

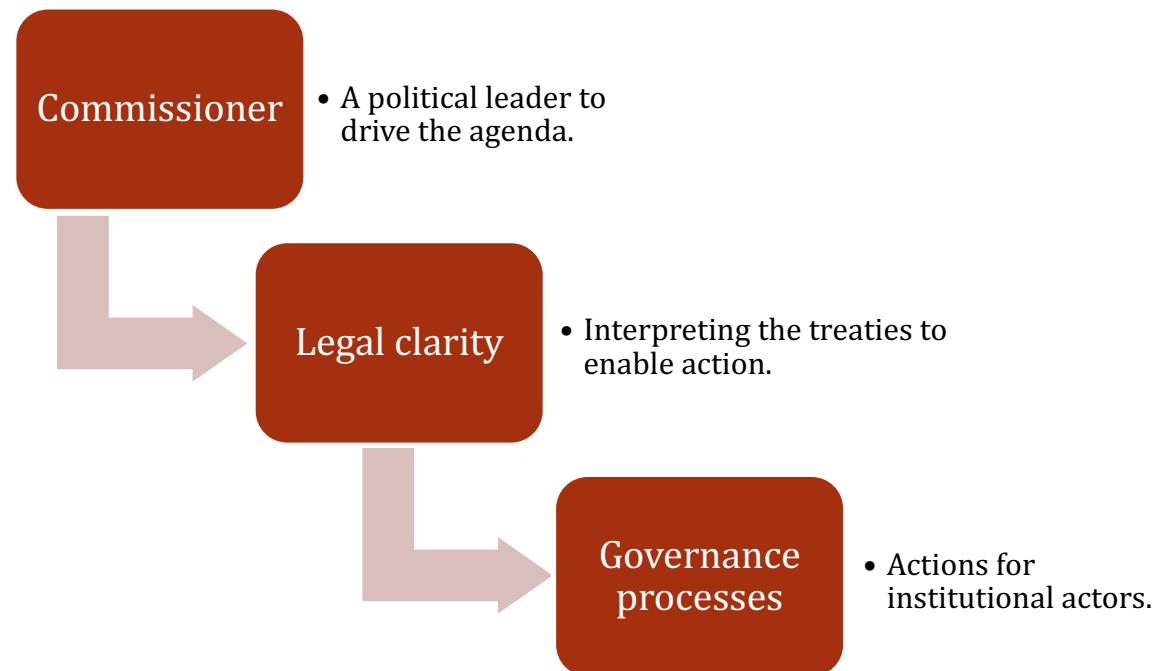
European Union law for Future Generations: what, why and how?

Katalin Sulyok¹, Béla Kuslits² 2025

Introduction

The Jesuit European Social Centre (JESC), as a founder and coordinator of the Future Generations Initiative, has been campaigning for the creation of an Interinstitutional Agreement for Future Generations. This report explores the sources and potential content to consider when drafting such a document.

The Commissioner responsible for Intergenerational Fairness (IGF) is connected to a long legal tradition of protecting the rights of Future Generations. This tradition puts constraints on how the term can be legally defined under EU law and also opens up opportunities to make an impactful agenda.



¹ Associate Professor in International Law and Sustainability at Durham University

² Senior Ecology Officer at Jesuit European Social Centre

The Strategy on Intergenerational Fairness

The adoption of the EU Strategy on Intergenerational Fairness is scheduled for March 2026. This strategy will lay out the IGF agenda for the broader policy audience, it will provide key definitions and offer an understanding of the added value of this new field. The strategy will be crucial in introducing new language, defining the concept of IGF itself and explaining how it fits into the political landscape. It is not a legislative act, but it is crucial in enabling sufficient support for the agenda that allows for stronger measures also involving the Parliament and the Council. We propose that such a document should be an Interinstitutional Agreement on Intergenerational Fairness.

Why an Interinstitutional Agreement?

An Intergenerational Fairness Law similar to the often-cited *Well-being of Future Generations Act* in Wales could only be created using the Flexibility Clause of the TFEU (Art 352). At the same time, the treaties commit to the principles of *sustainable development* and *solidarity between generations*. Interpreting and operationalising these principles could clarify the legal interpretation of Intergenerational Fairness in EU law. A shared interpretation in an Interinstitutional Agreement by the Commission, Parliament, and the Council could establish legal clarity and a set of procedures that work together without friction in delivering on our responsibility towards Future Generations.

Definitions

Intergenerational fairness is closely related to neighbouring concepts such as intergenerational solidarity, justice and intergenerational equity. It captures the idea that decision-makers in the present should not inflict long-term harms and risks on future generations.

There is no universally applicable legal definition of how to conceptualise future generations; domestic laws and jurisprudence, in fact, differ widely in this respect. In some legal systems, the concept of future generations encompasses currently living children; in other jurisdictions, it is equated with generations yet to be born. This latter understanding is reflected in the *Maastricht Principles on the Human Rights of Future Generations*, which emphasises that future generations are “*do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and peoples.*”

The EU Strategy on Intergenerational Fairness takes an even broader approach, considering intergenerational fairness applicable to past, present, and future generations, and stresses the implications of multiple coexisting generations.

Accordingly, its temporal scope includes the different generations living at the same time, but also extends to current children and even generations yet unborn. Taking care of later generations necessitates taking a long-term view and considering the impact of the decisions

made today by at least decades from now, and in some contexts even by the end of this century, where scientific evidence is available on the future implications over such a timescale.

International developments

At the UN Summit of the Future, nations committed to uphold, strengthen and accelerate the 2030 Agenda that defines the *Sustainable Development Goals*. Part of the *UN Pact for the Future* is the *Declaration on Future Generations*³ which specifies how this agenda is especially relevant to upholding human rights of future generations:

Reaffirming also our commitments to the 2030 Agenda for Sustainable Development, including the political declaration of the Sustainable Development Goals Summit of 2023, and our pledge to future generations as set out, inter alia, in the Rio Declaration on Environment and Development,

Cognizant that future generations are all those generations that do not yet exist, and who will inherit this planet,

Observing that many existing national legal systems, as well as some cultures and religions, seek to safeguard the needs and interests of future generations and promote intergenerational solidarity, justice and equity,

Recognizing that the decisions, actions and inactions of present generations have an intergenerational multiplier effect, and therefore resolving to ensure that present generations act with responsibility towards safeguarding the needs and interests of future generations,

The *UN Common Principles on Future Generations*⁴ also emphasise, among other principles, the importance of governance processes to foster long-term thinking, specific institutions to represent future generations in democratic processes and fostering a future-oriented organisational culture.

Future Generations in the sources of EU law

The primary legislation of the European Union contains several provisions that support obligations of EU institutions to protect future generations, even without an explicit treaty amendment.

³ <https://www.un.org/pact-for-the-future/en/annex-ii-declaration-future-generations>

⁴ <https://unsceb.org/united-nations-system-common-principles-future-generations>

TEU contain several fundamental objectives which pave the way for protecting posterity's long-term interests in EU law. Article 3(3) of TEU explicitly mentions *solidarity between generations, sustainable development, non-discrimination, and protection of human rights*. The concept of sustainable development, embedded as a fundamental aim under Article 3(3) TEU and reinforced by Article 11 TFEU, inherently protects future generations' interests, as it requires *meeting present needs without compromising future generations' ability to meet their own needs*. Non-discrimination provisions could be interpreted to address the disparate climate impacts that younger cohorts will experience. For example, scientific studies show that people born in 2020 will experience six times as many heat waves as those born in 1960⁵.

The *EU Charter of Fundamental Rights* contains the most direct reference to future generations at the primary legislation level, with its Preamble stating that the rights guaranteed therein "*entail responsibilities and duties with regard to other persons, to the human community and to future generations*".

Additionally, there are relevant general principles of EU law that support taking action against future risks and potential harm. More specifically, the *precautionary principle* is inherently future-oriented, allowing for consideration of the possible long-term costs of inaction.

International legal obligations binding on the EU further strengthen the case for protecting future generations. The EU is party to international treaties that enshrine intergenerational equity, including the *UN Framework Convention on Climate Change* and the *Paris Agreement*, whose provisions on intergenerational equity impose normative obligations on the EU according to the Commission itself. The *Aarhus Convention*, to which the EU is party, recognises that every person has the duty to "*protect and improve the environment for the benefit of present and future generations*" and aims to "*contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being*".

The International Court of Justice (ICJ) in its advisory opinion on *Obligations of States in respect of Climate Change* gives special attention to the legal status, rights, and processes connected with future generations, reinforcing intergenerational equity as a principle of international law. The ICJ formally recognised intergenerational equity as an interpretive principle, which guides the interpretation and implementation of binding obligations under the sources of international law, including treaties and customary law.

States must act to preserve dignified living conditions for those yet unborn, ensuring that actions today do not foreclose basic rights or life-plans for Future Generations. The ICJ stressed that States should pay due regard for the interests of future generations and the long-term implications of their conduct when they decide on and implement policies and measures.

⁵ <https://www.nature.com/articles/s41586-025-08907-1>

The opinion also links climate action to the protection of fundamental rights, including life and health, which have direct implications for Future Generations.

Domestic law of EU Member States

As of 2022, 41% of all constitutions are listed as containing provisions on future generations. This ratio is even higher in Europe, where 15 EU Member States mention future generations in some form in their constitutions, including *Austria, Belgium, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, and Sweden*⁶.

Relevant provisions may range from explicit references to intergenerational solidarity in substantive or preambular provisions to indirect references, such as enshrining the concept of sustainable development, or managing natural resources with long-term considerations. Even in Member States where the constitution does not mention future generations, courts often interpret rules and regulations with explicitly factoring in the long-term needs of future generations in legal disputes involving future risk or harm.

Judicial decisions in Europe

In the *Urgenda v Netherlands* case, the *Supreme Court* and the *Court of Appeals* found the Dutch GHG emissions reduction policy violating the right of private life of Dutch citizens because it was "clearly plausible that the current generation of Dutch nationals, in particular but not limited to the younger individuals in this group, will have to deal with the adverse effects of climate change in their lifetime if global emissions of greenhouse gases are not adequately reduced." (Supreme Court's judgment, § 4.7.)

The *German Federal Constitutional Court* in its climate decision in 2021, also referred to as *Neubauer*, found that a domestic climate legislation, which unilaterally offloads the mitigation burden to future generations, that is after 2030, is against the *German Basic Law*.

The *European Court of Human Rights* in the *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* case reached a similar conclusion, when it found that climate measures of State Parties to the *European Convention on Human Rights* should observe "the importance of intergenerational burden-sharing." (§410). The Court also found that "to avoid a disproportionate burden

⁶ For a more detailed discussion on Member State constitutions, see a dedicated analysis by JESC at <https://jesc.eu/publication-constitutional-protections-for-future-generations-among-eu-member-states/>

on future generations, immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality." (§ 549)

In 2025, the *Hungarian Constitutional Court* partially annulled the one-page-long Hungarian Climate Law on the basis of a constitutional public trust provision, which poses an obligation for the State to protect the environmental interests of future generations. The Court stressed that this obligation includes a duty not to create harmful path dependencies for future generations (§49 5/2025. AB Decision (VI.30.) and on this basis called the legislator to adopt a new climate act, which provides adequate safeguards and rules for both climate mitigation, adaptation, and climate resilience to protect future generations from the harmful consequences of climate change.

Do No Harm to Future Generations

Built on the sources explored above, considering the Mission Letter the President of the European Commission gave to the Commissioner and the existing legal principle of *Do No Significant Harm*, we suggest wording the legal principle for Intergenerational Fairness as follows:

The three EU Institutions commit to ensuring that their actions, policies, and decisions taken today do no harm to future generations. Intergenerational fairness requires the Union to avoid imposing disproportionate or excessive burdens or risks on future generations thereby undermining their long-term interests, vital needs, rights, and well-being in its decisions and policies. The three Institutions, therefore, commit to ensure a fair distribution of risks, benefits, and burdens across present and future generations.

The principle of intergenerational fairness commits the Union to a long-term course of action, where the goals set for the future in EU strategies are adequately reflected in binding legal safeguards and put into practice, and where the three Institutions diligently work towards realising such long-term goals that safeguard a liveable future for present and future generations. This entails a due diligence obligation for the three Institutions to pay due regard to the future in exercising their powers under EU law.

This principle draws on established legal language and provides a horizontally applicable principle, which confers a due diligence obligation on EU institutions. A duty of due diligence imposes an obligation for the actors to do their utmost in taking all necessary and reasonable measures at their disposal to reach the goals set for them. This provides a continuously evolving obligation the standards of which become more demanding with the increase in the magnitude of the risks to be prevented, the scientific information available, as well as the technological and financial capabilities of the duty bearers.

This due diligence obligation supports the implementation of crucial European laws with long-term objectives, such as the Nature Restoration Law and the European Climate Law. The due diligence obligation, constituted by the principle, aims to prevent implementation failures of these protective secondary legislations, which can paradoxically be the consequence of their decade-long timeframes. Notably, the Nature Restoration Law and the European Climate Law both set long-term targets to be reached by 2050. Such long-term legislations are prone to be difficult to be implemented. As the shortcomings in the implementation of another long-termist legislation, the Water Framework Directive, also showed, when ambitious goals are defined with an extended timeframe but without well-defined interim steps and targets, the necessary action (or the scaling up of that action) can be postponed indefinitely – ultimately jeopardising the law's objectives.

In this sense, the objective of Intergenerational Fairness, and all the tools and procedures that implement it, is to prevent this failure in addressing long-term challenges. The EU must define the necessary and proportionate interim steps and procedures to deliver and monitor the long-term objectives set out in EU law.

Mainstreaming intergenerational fairness across EU institutions

Mainstreaming Intergenerational Fairness into the Commission's work is analogous to gender equality, which has been realised through a 'dual approach'. This involves mainstreaming a gender perspective in all policies, while also implementing specific measures to eliminate, prevent, or remedy gender inequalities. Neither of these approaches can replace the other. Gender mainstreaming is not a policy goal in itself, but a means to achieve gender equality.

Analogously, Intergenerational Fairness requires the Commission to apply the legal principle across all actions, funding instruments, and policies, while also developing specific tools and processes to evaluate and promote the implementation of IGF with a more generalist perspective that goes beyond the particular policy problems on the agenda.

The IGF principle can be implemented through a number of different institutional and procedural mechanisms as detailed below.

Skill building

The Commissioner should provide guidance and capacity-building to EU civil servants on future-fit policymaking. Developing the skills of the policy staff can significantly contribute to simpler processes while ensuring organic integration of IGF into all policies.

Annual report on Intergenerational Fairness

One of the key challenges of IGF is that it is fundamentally a horizontal concept that looks beyond any particular pressing matter on the current policy agenda. It is concerned with long-term challenges, such as the planetary crisis, but these issues are not always subject to legislation. We need an impact assessment framework that addresses systemic risks and links them to fundamental rights to evaluate the EU's progress on these issues.

Producing such an assessment requires strong capacities in modelling long-term environmental trends, foresight to identify plausible scenarios, and an understanding of how these systemic risks threaten fundamental rights today and in the future. For such an effort, a collaboration among the Joint Research Centre (JRC), the Fundamental Rights Agency (FRA), and the European Environment Agency (EEA) would be well-suited.

Impact Assessment

While the annual report would address the horizontal and long-term questions from the perspective of the rights of Future Generations, individual legal proposals still need to be assessed to determine how they shift the perspective in their relevant areas. Existing impact assessment tools in the *Better Regulation Toolbox*, such as foresight, multi-criteria decision analysis (MCDA), and life cycle assessment (LCA) could all be utilised to evaluate how a specific legal proposal would change either the risk exposure of European citizens or their adaptive capacity to those risks.⁷

Standing Rapporteur in the European Parliament

Standing rapporteurs ensure oversight on and engagement with strategic topics.

The European Parliament's Rules of Procedure need to be updated to create a permanent rapporteur position. This would require a majority vote by MEPs and could establish the role within an existing committee (LIBE or ENVI) or as a cross-cutting position reporting to multiple committees.

The Inter-institutional Agreement may establish a standing rapporteur position vested with even stronger powers. The Parliament could negotiate with the Commission and Council to formalise this role across EU institutions, similar to how the European Ombudsman operates. This would provide greater legitimacy and cross-institutional recognition.

Council Working Party on Intergenerational Fairness

The EU Council may also establish a permanent Working Party on intergenerational fairness, bringing together representatives from Member States with proven expertise in foresight and long-term policy planning across various sectors. This body would serve as an expert advisory

⁷ JESC recently published a report that discusses in detail the structure and proposed methodology of the Annual Report on Intergenerational Fairness and the connected Impact Assessment procedure. The report is available at: <https://jesc.eu/publication-impact-assessment-for-intergenerational-fairness/>

mechanism to Council formations, helping to embed long-term perspectives into EU legislative processes and decision-making. Member States could draw on their national institutions to support future generations and their representatives' work. Unlike rotating presidencies, the Working Party should be led by a fixed chair appointed on the recommendation of the Commissioner responsible for Intergenerational Fairness, ensuring continuity and strategic direction. The chair should possess demonstrable expertise in either future generations policy or foresight methodologies for long-term policymaking.

Coordination with Member States and the UN

Effective implementation of IGF requires that the agenda and the relevant policy work is coordinated beyond the EU institutions, within Member States, and the UN. The Ministers of the Future network, or where applicable, dedicated institutions for Future Generations, could be interlocutors for such a task. The EU should support the establishment of the UN Special Envoy on Future Generations politically and financially.