
Structural In-Work Poverty and its Antidotes

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L'existence, ça vous tord et ça vous écrase la face. À elle aussi ça lui avait écrasé la face mais moins, bien moins. Les pauvres sont fadés. La misère est géante, elle se sert pour essuyer les ordures du monde de votre figure comme d'une toile à laver. Il en reste.

*Louis-Ferdinand Céline, Voyage au bout de la nuit
(Denoël et Steel, Paris, 1932) 270*

I. Introduction: Labour Laws against Poverty

The law of work is rooted in industrialism and was born to emancipate working people, providing them with enforceable rights vis-à-vis both their employers and public authorities.¹

Appearing with increasing frequency and intensity, labour laws crafted private parties' ability to regulate their own interests, by restricting their capacity and freedom to contract, limiting property rights, and ultimately regulating their powers and prerogatives towards each other.² Still, in many respects, labour laws contributed to preserve such freedoms, property rights and prerogatives, albeit to a lesser extent than in other fields of law.³ This constraining effect on contractual freedom came as a natural consequence of labour laws being consistently tailored on subordination, a concept (and status) implying by definition a relation of power and inequality between an employer and a worker.⁴

¹ B Veneziani, 'The Evolution of the Contract of Employment' in B Hepple (ed), *The Making of Labour Law in Europe. A Comparative Study of Nine Countries up to 1945* (London and New York, Mansell Publishing, 1986) 31.

² H Collins, 'Against Abstentionism in Labour Law' in J Eekelaar and J Bell (eds), *Oxford Essays in Jurisprudence* (Oxford, Clarendon Press, 1987) 86.

³ K Pistor, *The Code of Capital: How the Law Creates Capital and Inequality* (Princeton, Princeton University Press, 2019).

⁴ O Kahn-Freund, 'A Note on Status and Contract in British Labour Law' (1967) 30(6) *Modern Law Review* 635.

Yet, a closer observation of the many facets of in-work poverty and economic inequalities across the EU allows us to reflect more attentively on the actual role of labour laws in perpetuating, or at least not adequately addressing, power and economic inequalities in contemporary societies.

The aim of this chapter is to draw some lessons from the legal research conducted so far on in-work poverty – in the chapters of this book and beyond – by questioning the ultimate function of legal norms in relation to the societal problem of lifting working people out of poverty. The main argument is that instead of counteracting the rampant resurgence of poverty amongst workers – a facet of poverty relatively uncommon during the twentieth century in Western Europe and the US – labour laws partially contributed to the worsening of some working and employment conditions, thus transforming in-work poverty into one of the most evident diseases of contemporary labour markets. As most diseases that become structural and increasingly constant, in-work poverty should not be underestimated and requires a careful consideration on possible antidotes to treat its spread amongst workers. Existing literature on the legal determinants that contribute to structuralising forms of precarity, vulnerability and ultimately social injustice, is used to reinforce the claim that the enactment of labour laws and especially their legal interpretation should be addressed to combat in-work poverty as much as to protect other individual rights of workers. In-work poverty should thus become a yardstick to benchmark labour legislation and its concrete effects.

To assess the structuralisation of in-work poverty and its countermeasures, this chapter proceeds as follows. In section II, EU social policy's strive against poverty is diachronically situated. Section III zooms in on the emergence of inequality and in-work poverty as endemic features of modern economic environments. Section IV portrays four situations of in-work poverty, corresponding to the four groups of vulnerable and under-represented persons (VUP Groups) analysed throughout this book. Section V addresses potential antidotes to structural in-work poverty, questioning how the human rights and the EU law perspectives may help counter the increase of in-work poverty. Section VI concludes with the way forward that can be envisaged against a background of fundamental societal transformations.

II. Working, Yet Poor in Europe: Dialectical and Yet Coexistent

The very title of this book evokes the contradictory coexistence between the activity or status of 'working' and the condition of being (considered as) 'poor'.

While at first glance, received narratives seem to challenge this apparent contradiction, reality shows an increasing polarisation of incomes and a slow but steady trend towards pushing those on the lower end of European societies below a

social minimum, thus exposing them to social and material deprivation and other manifestations of what is currently identified as multidimensional poverty.⁵

Accounts of the effects of recent economic trends confirm the tangible worsening of living and working conditions of vast sectors of the population, in the US as well as across the EU.⁶ Poverty emerges as the main consequence not of personal choices, but rather of a more structural double deficiency: of labour markets to provide individuals with adequate working opportunities, and of welfare states to support and develop education, housing and healthcare services.⁷ Such double deficiency articulates along different trajectories, bringing people towards impoverishment, disempowerment and exclusion from the society.⁸ Specific segments of the labour population suffer more than others, with vertical and horizontal disparities between women and men marking the reality of contemporary employment relations, and potentially influencing pension outcomes and wealth accumulation in the future.⁹ All this has been dramatically worsened by the Covid-19 pandemic,¹⁰ which inter alia amplified the (already evident) divide between essential and non-essential workers, and emphasised the need to provide the former with better working and employment conditions after the lift of pandemic-related restrictions.

Working, yet being poor, however, has not always characterised labour-related income earners, at least not in Europe. In fact, the approach taken by European institutions since the 1970s has been focused primarily on poverty as a societal issue which characterises specific clusters of the non-working population, hence marking a clear divide between working and poor.

Since 1975, targeted European anti-poverty programmes funded a number of projects and comparative research aimed at supporting those who were in a condition in which resources were 'so small as to exclude them from the minimum acceptable way of life of the member state in which they live'.¹¹ With the late 1980s and the 1990s, the activism of the then President of the EC Commission Jacques Delors helped to turn the concept of (and the policy initiatives on) 'poverty' into that of 'social exclusion', which paved the way to the more structured

⁵ Oxford Poverty and Human Development Initiative, Global Multidimensional Poverty Index 2022, *Unpacking Deprivation Bundles to Reduce Multidimensional Poverty* (Oxford, University of Oxford, 2022), available at ophi.org.uk/wp-content/uploads/G-MPI_Report_2022_Unpacking.pdf.

⁶ M Burt, *Who Owns Poverty?* (Chicago, Red Press, 2019); D McGarvey, *Poverty Safari. Understanding the Anger of Britain's Underclass* (Edinburgh, Luath Press, 2017); L Tirado, *Hand to Mouth. The Truth about Being Poor in a Wealthy World* (New York, Penguin Books, 2014).

⁷ M O'Hara, *The Shame Game. Overturning the Toxic Poverty Narrative* (Bristol, Policy Press, 2020).

⁸ B Hvinden and R Halvorsen, 'Who Is Poor? Linking Perceptions of Poor People and Political Responses to Poverty' in R Halvorsen and B Hvinden (eds), *Combating Poverty in Europe. Active Inclusion in a Multi-level and Multi-actor Context* (Cheltenham, Edward Elgar, 2016) 33.

⁹ Annabelle Williams, *Why Women are Poorer than Men and What We Can Do About It* (New York, Penguin Books, 2022).

¹⁰ S Hennigan, *Ghost Signs. Poverty and the Pandemic* (Hebden Bridge, Bluemoose Books, 2022).

¹¹ Council of the European Communities, Council Decision of 22 July 1975 concerning a programme of pilot schemes and studies to combat poverty (75/458/EEC).

interventions on social policy inaugurated in 2000 with the Lisbon Council and culminated with the statistical indicators on poverty approved in 2001 during the Laeken Council.¹²

Based on the clear mandate enshrined in Articles 151 and 153 of the Treaty on the Functioning of the European Union (TFEU), after Lisbon the combating of poverty and social exclusion became a primary objective of the EU and Member States' action. As a result, with the launch of the European platform against poverty and social exclusion in 2010, financial resources were allocated to reach the innovative and ambitious targets set in the Europe 2020 strategy, in particular the headline initiative of lifting some 20 million EU citizens out of poverty by 2020.¹³ Member States were monitored on the basis of the Social Scoreboard in the context of the European Semester, which since 2013 has featured a specific focus on the impact of public policies to reduce poverty.¹⁴

The separation between working poverty (based on a relative evaluation) and material deprivation poverty (based instead on absolute measurement) emerged relatively late in EU social policy. Despite the early 2000s adoption of statistical indicators to carefully monitor both forms of impoverishment, it was only very recently that in-work poverty was found as one of the main objectives of EU's action in the social domain. This happened in November 2017 with the proclamation of the European Pillar of Social Rights ('EPSR' or the 'Pillar'). Not by chance, the EPSR deals with in-work poverty in relation to the right to receive an adequate remuneration from work, by including the prevention of in-work poverty in its Principle 6(b). The proclamation of the Pillar prompted a revised version of the Social Scoreboard, which thereafter included new indicators marking precarity and income insecurity, such as the share of involuntary temporary employees, the median at-risk-of-poverty gap, and the housing cost overburden.¹⁵

The EPSR implementation through the 2021 Action plan further mirrored the EU Commission's activism in addressing in-work poverty as a standalone societal issue. The legal instrument most evidently showing this attitude is Directive 2022/2041 on Adequate Minimum Wages, which considers in-work poverty within

¹² For a detailed account on such historical evolution see M Ferrera and M Jessoula, 'Poverty and Social Inclusion as Emerging Policy Arenas in the EU' in R Halvorsen and B Hvinden (eds), *Combating Poverty in Europe. Active Inclusion in a Multi-level and Multi-actor Context* (Cheltenham, Edward Elgar, 2016) 67, 74.

¹³ M Daly, 'Paradigms in EU Social Policy: A Critical Account of Europe 2020' (2012) 18(3) *Transfer* 273.

¹⁴ J Ryszka, 'Protection of Social Rights as a Permanent Challenge for the European Union' (2021) 46 *Review of European and Comparative Law* 109; J Zeitlin and B Vanhercke, 'Socializing the European Semester: EU Social and Economic Policy Co-ordination in Crisis and Beyond' (2018) 25(2) *Journal of European Public Policy* 149.

¹⁵ S Garben, 'The European Pillar of Social Rights: An Assessment of its Meaning and Significance' (2019) 21 *Cambridge Yearbook of European Legal Studies* 101, 115.

its main objectives and draws a causal link between granting adequate minimum wages and the reduction of in-work poverty.¹⁶

Despite the aforementioned policy initiatives, across the European continent working poverty did not stop increasing. Moreover, the EU's target to reduce poverty by 20 million individuals before 2020 was not achieved. As the previous chapters of this book make evident, the many social and economic factors aggravating in-work poverty grew to such an extent as to question the very ability of EU law and policy to tackle it. The quasi-permanent crisis of European economies not only made it impossible to lift people from absolute poverty, but also increased the number of working people falling below the relative poverty line.

Given the persistence of the (only apparent) contradiction between 'working' and 'poor', it seems necessary to raise a broader question, namely whether the steady (and worrying) growth of in-work poverty across EU countries is exceptional or rather must be taken as a given, being an essential, endemic component of contemporary societies. The question interrogates the very role of labour laws – and of the law more generally – to reduce or rather amplify and structuralise in-work poverty, and requires courage and imagination to envisage how such structuralisation can be counteracted.

III. Current Times: The Rise of Inequalities and In-work Poverty

Writing in 1913, Richard Tawney famously remarked that 'what thoughtful rich people call the problem of poverty, thoughtful poor people with equal justice call the problem of riches'.¹⁷ On that basis, a growing (and nowadays impressive) body of literature has been focusing on the unequal distribution of income and wealth,¹⁸ especially in terms of income derived from work, at least since the emergence of labour movements demanding higher wages and better working conditions for their affiliates.¹⁹ In what follows I will try to emphasise that the connections between income inequality and in-work poverty are intuitively evident but not always measurable. Yet, the spread of inequality tends to increase the clustering of vulnerabilities and in-work poverty.

¹⁶ See L. Ratti, 'The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU' (2023) *Industrial Law Journal*. For a contextualisation of the directive within a broader set of instruments see the contribution by Marchi in this book (ch 6).

¹⁷ R Tawney, 'Inaugural Lecture on Poverty as an Industrial Problem' in *Memoranda on the Problems of Poverty* (London, William Morris Press, 1913).

¹⁸ A Atkinson, *Inequality. What can be done?* (Harvard, Harvard University Press, 2015); O Galor, *The Journey of Humanity. The Origins of Wealth and Inequality* (New York, Penguin Books, 2022).

¹⁹ T Piketty, *A Brief History of Equality* (Harvard, Harvard University Press, 2021).

The globalisation and financialisation of economies have contributed to concentrating wealth and amplifying the divide between particularly high- and particularly low-income earners. Large portions of those at the lowest end of the spectrum became incapable of improving their living conditions through work, thus hindering social mobility. While this phenomenon triggers broader political and democratic questions – related to the concentration of power and the creation of a wide typology of shields to perpetuate the status quo²⁰ – important labour law-related questions also arise from the spread of inequalities.

On a historical level, Thomas Piketty has demonstrated how labour rights in a broad sense have been negatively affected by the rise of income inequalities. Increased disadvantage in bargaining power and the concentration of decision-making in the hands of few big corporations have made it more difficult for workers to organise and advocate for their rights, which in turn has led to a decline in social cohesion. While Piketty's core argument is on progressive taxation as a means to redistribute wealth and reduce income inequality – as happened during the 'grande redistribution' between 1914 and 1980²¹ – in the field of labour rights measures such as minimum wages, collective bargaining rights and an effective enforcement of labour laws are seen as important tools to share the benefits of economic growth.²²

On a more normative level, the post-globalisation disappearance of the social contract bridging the state, capitalism and democracy has led to claim for a proper rethinking of capitalism. According to Adalberto Perulli, against a background of increased inequalities, new conditions for the regulation of economic life of humanity should be conceived along the axes of a rebalance of power between capital and labour, a renewed centrality of the nation state (with a view to de-globalising markets), and a stricter conditionality in international trade agreements, centred on the essential role of social sustainability.²³

Inequalities have spread not only between areas and countries across the globe, but also within the same country, both vertically – ie between the rich and the poor in a given societal context – and horizontally – ie between different groups or categories.²⁴ The rise of inequality in its many aspects, however, does not fully explain the increase of in-work poverty. They are in fact two distinct concepts, and so is their measurement, therefore a strict causality between the former and the latter cannot be empirically established. In-work poverty, contrary to

²⁰ R Reich, *Supercapitalism. The Transformation of Business, Democracy, and Everyday Life* (New York, Vintage Publishing, 2008); T Piketty, *Capital and Ideology* (Harvard, Harvard University Press, 2020), in particular chapter 13.

²¹ Piketty, *A Brief History of Equality* (n 19), in particular chapter 6.

²² T Piketty, *Capital in the Twenty-First Century* (Harvard, Harvard University Press, 2013), in particular chapter 10.

²³ A Perulli, 'Social Justice and Reform of Capitalism' in B Langille and A Trebilcock (eds), *Social Justice and the World of Work. Possible Global Futures* (Oxford, Hart Publishing, 2023) 23, 32.

²⁴ World Bank, *Poverty and Shared Prosperity 2022: Correcting Course* (Washington DC, World Bank, 2022).

income inequality, is a bi-dimensional construct which assumes an individual (a single worker earning a work-related income) as embedded in a collectivity (the household).²⁵ When only the individual element is considered, the main reasons driving workers into poverty are related to the type of employment, how much income such employment can generate, personal characteristics including age, sex or migrant background, and level of education. By contrast, when considering the household context, other factors such as the number of dependent children or the overall characteristics of the labour-related income produced by the household are determinant.²⁶ It is not always the same reasons identified as drivers of in-work poverty that can bring individuals, or more generally societies, towards inequality. The contrary tends, however, to hold true. In fact, inequalities fuel in-work poverty, in that high levels of income inequality tend to slow down poverty reduction. As recognised by the International Labour Organization (ILO), ‘achieving the SDG [Sustainable Development Goal] on ending poverty (Goal 1) will be possible only if that Goal is pursued in conjunction with efforts to achieve the Goal on reducing inequality (Goal 10). Reducing poverty most effectively would require a combination of higher economic growth and decreased levels of inequality.’²⁷

A 2021 Resolution of the European Parliament²⁸ considers inequalities and in-work poverty in a relationship between ‘genus’ and ‘species’, so that in-work poverty is seen as a specification of inequality. In particular, gender inequality, job precarity, low wages and the decrease in collective bargaining coverage are identified as the main factors worsening living and working conditions, thus leading to in-work poverty.²⁹

What is only sketchily delineated in the European Parliament’s Resolution – but has become clear in recent years – is that the aforesaid economic, societal and institutional determinants do not play an equivalent role, as working poverty is unevenly distributed across the labour market. The increasing inequalities and rates of in-work poverty in Europe have amplified this uneven distribution by creating, perpetuating or worsening the living and working conditions of specific groups of people, who risk finding themselves trapped and not being sufficiently supported by labour laws and welfare state institutions. This requires a careful consideration of the way these groups are studied, and the relevant regulatory responses articulated.

²⁵ See the contribution by García-Muñoz in this book (ch 1). See also L Bardone and A-C Guio, ‘In-work poverty. New commonly agreed indicators at the EU level’ (2005) *Statistics in Focus. Population and Social Conditions* 2005–5, Eurostat.

²⁶ M Filandri and E Struffolino, ‘Individual and Household In-work Poverty in Europe: Understanding the Role of Labor Market Characteristics’ (2019) 21(1) *European Societies* 130; E Crettaz and G Bonoli, ‘Worlds of Working Poverty: National Variations in Mechanisms’ in N Fraser, R Gutiérrez and R Peña-Casas (eds), *Worlds of Working Poverty: National Variations in Mechanisms* (New York, Palgrave Macmillan, 2011).

²⁷ ILO, *Inequalities and the World of Work* (Geneve, ILO, 2021) 10, 11.

²⁸ EU Parliament, Resolution of 10 February 2021 on Reducing Inequalities with a Special Focus on In-work Poverty (2019/2188(INI)).

²⁹ *ibid.*

IV. Portraits of Clustered In-work Poverty

Throughout this book – mirroring the scientific journey conducted by the Working, Yet Poor (WorkYP) Consortium from February 2020 to January 2023 – we have focused on several aspects of in-work poverty, starting with its main social and economic determinants.

We did this on the basis of a conceptual assumption: that in-work poverty particularly affects some specific clusters of working people in the labour market.³⁰ This assumption is not only empirically, but also philosophically supported by the concept of ‘disadvantage’ unfolded by Wolff and de Shalit. By arguing that the central components of disadvantage are risk and insecurity, they claimed that the law may contribute to the ‘clustering of disadvantage’. This led them to identify the exposure to such disadvantage as grouped and magnified whenever more causes of risk and insecurity intersect, giving rise to ‘corrosive disadvantage’ situations.³¹

By using the concept of VUP Groups as a valuable proxy for clusters of people more intensely experiencing in-work poverty,³² we can identify how the law of selected EU Member States and EU law itself address the clustered disadvantages of these vulnerable and under-represented persons.³³ This section provides an overview on how the legal framework at the domestic level actually contributed crystallising or even increasing in-work poverty amongst the four VUP Groups.³⁴

A. Low-skilled Employees with Standard Employment Contracts Employed in Poor Sectors (VUP Group 1)

Across the seven jurisdictions investigated by the WorkYP consortium,³⁵ the majority of working people are employed under standard employment contracts, with lower levels in the Netherlands and higher in Luxembourg. Some factors are considered as directly influencing in-work poverty of VUP Group 1 workers and are supposedly tackled by labour laws. Their concrete application and enforcement, however, may prove at times problematic, thus magnifying rather than alleviating the causes of in-work poverty.

³⁰ See the contribution by García-Muñoz in this book (ch 1).

³¹ J Wolff and A de Shalit, *Disadvantage* (Oxford, Oxford University Press, 2007).

³² See the contribution by García-Muñoz in this book (ch 1) and L Ratti (ed), *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective*, Bulletin of Comparative Labour Relations 111 (London, Wolters Kluwer, 2022).

³³ See the contributions in this book by Hiessl (ch 2) and Houwerzijl (ch 3).

³⁴ This section builds on Deliverable D5.1 of the Working, Yet Poor project, prepared by K Duffy and F Tornincasa (EAPN Europe) and available at workingyetpoor.eu/deliverables.

³⁵ Namely Belgium, Germany, Italy, Luxembourg, the Netherlands, Poland and Sweden.

Antidiscrimination laws are important to ensure equal working conditions between male and female workers, as well as to integrate migrant workers in the labour market adequately. However, focusing on what can be identified as ‘poor sectors’ – ie sectors where more than two-thirds of the working population are low-wage workers – the share of women and people with a migrant background is more prominent, especially in Italy and Poland.

The role of Vocational and Educational Training (VET) policies is also crucial, as there is correlation between the level of education and professional specialisation and the levels of in-work poverty. The obsolete system of VETs in some Member States (eg Italy) surely contributes to increasing the spread of in-work poverty among standard employees and hinders the efficacy of other labour law instruments. Research shows a rise in the proportion of jobs classified as highly skilled, and, until recently, a decline in the proportion of jobs classified as low skilled, at least by reference to occupation. Currently, almost all labour markets across EU Member States are experiencing unfilled vacancies for highly skilled jobs, suggesting greater competition for the remaining low-skilled jobs.³⁶ Education also plays a role, as in-work poverty is more visible amongst the less educated workers. Germany shows a relatively small proportion of graduates from tertiary education, more attention to upskilling, and vocational training, but a large low-wage sector (over 20 per cent of the workforce in Germany and Poland, but lower than 4 per cent in Sweden).³⁷ Data from EU-SILC show that the majority of workers in occupations classified as ‘low skilled’ have a medium level of education (this rises to 80 per cent in Poland), and diachronically highly educated workers are more and more represented in low-skilled occupations, as well as in ‘poor sectors’.

VUP Group 1 is particularly affected by the level and distribution of wages, where national legislation still maintains a pivotal role (even after the enactment of Directive 2022/2041 on adequate minimum wages).³⁸ The low level of wages may increase the risk of in-work poverty, although the number of low pay earners is typically concentrated in certain sectors (eg logistics, construction, tourism). Wage inequalities are more visible in some countries than in others, with sectoral low pay ranging between 0.74 per cent and 11.46 per cent (excluding the public sector) in Sweden and from 1.44 per cent and 66.09 per cent in Germany. Overall, Swedish and Polish workers on full-time permanent contracts are largely protected from poverty, except for the youngest workers.³⁹

Social security transfers typically contribute to shield standard workers from in-work poverty. This is particularly evident when decoupling relative and absolute

³⁶ C Hiessl, ‘Working, Yet Poor: A Comparative Appraisal’ in L Ratti (ed), *In-Work Poverty in Europe: Vulnerable and Under-Represented Persons in a Comparative Perspective* (London, Wolters Kluwer 2022) 313 ff.

³⁷ *ibid.*

³⁸ See the contribution by Marchi in this book (ch 6).

³⁹ Duffy and Tornincasa (n 34).

poverty amongst VUP Group 1 workers. Standard employees have about half of the monetary poverty levels and two-thirds of the rate of severe material deprivation of the general workforce, which also includes all those working less than full-time for a full year and all forms of non-standard work. Even those standard employees in low-skilled occupations have below average monetary (AROP) poverty rates, except in Luxembourg where already high rates are even higher for this group.⁴⁰ Monetary poverty rates for low-skilled employees in poor sectors range from 20 per cent in Luxembourg (the vast majority working under standard employment contracts), to 4.4 per cent in the Netherlands (more prone to non-standard employment). In 2019, low-skilled standard employees were just 14.4 per cent of the Netherlands workforce, demonstrating a greater problem of in-work poverty amongst non-standard employees.⁴¹

B. Solo and Dependent Self-employed Persons and Bogus Self-employed (VUP Group 2)

The self-employed cover about 7 per cent of the EU workforce, with fluctuating trends since the 2000s. The self-employed is a very heterogeneous group, which constantly changes its internal composition, therefore interpreting its in-work poverty levels and characteristics is particularly problematic. The same comparison between EU Member States proves difficult. Data show that in Italy and Poland, the self-employed account for around 20 per cent of the workforce. Germany, Luxembourg and Sweden, on the contrary, feature much lower levels, all below 10 per cent. The Netherlands saw a rising share of self-employed in the last 15 years, reaching around 12 per cent of the active labour force.

Labour laws typically abstain from regulating self-employment relations. However, in recent years several Member States have introduced either specific protections targeting the self-employed or an extension of historical protections to some segments thereof. A notable example is Italy, where since 2015 those workers whose activities are organised by an employer who decides where and when they should work, are granted the application of all labour laws.⁴²

While women account for about one-third of the self-employed as an EU average, across the seven countries investigated self-employed women represent around 40 per cent of the total self-employed in four Member States (Germany, Luxembourg, the Netherlands and Poland). Older people (over age 50) represent a larger share of the self-employed than younger people; this proportion varies

⁴⁰ Duffy and Tornincasa (n 34).

⁴¹ Hiessl (n 36).

⁴² See E Villa, G Marchi and N De Luigi, 'In-Work Poverty in Italy' in L Ratti (ed), *In-Work Poverty in Europe: Vulnerable and Under-Represented Persons in a Comparative Perspective* (London, Wolters Kluwer 2022) 121 ff.

significantly in the investigated Member States, from 26.6 per cent in Luxembourg, through 36.9 per cent in Italy, to 55 per cent in Germany. Solo self-employed, who are the most exposed to the risk of in-work poverty, account for three-quarters of the self-employed and appear to be less well-educated and more likely to be non-nationals of the country in which they work. One in five of the solo self-employed have just one dominant client, which may hide the fact that they could be considered as bogus/false self-employed.⁴³

The self-employed show lower levels of median income than employees at EU level, though the difference is smaller in the Netherlands and Sweden. Receiving a lower income exposes this group to a higher risk of in-work poverty, so that for instance in Belgium, Germany, Poland and Sweden, the monetary poverty rate of the self-employed is three times higher than that of the general workforce, and even higher focusing on the solo self-employed only. The 2017 Eurostat Labour Force Survey (LFS) – which featured an ad-hoc module on the self-employed – found that only 5 per cent of the solo self-employed had a second job. However, in some countries, having a second job is much more common amongst the self-employed (eg in Poland around 31 per cent, in Germany 16.6 per cent). In contrast to their higher monetary poverty levels, the solo self-employed at EU level have only slightly higher levels of severe material deprivation.⁴⁴

C. Flexibly-employed Workers (VUP Group 3)

VUP Group 3 includes fixed-term, temporary agency and part-time workers. The share of temporary work (thus including the first two contractual forms) is around 15 per cent at EU level, with a slight decrease during the Covid-19 pandemic.

A small but significant share of the EU's workforce (between 1.25 and 4.4 per cent of all employees) consists of involuntary part-timers, with Italy having a much higher level (around 12 per cent). In 2020, as a share of all EU part-time employment (LFS measurement), involuntary part-time employment was below 25 per cent, having declined in the years that followed the financial crisis. Across the Member States investigated in this book, there is a very wide range for involuntary part-time employment, from below 5 per cent of all part-time employment in Belgium, to a much higher two-thirds of all part-time employment being involuntarily part-time working in Italy.

As argued by Duffy and Tornincasa,⁴⁵ 'the size of the involuntary part-time subgroup is heavily affected by what is included in the definition of involuntary and whether a threshold number of hours is defined for "part-time"'. Three notions are commonly used to define what is involuntary. Involuntary part-time occurs

⁴³ Duffy and Tornincasa (n 34).

⁴⁴ *ibid.*

⁴⁵ *ibid.*

when workers: (a) cannot find full-time work (LFS); (b) would work more hours – a broader definition but then narrowed by the qualification that the respondent must be currently available to work more hours (Organisation for Economic Cooperation and Development, OECD); (c) cannot work more hours due to caring responsibilities (EU Statistics on Income and Living Conditions, EU-SILC).⁴⁶ As correctly pointed out by Houwerzijl,⁴⁷ the exclusion of casual workers from the Part-Time Work Directive results in limiting minimum protection for a considerable part of the workforce. Furthermore, the absence of any regulatory distinction between involuntary and voluntary part-time employment and the lack of an anti-abuse clause in the Part-Time Directive substantially undermine the opportunities of part-time workers to make a decent living.

D. Casual and Platform Workers (VUP Group 4)

VUP Group 4 includes a vast array of contractual arrangements leading to the performance of casual and platform work, ie work performed through digital labour platforms. While data on the overall numbers and the characteristics of this group are lacking, it seems reasonable to assume that intermittent and unpredictable work is unlikely to result in stable incomes above the poverty line, which may directly influence the rate of in-work poverty at the individual level. Moreover, while there seems to be no evidence of such a strong causal link at the household level, the loss or reduction of such forms of top-up income may plunge households into poverty. Since employers often use casualised workers to meet fluctuating demand, this is highly likely to occur.

Labour laws tend to tackle casual and platform workers' vulnerabilities by favouring their classification as subordinate employees. This may happen either through the activism of case law (as is the case almost everywhere in the EU) or by extending or creating specific legislation for such contractual arrangements. Hiessl argues that workers belonging to VUP Group 4 are in fact for the most part either dependent (and potentially bogus) self-employed or fixed-term and/or part-time employees, along with a very few ordinary employees, who are 'very likely to be low-skilled'.⁴⁸

The main problem, however, remains avoiding an excessive casualisation of work, which at times happens regardless of the type of contract in question and depends much more on the overall work-intensity at the household level. The combination of involuntary part-time jobs and casual assignments, oftentimes distributed through online platforms, renders VUP Group 4 workers inextricably bound to in-work poverty risks.

⁴⁶ *ibid.*

⁴⁷ See the contribution by Houwerzijl in this book (ch 3).

⁴⁸ Hiessl (n 36).

V. Searching for Antidotes to Structural In-work Poverty

When describing in-work poverty as structurally embedded in contemporary societies and to some extent facilitated by the law, one might get the impression it is inevitable. Being identified as an endemic characteristic of EU labour markets, the spread of in-work poverty may look like an insurmountable obstacle and yet an inexorable consequence of current economic and legislative developments.

Yet, nothing should lead to considering in-work poverty as unavoidable or irreducible. On the contrary, research shows how much has been and can be done from a legal perspective to effectively address the major causes of in-work poverty and reduce its levels across EU countries.

A. Adopting a Human Rights Approach: The Debate on the ‘Social Minimum’ and Structural Injustice

Human rights studies suggest a number of valuable research trajectories which deserve attention. Courts have in fact deployed constitutional rights in an effort to achieve greater economic justice relying precisely on specific human rights.⁴⁹

Katie Boyle identified two main approaches to the constitutionalisation of the so-called ‘social minimum’, ie the minimum standard to achieve a dignified life.⁵⁰ On the one hand, a substantive approach might be translated into the recognition of a specific right to a given outcome or the right to a policy to achieve an outcome (such as a public policy to get decent housing). On the other hand, a procedural approach would lead to demanding procedural fairness from public authorities while adopting certain decisions that affect individuals. Both approaches, Boyle suggests, would require considering absolute and relative thresholds, so that not only is the bare minimum achieved, but also extreme inequalities are reduced at societal level.⁵¹

A human rights approach is particularly promising in axiological terms, and it can also bring methodological insights on how to look at structural inequalities in contemporary labour markets. This has been recently outlined by Virginia Mantouvalou in her reflection on structural injustice.⁵² Building on the concept

⁴⁹ M Versteeg, ‘Can Rights Combat Economic Inequality?’ (2020) 133(6) *Harvard Law Review* 2053.

⁵⁰ K Boyle, ‘Constitutionalising a Social Minimum as a Minimum Core’ in T Kotkas, I Leijten and F Pennings (eds), *Specifying and Securing a Social Minimum in the Battle Against Poverty* (Oxford, Hart Publishing, 2019) 273, 276.

⁵¹ *ibid* 280.

⁵² V Mantouvalou, *Structural Injustice and Workers’ Rights* (Oxford, Oxford University Press, 2023).

of structural injustice coined by Iris Marion Young,⁵³ Mantouvalou's approach to the working poor relies on a notion of 'disadvantage' which largely coincides with the idea of VUP Groups as clusters of people more visibly exposed to the risk of in-work poverty.⁵⁴ She claims that welfare-to-work measures altered their typical function – of activating people with a view to (re)integrating them in the labour market – by changing this function from supporting workers to forcing and trapping workers into low-paid jobs.⁵⁵ Conditionality systems and over-bureaucratisation of welfare-to-work schemes did not simply penalise jobseekers, but also and especially deteriorated the situation of those who are already employed but earn low incomes.⁵⁶ The main argument maintained by Mantouvalou is that legal rules aimed to remedy labour market vulnerabilities in fact contributed to amplify them, putting welfare recipients in front of the alternative of whether to be out of work (thus still benefiting from welfare measures) or working poor. This happened not only through activation policies, but also by allowing fragmentation and casualisation of work relations.⁵⁷ Mantouvalou's solution to address this situation is to seriously adopt a human rights perspective – one which brings the right to work, the prohibition of inhuman and degrading treatment, and the right to a subsistence minimum and to social assistance to the forefront. With a view to identify the (unintended but determinant) role of the legal systems in exacerbating in-work poverty, Mantouvalou identifies the state as responsible and the role of human rights monitoring bodies (including courts) as crucial, while reserving additional functions to the European Committee of Social Rights (ECSR), the ILO and the UN Special Rapporteur on Extreme Poverty and Human Rights.⁵⁸

Further developing this perspective, Olivier De Schutter has argued that poverty in general – and in-work poverty in particular – could be strictly considered as a prohibited ground of discrimination,⁵⁹ often intersecting with other recognised grounds including gender, nationality and ethnic origin. While this line of reasoning has not yet found proper recognition in court, it may unfold further avenues to enforce human rights related to a situation of in-work poverty vis-à-vis the state, which is responsible for not fulfilling the goals of shared prosperity and equality enshrined in supranational declarations and national constitutions.

⁵³ IM Young, *Responsibility for Justice* (Oxford, Oxford University Press, 2011). On this (now affluent) literature see M McKeown, 'Structural Injustice' (2021) 7 *Philosophical Compass* 16; and more recently M McKeown (ed), *With Power Comes Responsibility: The Politics of Structural Injustice* (London, Bloomsbury Academic, forthcoming).

⁵⁴ Mantouvalou (n 52) 74.

⁵⁵ *ibid.*

⁵⁶ See also D Seikel and D Spannagel, 'Activation and In-work Poverty' in H Lohmann and I Marx (eds), *Handbook on In-Work Poverty* (Cheltenham, Edward Elgar, 2018) 245.

⁵⁷ Mantouvalou (n 52) 87, 88.

⁵⁸ Mantouvalou (n 52) 171, 173.

⁵⁹ O De Schutter, 'A Human Rights-Based Approach to Measuring Poverty' in M Davis, M Kjaerum and A Lyons (eds), *Research Handbook on Human Rights and Poverty* (Cheltenham, Edward Elgar, 2021) 5, 7.

From an ILO perspective, Keith Ewing and Lord Hendy KC have maintained that achieving a just minimum, including a fair minimum remuneration, is only possible through establishing procedural justice (ie a process in which employers and trade unions freely negotiate on working conditions) coupled with substantive justice, aimed at recognising both 'equal remuneration for work of equal value' and 'fair remuneration for work of different value'.⁶⁰ As a result, getting the 'just share of the fruits of progress'⁶¹ would be legally achieved by counteracting wage disparities and thus preventing excessive differences between the highest and lowest ranges of wage scales.⁶²

The many ways human rights law and supranational adjudication may support in-work poverty claims leave legal remedies largely uncharted. The rise of structural inequalities and vulnerabilities renders it necessary to unveil the potential of existing tools aimed to identify specific responsibilities of the state.⁶³ Yet, the road seems still long, not least because the penetration of human rights in the public discourse and, ultimately, the efficacy of its main principles on concrete changes in policymaking is contested and still unexplored.⁶⁴

B. Expanding the Interpretation of Minimum Wage Rules to Include the Household Dimension

An alternative direction towards a more effective legal response to in-work poverty lies at the level of legal interpretation of existing policies and principles. Pivotal in this sense are the principles governing minimum wages, stemming from the international, the EU and the national level, all of which seem to stress the importance of the household dimension.

The Universal Declaration of Human Rights (1948) proclaims the right of everyone to 'just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection' (Article 23(3)). The two ILO Minimum Wage Conventions on minimum wage machinery (1928 and 1970) aim to ensure a level of minimum wages that is appropriate with due regard inter alia to 'the needs of

⁶⁰ KD Ewing and KC Lord Hendy, "A Just Share of the Fruits of Progress": What Does It Mean? in B Langille and A Trebilcock (eds), *Social Justice and the World of Work. Possible Global Futures* (Oxford, Hart Publishing, 2023) 66, 70.

⁶¹ See K Ewing, 'A Just Share' – *The Case for Minimum Wage Reform* (Liverpool, Institute of Employment Rights, 2021).

⁶² I Katsaroumpas, 'A Right Against Extreme Wage Inequality: A Social Justice Modernisation of International Labour Law' (2021) 32 *King's Law Journal* 260; H Collins, 'Fat Cats, Production Networks, and the Right to Fair Pay' (2022) 85(1) *Modern Law Review* 1, 24.

⁶³ Mantouvalou (n 52).

⁶⁴ See S Moyn, *Not Enough: Human Rights in An Unequal World* (Cambridge, Harvard University Press, 2018). Critically, on the claim that human rights approaches have not led to the expected outcomes see: Versteeg (n 49) 2059–60.

workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups” (Article 3(1)(a), ILO Minimum Wage Fixing Convention, 1970 (No 131)). In a similar vein, the (revised) European Social Charter (1996) (ESC) provides that workers ‘have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families’ (Article 4). Finally, in the EPSR the reference point for anchoring the adequacy of minimum wages (as per Principle 6) is identified with ‘the needs of workers and their families according to national economic and social conditions’, thus building on the constitutional traditions of some European Member States.

Despite their heterogeneous origin and fabric,⁶⁵ supranational sources seem to already encompass the two main dimensions of in-work poverty – individual and household-related. So far, the legal interpretation of the right to an adequate wage has been limited to consider only the individual level, focusing on the employment relation between an employee and an employer. While this is certainly in line with the legal nature of the ‘fair exchange’ embedded in employment contracts,⁶⁶ the societal (and macroeconomic) dimension of the right to an adequate minimum wage should suggest considering the needs of the worker’s household as a compelling element in the fixation of remuneration. Of course, such consideration should not lead to wage differentials paid directly by the single employer, who cannot bear the costs of individual aspects related to the household dimension and composition. However, these aspects should be considered by the state while imposing taxation and social contributions on wages – and correspondingly while delivering family-related benefits – thus reaching a more progressive and differential treatment depending on the effective needs of the household. Against the objection that the labour laws should not perturbate the individual setting of mutual interests between a worker and their employer, it is easy to reply that the law already does so whenever it considers individuals eligible to receive social security benefits or other financial transfers or services from welfare states.

When questioning whether the aforesaid supranational sources have in fact been operationalised by concrete legislative measures, the text of Directive 2022/2041 comes to the forefront.⁶⁷ Despite being directly linked to Principle 6 of the EPSR,⁶⁸ the Directive fails to recognise the household dimension in its stipulations. Recitals 4 and 5 of the Directive’s preamble merely quote the European Social Charter where the family dimension is contemplated. Households are never mentioned throughout the text of the Directive, nor is the household dimension

⁶⁵ For a contextualisation of economic and social rights in the Universal Declaration of Human Rights, see: N Bhuta, ‘Recovering Social Rights’, IILJ Working Paper 2023/1, 20, 21.

⁶⁶ M Freedland and S Deakin, ‘The Exchange Principle and the Wage-Work Bargain’ in M Freedland (ed), *The Contract of Employment* (Oxford, Oxford University Press, 2016) 52, 72.

⁶⁷ For a contextualisation of the directive and its main objectives see Ratti (n 16).

⁶⁸ Which, as mentioned earlier, considers ‘the needs of workers and their families according to national economic and social conditions’ as an integral part of the right to a fair remuneration.

cited by Article 5 when focusing on the procedures to ensure adequacy of minimum wages. Against this background – and given the importance of supranational references in the field of remuneration⁶⁹ – a possible interpretation of Directive 2022/2041, and specifically of its Article 5(1) focused on the goals ‘promoting social cohesion and upward social convergence, and reducing the gender pay gap’, cannot avoid considering the needs of the worker’s household as a necessary criterion to achieve those goals.

Not only is in-work poverty an issue for welfare states,⁷⁰ but it is also (and particularly in a European context) an issue for the systems of labour law. The need to adequately consider the situation of the worker’s household can therefore emerge as a specific obligation for the single Member State which, in order to successfully meet the targets established by the Directive, should design its taxation and social contribution policies in a way to relieve those workers living in households in danger of falling below the poverty line.

Whether this conclusion is partially contradicted by the narrow legal basis chosen by the EU legislator to articulate Directive 2022/2041 on adequate minimum wages depends on how the heated debate preceding the final approval of the directive is read. An option would be complementing the legal basis of Article 153(1)(b) TFEU on ‘working conditions’ – which remains controversial due to an alleged contrast with Article 153(5) TFEU⁷¹ – with the more ‘reassuring’ legal basis of Articles 174 and 175 TFEU on social and territorial cohesion. In reality, the fact that such alternative or complementary legal basis – which provides inter alia for Commission reporting on the progress made towards achieving economic, social and territorial cohesion every three years⁷² – was not chosen does not seem to run against still considering social cohesion as a guiding principle to interpret the same Directive 2022/2041. The combat of social inequalities, therefore, derives from an overall consideration of the EU’s objectives in the social sphere as enshrined in Article 3 of the Treaty on European Union (TEU) and Articles 9 and 151 TFEU.

C. Revisiting Labour Law’s Horizon to Tackle the Vulnerability of the Self-Employed and Precarious Workers

The received approach on how to reduce in-work poverty levels usually centres on the deployment of public policy (in particular fiscal and/or welfare) measures, together with an efficient guarantee of work-related incomes. Indeed,

⁶⁹ Including the ILO, ESC, Charter of Fundamental Rights (CFR) and other international covenants.

⁷⁰ L Simmons (ed), *Welfare, The Working Poor, and Labor* (London and New York, Routledge, 2004).

⁷¹ See CJEU, Case C-19/23, *Denmark v European Parliament and Council of the European Union*.

⁷² See the latest one approved in 2022: European Parliament resolution of 15 September 2022 on economic, social and territorial cohesion in the EU: the 8th Cohesion Report (2022/2032(INI)).

this reflects an attitude to in-work poverty from a redistributive perspective, which tends to prioritise *ex post* measures as an effective way to reduce negative externalities.

Recent studies in private law challenge this approach, (re)discovering how labour law may also serve as an *ex ante* driver of emancipation. It is argued that ‘a concern for poverty, properly defined, is integral to relational justice and, consequently, bears on the morality of private law.’⁷³ Worker’s protections, therefore, should be anchored to a contractual approach instead of fully relying on the logics of public law.⁷⁴ Reflecting the relational measurement of in-work poverty, those who are in a more precarious situation – regardless of their status, the duration of their assignments, and the quantity of hours performed – may well benefit from a labour law approach. As the analysis in this book has revealed, casual, non-standard, and self-employed workers are among the most exposed to the vulnerabilities typical of the working poor precisely because established levels of treatment do not apply or are practically unenforceable. The persistence of in-work poverty among standard employees, however, suggests that it may not be enough to extend typical labour law guarantees to all types of employment.⁷⁵ What those workers claim, in fact, is not only to gain access to (some parts or the whole) labour legislation, but also to overcome their situation of vulnerability and under-representation.

Yet, labour laws were generally unable to address the wide spread of casual working arrangements,⁷⁶ including involuntary part-time, casual work, and even zero-hours contracts.⁷⁷ In the European context, Directive 2019/1152 on transparent and predictable working conditions marks a clear change and provides some useful tools, making the use of ‘on-demand or similar employment contracts, including zero-hour contracts’ conditional upon the obligation of Member States to ensure that ‘effective measures to prevent their abuse are in place.’⁷⁸ More specifically, among the ‘complementary measures for on-demand contracts’, the Directive provides for ‘a rebuttable presumption of the existence of an employment contract or employment relationship with a guaranteed amount of paid

⁷³ H Dagan and A Dorfman, ‘Poverty and Private Law: Beyond Distributive Justice’ (2023) *American Journal of Jurisprudence*.

⁷⁴ H Dagan and M Heller, ‘Can Contract Emancipate? Contract Theory and The Law of Work’ (2021) 24(1) *Theoretical Inquiries in Law* 49 ff.

⁷⁵ As it is the case for instance to the hetero-directed self-employed workers in Italy. See for further details: Villa, Marchi and De Luigi (n 42); M Del Conte, E Gramano, ‘Looking to the Other Side of the Bench: The New Legal Status of Independent Contractors Under the Italian Legal System’ (2018) 39(3) *Comparative Labour Law & Policy Journal* 579.

⁷⁶ ACL Davies, ‘Regulating Atypical Work: Beyond Equality’ in N Countouris and M Freedland (eds), *Resocialising Europe in a Time of Crisis* (Cambridge, Cambridge University Press, 2013) 244.

⁷⁷ For a discussion on how zero-hours contracts cannot be seen as employment contracts in common law see: P Elias, ‘Changes and Challenges to the Contract of Employment’ (2018) 38(4) *Oxford Journal of Legal Studies* 869, 880.

⁷⁸ Preamble 35, Directive 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union.

hours' (Article 11). Directive 2019/1152 also features provisions on the maximum duration of probationary periods (Articles 4(2)(g) and 8) and requirements for predictable working patterns (Articles 4(2)(m) and 10).⁷⁹ These provisions seem to suggest that a correct implementation of the Directive should oblige Member States to effectively increase the protections for casual workers and reduce their risk of in-work poverty.

Mirroring what has been already done with Council Recommendation (2019/C 387/01) of 8 November 2019 on access to social protection for workers and the self-employed, in the field of labour law, casual, non-standard and self-employed workers should also become part of the policy discourse. Status, social protection and collective representation may therefore become the three testbeds to realise a proper emancipation to tackle their insecurity, income discontinuity and, eventually, in-work poverty.⁸⁰

VI. Conclusion: Societal Transformations and the Way Forward

This chapter provided an overview of existing issues at EU and Member State level – including policy initiatives – concerning the wide spread of in-work poverty across Europe. Years of studies and reflection on the many determinants and internal components of in-work poverty helped outline important regulatory instruments that may and should be refined or modified. Still, a number of societal transformations question the very ability of such instruments to be really fit for purpose in the years to come.

A first challenge that regulatory measures aimed to combat in-work poverty will need to address concerns the variations in *demographic* structures of European societies. Van Winkle and Struffolino, for instance, have provided an interesting observation on the US labour market, claiming that the age-specific effects of family demographic processes are 'considerably larger compared to the average effects of traditional stratification factors reported in the literature'.⁸¹ As a consequence, the risk of belonging to the working poor is 'relatively stable

⁷⁹ For an overall assessment of the Directive's impact see B Bednarowicz, 'Delivering on the European Pillar of Social Rights: The New Directive on Transparent and Predictable Working Conditions in the European Union' (2019) 48 *Industrial Law Journal* 604 ff; JM Miranda Boto, 'Much Ado about Anything? The New Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions in the European Union' in F Marhold and others (eds), *Arbeits- und Sozialrecht für Europa. Festschrift für Maximilian Fuchs* (Baden Baden, Nomos, 2020) 157 ff.

⁸⁰ A Perulli, 'A Critique of Self-Employment' (2022) 13(2) *European Labour Law Journal* 307, building on R Semenza, F Pichaud (eds), *The Challenges of Self-Employment in Europe. Status, Social Protection and Collective Representation* (Cheltenham, Edward Elgar, 2019).

⁸¹ Z Van Winkle and E Struffolino, 'When Working Isn't Enough: Family Demographic Processes and In-work Poverty across the Life Course in the United States' (2018) 39(12) *Demographic Research* 365 ff.

over individual life courses', while a 'wider prevalence of in-work poverty during defined phases characterized by care responsibility (typically when small children are present in the household)' can be identified.⁸² Furthermore, examining how the household composition affects the structure and persistence of in-work poverty, Thiede, Sanders and Lichter have observed that single-parent families expose the household to major risks of in-work poverty that are not adequately addressed by specific family-oriented policies.⁸³ Variations may occur cross-country even in the European context, as welfare state models largely remain regulated at Member State level. This may explain why an increase in household resources may prove an effective remedy to protect the household from in-work poverty only in some jurisdictions.⁸⁴ The increase in life expectancy and the progressive ageing of European population – regularly certified by Eurofound⁸⁵ – still deserve to be thoroughly analysed for their effects on any proposed measure to reduce in-work poverty levels, as it may well be that some policy options are more practicable than others precisely considering the demographic composition of the workforce. In countries where intergenerational dependence is more structural, typically located in the south of Europe, the family may keep young people out of poverty (being supported by family resources) but this may also increase the risk of poverty for older people (because they have also the needs of the young adults to meet). Conversely, in the Nordic countries where intergenerational dependency is weak and young people leave home early, in-work poverty is more common among young people but has been historically a transitory phenomenon.⁸⁶

A second important aspect which deserves attention is how the law addresses the *longitudinal* trajectory of in-work poverty. The way people enter and exit in-work poverty is dramatically important from a policy perspective, as it makes it possible to distinguish whether the law has been effective or not in improving working and living conditions. Also, this aspect needs to be understood against the background of very diverse welfare models in Europe.⁸⁷ Considering the composition of the labour force, both horizontally and from a longitudinal perspective, Hick and Lanau have found that labour market events, such as a decrease in the hours worked both at the individual and the household level, trigger the majority of in-work poverty entries. On the contrary, exits from in-work poverty are

⁸² *ibid.*

⁸³ B Thiede, S Sanders and D Lichter, 'Demographic Drivers of In-work Poverty' in H Lohmann and I Marx (eds), *Handbook on In-Work Poverty* (Cheltenham, Edward Elgar, 2018) 109 ff.

⁸⁴ See A Polizzi, E Struffolino and Z Van Winkle, 'Family Demographic Processes and In-work Poverty: A Systematic Review' (2022) 52 *Advances in Life Course Research* 15.

⁸⁵ See at last Eurofound, *Demographic Outlook for the European Union* (Brussels, European Union, 2022).

⁸⁶ H Lohmann, 'Welfare States, Labour Market Institutions and the Working Poor: A Comparative Analysis of 20 European Countries' (2009) 25(4) *European Sociological Review* 489 ff.

⁸⁷ R Layte and C Whelan, 'Moving in and out of poverty: The impact of welfare regimes on poverty dynamics in the EU' (2003) 5(2) *European Societies* 167, 191.

typically due to household-related events, including an increase of income, number of income earners, and hours worked in the household.⁸⁸ Their conclusion – referred to the UK – is that most of the working poor population departs from situations of in-work poverty by exiting poverty in general. This suggests the importance not only of stabilising the working situation and increasing the number of jobowners in the household, but also of guaranteeing basic welfare tools like housing, childcare, healthcare and transport, as crucial preconditions to favour exiting trajectories from in-work poverty.⁸⁹

A third significant societal transformation which requires specific policy attention relates to the structural *casualisation* of labour relations. Unpredictable working schedules and uncertain employment prospects lead to low work-intensity at the household level, which has been clearly outlined as one of the most serious causes of in-work poverty in Europe. This raises the broad question of adapting existing indicators to the current reality of employment relations. Since the threshold of in-work poverty is identified considering those who are ‘in-work’ – ie have worked for more than half of the reference period (a year) – current indicators may be too rigid and fail to capture all those casual and intermittent work assignments that are not continuous enough to meet the threshold. As already flagged in the 2019 European Social Policy Network (ESPN) study on in-work poverty across Europe,⁹⁰ there is ample margin for improvement of current statistical indicators, as several determinant factors are not adequately considered and could make the dynamic situation of current labour relations more visible to policy makers.

The formulation of specific antidotes against in-work poverty leaves us with the impression that the complex and changing nature of the phenomenon is still not entirely acknowledged. This is in spite of the current social policy framework at EU level, as solemnly enshrined in the interinstitutional proclamation of the EPSR. A literal and contextual interpretation of Principle 6 of the Pillar, in fact, should lead to concluding that in-work poverty is not something which must be merely ‘reduced’ – as happens at UN level with SDG 1 on absolute poverty – but something which must be prevented,⁹¹ avoided⁹² and combatted.⁹³ An obligation of result in terms of policy output, therefore, can be derived from that Principle, which requires that not only the EU and its institutions, but also the Member

⁸⁸ R Hick and A Lanau, ‘Moving In and Out of In-work Poverty in the UK: An Analysis of Transitions, Trajectories and Trigger Events’ (2018) 47(4) *Journal of Social Policy* 661 ff.

⁸⁹ This conclusion is in line with what have been identified as ‘indirect measures’ to combat in-work poverty. See ESPN, *In-work Poverty in Europe. A Study of National Policies* (Brussels, European Commission, 2019). See also the contribution by R Peña-Casas, D Ghaliani and K Kominou in this book (ch 7).

⁹⁰ *ibid.*

⁹¹ Principle 6(3) EPSR, English, German and Italian versions.

⁹² Principle 6(3) EPSR, French, Dutch and Spanish versions.

⁹³ Principle 6(3) EPSR, Portuguese version.

States (equally bound by the EPSR at Council level) are called to introduce specific policies aimed at achieving that result. The absence of any reference to an overall approach to combat in-work poverty in the 2021 EPSR Action plan requires to be filled by an overall strategy on in-work poverty, intended to direct efforts and coordinate policies. The regulatory capabilities to prevent in-work poverty are all but fully developed. The EU and its Member States must do more and better, and scholars too.