

MANAGING POST-PANDEMIC RECOVERY. THE  
NORMALISATION OF EMERGENCY SOCIO-ECONOMIC MEASURES IN  
DIFFERENT EUROPEAN [CONSTITUTIONAL] LANDSCAPES

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*Abstract*

This article expounds on the findings of European-financed research concerning how different States grappled with the socio-economic consequences of the pandemic and to what extent one can envisage non-marginal institutional and policy change towards the post-pandemic phase. The article investigates any connection between what the States are promising and the social impact of the COVID-19 crisis, appraising the general orientation of social policy reform in terms of institutional design and 'philosophical' inspiration. By the latter, we mean a social rights-based approach and an active social policy approach, also termed social investment. Therefore, rather than only seeing how policies impact the socioeconomic situation, we also detect how the socioeconomic situation impacts the general political response. To this end, the article analyses a set of national jurisdictions against the backdrop of a piece of supranational legislation, such as the Recovery and



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Resilience Facility (RRF), intended to bring about essential change. The approach is interdisciplinary, involving legal and sociological analysis, and uses much reliable information to chart specific policy patterns valuable for decision-makers.

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### 1. Introduction. Active social policy vs social rights?

It is acknowledged that the COVID-19 pandemic intensified existing social problems, resulting in new social risks, particularly for the most vulnerable groups<sup>1</sup>. Although European welfare systems are deemed better equipped to face crises, they have still struggled to respond to the situation caused by the COVID-19 pandemic<sup>2</sup>. In addition, the EU Member States and the UK, which

<sup>1</sup> See: Organisation for Economic Co-operation and Development, *COVID-19: Protecting People and Societies*, available at <https://www.oecd.org/inclusive-growth/resources/COVID-19-Protecting-people-and-societies.pdf> (2020); United Nations, *COVID-19 and Human Rights: We Are All in This Together*, available at <https://unsdg.un.org/resources/covid-19-and-human-rights-we-are-all-together> (2020).

<sup>2</sup> I. Casquilho-Martins, H. Belchior-Rocha, *Responses to COVID-19 Social and Economic Impacts: A Comparative Analysis in Southern European Countries*, 11(2) Soc. Sci. 1 (2022).

exited the Union amid the pandemic, have different welfare regimes. It is also relevant to contextualise the pandemic crisis and the current political strategies, considering the marks left by the previous 2008 financial crisis<sup>3</sup>, which affected the Southern European States more harshly. It has become clear that austerity policies reduced social spending and increased inequalities, causing new risks<sup>4</sup>. In 2014, the European Commission acknowledged that the financial crisis had a clear impact, particularly on employment and poverty levels<sup>5</sup>. Nonetheless, austerity was justified as a pitiful necessity, even though it questioned the principles of equity and social integration on which the European welfare model has been built.

However, during the pandemic crisis, a new anti-austerity narrative has emerged, epitomised by the massive public spending guaranteed by the EU Recovery and Resilience Facility (€ 723 billions to invest in reforms and projects at 2022 prices, of which € 385 billions of funds in loans and € 338 in grants, according to the EU official site<sup>6</sup>). The crucial question is to what extent such a narrative corresponds to a strategy that brings a structural change in social policy. In other words, problematising is paramount if transition means reorganising social policy to boost equality and societal resilience rather than returning to the status quo. Put in such terms, the question is quite generic, though.

How to measure change in social policy is a disputed issue. One of the standard ways is to interrogate statistical data over time regarding, on the one hand, social expenditure and, on the other hand, information such as income, poverty, etc. In particular, the drawbacks of 'welfare effort', that is, social spending as a percentage of GDP, have often been highlighted<sup>7</sup>. This was not,

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<sup>3</sup> S. Civitarese Matteucci, S. Halliday, *Social Rights, the Welfare State and European Austerity*, in S. Civitarese Matteucci, S. Halliday (eds.), *Social Rights in an Age of Austerity: European Perspectives*, 3 (2017).

<sup>4</sup> S. Civitarese Matteucci, S. Halliday, *Constitutional Law and Social Welfare After the Economic Crisis*, in F. Merloni, A. Pioggia (eds.), *European Democratic Institutions and Administrations. Cohesion and Innovation in Times of Economic Crisis*, 149 (2018).

<sup>5</sup> European Commission, *Austerity and Poverty in the European Union*, available at <http://www.europarl.europa.eu/studies> (2014).

<sup>6</sup> See [https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility\\_en](https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en).

<sup>7</sup> J. Olaskoaga, R. Alaez-Aller, P. Diaz-De-Basurto-Uraga, *Beyond Welfare Effort in the Measuring of Welfare States*, 15(3) *J. Comp. Policy Anal.: Res. Pract.* 274 (2013).

however, the primary endeavour of this study, whose focus was to detect the general orientation of policy reform in terms of institutional design and ‘philosophical’ inspiration. By the latter, we mean two broad approaches to social policy encompassing several more nuanced characters: a social rights-based approach and an active social policy approach, also termed social investment.

Although not the primary concern of this research, we nonetheless considered social expenditure in the empirical analysis (see Section 3) to develop a specific social indicator – the Expenditure for Social Protection – by combining various expenditure indexes, such as those for welfare, education, healthcare, expenditure borne by families, and pensions. This indicator reflects the social rights-based approach in opposition to the active social policy approach (social investment), for which we identified a different social indicator, Opportunity and Activation.

While the idea of social rights is linked to an unconditional entitlement to certain benefits, social investment emphasises ‘activation’ vis-à-vis passive universal benefit delivery. The objective of policies oriented towards social investments is to improve the opportunities and abilities of individuals to face *the social risks of post-industrial economies ex-ante* while ensuring high levels of training and employment necessary to sustain the ‘carrying capacity’ of the Welfare State. Early childhood education and care, lifelong vocational training, active labour market policies, and work-life balance policies such as parental leave and long-term care are activation policies that exceed the logic of the passive welfare policies of the post-World War II period and embody the active social policy approach<sup>8</sup>.

It has been noticed<sup>9</sup> that active social policy can be considered a centrist policy that simultaneously appeals to and raises conflict in both the right and left camps. This leads to the tension between Social Democrats’ affection for unconditional social rights and the attractiveness of promoting access to employment to help disadvantaged people. Policies that foster human capital development and its efficient use are essential to social investment, such as early childhood education, lifelong training, and active labour market services<sup>10</sup>. Notably, a social

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<sup>8</sup> A. Hemerijck, *Towards a European Union of Social Investment Welfare States*, 58(5) *Intereconomics* 235 (2023).

<sup>9</sup> G. Bonoli, *The origins of active social policy*, 177 (2013).

<sup>10</sup> G. Bonoli, *The origins of active social policy*, cit. at 9, 17.

investment approach has buttressed the Lisbon Agenda, which the European Union adopted in 2000 to make Europe “the most dynamic and competitive knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment”. Strictly linked to this in the EU Commission’s view was the modernisation of social policies to give activation measures a more prominent role. To achieve this aim, “support schemes should provide an exit strategy, so they should in principle be temporary”.

A methodological caveat is apposite to the point. As mentioned, policy change is a complex and controversial field, and whether and to what extent change in the law implies policy change is an under-investigated question<sup>11</sup>. However, we assumed that changing the law must be part of this broader picture. This is why we analysed a set of national jurisdictions (see below) against the backdrop of a piece of supranational legislation, such as the Recovery and Resilience Facility (RRF), intended to bring about essential change. Article 4.1 of the relevant EU Regulation (2021/241 of the European Parliament and of the Council of 12 February 2021) reads that “in the context of the COVID-19 crisis, the general objective of the Facility shall be to promote the Union’s economic, social and territorial cohesion by improving the resilience, crisis preparedness, adjustment capacity and growth potential of the Member States, *by mitigating the social and economic impact of that crisis, in particular on women, by contributing to the implementation of the European Pillar of Social Rights...*” (added emphasis)<sup>12</sup>.

This passage proves the importance of investigating the connections between what the States are promising and the actual

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<sup>11</sup> A large amount of data over a sufficiently long period and a counterfactual analysis with a set of norms as independent variables would be necessary to determine such an output, and, however, after accepting certain presuppositions. To our knowledge, there are no attempts of this sort. Only partially similar is the idea of impact evaluation of public policies via the counterfactual analysis, which aims to measure the “causal effect of a policy on outcomes of interest, on which it is expected to have an impact”, according to M. Loi, M. Rodrigues, *A note on the impact evaluation of public policies: the counterfactual analysis* (2012), 4.

<sup>12</sup> Through the RRF, the Commission raises funds by borrowing on the capital markets (issuing bonds on behalf of the EU), then made available to the Member States. The latter are expected to address the challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination.

situation caused by the COVID-19 crisis. Therefore, rather than only seeing how policies impact the socioeconomic situation, we are also interested in how the socioeconomic situation impacts the general political response.

To this end, after sketching out in Section 2 some basic remarks about the methodological issues, describing the choice of the sample (Section 2.1) and what we searched for in the recovery and resilience plans (Section 2.2), in Section 3 we analyse the two selected Social indicators - *Expenditure for Social Protection* and *Opportunity and Activation* - explaining how they reflect, respectively, the social rights-based approach and the active social policy approach. In Section 4, we engage with the fundamental orientation of policy reform to explain and contextualise some of the implications of the case law survey findings. By combining the information from the recovery and resilience plans (and some relevant social policy legislative measures) with the data obtained from the empirical analysis to investigate any connection between what the States are committing themselves and the social consequences of the COVID-19 crisis - we specifically focus on different issues: the impact of Covid (Section 4.1), as revealed by the empirical analysis; the structure of the sampled national plans and social tools (Section 4.2); the impact of resources intended for social use (Section 4.3), with particular regard to fighting poverty (Section 4.4), social inclusion and work policies (Section 4.5). Section 5 concludes.

## 2. Methodological issues

We adopted three more analytical tools to refine our analysis, entailing further epistemological assumptions. First, a quantitative study was carried out regarding socioeconomic and social protection indicators through secondary data<sup>13</sup> using the statistical office of the European Union - the Eurostat portal. The ensuing framework aims not primarily to deduce possible social policy effects but to link social policy reform legislation (traceable to one or the other of the two mentioned orientations) to the said indicators (see Sections 3 and 4).

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<sup>13</sup> On social research and data analysis see N. Blaikie, *Analyzing Quantitative Data* (2003).

Second, we wanted to discuss such policies against the backdrop of the archetypal classification of welfare regimes in ‘families’<sup>14</sup> like other authors have recently done to make sense of social policy measures to tackle the Pandemic<sup>15</sup>. This classification uses the notion of decommodification as opposed to the market forces to shape social relations to cluster the different jurisdictions. The justification for such an approach resides in the idea – well established in the literature – of a path-dependency of successive social policy reforms. We will analyse the States from the point of view of the welfare regime under which they are classified, and, considering this classification, we will question how their social policy is being reformed.

Third, we grouped the selected countries according to their constitutional structure regarding welfare rights. Following a report commissioned by the European Parliament<sup>16</sup>, a comparison of the then-28 Member States revealed three models of incorporating social rights in constitutions: a liberal model, a southern European model, and a moderate model. These models overlap to some extent with the welfare regime typology classification, as we will see in the next Section.

The underlying assumptions of what precedes are that specific responses to the problem of welfare normalisation could be expected based on the socioeconomic or welfare-constitutional regime. Such perspectives may align with each other or lead to conflicting outcomes. Nevertheless, our findings show that welfare-constitutional models make little difference since, in the end, contingent political choices give the direction.

As hinted above, a significant part of the measures implemented in the European plans through the RRF aims to tackle social exclusion and poverty. For example, the Italian Recovery and Resilience Plan (2021) deals with such issues in different components, including investments and reforms. Regarding Employment Policies, the plan expressly states that they address the priorities identified by the European Commission in the Country Reports for Italy in 2019 and 2020 reading, respectively, that “active labour market and social policies are effectively

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<sup>14</sup> Based on the theories developed by Gøsta Esping-Andersen: see G. Esping-Andersen, *The Three Worlds of Welfare Capitalism* (1990).

<sup>15</sup> S. Börner, M. Seeleib-Kaiser Martin (eds.), *European Social Policy and the COVID-19 Pandemic. Challenges to National Welfare and EU Policy* (2023).

<sup>16</sup> See M.E. Butt, J. Kübert, C.A. Schultz, *Fundamental social rights in Europe* (2000).

integrated and reach out notably to young people and vulnerable groups” (Recommendations COM/2019/512 final, 21 - n. 2) and that “the employment impact of the crisis” should be mitigated, “including through flexible working arrangements and active support to employment” (Post-Covid Recommendations COM/2020/512 final, 9 - n. 2).

Within the “inclusion and cohesion” Policy area, the component “Social infrastructures, families, communities and third sector” “aims to tackle social exclusion, reaching out to vulnerable population groups, mainly through social housing solutions, a strengthened role of national social services and greater access to sports disciplines. Mainly, it supports the national strategy for active inclusion and the fight against the different forms of the vulnerability of the population, worsened because of the epidemiological emergency from COVID-19, through the strengthening of integrated social services, the adoption of innovative models of social housing, the development of the resilience capacity of the most vulnerable subjects, also through the dissemination of the culture of sport”.

These two recommendations immediately point to two different constellations. Whether a social right or an activation trajectory prevails depends on the Member State’s concrete choices.

## **2.1 The choice of the sample. Welfare Worlds and Constitutional Commitments to Social Rights**

Regarding the choice of the sample, we used two main criteria deriving from the analytical tools discussed above, from which two constraints followed. The first constraint was constituted by the RRF, which, as seen in the previous Section, represents a (supposedly) main driver of the welfare reforms we wanted to chart. The only exception was including the UK in the analysis, given its traditional leading role in Europe regarding the birth and evolution of the welfare state (the Beveridge/Marshall universalistic ideal) and the uniqueness of its case due to the occurrence of the exit from the EU during the pandemic. A specific choice (then not a constraint) regards the fact that we opted for those countries which were included in the research project COVID-19 (<https://lexatlas-c19.org/>), published open access by Oxford University, as Section V of each country report deals with Social and Employment Protection Measures.



The second constraint was to choose jurisdictions representative of different welfare worlds. Based on this classification, the sample and number of cases under study were selected according to the criteria of an intentional theoretical sample<sup>17</sup>. The selection of cases that are expected, according to their level, to generate new ideas based on beforehand established criteria supported this selection.

As well known, Scandinavian countries are at the furthest end of the decommodification range. Sweden represents this world of welfare in our sample because it simultaneously constitutes the quintessential Nordic welfare state and a country that has long engaged with active social policy<sup>18</sup>.

France and Germany traditionally embody the corporatist (Bismarckian) welfare regime. This regime, sometimes labelled conservative, conceives of welfare essentially as a mediator of group-based mutual aid and risk pooling, relying mainly on contributions from potential benefit recipients. Entitlement is based on contributions by the members of the social insurance system. Relatively strict rules of employment protection tend to offer security for inside workers. Among the corporatist regime sits the bulk of the EU Member States, presenting, in turn, various situations regarding social rights entitlements, constitutional structure, and attitude towards active social policies. Belgium, Austria, and the Netherlands show soundly such a variety.

The liberal regime, which includes the UK, is based on the priority of the market, where the state is expected to play a subsidiary welfare role. One of its typical features is that social benefits are usually subject to a means test and targeted at those falling behind in the labour market's competitive environment. Alongside the UK, only Ireland, albeit with caveats (which also apply to the UK), represents the welfare liberal family<sup>19</sup>.

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<sup>17</sup> See U. Flick, *An Introduction to Qualitative Research* (2009).

<sup>18</sup> G. Bonoli, *The origins of active social policy*, cit. at 9, 71.

<sup>19</sup> Ireland is ambiguous, being in the liberal category based on its low decommodification score but with medium scores on Esping-Andersen's conservatism index: see C. Deeming, *The Lost and the New 'Liberal World' of Welfare Capitalism: A Critical Assessment of Gøsta Esping-Andersen's The Three Worlds of Welfare Capitalism a Quarter Century Later*, 16(3) Soc. Policy Soc. 408 (2017).

According to Ferrera<sup>20</sup> and Sapir<sup>21</sup>, countries such as Portugal, Spain, and Italy have a social protection model based on a mixed type of coverage (Bismarkian and Beveridgean) in which pensions represent most social expenditure. They are characterised by high youth unemployment, low female employment and gender inequality, and an imbalance in social protection that is generous for some groups but limited for others<sup>22</sup>. This Southern regime is distinguished by the crucial role of family support systems and can take some elements of any other regimes classified by Esping-Andersen<sup>23</sup>. Labour market policies are poorly developed and selective. The benefits system is uneven, minimalist, and lacks a guaranteed minimum income provision<sup>24</sup>.

A partly similar account – in the sense of their ideal-type indeterminacy – applies to ex-communist countries. However, the literature tends to trace Eastern European countries back to the Central European roots they partook of before entering Soviet orbit<sup>25</sup>. Hungary and Poland offer valuable examples of a trajectory that, in the transition from communism to capitalism, presents a mixed picture regarding the return to a corporatist regime and attempts towards a more pronounced commodification.

As mentioned in the previous Section, another criterion for grouping the States in our sample was their constitutional approach to incorporating social rights.

The moderate model compounds liberal stances with a variable degree of commitment to protecting rights, whether as individual rights, as general goals of the State or as a policy to undertake. All the countries labelled corporatist belong to the moderate model, of which France and Germany are the traditional benchmarks. Although fundamental social rights are not explicitly referred to in the German constitution (Grundgesetz-GG), as the

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<sup>20</sup> M. Ferrera, *The “Southern Model” of Welfare in Social Europe*, 6(1) J. Eur. Soc. Policy 17 (1996).

<sup>21</sup> A. Sapir, *Globalisation and the Reform of European Social Models*, 44(2) J. Common Mark. Stud. 369 (2006).

<sup>22</sup> M. Ferrera, *The “Southern Model” of Welfare in Social Europe*, cit. at 20 and A. Sapir, *Globalisation and the Reform of European Social Models*, cit. at 21.

<sup>23</sup> G. Esping-Andersen, *The Three Worlds of Welfare Capitalism*, cit. at 14.

<sup>24</sup> S. Civitarese Matteucci, S. Halliday, *Constitutional Law and Social Welfare After the Economic Crisis*, cit. at 4, 152.

<sup>25</sup> C. Aspalter, K. Jinsoo, P. Sojeung, *Analysing the Welfare State in Poland, the Czech Republic, Hungary and Slovenia: An Ideal-Typical Perspective*, 43(2) Soc. Policy Adm. 170 (2009), 183.

constituent fathers refrained from setting out a specific social programme, the social state principle enshrined in Article 20 GG is meant to require an intervention of the State to guarantee social safety and a subsistence minimum. It is still controversial whether one can speak of social rights as proper human rights or whether such an expression is just used to refer to social policies necessary to make the social state principle somehow concrete<sup>26</sup>. The French constitution of 1958 does not refer to social rights either. Then, one must turn to the Preamble of the 1946 constitution, cited in the Preamble of the 1958 constitution, to look for such rights. We do not find a clear welfare right conferment or a social State clause. However, several provisions of the 1946 constitution are interpreted as enhancing social rights, such as rights to labour, health, social assistance, and education. Viz they are often intended as bringing about indirect effect – that is to say, used as principles either to assess the legality of administrative decisions or as a parameter for the balancing with other values – but not directly judicially enforceable to have the state obliged to positive actions.

The liberal model, including the UK and Austria, according to the cited report, assumes that a liberal stance towards economy and politics is ill at ease with acknowledging constitutional social rights. This position is well expressed in the Joint Committee on Human Rights report, “A Bill of Rights for the UK?” of August 2008, regarding whether and to what extent to include economic and social rights in a Bill of Rights. It purports that there are several reasons why economic and social rights are aspirational policy goals rather than enforceable legal rights<sup>27</sup>.

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<sup>26</sup> The Constitutional Court recently deduced from the Constitution a right to a dignified minimum existence, coalescing the principle of dignity with the social principle. Still, it is debated whether social rights in Germany can be depicted as directly enforceable in court, while they can be used as a parameter to assess legislation or its administrative implementation: see S. Civitarese Matteucci, G. Repetto, *The expressive function of human dignity: A pragmatic approach to social rights claims*, 23(2) Eur. J. Soc. Sec. 129 (2021).

<sup>27</sup> Such reasons reflect the basic concerns about the protection of social rights, which feature the universal debate on the matter. The first is the imprecision and general formulation of such rights in the charters, which make them unsuitable for court consideration. The second is that the incorporation of social rights would allow the courts to interfere with the functions of the democratically legitimised decision-makers. The third, somehow connected to the second, is that the courts would be inappropriately involved in public resource allocation. Hence, even though social rights found their place in a bill of rights, this could

Finally, the “Southern European model” is distinguished by ample recourse to provisions conferring social rights on individuals, usually covering the various needs to live a decent life, such as income, education, healthcare, social housing, social security, etc. Of course, the meaning and way of implementation of such rights are disputed. However, in the literature, the idea prevails that they should be interpreted as enforceable in court.

We can notice, to a certain extent, a symmetry between the welfare regime typology and how social rights are either entrenched in the constitution or not (see tab. 1). One expects that liberalism is wary of positive rights. Corporatism would instead protect the dynamics favouring mutual inter-class assistance rather than promote individual social rights. As for the Southern model, the strong commitment to social rights is difficult to assess in abstract terms. However, the symmetry reverses in asymmetry here as constitutions entail a transformative function of an underdeveloped welfare regime.

The following table recaps the sampled jurisdictions grouped according to their welfare/constitutional regime.

Tab. 1. Welfare/constitutional regimes of the sampled countries

<b>Welfare regime</b>	<i>Liberal</i>	<i>Nordic</i>	<i>Corporatist</i>	<i>Southern</i>
	Ireland, UK	Sweden	Germany, France, Belgium, Austria, the Netherlands, Hungary, Poland	Italy, Spain, Portugal

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happen only in a way which avoids bestowing the courts with the power to adjudicate such rights. So, discussing three possible models of “constitutionalising” social rights – the fully justiciable and legally enforceable rights, the directive principles of State policy, and the one called “a duty of progressive realisation of economic and social rights by reasonable legislative and other measures, within available resources” – the Committee endorses the latter as one which can combine the advantages of the other two models whilst avoiding their main drawbacks. In this third model, implementation of the basic commitments spelt out in the Bill of Rights is still primarily through democratic processes rather than the courts. So “there is scope for some judicial role in enforcing the constitutional provision, but the caveats surrounding the definition of the rights mean that there is very little scope indeed for judicial interference with the setting of priorities”.

Constitutional social rights	Liberal	Moderate	Southern	
	Austria, UK	Germany, France, Belgium, Netherlands, Hungary, Poland	Italy, Spain, Portugal	

Interestingly, the Southern countries end up in the same category under both criteria.

It is healthy to reiterate that this modelling has a relative heuristic value; one finds many variations and contradictory elements. For example, Austria and the United Kingdom provide wide-ranging social safeguards. However, both have a liberal approach regarding constitutional entrenchment of social rights, and the UK belongs to the liberal cluster of welfare families.

## 2.2 What we searched for in the Recovery and Resilience plans

As previously said (see Section 2), the implementation of national recovery and resilience plans (NRRPs) represents a significant tool of the policy to manage the pandemic crisis and a (supposedly) main driver of the welfare reforms we intended to outline. The Recovery and Resilience Facility (RRF) is the centrepiece of Next Generation EU<sup>28</sup>, developed to allow EU Member States to recover from the socio-economic consequences of the COVID-19 pandemic. For our purposes, it finances investment projects and reforms to be implemented until 2026, and it is mainly focused on structural reforms from the perspective of managing

<sup>28</sup> On NGEU as a “new mode of EU policymaking” see L. Schramm, U. Krotz, B. De Witte, *Building ‘Next Generation’ after the pandemic: The implementation and implications of the EU Covid Recovery Plan*, 60 J. Common Mark. Stud. 7 (2022). On the revival of the European integration process through NGEU, see A. Sandulli, *Economic Planning and Administrative Transformations in the NGEU and NRRP: A Paradigm Shift*, 14(1) Italian Journal of Public Law 3 (2022). For a critical perspective, see P. Leino-Sandberg, M. Ruffert, *Next Generation EU and its Constitutional Ramifications: A Critical Assessment*, 59 Common Mkt. L. Rev. 433 (2022), stressing how NGEU determines a “large-scale and nearly unconditional redistribution of public money among the Member States”, with the risk of circumventing the EU Balanced Budget Principle. On these topics, see also R. Crowe, *The EU Recovery Plan: New Dynamics in the Financing of the EU Budget*, in G. Barrett, J.-P. Rageade, D. Wallis, H. Weil (eds.), *The Future of Legal Europe: Will We Trust in It? Liber Amicorum in Honour of Wolfgang Heusel* (2021), 117.

post-pandemic recovery. In most cases, these reforms constitute a condition for receiving further funds for investments. The RRF can, therefore, be described as a performance-based tool whereby the disbursement of funds is conditional on the achievement of “milestones” and “targets”.

The purpose of our national recovery and resilience plan analysis was then to synthesise information necessary to investigate what reforms introduced by the NRRPs are to achieve, considering the socio-economic asset.

Furthermore, we intended to combine the data collected by studying the NRRPs with those deriving from the statistical analysis. To compare the situation emerging from these statistics with national reforms introduced and implemented through recovery plans, we sorted out specific fields of investigation. We therefore built a table with the following categories:

- **Impact of Covid.** The pandemic has caused different consequences for different population segments, strongly affecting the most vulnerable and disadvantaged. We used the “risk of exclusion” as a reference indicator to measure the impact of Covid. We aimed to investigate to what extent this impact was related to existing (or non-existing) labour and social policies, as well as to what extent this impact is being mitigated by the introduction and/or implementation of new reforms.
- **Structure of the national plans and parts dedicated to social tools (compared to the Next Generation EU approach).** The intent was to carry out a broader system analysis of the structure and welfare approach of the Next Generation EU scheme by investigating how the individual national plans deal with social issues.
- **Impact of resources intended for social use.** As part of the Next Generation EU funding strategy, the Union raises the RRF funds collectively on capital markets. The distribution of RRF funds is governed by the EU Regulation establishing the RRF (Regulation EU 2021/241 of 12 February 2021). It considers the differences among countries in the severity of the impact of COVID-19 and the capacity of each country to recover. The 70% of grants were allocated for 2021-2022 according to three criteria: the size of a Member State’s population, the inverse of its gross domestic product (GDP) per capita, and the average unemployment rate in 2015-2019.

For the remaining 30%, allocated for 2023, the unemployment criterion was replaced by the change in real GDP observed over 2020 and by the aggregated change in real GDP over 2020-2021 (Regulation EU 2021/241)<sup>29</sup>. Because of these criteria, Southern and Central-Eastern Member States received higher shares of grants relative to their gross national income (GNI) and compared to Nordic countries<sup>30</sup>. All Member States have requested the disbursement of grants to the Commission, but only some have requested loans to be reimbursed with relatively low interest rates after 2028.

- **Poverty Fighting (main measures)**. A worrying factor is that income for the lowest groups has collapsed after the COVID-19 pandemic, leading to a significant increase in the percentage of subjects below the extreme poverty threshold. Poverty has significantly increased among the countries we have analysed due to the pandemic crisis. We consequently searched for measures to contrast poverty in the recovery and resilience plans.
- **Social inclusion (main measures)**. The exclusion caused by the COVID-19 pandemic has affected different dimensions. Exclusionary processes impressively resulted in the economic dimension, such as unemployment or precarious employment and consumption capacity, due to the decline in income. Another critical issue is how exclusion affected other dimensions, with processes leading to material deprivation that can directly affect living conditions and access to social rights that form the basis of citizenship. Taking the interconnection of these factors into account in the recovery and resilience plans, we tried to detect an approximate picture of exclusion caused by the crisis and, mainly, the measures adopted to counter this phenomenon.
- **Work policies (main measures)**. The increase in unemployment is a sign of the seriousness of the social effects of a crisis. It is a cause for great concern, frequently

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<sup>29</sup> On this allocation see M.D. Guillamón, A.M. Ríos, B. Benito, *An Assessment of Post-COVID-19 EU Recovery Funds and the Distribution of Them among Member States*, 14(11) *J. Risk Financ. Manag.* 549 (2021).

<sup>30</sup> P. Bisciari, P. Butzen, W. Gelade, W. Melyn, S. Van Parys, *The EU budget and the Next Generation EU Recovery Plan: a game changer?*, 2 *NBB Economic Review* 29 (2021), 34.

monopolising most analyses on the social impact of a crisis. According to Fana et al.<sup>31</sup>, young and low-skilled workers have been the most negatively affected by the COVID-19 pandemic, as their fragile labour market position worsened because of redundancies and job losses. Due to COVID-19, Member States faced a protracted youth employment crisis that called for new policy responses<sup>32</sup>. Female workers have been seriously affected by the pandemic, too, being generally overrepresented in economic activities that are most at risk of being disrupted and less transposable to teleworking modality, thus facing an increased probability of falling into poverty<sup>33</sup>. The countries under analysis tried to compensate for the increase in unemployment by introducing support mechanisms for the private sector, allowing the exemption of contributions or the temporary suspension of activity, with the condition that no worker was to be dismissed. As for unemployed workers, unemployment subsidies were granted, new special ones were created, and unemployment benefits were extended. In addition, new hiring, mainly in the health sector, was reinforced, aiming at minimising the effects of the pandemic on employment rates. We chose to include the analysis of work policies because of their connection to the archetypal classification of welfare regimes. Those systems that are more engaged in employment policies assume that this kind of social policy is preferable to implementing income redistribution policies. We questioned how many measures adopted to counter unemployment were introduced or implemented by reforms linked to the recovery plans and what kind of welfare regimes they represent.

In summary, although the information collected was heterogeneous, depending on each recovery and resilience plan's priorities, volumes and impact, a systematic analysis was carried

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<sup>31</sup> M. Fana, S. Tolan, S. Torrejon Perez, M.C. Urzi Brancati, E.F. Macias, *The COVID confinement measures and EU labour markets* (2020).

<sup>32</sup> See European Commission, *Joint Employment Report. As adopted by the Council on 9 March 2021* (2021).

<sup>33</sup> P. Profeta, X. Caló, R. Occhiuzzi, *COVID-19 and its economic impact on women and women's poverty*, Study Requested by the FEMM committee, European Parliament, available at <http://www.europarl.europa.eu/supporting-analyses> (2021).



out based on the above categories. This allowed us to summarise the set of reforms for each country, presenting an exploratory description of countries’ policy responses to the socioeconomic impact of the pandemic and evaluating the primary orientation of policy reform. Our research, referring to a continuously evolving picture, photographs the recovery and resilience plans progress in the studied countries until April 2024.

**3. Social indicators. Expenditure for Social Protection (social rights-based approach) and Opportunity and Activation (active social policy approach)**

In the first stage of the research, we aimed to examine and compare social expenditure and the conditions of opportunity and well-being in the analysed European countries, using data provided by Eurostat in 2018 and 2021. The data concerned the macro-sectors of welfare, education, and healthcare spending – the selected indicators defined two composite dimensions: *Expenditure for Social Protection* and *Opportunity and Activation*.

The first dimension – Expenditure for Social Protection – combines various expenditure indexes, such as welfare, education, healthcare, family expenditures (out-of-pocket spending), and pensions. This indicator also reflects families’ housing conditions (see tab. 2).

The second dimension – opportunity and Activation – is linked to the population's opportunities and socio-economic conditions. It includes data on adult learning, youth employment, digital skills, labour transition (from temporary to permanent employment), tertiary attainment, and the gender employment gap (see tab. 3).

Tab. 2. Indicators of *Expenditure for Social Protection*

Indicator	Description	Source	Occurrence	Unit of measure
Severe Housing Deprivation	It measures the percentage of population living in conditions of severe housing deprivation, considering factors such as overcrowding and poor domestic equipment.	EU-SILC	Annual	%
Government Expenditure by Function	Government expenditure on specific socio-economic functions (health, education, and social protection).	COFOG	Annual	% of GDP

Indicator	Description	Source	Occurrence	Unit of measure
Out-of-Pocket Healthcare	Direct payments by families for health goods and services, recorded at the time of purchase or use of the services.	System of Health Accounts	Annual	% of current healthcare spending
Aggregate Replacement Ratio	Ratio between individual pensions for the 65-74 age group and individual earnings for the 50-59 age group, excluding other social benefits.	EU-SILC	Annual	%

Tab. 3. Indicators of *Opportunity and Activation*

Indicator	Description	Source	Occurrence	Unit of measure	Age
Adult Learning	It measures the participation of adults (25-64 years) in formal or non-formal training in the four weeks preceding the survey.	EU-LFS	Annual	%	25-64 years old
NEET	Percentage of young people (15-29 years) not employed or involved in educational or training courses.	LFS	Annual	% total population	15-29 years old
Digital Skills	Percentage of individuals (16-74 years old) with basic or advanced digital skills.	ICT Survey	Annual	% individuals	16-74 years old
Labour Transition	Percentage of people (16-64 years) on temporary contracts who move to permanent contracts in one-year, three-year average.	EU-SILC	Annual	%	16-64 years old
Tertiary Attainment	Percentage of population (30-34 years) with completed tertiary education (ISCED levels 5-6).	EU-LFS	Annual	%	30-34 years old
Gender Employment Gap	Difference between employment rates of men and women (20-64 years).	EU-LFS	Annual	Difference %	20-64 years old

The data were collected from official sources, namely Eurostat and the OECD database. When the data concerning the United Kingdom were not available and homogeneous with the European classifications, imputation techniques based on historical series analysis were used to implement the available data up to 2019. This occurred particularly for AROPE (see below for the description of AROPE).

In the proposed model, the Expenditure for Social Protection dimension represents the choice of public authorities to intervene directly with economic contributions to support the population in

poor conditions. It represents a social rights-based approach, that is, a policy of institutional redistribution aiming to support the categories of the population at risk in a social security logic.

On the other hand, the Opportunity and Activation dimension expresses the analysed countries' tendency to favour activities in line with the perspective of "inclusive and sustainable growth"<sup>34</sup>, which is the typical idea of the Social Investment Paradigm.

After defining the social rights-based approach and the active social policy approach based on the selected indicators, we wanted to deeply understand how the policies implemented during the pandemic period adhered to the socio-economic situation of the population. To do so, we set out a set of indicators capable of measuring the risk of poverty and social exclusion in the selected countries. We used AROPE for that purpose, allowing us to calculate the percentage of people at risk of poverty or social exclusion (see tab. 4).

Tab. 4. AROPE 2018-2021 for the countries under study

Country	Arope_2021	Arope_2018
Germany	21,1	18,7
Ireland	20,7	21,1
Spain	26	26,1
France	21	17,4
Italy	24,4	27,3
Hungary	18,4	19,6
Netherlands	16,5	16,7
Austria	17,5	17,5
Poland	15,9	18,9
Portugal	20,1	21,6
Sweden	18,6	18
United Kingdom	23	23,1

The final step was to develop two Cartesian plots (see Fig. 1 and Fig. 2), in which we represented the two social dimensions emerging from the principal social indicators (the Expenditure for Social Protection dimension on the abscissas and the Opportunity

<sup>34</sup> On this perspective see OECD, *Economic Policy Reforms 2018: Going for Growth Interim Report*, available at <http://dx.doi.org/10.1787/growth-2018-en> (2018).

and Activation dimension on the ordinate axis). The colour represents the intensity of the AROPE indicator. This allowed us to combine the two social dimensions emerging from the principal social indicators (tabs. 2 and 3) and the AROPE index (tab. 4) for 2018 and 2021, providing a graphical, synthetic, and comparative description of social protection expenditures, measures to promote equal opportunities and activation, and the risk of poverty or social exclusion in the selected countries.

Fig. 1. Cartesian plot of social dimensions in 2018

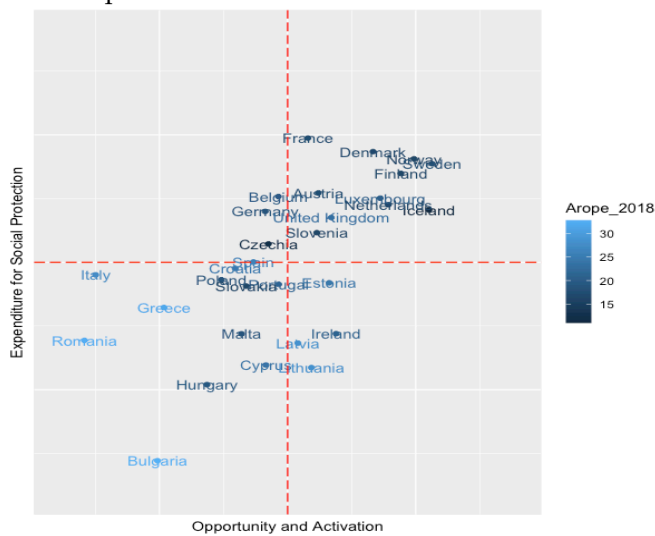
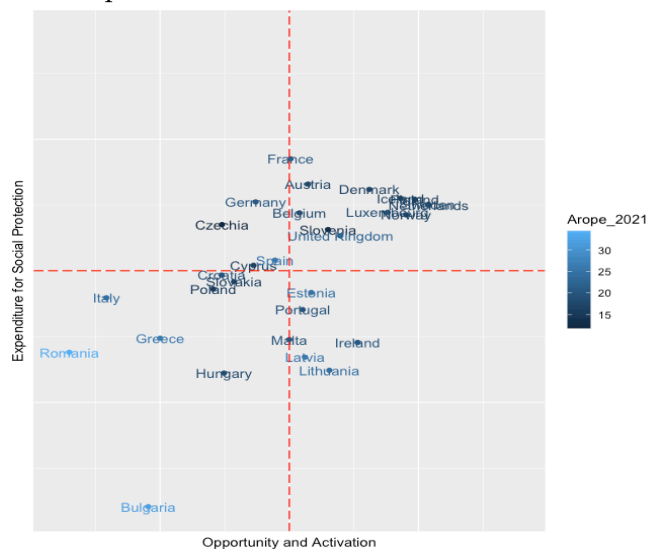


Fig. 2. Cartesian plot of social dimensions in 2021



#### 4. The fundamental orientation of policy reform

We compared information extracted from the recovery and resilience plans (and some relevant social policy legislative measures) with the data obtained from the empirical analysis to investigate whether there is a connection between the States' promises and the social impact of the COVID-19 crisis. By focusing on the primary orientation of policy reform, we wanted to investigate how the socio-economic situation may impact the general political response.

##### 4.1 The impact of Covid

The first question we had to tackle (see Section 2.2 for all the main issues investigated) was the **impact of COVID-19**, which we took on by discussing the empirical analysis's results.

Starting from the two Cartesian plots under Figures 1 and 2, we observed (in the upper right quadrant) that Finland, Denmark, Iceland, Norway, and – as sampled countries in our study – Sweden, Austria, the Netherlands, and the UK are countries with high scores for both Expenditure for Social Protection and Opportunity and Activation dimensions and have a low risk of poverty or social exclusion (low AROPE, colours clear). Nordic countries have thus confirmed their traditional approach to investing more effectively in terms of social protection and activation (presenting a low risk of social exclusion). In addition, it should be stressed that Austria, the Netherlands, and the UK performed well in terms of social protection, and opportunity and activation.

In the lower right quadrant, countries with high scores on the provision of activating services (Opportunity and Activation) but lower than average for Social Protection, with various AROPE risk intensities, are located. We are referring to Ireland and some Eastern European countries. Portugal is more centrally located between the bottom two quadrants.

In the upper left quadrant, we can find countries with high scores on the Expenditure for Social Protection dimension axis but lower scores on the Opportunity and Activation axis, again with various risk intensities AROPE. Among the most significant countries for our study, we can mention Germany and, although in a more central position, France, Belgium, and Spain.

The last quadrant, at the bottom left, contains countries with low Expenditure for Social Protection and Opportunity and Activation scores. Such countries tend to have a higher AROPE risk (darker colours). These countries spend less than the EU average and have a lower impact on preventing poverty, material deprivation, and social exclusion. Among these countries, we must note the presence of Italy, Greece, and several Eastern European countries.

#### 4.2 The structure of the sampled national plans and social tools

However, a strong focus on social issues emerges if one considers the **social policies in the national plans**. This concerns not only, as expected, the countries in the upper right quadrant, with high scores for both expenditures for social protection and opportunity and activation dimensions. As an example, we can mention the Swedish NRRP, marked by measures that impact social rights, directly or indirectly, in all the reforms and investments envisaged (though the most relevant parts for active social policies are described in section 2.2, about “education and transition”, and in section 2.5, about “investments for growth and housing”). The same attention towards social issues interestingly characterises (at least on paper) the countries (in the bottom left quadrant) with low scores for Expenditure for Social Protection and Opportunity and Activation.

In Italy, a significant part of the NRRP is linked to social policies, highlighting the interconnections between the strategic and the specific goals and actions. It sets three transversal goals, which are essential from a social policy perspective: gender equality, protection and educational empowerment of young people, and territorial socio-economic cohesion. In November 2023, the European Commission positively assessed<sup>35</sup> the Italian NRRP, including the additional REPowerEU chapter. The Commission has stated that the plan focuses on reforms and investments to improve Italy’s growth potential, labour market conditions and social

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<sup>35</sup> Commission Staff Working Document, *Analysis of the recovery and resilience plan of Italy Accompanying the document Proposal for a Council Implementing Decision Amending Implementing Decision (EU) (ST 10160/21; ST 10160/21 ADD 1 REV 2) of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Italy*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023SC0392>).

resilience, addressing a significant subset of the economic and social challenges outlined in the Country Specific Recommendations (CSRs) adopted by the Council in 2020<sup>36</sup>. The Italian recovery plan's massive size seems to respond to the challenges of a country whose debt mainly stems from a lack of growth<sup>37</sup>.

Portugal, located in the bottom left quadrant in 2018 and moving towards the bottom right quadrant in 2021, has adopted an NRRP that, by leveraging the post-pandemic juncture to affect reforms, responds to the main structural challenges in terms of social and educational needs, as well as healthcare and housing policies, as they interlock with the climate and digital transitions. Overall, the country's movement in the plot might indicate a positive impact of the plan, at least in activation.

Another interesting case is the Polish plan, which includes six components to increase economic development and productivity and support digital and green transitions. Key macroeconomic challenges concern low labour market participation of women and disadvantaged groups, poor health services and the need to improve investments. To this end, the plan: *i)* strengthens economic and social resilience with measures to develop further childcare and long-term care, which should facilitate women's participation in the labour market (thus introducing important activation policies); *ii)* supports the accessibility and effectiveness of the Polish healthcare system; *iii)* finally, includes a comprehensive reform of the disciplinary regime applicable to Polish judges, in terms of judicial independence (which is, actually, one of the primary concern of the plan, being the strengthening of the Rule of Law a central issue).

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<sup>36</sup> See <https://www.consilium.europa.eu/en/press/press-releases/2020/07/20/european-semester-2020-country-specific-recommendations-adopted/>.

<sup>37</sup> In the 2023 CSRs, among other points, the Council recommended that Italy ensure an effective governance, to allow for a steady implementation of its recovery plan. In this context, the European Commission assessed the implementation of Italy's NRRP as under way, albeit with increasing risk of delays: for the 2023 CSRs see [www.consilium.europa.eu/en/press/press-releases/2023/06/16/european-semester-2023-country-specific-recommendations-agreed/](https://www.consilium.europa.eu/en/press/press-releases/2023/06/16/european-semester-2023-country-specific-recommendations-agreed/).

### 4.3 The impact of resources intended for social use

Given that almost all national plans focus on social issues, the data concerning the conditions of opportunity and well-being in 2021 were a helpful source to measure the (real) impact of resources intended for social use. Evidence shows that what matters is not the level of social spending but its composition and effectiveness<sup>38</sup>. Examining the Cartesian plots in Figures 1 and 2 for the two different periods under investigation (2018 and 2021), we can infer that the movements of the countries in the plots are not significant. The values for *spending on transfers to support poverty conditions* are almost unchanged. However, one notes the movement of nearly all the sampled countries towards the activation paradigm.

Reading the Cartesian plots in light of the welfare regime classification (see Section 2.1), one notes that Nordic countries are distributed evenly in the upper right quadrant. A high level of universal social benefits still characterises the welfare systems of countries such as Denmark, Iceland, Norway, Finland, and Sweden. The upper right quadrant is characterised by high values in social spending and investment in activating services and a low risk of poverty or social exclusion. However, among our sample, Sweden shows a minimal contraction in spending on social protection and activation services between 2018 and 2021.

Regarding corporatist regimes, countries such as Germany, France and Belgium sit at the centre of the graph, suggesting *a balance between spending on social protection and activation services* with lower investments than Northern European countries. Austria and the Netherlands performed well in spending on social protection and activation services, being in the same upper right quadrant of the Nordic countries (although the Netherlands, just like Sweden, showed a minimal contraction in social spending between 2018 and 2021). Germany and France significantly worsened the risk of poverty and social exclusion (ARPE) in 2021 compared to 2018.

On paper, liberal regimes should provide relatively low levels of social spending, with a system of benefits often conditioned by a means test and oriented towards impoverished citizens. These countries are distributed in the right-hand

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<sup>38</sup> A. Hemerijck, *Towards a European Union of Social Investment Welfare States*, cit. at 8, 234.



quadrants, which show *high values in investment in activation services but are positioned differently on the axis of social protection spending*. The United Kingdom appears in the Nordic countries' quadrant, while Ireland is in the bottom right quadrant.

Southern European countries and Eastern European countries performed differently. Spain sits in a central position in the graph, while Italy, Hungary, Poland, and partly Portugal share the bottom left quadrant. In these countries, *the activation paradigm does not seem to have significantly penetrated national welfare, although there is a trend in this direction from 2018 to 2021*. This indicates a positive correlation between the Recovery and Resilience Facility goals and the NRRPs, which all essentially emphasise the activation-based approach<sup>39</sup>.

#### **4.4 Fighting poverty**

Regarding the principal measures for fighting poverty, Italy is a paradigmatic example of the emphasis on the activation-based approach since the two main measures introduced to face poverty based on a social protection approach – the Citizenship Income and the Emergency Income – have been cancelled. More precisely, the Citizenship Income, introduced as the national basic income in 2019 to fight poverty, showed its positive effects during the COVID-19 pandemic, alleviating the socio-economic consequences due to the emergency period. However, it was not enough to cope with the increasing number of impoverished individuals and families. Consequently, in 2020, an extraordinary and temporary antipoverty measure – the Emergency Income – was introduced to face relative and absolute poverty increases. Adopting a complementary antipoverty measure initially made the case for

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<sup>39</sup> A caveat is apposite to this statement, which particularly concerns Southern European countries, while for Eastern European countries the RRF funds have been released by the European Commission only more recently (because of the conditionality regulation). However, though by the reading of the respective NRRPs the activation paradigm seems to characterize Hungary and Poland too, at least for Hungary it has been critically noted that the approach to social and labour protection policies has been mainly negligent so far (a mere 3% of the budget) and that “All in all, it has emerged that social and labour objectives were not of high importance for the Hungarian government in the elaboration of the Recovery and Resilience Plan”: T. Gyulavári, *National Recovery and Resilience Plan: Hungary*, 15(Special Issue 1) Italian Labour Law e-Journal 12 (2022).

readjusting antipoverty policies towards more equitable distribution and effectiveness<sup>40</sup>.

Nevertheless, the Emergency Income was cancelled at the end of 2021. Following this, the Budget Law 2022 did not introduce any structural change to antipoverty policies. Citizenship Income suffered the same fate more recently, having been definitively cancelled on 1 January 2024 (according to Law no. 85 of 2023). This *unveils how a paradigmatic shift towards universalism in fighting poverty is still far from occurring*.

On these topics, the debate has recently been raised in Germany concerning *Bürgergeld* (Citizens' income), planned from 1 January 2023 to replace "Hartz IV" as a social security benefit that people who have worked in Germany can apply for if they have been on unemployment benefits for a prolonged period and have still not been able to find a new job, or if they have worked but need a top-up to their low wage. The raising of the standard rates for subsistence is currently at the forefront of the debate because since 1 January 2024, owing to the substantial rise in the cost of living, the standard rates of *Bürgergeld* have increased by 12%, despite German budget difficulties and the sharp criticism of those who see *Bürgergeld* as an expression of a change away from the concept of strict market-activation.

Nonetheless, though it may seem that Germany is moving towards universalism, the Ministry of Labour recently proposed tightening penalties for *Bürgergeld* recipients who do not comply with their activation obligations. Another proposal, to save budget, was to cancel the bonus for training courses.

#### **4.5 Social inclusion and work policies**

Considering the main measures in the national plans regarding social inclusion and work policies, there are significant differences among the sampled countries.

Those belonging to the Nordic regime (Sweden in our study) are spending more on welfare and have more robust social protection and activation achievements. In response to the COVID-19 pandemic, the eligibility criteria for unemployment benefits (including obligations for job search and participation in activation

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<sup>40</sup> On the poverty phenomenon and anti-poverty policies in Italy see F. Maino, C.V. De Tommaso, *Fostering Policy Change in Anti-Poverty Schemes in Italy: Still a Long Way to Go*, 11(8) Soc. Sci. 327 (2022).

programmes) were suspended or relaxed in all the Nordic countries, enabling access to income security in case of job loss for many part-time workers, fixed-term workers and other atypical workers<sup>41</sup>. Specific measures were also introduced to support freelancers, entrepreneurs, artists and solo self-employed, as groups often excluded (Norway) or only partially covered (Sweden, Denmark, Finland, Iceland) by the ordinary income protection systems<sup>42</sup>. Though the social protection spending, including labour market spending, was curbed between 2020 and 2021<sup>43</sup>, this did not jeopardise the social investment component of Nordic income protection. Active labour market policy spending remained comparatively high (0.95% of GDP in Sweden), complementing unemployment benefits<sup>44</sup>. The social investment component in Nordic active labour market policies is essential in securing a highly skilled workforce. Overall, the Nordic countries have thus proved flexible and robust in managing the pandemic, continuing to sustain social investment<sup>45</sup>.

To these countries, we should add Austria and the Netherlands, which are marked by a corporatist regime, and the United Kingdom, which has a liberal regime, proving good both in terms of social protection and activation. This shows how the models (the Nordic, the corporatist and the liberal ones) are not such a relevant factor in investigating current social policies

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<sup>41</sup> According to T.P. Larsen, A. Ilsøe, *COVID-19 and Atypical Workers in Times of Crisis*, in T.P. Larsen, A. Ilsøe (eds.), *Non-standard Work in the Nordics. Troubled waters under the still surface* (2021) 192, 210.

<sup>42</sup> See T.P. Larsen, A. Ilsøe, *Nordic Relief Packages and Non-standard Workers: Towards Expanded Universalism and Institutional Inequalities*, 13 *Nordic Journal of Working Life Studies* 7 (2022), 26 and A. Hedenus, K. Nergaard, *Freelance companies in Norway and Sweden*, in A. Ilsøe, T.P. Larsen (eds.), *Non-standard Work in the Nordics. Troubled waters under the still surface*, cit. at 41, 141. Regarding the system of non-standard work and self-employment in Sweden before COVID-19 crisis see J. Kolsrud, *Sweden: Voluntary unemployment insurance*, in OECD, *The Future of Social Protection: What Works for Non-standard Workers?* (2018), 197.

<sup>43</sup> According to Eurostat, *Government expenditure on Social Protection 2021*, Online database (2023b).

<sup>44</sup> T. Bredgaard, S. Rasmussen, *Dansk arbejdsmarkedspolitik* (2022).

<sup>45</sup> For this analysis of the social investment component of Nordic income protection, remained comparatively high, see C. de la Porte, T. Larsen, *The Nordic Model: Capable of Responding to the Social Side of Crises and Sustaining Social Investment?*, 58(5) *Intereconomics* 245 (2023), 246.

compared with specific political choices, given that corporatist and liberal countries have had the same results as the Nordic ones.

To offer a more detailed insight, a specific analysis of the Swedish (as an example of the Nordic regime), Austrian (for the corporatist model) plans, and United Kingdom employment-related measures follows.

In the Swedish plan, among the measures for social inclusion, we can mention an investment to support rental housing and student accommodation, as well as several reforms concerning social housing (including the provision that public housing apartments should be distributed between different residential buildings to promote social mixing). Measures for education and training, then, aim to increase job opportunities for the unemployed. This will be done by facilitating structural change, particularly adaptation to the increasingly digital society, through workforce training, greater flexibility in the labour market and increased opportunities. These objectives will be achieved through *i)* reforming labour law and more significant investment opportunities, *ii)* resources in regional adult vocational education, and *iii)* resources for universities. Finally, a specific aim is to guarantee elderly people access to care and healthcare.

In the Austrian plan, instead, as far as work policies are concerned, among the primary measures, we can find: *i)* one education bonus (to reduce school dropouts) as an additional benefit to unemployment benefits; *ii)* a specific financing line for retraining and improving skills; *iii)* measures to support the labour market, strengthening primary education and child support measures; *iv)* further measures regarding long-term assistance; *v)* measures to rebalance the age of access to the labour market and the retirement age of men and women. Reforming the pension system is also connected to work policies, in terms of *i)* the early starter bonus, which is an economic incentive consisting in the increase in pension treatment for periods of work in the 15–20-year age group; *ii)* pension splitting: automatic splitting for young couples with children; *iii)* access to support services and institutions for long-term unemployment.

As for the United Kingdom, the response to the pandemic contained aspects of originality and a commitment to existing policies implemented to face the COVID-19 emergency. The government introduced the Coronavirus Jobs Retention Scheme (CJRS, or “furlough”) for those who could not work because of stay-

at-home orders. Under the furlough scheme, the UK government agreed to fund 80% of the gross salary of retained workers. A separate scheme was rolled out for self-employed people, providing equivalent levels of support. While furloughed workers received generous provisions outside the social security system, those who lost jobs relied on a much less generous provision via the government's flagship means-tested social security payment, Universal Credit. Anyway, three changes were made to implement Universal Credit, increasing the generosity of awards<sup>46</sup>. First, the standard allowance for Universal Credit was increased by £20 to £94 per week for 2020 and 2021. Second, Local Housing Allowance, which determines the level of support for housing costs within Universal Credit, was increased. Third, the Minimum Income Floor, which limited awards for self-employed people, was scrapped. These changes temporarily increased the generosity of support the social security system provides.

As for the other sampled countries, the prevalence of the activation paradigm is confirmed by many measures concerning social inclusion and work policies in the analysed plans.

To give some examples, in the French NRRP, active labour market policies play a central role in the measures to fight unemployment. Regarding investments to support education and employment, essential interventions for developing digital skills are planned, such as training programs for updating and reskilling the workforce. Investments favouring young people include supporting educational achievement, strengthening apprenticeships, vocational education and youth employment<sup>47</sup>.

In Portugal, following temporary measures such as the "Extraordinary Support to the Maintenance of Employment Contracts", the "Support for Progressive Recovery", and the "Extraordinary Support for the Reduction of Economic Activity" (all introduced in 2020 to immediately cope with the COVID-19 crisis), the NRRP is now providing for the strengthening of assistance to the population with a low inclusion rate and of the

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<sup>46</sup> On the UK income support package, centred on the newly created Job Retention Scheme as well as an enhanced Universal Credit for people who became unemployed, see R. Hick, M.P. Murphy, *Common shock, different paths? Comparing social policy responses to COVID-19 in the UK and Ireland*, 55 Soc. Policy Adm. 312 (2021), 315.

<sup>47</sup> See C. Crepaldi, *Un confronto tra quattro Recovery Plan europei*, in Welforum.it (2021).

national strategy for the inclusion of people with disabilities; is strengthening digitalisation as a tool for inclusion; is promoting reform of teaching and professional training. In terms of work policies, the NRRP provides financial incentives for the stabilisation of employment relationships and to defeat precarious employment.

Similarly, in the section concerning socio-economic recovery, the Irish plan mainly focuses on activation strategies, promoting measures to support job reintegration, address skills gaps and prepare the workforce for the green and digital transition, and strengthen higher education and training (which matches the traditional approach of liberal welfare regimes).

Also, the Hungarian NRRP stresses an approach based on activation strategies, as proved by its Component B (on the labour market), aiming at promoting a well-educated and competitive workforce (in line with the Country Specific Recommendations in 2019 and 2020) through the following reforms: *i*) modernisation of higher education infrastructure to meet the needs of the labour market; *ii*) renewal of vocational training; *iii*) promotion of innovation based on higher education institutions. These measures include improving practice-oriented higher education infrastructure, human capacity and innovation, vocational training institutions, digital training materials and establishing a new network for innovative research. As for other relevant social aspects, the plan aims to promote the catching-up of poor villages by fighting poverty in housing and improving living conditions, with a strategy based on supporting public services, community and employability (albeit with inadequate resources<sup>48</sup>).

In Italy, the tools to support workers can only operate if integrated with active policies. The measures within Mission 5, “Inclusion and Cohesion” of the NRRP have thus the objective to reform the system of active labour and professional training policies to introduce and implement essential levels of benefits and promote the employability of workers, with particular attention to the so-called vulnerable subjects, as well as the social inclusion of people in conditions of extreme fragility<sup>49</sup>. As far as social inclusion

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<sup>48</sup> According to T. Gyulavári, *National Recovery and Resilience Plan: Hungary*, cit. at 39, 12.

<sup>49</sup> More exactly, the planned reforms and investments are distinguished by component: M5C1 (Component C1 - “Employment policies”), divided into Reforms (Reform of active labour market and professional training policies;

is concerned, a specific resistance against universal and unconditional social systems is confirmed by the legislative reform for not self-sufficient elderly people care provided by Mission 5 - Component 2 (“Social infrastructures, families, communities and third sector”), in the framework of the “European Care Strategy”<sup>50</sup>. The reform process started in October 2022, and the enabling law was approved in March 2023 (law 23 March 2023, no. 33). the Legislative Decree was passed on 15 March 2024, no. 29. Coming to the crucial point for our purposes, while the enabling law wanted a universal benefit – graduated according to need, allowing the non-self-sufficient older adult to opt between a monetary transfer or specific personal services – Decree no. 29/2024 instead introduced an economic benefit (a fixed sum of €850/month, not graduated according to need), based on the principle of *strict selectivity in access*<sup>51</sup>.

## 5. Conclusions

Our comparative analysis suggests two main upshots.

First, one needs to find measures such as direct support without conditions. During the pandemic, regardless of the regime to which they belong, countries generally enacted emergency measures to expand and/or supplement existing social policy instruments. The budgetary rules of the Stability and Growth Pact were suspended, and Member States could spend for social purposes without considering deficits and debt. From this point of view, assessing recovery policies that EU countries developed and

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Introduction of a national plan to contrast undeclared work) and Investments (Strengthening of employment centres; Strengthening of the Dual System); M5C2 (Component C2 - “Social infrastructures, families, communities and third sector”), divided into reforms (Introduction by legislative provision of an organic system of interventions in favour of non-self-sufficient elderly people) and Investments (Support for vulnerable people and prevention of the institutionalization of non-self-sufficient elderly people; Independence paths for people with disabilities; Temporary housing and post stations for homeless people; Integrated Urban Plans for overcoming illegal settlements in agriculture).

<sup>50</sup> See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European care strategy*, 7 September 2022, COM/2022/440 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0440>.

<sup>51</sup> People under 80 will not be able to benefit from it, and only those over 80 with an ISEE of less than € 6.000 and very serious healthcare needs will be potential recipients.

detecting the relevant socioeconomic criteria applied, our findings can also contribute to further developing the existing debate in the literature on whether the socioeconomic criteria adopted in the distribution of funds after the COVID-19 pandemic have been appropriate<sup>52</sup>.

Nonetheless, regardless of the regime they belong to, once the emergency phase was over, there was a return towards activation mechanisms in all countries. In these terms, we can say that welfare models make little difference because, ultimately, contingent political choices give the direction. At the same time, we can stress the limited impact of the respective constitutional programmes on the evolution of welfare regimes. Instead, this kind of evolution was prompted – just in a temporary way – by the pandemic emergency. This raises the question of whether and to what extent constitutions can shape welfare policy<sup>53</sup>; a crucial point is the (limited) potential for constitutional provisions to have an indirect rather than directly enforceable impact on securing social entitlements<sup>54</sup>.

Our second conclusion is that the reverse can be said regarding national policy legacies: they help explain differences in the design of the policies adopted in response to COVID-19.

One should note that in the liberal welfare regime of the United Kingdom, the policy response has been quite discontinuous with previous policy legacies. Still, these discontinuities can be explained by considering that the low payment rate of pre-existing social protection schemes required a different response once the pandemic broke out, as the lockdown resulted in the loss of

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<sup>52</sup> On this debate on whether the socioeconomic criteria adopted in the distribution of funds have been appropriate (or whether other criteria, such as those of a health nature, should have been considered) see M.D. Guillamón, A.M. Ríos, B. Benito, *An Assessment of Post-COVID-19 EU Recovery Funds and the Distribution of Them among Member States*, cit. at 29.

<sup>53</sup> J. King, *Social rights in comparative constitutional theory*, in G. Jacobsohn, M. Schor (eds.), *Comparative Constitutional Theory* (2018), 144 who situates “thinking about social rights in the broader tradition of constitutionalism” by examining how constitutions have an indirect rather than a directly enforceable impact on securing social entitlements.

<sup>54</sup> From this point of view, the report by the European Parliament cited in Section 2.1 (M.E. Butt, J. Kübert, C.A. Schultz, *Fundamental social rights in Europe*, cit. at 16, 30-31) candidly expresses that “from the wide-ranging social safeguards in Austria and the United Kingdom, however, it is clear that fundamental social rights do not need to be enshrined in the constitution for the public to be assured of basic social services”.



employment income for many middle-income workers. That required Covid response programmes to be much more generous than previously existed. In Germany, France and Belgium, existing social insurance systems were expanded temporarily, with a balance between spending on social protection and activation services but lower investments compared to Northern European countries (Germany and France are also suffering a risk of poverty worsening) and a prevalence in the respective NRRPs for activation measures, while in Austria and the Netherlands levels comparable to those of the Nordic systems have been reached. The plans of Poland and Hungary contain measures aimed at social issues, too. However, the primary focus is respecting the Rule of Law<sup>55</sup>, albeit with differences between these two countries<sup>56</sup>, significantly depending on political opportunities and constraints in political developments<sup>57</sup>. In the Nordic welfare States, institutional continuity proved strong as existing job-retention schemes were temporarily expanded. In Ireland, although the traditional liberal

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<sup>55</sup> On the safeguard of the Rule of Law in those countries, it is fitting to mention the two 'twin' rulings of 16 February 2022, lastly adopted by the European Court of Justice (ECJ) on the two actions for annulment brought before the Court by Hungary and Poland, concerning the request for the Court to adjudicate on the compliance with the Treaties of the conditionality mechanism, introduced in the EU legal order through Regulation (EU) 2020/20922 to protect the EU's budget from infringements of the Rule of Law: ECJ, C-156/21, *Hungary v. Parliament and Council*, ECLI:EU:C:2022:97; ECJ, C-157/21, *Poland v. Parliament and Council*, ECLI:EU:C:2022:98. For some comments, see R. Mavrouli, *The Dark Relationship Between the Rule of Law and Liberalism. The New ECJ Decision on the Conditionality Regulation*, 7 *European Papers* 275 (2022); V. Borger, *Constitutional Identity, the Rule of Law, and the Power of the Purse: The ECJ Approves the Conditionality Mechanism to Protect the Union Budget: Hungary and Poland v. Parliament and Council*, 59 *Common Mkt. L. Rev.* 1771 (2022). On this topic, see G. della Cananea, *On Law and Politics in the EU: The Rule of Law Conditionality*, 13(1) *Italian Journal of Public Law* 1 (2021). See also the contributions published in the Volume of the *Italian Journal of Public Law* dedicated to the Rule of Law (Vol. 12, Issue 2, 2020), and particularly: G. della Cananea, *The Rule of Law in Europe: a Contested, but Essential Concept*, 12(2) *Italian Journal of Public Law* 131 (2020); G. Halmai, *The Fall of the Rule of Law in Hungary and the Complicity of the EU*, 12(2) *Italian Journal of Public Law* 204 (2020).

<sup>56</sup> On these differences see A. Dudzińska, G. Ilonszki, *Opposition Discourse About National Recovery and Resilience Plans. Poland and Hungary Compared*, 1 *Studia Europejskie* 37 (2023).

<sup>57</sup> Following the outcomes of R. Csehi, E. Zgut, *'We won't let Brussels dictate us': Eurosceptic populism in Hungary and Poland*, 22(1) *Eur. Politics Soc.* 53 (2021), identifying different political opportunities and constraints in Hungarian and Polish political developments.

approach of preference towards activation seems confirmed by the NRRP, it cannot be overlooked that the most relevant measures have been taken outside the plan, therefore remaining decisive national policy legacies and choices: first, because the Irish plan does not directly address access to quality and affordable childcare, reserving this issue for Government different actions; second, because as for social housing – one of the most pressing social problem in Ireland –, the two legislative acts mentioned in the plan (the “Affordable Housing Bill 2021” and the “Land Development Agency Bill 2021”) had both been proposed in Parliament even before the NRRP was presented to the Commission. As for Italy, we should emphasise the political choice to cancel the Citizenship Income and the Emergency Income, the two main measures introduced to face poverty based on an approach of social protection.

A related point concerns the role embodied by constitutional provisions in the interplay between existing national policy legacies and the courts. From a normative and empirical perspective, despite the recurring idea that social rights are mere programmes for governments to pursue, they are tools to set out a debate between the legislature, the people, and the courts. Normatively, constitutionalising social rights is essential as long as such rights become justifiable at a constitutional level. Empirically, there is enough evidence that well-structured and complex welfare legislation can develop independently from a formal constitutional mandate and that social rights adjudication comes to the fore when adverse political choices or holes in the legislation emerge. It is therefore not surprising that during the pandemic crisis and in its aftermath, such use of the rights discourse in courts has increased, but whether judges should directly enforce subjective social rights claims remains a question of public policy that can only admit national answers<sup>58</sup>.

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<sup>58</sup> J. King, *Social rights in comparative constitutional theory*, cit. at 53, 144. The role of supranational courts in directly enforcing subjective social rights claims is disputed. The European Court of Justice has somewhat contributed to the interplay between existing national policy legacies and the courts, allowing for some room for specific social rights to guarantee the internal market’s correct functioning. For healthcare, a reference is often made to the Watts case about the obligation of the competent national institution to authorise a patient registered with a national health service to obtain, at that institution’s expense, hospital treatment in another Member State (the case concerned the reimburse of the cost

Ultimately, the weight of national policy legacies remains strong, while constitutional welfare traditions did not have a decisive impact on how States faced the pandemic emergency. Simultaneously, the fact that all the countries under consideration reacted swiftly to the crisis suggests that economic shocks can trigger some level of social policy convergence. However, in the case of COVID-19, this convergence has only been temporary. Nonetheless, we do believe this awareness of the enduring weight of national policy legacies, on one side, as well as of the impact of economic crises on social policy development, on the other, should facilitate a deeper understanding of both national convergence and divergence in social policy responses to global crises.

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of hospital treatment received in France by Mrs. Watts, who resided in the United Kingdom): ECJ (Grand Chamber), C-372/04, *Yvonne Watts v. Bedford Primary Care Trust, Secretary of State for Health*, 16 May 2006, EU:C:2006:325. Nonetheless, the definition of healthcare services as economic services deducible from that judgment risks undermining the conception of healthcare services as universally guaranteed benefits: for this perspective, see S. Civitarese Matteucci, *Servizi sanitari, mercato e «modello sociale europeo»*, 1 *Mercato concorrenza regole* 179 (2009). There are more recent cases where the ECJ has ensured the protection of social rights, such as: ECJ (Fifth Chamber), C-585/19, *Accademia de Studii Economice din București*, 17 March 2021, EU:C:2021:210, concerning minimum safety and health requirements for the organisation of working time; ECJ (Grand Chamber), C-112/22 and C-223/22, *Procedimento penale a carico di Procura della Repubblica, Tribunale di Napoli e a.*, 29 July 2024, EU:C:2024:636, requiring equal treatment between third-country nationals who are long-term residents and nationals of the Member States in terms of social security, social assistance and social protection. See also ECJ (Fifth Chamber), judgment of 25 November 2020, C-303/19, *Istituto nazionale della previdenza sociale* (Family benefits for long-term residents), EU:C:2020:958. However, the drivers of such case law are always other principles that underpin the internal market construction rather than direct application of the European Social Pillars, the European Social Charter, and the Charter of Fundamental Rights of the European Union.