Conclusion: Solidarity as a Public Virtue?

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Studying solidarity at the time of the crisis with regard to vulnerable groups (the unemployed, migrant, asylum seekers and refugees, and people with disabilities), which have substantial and symbolic dimensions relevant to solidarity, means putting the legal force of solidarity as binding principle for law and policy-makers and as constitutional paradigm in constitutional litigation to a double critical test. Drawing univocal and perfectly linear conclusions from this research is very difficult and might be misleading. The failure to meet European citizens' expectations in terms of both capacity to provide adequate responses to basic needs, and of crafting new, alternative visions of future European societies is evident. And yet, the ongoing political, social, and academic debates of the past decade have revealed the latent potency of existing legal, institutional, social principles and mechanisms that could prove useful when re-thinking and re-conceptualising social, political and legal institutions at national and supranational level. New actors have emerged over the years (movements, groups, parties, etc.), and others (such as courts, for example) have sometimes revealed more valiant than expected. Therefore, a comparative discussion of the most interesting and peculiar elements of the institutional, political and legal context of solidarity in Denmark, France, Germany, Greece, Italy, Poland, Switzerland, the UK and at the level of the European Union unveils specific traits of policy and legal systems and their social responses that are crucial for reflecting on whether – following Habermas' call (2013)- the path towards a more pervasive European (i.e. transnational) solidarity to politically overcome the crisis is viable.

In these comparative conclusions, we will first reflect on the significance and the "function" of solidarity in the studied countries' legal systems, highlighting: whether the formal inclusion of solidarity in the constitutional texts and in the EU treaties makes a difference, the most important implications of solidarity as a source of legislation and policies at both national and EU level, and the most relevant dimensions of solidarity in the different jurisdictions. Secondly, through the comparative scrutiny of legal

and policy regulation of the three research domains of unemployment, disability and immigration asylum and of the impact of the crisis, we will discuss whether the actual legal and policy framework is coherent with the principle of solidarity at country and EU level transpiring from our analyses.

Towards a Common Notion of Solidarity?

Solidarity as a legal concept has a long history, dating back to Roman times. In the Roman law of contracts, the *obligatio in solidum* bound the co-debtors to the whole, and not just part (*pro-rata*) of the debt – since the joint-liability rule was in existence at that time (Scacconi 1973; Parenti 2012). This meant that a person had an *obligatio in solidum* when she was responsible for the whole debt of another person (something like "all for one and one for all"). A legal "presumption of solidarity existed for people as members of specific groups (family, guild, but also people bound together by religion, as was the case for Jewish people, for example, up until the early 19th century (Leff 2002)). It was the Napoleonic code in 1804 that forbade the presumption of solidarity based on these kinds of memberships in specific groups because "it threatened the solidarity of citizens based on the new creed of liberty, equality and fraternity" (Hittinger 2016, 19). As explained by Blais, the French Revolution, with its emancipatory impetus, had in fact transformed subjects into citizens, setting people free from loyalties imposed by the *ancième regime*. But this opened a new, crucial question: the creation of new ties among "emancipated" and independent people. Solidarity became a strategic asset to reconcile individual independence and collective relations in a society where citizens' freedoms implied the consolidation of the relationships holding those same citizens together (Blais 2007). Contrary to the principles underlying any other private responsibility, the new notion of solidarity does not divide people into those that provide for a guarantee or donate and those that benefit from the same guarantees and donations (Rodotà 2014). Solidarity makes every member of the community, i.e. every citizen, contribute to and at the same time benefit from being a member of that same community. As a legal technique, solidarity allows for bringing unfamiliar persons and heterogeneous interests together, creating a collective responsibility and "allows for thinking individuals on a collective dimension", even in the absence of any other social ties except for an *obligatio in solidum* (Supiot 2015, 7).

By recognising the revolutionary principle of solidarity (named *fraternité* in that context*)* as the socio-legal marker of the nation states' membership, the newly created national communities of the 18th and 19th centuries transformed solidarity from a philosophical concept into a binding legal standard. Since then, solidarity has become a general principle of law, first at national level, and then, through the action of the European Court of Justice and the principles endorsed by the Charter of Fundamental Rights of the EU, at the European level. In fact, at the end of the Second World War, solidarity was fully entrenched in constitutional texts in Europe (De Búrca and Weiler 2011; Tuori 2015). This was when a new model of constitutions grounded in the value of the person, human dignity and fundamental rights, bloomed. In these constitutions, rights and liberties are conceived in a "solidary" frame, therefore the respect for and guarantee of those rights and liberties has to be intrinsically combined with the meta-principle of social solidarity (Cippitani 2010, 34-37). From the research perspective of the present volume, this is a highly relevant legal innovation. The interweaving of rights and solidarity becomes clear, for example, in Art. 25(4) of the Greek constitution ("The State has the right to claim off all citizens to fulfil the duty of social and national solidarity") and in Art. 2 of the 1948 Italian Constitution ("The Republic recognises and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity"). Inviolable human rights are therefore intertwined with the "unalterable duty to […] social solidarity."

At the EU level, on 9 May 1950, the French Minister Robert Schuman, proposing the creation of a European Coal and Steel Community, declared that "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity." Solidarity features in the EU landscape since the very beginning, despite a number of ambiguities, and "the Lisbon treaty conforms [its] centrality in the EU's future constitutional arrangements" (Ross 2010:45), even though the walk toward its effective implementation may still be long and uneven.

Solidarity in the Constitutions

From the comparative analysis of Part I chapters, solidarity clearly emerges as a founding principle for all analysed legal systems, even though it is not necessarily listed in specific constitutional provisions. In fact, it is explicitly named in the constitutional texts in four cases (France, Greece, Italy and Poland), in three (France, Poland and Switzerland) solidarity is also evoked (or only) in the preamble to the constitution, and in the remaining three cases (Denmark, Germany and the UK) it has to be inferred by a systematic interpretation of contiguous legal principles, such as equality, human dignity, etc. In the EU treaties, a number of articles explicitly refer to solidarity: from Art. 3 of the TEU, enunciating the objectives of the Union (the Union "shall promote economic, social and territorial cohesion, and solidarity among Member States") to Art. 80 of the TFEU, ("The policies of the Union set out in this Chapter [V, devoted to EU policies on border checks, asylum and immigration and their implementation shall be governed by the *principle of solidarity* and *fair sharing of responsibility, including its financial implications*, between the Member States"- emphasis added), and Articles 122 and 194 of the TFEU which establish a principle of solidarity in the field of economic policy, and, in particular, with reference to energy policy: "Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy".

When Solidarity Appears in the Constitutional Document

In the Greek, Italian and Polish constitutions, the principle of solidarity is entrenched among the founding principles of the State, which means that it assumes an overarching value with respect to other constitutional provisions that have to be interpreted in line with solidarity. Therefore, solidarity is to be considered a meta-value, with a higher legal force: it should pervade law and policy-making and, in the case of conflict or balancing with other constitutional values (for example, a balanced budget), it shall prevail. Nonetheless, as we have discussed in country chapters, during the

crisis this has rarely been the case in law and policy-making, and also (even though to a lesser extent) in constitutional litigation.

Article 2 of the Italian Constitution and Art. 25(4) of the Greek Constitution frame solidarity into the context of duties, in direct dialogue with rights that are recognised and entrenched in the first part of Art. 2 of the Italian Constitution, and in the previous clauses of Art. 25 of the Greek one. In Poland, solidarity is framed in the broader context of regulation of the social market economy. Art. 20 ("A social market economy, based on the freedom of economic activity, private ownership, and *solidarity*, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland") acknowledges solidarity as a counter-balancing value (together with dialogue and cooperation) against freedom of economic activity and private ownership. However, the Polish Constitution also mentions solidarity in the Preamble ("We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the *obligation of solidarity with others*, and respect for these principles as the unshakeable foundation of the Republic of Poland"). Here the scope is broader: the recognition of human dignity and fundamental rights. Thus, the Polish legal system attributes solidarity a double function: a negative one (limits on market economy) and a positive one (source of rights and social cohesion).

Poland is not the sole country evoking solidarity in the Preamble; both the French and the Swiss constitutions do the same. In academic literature there is an ongoing debate regarding the legal binding force of constitutional preambles. Should they be considered as proper constitutional text (that in all rigid constitutions means that they have to be considered supreme), or do they have a less binding value, as a sort of guiding principle for both law-makers and constitutional judges (Levinson 2011; Orgard 2010)? Beyond theoretical discussion, this can also make a difference from our perspective, as we will argue. The full entrenchment of solidarity in the constitutional text, in fact, seems to allow the courts to refer to solidarity much more often and to greater effect than when solidarity is either inferred from other constitutional values or is solely mentioned in the constitution's preamble.

Solidarity, as mentioned in the French Constitution's preamble, was conferred the constitutional value (and legal force) by the Constitutional council. In France, solidarity is evoked verbatim in a very specific, though rather marginal, context: the Francophone cooperation, which is a by-

product of French colonialism. Art 87 states: "The Republic participates in the development of *solidarity* and cooperation between States and peoples having the French language in common". Solidarity is confined to a definition that seems to limit the relationship to France and its former colonies. This appears rather surprising for the country that first elaborated on the concept of *fraternitè* and that has transposed this moral notion into a legal, binding value. And indeed, the substantive power of solidarity in the French legal system does not originate from Article 87, but from recital 12th of the preamble of the 1946 Constitution ("The Nation proclaims the solidarity and equality of all French people in bearing the burden resulting from national calamities") which has a much broader scope: in association with equality (that it is a legal concept tightly connected with solidarity, as we will discuss later), it defines the perimeter of burden-sharing: whoever participates in this burden-sharing is part of the nation. The preamble of the 1946 Constitution does not simply have a declaratory force, since in 1971 the French Constitutional Council (decision n. 44-71) held that the preamble to the 1946 constitution enjoys a specific legal force and constitutes an independent source of rights, which means that any legislation in breach of the principles enacted in the 1946 Preamble is unconstitutional. Since then, solidarity has acquired its own binding force and has become a relevant constitutional paradigm.

Switzerland is the sole country in this volume's research where solidarity is named exclusively in the preamble ("In the name of God Almighty! We, the Swiss People and the Cantons, being mindful of our responsibility towards creation, in renewing our alliance to strengthen liberty and democracy, independence and peace in *solidarity* and openness towards the world, determined, with mutual respect and recognition, to live our diversity in unity, conscious of our common achievements and our responsibility towards future generations, certain that free is only who uses his freedom, and that the strength of a people is measured by the welfare of the weak, hereby adopt the following Constitution"). The Swiss preamble typically outlines Swiss society's final goals while defining the identity of the country. Since the *incipit* of the constitution, solidarity has been connected with the highly decentralised form of the Swiss State, and this makes a very relevant dimension of solidarity as constitutional values emerge – "territorial" solidarity.

When Solidarity Does Not Appear in the Constitutional Document

Finally, in the Danish, German and the UK constitutions the very word "solidarity" is never mentioned. Of course, this has not prevented lawmakers, courts and scholars from referring to solidarity as a fundamental value of the jurisdiction, but it may have influenced the way in which solidarity is understood and enacted in these countries. The Danish constitution is one of the oldest in Europe and it presents some of the typical features of 19th century constitutions, more focused on enforcing the separation of powers and counter-balancing the Monarch's powers and functions than on a meticulous list of rights and freedoms, and to an even lesser extent on fundamental values (Fioravanti 2014; Matteucci 1976; McIlwain 1940). No surprise, then, that there is no explicit room for solidarity. However, following a pragmatic approach based on the enforcement of individual rights and not on abstract principles, Article 75 (2) provides that "any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by Statute in such respect". Throughout the decades, this constitutional provision has become the constitutional foundation for the Danish welfare system, and the most explicit expression, in Denmark, of the notion of solidarity as public virtue.

In the 1949 German Basic law there is no explicit reference to solidarity, but, as in the case of Denmark, the Grundgesetz codifies the social welfare state principle ("The Federal Republic of Germany is a democratic and social federal state" Art. 20(1), and "The constitutional order in the States [Länder] must conform to the principles of the republican, democratic, and social state under the rule of law, within the meaning of this Constitution [...]" 28(1)) that guarantees a minimum of social welfare in order to enforce the overarching values of the German legal system: human dignity and its corollary of fundamental rights ("Human dignity is inviolable. To respect and protect it is the duty of all state authority. The German People therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace, and of justice in the world" (Art. 1(1) (2)). Thus, the principle of welfare state, essential to enforce human dignity and fundamental rights, is something that is very close to what other constitutions (Italian, Greek, French and Polish) name solidarity. However, it is interesting to highlight that at the level of the federal states, the picture is more complex. Similar to the Basic Law, the

constitutions of the former West German federal states do not explicitly mention solidarity, whereas solidarity is directly referred to or equivalently addressed as a basic principle of state action in the constitutional preambles of the new, East German federal states, sometimes as abstract expectation and sometimes as concrete obligation of the respective federal state[1].

From a constitutional comparative standpoint, the UK is the most peculiar case in our research, because the country does not have a constitution codified in one, single, written document, but rather its constitution is based on customs, conventions and constitutional practices, as well as on a series of documents spanning almost ten centuries (Magna Carta (1215), Bill of Rights (1689), the Act of Settlement (1701), the Act of Union (1707), and the Great Reform Act (1832), to mention the most famous, the constitutionality of which is not in dispute). The very notion of a legal instrument that we may name "the British constitution" is alien to the UK legal tradition and scholarship, and Sir W. Blackstone, one of the most prominent English jurists of the 18th century, used to refer to the "British constitutions" in the plural. Thus, we cannot expect to find solidarity explicitly entrenched in a constitutional document. Nonetheless, the absence of a single constitutional document does not entail that at the heart of the British constitution(s) there are not basic principles that are the source of law for the whole legal system and derived legislation. Together with the rule of law, Parliamentary sovereignty, the separation of powers and the system of checks and balances, scholars mention the Union of Kingdoms and fundamental rights and liberties (Leyland 2016). And it is exactly in the sphere of application of the latter two that we can situate the notion of solidarity. Similar to the other cases, solidarity in the UK is rooted in the idea of human dignity and fundamental liberties, dating back to the Magna Carta, so that over the centuries this notion assumed incremental value with the development of the complexity of rights and duties that give

1 The preamble of the constitution of the Land of Brandenburg reads: "We, the citizens of the Land of Brandenburg, have given ourselves this Constitution in free self-determination, in the spirit of the traditions of law, tolerance and solidarity in the Mark Brandenburg, based on the peaceful changes in the autumn of 1989, imbued with the will to safeguard human dignity and freedom, to organise community life based on social justice, to promote the well-being of all, to preserve and protect nature and the environment, and determined to fashion the Land of Brandenburg as a living member of the Federal Republic of Germany in a uniting Europe and in the One World".

sense to the fact of belonging to the British political community (Marshall 1950). And, as we discuss in the next section, the tight connection between solidarity, fundamental rights and human dignity upholds the most significant concrete output of solidarity from a legal and political point of view: the welfare system. However, what is interesting in the UK system is the second pillar stemming from solidarity: the unity of the kingdoms. This aspect is not a novelty in our discourse. The solidaristic foundation of highly decentralised States has already been highlighted: ensuring territorial cohesion and spacial justice among territories and communities that have sometimes little cohesion among them and that are characterised more by spacial inequality than by spacial justice is difficult, as it implies that they "support and consult one another, co-ordinate their actions and in case of conflict exhaust all remedies before turning to the court"(Leonardy and Brand 2010, 661) This presumes both solidarity as a pre-existing value and solidarity as a means of pursuing cohesion and justice.

What for Having Solidarity in the Constitution?

Solidarity is part of the constitutional DNA of all our countries. But does its strong entrenchment in constitutional documents make an explicit difference? "The constitution has to be the source of all government powers, its terms identify the fundamental or basic moral and political principles according to which society should be managed" (Loveland 2009, 16). Moreover, according to Sunstain, "…the central goal of a constitution is to create the preconditions for a well-functioning democratic order, one in which citizens are genuinely able to govern themselves" (2001, 6). This means that explicitly acknowledging the value of solidarity shall orient the well-functioning of the democratic order, and, at the same time empower citizens in a solidaristic way: i.e. creating an unambiguous connection between rights and duties (see for example Art. 2 of the Italian Constitution where solidarity directly bridges fundamental rights and citizens' duties). So, the presence of the value of solidarity in the constitution makes it easier for legislators and decision-makers to refer to it in their activities of law and policy-making. Whether they actually do so, and whether there is a relevant difference between a "solidaristic approach" in law-making in the countries where solidarity is explicitly entrenched in the constitution is difficult to assert and it would require a broader and more indepth scrutiny of existing legislation in all fields, which largely exceeds the scope of this

research. However, what we can draw from our enquiry is that in Italy, France, Poland (where the constitutions mention solidarity) there is a relatively wide range of legislation referring to solidarity: from housing policies to family law, from fiscal measures and tax law to labour law; from international cooperation to energy legislation; from the promotion of volunteering and civil society to freedom of association. This entails, first, that the constitutional value attributed to solidarity allows legislators and policy-makers to refer to it as a legitimate source of legislation and policies that go far beyond the more "typical" application of the principle of solidarity that is the welfare system, as we will highlight below. And, secondly, the presence of solidarity among the fundamental principles of the constitutions binds legislators and policy-makers to enact solidarity legislation and policies. It activates a sort of "virtuous circle" of solidarity that starts from the constitution, is put into effect in legislation and policies, through legislation and policies it supports and strengthens solidarity at societal level, and the social value of solidarity reinforces and "gives meaning" to the constitutional principle.

Moreover, should this virtuous circle be breached, for example by the harsh economic and political consequences of the crisis, the constitutional entrenchment of solidarity makes it easier for judges, especially constitutional judges, to refer to it as an insurmountable constitutional paradigm. Indeed, both the Italian Constitutional Court and the French Constitutional Council have been prone to refer to solidarity as a tool to mitigate measures that might have a negative impact on vulnerable people's dignity. The Constitutional Council has referred many times to the notion of solidarity. In its jurisprudence, the term solidarity has a plurality of meanings. The Constitutional Council uses the terms "*mécanisme*" (mechanism) of solidarity, "*principe de solidarité*" (principle of solidarity), "*exigence de solidarité*" (solidarity requirement), "*objectif de solidarité*" (solidarity objective), sometimes relying on several of them in the same decision. It is therefore not a monovalent concept. The privileged applications of these notions obviously lie in the domain of social systems, spanning the routes that individuals make across their lives, for example in and out of the labour market. Thus, in its decision of 16 January 1986, the Constitutional Council ruled, with regard to the "*Sécurité sociale*", that it was the responsibility of the legislator to encourage solidarity between people in employment, the unemployed and those who were retired, and that it was also the responsibility of the legislator to ensure that the finances of the "*Sécurité*

sociale" were well-balanced enough to allow its institutions to fulfil their roles.

A fortiori, to have a better understanding of the legal reasoning behind this case-law, suffices to recall the very recent Italian case concerning the right to education of pupils with disability (CC decision n.257 of 16 December 2016). The Court declared the retrenchment of support teaching for pupils with disabilities in respect of Article 81 of the Italian Constitution ("The State ensures the balances of state revenue and expenditure in its budget whilst taking account of the adverse and favourable phases of economic cycle") in breach of the Constitution because it was in breach of the principle of social solidarity. What is interesting in the argument of the Court here is that solidarity provides the constitutional judges with the tools to maintain that "despite the law-maker's discretion in singling out the most appropriate measures to guarantee the rights of people with disabilities, this discretion finds the insurmountable limit of a core of absolute, unswerving guarantees for these people". This entails that the principle of solidarity allows the Court to overcome the balancing of rights against budget requirements, because of an insurmountable limit. In this decision, the Court goes much further than mitigating austerity measures. It argues that when a core of absolute, unswerving guarantees for vulnerable people is at stake, the very balancing of interests (which is the essence of constitutional courts usual reasoning) becomes pointless. The duty of social solidarity simply prevails. What emerges is a very powerful interpretative innovation.

However, the comparative reading of the country chapters clearly shows that in the past years not all Courts have resorted to using solidarity as insurmountable limit to protecting fundamental rights. In Poland, the very existence of the Constitutional tribunal is at risk due to political contentiousness, so that it becomes difficult, if not impossible, to analyse the case-law and its development over the duration of the crisis years. Nonetheless, this erases any doubt on how courts, and especially constitutional and supreme courts, may be effective watchdogs for the democratic system, so effective that the other powers are tempted to silence them. Indeed, the tension between *jurisdictio* and *gubernaculum* dates back to the dawning of modern constitutionalism (McIlwain 1940), but when in contemporary democracies the very existence of courts is in question, not to speak of their legitimacy, the implications for rights' enforcement and the rule of law itself may be serious.

Noticeably, in Greece the constitutional case-law is more ambivalent than in other countries and it brings to the forefront a second, very important entailment of the principle of solidarity: sacrificing the interests of determined categories in the name of the survival of the whole nation. During the crisis, Greek judiciary has interpreted solidarity as a constitutional paradigm both to mitigate some crisis-driven reforms (in this case solidarity assumes the function of a shield, protecting people's fundamental rights and accessibility to a decent living), and to enforce other austerity laws (in this case solidarity assumes the value of the community's higher common interest). In fact, on the one hand the Council of State (case 668/2012) maintained that the reductions in public wages, pensions and other benefits were justified by a stronger public interest (improving the state's economy and financial situation) – and moreover the measures guaranteed the common interest of the Member state of the Eurozone (a "reinforced" public interest). On the other hand, the Court of Auditors (Proceedings of the 2nd special session of the plenary, 27 February 2013) ascertained that the discretion of legislators to adopt restrictive measures to decrease public spending should not jeopardise adequate living conditions (recognised by Articles 2 and 4(5) of the Constitution), and should ensure a fair distribution of the crisis-burden on citizens in the name of the principle of proportionality (Art. 25(1)) and of the state's right to require social and national solidarity a duty of all citizens.

This is particularly interesting from our perspective: the apparent ambiguity of Greek courts reveals a crucial element of solidarity that we mentioned in abstract terms in the introduction. If solidarity is to be considered as a status of intersubjectivity, in which people are bound together, whether by a shared identity or by the facts of their actual interest, into mutual relationships of interdependence and reciprocal aid, the two dimensions of solidarity that emerge in Greek case-law are both crucial: fundamental rights that grant human dignity on the one hand, and the very existence of the community, which may require the sacrifice of individual interests and benefits, on the other. Of course, this reasoning is not meant to legitimise the harsh austerity measures imposed on Greece to prevent the financial collapse due to the debt crisis and the conditions for the bailout. Beyond the political and social evaluation of the Greek austerity measures, what is relevant here is that this extremely critical situation revealed the notion of solidarity as interconnection between rights and duties. And it is this interconnectivity that integrates the individual into a community of citizens (Apostoli 2012, 10-11).

Despite all that we have just said about the importance of an explicit enforcement of solidarity in the constitution, in other jurisdictions, as is the case for Germany, the courts have had similar arguments, even while building on other fundamental principles such as equality, social justice, human dignity, fundamental rights, to protect the very same un-shrinkable core of rights and entitlements that are protected by solidarity. In Germany, the courts, and in particular the Federal Constitutional Court, the Bundesverfassungsgericht (BverfG), intervened repeatedly to recall that the right to human dignity and the welfare state principle of the Basic Law oblige the state to guarantee a social welfare minimum and, hence, entitle each citizen to the provision of a material minimum needed to cover daily subsistence, as was the case of the minimal provision of social "Hartz IV" benefits (BVerfG, Judgement of the First Senate of 09 Feb., 2010 – 1 BvL 1/09 – "Hartz IV-judgement") and of asylum seeker benefits (BVerfG, Judgement of the First Senate of 18 July, 2012 – 1 BvL 10/10). Moreover, already in 1977, the Federal Court of Justice had highlighted that the "respect and protection of human dignity belong to the constitutional principles of the Basic Law. The free human personality and its dignity are the highest legal values within the constitutional order. […] The Basic Law does not understand this freedom as the freedom of an isolated and autocratic individual, but of a community-related and community-bound individual. Due to this communal connectedness [freedom] cannot be unlimited. The individual must accept the limits to their freedom of action that the legislator draws in order to maintain and promote social coexistence within the limits of the […] as generally reasonable" (BVerfGE 45, 187). Once again, the eventual limitation of rights, interests and benefits for the sake of social cohesion is not claimed in Germany in the name of the principle of solidarity, but rather as human dignity that implies a mutual constitutive relationship between individual autonomy and the solidary community. Implicitly, the reference is to the same significance of what other jurisdictions name "solidarity".

In sum, explicitly or implicitly, in the very text of the constitution or in the preambles (and thus to different degrees of incisiveness), solidarity is in the facts a "constitutional paradigm" (Ross 2010) in all studied countries. In legal and political terms this has three direct implications: first, in all countries, solidarity is a legitimate source of law and policies and guides the choices of public authorities and policy-makers at all levels of government; second, decision-makers should provide good reasons to depart from the respect of the principle of solidarity, should they decide to

do so; and, third, courts, especially Constitutional courts and Supreme courts, are legitimate in their use of solidarity as paradigms of constitutionality in litigation, and are called to decide on the reasonableness of any eventual departure from the application of solidarity.

Solidarity? The Danish, French, Greek, German, Italian, Polish, Swiss and British Way to Solidarity

As for other fundamental values that often and, sometimes more explicitly, permeate our case-studies' constitutions (as for example equality, human dignity, fundamental rights and to some extent also social justice and social state or welfare), solidarity is a nuanced notion that acquires legal force and specific meaning according to its socio-cultural, political and economic context. The ancient Roman maxim, "*Ubi societas, ibi ius*", asserts that every society has its own legal system, and also that societies and legal systems form a sort of hendiadys meaning that societies without a legal system may not be named "societies" and legal systems may not exist as abstract concepts, but always and necessarily require the existence of a society (Romano 1946; Hauriou 1933). Nonetheless, this neither prevents the enactment of legislation inadequate to meet societal needs, nor societal practices that go beyond or even against the law; phenomena of resilience, resistance and protest against governments and "bad" laws and public policies are frequent, as well as phenomena of social resilience, resistance and protest against positive legislation fighting, for example, corruption, discrimination and marginalisation. The intimate relationship between the two terms of the hendiadys may be a conflicting one, but yet a satisfactory understanding of solidarity as legal concept demands also an insight into the solidaristic socio-cultural background, and any sociological and politological analysis underestimating the theoretical and empirical relevance of the legal framework risks impoverishing the results.

In all our countries the social value of solidarity is tightly intertwined with volunteering *lato sensu*. Being engaged in civil society activities, donating time, competencies and money, is a shared value and a widespread practice, and it assumes different connotations, which may reverberate on the general understanding of solidarity.

Table 1 – Proportion of people involved in solidarity activities in the past 5 years (2012-2016)

	Helping a stranger (%)	Donating money (%)	Donating time (%)
Denmark	57	54	21
France	39	30	31
Germany	58	55	22
Greece	50	10	11
Italy	44	30	15
Poland	37	27	13
Switzerland	39	51	33
The UK	58	64	28

Note: In the World Giving Survey, respondents were asked whether they have helped a stranger or someone they did not know; have donated money to charities; and have volunteered time in a voluntary or charitable organisations. The estimates derived here correspond to the proportion of respondents who answered positively.

Sources: World Giving Index 2017

As we can see from Table 1, in all countries almost half of the population is engaged in solidarity activities connected with volunteering, with the exception of Poland and, to a different extent, Greece. These data are confirmed by the analysis of the socio-cultural dimensions of solidarity as illustrated in Part I of the volume, which points at volunteering as one of the most important markers of solidarity in society. Thus, if we assume volunteerism as an indicators of social solidarity at the interpersonal level (Hustinx and Lammertyn 2000; Valastro 2012; Zambeta 2014), we can assert that at least in Denmark, France, Germany, Greece, Italy, Switzerland and the UK, a number of forms of solidarity are based on social activism and volunteerism. Interestingly, however, each country has its own way to solidarity through volunteering, and in each country, solidarity is characterised by specific connotations.

In Denmark, as part of its protestant tradition, the principle of solidarity is often moralised in public discourse emphasising the responsibility of the individual towards the community and blaming the abuses of single beneficiaries or groups who are perceived as relying excessively on welfare services. There is an emphasis on reciprocal obligations of the citizens and on values that all Danes share in principle and in practice. In Germany,

where volunteerism has been increasing in the past years, according to the most recent survey (the German Volunteers' Survey) in 2014 the "political" dimension was very strong: more than 80 percent fully agreed or rather agreed (57.2% and 23.8%, respectively) that their voluntary engagement is motivated by the aim to play a part in shaping society at least to a small degree. Italian society still moves between traditionalism and modernity; between conservative and progressive political culture, and against this complex background, the two most relevant, and rather contradictory-if analysed individually-, elements of the socio-cultural dimensions of solidarity (i.e. familism and civic volunteerism) still complement each other. Along with classical forms of volunteerism based on charity and supportive activities of religious inspiration, which remain pervasive in the country, mainly working in the social and healthcare fields, new forms of 'civic' volunteering have also emerged. Based on alternative forms of social vindication and participation, they widen the scope of voluntary organisations, which are active also in fields where they aim to meet the collective needs linked to quality of life, the protection of public goods and the emergence of new rights. In Switzerland, the decentralised nature of the state and the diversified cultural identity forged on the principle of linguistic and religious diversity also have an impact on solidarity at societal level. The propensity to volunteer is highest in the German-speaking part of Switzerland, followed by the French- and Italian-speaking regions (Freitag and Ackerman 2016). Thus, the territorial autonomy of the different cultural communities translates into various levels of collective belonging, which impacts the political and social structure of the national community, and also the forms of solidarity. In France, the subtle difference between "*bénévolat*" and, "*volontariat*" (the first referring to the free commitment of individual citizens for non-remunerated activities, and the second which is closer to the notion of voluntary service) is directly linked to the intertwining nature of solidarity and subsidiarity, allowing non-profit organisations to multiply in the past four decades in every field of public interest (Faure 1997). The UK perspective adds another aspect: while strongly connected with the voluntary sector, one of the areas of British society where there is an explicit usage of the term solidarity is perhaps best recognised through the trade union movement where the word continues to signify comradeship between workers and trade unions operating across various sectors. Thus, solidarity permeates not only the so called "third sector", but it also reaches the economy through the activism of the trade unions (Cohen 2006; Fernie and Metcalf 2005).

Against a rather homogeneous, though variegated, social dimension of solidarity taking the form of volunteerism, the Greek and the Polish cases can be singled out as outliers.

The political dimension of solidarity is still quite pervasive in Poland, where solidarity is primarily associated with the "Solidarity" social movement which had a substantial influence on political change and democratisation. Thus, solidarity as a value cannot be interpreted without acknowledging the importance of the trade unions and the social movement which had a strong impact on the transformation of the political system in 1989. However, since the defeat of *Solidarność*, the country implemented the so-called "shock therapy" of neoliberalism that could be defined as an ideology that prefers market-based solutions to almost all social phenomena (Duménil and Lévy 2005) and neoliberal values seem to have prevailed. They reverberate in Polish people who have the lowest levels of empathy among 63 countries, according to a study measuring people's compassion for others and their tendency to imagine another person's point of view (Chopik, O'Brien and Konrath 2016). Moreover, Polish Catholicism, which is an important element of Polish cultural, social and also political domains – according to the last census in 2011 when 87.58% of people declared themselves as Catholics (GUS 2013) does not mitigate this attitude, as it is mainly characterised by a reactionary moral approach to social habits. These considerations contribute towards explaining not only a certain reluctance towards volunteerism, but also the tightening of migration policy and the political refusal of a European burden-sharing approach which ended with the European Commission's decision to launch infringement procedures against Poland (together with Hungary, and the Czech Republic) over refugee sharing in June 2017.

Finally, the Greek case is of particular interest because in Greece the crisis had a direct reflection on solidarity as a social value, pushing people towards altruism. Against the backdrop of a traditionally weak and feeble civil society, characterised by low levels of people's attachment to civil society organisations, the crisis has been a turning point for civic engagement, revealing new understandings of solidarity. Since the crisis, there is indeed evidence of a rise in solidarity initiatives consisting of citizen groups which cooperate, organise and manage many activities, such as alternative exchange networks, local economies, social clinics and other informal groups and networks. And the data of several recent surveys converge, showing a significant increase in voluntary participation since the beginning of the crisis (Sotiropoulos and Bourikos 2014). We would be

tempted to conclude that the crisis in Greece gave solidarity a new beginning, with the support of the Greek government that enacted a number of specific measures to give a boost to social economy and social entrepreneurship initiatives.

In sum, in our countries, to a lower degree in Poland, the socio-cultural significance of solidarityevokes altruism and volunteering. However, it assumes different flavours: a more accentuated political taste in some countries, and a more moral one in others; tones that are closer to charity in some contexts, and tones evoking social protest in others; a tighter connection with the kin dimension in some societies, and a tighter connection with the institutional dimension in others.

This paints a rather variegated "European way" towards solidarity.

The Dimensions of Solidarity

In legal systems based on solidarity, i.e. where solidarity "defines a *perimeter of mutual assistance* which includes some people and excludes others" (Supiot 2015, 15), citizenship, which is the maker of this perimeter, means that the legal bond between the individual and the State creates a relationship of mutual responsibility that does not simply concern a bi-directional vertical dimension between the State and its citizens (vertical dimension), but also a bi-directional horizontal dimension, i.e. between fellow-citizens. Every citizen is responsible for the promotion and guarantee of fellow citizens' rights and needs (Apostoli 2012, 143). Moreover, in decentralised States solidarity acquires a third, crucial aspect that has already emerged in the previous paragraphs: the territorial dimension, i.e. the principle of federal solidarity. "The general idea is that governments forming a federation do not merely calculate their actions to be to their own benefit. By forming a federation, partners intend to work collectively for the common good of a shared citizenry. Each government – be it federal, provincial or territorial – owes special duties to the other common members of the federation that they do not necessarily owe to foreign states (or that are not owed with the same degree of intensity) precisely because they belong to a common body politic" (Cyr 2014, 31). These

three dimensions are all interconnected, and they assume a slightly different connotation at the EU level[2].

The most relevant element of solidarity's vertical dimension in every country is the welfare system (Ferrera 2005). From the Danish social democratic Nordic welfare model (Esping-Andersen 1999), where there is a strong state that builds on the principles of universalism by providing tax-financed benefits and services, to the Italian "residual welfare state" in the broader category of the conservative-corporatist model (or Ferrera's Southern group model (1996)), where social services are provided to people who are unable to help themselves; from the Swiss liberal welfare with a moderate decommodification but with a high generosity index, close to the one in Sweden (Scruggs and Allan 2006, 67) to the Greek pre-crisis corporatist model based on moderation and the elimination of the most dramatic inequalities through redistribution policies; from the Polish social model which blends elements of liberalism on a conservative and corporatist tradition inherited from the period between the wars (Esping-Andresen 1999) to the French corporatist regime reflecting, for most part, the Bismarkian tradition of earning-related benefits (Serre and Palier 2004); from the British universalism based on the Beveridge model (Taylor-Gooby 2013) to the typical conservative welfare regime in Germany (Esping-Andersen 1999); whatever type of welfare regime presumes an unequal distribution of resources and wealth, and the specific function of solidarity is to bridge these inequalities through redistribution policies. Solidaritythat is embodied in welfare systems on the one hand promotes human dignity through the enforcement of fundamental rights, and, in this sense, the welfare state represents the institutional form of social solidarity generated in constitutional principles and specified in codified entitlements to social policies. On the other hand, solidarity promotes social cohesion through the binding force of the interconnectivity between rights and duties. Indeed, the welfare state as a set of redistributive policies has been a

2 Due to the supranational nature of the EU legal system, at this level solidarity is embedded in two dimensions: the relationship between Member states (horizontal dimension) that is evoked in a number of articles of the treaties – for example, Article 3 of the TEU, enunciating the objectives of the Union, declares that the Union "shall promote economic, social and territorial cohesion, and solidarity among Member States"- and the relationship between the States and their subjects, i.e. the individuals (vertical dimension), which appears in the Preamble of the TEU stating that the Union aims are to "deepen the solidarity between their peoples while respecting their history, their culture and their traditions".

key tool in the promotion of national identity, and therefore as a way to create solidarity among citizens, "bounding for bonding" (Ferrera 2005, 44). In fact, citizens allow a redistribution of their resources to happen as long as they perceive each other as members of the same group or nation. As we will highlight later on, the crucial issue, then, becomes the boundaries of welfare, i.e. where to draw the perimeter of solidarity.

"The concrete enforcement of solidarity in its vertical dimension (from the State and the institutions towards individuals) is tightly connected to the functioning of the guiding principle of subsidiarity […] as subsidiarity presupposes the *subsidium*, which is the duty of participation and support «top down» by virtue of social cohesion" (Apostoli 2012, 61). Subsidiarity opens the public sphere to citizens' participation and free engagement in the fulfilment of fundamental rights and in service delivery, connecting the vertical and horizontal dimensions. Civil society participates in realising the rights and may even go further by directing its energy towards expanding and enriching the quality and quantity of those rights (Onida 2003, 116). In other words, if rights cannot be fully and directly enforced by the State, either because of economic restrictions (as may be the case during a crisis) or because of political opportunity reasons, the State may "activate" the citizens' duty of solidarity through legislation promoting private intervention.

The horizontal dimension of solidarity which has already been discussed, finds its most evident and most widespread expression in volunteerism, may be favoured by specific legislation and measures promoting the third sector (as has been the case of the Italian law n. 266 of 1991), and it has provided valuable solidarity responses during the crisis, as the Greek case clearly describes. But the opening to this horizontal dimension may also acquire more ambiguous political aspects, as was the case of the UK's "The Big Society" policy.

Finally, in decentralised states, subsidiarity allows for interconnectivity between the different tiers of government, making the significance of solidarity relations among all territorial entities emerge. The importance of territorial solidarity is taken into consideration in the cases of Germany, Italy, the UK and Switzerland. In all these jurisdictions, the very structure of the decentralised (federal, regional or cantonal) state relies on the mechanism of power sharing (which assumes different political and legal forms, structures and mechanisms in the different countries) that enables mediation between sub-national and national interests, needs, resources and competences. However, in none of these countries is the equilibrium

between diversity, autonomy and solidarity a simple one, and the crisis has exacerbated several elements of this difficult equilibrium. The British and the Italian cases represent the two most critical aspects of territorial solidarity: the very respect of the *pactum unionis* among sub-national entities and the exacerbation of difference to the detriment of equality in rights enforcement which questions the solidaritstic dimension of decentralisation.

In the UK, the solidarity-creation mechanisms between sub-national entities (Scotland, Wales, England, and Northern Ireland) have been seriously challenged in the past few years by political and political-economic issues. These challenges seem to be a catalyst for the robust revival of sub-national solidarities against the British one. The devolution of power occurring from the end of the 1990s has come under intense scrutiny in recent years in terms of its capacity to allow sub-national communities to have their voice and interests represented by British decision making. As a consequence, in Scotland in 2014, a referendum took place for one of the "constituting nations" of the UK to become independent from the UK. Although the vote upheld the will of Scottish people to remain British, this was a very strong attempt to reshape the boundaries, and even the content, of territorial solidarity. Even though not directly connected with the Scottish national question, the British people put another form of supranational solidarity under pressure as a legitimate system of redistributing resources across the continent: solidarity based on the European Union. In June 2016 they voted to leave the European Union: a dramatic outcome.

In Italy since the 1990s, there has been a significant devolution of functions to regions in the field of welfare, which has radically changed the relationship between the central government, the regional governments, and local governments according to the principle of subsidiarity. The economic crisis had the effect of modifying and reinforcing the role of regional governments in new strategic policy-making and service delivery to temper both the direct effect of the crisis and the impact of national retrenchment measures. Regional responsibilities in the field of social policies has become so important that scholars argue that Italy has moved from a 'welfare state' to 'welfare regions' (Ferrera 2008). This process has exacerbated existing differences, especially between Northern and Southern regions, that remain more strongly marked by high rates of poverty, unemployment, social exclusion, and whose regional governments have proved to be less pro-active in counter-balancing the worst effects of the crisis, especially in the field of unemployment. The gap is not only measurable in terms of per capita income, but also in terms of well-being and opportuni-

ty gaps (Cersosimo and Nisticò 2013). The paradox is that regions most severely hit by the crisis were the most vulnerable ones, and the most severely hit populations were the most marginalised. Another dramatic failure of territorial solidarity. Building on the socio-economic indicators that have been discussed in the introduction (GDP per capita, government debt, percentage of economic strain, percentage of population at risk of poverty; unemployment rate, percentage of people with disability suffering severe material deprivation; asylum applications; social expenditure per capita), it is doubtless that, in the large majority of our case-studies, the crisis has strengthened the need for solidarity. Similarly, it is doubtless that the vertical dimension suffered most from the crisis, stretched between two opposing imperatives: increased requests for redistribution on the one hand, and the urge for austerity and reduced resources on the other.

The discussion of the policy responses in the domains of unemployment, disability and immigration asylum will provide the terrain to enquire about the depth of this solidarity sufferance.

Immigration and Asylum, Unemployment and Disability: Is there Room for Solidarity?

The very diverse constitutional organisation of the State, system of government, rights enforcement and litigation, and political system of Denmark, France, Germany, Greece, Italy, Poland, Switzerland, and the UK have already been described earlier in this volume. Their socio-economic background also shows a much-differentiated pattern, with Greece representing the most deprived, and Denmark and Switzerland holding the most privileged positions in terms of GDP per capita. Noteworthy, other variables such as levels of corruption, clientelism, religion's influence, income and wealth distribution strongly contribute to defining our case-study diversity. Understanding the significance, the function and the potency of solidarityin times of crisis can not ignore the policy legacies and also the pathologies of the past. If solidarity before the crisis was deformed due to clientelism and strong patronage arrangements between political parties and organised interests of social welfare recipients causing severe social or economic imbalances at the expense of the weaker groups of the population – as in the Greek case – the path towards solidarity during the crisis might be more difficult to engage. Nonetheless, even in countries charac-

terised by a strong ethos for solidarity, as in Denmark for example, the enforcement of solidarity-based legislation and policies in given policy domains shall not be taken for granted.

Despite the fact that principles and rules deriving from the European Union legislation and policies should provide a common normative framework in the fields of unemployment, disability and immigration/asylum in EU Member states, the comparative analysis of the seven EU member states and of Switzerland[3] shows that national principles, legislation and policies remain highly country-specific. Moreover, even at the national level there is a lack of consistency. Disability legislation and policies, for example, are generally characterised by internal fragmentation and in decentralised states they are influenced by the regional or federal organisation of the competences.

The transposition of the constitutional solidarity principle into specific legislation and policies is not simple, and in several cases there are evident discrepancies between a solidaristic approach embodied in the constitution and specific laws, regulations and policies violating it. Moreover, in many European countries the economic, as well as "refugees" crises of the past years had a considerable impact on the legal entrenchment of the solidarity principle and its implementation in administrative practice. As already highlighted in Part I and III, courts may intervene and quite often they do so, reaffirming the overarching constitutional value of solidarity, but this has not prevented dramatic welfare retrenchment measures and a generalised tightening of migration laws.

When Laws and Policies Do Not Mention Solidarity

Very seldom, solidarity is expressly named as the leading principle in any of the framework legislation in the policy domains of disability, unemployment/asylum and migration. Very interestingly, from being a fundamental value at the constitutional level, solidarity seems to have become a recessive one at the level of legislation.

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3 The research on the EU impact over Swiss law and policy is wide. Suffice to mention, there are various way of influence: from the so-called autonomous adaptation, to multilateral agreements, passing through international treaties and the comparative law method. For insights: Epinay, 2009; Jenni 2014.

Nonetheless, the analysis of Part III of the volume demonstrates that solidarity is of relevance for rights and entitlements in disability, migration/asylum and unemployment law to the extent that it can be derived from other basic constitutional rights and principles, such as equality and anti-discrimination, with few exceptions such as "solidarity contracts" in Italy and Switzerland, for example. For instance, in Germany it can be derived from the constitutional vision of humanity, fundamental rights, the welfare state principle, equal treatment, equal participation, and equal opportunities. The right to live a life in human dignity stands above all, and all other rights are subordinate to it. This also means that rights have to be interpreted in the light of the overriding right to a dignified life. Thus, irrespective of the missing explicit reference to solidarity, German law still foresees a broad range of instruments and mechanisms to support the unemployed, asylum seekers and disabled people. And yet, some degree of vagueness in determining the exact significance and legal impact of these principles opens the door for policy making to downplay the role of solidarity and to increase the conditionality of solidarity within vulnerable groups. As we learn from the German chapter, this has happened particularly in the asylum and unemployment fields in the past few years. Moreover, laws and their administrative implementation are not always perceived by civil society as sufficient to meet solidarity expectations. Indeed, recent policy reforms have shown that solidarity remains highly contested and subject to political struggles between different interest groups in society, even in a country with good economic performances and low unemployment like Germany.

In other countries, such as Greece, although solidarity and the social welfare state are clearly defined in the Constitution as a duty of the Greek state towards its citizens, there is mounting evidence that the recent policy options are progressively eroding their normative foundation and practical exercise. After several years of recession, Greece has adopted painful policy choices with regards to wage and pension cuts, labour relations, layoffs and social policies. Failure to protect the weaker, vulnerable population groups most severely hit by the country's multiple crises suggests that Greek political elites and policy-makers have neglected solidarity. The weakening of solidarity policies for the social protection of people with disabilities, the unemployed, the migrants, the newly-arrived refugees and asylum seekers has gone hand in hand with increased retrenchment, severity of sanctions and welfare conditionality.

The constitutional entrenchment of solidarity should find a direct application in the legislation. As pointed out by the Italian Constitutional Court, "social solidarity is a general guideline," not merely an abstract, moral and ethical value. It has to be considered "binding for the legislators" (C.C. decision n. 3 of 1975), which means that solidarity should permeate in a very concrete way the whole legal system, or should provide a relevant interpreting paradigm. And yet, the process of translating a constitutional principle (either directly or indirectly enforced) into specific legislation and policies may present major difficulties, as the analysis of the three policy domains illustrates.

Solidarity in Disability Legislation and Policies

In the frame of the EU approach mainly based on non-discrimination measures, disability laws pursue social integration and equality combining typical anti-discrimination measures, proactive integration tools (social inclusion at school and in the labour market, for example) with social assistance.

Except in Germany, people with disabilities have suffered from significant reductions of disability grants and allowances due to the crisis in all countries. The introduction of the system of means-testing for services and benefits in several countries and the reforms of the welfare system generally have meant a further increase in the vulnerability of people with disability. This occurred especially during the first years of the crisis, even in countries not strongly economically affected such as Denmark, Switzerland and Poland. Disability is one of the typical fields where the notions of intersectionality and multiple discrimination have become very relevant (Soder 2009; Lawson 2016), which means that disadvantages in the intersection between disability and, for example, unemployment, gender, race, class, etc. are likely to become more severe, and this is why austerity measures tend to have a stronger impact on people with disabilities.

As we learn from Part III chapters, in a first group of countries (Germany, France, Italy, Denmark and Greece) there have not been significant reforms, whereas in the UK, Switzerland, and Poland a number of reforms have been upheld, not touching the principles, but reviewing the mechanisms for accessing benefits. In Poland, indeed, there has been a relevant legal activism in order to align with the European standards, which has meant an enhancement of rights' guarantees for Polish people with dis-

abilities. Moreover, as we will discuss below, the concomitant adoption of the International Convention on the Rights of Persons with Disabilities in 2006 has entailed innovative approaches to disability, which means that in the time-frame of the crisis, in terms of legal principles and values, law reforms tended to enhance the level of rights and guarantees.

Nonetheless, the crisis has exacerbated the process of socio-spatial production of legal peripheries (Febbrajo and Harste 2013) in the field of disability, where contemporary discourse of inclusion and tolerance of diversity is at odds with the real guarantee of fundamental rights, regarding the relationship with the democratic institutions and public administration services. While formally entrenched in legal documents, basic human rights are systematically denied by the lack of resources, and those same rights then become the terrain where exclusion is *de facto* widespread and strong.

Among the countries most severely hit by the crisis, in Italy the impact has been dramatic and emphasised by the convergence of cuts and/or restriction of measures specifically targeting people with disabilities, and of welfare retrenchment measures. In particular, the 'National Fund for the Non-Self-Sufficient' was reduced by 75% due to budget cuts in 2011, the Fund was not financed at all in 2012. The impact of the cuts was amplified by the concomitant cut in the Fund for Social Policies (policies of social inclusion of people with disabilities, marginalised people, the drug addicted, elderly people, migrants, are financed through this fund). The reduction/non-financing of the Funds were partially compensated for and mitigated by regional activism, but this aggravated the regional inequalities with a perverse multiplier effect.

In Greece, the austerity policies encapsulated in the "Memoranda of Understanding" signed by the Greek government and the Troika (European Commission, European Central Bank, International Monetary Fund) caused significant reductions to welfare benefits for the disabled, and state funding to solidarity organisations have been reduced, while at the same time the beneficiaries' needs have increased as a growing number of disabled people and their families cannot afford to pay for certain health-care related services. The intersectionality between disability and unemployment was brought to the forefront of political debate in the discussion concerning the introduction of means-tested criteria for benefits and pensions. This measure has been highly contested by the disability movement in Greece, drawing attention to high unemployment for disabled people and the almost exclusive reliance on individual resources for supporting needs

and extra living costs due to disability, since social care/welfare is shrinking.

The very same point was raised in France: people with disabilities are the first victims of unemployment. Despite the government providing a generous healthcare system, France dedicates only 1.8% of its GDP to disability policy (in 2014). The policies of public expenditure rationalisation and reduction in all spheres of government hugely impacted on people with disability care and support systems.

Support action in the field of disabilities has also suffered from the financial cuts that were imposed on the public sector even in Denmark, a Northern country traditionally characterised by a universalistic welfare state which provides the disabled with a variety of measures to apply for public funding. During the crisis, the terms for these funding schemes have been increasingly complex, and these complex administrative processes have made it more difficult to apply for and receive public funding. For disabled persons this often implies insufficiencies in receiving personal assistance (e.g. disability-friendly cars, oxygen concentrators), but also more restrictive access to early retirement pensions or other benefits. In counter-trend with the intersectionality argument between disability and unemployment, it seems that Danish disabled people have been met with a high degree of solidarity in employment matters (the anti-discrimination Act of 2008 prohibits any kind of discrimination in respect to employment, whether related to ethnicity, race, religion, sexuality, and, most relevant in this context, disability), whereas they are less protected from discrimination outside the labour market.

In the UK, in 2008, the replacement of the Incapacity Benefit with a new benefit, the Employment and Support Allowance was part of the government package on welfare reform (Bambra and Smith 2010). One feature of this new benefit was the "Work Capability Assessment" which represented a significant shift in evaluating the applications for welfare state support by disabled people by focusing on what they were capable of rather than the extent of their incapacity to work. In 2010 a major expansion of the "Work Capability Assessment" was pursued as part of the overall strategy to reduce welfare spending and get as many disabled people as possible back to work. Moreover, the Welfare reform act of 2012 introduced a particularly contested measure to reduce public spending in 2013, the so-called "bedroom tax", which disproportionally affected people with disability who need more space at home to accommodate their basic needs. This policy targeted working age tenants living in social housing

(that is, property owned by local Government or housing associations) and was introduced as a strategy to reduce the amount of money spent on housing benefit, a welfare measure which helps pay the rents of people who are either unemployed or in low paid employment. However, in March 2017 the Supreme Court found that the tax "unlawfully discriminated" against disabled tenants.

In Switzerland the Law on Disability Insurance was strongly redefined between 2003 and 2012. These changes were the result of economic and debt pressures accumulated by the disability insurance scheme and not because of the economic crisis which did not significantly affect the country. A new definition of disability concealing a perception of disability as 'objectively measurable', so the disability could be considered as feasibly a reversible state, surmountable, has been introduced into the legal system, and people that cannot prove their "objective" disability are requested to fit back into the labour market (which may have a strong impact on psychic patients). Moreover, the legal framework shifted from targeting "compensation rents" to working "re-adaptation rents" within the scope of restoring or improving the earning capacity (Probst et al. 2015, 112). Thus, the disability legal framework has shifted towards a criteria of employability, and has strengthened its focus on rehabilitation and reintegration of people living with disability with periodic reviews of rents, including previous permanent rents under the argument of 'poorly used working capacity' for people living with disability (Bieri and Gysin 2011; Probst et al. 2015).

In Poland, as has already been highlighted, the legislation in the field of disability (often implementing the European Union directives) has been more and more inclusive and has improved the level of fundamental rights and freedoms' guarantees. However, neither the new legislation nor the insignificant impact of the economic crisis on the country's economy have prevented the government from enacting retrenchment measures that resulted in cuts to services and benefits. The positive advancements in terms of recognised rights have been negatively counterbalanced by budget decisions.

Interestingly, in most countries, the main concerns regarding the disability field do not lie in the lack of legislation, but in their implementation, as highlighted by the analysis of the interviews carried out with grassroots and civil societies' associations and movements in all countries. In Italy, for instance, the legal framework is deemed appropriate, in line with the most progressive European countries. In some fields, Italy has

been (and sometimes still is) ground-breaking, as with the example of disabled pupils' integration in schools. What remains highly problematic is the actual implementation of existing legislation. But this is true even for a country like Germany, where the effective enforcement of guarantees and the rights of disabled persons is often a question of the quality of administrative practice at the levels of national state, the single federal states, local authorities and benefit providers, and the assertiveness of individual claimants (Kuhn-Zuber 2015; Welti 2010, 27).

Finally, the coincidence of the early stages of the crisis and the entering into force of the International Convention on the Rights of Persons with Disabilities brought about the extension of anti-discrimination measures between 2007 and 2014 in several countries, and the decisive shift from a medical definition of disability to a socially-oriented one. As far as the protection of people with disabilities is concerned, a general tendency to promote equality of chances and non-discrimination can be noticed in most countries. And yet, reality does not always move at the same pace as legislation.

Solidarity in Unemployment Laws and Policies

The 2008 global economic crisis had very different effects in terms of unemployment across the countries, as illustrated in the introduction. The crisis impact on the quantitative and qualitative levels of employment has put heavy responsibility on European institutions' capacity given that Article 145 TFEU states that "the Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action". Despite the fact that EU competence in this field relies primarily on coordination of national policies and legislation, EU legislation and policy have developed along two salient issues: social protection of workers and social rights.

The picture of policy and legislative responses in the field of unemployment shows also differentiated patterns which, nonetheless, do not necessarily adhere to the crisis effect, that impacted differently on member states. Regarding this, as illustrated in Figure 1, the countries can be divided into two groups: those marked by significant crisis-driven reforms (either in response to concrete needs or seizing the crisis as a political opportunity) and those where only temporary measures and/or limited legislative changes were adopted.

Figure 1 - Economic crisis and legislative/policy reforms

Crisis-driven reforms	Economic crisis: severe	Economic crisis: moderate	Economic crisis: low
structural	Italy Greece	The UK France	Poland
Tempo-rary/ limited			Germany Switzerland Denmark

In Germany the crisis was dealt with ad hoc measures. The extension of short-term allowances for employees whose working hours were reduced substantially helped the county's economy to overcome the recession between 2008 and 2010 relatively quickly and smoothly. Together with other measures from the government's economic stimulus packages (a large amount of public money was devoted to investments in the country's infrastructure, tax cuts, child bonuses, increases in some social benefits, incentives to boost the car industry, etc.), short-term allowances were an important means of stabilising employment and avoiding a growth spurt in unemployment. Yet, the unemployment-related welfare witnessed a certain retrenchment and a growth conditionality in quite distinct ways. In fact, with the latest reform of the Hartz IV benefit system of August 2016 (measures recommended by the Hartz commission- named after its chairman), the unemployment law and its implementation are characterised by a tightening of rights and entitlements – particularly for the long-term unemployed – despite the good overall socio-economic climate.

In Switzerland, the most important revisions of the unemployment insurance law occurred in the 1990s, when the Swiss model of unemployment insurance as a national-liberal model evolved towards a social-liberal model with the adoption of a common unemployment insurance system and some essential protection measures for vulnerable groups on the labour market (Schmidt 1995). Thus, in the past few years there was neither need for any significant reform, nor have policy-makers instrumentally used the argument of the incumbent crisis to further reform the labour market or the unemployment services.

Minor adjustment measures were also implemented in Denmark. Welfare and labour market policies are combined in what is called the Danish *flexicurity* model. *Flexicurity* refers to an employment-welfare policy, which combines flexibility for the employers when hiring and firing em-

ployees, and social security for the employees, providing them with unemployment benefits and income insurance when they lose their jobs. It also refers to an active labour policy that offers training for skills development in order to gain access to or return to the labour market. Flexible labour is safeguarded by the existing schemes of unemployment benefits and active labour market policies by providing skills and training (Duru and Trenz 2017; Alves 2015). As a result of most recent policy changes, social benefits have been reduced or have become more conditional with preference given to measures that seek to reintegrate service receivers into the labour market.

Despite the Polish economy's relative resistance, unemployment, especially youth unemployment, rose in the years of the crisis, and growing numbers of people were forced to work on "civil law contracts", deprived of labour and social security rights, including unemployment benefit in the event of losing the job. The government introduced two "anti-crisis" packages protecting employers rather than employees (Theiss et al. 2017). Among austerity measures, cuts were made to funds for public employment services, including unemployment benefits as well as the freezing of salaries for some groups of workers in the public sector. The government also introduced a more flexible system of public unemployment services. On the other hand, the state also introduced some non-austerity measures, like the possibility of combining income from work and social assistance benefits, and regular increases to minimum wage. However, the liberalisation of labour legislation was not a novelty introduced by the crisis. After the transformation of 1989, the so-called liberal "shock therapy" consensus dominated Polish public policies. The crisis did not change this landscape, but rather it was an "excuse" to strengthen the "flexi-insecurity" model (Meardi 2012), characterised by minimalistic, liberal or hybrid models of social policy, with certain privileged groups on the labour market (Szelewa 2014; Cerami 2008).

Conversely, Italy, Greece and (to a lesser extent) France and the UK are all countries which have adopted important crises-driven reforms. The crisis prompted Greek policy-makers to hugely change the labour market law. Greece had to rely on bailout rescue loans and implement austerity packages which may have led to some streamlining of social spending but, above all, has resulted in cutbacks in the earnings of all persons employed in the wider public sector and in the weakening of solidarity policies for the social protection of the middle and the lower classes, the unemployed, the poor and the socially excluded. From 2010 to 2012, Greece instituted

several sweeping reforms in the field of employment, promoting flexibilisation and deregulation of the labour market at the expense – as trade unions claim- of workers' rights and social protection. In particular, several fundamental changes in labour relations were introduced, including the following: a) the notice period for terminating white collar workers' open-ended employment agreements was significantly shortened, leading to an indirect reduction of white collar workers' severance pay by 50 percent; b) the threshold for collective dismissals was lowered considerably; c) a new type of company-related collective employment agreement was introduced which may provide for remuneration and other working terms that are less favourable than the remuneration and working terms provided for by the respective sectoral collective employment agreements; d) the right to determine the minimum wage through collective agreements was taken from the key social partners in Greece, and handed to the government.

Italy was the second country worst hit by the crisis: from 2010 to 2014 the unemployment rate (especially among the youth) increased constantly. In this negative context, the crisis was seized by policy-makers as an opportunity to address the traditional and long-standing weaknesses of the Italian labour market through several reforms among which the most important was undertaken during the biennium 2014-15 under the name of Jobs' Act. Article 18 of the Workers' Statute, imposing very restrictive conditions for workers' dismissal, was radically reviewed, eliminating the system of compulsory reintegration in case of unjustified dismissal for workers employed under the new contract system. According to the Jobs Act, increased levels of job protection now depend on seniority and are based upon monetary compensation (instead of compulsory reintegration). At the same time when passive and active labour market policies were being reformed, the period for fixed-term contracts was extended from 12 to 36 month (with a limit of 5 renewals), and a new form of permanent contract with increasing protection levels was launched, together with incentives to hire or convert more workers onto permanent contracts, and a new unemployment benefit scheme was put in place extending income support to (almost) all the unemployed. These new unemployment measures clearly strive towards the universalisation of income support for the unemployed following the idea of 'flexicurity', providing a safety net necessary to protect the worker during periods of transition from employment to unemployment, which more easily occur in a labour market characterised by flexibility in hiring and firing.

Similar to Italy, in the summer of 2016 the French government upheld an important reform of the labour market, the *Loi Travail*, even though the discussion of this piece of legislation was marked by strong opposition and several struggles across the political domain and civil society. While the legal workweek has been maintained at 35 hours long, the law gives specific company agreements precedence over branch agreements. The maximal number of hours worked in a day can be extended, and specific company agreements can reduce the rate of overtime compensation. The law allows companies to adjust their organisations in order to "preserve or develop employment". The employees' monthly salary cannot be reduced, but premiums can, for example, be abolished. Employees who refuse to accept such agreements can be dismissed for economic reasons. The criteria for economic redundancies are laid out according to the size of the companies. Overall, it can be argued that the large space that the law gives to spell out the conditions under which employers can use economic redundancy, weakens any progressive and solidaristic element that may be singled out.

Also in the UK, policy-makers addressed the crisis through austerity measures to reduce the budget deficit. In an effort to simplify and streamline existing welfare to work initiatives, in 2011, the UK government introduced the 'Work Programme' which sets out how support will be offered to those seeking employment by public, private and voluntary sector service providers who undertake contracts from the Work Programme based on payment by results. These changes to the delivery of support for the unemployed signalled a broader introduction and scaling up of work experience placements for most unemployment benefit claimants, an approach more commonly known as "workfare" (Peck 2001; Jessop 2002). One of the difficulties for claimants has been that should they refuse such placements, they can be (and often are) subject to 'sanctions' which include the complete removal of benefits for four weeks in the first instance, leading up to a maximum of three years' removal of benefits for continuous contraventions. Unsurprisingly, these sanctions have been a source of controversy amongst some groups. Another novelty was introduced by the Trade Union Act in 2016 which has placed new restraints on industrial action in terms of balloting for strike action.

To sum up, this comparative analysis shows that in some countries, the crisis has been seen as an opportunity to address historical weaknesses in the labour market, whereas in other countries it was just an "excuse" to pursue a very politically-oriented agenda. In all countries, however, we

detected a general tendency towards policy changes emphasising flexibilisation of labour relations, conditionality for welfare and unemployment benefits and 'activation' elements, in accordance with the broader supply-focused trend characterising European unemployment policies throughout the 1990s and 2000s. And against this trend, all the respondents from grassroot and civil society organisations active in the field of unemployment, interviewed in the frame of the EU financed project TransSOL which the present volume builds on, agree that a solidarity approach in labour market and welfare benefit reforms is sorely lacking. Solidarityremains a recessive value in current unemployment and labour legislation, even though in this domain it is overtly named, for example, in "solidarity contracts", in Italy and in Switzerland, and in "solidarity gradual pre-retirement contracts" in France.

Solidarity in the Field of Migration Legislation and Policies

The "refugee" crisis especially affected Mediterranean countries like Italy and Greece. The EU legal framework in this field is pivotal: the principle of solidarity has a special role in the common policies of asylum and immigration, set forth respectively in Articles 78 and 79 of the TFEU. This is due to Article 80 TFEU which meaningfully provides that these policies and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

Immigration and asylum laws were generally amended in all our countries, adopting more restrictive measures, except in Poland and Greece. This occurred regardless of the country's actual involvement in the migratory crisis, signalling a politicisation of this issue and the increasing importance of populist claims in this regard (Boswell, Geddes and Scholten 2011; Van der Brug et al. 2015), as illustrated in Figure 2.

Figure 2 - Migration crisis and legislative/policy reforms

Tightening of migration legislation	**Migration crisis**		
	heavy	moderate	low
yes	Italy Germany	The UK France	Denmark Switzerland
no	Greece		Poland

The two countries least affected by the migration crisis, Denmark and Switzerland, represent the most interesting litmus test for the argument of the politicisation of the discourse and debate on migration. Despite a relatively low number of migrants and a high-functioning economy, the Danish welfare state has moved from a universalistic to a more exclusivist one, mainly protecting the Danes and the ones who contributes to society in financial terms, leading to retrenchments in welfare benefits with regard to immigration (trying to reduce the intake of ─ EU and non-EU ─ immigrants and refugees, by e.g. restricting social benefits). Denmark, like other Nordic countries, has a universal social-democratic welfare state-tradition with a high level of trust in the state and its institutions. However, increased individualism, the inflow of refugees and asylum seekers, and increasing intra-EU mobility creates tension between the transnational solidarity principle and the particularities of the welfare state. Similarly, Switzerland has neither been affected by the economic crisis, nor dramatically by the refugee crisis; and yet, deeper analysis of the social perception of the crisis in the Swiss population discloses the assumption of a new immigration regime, which turns into restrictive attitudes towards foreigners throughout the country, but especially in German-speaking cantons and in the Ticino (Wichmann et al. 2011; Ruedin et al. 2015). In this respect, the referendum banning the construction of minarets on mosques in the country held in 2009 is paradigmatic and it is inherently contrary to the principle of equality, since it results in discrimination against a specific group by diminishing their presence in the public sphere. The initiative expresses the willingness to defend the presumed idea of homogeneity and coherence of the Swiss community, and it exposes the tensions and the fragile equilibrium between solidarity within national community and solidarity between individuals and exterior communities.

France and the UK have been moderately touched by the new migrant inflow, but in both countries migration has been a highly-contested terrain for political debate, with little room for solidarity. In the UK, the issue of immigration has a history of contention and concerns about the free movement of people; whether they are migrants or refugees and asylum seekers is somewhat illustrated by the different approach the UK adopts in comparison to other European countries. For example, in contrast to the majority of Member States of the European Union, the UK, along with five others, is not a signatory of the Schengen Agreement, which enshrines the principle of free movement of people. Furthermore, in recent years, the issues of asylum and migration have often been welded together in anti-im-

migrant discourses perhaps best exemplified by a poster from the Leave Campaign during the 2016 EU referendum which called for a leave vote alongside a picture of a line of Syrian refugees. Evidence of continued concerns over border control has also emerged, more recently in 2015 during the Syrian refugee crisis in which the UK Government was reluctant to accept high numbers of refugees who had crossed the Mediterranean (accepting up to 20,000 over five years) instead opting to emphasise the financial assistance it has provided and the practical support it could offer to those living in refugee camps in the region (UK Government 2015).

In France, migration comprises a very complex field characterised by intense policy reforms over at least two decades. Major legislative reforms have been implemented across the 2000s and the 2010s including new tools for promoting access to citizenship, socio-economic integration, and the fight against crime over migration. Republican France is notoriously a country of civic traditions, whereby group distinctions in general are not put in the public space and play no significant role in the distinction between citizens and non-citizens. A relevant characteristic of the intervention of French authorities in the field of migration consists of the increasing fight against irregular migration, with a major emphasis on coercive measures that target those who provide spontaneous and individually-based aid to immigrants for entering France irregularly. These coercive measures —which have often included the detention of people who have offered shelter or other kinds of help to immigrants (who were later found to be irregular)— have been applied as an implicit formalisation of a 'solidaritycrime', the latter being based on a very vague definition that the law gives to the content of the crime itself. The vagueness of the definition is indeed so opaque that it allows for mixing up human trafficking with genuine concerns and solidarity (Müller 2009 and 2015). The law does not explicitly name the support to undocumented migrants as "solidarity-crime", but it is extremely interesting that in the media and common discourse, this is the label stuck to the crime. In the field of migration, solidarity may even become a crime.

The refugee crisis strongly affected three countries —Germany, Italy and Greece —, but policy responses were different. In Germany, the development of legislation in the field of asylum has been very dynamic in recent years. The most radical change was spurred by the unprecedented arrival of large numbers of refugees and asylum seekers in late summer 2015, leading to various reforms (esp. Asylum Packages I of October 2015 and II of March 2016). In response to the new challenges, the recognition

of asylum or international protection status was subject to stricter and tighter rules, together with stricter deportation rules and restrictions on family reunification. Moreover, stricter conditions for social benefits were implemented, following the principle of "demanding and supporting" and the requirement to cooperate, together with a stricter definition of target groups with entitlement to asylum seeker benefits. The reforms aimed to remove potential "disincentives" (Deutscher Bundestag 2015, 25-26) and to allocate resources and capacities more efficiently to the growing group of asylum seekers and refugees with humanitarian, political and international protection motives (cf. also Federal and State Decisions on Refuge and Asylum of 24 Sept. 2015). Overall, the German migration and asylum legislation remains a highly contested field, since a considerable divide between proponents and opponents of solidarity with refugees has emerged over the past two years, both among policy-makers and within society. Thus, the question of insufficiencies in the law and administrative implementation is itself subject to the conflict between different political and societal groups and positions.

In Italy, during the crisis, the entry rate of new workers, both documented and undocumented, from non-EU countries diminished mainly due to a sharp decrease on the economy of the country (Bonfazi and Marini 2014). From 2010 to 2014, however, there was a noteworthy increase in the number of asylum applicants, refugees and asylum seekers, especially from Africa and Syria. In order to manage the refugee humanitarian crisis in the Mediterranean Sea, Italian authorities organised migrants' rescues through the naval assets of 'Mare Nostrum' and/or 'Frontex' operations, even in the absence of an agreement at EU level. As of late 2017, no effective burden-sharing mechanism has been enforced and asylum seekers and refugees relocation processes have been extremely difficult, slow and rather inconsistent as regards real numbers of people relocated. Against this backdrop, the Italian legislation on immigration has mainly focused on the 'criminal' aspects linked to undocumented immigration, sometimes at the expense of the protection of fundamental rights (as recognised by the case-law of the Constitutional Court and also by the Council of States, that established that the failure to obey an order of expulsion could not inhibit legalisation – Plenary Meeting of the Council of State, decision n. 7 of 2011). In the past few years, the already restrictive immigration law has been further tightened, favouring repressive aspects (undocumented migration became a crime; ex-post legalisation procedures for undocumented

migrants were forbidden; permanence in the Centres of Identification and Expulsion was prolonged up to 180 days, etc.) over inclusive measures.

Noticeably, Greece and Poland do not follow the mainstream: differently affected by the "migrant crisis", the two countries have the adoption of non-restrictive legislation and policies in common, though for different reasons. In Greece, Law 3838/2010 marked a clear break from pre-existing restrictive provisions by facilitating the naturalisation of first generation migrants, and by providing for citizenship acquisition to second generation migrants. At the same time and in line with the trend for more intensive integration tests in a number of European countries (Baubock and Joppke 2010), the new law also required passing a test verifying an individual's knowledge of Greek history, institutions and civilisation. Besides facilitating nationality acquisition, it also extended to Third Country Nationals (TCNs) the right to vote and stand as candidates in local elections. However, this major reform was subsequently suspended. In 2013, the Council of State declared the above two provisions facilitating nationality acquisition and extending political rights to TCNs unconstitutional (Decision 460/2013). It did so on the grounds that they undermined the national character of the state and diluted the composition of the legitimate electorate. Nevertheless, the final judgement of the Council of State did not elaborate on legislation for naturalisation, nor on the requirements for obtaining Greek citizenship, leaving space for more open policy-making in the future. The introduction of the Dublin procedure[4] has resulted in additional asylum applications to Greece, adding to migration pressure on its external borders. The UNHCR has described the situation in Greece for migrants and asylum seekers as a "humanitarian crisis" (UNHCR 2013; EMN 2011), further exacerbated by the economic difficulties of the country.

Poland, which has not been affected by the Mediterranean refugee crisis, but has faced new waves of refugees from the Ukrainian armed conflict area, adopted the new "Law on Foreigners", in December, 2013. The

4 This system, originally based on the Dublin Convention and currently disciplined by Regulation (EU) n. 604/2013 of 26 June 2013, provides the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The State determined as responsible for the application is also the sole State bound to guarantee the rights to asylum and to provide to the refugees all the benefits and rights granted by the European Union provisions.

law comprehensively regulates all issues connected to foreigners residing and working in Poland and adjusts the Polish law to the EU directives concerning the status of third-country nationals who are long-term residents, the standards for the qualification of third countries or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection. This resulted in a friendlier legal and policy framework towards migrants, probably due more to the influence of European standards than to a solidaristic attitude of the people or to a pro-migrant political discourse. This has been confirmed by the firm refusal to welcome refugees and asylum seekers according to the burden-sharing approach of the European Union, refusal that has been sanctioned by the European Commission launching infringement procedures against Poland (and Hungary and Czech Republic) in June 2017 for not having fulfilled their obligation to host relocated migrants from Italy and Greece.

Thus, the importance of the migration waves has been claimed as political justification for restrictive legislation and policies in Germany and in Italy, but the Greek case demonstrates that even under very critical conditions, the legal response may assume different tones. Furthermore, the cases of Denmark, Switzerland, the UK and France confirm that the political debate easily overlooks the real numbers of either the "refugee crisis" or the economic one, as a number of research papers and studies maintain (Geddes and Scholten 2016; Van der Brug et al. 2015). Moreover, this is further confirmed by the interviews carried out with civil society and grassroot movements and organisations in the field of migration: the exacerbation of the tones of the political debate on the refugee crisis have blurred the real aspects of the phenomenon. And the securisation trend of the legislative and policy reforms has been intensified by the lack of material resources and slow policy implementation, especially in the countries most severely involved with intense refugee and migrant incoming fluxes.

Finally, all country chapters show that in the migration legal framework, little reference, if any at all, is made to solidarity. There are other keywords often mentioned, such as fundamental rights, human dignity, social integration, but solidarity, with its distinctive significance, is absent from the legal discourse, and curiously, it appears in media and popular language to identify a crime in France.

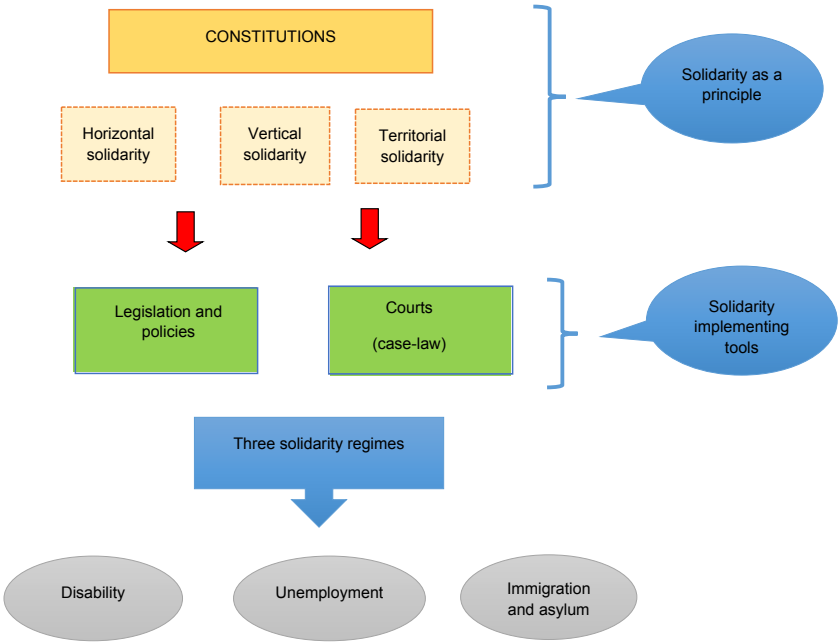
Denmark, France, Germany, Greece, Italy, Poland, Switzerland and the UK are characterised by complex webs of solidarities, and the same applies to the legal and policy framework at the European Union level. These solidarities are sometimes imposed by the legal frameworks, while at other times the legal frameworks accommodate and recognise existing solidarity ties and practices, and on other occasions, laws and policies result in counter-solidarity measures.

According to Durkheim, the substance of law and its processes express the specific features of societies' solidarity that is to say the manner in which societies are integrated and remain united despite increasing complexity and diversity. Studying the evolution of the law in each society unveils how the structures of solidarity allowing contemporary societies to cohere have gradually formed (Durkheim 1984). Thus, our comparative study on the evolution of law and policy reforms in the fields of disability, unemployment and migration and asylum has unfolded how the constitutional solidaristic approach that characterises – albeit diversely- all our countries reveals the weaknesses of social and legal systems pursuing a difficult and precarious balance between the full enforcement of rights and the recognition of human dignity as supreme values on the one hand, and the imperatives of the market on the other.

The Courts have played a significant role, admittedly with a certain degree of ambiguity in some jurisdictions, in mitigating the most severe austerity measures, using solidarity as a potent constitutional paradigm. Moreover, regardless of the concrete effectiveness of jurisprudence as a shield against unconstitutional legislation (which however remains quite an effective shield especially in France, Germany and Italy), the interest of the court's activity is that in this case-law the distinctiveness of solidarity, i.e. the value of bridging rights and duties while allowing for the creation of national communities, has emerged in a much clearer way than in any other legal domain.

The legal “solidarity system” as depicted in Figure 3, shows how solidarity, in its three dimensions, from the constitutional level defines the specific policy regimes through the combined tool of legislation and case-law. However, it assumes different connotations along policy fields and across countries.

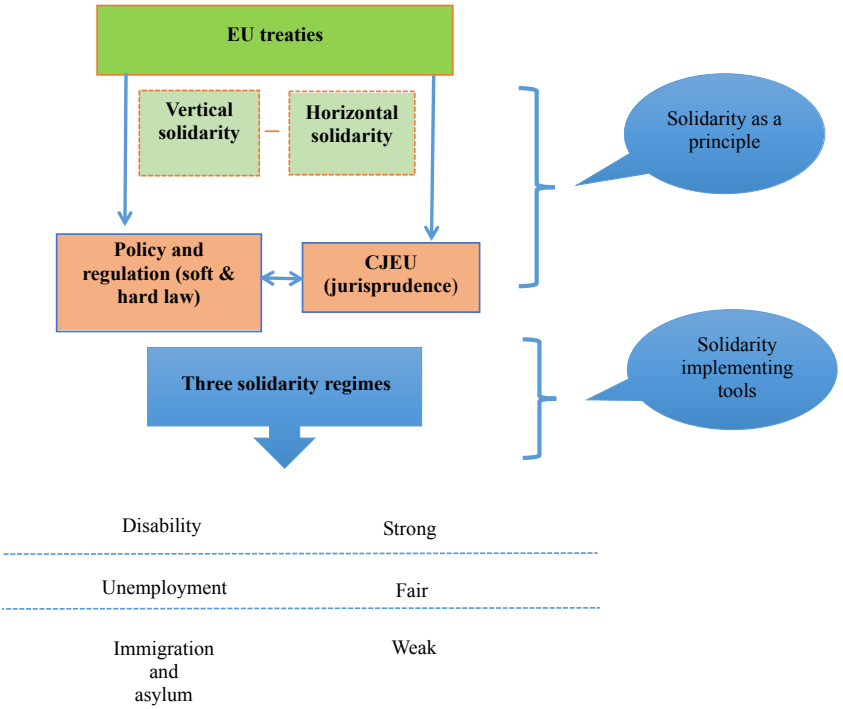
Figure 3: Solidarity in domestic jurisdictions



In the years of the crisis the perimeter of mutual assistance has narrowed and its content has become lighter. And even more narrow and lighter passing from disability to unemployment, and from unemployment to immigration and asylum.

The same structure can be adopted for the EU level (figure 4). Here, the difference in the solidarityregimes is even more evident: disability is the policy domain where solidarity based legislation and policies are stronger, and immigration and asylum the policy domain where they remain weaker.

Figure 4: Solidarity in the EU legal system



Has Solidarity Resisted the Crisis Crush Test?

In our analysis, we have tried to free solidarityfrom the rhetoric often associated with the idea, and to understand the effective potency of the notion. Thus, we should be careful not to paint solidarity as the panacea to the global economic crisis while paying homage to its unique and transformative role in mitigating the ill effects of the crises economically, socially, politically and legally at national and European levels. In all the three policy domains, solidarity has been a recessive value against the imperative of the market (in the field of unemployment), of the securisation discourse (in the field of migration) and of welfare retrenchment (in the field of disability). And even in the field of disability, where all our country chapters have highlighted a strong entrenchment of solidarity in the legal frame-

work, the implementation of the laws remains highly problematic, and this seriously jeopardises people's rights and dignity and undermines solidarity. Moreover, the large majority of interviewed grassroots and civil society organisations across the eight countries struggle to acknowledge the value of a solidarity legal framework. Seldom do they resort to courts to seek the sound respect of the constitutionally entrenched principle of solidarity, so that the judiciary remains an underestimated means for the entrenchment of solidarity.

There is no single lesson to be learned here. There is no single recipe. There is no single roadmap to the full disclosure of the still latent potency of solidarity. As we have demonstrated, *per se* the presence of solidarity in the constitutions or in the EU treaties does not guarantee the solidaristic quality of national and European laws and policies. But constitutions and Treaties are documents deemed to persist in time. They remain tools in the hands of the people, subject to new, more progressive and open interpretations.

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