Looking solely at the last four years, the European Commission has initiated more than 20 infringement procedures dealing with certain tenets of the rule of law¹⁸. The key infringement procedures initiated against Poland concern the disciplinary regime for domestic judges¹⁹, the violation of EU law by the legislative changes affecting the judiciary²⁰, and the violation of Article 19(1) TEU read in conjunction with Article 47 Charter of Fundamental Rights of the European Union (CFREU) by the new law on the Supreme Court²¹. Extremely unusual is the infringement procedure started in 2021 on a further violation of EU law, especially Article 19(1) TEU) and the general principles of EU law, by the Polish Constitutional Tribunal²². The infringement procedure was brought against its rulings considering the EU Treaties as incompatible with the Polish Constitution (European Commission 2022a). While this is hardly the first time a highest national court has refused to follow and/or has questioned the validity of EU law²³, this is the first time in recent years that the European Commission has targeted a Member State and a specific court about such case law via an infringement procedure.

Further infringement procedures associated with rule of law breaches initiated against both Hungary and Poland fall within the broader scope and understanding of the rule of law's association with infringements of human rights. In this respect, there have been several infringement procedures against Hungary concerning the rights of asylum seekers²⁴ and some concerning such aspects as racial discrimination²⁵.

All in all, the European Commission has been quite active in using the administrative enforcement mechanisms at its disposal to deal with rule of law backsliding in both Hungary and Poland. It is especially striking when compared to the Commission's laggardness regarding Member State infringements of EU social and labour law, where infringement procedures are few and far between (Unterschütz 2022).

17. This is not typical since the Commission maintains significant discretion as to whether to use the infringement procedure. The fact that the procedure has been used for prosecuting rule of law breaches illustrates the political importance of the rule of law in the EU.

18. Data gathered from the European Commission search engine on infringement decisions, available at [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en] (accessed 20 Sep 2022). The data is collected by exploring all infringement procedures brought against Poland and Hungary between 1 January 2018 and 20 September 2022 and extracting those dealing with rule of law breaches.

19. Decision by the Commission, No INFR(2019)2076.

20. Decision by the Commission, No INFR(2020)2182.

21. Decision by the Commission, No INFR(2017)2121.

22. Decision by the Commission, No INFR(2021)2261.

23. Solange I and Solange II, BVerfGe decision in the PSPP case where the German Constitutional Court ruled that both the CJEU judgment in C-493/17 and the ECB's public sector purchase programme (PSPP) were ultra vires; see also Danish Supreme Court where the Court refused to follow the CJEU ruling in the Mangold case (C-144/04) (Ajos ruling - C-441/14).

24. Commission decision no. INFR(2019)2193, Commission decision no. INFR(2015)0433, and Commission decision no. INFR(2020)2310, among others.

25. Commission decision no. INFR(2016)2078 and Commission decision no. INFR(2021)2073.

2.1.2 Judicial enforcement

In recent years, the CJEU has extensively fleshed out the rule of law concept in its case law, whether in judgments pertaining to issues arising in Hungary and Poland, or in those concerning other countries.

The thematic focus of this chapter does not permit an analysis of any more than a sample of the key judgments handed down by the CJEU on rule of law backsliding linked to social policy matters. A much broader overview, albeit with a general rather than social policy focus, can be found in Pech and Kochenov (2021). It is broadly agreed in the literature analysing the vast *acquis* of CJEU case law that the CJEU has been at the forefront, if not the spearhead, of ensuring that the rule of law has been converted from a lofty phrase in the Treaties to a functioning legal concept (Pech and Kochenov 2021).

Overall, there are three groups of cases belonging to the rule of law family. First, there are those dealing directly with the independence of judges and the judiciary²⁶. Second, there are those ‘associated’ with the deterioration of fundamental rights in the context of rule of law backsliding. Most cases here are those dealing with the rights of asylum seekers²⁷, the European Arrest Warrant²⁸, protection of NGOs²⁹ and academic freedom³⁰. Finally, the third group concerns the procedural side, namely the attempts by Poland and Hungary to challenge the ongoing reform of the rule of law protection framework at EU level. This group includes cases such as the challenge to the Conditionality Regulation (Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget, discussed in more detail in the following section)³¹, or the questioning of the legality of the Article 7 TEU Resolution³². While judgments linking rule of law and social policy are rare, social policy aspects, such as the prohibition of discrimination, have served as the basis for the CJEU to engage in the debate over the rule of law³³.

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26. CJEU judgment in C-286/12 *Commission v Hungary*, ECLI:EU:C:2012:687; CJEU judgment in C-564/19 SI, ECLI:EU:C:2021:949; CJEU judgment in joined cases C-924/19 PPU and C-925/19 PPU *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, ECLI:EU:C:2020:367; CJEU judgment in C-896/19 *Republika*, ECLI:EU:C:2021:311; CJEU judgment in C-192/18 *Commission v Poland*, ECLI:EU:C:2019:924; Order of the CJEU in C-522/18 *Zakład Ubezpieczeń Społecznych*, ECLI:EU:C:2020:42; CJEU judgment in C-637/18 *Commission v Hungary*, ECLI:EU:C:2021:92; CJEU judgment in C-558/18 *Miasto Łowicz*, ECLI:EU:C:2020:234; CJEU judgment in C-585/18 A. K., ECLI:EU:C:2019:982; Joined cases C-624/18, C-625/18 and C-585/18 CP et al (not yet decided); CJEU judgment in case C-619/18 *Commission v Poland*, ECLI:EU:C:2019:531; Order in case C-623/18 *Prokuratura Rejonowa w Ślubicach*, ECLI:EU:C:2020:800 and others.
27. CJEU case C-718/17 *Commission v Hungary* (not yet decided); CJEU Judgment in case C-406/18 PG, ECLI:EU:C:2020:216; CJEU Judgment in case C-564/18 *Bevándorlási és Menekültügyi Hivatal*, ECLI:EU:C:2020:218; CJEU judgment in case C-808/18 *Commission v Hungary*, ECLI:EU:C:2020:1029.
28. CJEU judgment in joined cases PPU C-561/21 and PPU C-562/21 *Openbaar Ministerie*, ECLI:EU:C:2022:100; CJEU Judgment in case C-354/20 PPU *Openbaar ministerie*, ECLI:EU:C:2020:1033; CJEU case C-412/20 PPU *Openbaar Ministerie* (not yet decided).
29. CJEU judgment in case C-78/18 *Commission v Hungary*, ECLI:EU:C:2020:476.
30. CJEU judgment in case C-66/18 *Commission v Hungary*, ECLI:EU:C:2020:792.
31. CJEU judgment in case C-156/18 *Hungary v Parliament and Council*, ECLI:EU:C:2022:97; CJEU judgment in case C-157/21 *Poland v Parliament and Council*, ECLI:EU:C:2022:98.
32. CJEU judgment in case C-650/18 *Hungary v European Parliament*, ECLI:EU:C:2021:426.
33. CJEU judgement in case C-286/12, *Commission v Hungary*, ECLI:EU:C:2012:687.

The case law situation related to the rule of law differs greatly when it comes to Hungary and Poland. While Hungary has been cited before the CJEU mainly for cases related to its handling of asylum-seekers, Polish cases relate mainly to the independence of the judiciary. Both countries submitted annulment procedures concerning the Rule of Law Conditionality Regulation which were recently rejected by the CJEU³⁴. These two judgments will be incorporated in the analysis in the next section where conditionality mechanisms and their relation to social policy are discussed. We start our analysis with the CJEU ruling on the Portuguese judges' case³⁵, which is often taken as the starting point for the judicial construction of the content of the rule of law framework in recent CJEU case law. This judgment is a telling example of how social policy, in this case labour law, can serve as the entry to the debate on the independence of courts and, by association, the rule of law debate.

In this case, the Portuguese legislator had temporarily reduced the remuneration of public sector employees, including the judges of the Court of Auditors³⁶. The trade union representing judges (*Associação Sindical dos Juizes Portugueses*) brought the case before national court, questioning the compatibility of this reduction with the principle of judicial independence (Articles 19(1) TEU and 47 of the Charter in particular). The national court in turn referred the matter to the CJEU³⁷. While a reduction of remuneration could essentially be seen as a matter for labour law, in the context of this case the CJEU directly proceeded to the constitutional aspects of the dispute. After establishing an important general obligation that each and every Member State must ensure that courts meet requirements of effective judicial protection (para 37), the CJEU ruled that Article 19(1) TEU does not preclude general salary reduction measures such as those litigated in the dispute³⁸. Such linking of essentially social policy and labour law reforms with the question of independence of judges and the rule of law more broadly has been a characteristic approach for the CJEU's entrance into the rule of law debate.

The CJEU stance in the ruling on the Portuguese judges was followed through in the joined cases C-585/18, C-624/18 and C-625/18 A.K. These cases were brought by judges on the Polish Supreme Court who were concerned by the lowering of the retirement age. The cases concerned an array of matters. The central question, as formulated by the requesting national court in the preliminary ruling procedure, was whether the new Disciplinary Chamber of the Supreme Court could be considered 'independent' for the purposes of Article 267 TFEU (read in conjunction with Article 19(1), Article 2 TEU and Article 47 CFREU). In this case, the judges had brought a case alleging discrimination based on age. The question was whether they were entitled to have this case dealt with by an 'independent court' (they argued that the Disciplinary Chamber was not such) and whether a national court could disapply a national provision requiring the transfer of jurisdiction to a tribunal that could not be considered independent.

34. CJEU judgments in cases C-156/21 *Hungary v Parliament and Council*, ECLI:EU:C:2022:97 and C-157/21 *Poland v Parliament and Council*, ECLI:EU:C:2022:97.

35. CJEU judgment in case C-64/16 ASJP, ECLI:EU:C:2018:117.

36. *Ibid*, para 11.

37. *Ibid*, para 13.

38. *Ibid*, para 53.

The CJEU argued that Article 9(1) of Directive 2000/78, the scope of which covers *inter alia* discrimination based on age, requires that Member States ensure that all persons (including Supreme Court judges) who consider themselves wronged by a failure to apply the principle of equal treatment can enforce their rights before independent courts, while the national court is required to disapply any national provisions requiring the opposite³⁹. Here again the gist of the case lay in the procedural rules and the question of what constitutes an independent court; however, the CJEU went as far as setting out procedural guarantees in an essentially labour law dispute to contain the requirement that any court deciding such cases should be ‘independent’, in line with the criteria set forth at EU level. Thus, the CJEU went further than mere procedural autonomy⁴⁰ when it came to the judicial enforcement of age discrimination cases.

The CJEU approach has usually been to enter the debate on the content of the rule of law principle in cases that could also be seen as primarily concerning labour and social law. What is remarkable in these judgments is how little reasoning the CJEU assigns to the actual interpretation of EU social law; its foremost concern is the interpretation of EU constitutional law, and more precisely the rule of law framework on the independence of courts. The CJEU prefers to interpret general primary law rather than secondary social law in rule of law cases – a reasonable choice even if in most other cases more specific (secondary) law is interpreted and applied before more general (primary) law. Indeed, one could wish for broader entrenchment of rule of law elements in the social law *acquis per se*.

An exception to this approach is a much earlier Hungarian case, decided way before the rapid development of the CJEU’s rule of law case law. In its judgement, the CJEU ruled that, by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, the country had failed to fulfil its obligations under Article 2 and 6(1) of Directive 2000/78/EC (General Framework Directive)⁴¹. Instead of engaging in constitutional law interpretation and the debate on the content and limits of the rule of law protection in general and the independence of the judiciary in particular, the CJEU relied here entirely on EU secondary law on non-discrimination. Even though the facts of the case were very similar to the later Polish cases, this early case gave precedence to solving the matter within the realm of EU social rather than constitutional law. Whether this or the current approach is more welcome depends on one’s perspective. More specific law has priority over more general law, though this does not mean that the development of constitutional principles should be entirely left aside.

Even though the CJEU’s docket is typically dominated by preliminary references (Article 267 TFEU)⁴², rule of law protection is something of an exception. The number of infringement procedures brought before the CJEU against violating Member States

39. CJEU Judgment in joined cases C-585/18, C-624/18 and C-625/18 A.K., para 172.

40. Principle that the EU law should be enforced at national level in the same way as national law.

41. CJEU judgment in case C-286/12 *Commission v Hungary*, ECLI:EU:C:2012:687, para 82.

42. This is a judicial procedure under which domestic courts in EU Member States can send questions to the CJEU concerning the interpretation and/or validity of EU law.

reveals the significant role played both by the CJEU and the European Commission in addressing the rule of law crisis. The European Commission has so far brought five infringement procedures before the CJEU to ensure that national courts meet the requirements of effective judicial protection: four against Poland and one against Hungary. Four of the cases have already been decided⁴³.

In all these cases Hungary and Poland were found to be in violation of EU law (mainly Article 19(1) TFEU), though the approach to the social rights aspects differed in the judgments. Two judgments illustrate the CJEU's different approaches.

In the case *Commission v Poland* (C-619/18) the legality of reducing the retirement age (and subsequent dismissal) of Polish Supreme Court judges was questioned⁴⁴. The Polish government argued that the changes were made in order to balance judges' retirement age with that of the general population and also to improve the age balance among Supreme Court members⁴⁵. Diving straight into an interpretation of Article 19(1) TFEU, the CJEU evaluated the situation based on the principle of independence of judges rather than by (also) looking into the EU law on the prohibition of discrimination based on age. This can be considered a lost opportunity to rely on the broader rather than narrow interpretation of the rule of law principle⁴⁶. But it is very much in line with the more recent CJEU case law analysed in the previous paragraphs, where clear priority is assigned to assessing the rule of law (based on primary law) rather than compliance with EU (secondary) law on social policy requirements.

In the case *Commission v Poland* C-192/18, which dealt with the retirement age of the judges (different for women and men) sitting on ordinary courts, the approach was very different, especially since the Polish Government itself argued that the situation fell outside the scope of Directive 2006/54/EC. The CJEU took the opportunity to interpret the General Discrimination Directive in relation to Article 157(1) TFEU (the principle of equal pay for male and female workers for equal work or work of equal value). The CJEU argued that the situation fell within the scope of Article 157 TFEU and Directive 2006/54 on equal opportunities and equal treatment of men and women in matters of employment and occupation⁴⁷, ruling that the national law directly introduced discriminatory conditions based on sex into the pension schemes for judges of ordinary courts and public prosecutors, contrary to Article 157 TFEU and Articles 5(a) and 9(1) (f) of Directive 2006/54/EC⁴⁸. Hence in this case the CJEU interpreted the reforms as potentially threatening the independence of the judiciary not only as an issue of the rule of law and independence of the courts, but also under EU secondary law on non-discrimination. This example well illustrates how rule of law concerns are intrinsically

43. CJEU judgment in C-619/18 *Commission v Poland*, ECLI:EU:C:2019:531; CJEU judgment in case C-192/18 *Commission v Poland*, ECLI:EU:C:2019:924; CJEU judgment in case C-791/19 *Commission v Poland*, ECLI:EU:C:2021:596.

44. C-619/18 *Commission v Poland*.

45. *Ibid*, para 80.

46. *Ibid*, especially, paras 71-97.

47. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

48. *Ibid*, especially, para 137.

linked with social rights, such as the prohibition to discriminate based on age, which is a right recognised not only in EU secondary law but also in the CFREU. Both this case and the one discussed in the previous paragraph deal with lowering the retirement age. According to the CJEU, such a move could not be justified and resulted in an endangerment of the rule of law principle. Nevertheless, in the latter case the CJEU preferred to base the operative part of its judgment on the more specific equality law rather than the more general rule of law constitutional framework.

The only case not dealing with the question of independence of judiciary but related to the social realm, and more precisely to the right to freedom of association is the case *Commission v. Hungary* (C-78/18). The case challenged the Hungarian Transparency Law subjecting organisations that receive support from abroad exceeding a certain threshold to registration, declaration and publication requirements, in contrast to organisations that do not receive such support⁴⁹. The Court ruled that this law breached Article 63 TFEU and Articles 7, 8 and 12 CFREU⁵⁰. The CJEU's reasoning referred to the European Court of Human Rights' case law, while the judgment was partly based on the right to private life (Article 7 of the Charter and Article 8 ECHR) and freedom of association (Article 11 ECHR and Article 12(1) of the Charter)⁵¹. The CJEU *inter alia* argued that the obligation for civil society organisations established in Hungary to declare financial support granted by natural or legal persons established abroad limited the right to respect for private and family life⁵². Interestingly, while this case is seen as constituting part of rule of law case law (Pech and Kochenov 2021)⁵³ and as rule of law backsliding in Hungary, it was not linked to Article 2 TEU by the CJEU. Instead, the Court argued the case based on human rights and so-called social rights provisions as laid out in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. This aptly illustrates the close link between rule of law protection and social rights.

To sum up, while 29 rule of law cases have been brought against Poland (not counting the joined ones)⁵⁴ and 16 against Hungary⁵⁵, in only four judgments has the CJEU established the connection between fundamental social rights and the rule of law, despite many of them posing an opportunity for the CJEU to connect the dots. Multiple cases concerning the independence of the judiciary could also have been assessed in the light of social law (prohibition to discriminate, unlawful dismissal, limits to disciplinary measures against workers and others). One could thus argue that in some cases there has been a lost opportunity to see rule of law protection as being embedded in and expressed by EU secondary law and in its larger setting in connection with the protection of human rights.

49. CJEU judgment in C-78/18 *Commission v Hungary*.

50. *Ibid.*, para 145.

51. *Ibid.*, para 132.

52. *Ibid.*

53. See also the rule of law dashboard. Available at: [<https://euruleoflaw.eu/rule-of-law-dashboard-new/>].

54. *Ibid.*

55. *Ibid.*

Some academics have criticised the CJEU for not taking a firmer stance on the rule of law issue (Halmai 2017b), arguing that the CJEU should have focused only on EU primary law requirements concerning the independence of the judiciary (Article 2 TEU, Article 19(1), Article 47, etc.) rather than venturing into EU equality legislation⁵⁶. In contrast to this opinion, however, the social policy and equality legislation not only provided the CJEU with a door-opener for developing an EU-level protective framework for the rule of law, but also broadened our understanding of the rule of law, linking the debate to the more tangible issues faced by such professional groups as judges, and illustrating the interconnectedness between protection of rule of law and social rights.

2.2 The newly designed rule of law conditionality mechanism: is there a social aspect?

Conditionality mechanisms are a tool which the European Commission has often used to ‘discipline’ EU Member States or to promote compliance with EU values and principles by candidate countries. For example, negative conditionality is one of the main instruments used in the accession process for candidate countries applying to join the EU club (Schimmelfennig and Sedelmeier 2004; Steunenberg and Dimitrova 2007; Sedelmeier 2011). One of the major points of the so-called Copenhagen criteria⁵⁷ concerns the ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’.

Similar conditionality mechanisms have been introduced as tools in the EU financial domain. In the 2014-2020 Multiannual Financial Framework (MFF), the measure of ex ante conditionalities was set as an element of the cohesion policy reform. Moving towards an increased role of conditionality mechanisms not just in EU external policies but also in internal matters was disputed by some scholars as moving away from the inherent nature of the EU – instead of ‘lead[ing] towards an increased solidarity (not conditionality) within the EU’, the Union finds its way towards ‘a de facto conditional solidarity’ (VIŤÁ 2017). In this MFF case, the conditionality mechanism was aimed at ensuring ‘the effective delivery of Europe 2020 objectives and targets through cohesion policy’ (European Commission 2011). It covered the European Structural and Investment Funds, namely the European Regional Development Fund, European Social Fund, the Cohesion Fund, European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. Regulation (EU) 1303/2013⁵⁸ explicitly included ex-ante conditionalities with regard to achieving specific thematic objectives,

56. The case was adjudicated on the basis of Directive 2000/78/EC with regard to gender equality rights.

57. Accession criteria (Copenhagen criteria), available at: [<https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>].

58. Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

including some in the social policy domain⁵⁹, through requiring that specific measurable criteria be met (see Regulation (EU)1303/2013).

Unlike this conditionality mechanism applied to the European Structural and Investment Funds, the recently adopted rule of law conditionality mechanism is rather vague when it comes to setting specific objectives. At the same time, while the Regulation does not contain concrete objectives in different thematic areas, it highlights the importance of the rule of law not only as a foundational value crucial for sustaining democracy in EU Member States but also as an important element for their economic and social development and cohesion:

Respect for the rule of law is essential not only for Union citizens, but also for business initiatives, innovation, investment, economic, social and territorial cohesion, and the proper functioning of the internal market, which will flourish most where a solid legal and institutional framework is in place⁶⁰.

Thus, the Regulation highlights the various linkages between the rule of law and the ‘flourishing’ of certain domains, including the social policy domain, without, however, setting any meaningful concrete goals.

At the same time, the Regulation could be defined as surprisingly ‘narrow’ if aimed at defending a foundational principle such as the rule of law, due to its scope of application referring solely to irregularities in the EU budget expenditure of EU Member States⁶¹. This narrowness might be explained by the difficulties of reaching a compromise during the legislative process and the possible fear that a wider-ranging measure might give too much discretion to the European Commission in prosecuting rule of law breaches. An additional hurdle is that any objection to a national action must pursue the aim of protecting the Union’s budget⁶². However, where a breach is detected, the measures available to the Commission under this Regulation are wide-ranging:

- a. Where the Commission implements the Union budget and where a government entity is the recipient, the Commission can suspend payments, prohibit a Member State from entering into new legal commitments, suspend or reduce the economic

59. Objectives include promoting sustainable and quality employment, promoting social inclusion, combating poverty and any discrimination, as well as investing in education, training and vocational training for skills and lifelong learning.

60. Regulation (EU, Euratom) No 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, recital (11).

61. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, recital (17).

62. Article 4(2): ‘breaches of the rule of law have to concern one or more of the following: a) the proper functioning of the authorities implementing the Union budget; b) the proper functioning of the authorities carrying out financial control, monitoring and audit [...]; c) the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of fraud, corruption or other breaches of Union law relating to the implementation of the Union budget; d) the effective judicial review by independent courts of actions carried out by authorities in (a)-(b); e) the prevention and sanctioning of fraud, corruption or other breaches of Union law; f) the recovery of funds unduly paid; g) the effective and timely cooperation with OLAF etc.; h) other situations or conduct of authorities that are relevant to the sound financial management of the Union budget’.

advantage under an instrument guaranteed by the Union budget, or prohibit a Member State from entering into new agreements on loans or other instruments guaranteed by the Union's budget (Article 5(1)(a));

- b. Where the Commission implements the Union budget under shared management with Member States, the Commission may suspend the approval of programmes or amendments, suspend commitments, reduce commitments, reduce pre-financing, interrupt payment deadlines or suspend payments (Article 5(1)(b)).

This general regime of conditionality for protecting the Union budget thus targets high-level corruption, strengthening regulatory and institutional mechanisms and structures where the rule of law crisis has direct links to mismanagement of EU funds (Tridimas 2020). The measure is expected to return results contributing to a more efficient and effective spending of EU funds and favouring any domain for which these funds are allocated, including the social policy domain. The European Social Fund Plus (ESF+), a major EU funding instrument for tackling the socio-economic crisis and for investing in social policy developments, is one of the EU funding schemes whose financial rules are covered by the Regulation⁶³. The ESF+ in addition supports implementation of the European Pillar for Social Rights in the areas of employment, education and skills as well as social inclusion. The main objectives of ESF+ funding are aimed at tackling social inequalities and poverty, youth unemployment, as well as at addressing poverty and child poverty, and at strengthening the capacities of social partners and civil society. Hence, using this Regulation to suspend or limit funding in the social domain could have tangible effects on Member States' funding of social policies.

On the other hand, there are concerns about the financial impact that this Regulation could have on the end beneficiaries if EU funds are reduced or suspended due to irregularities closely linked to rule of law breaches. The Regulation itself includes a safeguard clause for final recipients, stating that the Commission, in making any decisions, should take into account the potential impact on final recipients and beneficiaries (recital 19 of the Regulation).

Academics call into question the effectiveness of the conditionality instruments since instead of 'directly impacting the government', they usually impact the 'beneficiaries of EU programmes who are not responsible for government misbehaviour' (Heinemann 2018). Hungary and Poland were among the largest recipients of funds from the total EU economic, social and territorial budget distributed between 2015 and 2020 (see Figure 2 in annex). While Poland was the biggest beneficiary (as a percentage of the total funding under this scheme), Hungary – together with Czechia, Italy, Romania (in the early years) and Spain – also largely benefited from the funding (see Figure 2 in annex). These funds have been used in programmes important for implementing the European Pillar of Social Rights and European Semester recommendations, as well as for subsidising jobs growth and supporting initiatives such as the Youth Guarantee, the Youth Employment

63. The other funding schemes covered in the Regulation include the European Regional Development Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund and the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument (Article 5).

Initiative, the Council Recommendation on Long-Term Unemployment and the Skills Agenda for Europe (all under the jobs, growth and investment flag). While the larger part of this funding does not necessarily reach end beneficiaries in cash, the financial resources are used for funding social programmes and infrastructure.

Commission President Ursula von der Leyen has announced that the rule of law conditionality mechanism will be triggered against Hungary but not Poland (The Greens/EFA 2022). On 18 September 2022, the Commission presented two proposals to the Council for cutting funding allocated to Hungary as part of the EU cohesion funding mechanism: ‘A suspension of 65% of the commitments for three operational programmes under cohesion policy’ and ‘A prohibition to enter into legal commitments with the public interest trusts for programmes implemented in direct and indirect management’ (European Commission 2022b). These are to be voted on by the Council within one month of the Commission’s proposal. Since the Council can pass the measure with a qualified majority, what was initially seen as a vague threat for Hungary has become a rather real scenario for substantial cuts in EU funding.

Having sensed the potential threat of budgetary losses under the Regulation, both Hungary and Poland unsuccessfully challenged its legality before the CJEU. The Court stressed that the Union budget is one of the principal instruments for giving practical effect to the principle of solidarity and for implementing the principle of mutual trust⁶⁴. However, the CJEU also somewhat restricted the Regulation’s applicability by ruling ‘in the first place, the contested regulation allows the EU institutions to examine situations in the Member States only in so far as they are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union and, in the second place, appropriate measures can be adopted under that regulation only where it is established that such situations involve a breach of one of the principles of the rule of law which affects or seriously risks affecting that sound financial management or the protection of those financial interests of the Union in a sufficiently direct way’⁶⁵. The phrase ‘in a sufficiently direct way’ means that a genuine link must be established between a breach and such an effect or serious risk of an effect⁶⁶. Finally, the Commission must always assess the proportionality of the measures imposed, in accordance with an evidence-based approach respecting the principles of objectivity, non-discrimination and equality of Member States before the Treaties⁶⁷. This potentially restricts the Commission’s scope of discretion. It now remains to be seen what Hungary will do in the wake of the decision to trigger the Conditionality Regulation and to reduce funding. Most likely, if Hungary appeals against this decision, the question whether rule of law breaches have serious and sufficiently direct effect on the sound financial management and financial interests of the Union will be among those the CJEU will have to adjudicate on.

64. CJEU judgment in case C-156/21 *Hungary v Parliament and Council*, ECLI:EU:C:2022:97, para 129.

65. *Ibid*, para 144.

66. *Ibid*, para 147.

67. *Ibid*, para 316.

Finally, the Commission's approach to the Resilience and Recovery Facility (RRF) constitutes a new and exciting nod to the rule of law conditionality beyond the realm of the existing conditionality mechanisms embedded in the legal framework discussed above. Though the RRF is not explicitly covered by the scope of the Regulation, rule of law conditionality was similarly applied. According to the Commission, the aim of the RRF is to mitigate the economic and social impact of the coronavirus pandemic and to make European economies and societies more sustainable, resilient and better prepared for green and digital transitions⁶⁸. While recently approving the Polish Recovery and Resilience Plan (RRP), the European Commission added three conditions with regard to rule of law compliance: dismantling the controversial disciplinary chamber for judges, reforming the disciplinary regime, and reinstating dismissed judges. At the time of writing (September 2022), no funding has yet been released and the Hungarian RRP remains under scrutiny

While the debate on cutting EU funds to Hungary in 2012 due to rule of law violations led to a political discussion on the potential negative impact of alienating Hungarian citizens from the EU, this debate took a different twist ten years later with the adoption of the rule of law conditionality mechanism. The main concern has been that EU citizens' taxes should not be spent on funding what the European Parliament calls a 'hybrid regime of electoral autocracy'⁶⁹. This is a rather remarkable *volte-face*. The most important question regarding the practical implementation of the mechanism is whether freezing EU funding under the conditionality mechanism is implementable in a way not impacting end beneficiaries, especially when these EU funds concern the social infrastructure, technical assistance, funding for jobs growth and re-skilling the unemployed, or funding for reducing youth unemployment. While financial sanctions are probably a last resort measure available to the EU to 'punish' domestic politicians, it is not clear in which direction the vehicle could turn.

Conclusions

While social policy has helped the CJEU to enter the rule of law debate in the case of both Hungary and Poland, there has not been much scholarly debate on the linkage between social policy and the rule of law. In this chapter, we aimed to highlight this relation. We also showed that the social context of the cases discussed is often promising and potentially brings a broader explanatory dimension to the CJEU's understanding and EU's notion of the rule of law. In addition, we concluded that, while there are various mechanisms available in the rule of law toolbox, their impact on Member State social policies and budgets remains to be seen.

68. Recovery and Resilience Facility, European Commission, available at: [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en].

69. The European Parliament voted that Hungary shall be defined not as democracy but as 'hybrid regime of electoral autocracy' in a non-binding report on 16 September 2022.

Initially believed to be one of the ‘weak’ instruments available to the EU institutions (similar to Article 7 TEU, which was under discussion for almost a decade before action was taken to trigger it), the Commission recently triggered the rule of law conditionality mechanism with regard to Hungary. If given the green light by the CJEU, the Commission’s action promises to have a substantial budgetary impact on Hungary, including on its social policy budget. While it is far from clear whether this instrument will get the governments in Hungary and Poland to once again adhere to rule of law and democracy principles, at the same time the potential social impact of the rule of law conditionality mechanism’s application – direct with regard to final recipients of pruned EU funding as well as indirect with regard to the implications for the state budget – needs further scrutiny. Would suspending EU funding lead to a reallocation of budget spending in different domains, including in the social policy domain? In addition, while direct consequences are supposed to be prevented, could the state downscale such programmes? This is not clear. Moreover, since the Regulation is not backed by an impact assessment requirement, its potential consequences cannot be assessed in depth, at least not in a way that is transparent and accessible for the public. This chapter has aimed to raise the pertinence of this question for further research on the topic.

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Annex

Figure 2 Share (in %) of the total EU economic, social and territorial budget each of the EU countries received in the period 2015 – 2020

Year	EU-28	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
2015	50872,9	1%	3%	11%	0%	5%	0%	0%	6%	11%	5%	0%	10%	0%	1%	0%	0%	7%	0%	0%	1%	16%	2%	7%	1%	6%	0%	0%	4%
2016	37579,4	1%	3%	9%	0%	4%	1%	0%	6%	10%	3%	1%	12%	0%	1%	1%	0%	7%	0%	0%	0%	15%	4%	12%	0%	5%	0%	0%	3%
2017	29660,3	1%	2%	9%	0%	7%	1%	0%	5%	7%	4%	1%	6%	0%	1%	2%	0%	7%	0%	1%	0%	25%	8%	4%	0%	3%	1%	1%	2%
2018	46412,8	1%	2%	6%	0%	6%	1%	0%	3%	9%	5%	1%	7%	0%	1%	3%	0%	10%	0%	0%	0%	25%	7%	4%	1%	3%	0%	1%	2%
2019	47423,9	1%	2%	8%	0%	6%	2%	0%	4%	5%	5%	3%	7%	0%	2%	2%	0%	9%	0%	0%	1%	24%	6%	5%	1%	3%	0%	0%	4%
2020	55468,4	1%	2%	7%	0%	5%	1%	0%	7%	7%	5%	2%	7%	0%	1%	3%	0%	8%	0%	0%	0%	23%	6%	6%	1%	3%	0%	0%	2%

Note: For the analysis two datasets are used – EU spending and revenue, Data 2000-2020, 09 June 2021, available here: [https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2014-2020/spending-and-revenue_en] and the Eurostat dataset GDP and main components (output, expenditure and income), [nama_10_gdp], last updated on 9 June 2022.

Data sources: EU spending and revenue (Data 2000-2020), 09 June 2021, and Eurostat dataset GDP, [nama_10_gdp]

Conclusions

Policymaking in a state of permacrisis: can the EU uphold its social ambitions?

Bart Vanhercke, Sebastiano Sabato and Slavina Spasova

Introduction: lurching from crisis to crisis¹

Unleashed in February 2022, the war in Ukraine has put paid to Europe's fragile economic recovery from the Covid-19 pandemic, triggering a devastating humanitarian crisis in Europe, sharp rises in food and energy prices and globally exacerbating inflationary pressure. The European Union's (EU) annual inflation was 9.6% in June 2022; a year earlier, it had been just 2.2% (Eurostat 2022). At the same time, Covid-19 continued to rage worldwide in 2021, spurred by more contagious variants. Vaccines proved highly effective but were unevenly distributed. It is estimated that 3.5 million people died worldwide from Covid-19 in 2021, or around 50,000 people every week (WHO 2021).

The climate crisis continued unabated in 2021, repeating the catastrophic extreme weather events of 2020, from fires to floods. Four key climate change indicators – greenhouse gas concentrations, sea level rise, ocean heat and ocean acidification – set new records in 2021. Extreme weather – the day-to-day 'face' of climate change – led to hundreds of billions of dollars in economic losses and wreaked a heavy toll on human lives and well-being, while triggering shocks for food and water security and displacement (WMO 2022). Unsurprisingly, the outlook for the global economy, still reeling from the pandemic and Russia's invasion of Ukraine, is increasingly gloomy and uncertain. Higher-than-expected inflation is triggering a tightening of global financial conditions. The pandemic is now recognised as having triggered the largest synchronised fall in global GDP in modern history, constituting the worst recession since the Great Depression (following the Wall Street Crash of 1929), and far worse than the 2007-2008 global financial crisis. At the same time, the impact of what the International Monetary Fund (2020) framed as the 'Great Lockdown' was quickly mitigated by the EU and Member State governments, guided by lessons learned from the global financial crisis (Vanhercke and Spasova 2022).

For the first time in the 32 years that the United Nations Development Programme (UNDP) has been calculating the Human Development Index, this index – which measures a nation's health, education, and standard of living – declined globally for two years in a row (UNDP 2022). As a result of Covid-19 and the war in Ukraine hitting the

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world back-to-back, human development slipped back to its 2016 levels in nine out of ten countries, reversing much of the progress made towards achieving the Sustainable Development Goals (SDGs). While some countries are beginning to get back on their feet, recovery is patchy and partial, further widening inequalities in human development (ibid.).

The uncomfortable background to this book are thus multiple global crises: a health crisis, an economic and financial crisis and a climate crisis unfolding in parallel, while war has returned to Europe. According to some, rather than being the exception, a state of ‘permacrisis’² with one challenge seamlessly followed by the next, ‘will be the environment in which Europe will have to continue to operate for the foreseeable future’ (Zuleeg et al. 2021). Importantly, Hans Kluge of the World Health Organization (WHO) argues that the European Region is in a permacrisis that stretches well beyond Covid-19 (arguably the most visible pandemic in our lifetime), climate change and war. Indeed, other long-running crises are relatively discreet, but continue to compromise the health of millions and burden health systems. As a matter of fact, the WHO (2022) points out, noncommunicable diseases³ often go unnoticed but cause several times more deaths than Covid-19 (WHO 2022).

The remainder of this chapter is structured as follows. Section 1 summarises the initiatives topping the EU agenda which have been analysed in-depth in the respective chapters of this book. Section 2 completes the picture of the EU’s social policy agenda during 2021 and the first half of 2022 (the period covered by this book), discussing some of the more recent initiatives not addressed in the volume. Section 3 discusses the need for a reform of EU economic governance to promote social progress and environmental sustainability, including the setting up of an EU ‘Social Imbalances Procedure’. Section 4 glances ahead to 2023, while the final section raises the question whether the EU’s new agenda on ‘Open Strategic Autonomy’ (OSA) could possibly provide a framework for sustaining an ambitious EU social agenda in a context of permacrisis.

1. An ambitious EU social policy agenda: chapter by chapter

The unsettling reality of a ‘multi-crisis Europe’ provides essential background when analysing EU social policymaking in 2021 and the first half of 2022. As Zuleeg et al. (2021) point out, ‘the functioning of EU governance increasingly relies on national leaders being able to overcome domestic constraints and act more in the European interest. National governments (and parliaments) are, in many cases, politically overwhelmed by this dual challenge’. And yet, the chapters of this book suggest that – building on the policy momentum created by the Juncker European Commission (2014-2019) and the seeds sown in 2020 (see Vanhercke and Spasova 2022) – the von der Leyen European Commission has been able to pursue an ambitious social policy

2. The word permacrisis is most widely understood as a portmanteau of ‘permanent’ and ‘crisis’ and refers to an extended period of instability and insecurity (Collins Dictionary).

3. These include cancer, heart disease, alcohol- and tobacco-related disease, and the epidemic of obesity (WHO 2022).

agenda throughout 2021 and the first half of 2022, despite the global turmoil and in many cases with Covid-19 acting as a catalyst.

The opening chapter by Federico Fabbrini (this volume) explores how the invasion of Ukraine has affected the process of European integration and reflects on prospects for the future of the EU. He argues that Russian military aggression in early 2022 prompted the EU to respond with unprecedented steps forward in integration, particularly in the fields of defence and energy. The EU's Common Foreign and Security Policy has been enriched by a new 'Strategic Compass' (long in the making). In addition, the revamped Common Security and Defence Policy (CSDP) made it possible to deploy, for the first time, the European Peace Facility to provide weapons to the Ukrainian army, while Denmark abandoned its CSDP opt-out. In the area of asylum and migration, the EU's 'open-door' policy in response to the massive inflow of Ukrainian refugees contrasted with the 2015-2016 refugee crisis, with the possibility created to redirect EU cohesion policy funds to assist refugees. The EU also decided to reduce energy dependence on Russia, to promote transnational connections and speed up the transition to clean energy, including through 'RePower EU' – the common European action plan for more affordable, secure and sustainable energy.

At the same time, the chapter by Fabbrini highlights key weaknesses in the EU governance system, power structure and financial architecture exposed by the geopolitical situation. These include a lack of adequate supranational competences, difficulties in decision-making due to the rule on unanimity and limited financial resources (lack of significant fiscal capacity). As a result of these limitations, the EU response to the invasion of Ukraine suffered several setbacks. For example, the chapter argues, the objective of establishing a 5,000-strong EU Rapid Reaction Force by 2025 can be seen as 'too little, too late' – and far less ambitious than what was already envisaged in the 2000s – for the EU's Common Foreign and Security Policy. The abovementioned open-door policy for Ukrainian refugees has not been applied evenly, and there have been reports of border officials committing serious and illegal acts of racial discrimination against refugees. Just as importantly, no progress has been made on the EU Pact on Asylum and Migration. Finally, the EU's ambition to leverage the collective force of the EU on the international energy markets did not take off, while further financial sanctions against Russia were slowed down by internal disagreement.

At a time when the war in Ukraine made reform of the EU more urgent, the Conference on the Future of Europe (CoFoE) – established in May 2021, concluded in May 2022 and hence profoundly influenced by the invasion of Ukraine – mapped a path for addressing some of these shortcomings, including recommendations for Treaty changes, in health, social policy and migration among other policy areas. Hopes for progress in this respect were however dashed by the fact that no less than 13 Member States immediately raised a red flag against such Treaty changes. Even so, in June 2022 the European Parliament adopted a resolution calling on the European Council to agree to start the process of revising the EU Treaties (European Parliament 2022). In the meantime, the European Commission (2022a: 4) claims that many of the key initiatives outlined in the 2023 work programme 'follow up on the ambitious proposals made during the Conference'.

Another 2021 milestone was Member States' submission of their national Recovery and Resilience Plans (RRPs) setting out hundreds of policy initiatives for the next years under the Recovery and Resilience Facility (RRF). A significant subset of these initiatives focus on the EU's green and digital transitions, though, as David Bokhorst (this volume) argues, many also have a social orientation. This is the logical result of the structure of the RRF. On the one hand, 'social and territorial cohesion', 'health, and economic, social and institutional resilience', as well as 'policies for the next generation, children and youth' are among the six pillars of the RRF. On the other hand, Member States are required to explain how their RRP is expected to contribute to the implementation of the European Pillar of Social Rights (EPSR). Furthermore, to gain access to the funding, Member States need to show how their plans address the challenges set out in the European Semester's Country-specific Recommendations (CSRs), some of which concern the adequacy of social provisions and the longer-term challenges facing the welfare state.

According to the European Commission, Member States generally delivered ambitious reform and investment plans, although countries set to receive less funding are also less ambitious in terms of CSR implementation. Importantly, Bokhorst's chapter finds that welfare state resilience in the RRP is primarily understood in terms of 'social investment', with many measures targeting human capabilities and enabling a better balance between work and family. There are also reforms and investments in the adequacy of social protection programmes, although key policy problems, such as pension reforms, are insufficiently addressed by Member States. According to the author, the RRF can be seen as a further step in the progressive 'socialisation' of EU economic governance: for future steps it will be important to ensure that the welfare transitions initiated under the RRF receive sufficient support for a longer time horizon and do not conflict with fiscal rules (see the debate on an EU Social Imbalances Procedure in Section 3).

In addition to making fiscal resources available (very significant amounts for some Member States), Bokhorst argues that a key innovation of the RRF is the 'performance-based financing' approach. This foresees much greater detail in the plans than previously in the European Semester, and an enhanced monitoring role for the European Commission. A key finding is that, while the RRF has been designed to operate in a machine-like manner in terms of monitoring implementation, in practice, the Commission may not be able to refuse some room for manoeuvre to meet changing political demands. Importantly, according to the author, one could expect the performance-based financing approach to be the 'new normal' in EU governance. While this approach has considerable potential for more effective monitoring (a clear demand from the so-called 'Frugal Four'⁴), it depends greatly on a high degree of ex-ante knowledge, placing the Commission in the driving seat. Performance-based financing also tends to centralise domestic decision-making, favouring the executive, with social players and national parliaments pressured to deliver at short notice. Due consideration should therefore be given to the implications of further 'hardening' the

4. Austria, Denmark, the Netherlands and Sweden.

Semester in the sensitive area of welfare state reform with a view to striking a balance between efficiency and legitimacy.

The Recovery and Resilience Plans are analysed from a different angle in the chapter by Sebastiano Sabato and Sotiria Theodoropoulou (this volume). Since the objective of promoting a just, green transition dominates the RRF Regulation, the authors scrutinise the ‘socio-ecological dimension’ of the RRFs of six Member States, with a view to identifying the measures explicitly aimed at integrating social and green transition objectives and policies. For this, the authors use an original analytical framework aimed at identifying the specific ‘eco-social’ functions that welfare states are expected to perform in the green transition. They find that, while the RRFs do have a socio-ecological dimension, it seems, overall, rather limited and somehow unbalanced. Most of the measures identified in the six countries under scrutiny pertain to the ‘enabling’ function of the welfare state and are aimed at linking education, training and skill development policies to the needs of the green transition. Other measures have the potential to help meet the objectives of the green transition by reducing the environmental impact of social infrastructure. A significant number of measures pertain to what the authors label the ‘benchmarking’ function of the welfare state, meaning measures that – while primarily aimed at achieving ‘green’ objectives – are designed in a way that considers social objectives and concerns. Examples of this include measures for promoting energy efficiency in buildings, with specific incentives for vulnerable households.

By contrast, measures linking social protection and green transition assistance schemes with a view to providing citizens and workers with ‘buffers’ against the negative consequences of the transition are underdeveloped in the RRFs. Also, the role to be played by social and civic dialogue in the transition, to create consensus and manage conflicts, is not always made explicit in the measures proposed. The authors conclude that a ‘just transition’ requires more comprehensive and coherent policy frameworks to simultaneously pursue the social and green objectives. The need to adapt traditional welfare state provision to ensure adequate and sustainable buffers for citizens during the green transition is becoming increasingly pressing, as learned from the pandemic. Will implementation of the Council Recommendation on ensuring a fair transition towards climate neutrality (June 2022) be a step in this direction?

The politics of the December 2021 proposal (European Commission 2021a) for an ambitious Directive on improving the working conditions of people working through platforms are at the heart of the chapter by Slavina Spasova and Matteo Marengo (this volume). The authors trace in detail the emergence of the proposal in the political context of the post-Juncker Commission and the social situation of platform workers, exacerbated by the Covid-19 pandemic. They demonstrate that the European Commission played a key role, acting as a *policy entrepreneur* in setting the policy agenda. The Commission was prominent in the *problem definition*, focusing the consultations and the final proposal on the issue of ‘employment status’ and notably the ‘presumption of employment’. The Commission also acted as a *coalition builder*, working in close collaboration with the European Parliament – in a dynamic defined by the authors as a ‘symbiosis’ and reciprocal influence – thus reflecting Commission President von der Leyen’s wish to improve cooperation with other EU institutions.

Spasova and Marengo also demonstrate the extent to which the European Parliament (and individual members) played a key role in politicising the issue, especially in pushing for the legal instrument (a Directive rather than a Recommendation) and the presumption of employment. This role was also vital in making the voice of platform workers heard at EU level. Highlighting the need to strengthen protection of these workers, the pandemic favoured the decision-making process and made it possible to overcome traditional political divides within the European Parliament (such as left/right, liberals/regulators and creditors/debtors). The mobilisation of stakeholders, i.e., traditional social partners and newly emerging players, was also crucial in this dossier. While traditional trade unions were mostly aligned with representatives of platform workers (supporting the proposal), employer organisations mostly agreed with platform companies (opposing the proposal). Crucially, the authors emphasise that the rise of platforms has accentuated the mismatch between the core interests of traditional social partners (i.e., standard employment), the new constellation of players (platforms and platform workers) and an increasingly differentiated labour market structure. The politics surrounding the proposed Directive demonstrate that regulating digital work is possible, while emphasising the extent to which EU social dialogue mechanisms need to be reformed.

As described in the chapter by Petra Debusscher (this volume), the current European Commission – with the unparalleled support of the first-ever female European Commission President, the appointment of a dedicated Commissioner for Equality, and a near-gender-balanced College – has put gender equality firmly back on the EU political agenda. This represents a change of perspective compared to *all* previous European Commissions, except for the Delors Commission (1985-95) which encouraged a flourishing of equality initiatives linked to the single market project. The von der Leyen Commission has made significant efforts to move forward with the implementation of the Gender Equality Strategy 2020-2025 over the past two years, supported by gender advocates within and outside the institutions. Key advances in 2021 and 2022 include: a) exploring alternative legislative options to achieve the goals of the Istanbul Convention on preventing and combating violence against women and domestic violence; b) a European Commission proposal on binding pay transparency measures and a Commission proposal for a European care strategy; c) political agreement between the EU institutions on the ‘women on boards’ Directive which had been stalled in the Council for a decade; and d) embedding gender equality in the design of the 2021-2027 Multi-Annual Financial Framework (MFF), as well the adoption of a new methodology for tracking social expenditure (including on gender equality) in Member States through the RRF. At the same time, clearly, the EU’s gender mainstreaming strategy in all policy areas in all phases of the policy cycle continues to be implemented in a patchy and ad hoc fashion. For example, the European Green Deal and the European Commission’s initial RRF proposal (May 2020) lacked gender considerations, suggesting that the Commission is still working in silos on the topic.

The real question, Debusscher argues, is whether the present European Commission will be able to sustain its ambition in this area in the coming years: over the past years, several European Member States have undergone unprecedented de-democratisation, with negative consequences for (gender) equality and social justice (see Atanasova and

Rasnača, this volume). Conservative governments, often supported by religious groups, have been systematically attempting to remove the word ‘gender’ and ‘gender equality’ from key EU policy documents, thereby undermining progress in the gender equality agenda. All in all, however, the author concludes that there are grounds for optimism: it is time to move beyond the idea that the EU as a gender equality polity is merely a ‘foundational myth’: the EU, she argues, has been an important catalyst in promoting women’s economic, political and social equality.

The final chapter of the book by Angelina Atanasova and Zane Rasnača addresses the ‘rule of law dismantling’ process from a social policy perspective, illustrating it with two country cases: Hungary and Poland. The rule of law involves a set of formal and procedural principles addressing the way in which a community is governed. It guarantees fundamental rights and values and allows application of EU law. The recent rule of law backsliding in some EU Member States has been described by some as ‘arguably the only truly existential risk’ to the EU’s institutional survival. In the last decade, multiple charges of breaching the rule of law have been levied against Hungary and Poland. Examples include interference with the independence of the judiciary through forced early retirement and disruption of academic freedom.

The EU responses to the rule of law crisis have involved the use of a wide array of approaches. The so-called ‘emergency brake’ (Article 7 TEU) was triggered for the first time ever in 2017 against Poland by the Commission, and against Hungary in 2018 by the European Parliament. A second mechanism used has been the infringement procedure: since 2018, more than 20 such procedures regarding the rule of law have been initiated, mostly against Poland (e.g., against the disciplinary regime for domestic judges) but also Hungary (rights of asylum seekers, racial discrimination). Finally, a new instrument – the Rule of Law Conditionality Regulation – was adopted by Council and the European Parliament in 2020. During 2023, the European Commission will put forward a ‘Defence of Democracy’ legislative package to deepen the action under the European Democracy Action Plan.

The chapter focuses on the various institutional tools used in the EU response to the rule of law crisis, specifically in the social policy domain, emphasising that social policy and equality legislation not only provided the Court of Justice of the EU (CJEU) with a ‘door-opener’ for developing an EU-level framework for protecting the rule of law, but also broadened our understanding of the rule of law as a concept. A key question raised by Atanasova and Rasnača is *to what extent can the EU’s conditionality mechanisms be used to discipline Member States regarding the rule of law?* Strict application of the EU’s cohesion policy and the RRF would indeed enable, in principle, large amounts of national funding to be withheld: the question is whether and how this could be done without a negative impact on the final recipients of EU funds. Further research will have to scrutinise the possible impact on domestic labour markets and social policies.

2. Deeping Social Europe: other social policy initiatives (2021-2022)

Looking at the wider range of EU social policy initiatives launched in 2021 and the first half of 2022, the chronology by Atanasova and Moja (this volume) flags that negotiations on EU social security coordination remained on the agenda of both the Portuguese and Slovenian Presidencies of the Council of the EU, with no compromise reached with the European Parliament by the end of 2021. By contrast, both Presidencies consistently negotiated and made progress on the key proposal for a Directive on adequate minimum wages. One of the highlights of the Portuguese Presidency was the Porto Social Summit, with its spotlight on such key topics as the revival of the EU economy after the Covid-19 pandemic and the commitment to make progress on implementing the European Pillar of Social Rights. As the authors describe, during 2021, the Court of Justice of the EU handed down several ground-breaking decisions strengthening social protection rights for EU citizens. Several other social policy initiatives were implemented in 2021 and 2022, including the adoption of a Recommendation on the European Child Guarantee and of the new EU Strategic Framework on Health and Safety at Work for 2021-2027, as well as the adoption of the Commission's strategy for the rights of people with disabilities for the period 2021-2030. The next paragraphs briefly discuss some of these initiatives.

A milestone in EU social policymaking is the agreement reached on 7 June 2022 between the European institutions on a European Minimum Wage Directive. As Müller and Schulten (2022) point out, though care should be exercised when using the term 'historic', the term seems appropriate for this agreement cementing the first ever EU legislation explicitly aimed at ensuring adequate minimum wages and strengthening collective bargaining. The most important provision for *setting national minimum wages* is Article 5(4), which states that Member States may be guided by indicative reference values when assessing the adequacy of statutory minimum wages, using internationally recognised indicators such as 60 per cent of the gross median wage and 50 per cent of the gross average wage. The Directive, thus, de facto establishes a double 'decency threshold'. In the majority of EU states, more or less substantial increases in statutory minimum wages are necessary to reach the double decency threshold. Although this threshold is not legally binding, it is a strong normative benchmark for setting minimum wages at national level which Member States will find it difficult to escape (ibid.).

To *strengthen collective bargaining*, the Directive also contains various provisions aimed at strengthening the role of trade unions. Thus, Article 4(1) guarantees the right to collective bargaining and protects workers and their representatives who participate (or wish to participate) in collective bargaining from discrimination. Crucially, Müller and Schulten (2022) point out that Article 4(2) obliges Member States with collective bargaining coverage of less than 80 per cent to take measures to increase it. This includes national action plans containing clear timetables and concrete measures to do so. These plans must be developed in cooperation with the social partners, reviewed regularly and updated at least every five years. In other words: the Directive provides an unprecedented window of opportunity to strengthen the institutional power of national

trade unions (ibid.). However, implementing the non-binding thresholds at national level is set to be an uphill struggle for trade unions in many Member States.

The importance of this agreement is fourfold: first, it brings to a successful end a decades-long debate on the possibilities and limits of a European minimum wage policy. Second, it marks nothing less than a paradigm shift for a social Europe, contrasting greatly with the period that followed the 2008/2009 financial crisis when the crisis management pursued at European and national level promoted the freezing or even cutting of minimum wages, the decentralisation of collective bargaining and, thus, an overall weakening of collective bargaining coverage (Schulten and Müller 2015). Third, it has the potential to become a real game changer in the fight against in-work poverty and social inequality. Fourth, the 80 per cent collective bargaining threshold will, in practice, provide a strong push to promote sectoral collective bargaining, especially in countries where this is currently weak. Now that the European Parliament and the Council have formally adopted the Directive (in September and October 2022 respectively), Member States have two years to transpose it into national law.

Important progress has also been made in the field of occupational health and safety (OHS). In June 2021, the European Commission (2021b) published the 'EU strategic framework on health and safety at work 2021-2027'. In a previous edition of the *Bilan social*, Laurent Vogel (2018) described a decade of very productive legislative activity on health and safety issues following the Single European Act (1986), which led to a radical overhaul of national health rules in many Member States. This period was followed by the 'Better Regulation' paradigm which put OHS on the backburner from the 2000s onwards. The revision of the Directive on carcinogens and mutagens (2015-2017) seems to have revamped the EU's OHS agenda, even if Vogel (ibid.) warned that 'one swallow does not make a summer'. Indeed, when looking at the causes of work-related deaths, 52% are caused by cancer (European Commission 2021b). Moreover, although some Member States improved their performance, other Member States are seeing an increase in workplace accidents. Against this background, the Commission announced a series of concrete initiatives to start implementing the new Strategic Framework, including a proposal (September 2022) for revising the 2009 Directive (2009/148/EC) on protecting workers from the risks of exposure to asbestos at work. The European Trade Union Confederation (ETUC) promptly expressed its disappointment concerning the proposal, stressing that the proposed revision lacks ambition (ETUC 2022a). The need to reconcile the interests of business with workers' health will be at the heart of the negotiations on the file between the EU institutions in the following months.

Remaining in the field of health, the Commission announced a new European Care Strategy in September 2022. Its objective is to ensure high-quality, affordable and accessible care services across the EU and to improve the situation for both care receivers and the people caring for them, professionally or informally (European Commission 2022b). The strategy put forward by the Commission aims to attract more investment in care, ensure a better gender balance and improve early education and care by setting ambitious targets. The Strategy is accompanied by two proposals for Council Recommendations: one on the revision of the Barcelona targets on early childhood education and care; the other on access to affordable high-quality long-term care (LTC).

Once adopted, the latter will launch the first-ever EU (soft governance) initiative on the topic and increase the profile of the ‘affordability’ and ‘quality’ dimensions of LTC in the European Semester, alongside its ‘financial sustainability’. This could lead to supporting reforms and investment through available EU funding in LTC, a policy area firmly in Member State hands and where the EU will have to tread carefully.

The pandemic highlighted the need for a common European space for health. In the context of the development of a ‘European Health Union’ (Deruelle 2021), the Commission published a proposal for a Regulation on the European Health Data Space in May 2022. Its aim is to create a shared cross-border space for health data, facilitating the use of health data for innovation, research and public policy protection (European Commission 2022c). While the Regulation would arguably represent a leap forward in the digitalisation of health services in the EU, many issues have been raised regarding the protection of patient and citizen data: the new legislation should be human-centred and protect the sensitive information of patients. At the time of writing (winter 2022), negotiations among the EU institutions are ongoing, while the Council has already outlined a consensus on a legal framework for health data.

At the European Summit held during the Portuguese Presidency of the Council of the EU in May 2021, the Action Plan of the European Pillar of Social Rights was endorsed in the Porto Social Commitment (European Union 2021) by the EU institutions, the European social partners and European civil society representatives (7-8 May 2021). Considered a salient moment for Social Europe (Fernandes and Kerneis 2021), the endorsement of the Action Plan gives strong political legitimacy to the proposed three EU-level headline targets in the areas of employment, skills and social protection to be achieved by 2030 and key actions to achieve them (see Vanhercke and Spasova 2022). One key initiative taken in this context was the June 2021 Council Recommendation on a European Child Guarantee which strives to make essential childcare (early childhood education and care, education, healthcare, nutrition and housing) free or affordable to children in need.

In addition, the European Platform for Combatting Homelessness was set up by the European Commission and the Portuguese Presidency. The Platform is underpinned by the June 2021 Lisbon Declaration (European Union 2021b) in which Member States unanimously commit to cooperating at European level to make substantial progress towards ending homelessness by 2030. The Platform’s governance is now in place (ministerial meetings every two years; a steering board which includes civil society organisations; a secretariat provided by the European Commission) and its work programme was agreed under the French Presidency in February 2022. The priority actions for the platform are to: a) support monitoring of homelessness, strengthen analytical work and data collection; b) support mutual learning of good practices; and c) promote the use of EU funding by the Member States (Ministère chargé du logement 2022). In view of the recent warning issued by the Foundation Abbé Pierre and FEANTSA (2022) about the surge in rent arrears and the ensuing risk of the number of evictions in the EU increasing – while the exceptional and temporary protection measures adopted over the past two pandemic years are gradually coming to an end, household energy

costs have soared in the wake of the war in Ukraine –, the operation and effectiveness of the Platform deserve close scrutiny.

The EPSR is also behind a minimum income initiative at European level⁵, with the European Commission proposing a Council Recommendation on adequate minimum income in September 2022. It is expected to help achieve the EU's 2030 social targets to reduce the number of people at risk of poverty or exclusion by at least 15 million people. As described by Shahini et al. (2022), national and supranational players have taken action in favour of binding EU legislation in this field, while 'key stakeholders have launched a mobilization campaign which brought together civil society organizations (CSOs) and the main supranational trade union confederations' (ibid.: 6). While negotiations over the Recommendation are ongoing at the time of writing, the authors argue that the European Commission's decision to adopt a recommendation rather than a directive on an EU-level minimum income scheme 'is attributed to political non-viability, in light of the strong gatekeeping role played by some Member States eager to protect social sovereignty in this policy field' (ibid.: 8).

3. Reformed EU economic governance for social progress and environmental sustainability

In a context of multiple crises, even the ambitious social policy responses described above will be insufficient to effectively deal with the 'twin transition'. EU governance frameworks also need to be adapted. On 9 November 2022, the European Commission (2022d) published a Communication illustrating its orientations for a *reformed EU economic governance framework*. The debate on this reform started at the beginning of 2020 but was put on hold during 2020 and most of 2021 due to the Covid-19 pandemic, before being officially relaunched in autumn 2021 (European Commission 2021c). The stated objective of the reform proposed by the European Commission is to adapt the EU economic governance framework to the challenges and priorities ahead, including achieving a fair green and digital transition, boosting social and economic resilience, increasing territorial cohesion, reducing energy dependencies, and increasing defence capabilities (European Commission 2022d: 4). In the Commission's view, the reformed framework should be able to simultaneously strengthen debt sustainability and enhance sustainable and inclusive growth, through a combination of prudent fiscal strategies, investment and reforms (ibid.: 1). The Commission proposes several changes to both the Excessive Deficit Procedure (EDP) and Macroeconomic Imbalances Procedure (MIP) – and closer integration between the two tools. The goal is to simplify procedures, increase national ownership, and enhance their effectiveness by strengthening enforcement⁶. The debate on the reform will continue in 2023, with the objective of establishing the new framework ahead of Member States' budgetary processes for 2024 (ibid.: 20).

5. The Pillar states that 'Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market' (European Pillar of Social Rights, principle 14).
6. Including by broadening the array of possible sanctions for non-compliance, and making these more stringent.

The importance of ensuring that the new EU economic framework is compatible with achieving the EU's social and green objectives should be stressed here. Indeed, the asymmetry between relatively strong and well-codified EU governance procedures in the fiscal and macroeconomic domains and weaker procedures in the social domain is well known (see Sabato et al. 2022 for a recent review). Especially in the aftermath of the Great Recession, this asymmetry contributed to pushing some Member States to implement tough fiscal consolidation policies, with only scarce consideration of their social implications.

We have argued elsewhere that this risk should be avoided: any reform of the EU's economic governance should be accompanied by a significant strengthening of the EU's social dimension. In this respect, the setting up of a 'Social Imbalances Procedure' (SIP) complementing existing fiscal and macroeconomic procedures would be a promising step forward (Sabato et al. 2019, 2022). The debate on a possible SIP was (re-)opened by the Spanish and Belgian governments which, in a 'non paper' published ahead of the May 2021 Porto Social Summit, proposed equipping the EPSR Social Scoreboard with 'an alert mechanism that triggers a more in-depth follow-up and discussions at committee and ministerial level, based on the approach for macro-economic imbalances in the Alert Mechanism Report' (Belgian and Spanish Governments 2021). This proposal was further developed by the two countries and discussed on several occasions in 2021 and 2022 – including by the Employment and Social Affairs (EPSCO) Council and its advisory committees (Vanhercke and Sabato 2022). More recently, a joint SPC and EMCO ad hoc Working Group on the SIP was created, with a view to launching, in 2023, a pilot scheme to test the practical modalities of such an instrument. A window of opportunity is currently open for an EU Social Imbalances Procedure. The first months of 2023 will be crucial to approving an ambitious SIP and avoiding the risk of a watered-down tool with neither the ambition nor the strength to counterbalance EU fiscal and macroeconomic instruments. In the past months, debates about the SIP have taken place under the radar in specialised EU committees without any meaningful involvement of the European Parliament. Institutional and societal players interested in strengthening Social Europe should therefore raise their voices and contribute to the debate with constructive proposals, possibly encouraging the Swedish Presidency of the Council of the EU (1 January-30 June 2023) as well as the European Commission to vigorously use this window of opportunity to bring an ambitious SIP to fruition in the coming months (ibid).

Helping achieve a fair green and digital transition is among the stated objectives of the Commission's proposal for reforming EU economic governance. The ambition to achieve a 'just' green transition 'that leaves no one behind' was already put forward by the European Commission in its 2019 Communication on the European Green Deal. Since then, an EU just transition framework has gradually emerged through a series of EU-level policy orientations and instruments aimed at ensuring that the EU and its Member States can exploit the opportunities deriving from the green transition while addressing and cushioning the related social challenges. While important initiatives in this respect were already taken in 2021 – including the setting up of the Just Transition Mechanism and Just Transition Fund, and the inclusion of just transition in the RRF objectives (see Sabato and Theodoropoulou this volume) –, further elements of the EU

just transition framework are on the horizon. At the time of writing, trilogue negotiations between the Parliament, the Council and the Commission are ongoing with a view to approving a Regulation establishing a Social Climate Fund.

This Regulation was proposed by the European Commission (2021d) in July 2021, as part of the broad ‘Fit for 55’ policy package setting out initiatives to achieve a reduction of net greenhouse gas emissions in the EU by at least 55 per cent by 2030 (compared to 1990 levels). The Social Climate Fund – which, in the Commission’s proposal, would amount to a maximum of EUR 72.2 billion over the 2025-2032 period – is notably meant to accompany the proposal to revise the Emission Trading Scheme (ETS) to include the building and road transport sectors. As this will entail an increase in fossil fuel prices, the specific objective of the fund is to ‘address the social and distributional impacts on the most vulnerable arising from the emissions trading for the two new sectors’ (ibid.: 2) including: a) by financing temporary direct income support for vulnerable households and transport users to absorb the impact of higher prices; and b) by financing measures and investments to increase the energy efficiency of buildings, to decarbonise heating and cooling of buildings, and granting improved access to zero and low-emission mobility and transport (ibid.: art. 6.1, 6.2).

While both the Just Transition Fund and, if approved, the Social Climate Fund will provide Member States with additional EU funding to ensure a just transition, the two funds have relatively limited scope in terms of territories and sectors targeted, and beneficiaries. Broader guidance to the Member States on just transition policies to be implemented was provided by the Council of the European Union (2022) in its Recommendation on ensuring a fair transition towards climate neutrality, adopted in June 2022. The Council Recommendation calls on Member States to implement *comprehensive and coherent policy packages* addressing the employment and social aspects of the green transition, and indicates specific actions to be taken in four domains: a) active support for quality employment; b) quality and inclusive education, training and lifelong learning, as well as equal opportunities; c) fair tax-benefit systems and social protection systems, including social inclusion policies; and d) access to affordable essential services and housing. The European Semester is expected to be an important vehicle for monitoring implementation of the Recommendation and, in order to do so, further work will be conducted on (among others) developing indicators better capturing the social dimension of the green transition (including, importantly, in the domains of energy and transport poverty).

4. Further building Social Europe in 2023

Building on the ambitious policy agenda of 2021 and the first half of 2022, various social policy initiatives have been scheduled or are set to come to fruition in 2023. With its stated aim to deliver the necessary reskilling and upskilling of the European workforce, the European Year of Skills will *inter alia* see an update of the current EU learning mobility framework (through a Council Recommendation) to enable learners to move more easily between education systems.

In the area of health, the Commission's European Health Union will continue to be rolled out, *inter alia* through continued implementation of the 'Beating Cancer Plan', the European Health Data Space and a comprehensive (non-legislative) approach to mental health, a major societal issue spotlighted during the pandemic. Draft legislation on a European Disability Card should be presented by the end of 2023, with the aim of ensuring the mutual recognition of disability status across all Member States. A legislative initiative is expected on the screening and registration of asbestos in buildings, following up on a European Parliament legislative resolution on the topic. The ambition is also to reach agreement between the EU institutions during 2023 on the abovementioned proposed Directive on combating violence against women and domestic violence, as well as on pay transparency. Stalled in the Council since 2008 due to the unanimity requirement, the European Commission proposal for an anti-discrimination (dubbed 'equal treatment') Directive remains on the agenda.

Following the agreement between the ETUC and European business associations on a work programme for social dialogue 2022-2024, the EU social partners will work towards legally binding measures to regulate telework and institute a right to disconnect at European level. The European Commission had announced, in its Work Programme 2022, that it would put forward a Communication to strengthen social dialogue at EU and national level by the third quarter of 2022. At the time of writing, the Communication – which will consider the implications of the landmark European Public Service Union (EPSU) versus the Commission court case⁷ – has still not been published.

As part of the implementation of the EPSR Action Plan, the Commission will present an initiative for the digitalisation of social security systems and social safety nets in support of labour mobility in connection with the ongoing work on the European Social Security Pass (ESSPASS). The Quality Framework for Traineeships will also be updated (in the context of the European Years of Skills), with a view to addressing such issues as fair remuneration and social protection. The Commission will also propose a Council Recommendation on developing social economy framework conditions. The 2016 Commission proposal for revising EU social security coordination rules remains on the agenda, reflecting the slow progress on the file over the past 18 months. Discussions on the wider question of how the EU can contribute to reinforcing welfare states will draw on the report (expected in January 2023) of the 'Level Group on the future of social protection and of the welfare state'.

As regards the European Green Deal, most proposals have already been tabled by the Commission over the past two years, as reflected in the heading 'priority pending proposals' in the Commission's 2023 work programme (European Commission 2022a: Annex III). The ambition is to reach agreement on them before the end of the parliamentary term in 2024. For 2023, 'swift agreement on the Fit for 55 package is key' (*ibid*:5).

7. EPSU launched legal action in May 2018 against the Commission after it refused to put forward a social partner agreement for adoption as a European directive. In October 2019, the General Court of the Court of Justice of the European Union (CJEU) ruled in favour of the Commission, concluding that the Commission's right of initiative meant it could decide on whether or not to make social partner agreements legally binding in all EU Member States (Judgment of the General Court, 24 October 2019, Case T-310/18).

5. Managing the permacrisis: a new 'open strategic autonomy' framework for the EU in the making?

The question is whether the EU will be able to sustain its ambitious social policy agenda in 2023, in view of the permacrisis discussed above. In the second half of 2022, the debate arose as to which overarching framework would allow the EU and its Member States to simultaneously tackle the multiple challenges they face. In June 2022, the ETUC called for an ambitious agenda on European open strategic autonomy (OSA), recognising it as a 'key strategic policy framework' to mitigate EU vulnerability to disruptive crisis situations, while achieving the just, green and digital transition and strengthening industry in Europe (ETUC 2022b: 1). This clear affirmation by the European trade union movement of OSA as 'one of the promising avenues to re-establish a fair and level playing field for a resilient economy, in full respect of EU democratic, social, and environmental values' (ibid.) might have raised some eyebrows among certain 'social' as well as academic observers.

After all, is 'strategic autonomy' not a concept that was (and to some extent still is, see below) linked to the EU's common defence policy, the definition of NATO's European pillar, as well as the EU's common foreign and security policy (Van den Abeele 2021)? For some 25 years, the term has generally been used in reference to the need to be able to conduct military crisis-management operations outside Europe autonomously: without the US but – if need be – with NATO resources. While the concept of strategic autonomy remains rather elusive to this day, it has been crucially transformed since it first appeared in the national debate in 1994⁸ and then at EU level in 1998 (ibid.).

In their new strategic agenda for the EU 2019-2024, the Heads of State and Government paved the way for a broader notion of strategic autonomy, referring amongst others to the dependence of European industries on external sources (European Council 2019). The European Commission (2020a) picked up the gauntlet, proposing a quantum leap in the EU's approach to strategic autonomy in March 2020. Acknowledging the EU's overall dependence, it framed 'Europe's strategic autonomy' in a much broader sense: it is now about 'reducing dependence on others for things we need the most: critical materials and technologies, food, infrastructure, security and other strategic areas' (ibid: 13). Importantly, the strategic autonomy concept is now seen as having two dimensions: *defensive* (reducing the EU's external dependency) and *offensive* (developing markets, products and services externally).

Since the outbreak of Covid-19 in March 2020, the EU's strategic autonomy has come to the surface in the European policy discourse due to deep disruptions in supply chains, impacting the manufacturing of critical goods and products in a wide range of sectors, from pharmaceuticals to industrial machinery. The pandemic thus spotlighted the EU's external dependences and deepened existing vulnerabilities (Akgüç 2021: 2). The 2022 Russian invasion of Ukraine further underlined the need for the EU to rethink not only its energy, security and defence policies, but also food security and affordability,

8. In a White Paper on the Defence of France. The term had been used before, by General de Gaulle during a press interview in 1950 (Van den Abeele 2021).

chemical components and access to critical raw materials. This new context has resulted in important and immediate shifts in the EU's approach to strategic autonomy and 'may well trigger a change in paradigm towards a more radical transformation of economic interdependence and production processes' (ETUC 2022b: 2).

A first novelty is the notion of 'resilience' as a new compass for the EU's OSA, notably along four lines: 'social and economic', 'geopolitical', 'green' and 'digital' (European Commission 2020b). In a second move, the OSA agenda was enlarged to include 'ensuring sustainable and resilient health and food systems' and 'developing and retaining skills and talent [...]' (European Commission 2021e). Thirdly, it is acknowledged that 'fairness and affordability' should be at the heart of the green and digital transition (European Commission 2022e). The fourth novel element in the EU OSA discourse is the Commission's listing of a) 'strengthening economic and social cohesion, by reinforcing social protection and the welfare state'; and b) 'developing monitoring frameworks for measuring wellbeing beyond GDP' as two areas of action needed for twining the two transitions.

In other words: no less than a paradigm shift is taking place as regards the EU's open strategic autonomy. Recent events clearly flag the weaknesses of the excessive openness of EU economic relations and of maximum global marketisation as a desirable socioeconomic optimum. Consequently, the evolving and increasingly broad notion of the EU's OSA – including socioeconomic and environmental considerations – can be considered as a key driver of the European project in the future. It could allow a rebalancing of the EU's economic and (still underdeveloped) social dimensions and may provide a tool for improving social and environmental standards globally (Akgüç 2021).

The topic of the EU's OSA thus seems to have become increasingly important for national and European social players. The expanded vision of European autonomy in economic, social and environmental domains may indeed provide an opportunity for them to influence the policy agenda, especially through dialogue with the European institutions. In a similar vein, Pochet (2022) argues that the war in Ukraine, the climate challenge and the concept of strategic autonomy are paving the way for a 'Single Market 2.0', with reflections on a new type of European single market set to top the EU agenda in 2023. There is one important caveat though: OSA has not been made operational as a concept, let alone a political strategy. External factors (e.g., the invasion of Ukraine) may provide its opponents (e.g., the 'Group of Twelve' in the Council of the EU) with the necessary arguments to water it down and even return to its earlier, narrow scope: 'a defence-oriented "tunnel vision" that would strain public budgets at the expense of welfare and other social expenditure' (Akgüç et al. 2022: 32). In other words: the time to seize OSA as a window of opportunity to sustain the EU's social ambitions is now.

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The European Union in 2021: key events

Angelina Atanasova and Federico Moja

Introduction¹

With the Covid-19 pandemic slowly losing its grip, European Union (EU) social policymaking in 2021 has been largely aimed at promoting economic recovery in Member States and adapting to new realities in the social domain. In February, the European Parliament adopted the interinstitutional agreement on the 'Recovery and Resilience Facility'. Furthermore, as a consequence of the pandemic and the subsequent joint efforts of EU Member States in the public health domain, the EU4Health programme was launched in March.

Besides its economic and health consequences, the pandemic spurred major developments in the social domain. Digitalisation and platform work increased significantly during the pandemic, calling for further social protection measures to cover atypical workers and teleworkers. In January, the European Parliament adopted a resolution on the right to disconnect, while forward-looking measures for regulating and protecting atypical and platform workers were adopted.

Looking at other key social initiatives, negotiations on EU social security coordination remained on the agenda of both the Portuguese and Slovenian Presidencies of the Council of the EU, with no compromise reached with the European Parliament by the end of the year. By contrast, both Presidencies consistently negotiated and furthered the key proposal for a directive on 'adequate' minimum wages. One of the highlights of the Portuguese Presidency was the Porto Social Summit, with its spotlight on such key topics as the revival of the EU economy after the Covid-19 pandemic and the commitment to make progress on implementing the European Pillar of Social Rights. Last but not least, a brand-new initiative, the 'Conference on the Future of Europe', brought EU citizens together to discuss the future of the EU.

Over the year, the Court of Justice of the EU (CJEU) handed down several groundbreaking decisions strengthening social protection rights for EU citizens (Case C-709/20, Case C-909/19, Cases C-344/19 and C-580/19). At the same time, the CJEU negatively surprised European trade unions with its judgement (in Case C-928/19 P) confirming an earlier judgement of the EU General Court rejecting the European Federation of

1. The present chronology is based on two main sources: the European Daily Bulletin in 2021, and the trimestral 'European and international Digests' which the European Social Observatory produces for the *Revue Belge de Sécurité Sociale* (RBSS): <https://socialsecurity.belgium.be/fr/publications/revue-belge-de-securite-sociale>.

Public Service Unions' (EPSU) case against the EU Commission. This may result in weakening the position of social partners in future institutional negotiations at EU level.

Several other initiatives in the social policy domain were implemented, including the adoption of a Recommendation on the European Child Guarantee in June and of the new EU Strategic Framework on Health and Safety at Work for 2021-2027 in October; the launch of the European Platform on Combatting Homelessness in June; and the adoption of the Commission's strategy for the rights of people with disabilities for the period 2021-2030 in March.

In the context of the pandemic, during which gender inequalities became increasingly evident, the EU institutions made progress on several gender equality initiatives. Member State Ministers of Social Affairs agreed on a general approach on the draft directive on pay transparency. The European Parliament adopted a report on extending the European list of crimes to include gender-based violence in September, and a new resolution defending abortion rights in November.

At the same time, in 2021, the rule-of-law crisis in some EU Member States continued to deepen, calling for further involvement of the EU institutions, and becoming one of the four priorities of the Slovenian Presidency. The second annual report on the rule of law in the EU27 was published in July. In that same month, the European Commission opened infringement proceedings against Hungary and Poland for their failure to respect fundamental rights, while the CJEU issued a key judgement on the independence of Polish judges (Case C-791/19).

Some positive developments occurred on the climate and green transition front. The European Parliament adopted its position on the revision of EU regulations to improve citizens' access to justice in environmental matters. Turning to climate change policies, the failure of the G20 energy and climate ministers, meeting in Naples, to agree on a joint commitment to limit global warming to 1.5°C was a disappointment. In the same vein, the compromise reached at the 26th session of the United Nations Climate Conference (COP26) in Glasgow in November was castigated by civil society organisations for its lack of ambition.

January

1 January: Portugal begins its fourth Presidency of the Council of the EU, to run until 30 June 2021. One of the central themes for the Portuguese Presidency is to strengthen the European social model, giving momentum to the realisation of the European Pillar of Social Rights goals.

6 January: Eurostat publishes a survey on the state of housing in Europe, according to which 9% of those surveyed considered that their housing was not properly heated (compared to 10.8% in 2021). The gap across countries was considerable, ranging from just 2% in Germany, Austria and Finland to as high as 30% in Bulgaria, 26.7%

in Lithuania and 21% in Cyprus (EC, Eurostat, *Housing in Europe – 2021 interactive edition*).

14 January: the European Parliament’s Employment and Social Affairs Committee (EMPL), approves by majority (29 in favour, 2 against and 21 abstentions) that the threshold for minimum wages in Europe should be set above the poverty line in the respective countries (EP, EMPL, *Result of roll-call votes of 14.01.2021*).

15 January: in a statement, the European Trade Union Confederation (ETUC) underlines why EU action is needed to ‘end the scandal of platforms not accepting their responsibilities as employers’. In Spain, Deliveroo is to pay 1.3 million euros in social contributions following a Barcelona Court ruling establishing that 748 Deliveroo’s riders are false self-employed (12/01/21). In Belgium, the government’s administrative committee on work relations issued a decision on an Uber driver’s working conditions, stating that they are incompatible with a self-employed status (13/01/21) (European Trade Union Confederation, *National rulings on platform work show need for EU action*, press release).

21 January: the European Central Bank (ECB) declares its commitment to maintain its policy of quantitative easing (ECB, *Monetary policy decisions*, press release).

21 January: the European Parliament adopts a resolution on the right to disconnect, laying down minimum requirements enabling workers using digital tools for work purposes to exercise their right to disconnect and to ensure that employers respect such right. The resolution applies to all sectors, both public and private, and to all workers, independent of their status and their working arrangements (EP, P9 TA(2021)0021).

28 January: the European Parliament and the Council of the EU reach political agreement to allocate a quarter of the European Social Fund Plus (ESF+) to social inclusion, mainly to the most deprived groups in the population. This agreement marks a redirecting of the original plan, strongly geared towards work and employment, to a broader policy of social inclusion, particularly for children suffering impoverished living conditions or young people not in education, employment or training (Council of the EU, *European Social Fund Plus: Council and Parliament reach a provisional deal*, press release).

February

3 February: European Commission President Ursula von der Leyen calls for a ‘new social rulebook’ to better reconcile climate and social issues, at a conference jointly organised by the ETUC and the European Trade union Institute (ETUI). During this conference, the Commissioner for Employment and Social Rights, Nicolas Schmit, and the Vice-President of the European Commission responsible for the ‘Green Pact’, Frans Timmermans, state that the ecological transition will only succeed if the role of the social partners is reinforced (European Trade Union Institute, *Towards a new socio-ecological contract*, ETUI-ETUC conference, 3-5 February).

3 February: in the new European Commission's Europe's Beating Cancer Plan, 'A new EU approach to prevention, treatment and care', the 'workplace dangers from priority cancer actions' were omitted. According to the ETUC, 'work-related cancer should be a specific "flagship initiative" in the plan', since more than 100,000 people die every year from occupational cancer – around 10% of all cancer deaths in Europe (ETUC, *Commission omits workplace dangers from priority cancer actions*, press release)

5 February: as part of the strategy on the rights of the child, the European Commission undertakes to prepare new laws and regulations to prevent and criminalise female genital mutilation, to provide prevention, protection and care services and to raise awareness on its consequences (EC, *Joint Statement ahead of the International Day of Zero Tolerance for Female Genital Mutilation*, press release). The European Commission also launches a public consultation on combating gender-based violence and domestic violence (EC, ec.europa.eu, *Combating gender-based violence – protecting victims and punishing offenders*).

8 February: following a previous commitment to maintain its *quantitative easing* policy (European Central Bank (ECB), *Monetary policy decisions*, press release 21 January 2021), during a debate at the European Parliament the President of the ECB announces a shift in lending towards 'green' loans (EP, *European Central Bank – annual report 2020 (debate)*).

10 February: the European Parliament adopts, with a substantial majority (582 in favour, 40 against, 69 abstentions) the interinstitutional agreement on the 'Recovery and Resilience Facility' (€672.5 billion, made up of €360 billion in loans and €312.5 billion in grants) (EP, P9_TA(2021)0038). This 'facility' is the key element of NextGenerationEU, a temporary economic recovery instrument enabling the European Commission to leverage funds used to mitigate the economic and social impact of the Covid-19 pandemic. In response to trade union criticism as to the scarcity of social actions in the recovery plan, the social dimension of the recovery plan is emphasised at a European Parliament session (EP, *First virtual European Parliamentary Week 2021 – 22 February 2021*).

10 February: the European Parliament adopts (365 in favour, 118 against, 208 abstentions) a report by MEP Demiral (The Left, Germany) calling for the introduction of a statutory national minimum wage for all workers – including non-standard workers, particularly workers through platforms – which is to be set above the country's poverty threshold (EP, P9_TA(2021)0044). Strong opposition to the report came from Scandinavian MEPs.

24 February: the European Commission adopts a new EU strategy on adaptation to climate change which sets out how the EU can adapt to the unavoidable impacts of climate change and become climate resilient by 2050 (COM/2021/82).

24 February: In view of the increased digitalisation of work and the precarious position of platform workers, the European Commission launches the first-stage consultation of European social partners on how to improve the working conditions for people working

through digital labour platforms. The consultation is aimed at collecting the views of social partners on the way forward in improving the situation of platform workers (EC, *Protecting people working through platforms: Commission launches a first-stage consultation of the social partners*, press release).

25 February: the CJEU hands down a judgment on a case concerning parental leave. The *Caisse nationale pour l'avenir des enfants* (Luxembourg) refused to grant parental leave three years after the birth of twins, since the person was not employed at the time the children were born. According to the Court, while the birth (or adoption) of a child and worker status are criteria which must be met to obtain this benefit, this does not mean that the worker must actually be employed at the time of the birth (CJEU, Case C-129/20).

March

2 March: the gap in earnings between the richest and poorest Europeans was widening even before the Covid-19 crisis struck. The European Commission's Social Scoreboard, which measures progress in implementing the European Pillar of Social Rights, shows that the richest 20% of Europeans were making 4.9 times more than the poorest 20% in 2010 (ETUC, *EU inequality got worse before Covid crisis, data shows*, press release).

3 March: following the failure of the interinstitutional negotiations in December 2020, the Portuguese Presidency of the EU restarts work on an agreement on revising the regulation on coordination of social security systems in the EU. However, the negotiations between the EU Presidency and the European Parliament again stall, largely due to the obligation for a company based in another EU Member State to give prior notification to the state hosting a worker (*European Daily Bulletin*, no. 12669, 3 March).

3 March: the Commission's strategy for the rights of people with disabilities for the period 2021-2030 is adopted. The strategy is aimed at improving the lives of persons with disabilities in Europe and around the world, allowing them to enjoy their rights and participate fully in society and economy (EC, COM(2021) 101).

4 March: the European Commission publishes its European Pillar of Social Rights Action Plan up to 2030. This sets out legislative and non-legislative measures to implement the EPSR as a joint effort of Member States and the Commission with the active involvement of the social partners and civil society. Specific objectives are the following: at least 78% of the adult population should be in employment; at least 60% of all adults should participate in training every year; and the number of people at risk of poverty or social exclusion should be reduced by at least 15 million (EC, *The European Pillar of Social Rights: turning principles into actions*, press release).

4 March: the European Commission presents its proposal for a directive to introduce binding European standards for pay transparency. It hopes that the standards will

‘reinforce the application of the principle of equal pay for equal work or work of equal value’ (European Commission, COM(2021) 93 final).

9 March: the CJEU rules that a period of stand-by time is to be considered as working time if it significantly affects the employee’s free time. The Court states that, in order to assess whether a stand-by period constitutes ‘working time’, the only factors to be considered are the constraints imposed on the worker, through national regulations, through a collective agreement or by his or her employer (CJEU, C-344/19 and C-580/19).

17 March: the CJEU clarifies the definition of daily rest period. Where a worker has concluded several work contracts with the same employer, the daily rest period should be calculated on the basis of all these contracts as a whole, rather than contract by contract (CJEU, C-585/19).

19 March: the European Committee of the Regions (CoR) adopts an opinion in favour of a statutory minimum wage of at least 60% of the full-time gross national median wage (CoR, CDR 5859/2020).

22 March: the European Commission publishes its first preliminary assessment of the impact of Support to mitigate Unemployment Risks in an Emergency (SURE), the instrument designed to protect jobs and incomes affected by the Covid-19 pandemic. According to the report, the instrument had provided support to between 25 and 30 million people in 2020 and between 1.5 and 2.5 million firms affected by the Covid-19 pandemic (EC, *Report confirms SURE’s success in protecting jobs and incomes*, press release).

24 March: EU leaders and European social partners meet at the Tripartite Social Summit to discuss ‘how to achieve a fair and sustainable recovery’. The three main topics of discussion covered 1) the need to tackle the health, economic and social crisis along with the emergency measures; 2) the role and contribution of social partners for the economic recovery, and 3) the road to the Porto Social Summit (Council of the EU, *Main messages from the Tripartite Social Summit*, 24 March 2021, press release).

25 March: the European Parliament adopts a resolution supporting the obligation to respect ambient air quality directives (EP, P9_TA(2021)0107). The European Parliament, while pointing to some improvements, ‘alerts that as of February 2021, 31 infringement procedures against 20 Member States on the implementation of the Ambient Air Quality Directives² are pending.

30 March: the European Commission disburses €13 billion under the SURE instrument to support six EU Member States (Czechia, Belgium, Spain, Ireland, Italy and Poland) in preserving employment and especially short-time work schemes (EC, *Commission disburses further €13 billion under SURE to six Member States*, press release).

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April

22 April: MEPs welcome the report by Dennis Radtke (EPP, Germany) and Agnes Jongerius (S&D, the Netherlands) on the draft directive to introduce a fair minimum wage in the EU. The draft proposing that Member States draw up action plans on improving collective bargaining coverage to at least 90% is welcomed by the ETUC. In February, Denmark, Sweden, Poland, Hungary, the Netherlands, Austria, Ireland, Greece and Malta had expressed concerns regarding the text, calling on the Commission to propose a recommendation rather than a directive (Agence Europe, Europe Daily Bulletin No. 12704, 23 April 2021).

27 April: the European Parliament unanimously welcomes the interinstitutional agreement reached on the European Globalisation Adjustment Fund for displaced workers (EGF) 2021-2027 (EP, P9_TA(2021)0136). The EGF can be activated when a single company (including its suppliers and downstream producers) lays off over 200 workers. The majority of MEPs welcomed the simplification of the fund and the inclusion not only of the effects of globalisation, but also of the digital and ecological transitions (EC, *European Globalisation Adjustment Fund for Displaced Workers*, EGF).

28 April: the ETUC is alarmed that the number of labour inspections has collapsed across Europe over the last decade, leaving workplaces less prepared for the Covid-19 pandemic. New ETUC research reveals that safety inspections have been cut by a fifth since 2010, falling from 2.2 million annual visits to 1.7 million (ETUC, *Huge fall in labour inspections raises Covid risk*, press release).

May

3 and 4 May: Poland and Hungary challenge the use of the concept of ‘gender’ in texts negotiated at European level. They regret the use of this term in a decision on the Union Civil Protection Mechanism. Poland rejects the inclusion of the word ‘gender’ in the new Regulation on the European Institute of Innovation and Technology and in the decision establishing its strategic programme. Both countries consider that the term ‘gender’ refers to ‘sex’ and will interpret any provision on gender equality ‘in the sense of equality between women and men’. Both countries have already prevented the adoption of Council conclusions on this ground and are arguing their case in negotiations (Council of the EU, 2020/0097(COD)).

5 May: the German Constitutional Court in Karlsruhe challenges the Public Sector Purchase Programme (PSPP) of the ECB, deeming it unconstitutional in Germany. The ruling comes after the ECB stressed its commitment, on 21 January 2021, to maintain its *quantitative easing* policy.

6 May: ECB President Christine Lagarde urges the EU to launch a ‘green’ capital markets union to finance the ecological and digital transitions. She stresses the need to match the NextGenerationEU post-pandemic Recovery Plan with ‘a truly green

European capital market that transcends national borders’ (ECB, *Speech by Christine Lagarde, at the European Commission’s high-level conference on the proposal for a Corporate Sustainability Reporting Directive*).

7-8 May: during the Porto Social Summit held by the Portuguese Presidency, the Porto Social Commitment is signed to consolidate the European Pillar of Social Rights. It is aimed at achieving inclusive, sustainable, fair and job-creating recovery for all EU Member States. The European Social Partners and EU institutions commit to the 2030 social targets proposed by the Commission in the European Pillar of Social Rights Action Plan (i.e., an employment rate of at least 78% in the EU; at least 60% of adults attending training courses every year; reducing the number of people at risk of social exclusion or poverty by at least 15 million people, including 5 million children) (Council of the EU, *Porto Social Summit, 7 May 2021*, press release).

9 May: the Conference on the Future of Europe is jointly launched by Parliament, Council and Commission, during an inaugural event in Strasbourg. The purpose of the project is to collect European citizens’ views and perspectives on the future of the EU (EC, *Conference on the Future of Europe: inaugural event in Strasbourg*, press release).

12 May: the European Commission adopts the EU action plan ‘Towards zero pollution for air, water and soil’, with targets to be met by 2030 (EC, *European Green Deal: Commission aims for zero pollution in air, water and soil*, press release). The ambition is to prevent, minimise and remedy pollution by tackling all sources – from agriculture, households, industry and transport. Specific targets are described in the action plan (EC, COM(2021) 400).

June

3 June: the CJEU rules that the equal pay principle set forth in the Treaties (Article 157 of the Treaty on the Functioning of the EU (TFEU)) must be interpreted as having direct effect in proceedings between individuals in which failure to observe the principle of equal pay for male and female workers for ‘work of equal value’ is pleaded (CJEU, C-624/19).

3 June: in the context of the rule-of-law crisis, the CJEU rejects the Hungarian authorities’ appeal against the European Parliament’s resolution calling on the Council of the EU to find a clear risk of violation of 18 fundamental European values in Hungary (CJEU, Case C-650/18).

8 June: the European Parliament approves the interinstitutional agreement on the European Social Fund plus (ESF+) reached on 28 January 2021 (EC, Daily News 09/06/2021).

9 June: the European Commission launches infringement proceedings against Germany for violating the fundamental principle of the primacy of EU law. The initiation

comes after the German Constitutional Court challenges a CJEU judgment validating the ‘quantitative easing’ (Public Sector Purchase Programme, PSPP) of the large-scale buy-back of public securities. The German Constitutional Court’s judgement declared the CJEU judgment to be ultra vires, constituting a serious judicial precedent (EC, *June infringements package: key decisions*).

14 June: the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council adopts conclusions on teleworking, recalling the very narrow competency of the EU. Highlighting the recent framework agreed by the social partners on the digitalisation of work, the conclusions call on the European Commission to analyse the extent to which current social and labour law in the EU ensures ‘decent working conditions’ for teleworkers, including the right to disconnect (Council of the EU, *Council conclusions on telework*, 9747/21).

14 June: the EPSCO Council adopts the Recommendation establishing a European Child Guarantee as a deliverable of the European Pillar of Social Rights. Its aim is to prevent and combat social exclusion by guaranteeing access of children in need to a set of key services. The recommendation extends its protection to children with mental health issues, those who have suffered violence, and those who have been discriminated because of their sexual orientation or gender. It also includes social housing and housing support policies for families with women single-earners (Council of the EU, *Council Recommendation (EU) 2021/1004 of 14 June 2021*).

15 June: the European Commission launches the second-stage consultation of social partners on how to improve the working conditions of platform workers, following the first-stage consultation process held between February and April 2021 (EC, *Protecting people working through platforms: Commission launches second-stage consultation of social partners*, press release). Among social partners’ positions, the ETUC stresses the need to clarify the status of workers performing their tasks via digital platforms.

21 June: EU institutions, relevant ministers and civil society sign the Lisbon Declaration launching the European Platform on Combatting Homelessness, within the Action Plan on the implementation of the European Pillar of Social Rights (EC, *European platform to combat homelessness is launched*, press release).

24 June: the Regulation (EU) 2021/1056 establishing the Just Transition Fund (JTF) is adopted. The fund is the financial pillar of the Just Transition Mechanism (JTM), an instrument aimed at ensuring that the transition towards a green economic system occurs without prejudice to the most affected regions, sectors and workers (Regulation (EU) 2021/1056 establishing the Just Transition Fund, European Sources Online).

24 June: the European Parliament adopts the agreement reached with the Council of the EU on the regulation on the Public Sector Loan Facility, the third pillar of the JTM. The facility aims to support investments made by public sector entities in those territories most affected by climate transition, in line with the Just Transition territorial plans. The aim is to mobilise between 25 and 30 billion of public investment over the

2021-2027 period. The Facility will be in line with the principle of ‘do no significant harm’ to the environment and climate (EP, P9_TA(2021)0311).

30 June: the European Commission unveils its communication on the EU’s rural areas, which are currently facing ‘challenges posed by globalisation, urbanisation, [and] ageing’. Measures to come include the publication of a guide on EU funding possibilities, the establishment of an observatory within the Commission and a data portal, with the two latter measures aimed at centralising data collection and analysis on rural area and at monitoring implementation of the Commission action plan (EC, *Long-term vision for rural areas: for stronger, connected, resilient, prosperous EU rural areas*, press release).

July

1 July: Slovenia takes over the Presidency of the Council of the EU. Its four priorities are recovery and greater EU resilience, reflecting on the future of Europe, strengthening the rule of law and European values, and ensuring security and stability in the European neighbourhood. One of the goals set is to reach political agreement within the Council on the framework directive on minimum wages, along with a compromise with the European Parliament on the regulation on the coordination of social security systems (European Daily Bulletin, no. 12757, 8 July 2021).

5 July: of the 26,669 citizens surveyed in a Special Eurobarometer survey on climate change, 93% considered climate change to be a fairly serious (15%) or very serious (78%) problem, while 87% felt that the EU should set ambitious targets to increase the amount of renewable energy used. While a similar percentage think that it is important for the EU to support energy efficiency, 81% are in favour of more public financial support for the transition to ‘clean energy’, even if this means reducing subsidies for fossil fuels (EC, *Special Eurobarometer 513 Climate Change*, March-April 2021, 2273 / SP513).

14 July: the European Commission presents its ‘Fit for 55’ legislative package in which it proposes to revise upwards the targets set for Member States to enable the EU to reduce its greenhouse gas emissions in sectors (transport, buildings, agriculture, waste management) not covered by the EU Emissions Trading Scheme (ETS) or the ‘LULUCF’ regulation on land use by 40% by 2030 compared to 2005. In this package, the European Commission also presents the proposal for a Regulation establishing a Social Climate Fund (SCF). The purpose of the fund is to address any social impact arising from the emission trading system revised within the Fit for 55 package (European Commission, *Social Climate Fund*, COM (2021) 568).

15 July: the CJEU rules that, by adopting the new disciplinary regime for judges, Poland has failed to fulfil its obligations under the EU law and more particularly those under Article 19(1) TEU. According to the CJEU ruling, the disciplinary regime could be used for political purposes, and Polish judges may be exposed to disciplinary proceedings for submitting a request for a preliminary ruling to the CJEU (Article 267 TFEU). This

could undermine the uniform interpretation and application of EU law by domestic judges (CJEU, Case C-791/19).

15 July: the European Commission opens infringement proceedings against Hungary and Poland for failure to respect fundamental rights. Three proceedings are initiated, two of which concern instances of discrimination against the LGBTIQ+ community in Hungary. According to the Commission, the measures adopted at domestic level ‘equate to restricting the right to freedom of expression and the right to non-discrimination’ enshrined in the EU Charter of Fundamental Rights and violate the Unfair Commercial Practices Directive. In Poland, the Commission actions are directed against the emergence of localities declared ‘free of LGBTIQ+ ideology’ since 2019 (EC, *July infringements package: key decisions*).

15 July: the Grand Chamber of the CJEU rules that a ban on employees wearing visible signs of political, philosophical or religious conviction in the workplace can be justified by the employer’s need to present itself in a neutral manner to customers or to prevent social conflict. However, the employer must be able to prove that there is a genuine need, and the prohibition must be uniform, consistent, systematic and limited to what is strictly necessary in view of the scale of the adverse effects it is trying to avoid. Further conditions are presented in the judgement concerning the local context specificities and the ‘appropriateness’ of a difference in treatment (CJEU, joined Cases C-804/18 and C-341/19).

15 July: the CJEU rules that an EU citizen who enjoys a temporary right of residence in a Member State without means testing cannot be systematically excluded from social assistance guaranteed to nationals of that State. In addition, ‘the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in Articles 1, 7 and 24 of the Charter of Fundamental Rights of the European Union’ (CJEU, Case C-709/20).

15 July: the European Commission opens infringement proceedings against 24 Member States for not complying with the Directive on the enforcement of posted workers’ rights (Directive 2014/67/EU), which seeks to strengthen the practical application of the rules on the posting of workers, particularly to combat fraud and circumvention (EC, *July infringements package: key decisions*).

23 July: meeting in Naples, G20 energy and climate ministers fail to agree on a joint commitment to limit global warming to 1.5°C. According to the statement of the Italian G20 Presidency issued after the meeting, two points could not be resolved ‘despite a prolonged and tireless discussion’: 1) setting a date for phasing out coal (many argued for 2025); and 2) ending public financing of coal-fired power generation and phasing out inefficient fossil fuel subsidies within a set timeframe (<http://www.g20.utoronto.ca/>, *Presidency Statement towards the G20 Leaders Summit*).

23 July: in its second annual report on the rule of law in the EU27, the European Commission confirms on the one hand its strong concerns about the situation of the judiciary in Poland as well as that of media freedom and corruption in Hungary. On the other hand, it reports some positive developments in Slovenia, Italy and Malta, Romania and Slovakia, with regard to consolidating the independence of the judiciary (EC, COM(2021) 432 final).

28 July: the European Commission launches a consultation on a draft delegated regulation to define the methodology for reporting on social measures taken at national level under the Recovery and Resilience Facility. To this end, the European Commission wants to carry out a detailed monitoring of the social spending in the context of national recovery plans, in particular for children and young people, but also on gender equality (EC, *Recovery and Resilience Facility – methodology for reporting social spending*).

August

5 August: the Commission publishes a proposal for a Council Recommendation on the development of ‘blended learning’, an approach that combines classroom and online learning time. The school closures and restrictions due to the Covid-19 pandemic have highlighted the innovative capacities as well as shortcomings of European education systems. With regard to distance learning, however, the importance of taking into account the different socio-economic and housing conditions of students is highlighted (EC, *Commission steps up action for high quality and inclusive primary and secondary education*, press release).

13 August: the European Commission decides to register the European Citizens’ Initiative ‘ReturnthePlastics’, the aim of which is to establish an EU-wide deposit system for recycling plastic bottles. In line with the ‘polluter pays’ principle, it would encourage supermarkets that sell plastic bottles to set up collection points and thus make producers pay to recycle them. The organisers of the initiative now have one year to collect at least 1 million signatures from at least seven different EU Member States. The Commission will then decide whether to grant the request (EC, *European Citizens’ Initiative: Commission decides to register ‘ReturnthePlastics’ initiative on plastic bottle recycling*, press release).

25 August: the public consultation on the Commission’s initiative on the mutual recognition of parenthood in EU comes to an end. The President of the Commission pledges to ensure the mutual recognition of parenthood amongst the EU27, which will support LGBTIQ+ families in their free movement and settlement in the EU (EC, Ares(2021)6847413).

September

2 September: a CJEU ruling confirms the judgement of the EU General Court, which previously rejected the European Federation of Public Service Unions’ (EPSU) challenge

against the European Commission. In May 2018, EPSU challenged the Commission before the CJEU for denying its request to present to the Council a proposal for a decision to implement an agreement establishing a general framework for information and consultation of workers in central administrations, previously agreed by social partners. According to the EU General Court, the European Treaties do not oblige EU institutions to follow up on requests from social partners to implement at Union level an agreement concluded between them; the CJEU confirms such ruling. European trade unions reacted with dismay to the decision, which is expected to deprive civil servants and public administration workers of unified legal protection and to leave social partners in legal uncertainty (CJEU, Case C-928/19 P).

15 September: President Ursula von der Leyen expresses the Commission's commitment to present a legislative act to protect workers from asbestos. The need to reduce the exposure limit value for asbestos was already pointed out in the EU Strategy for Health and Safety at work 2021-2027, presented in June 2021 (EP, *Plenary – October II 2021, Protecting workers from asbestos*, background material).

16 September: a report by MEP Sylvie Brunet (Renew Europe, France) requesting the European Commission to present a legislative initiative to regulate digital platform work at European level is adopted by the European Parliament (524 in favour, 39 against, 124 abstentions). One of its key points is the suggested reversal of the burden of proof, requiring a platform to prove a worker's self-employed status in the case of a dispute. MEPs also introduce the notion of a rebuttable presumption, i.e., there is no automaticity in the recognition of the employment relationship (EP, P9_TA(2021)0385).

22 September: energy prices soar across Europe. On the first day of the autumn and with winter looming, 15% of Europe's working poor won't be able to turn on the heating – equivalent to 2,713,578 people across Europe (ETUC, *Low wages leave 3 million workers without heating*, press release).

October

6 October: the Council of the EU adopts the Regulation amending the EU Aarhus Regulation (Regulation (EC) No 1367/2006) which aligns European legislation with the Aarhus International Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The new Regulation improves public scrutiny of administrative acts by both civil society organisations and individuals and ensures better public access to justice (Council of the EU, *Aarhus Regulation - Council adopts its position at first reading*, press release).

6 October: the CJEU confirms that the EU has competence to accede to the Istanbul Convention on the basis of Articles 82(2) and 84 of the Treaty on the Functioning of the EU (TFEU) concerning victims' rights and crime prevention (CJEU, press release no. 176/21).

7 October: the lack of compromise on LGBTIQ+ issues among EU Justice Ministers results in a failure to adopt the conclusion on the new EU strategy on the rights of the child (Europe Daily Bulletin, no. 12807, 8/10/2021).

15 October: during an EPSCO policy debate, the Ministers of Employment and Social Affairs welcome the new EU Strategic Framework on Health and Safety at Work for 2021–2027 (Council of the EU, www.consilium.europa.eu), presented by the European Commission in June 2021 (EC, COM(2021) 323 final). The strategic framework is a set of binding and non-binding legal actions based on three pillars: anticipating and managing change in the context of green, digital and demographic transitions; improving the prevention of work-related accidents and diseases; and increasing preparedness to respond to current and future health crises. The need to provide a better framework for telework and to tackle physical and psychological challenges related to increasing digital practices is highlighted.

15 October: Spain and Belgium submit a proposal to introduce a social imbalance alert mechanism within the European Semester. In parallel with the Macroeconomic Imbalance Procedure, the instrument aims to identify and correct social imbalances and to strengthen the social dimension of European governance (Agence Europe, Europe Daily Bulletin No. 12813, 16 October 2021).

20 October: the European Parliament approves a report by Lina Gálvez Muñoz (S&D, Spain) on employment and social policies in the euro area in 2021. The report calls for a stronger social dimension for the European Semester and stresses the importance of social conditionality within the EU. Moreover, it emphasises the importance of aligning the European Semester with the UN Sustainable Development Goals, the European Pillar of Social Rights and the Green Deal (EP, P9_TA(2021)0426).

22 October: the European Commission adopts an implementing decision aimed at making the Erasmus+ programme and the ‘European Solidarity Corps’ inclusive for young people with fewer opportunities. The text includes ten measures, some of which entail the provision of adequate financial support to participants with fewer opportunities. The Commission commits to monitor implementation of such measures within EU Member States (EC, *The Commission makes Erasmus+ and European Solidarity Corps more inclusive*, press release).

28 October: the CJEU rules that the period during which a worker undergoes vocational training imposed by their employers, which takes place on the premises of the training provider and during which the worker does not perform their usual duties, is part of working time, as stipulated in Directive 2003/88/EC (CJEU, Case C-909/19).

29 October: the European Parliament Legal Service lodges a lawsuit with the CJEU against the European Commission for non-application of the Rule of Law Regulation, after the European Parliament twice (in March and July) called on the Commission to implement the conditionality principle (see *Atanasova and Rasnaca*, this volume). The Regulation allows the Council of the EU, at the request of the Commission, to suspend payments from the Union budget or to suspend approval of programmes financed by the

budget, whenever the beneficiary EU Member State does not comply with rule-of-law principles (www.euronews.com/, *European Parliament sues Commission for failing to hold members accountable over rule of law*).

November

5 November: the Community of European Railway and Infrastructure Companies (CER) and the European Transport Workers' Federation (ETF) sign the Women in Rail autonomous agreement. The agreement comes after almost three years of negotiations and is aimed at promoting employment of women in the sector (ETF, *Women in Rail Agreement signed and ready for implementation*, press release).

11 November: a new resolution defending abortion rights is adopted by the European Parliament. The introduction of a near-total ban on abortion in Poland has raised a heated debate. The resolution condemns the Polish legislation and expresses concerns about the possible introduction of a similar bill in other countries, such as Slovakia. The signatories of the text stress the importance of access to reproductive health services and women's autonomy in reproductive matters as fundamental rights which cannot be subordinated to cultural, religious or political considerations (EP, P9_TA(2021)0455).

13 November: a compromise is reached within the 26th session of the United Nations Climate Conference (COP26) in Glasgow. While the President of the European Commission, Ursula von der Leyen, affirms that the deal represents a step in the right direction, civil society organisation, scientific institutes and other stakeholders are disappointed by the text's lack of ambition and point out shortcomings, such as the persistence of a climate finance gap – namely, the need for further funds to be mobilised for developing countries to help them cope with climate change (EC, *COP26: EU helps deliver outcome to keep the Paris Agreement targets alive*, press release).

16 November: the European Commission launches a High-Level Group on the future of social protection. After analysing the consequences of the pandemic and examining the interaction between social protection systems and other social policy fields – such as education, social inclusion, disability, healthcare and long-term care – the group will present its recommendations by the end of 2022 (EC, *Making the social welfare state fit for the future: Commission launches new EU High-Level Group*, press release).

25 November: European social partners adopt a recommendation on skills, innovation and training. Among others, it outlines ways of strengthening cooperation between all stakeholders on providing training and embracing lifelong learning (ETUC, *Social partner recommendations on skills, innovation, provision of and access to training*).

29 November: the ETUC addresses an open letter to the President of the European Commission Ursula von der Leyen calling for an ambitious European legislative initiative to improve working conditions in platform work. The letter is signed by MEPs from the whole political spectrum, i.e., EPP, S&D, The Left and the Greens (ETUC, *Open letter to the President of the European Commission Ursula von der Leyen for*

an ambitious European legislative initiative on improving the working conditions in platform work, 29 November 2021).

31 November: MEPs from five political groups (EPP, S&D, Renew Europe, Greens/EFA and the Left) call for a change in EU public procurement rules, since the current rules favour prices without giving due consideration to quality of service and the fairness of working conditions. They have requested that public contracts be awarded to companies with decent social practices, such as companies that have concluded collective agreements with their workers. In March, a similar initiative was launched by trade unions. (UNI-Europa, *Over 100 MEPs call for public contracts to only go to decent work employers*).

December

6 December: the Council of the EU agrees with a large majority on a general approach to the proposal for a Directive on adequate minimum wages. The text does not include binding measures – since such would be against the Treaties –, though provides a framework within which national minimum wages evolve. With regard to collective bargaining coverage, Member States with coverage lower than 70% will be required to submit an action plan (Council of the EU, *Council agrees on mandate for negotiations on a EU framework on adequate minimum wages*, press release).

6 December: after just nine months of negotiations (see 4 March), EU Member State Social Affairs Ministers agree on a general approach to the draft directive on pay transparency (see also Debusscher, this volume). The flagship measure of the future directive is the collection of information on the pay gap between male and female workers, which will apply on an annual basis to all companies with 250 or more employees. The main concerns about lowering the threshold relate to placing further administrative burdens on SMEs and potential threats to compliance with the Data Protection Regulation (Council of the EU, *Council agrees on common position to tackle gender pay gap*, press release).

7 December: the European Parliament and the Council of the EU agree to designate 2022 as the European Year of the Youth. The proposal was submitted by the Commission in October 2021 (EC, *Commission welcomes the political agreement on the European Year of Youth*, press release).

8 December: a coalition of civil society organisations and the ETUC sends an open letter to President Ursula von der Leyen requesting stronger political commitment to the Sustainable Corporate Governance initiative, which has been further delayed in time. (ETUC, *Joint open letter to President Von der Leyen: It is time for you to show leadership on the Sustainable Corporate Governance initiative*, 8 December 2021).

9 December: the European Commission proposes a set of measures to improve the working conditions in platform work. The package includes a Communication on EU-level measures on platform work, a proposal for a Directive on improving working

conditions in platform work and Draft Guidelines on the application of EU competition law to collective agreements of self-employed people (EC, *Commission proposals to improve the working conditions of people working through digital labour platforms*, press release). The ETUC welcomes the European Commission's proposal (ETUC, *EU ends free ride for platforms*, press release).

9 December: the European Commission presents an Action Plan to help the European social economy thrive, tapping into its economic and job-creation potential, as well as its contribution to a fair and inclusive recovery and to the green and digital transitions (European Commission, *Commission presents Action Plan to boost the social economy and create jobs*, press release).

14 December: in a case referred from a Bulgarian court, the CJEU rules that Member States must recognise the birth certificate of a child of a same-sex family in order to ensure the right to free movement within the EU (CJEU, Case C-490/20).

14 December: the European Commission presents a Proposal for a Council Recommendation on ensuring a fair transition towards climate neutrality. It provides guidelines on how to implement employment and social policies in response to the challenges posed by the green transition. (EC, *Commission presents guide for a fair transition towards climate neutrality*, press release).

15 December: the European Commission launches the Recovery and Resiliency Scoreboard, an online platform aimed at showing and monitoring progress made in implementing the Recovery and Resilience Facility as a whole and the National Recovery and Resilience Plans (EC, *NextGenerationEU: European Commission launches Recovery and Resilience Scoreboard*, press release).

16 December: the European Parliament adopts a report by MEP Gabriele Bischoff (S&D, Germany) calling for a directive to streamline EU legislation and strengthen workers' rights concerning information, consultation and participation in company decisions (EP, P9_TA(2021)0508).

17 December: IndustriAll European Trade Union and the European Steel Association (EUROFER) send a joint letter to the EU Ministers of Climate and Economy in response to the proposed revision of the Emission Trading System and the establishment of a Carbon Border Adjustment Mechanism within the 'Fit for 55' package (EUROFER, *A sustainable and just transition pathway for industry and workers*, 17 December 2021).

22 December: the Committee of Permanent Representatives I (Coreper I) rejects the Interinstitutional Agreement on the regulation on coordinating social security systems. Points of disagreement include the consequences of exporting unemployment benefits and the transfer of responsibility for monitoring these from the sending to the host Member State (*European Daily Bulletin*, No. 12859, 23 December).

Sources

The follow-up to all these issues is based on information in the **Europe Daily Bulletin**:

<https://agenceurope.eu/en/home.html>

Other important sources of information for this chronology are the following:

Council of the EU: <https://www.consilium.europa.eu/en/press/press-releases/>

European Central Bank: <https://www.ecb.europa.eu/paym/intro/news/html/index.en.html>

European Commission: https://ec.europa.eu/info/news_en

European Parliament: <https://www.europarl.europa.eu/news/en>

Court of Justice of the European Union: <https://curia.europa.eu/juris/recherche.jsf?language=en>

European Trade Union Confederation: <https://www.etuc.org/en>

European Trade Union Institute: <https://www.etui.org/>

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List of acronyms

BICC	Budgetary Instrument for Convergence and Competitiveness
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CoFoE	Conference on the Future of Europe
COP26	26 th session of the United Nations Climate Conference
CSDP	Common Security and Defence Policy
CSR	Country-specific Recommendation
DG	Directorate General (European Commission)
DG EMPL	Directorate General for Employment, Social Affairs and Inclusion (European Commission)
EC	European Commission
ECB	European Central Bank
ECEC	Early childhood education and care
EGD	European Green Deal
EMPL	Committee on Employment and Social Affairs (European Parliament)
EP	European Parliament
EPP	European People's Party
EPSCO	Employment, Social Policy, Health and Consumer Affairs (Council formation)
EPSR	European Pillar of Social Rights
EPSU	European Federation of Public Service Unions
ESF+	European Social Fund Plus
ESM	European Stability Mechanism
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EWL	European Women's Lobby
GAP	Gender Action Plan
ID	Identity and Democracy
JTM	Just Transition Mechanism
LGBTIQ+	Lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, and more
MEP	Member of the European Parliament
MFF	Multiannual Financial Framework
NATO	North Atlantic Treaty Organization
NGEU	Next Generation EU
NGO	Non-governmental organisation
OSE	European Social Observatory
PSPP	Public sector purchase programme
RRF	Recovery and Resilience Facility

RRP	Recovery and Resilience Plan
S&D	Socialists and Democrats
SURE	Support to mitigate Unemployment Risks in an Emergency
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Social policy in the European Union: state of play 2022

Edited by Bart Vanhercke, Sebastiano Sabato and Slavina Spasova

At the beginning of 2022, hopes were high that the Covid-19 pandemic was on the ebb and that the European Union (EU) would be able to focus again on the main challenge of this century: how to proactively tackle the green and digital transition in a socially fair and inclusive way. But the Russian invasion of Ukraine dashed these hopes. Realpolitik was back on the agenda, with the EU having to figure out how to deal with its Eastern neighbour. Overnight, EU dependence on Russian fossil fuels became a major headache. With energy and food prices soaring, double-digit inflation reared its ugly head throughout the world, resulting in a cost-of-living crisis which has pushed millions of people into poverty as well as stoking popular discontent and mobilising trade unions, with the prospect of further civil unrest, protests and strikes. Obviously, all this had a major influence on EU policymaking: while the Russian military aggression in early 2022 prompted the EU to respond with unprecedented steps forward in European integration, it also highlighted the weaknesses in the EU governance system. A health crisis, an economic and financial crisis and a climate crisis are unfolding in parallel, while full-scale war is back in Europe. The question is now whether 'normal times' will ever return or whether we will find ourselves living in a state of 'permacrisis'.

Despite this stormy background, the EU social ship reached deeper waters. With the wind of the European Pillar of Social Rights in its sails, important progress has been made *inter alia* on minimum wages, occupational health and safety, the working conditions of people working through platforms, and gender equality. Furthermore, many new social initiatives have seen the light of day under the umbrella of the Recovery and Resilience Facility, promoting, at least to some extent, social investment, performance-based financing and (be it in a patchy way) a 'just' green transition. Last but not least, the pandemic and the war in Ukraine have furthered European integration through highlighting the need to stand together in the face of a common foe. A European health space is now in the making, and new forms of economic governance – including the scope for an EU Social Imbalances Procedure – are being discussed, while the debate about a minimum income initiative is ongoing. Finally, this year's *Bilan social* raises the question whether the EU's 'open strategic autonomy' paradigm could provide a window of opportunity to sustain the EU's social ambitions in the longer run.

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