Inequality and the European Union

New Frontiers in Political Science and Law

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12

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Key findings and future challenges for EU policy making and scholarship

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1 Introduction. The multifaceted inequality problem in the EU

Cradle of the welfare state, the European continent remains the region in the world where inequality is most contained, mostly due to institutionalized measures of redistribution and legal protection in the form of fundamental and social rights. Along with civil liberties and political rights, social rights are widely seen as an important component of citizenship (Marshall, 1950). Yet, the pursuit of justice, equality, and social cohesion remains a tough challenge across the continent, as reflected in figures that remain unacceptably high for a region as prosperous as Europe. In 2022, 95.3 million European citizens, i.e. 21.6% of the population of the European Union (EU), were at risk of poverty and social exclusion.[1] According to a recent report from the United Nations International Children's Emergency Fund (UNICEF), approximately 20 million children, i.e. one in four in the EU, are threatened by poverty, alongside 'deteriorating mental health, online sexual abuse and exposure to pollution'.[2]

Enlarging the focus on income and welfare, our vision of inequality has expanded and become more versatile. As European societies have become *increasingly diverse* from the point of view of values, norms, and lifestyles, inequality and discrimination based on race, ethnicity, beliefs, gender or sexual orientation have come to the fore. Furthermore, our understanding of inequality has become *more transnational,* owing to the opening of the 'boundaries of welfare' (Ferrera, 2005) ensuing from economic, political, and social integration in Europe. Granting about 450 million people European citizenship has generated new gaps of inequality among individuals who are – at least theoretically – free to live, study, work, and have children anywhere from Vilnius to Lisbon, Berlin or Zagreb. Traditionally, inequality was two-dimensional. On one hand, within *national societies*, governments have to devise redistributive mechanisms to deal with social stratification and social order. On the other hand, *relations among states on the international stage*, embedded in trade and geopolitics, shaped global forms of inequality, notably a 'North'-'South' divide. Against this background, the EU has gradually become constitutive of a third space of inequality. This calls for understanding its role as a s*upranational centre of political authority* entrusted with legal, financial and regulatory powers. For a long time, the prevailing idea among elites was that

of a distribution of work between the EU and national states. In some form of 'trickle-down economics', the former would essentially stimulate the economy, i.e. generate growth, thus creating the general conditions for prosperity, which would in turn allow the latter to make decisions about redistributing wealth and contain inequality according to their own (democratically determined) standards.

This picture has now become completely out of date. Meanwhile, the EU has claimed its far-reaching ambitions to fight the different facets of inequality, notably in Article 3 of the Treaty on the European Union, stipulating that

> The Union's aim is to promote peace, its values and the well-being of its peoples. (…) The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance (…) It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. (…)

Does the European Union live up to these ambitions? This is the question at the heart of this book. The EU now has a relatively comprehensive and diverse toolkit to address the various facets of inequality, ranging from case law on fundamental and social rights to legislation on working conditions, the distribution of funds, and the soft coordination of welfare state reforms.

At the same time, there is a general lack of satisfaction with the EU's action, described as either weak and insufficient, or too intrusive and detrimental. Since the turn of the 21st century, in particular, debates about 'Social Europe' have been particularly vivid both among scholars and decision-makers (Crespy, 2022, 1–12). Some see the Union as mainly irrelevant because its financial and regulatory means remain incredibly limited to tackling the sheer scale of the inequality problems across the continent. Others have argued that, while still too limited, the EU's action was catching up on economic integration, with a continuous build-up of its competences and financial resources dedicated to social issues. Others, still, have denounced that 'Social Europe' is a 'myth' (Höpner, 2018) or an 'impossible dream' (Whyman et al., 2012) that is harming, rather than helping, national social pacts. Other scholars focusing on the EU's efforts to combat discrimination demonstrated how despite the transformative impact of the Amsterdam Treaty and the directives adopted in the early 2000s, these legal norms fail to remedy the discrimination faced by individuals, due to their limited material scope, their uneven application, the uncertainty about the meaning of certain concepts, and the 'irreducible gap between legal proclamation and effective social change' (De Witte, 2018). Additionally, scholarship on the EU's action to fight inequality shows that European policy making is by no means linear or following a course of progress.

Periods of progress are followed by stagnation or setbacks. The EU's austeritarian response and the way it affected, directly or indirectly, national welfare states catalysed the idea that Europe was above all 'anti-social' and subjected to market forces. In turn, the block's response to the pandemic of Covid-19 has reflected a logic of 'responsiveness' *vis-à-vis* social demands. With a large stimulus and investment plan, they shed a more positive light on the role the Union can play in the adaptation and strengthening of welfare states in the face of exacerbated inequality.

Against this background, the ambition of this book has been to investigate the new frontiers for fighting inequality at the EU scale in the face of three challenges. First, inequality among Europeans has become multifaceted, affecting groups, territories, and individuals because of, despite, or across national borders. Policies and jurisdictions dealing with inequality overlap or interfere in intricate ways. Second, the role of the EU, assessing what it has done in the past and what should be done going forward, remains contentious in relation to what is still seen as an essentially national remit. Third, the prevailing logic of disciplinary and thematic specialization in scholarship implies that we often lack the bigger picture, especially one able to articulate the nature and the effects of law with the underpinning or induced political and social dynamics. To address these challenges, this volume gathers a team of junior, mid-career and senior scholars working in different European countries across law and political science.[3] Dealing with various topics relating to inequality and the EU, all of them shed light on the crucial interactions between law and politics, in a way that shed lights on the new frontiers for the EU when it comes to inequality.

The contributions fall under three thematic parts reflecting three different approaches to the role of the EU, first in terms of anti-discrimination, second with a focus on the typically European issue of mobility, and third by questioning the European welfare model. The distinction between types of inequality has provided a common lens to all chapters. Each author has been tasked to reflect on which type(s) of inequality is at stake in relation to his/her particular field or topic:

a)   *International inequality*, namely inequality between Member States as political entities with institutionalized boundaries delineating national societies. In the literature, this type of inequality is often referred to as 'imbalances' in terms of socio-economic development, with a strong emphasis on cultural, economic, and institutional diversity, and the need for 'convergence' (e.g. Mascherini, 2018). To address this type of inequality, the EU has typically used funds stemming from the EU budget to operate redistribution targeting either regions (cohesion funds), or social groups (the European Social Fund) or states as a whole (Recovery and Resilience Facility). These redistributive tools nevertheless appear very limited in comparison with the effects of structural phenomena such as the market dynamics of global capitalism, of the monetary union, or of mobility. As a consequence, many scholars have underlined the persisting inequality between a European wealthy core and its (Southern and Eastern) peripheries (Makszin et al., 2020).

b)   *Transnational inequality* among European citizens, that is inequality be-tween individuals regardless of their home country or nationality, and regard-less of whether they are mobile or not. Fundamental rights or social rights, for example, apply to all citizens in the same fashion, at least in theory. This form of inequality has been tackled through EU primary law (especially through the treaty articles prohibiting discrimination on the grounds of nationality and the principle of equal pay between men and women; the 1989 Community Charter of Fundamental Social Rights for Workers; and later the EU Charter of Fun-damental Rights) as well as by the jurisprudence of the CJEU. This body of law has provided foundations for the development of a legal arsenal addressing discrimination on the grounds of nationality, gender, age, sex, race, beliefs, and religion (Article 19 TFEU introduced with the Amsterdam Treaty). While EU law has brought about the emergence of new transnational rights and solidarity across borders (De Witte, 2015), it has also been criticized for differentiating among mobile persons based on their merits (Ganty, 2021, 5030–5034) there-fore causing inequality. Moreover, many scholars have shed light on the oissible clash between individual and economic freedoms, on one hand, and nationally entrenched social protection and regulation, on the other hand. This is most bla-tantly evidenced by the issue of social dumping in the provision of cross-border services, resulting in competition between workers across the EU (Verschueren, 2015). Furthermore, transnational inequality results from international inequal-ity because mobility can by no means guarantee the same level of welfare or rights but rather produce new patterns of social stratification across the conti-nent (Bruzelius et al., 2017).

c)   *National inequality* matches a more classic understanding of social in-equality *within* the national boundaries of societies and states. Far from the idea that EU social regulation only concerns mobile Europeans, the EU 'social ac-quis' also constitutes a body of EU labour law setting minimum standards in terms of health and safety at work, working conditions (working time, parental leave, etc.) applicable in all work situations, being transnational or purely na-tional. The at-risk-of-poverty rate (AROPE) measured by Eurostat serves as a key indicator measuring levels of poverty in EU countries. Beyond a limited set of binding tools, the EU has deployed soft governance and coordination tools in order to encourage governments to engage with reforms and policies that can alleviate social inequality. Following the flourishing of the Open Method of Coordination in the 2000s, has then been absorbed into more hybrid governance frameworks combining hard and soft law. The European Pillar of Social Rights proclaimed in 2017 relies both on EU action whereby a new set of directives to advance social rights were adopted, and on national action whereby national governments should pursue policies in pursuit of the objectives set in the Pillar.

The authors contributing to this volume were asked to follow a similar approach to their empirical object and apply the same successive analytical steps thus pro-viding for a similar chapter structure across the book. First, they have identified which type(s) of inequality from the three outlined above were under examination.

Second, all chapters look at the new frontiers emerging both in policy making and scholarship by tackling the following questions: Are there novel aspects in the form of inequality at stake? How does it compare with older forms of inequality (across time and space)? Do several types of inequality intersect? Do we need new concepts or analytical tools to enlighten the phenomenon under study? Third, the authors were asked to present the competences and instruments used by the EU to address the issue, in relation with the underlying politics. Fourth, an assessment is provided in terms of the EU policies' effectiveness, as well as in terms of legitimacy. Can the EU be a force for good? is the central question to be answered. Fifth and finally, each chapter ends with an opening onto the prospects for policymaking and scholarship: how can decision-makers and scholars deal with the new frontiers of inequality in Europe? Ultimately, our goal is to tap into current academic *and* political debates. The ongoing poor management of intensifying migrations, or the rebellion of farmers in the face of a socially unjust green transition reflect only too well the increasingly important role the EU in guaranteeing an acceptable level of equality among Europeans.

Like the previous chapters in this book, this conclusive chapter follows the structure outlined above. It summarizes and discusses the research findings in the collection in a transversal fashion. The following section exposes the new frontiers in inequality we see emerging and how this brings about new analytical frontiers in political science and law. Section 3 explains which instruments the EU has been using to tackle inequality in anti-discrimination, mobility, and the welfare state. Section 4 gives an overall assessment of whether the EU has proved, or not, to be a force for good in these domains. Finally, Section 5 reflects on the prospects for policy making and scholarship.

2 New frontiers to understand inequality through law and political science

The question of inequality has long been a concern across societies, and there have always been debates and discussions surrounding the forms and types of inequality that may exist, and how best to address them. The European Union as a social space marked by a diversity of individual situations is also a space in which various types of inequality co-exist. Some are well-identified, such as the inequality based on socio-economic status, resulting from discriminations, or inequality resulting from territorial imbalances. Yet, this picture is not static. New forms of inequality may appear because of societal, legal, and technological developments. The contributors to this volume have contributed to such reflections, as they have, throughout their chapters, delineated new forms of inequality in the EU.

2.1 New frontiers in anti-discrimination

The EU has been conferred strong competences to promote and adopt common standards based on the concept of anti-discrimination. The early 2000s were a pivotal moment with the consecration of equality as a distinctive feature of EU

citizenship, applying not only horizontally, amongst nationals of the Member States, but also vertically, amongst different groups of citizens inside Member States (Belavusau and Henrard, 2019). The directives adopted in the early 2000s tackling discrimination based on race, gender, age, belief, and sexual orientation, aimed to bring the far-reaching definition of anti-discrimination consecrated in the EU treaty towards implementation. However, 20 years later, the application of this legal framework, and its interpretation in the case law of the CJEU, calls for a more nuanced, indeed critical, assessment. Some loopholes remain. New forms of discrimination are not tackled by EU law, and the recognition of intersectional discrimination by the CJEU remains limited to a few flagship cases. Such a context leads to the necessity to re-examine well-established types of inequality and pinpoint the evolutions at stake as well as the required actions.

In Chapter 3, Fabian Lütz joins the emerging debate on the need to update the rules on anti-discrimination to take technological development into account, and more specifically the increasing use of algorithms and artificial intelligence in various contexts. Revisiting the well-established legal framework prohibiting gender-based discrimination in EU law, he focuses on inequality between individuals caused by the use of algorithms, for instance during recruitment processes to sort out job applications, and the way bias in technology may result in a different treatment between men and women. Whereas gender-based discrimination has long been addressed by EU law, the development of new technologies changes the way it may be generated (machine-based discrimination) and the scale of the discrimination perpetrated, thus justifying exploring further how best to revise the legal framework in place.

Serena D'Agostino, in her chapter, criticizes the siloed approach currently in place under EU anti-discrimination law, whereby discriminated individuals must single out one ground of discrimination (gender, race, sexual orientation, etc.) in their mobilization of the legal remedies in place. A first form of inequality results from the imbalances in protection and enforcement between the different grounds of discrimination, with an over-representation of gender-based discrimination at work in case law, to the detriment of other forms of discrimination. Additionally, it fails to take into consideration the multiple discriminations that individuals may face, aggravating the inequality they experience. The support of an intersectional approach has been long advocated as a way to tackle such caveats, and D'Agostino examines whether the EU's current approach to equality could be conducive of a paradigm shift.

Lastly, Martijn Mos (Chapter 4) addresses forms of inequality involved with infringement proceedings launched by the European Commission to tackle national laws discriminating against LGBTIQ people. The novelty here is twofold. It first lies in the form of discrimination: national laws at stake do not directly discriminate against LGBTIQ people, for instance restricting their rights or abstaining from adopting protective measures. Rather, the national legislatures may choose to frame rules as allegedly anchored in child protection to restrict the access of minors to educational materials not in line with conservative values. Such rules, blocking key education and prevention measures, may foster further discrimination. The

second novelty lies in the uncertain competence of the EU to interfere in such matters. The realm of child protection and family law are limitedly covered by EU norms and remain a reserve of sovereignty for the Member States. Despite clear rules on the protection of fundamental rights, the Commission has not pursued a consistent approach, thus leading to a difference in the treatment of similarly problematic national laws in Hungary and Lithuania.

2.2   *New frontiers in mobility*

Free movement of persons is at the core of European unification. Introduced to facilitate the migration of South Europeans workers to industrial regions further up North in the 1950s, the right to free movement has been gradually extended to all EU citizens. Whereas the existence of such a fundamental right is undisputed and comes with a strong principle of equal treatment for all EU citizens, its exercise has generated new complexities and sources of inequality. Through successive enlargements, the EU has integrated Member States with different standards of remuneration or social protection. Differences in demographics have brought about movements of a much larger scale, depleting certain areas of their population through emigration, and causing tensions in others due to the arrival of new social groups. EU law has also facilitated the short-term movement of persons in the context of freedom to provide services, a phenomenon known as the 'posting' of workers. Ensuing risks of 'social dumping' call for convergence in social norms and working conditions.

Yet mobile persons are not only EU citizens, and the persons who do not hold the nationality of an EU Member State, also called third-country nationals (TCNs) in EU jargon, seek to exercise their right to move to enter the EU's territory and circulate within such area (secondary movements). This extra-EU movement has led to the development of the EU migration and asylum policy, covering common standards on the issuance of visas, common minimum rules in asylum (standards on reception and treatment of asylum applications), common standards for extra-EU workers (directives on the single permit, seasonal workers or the European Blue Card), etc. While this area is politically very sensitive, inequality often results from the intricacies between emerging EU norms and the national norms which remain strong in this domain. This should lead scholars to go beyond classic categories of analysis, as the contributions in this part of the book have attempted to do while tackling both intra and extra-EU movement of persons.

In Chapter 5, Martin Seeleib-Kaiser and Dominic Afsharian propose an innovative approach to understand the impact intra-EU movement of persons may have on inequality. They put forward a framework classifying inequality caused by intra-EU mobility into six constellations. This novel reading grid takes into account different levels of governance at local, national, and EU level, and inequality that may exist across individuals *and* territories. This allows them to offer a more refined approach on how the free movement of persons within the EU may affect inequality, either positively contributing to their reduction, or negatively exacerbating existing ones or creating new forms of inequality.

Addressing the connection between extra and intra- EU mobility, Anita Hein-dlmaier, Josephine Assmus and Susanne K. Schmidt (Chapter 6) contribute to new perspectives on inequality among mobile individuals through a focus on the intra-EU posting of TCNs. Such a topic is partially under-researched, as the post-ing of workers is usually approached from the perspective of EU citizens posted abroad. At the individual level, they demonstrate how posted TCNs, on one hand, and posted EU citizens, on the other, face different experiences in the mobilization of their rights. This is further exacerbated by the fact that, not all Member States apply the same rules with regard to the entry of TCNs on their territory and their posting abroad. Beyond EU-wide law, the national level of governance therefore appears as a strong mediator of social rights on the ground.

Turning then to extra-EU movement, Gaia Romeo focuses on the inequality between asylum seekers based on the reliance on the concept of safe country of origin (SCO) to expedite the evaluation of their asylum application. Afirst form of inequality across individuals results from the difference in treatment of asylum seekers coming from countries listed as SCO, who may face increased chances of seeing their requests denied. A second form of inequality results from the differ-ences across the EU Member States in the identification of SCOs and the absence of a common EU list leading to differences in the treatment of asylum requests from one country to another.

Lastly, Juliette Dupont detects an under-researched type of inequality implied by the implementation of the common Schengen visa rules. The rules already represent a source of inequality as they distinguish between nationals of non-EU countries seeking to access the EU's territory, requiring for some the obtention of a visa while exempting others from such a requirement. Despite the harmoniza-tion reached on the matter, and the common rules in place, Dupont pinpoints how their differentiated implementation in the national consulates bring about further inequality among individuals, as they are exposed to different administrative re-quirements and assessments.

2.3   *New frontiers of the European welfare model*

The last two decades have seen significant changes in the debates surrounding inequality in Europe. In the 1990 and until early 2000, the idea that welfare states were too costly against the background of global economic competition was ad-mitted as common wisdom among influential economists (e.g. Sapir, 2006) and international organizations such as the OECD (see Armingeon and Beyeler, 2004). Over the past decade, there has been the recognition more equal societies in North-ern and continental Europe are more productive and more resilient (Hemerijk and Huguenot-Noël, 2022). Demographic ageing, climate change, and digitalization require stronger – rather than lighter – welfare states. How this can be achieved is nevertheless the object of intense political and scientific debates. The last part of the book deals with new frontiers with regard to the European welfare model. While there is no unified pan-European welfare state, EU countries are sharing a number of common problems, often apprehended through common lenses by

policy makers. In many ways, an important frontier is the recognition that both old and new social risks today should be regarded as transnational in their nature and implications.

This is especially the case for inequality with regard to climate change and environmental policy examined by Chiara Armeni (Chapter 10). Three types of 'climate inequality' as labelled by Armeni can be detected both *between* and *within* EU Member States: (a) inequality between individuals and countries in the responsibility for levels of CO_2; (b) the inequal distribution among individuals and countries of the impact and hazards ensuing from climate change; (c) the unequal distribution of the financial costs involved with transition policies. As Armeni stresses, it is the awareness of 'environmental inequality' which is new, rather than their very existence. Furthermore, environmental inequality is fed by and intersects with older forms of inequality in health, income, education, gender, social or geographic isolation. Armeni's chapter taps into the burgeoning literature in law building on the concepts of environmental (or climate) justice and just transition. Environmental justice should not only be analysed in terms in its distributional dimension when considering the impact of climate change, but also in its procedural dimension looking at citizens' empowerment and participation in designing transition policies which are socially just.

Transnational perspective is also emerging in relation to a form of inequality typically seen through a national lens, the fight against unemployment. In their chapter (11), Corti and Huguenot-Noël show that disruptions of labour markets ensuing from economic recessions have been increasingly seen as having negative implications for other EU countries. Inequality *between* countries stems from the differentiated (or asymmetric) impact of a recession or economic 'shock', as illustrated by skyrocketing of (youth) unemployment, exacerbated by austerity policies, in Southern Europe in the aftermath of the 2008–2010 financial and debt crisis. These problems have fed the argument that there is a need for a stabilization instrument at EU level able to help, on a temporary basis, countries badly hit by economic crises. The idea of financial 'solidarity', though, takes the form of a functional imperative. The notion of 'reinsurance Union', describing how the EU could address international inequality via funds working as insurance mechanisms (Schelkle, 2014), offers a useful perspective to analyse the debate over a possible European unemployment reinsurance fund.

The concept of 'social investment' has gained traction from 2000 onwards, both as an academic concept (Esping-Andersen et al., 2002) and a policy programme promoted at European scale (Hemerijck, 2016). It can therefore no longer be seen as a new frontier in the field of social policy. Louise Fromont (Chapter 9) studies the place of inequality issues in the Recovery and Resilience Facility (RRF) adopted by the EU in response to the recession ensuing from the Covid-19 pandemic from 2020. The RRF is a large stimulus package of 648€ billion aiming to fund investment in the green transition, digitalization of the economy and the resilience of social systems. There was clear evidence that the pandemic had affected the less well-off in society, as well as young and old people and especially women, to a much larger extent. Yet, Fromont underlines that references to gender equality,

inequality, and poverty issues were only included in the Regulation setting out the Facility due to amendments of the European Parliament and demands from civil society. Overall, as will be further discussed, if social investment has been a new frontier for social policy making in the EU for a while, it remains to be seen whether tackling multiple forms of inequality is actually the primary objectives of investment-based policies.

3   The European Union's approach and tools to tackle inequality

The question of inequality within and across the EU is not a novelty, and a vast number of policy documents, soft law schemes, legislative instruments and/or funding programs have been set up by the EU institutions with the objective of tackling this multifaceted issue. Such developments have faced several hurdles, including the limits of the conferral of competences to the EU and the reluctances Member States may have in conferring additional powers to the EU in sensitive fields. The adoption of specific funding programs, such as the EU Cohesion Fund or the EU Social Fund, was also important as it marked a clear redistributive objective at the EU level, seeking notably to remedy territorial inequality and accompany national efforts. Whereas the evolution of EU primary law has allowed for the development of new instruments and/or the expansion of previous ones, several instances of 'political and legal creativity' have shown how the legal framework provided by the EU treaties can be adapted and/or modelled to fit specific political objectives. While the EU may have at times more leverage and means of actions than commonly accepted, important caveats remain with regard to the effectiveness and legitimacy of the EU's action.

3.1   *New frontiers in anti-discrimination*

In the field of EU anti-discrimination, the EU toolbox has long been dominated by EU primary law provisions protecting individuals against discrimination, and EU legislative instruments, whose enforcement is monitored and controlled by the European Commission, and whose content may be interpreted by the CJEU. This part of the book provides evidence for how existing tools can be used to address the new forms of inequality, including by complementing them with soft law instruments. A recurring finding is the importance of the political will to update the instruments in place, endorse new commitments, or strengthen enforcement.

Fabian Lütz, for instance, examines how the European Commission could use the Artificial Intelligence Act (Regulation on laying down harmonized rules on artificial intelligence), to foster the prevention of algorithm-based discrimination. However, he also shows that a new regulation would be preferable to establish more precise and detailed rules would be beneficial to better uphold gender equality in the context of algorithmic decision-making.

Serena D'Agostino accounts for how the von der Leyen Commission attempted to generate a new dynamic in favour of a Union of equality with the aim to correct

some of the weaknesses previously identified in the EU's anti-discrimination policy. To do so, it issued five policy documents – strategies, frameworks and actions plans – addressing different types of discrimination (discrimination based on gender, discrimination against LGBTIQ persons, against the Roma, and against persons with disabilities; and lastly discrimination caused by racism). The policy documents do not contain strong binding obligations, but they notably aim at 'mainstreaming equality in all policy initiatives through an intersectional perspective (referring to) intersectionality as a core cross-cutting principle'.

Lastly, Martijn Mos focuses on the tools at the disposal of the EU to enforce the protection of the rights of LGBTIQ persons, who may face discrimination as a result of national anti-propaganda laws using 'child protection as a pretext for restricting LGBTIQ rights'. He presents an overview of the different enforcement tools at the disposal of the EU, distinguishing between *political enforcement* through the activation of Article 7 TEU, *legal enforcement* through the launch of infringement proceedings and *financial enforcement* via the mobilization of the provisions foreseeing the suspension of EU funding.

3.2   *New frontiers in mobility*

The EU has long possessed competences to regulate intra- and extra-EU movement of persons which regularly revised to adapt to the changes in the labour market or in global migration patterns. Yet, the regulation of the mobility of persons has always constituted an area of tension, considering the close links it maintains with the Member States' discretion to decide upon the entry into, residence in and removal from their national territory. As a result, the EU norms are often the object of proceedings before the CJEU, either to clarify the interpretation of their content or to hold the Member States accountable for their lack of (or incorrect) implementation. Such tensions also explain why recent years have been marked by lengthy and tense negotiations of new instruments, as illustrated by the divisions between Member States over the revision of the Posted Workers Directive in 2018, or over the EU legal framework for migrations which started in 2016 and ended with the adoption of the New Pact on Migration and Asylum in April 2024. In this part of the book, all the authors highlight the complexities deriving from the difficulties in adopting common standards, and the interplay between different levels of governance in the design and implementation of norms.

In Chapter 5, Dominik Afscharian and Martin Seeleib-Kaiser identify a diversity of instruments that the EU can mobilize to tackle inequality across individuals and territories, including legal, regulatory, and redistributive policy instruments. Interestingly, their contribution analyses how the EU can support migrant workers through infrastructure, taking the example of the employment service cooperation network EURES which offers an EU-wide job search platform. However, social policy in the EU is largely organized at the Member State level. The EU's actions must therefore be assessed together with the actions undertaken at national and local levels, and the authors regret that there is a lack of engagement on the interplay between policies across levels of governance.

Chapter 6 sheds light on the way the EU's initial liberal bias slowly shifted in recent years, through the social (re)embeddedness of the single market by the EU institutions and the evolution of the CJEU's case law. The renewed EU regulatory approach aims primarily at improving enforcement and compliance with EU law on the ground. This has translated into the elaboration of common forms, more digitalization, and the establishment of a new agency the European Labour Authority. Yet, the Member States retain an important margin of discretion in determining the conditions for the entry of TCNs, thus undermining the coherence of the rules applicable.

Gaia Romeo's contribution (Chapter 7) accounts for the difficulty in adopting common standards at EU level. Whereas the concept of 'safe country of origin' was mentioned in the London resolutions adopted in 1992, as a soft law instruments, the adoption of legally binding rules took much longer. The Asylum Procedure Directive adopted in 2005 is the first instrument including legally binding norms referring to the concept of SCO and defining some criteria to identify a country as a SCO (in an Annex). The text was subsequently reformed in 2009 and 2011, but the common standards only concerned the definition of a SCO by the Member States, which would notify the results of their examination and their national procedures to the Commission.

Juliette Dupont (Chapter 8) further examines how the EU mobilizes its competences to enact through hard law instruments the lists of countries whose citizens can access the EU territory upon the condition of obtaining a Schengen visa (visa restricted) or without such requirement (visa-exempted). Yet, she also pinpoints the discrepancy between the law on paper, based on a common EU policy and lists of countries, and the law in practice with the application by national consular authorities of differentiated administrative requirements. She focuses particularly on the prior consultation procedure, and the new sanction/facilitation mechanism.

3.3   *New frontiers of the European welfare model*

2020 seems to mark an important turn for the renewal of EU policies and tool to fight inequality. This is mainly due to the conjunction between the Union's agenda for takling climate change boosted by the adoption of the European Green Deal in December 2019, on one hand, with the response to the economic and social consequences of the Covid-19 pandemic a few months later in 2020. The last part of the book provides cutting-edge insights about how this twofold context has led to a renewal in the EU's toolbox to address environmental, social, and gender inequality. Overall, this reflects a broad realization among decision-makers that social issues needed to be put back at the top of the EU' political.

In their Chapter 11, Corti and Huguenot-Noël shows how the European Commission proved a successful policy entrepreneur during the Covid-19 pandemic. Amidst the crisis, it could secure an agreement from the Member States to initiate the European instrument for temporary Support to mitigate Unemployment Risks in an Emergency, known as SURE. The chapter argues that, while the long-standing debate on a stabilization instrument in the form of an unemployment reinsurance

scheme had remained unfruitful, the adoption of SURE was only possible due to the 'purposeful opportunism' (Cram, 1994) displayed by the European Commission. Combining ideological, political and technical opportunism, the Commission was able to design the fund in such a way that it diffuse the reluctance towards establishing permanent transfers from net contributors towards net beneficiaries of the EU budget, notably by making SURE a 'second-line' instrument by light touch conditionality.

The recovery plan examined in Chapter 9 should not be seen only as an answer to the immediate impact of the pandemic itself, but also as an attempt to deal with enduring social consequences of the Eurocrisis and a decade of muddling through. As Louise Fromont notes, 'one of aims of the RRF is to fight poverty and inequality, protecting vulnerable groups, notably women, and improving the living standards of EU citizens'. This should happen through the articulation of the national plans to other EU instruments. The National Recovery and Resilience Plans should explain how the use of the RRF money will (a) address fiscal, economic, and social concerns raised in the Country Specific Recommendations of the European Semester, (b) serve to achieve the objectives enshrined in the European Pillar of Social Rights, in particular principles 2 and 3 relating respectively to gender equality and equal opportunities, (c) allow for a deeper monitoring of national policies through the Recovery and Resilience Scoreboard which includes 14 common indicators. The governance of the recovery agenda therefore seems to embrace large objectives.

Finally, the launch of the European Green Deal has been accompanied by the pledge that the green transformation of European economies should 'leave no one behind', thus implying a commitment to social justice. Against this background, Chiara Armeni (Chapter 10) the European Climate Law and the Just Transition Mechanism through the prism of procedural environmental rights, that is the possibility for citizens to participate in the elaboration of just transition policies. Moreover, the European Climate Pact was initiated by the European Commission in 2019 to raise awareness among civil society and stakeholders on how to engage with environmentally responsible behaviour. Rather than inaugurating a novel approach to participation, the provisions included in the new EU instrument of the Green Deal refer to the well-known EU notions of stakeholders, partnership, and consultation.

4   Is the EU a force for good? Findings and assessment

One of the central objectives of the book is to understand to what extent the EU's actions may participate in remedying or reducing inequality, or whether they participate in aggravating them, and how. We therefore invited chapter authors to question the scrutinized EU policies and actions and assess to what extent they are effective. These questions can be summarized in the overarching question of determining whether the EU can be a force for good in the fight against inequality. The answer to such a question is crucial to test whether the EU respects the values and rights it is bound to by the EU treaties, the EU Charter of Fundamental Rights or the EU Social Charter. The answer is even more relevant at a time of

'polycrisis' (Schramm, 2020), during which the legitimacy of the supranational centre of power is questioned.

4.1   *New frontiers in anti-discrimination*

The EU's capacity to ensure the protection of individuals from discrimination, including from those deriving from societal and technological change, is a clear test of its credibility in enforcing compliance with its values and fundamental rights. The latter are protected in EU primary law and their protection is further reinforced by a vast corpus of legal and policy instruments, case law from the CJEU, and funding schemes. All chapters in this part of the book identify some signs of progress made by the EU, but also the limitations encountered, mostly relating to the importance of political willingness to upgrade and/or enforce norms.

Fabian Lütz highlights the recent adoption of the EU Artificial Intelligence Act and how the text may indirectly tackle some of the issues raised. Yet, he also pinpoints the other avenues that may be pursued to update the existing instruments to new forms of discrimination linked to gender-based algorithmic discrimination. The competence of the EU to enact such modernized norms is not at stake and while he presents several ways to adopt new norms on the matter, the author also stresses the importance of a political momentum, that may be influenced by the agenda pursued at the highest level of the Commission.

The importance of political momentum is also highlighted by Serena D'Agostino in her chapter. While she illustrates how the entry into function of the von der Leyen prompted a new impetus in favour of a Union of equality, notably with the adoption of the five policy instruments she reviewed, her analysis confirmed the negative assessment prevailing in the existing the literature. The siloed approach and unequal attention granted to the different forms of discrimination are not corrected; and the need to better apprehend intersectional discrimination and the challenges in remedying it is not addressed.

A similar prevalence of political considerations is lastly demonstrated by Martijn Mos. His chapter demonstrates how two national legislations that are very similar in scope and substance receive different treatment, even though they both potentially breach EU values and rights. The discretion granted to the Commission in deciding whether to initiate infringement proceedings may result in such divergences. The pending case against Hungary may provide clarification on whether LGBTIQ-discriminating laws disguised as child protection laws constitute a violation of EU law including Article 2 TEU. But the importance of the Commission's willingness to pursue the infringement will remain a cause of uncertainty and potential inequality.

4.2   *New frontiers in mobility*

The EU's approach and policy to the mobility of persons has always been contentious, regardless of whether it concerns intra-EU or extra-EU movements of persons. EU laws and policies were criticized for their liberal bias in the development

of intra-EU movement in which the emphasis was placed on economic development and tolerated competition between the Member States' regulatory regimes and national rules on work conditions, levels of remuneration or social security. Concerning extra-EU movement, similar critics were voiced as it generates strong inequality among individuals based on their country of origin. Most importantly, the EU does not necessarily have a say in all migration aspects and must act within the limits of the decision-making powers the Member States chose to relinquish. The issue of mobility is so sensitive, that it is today a source of polarization within each Member State, as migrations is a largely exploited by nationalist, xenophobic, and anti-EU political forces, and is also a source of concern within mainstream parties. Against this background, the capacity for the EU to be a force for good, which would notably take the form of the adoption of common standards more consistently enforced and protecting individuals, is at best complex, at worst impossible.

Martin Seeleib-Kaiser and Dominic Afsharian draw a nuanced picture of the EU actions that are beneficial to the reduction of inequality, but they also pinpoint the weaknesses that limit its capacity to be a force for good, such as the case law of the CJEU and the welfare exclusions of internal migrants that are still not addressed. They also highlight the fact that social policy remains largely organized at the level of the Member States, leading to a situation where the rights that EU migrant citizens can export are highly stratified. The Member States may okay play an important role, either to reinforce or create new inequality, e.g. through the application of means-tested minimum social protection or to correct others, for instance through the recognition of qualifications or tax reforms.

Anita Heindlmaier, Josephine Assmus and Susanne K. Schmidt picture a rather negative view of the EU's action *vis-à-vis* inequality. The rules adopted on posted workers lead to a stratification among workers whose social rights vary along with citizenship and migration status, and such stratification is further exacerbated between posted workers holding EU citizenship and those who do not. Additionally, strong disparities that exist concerning the enforcement of EU law at the national level, or the rules on access to the labour market, on which the EU does not have regulatory competences.

Gaia Romeo demonstrates that the introduction of the SCO concept in EU legislation has not necessarily resulted in enhancing the respect for fundamental rights. She stresses the remaining divergence across national legislation identifying safe countries of origin. Although there is a certain degree of similarity between SCO lists established at national level, diversity remains: 60 countries are listed as SCO, of which 56 are identified as SCO only by less than half of the EU countries.

Finally, Juliette Dupont echoes the assessment made by many commentators according to which the EU visa regime must be considered punitive and exclusionary. Such characterization is linked to the intrinsic distinction that it makes between countries. Her chapter moreover reveals that the application of EU rules by national consular authorities further reinforces inequality among individuals, and the opportunities or actions by the EU institutions to reduce such inequality have not been numerous.

4.3   New frontiers of the European welfare model

The contributors to this volume tap into recent debates about the 'revival of Social Europe' since the proclamation of the EPSR (Keune and Pochet, 2023) by casting a more nuanced light on the latest developments. Examining the new frontiers of the manifestations of inequality as well as new frontiers in policymaking, they identify gaps and caveats in the way the EU addresses the multifaceted nature of inequality. Besides their respective topical angle, the three chapters gathered in the last part of this volume also correspond to the three essential dimensions of social policy, namely social investment (Chapter 9 on the RRF), social protection (Chapter 11 on SURE), and citizen participation (Chapter 10 on the Just transition).

Chapter 9 presents one of the most recent and innovative tool set up at the EU level, namely a new Fund (called Facility) allowing the Member States to fund the greening and digitalization of the economy along with social investment. But Fromont shows how the fight against inequality and poverty are depicted in the EU policymaking literature as secondary objectives, whereas the primary focus lies on generating (inclusive) growth. In tune with the EU institutions' prevailing mindset, there is a strong economic framing of social issues since growth and competitiveness are depicted as a prerequisite for the decrease in poverty and other forms of inequality. At odds with the complex definitions of poverty and inequality in the scientific literature, the RRF essentially considers income inequality and focusses on investment in human capital and bringing people to the labour market. At the same time, some national recovery plans do address a broader range of inequality including targeting women or disabled people.

In Chapter 11, Corti and Huguenot-Noël present a nuanced assessment showing the ambivalence of seeing SURE as a European instrument of social protection for saving jobs and therefore protect workers in times of economic recession. On one hand, SURE has been a success: it was massively and effectively used by national governments to strengthen their own national part-time work schemes, therefore succeeding to support the less well-off. On the other hand, though, SURE has clear limitations. It was conceived as a temporary instrument – it took and end in December 2022 – dealing with job retention during a recession. It therefore came nowhere near the idea of a permanent stabilization instruments supporting the unemployed and helping tackle inequality in a structural manner. Moreover, by pointing out that 'the Von der Leyen Commission also cynically used SURE success story to systematically ignore pressure by social actors to put back on the agenda the European Unemployment Reinsurance Scheme it had (reluctantly) committed to implement', Corti and Huguenot-Noël show how a quick political win can preclude more significant progress in the hard fight against inequality.

Chapter 10 about environmental justice deals with the most novel, but also most underdeveloped, frontier of the European welfare model, namely that of citizen participation. In her examination of the provisions empowering citizens in the European Climate Law, on one hand, and on the Just Transition Mechanism, on the other, Armeni finds that the EU tools are still very rudimentary. They come nowhere near the ambitious model designed in the Aahrus Convention, adopted in under the

auspices of the United Nations Economic Commission for Europe (UNECE) in 2001, which defines extensive rights to information as well as to participate in environmental decision-making. Vague notions of partnership and dialogue point to an instrumental relationship whereby stakeholders and social partners are above all consulted to improve the implementation of EU policies. This type of participation is accompanying what is essentially a distributive conception of justice lacking a genuine procedural (or participatory) dimension.

5   Prospects for policymaking and scholarship

At the time of writing in early 2024, the European agenda is dominated by the upcoming European elections. Every five years, they constitute a pivotal moment allowing policymakers and academics to take stock of the evolutions that occurred since the previous ones, but also to reflect on the impact they might have on the EU's priorities for the next five years. The 9th legislature of the EP and the von der Leyen mandate in 2019–2024 have been widely seen as a moment of environmental and social ambitions reflected in an important renewal in the regulatory and financial tool of the EU. There are doubts whether this agenda can be sustained in the coming years. Against this background, we invited the contributors to reflect on new avenues for policymaking and scholarship.

5.1   *New frontiers in anti-discrimination*

In the field of anti-discrimination, the three authors identified avenues for both policymaking and scholarship.

Fabian Lütz proposes different possibilities for adopting new norms on gender-based algorithmic discrimination and he foresees different avenues in which scholars and/or independent experts may participate in controlling compliance with fundamental rights when algorithms are used. In that regard, he advocates the establishment of rules guaranteeing the involvement of independent experts, such as neutral third parties, in the auditing of algorithms to detect *ex-ante* bias, and he couples it with rules on access to datasets or models.

Serena D'Agostino calls for a paradigm shift in the way the EU approaches discrimination with a renewed plea in favour of a clear commitment to address intersectional discrimination in policy as well as in law. She also calls for critical research on the quality of contemporary European politics and policy in the field of equality and non-discrimination, and inviting scholars to unpack the operationalization of intersectionality in public policies.

Lastly, Martijn Mos stresses the importance of the case currently pending before the CJEU and the shift it may constitute in the European Commission's approach to the enforcement of EU values and fundamental rights. It would also clarify whether Article 2 TEU can be a basis for infringement proceedings, which might open the door for further legal actions. Turning to scholarship, he suggests various avenues to further unpack the dynamics of the adoption of such national legislations and their contestations, including an examination of the parliamentary discourse

surrounding and preceding the adoption of such discriminatory proposals; the possible deterrent effect of the actions of the European Commission, and the possible mobilization by activists on the basis of EU law and policies.

5.2   *New frontiers in mobility*

Mobility is an issue for which the actions undertaken by the EU are marked by their diversity, and the EU policymakers and scholars have been active in revamping and appraising existing legislation, policies and practices, and researching the inequality generated by the EU's approach to the mobility of persons.

Martin Seeleib-Kaiser and Dominic Afsharian call for a more ambitious EU policy eventually accompanied by increased competences conferred to the EU level. They, for instance, suggest the possibility of granting competences to the EU to set up a European minimum income for internal job-seeking migrants or a European basic income scheme. One point is particularly worth underlining in the context of future policy developments: the importance of taking into account the equality-migration nexus when it comes to the envisaged enlargement of the EU, and the impact of previous enlargements on such delicate societal balances across the EU further supports their argument.

Anita Heindlmaier, Josephine Assmus and Susanne K. Schmidt formulate policy recommendations in favour of more accountability. This may be achieved through EU norms, such as the Due Diligence Directive adopted in 2024, but also through structural changes, marked for instance by an increase in trade unions' participation and representativeness, or an improved cooperation. This can be achieved not only through enhanced cooperation between labour administrative authorities under the auspices of the European Labour Authority, but it would also require to involve social security institutions. Research, and in particular Europeanization research, requires more reliable data on the posting of TCNs and fraudulent practices, and the authors thus support better statistics and access to data. They finally underline the importance of giving a voice to TCN-posted workers themselves, and the need to integrate their concerns in research design.

Gaia Romeo sketches the policy perspectives linked to the adoption of the Asylum Procedure Regulation as part of the New Pact on Migration and Asylum. The main change consists in the reintroduction of a mechanism to establish a common minimum SCO list, partially correcting the inequality resulting from the divergences across Member States. However, she also points out possible negative effects, for instance the introduction of border procedures to be set in place that would further exacerbate inequality among migrants. Research on the effects of Europeanization on migration policies via a comparative analysis could be intensified, as well as research on the enforcement of returns of irregular migrants to their countries of origin.

Juliette Dupont concludes that the Commission could require the Member States to provide more detailed statistics on visa issuance (incl. variables such as gender or geographical origin of the applicants), which would enable the quantification of travel inequality within states. In terms of research, she suggests to

further investigate the concept of continuum of (im)mobility between the undesirable and the happy few. It is useful since it complements the global mobility divide approach, without invalidating it, and help illustrating the systemic racism in international visa policymaking. Thus, this raises new questions linked to potential discrimination between visa-free nationals travelling to the EU.

5.3   *New frontiers of the European welfare model*

Chapter authors in this part if the volume call the EU to break path dependencies of old models and engage with bolder, truly innovative that push further the new frontiers in the fight against inequality.

According to Fromont (Chapter 9), the narrow focus, in the RRF, on an alleged economic virtuous circle putting growth and the labour market centre stage is at odds with the existing knowledge on the complexity of poverty as a social phenomenon. There is therefore a need to freed policymaking from the old paradigm considering social policy as a productive factor helping growth rather than as a desirable objective in its own right. A particularly important task for scholars is not to take the EU's social agenda at face value but to hold decision-makers accountable for the consistency between pledged objectives and actual implementation on the grounds.

Similarly, Armeni calls for a broadening of the EU's policy for climate justice beyond distributional justice, to develop an effective set of rights addressing procedural issues and empowering citizens. Integrating Aarhus-style procedural rights into the EU legal apparatus would allow a shift from the old paradigm of instrumental stakeholder consultation to a genuine model of citizen participation. As a matter of fact, the main challenge to the European Green Deal today does not primarily concern the design of 'good policies', but essentially their acceptance by the public, especially those most affected by intersecting multiple types of equalities. By engaging with a research agenda on environmental rights as human rights and participation, lawyers can help find a way to strengthen the just transition dimension of the European Green Deal and thereby enhance its legitimacy.

Finally, Corti and Huguenot-Noël (Chapter 11) advocate a reining of political debates about a European Unemployment Reinsurance Scheme. While SURE can be seen as a successful experience, it left untouched issues such as the good design for job retention schemes, let alone discussions about how to help the unemployed most efficiently. An important challenge for EU decision-makers is to agree on effective tools as structural manner to fight inequality, rather than as crisis-dependent instruments agreed in emergency mode. For scholars, an ongoing challenge is to conceptualize the role of the EU in the context of a multi-tiered social policy. The idea that the EU was becoming – or ought to become – a supranational, federal, welfare state in the making has long been outdated. Notwithstanding, recent policy initiatives have, according to them, increasingly turned the EU into a co-guarantor of social citizenship and a co-producer of social rights, notably by the combination of legal provisions and social investment. These tools should be strengthened for them to become more tangible for people.

Notes

1 Eurostat, 'Living conditions in Europe – poverty and social exclusion', https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Living_conditions_in_Europe_-_poverty_and_social_exclusion&oldid=584082 (retrieved on 3 May 2024).
2 UNICEF, 'Rising poverty, deteriorating mental health, online sexual abuse and exposure to pollution among challenges faced by millions of children across the EU', press release, 19 February 2024, https://www.unicef.org/eu/press-releases/rising-poverty-deteriorating-mental-health-online-sexual-abuse-and-exposure#:~:text=The%20State%20of%20Children%20in,EU's%20leading%20indicator%20for%20poverty (retrieved on 3 May 2024).
3 This book is a research output of the Jean Monnet Centre of Excellence EUqualis (2022–2025) led by Amandine Crespy and Chloé Brière. It gathers some of the best papers presented at the international conference IDEAS – Interdisciplinary European Advanced Studies organized at the *Institut d'études européennes* of Université Libre de Bruxelles (IEE-ULB) in May 2022.

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