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The EU social acquis

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Launching a consultation on an European Pillar of Social Rights

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1. A brief history of the social *acquis*

EU primary law, consisting of the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights (EU Charter), bestows a social mission and mandate on the EU. This social mandate is the result of a long and gradual development. Social policy in the broad sense began as a means of securing market integration, and has developed into a method to deliver social policies. This paper focuses on this "*acquis*", in a legal sense.

Already starting with the Treaty of Rome (1957), the European Economic Community provided the creation of a European Social Fund (ESF) in order to improve employment opportunities for workers and to contribute to the raising of their standard of living (Chapter II). It included a right to free movement of workers and the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment (Article 48). As illustrated in Article 119, it also focused on gender equality with respect to equal pay for equal work. In the field of the protection of health and safety in the workplace the Commission could issue opinions on problems at national and international level (Articles 117 and 118).¹ Moreover, due to the Treaty's obligation for the Council to act in the area of the coordination of social security (Article 51), EU secondary legislation in this field has existed since 1958.² Finally, concrete action was taken on vocational training already in 1963.³ Relatively early the Court of Justice of the European Union (CJEU) took social considerations on board, in particular in cases involving individuals. The result was that individuals, often migrant workers and their families were held to be entitled to various types of social benefits.⁴

The EU social *acquis* initially evolved in order to complete the single European market.⁵ The social policy further developed with the inclusion by the Single European Act in 1986 of the possibility to adopt minimum requirements on the health and safety of workers (Article 118a). The areas for EU action were expanded in the 1992 Maastricht Treaty's Social Protocol. The Protocol's provisions were subsequently integrated into the general Treaty framework by the 1998 Amsterdam Treaty rendering them applicable to all Member States, forming the basis for the current Title X of the TFEU. From the entry into force of the Lisbon Treaty, the EU had for the first time in the history of integration included the concept of achieving a highly competitive social market economy.⁶

As for fundamental social rights, the initial point of reference in the EU legal order was the Community Charter of the Fundamental Social Rights of Workers, adopted in 1989 by all Member States except the UK. Not legally binding, the 1989 Community Charter was a political instrument and a point of reference for the CJEU.⁷ Many of the 1989 Community Charter's rights are now featured in the EU Charter. Proclaimed in Nice in 2000 and given status equal to primary law by the Lisbon Treaty in 2009, the EU Charter contains a great number of social and welfare rights that need to be respected by the EU Institutions, as well as the Member States when they are implementing EU law.

¹ Minimum occupational health and safety requirements were needed in order to complete the single European market. This led to the adoption, for example, of Directive 82/605/EEC on protection against the risks associated with metallic lead, Directive 83/477/EEC on asbestos, and Directive 86/188/EEC on noise.

² Regulations No 3 and 4 of 1958.

³ 63/266/EEC: Council Decision of 2 April 1963 laying down general principles for implementing a common vocational training policy.

⁴ Cf. Case 249/83, *Hoeckx*; case 94/84, *Deak*; and C-237/94, *O'Flynn*.

⁵ Many early EU labour law measures were based on the general harmonisation competence for the establishment and functioning of the internal market. See e.g. Directive 80/987/EEC on employer insolvency, Directive 75/125 on collective redundancies, and Directive 77/187/EEC on transfer of undertakings.

⁶ Article 2(3) TEU.

⁷ For example case C-173/99, *BECTU*; C-397/01, *Pfeiffer* and C-151/02, *Jaeger*.

2. The framework of the EU social *acquis* as laid down in primary law

2.1. The Treaties

The social mission and objectives of the EU are to promote the well-being of its peoples (Article 3 TEU), to work for the sustainable development based on a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection. The EU shall combat social exclusion and discrimination, promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall also promote economic, social and territorial cohesion, and solidarity among Member States.

The EU shall pursue these social objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties (Article 5(2) TEU). The use of these competences shall comply with the principles of subsidiarity and proportionality (Article 5(3) and 5(4) TEU).

The social mission of the EU is further enhanced by Article 9 TFEU that prescribes a social ‘mainstreaming’ obligation, stating that in defining and implementing its policies and activities, the EU shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection and the fight against social exclusion.

The EU has implemented its social mission and objectives *inter alia* on the basis of Article 153 TFEU of the Social Policy Title X. The central provision in this Title is Article 153(1). It has a wide personal and material scope, providing the legal basis for the EU “*to support and complement the activities of the Member States*” in a number of fields for people both inside and outside the labour market: workers, jobseekers and unemployed. The objective is to improve working conditions, social security and social protection, workers' health and safety, information and consultation of workers, and the integration of persons excluded from the labour market.

For all those fields the EU is granted a law-making competence to adopt directives (except the combating of social exclusion and the modernization of social protection systems), but this power is limited in two ways: the EU operates under “*shared competence*” (Article 4 TFEU), and can only establish minimum requirements.

For directives concerning social security and social protection of workers, the protection of workers where their employment contract is terminated, the representation and collective defence of workers and employers and conditions of employment for third-country nationals legally residing in EU's territory, unanimous Council voting with consultation of the European Parliament is required.⁸ The specific bridging clause, which authorises the Council to decide unanimously to apply the ordinary legislative procedure⁹ can be applied in those cases, except on measures concerning social security and social protection of workers.

The final paragraph of Article 153 TFEU declares that “*the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs*”, limiting the EU's power under this social competence.¹⁰

⁸ Second subparagraph of Article 153(2)(b) TFEU.

⁹ Third subparagraph of Article 153(2)(b) TFEU.

¹⁰ However, some measures based on Article 153 TFEU, such as the fixed-term, part-time and temporary agency work directives include pay among the “employment conditions” for which they lay down a right to equal treatment. Aspects of pay are also indirectly regulated by Article 7 of the Working Time Directive, which lays down the right to minimum paid annual leave. In none of these cases are the levels of pay determined by EU law and this remains a matter of national competence. The CJEU has explicitly held that “as [Article 153(5)

Article 5(3) TFEU provides that the EU may take initiatives to ensure coordination of Member States' social policies. The scope of and arrangement for exercising the Union's competence in this regard is set out in Article 156 TFEU, laying down the necessary infrastructure for a social 'open method of coordination'.

The TFEU features a unique additional way for the EU to adopt social policy legislation, namely by the implementation of agreements concluded between the social partners, i.e. representatives of management and labour, at EU level. Articles 152, 154 and 155 TFEU provide the legal framework for this European-level social dialogue. In the areas covered by Article 153 TFEU, such agreements shall be implemented "at the joint request of the signatory parties, by a Council decision".¹¹

Article 21(3) TFEU provides competence for the EU to adopt measures concerning social security or social protection. Similarly, for cross-border situations in the internal market Article 45–48 TFEU provide competence to secure the free movement of workers in the EU.

Finally, Articles 145, 148, 162, 165 and 168 TFEU on employment guidelines, the ESF, education and health can be mentioned in the present context.

2.2. The EU Charter

A wide range of social rights and principles are laid down in the EU Charter.¹² The EU Charter is binding on the EU institutions, which means that they have to respect and observe it whenever they act in accordance with the powers conferred on them by the Treaties. In addition, the Charter is binding on the Member States when they are implementing EU law, for instance when transposing directives into their national law. Many of the social rights and principles laid down in the Charter have been concretised by means of secondary law. These measures are fully binding on the Member States and are interpreted by the CJEU in the light of the Charter.¹³

TFEU] derogates from paragraphs 1 to 4 of that article, the matters reserved by that paragraph must be interpreted strictly so as not to unduly affect the scope of paragraphs 1 to 4, nor to call into question the aims pursued by Article [151 TFEU]". See *inter alia* Case C-268/06, *Impact*, and C-307/05, *Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud*.

¹¹ The social partners have to date adopted ten such agreements: Four cross industry and six at sector level.

¹² Such as the prohibition of forced labour (Article 5), respect for private and family life (Article 7), freedom of association (Article 12), the freedom to choose an occupation and right to engage in work in any Member State (Article 15), the right not to be discriminated on only ground (Article 21), the equality between men and women in all areas, including employment, work and pay (Article 23), the right to information and consultation within the undertaking (Article 27), the right of collective bargaining and action (Article 28), the right to a free placement service (Article 29), the right to protection in the event of unjustified dismissal (Article 30), the right to fair and just working conditions, to maximum working hours, breaks and holiday (Article 31), the prohibition of child labour and protection of young people at work (Article 32), and the entitlement to social security and assistance (Article 34).

¹³ Already before the entry into force of the EU Charter, the CJEU attached considerable importance to it when interpreting EU law. See Case C-540/03, *Parliament v Council*, paragraphs 38 and 58; Case C-432/05, *Unibet*, paragraph 37; Case C-438/05, *International Transport Workers' Federation and Finnish Seamen's Union*, paragraphs 90 and 91; Case C-275/06, *Promusicae*, paragraphs 61 to 65; Joined Cases C-402/05 P and C-415/05, P *Al Barakaat International Foundation v Council and Commission*, paragraph 335; *Küçükdeveci* and Joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke and Eifert*, paragraph 45 et seq. See also Case T-177/01 *Jégo-Quéré v Commission*.

However, the EU Charter must be read in conjunction with the Treaties. The Charter does not establish any new power or task for the Union. Moreover, Article 52(2) requires that rights of the Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by the Treaties and the general principles of EU law. The freedom to choose an occupation and right to engage in work in any Member State (Article 15 of the Charter) is therefore to be exercised under the conditions and within the limits defined by article 45 TFEU as interpreted by the CJEU. Most importantly, in many areas where social rights feature in the EU Charter (e.g., housing, child well-being, social protection), there is little to no EU competence to enact secondary legislation.

3. Social rights and principles in EU secondary law

The largest part of the EU social *aquis* consists of secondary legislation, mostly in the form of directives. Many of these give a more concrete expression or implementation of social rights as derived from the Treaties and in the EU Charter. Moreover, EU secondary law in other areas also includes social clauses.

3.1. Work environment and access to work

The protection of workers at the EU level is currently ensured through a set of individual and collective rights. The EU has adopted directives on the basis of Article 153 TFEU on social policy.¹⁴ In those directives, the definition of worker is not uniform¹⁵ and most refer to national definitions.¹⁶ For a few, where there is no definition or reference to national definitions, the one used under Article 45 TFEU applies.¹⁷ This leaves a margin of appreciation to Member States and to their courts.¹⁸

¹⁴ For example on worker's health and safety (Framework Directive 89/391/EEC and the 23 specific Directives, see Part 3.1, *Protection of health and safety*, and footnote 36), and working conditions: Directive 91/533/EEC (Written Statement); Directive 94/33/EC (Young People at Work); Directive 2008/104/EC (Temporary Agency Work); Directive 2008/94/EC (protection of employees in the event of the insolvency of their employer); Directive 1997/81/EC (Part-time work); Directive 1999/70/EC (Fixed-term work); 2002/14/EC (Information and Consultation Directive); Directive 2003/88/EC (Working Time) and Directives 2000/78/EC (non-discrimination on the grounds of religion or belief, disability, age or sexual orientation) and 2000/43/EC (racial equality).

¹⁵ See for example Directive 90/270/EEC (work with display screen equipment); Directive 92/85/EEC (Pregnant workers); Directive 2010/32/EU (sharp injuries); Directive 92/29/EEC (medical treatment on board vessels) and the Framework Directive 89/391/EEC.

¹⁶ All working conditions directives referred to in footnote 3 except Directive 98/59 (collective redundancies) and Directive 2003/88/EC (working time).

¹⁷ Directive 2000/78/EC (case C-432/14, "*O*"); Directive 2003/88 (case C-428/09, *Isère*); Directive 98/59 (case C-229/14, *Ender Balkaya*).

¹⁸ The CJEU has brought some limitation to this discretion in order to ensure the effectiveness of EU law See for example Case C-393/10, *O'Brien*.

3.1.1. Equal treatment in the workplace

Several Directives aim to implement the principle of equal treatment between persons irrespective of racial or ethnic origin¹⁹ and of men and women.²⁰ They require Member States to set up National Equality Bodies to promote equal treatment and to assist victims of discrimination. The Employment Equality Directive²¹ prohibits discrimination in employment on the basis of sexual orientation, religious belief, age and disability, and the Racial Equality Directive²² prohibit discrimination on the basis of race and ethnicity in employment, in education, and in access to social security and goods and services. In 2006, the Gender Recast Directive consolidated into a single directive earlier EU legislation relating to equal opportunities and equal treatment for men and women in employment and occupation.²³

In addition to the antidiscrimination directives, EU law in areas of transport, telecommunication, consumer protection, state aid or public procurement include provisions to ensure accessibility for persons with disabilities.

3.1.2. Reconciling family and professional life

The Pregnant Workers (Maternity Leave) Directive provides for paid maternity leave, at least at the level of sick pay for fourteen weeks.²⁴ In addition, the Directive on self-employed workers and assisting spouses also grants a maternity allowance that is sufficient to enable an interruption of occupational activities for at least fourteen weeks for female self-employer workers or female spouses of self-employed workers.²⁵ The revised Parental Leave Directive²⁶ entitles men and women workers to a minimum of four months' leave after the birth or adoption of a child. Member States, or where implemented through collective agreements, social partners are granted discretion to decide whether or not this leave is paid, and whether or not this leave can be taken in a piecemeal way or part-time. Parents who return from parental leave have the right to request but are not entitled to changes to their working hours and/or patterns for a certain period of time. It also provides that workers may request limited time off work for urgent family reasons (*force majeure*).

3.1.3. Awareness of conditions of employment

The worker is entitled to receive essential information relating to the employment relationship in writing, not later than two months after the commencement of employment on the basis of the Written Statement Directive.²⁷ These elements cover the description of the work, the date of its commencement, its duration, the amount of paid leave and the working time with additional information for expatriate employees. The Commission is currently undertaking an evaluation of the Directive.

¹⁹ Directive 2000/43/EC.

²⁰ Directive 2006/54/EC (recast) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 97/7/EC on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

²¹ Directive 2000/78.

²² Directive 2000/43.

²³ The recast Directive 2006/54/EC.

²⁴ Directive 92/85/EEC.

²⁵ Directive 2010/41/EU.

²⁶ Directive 2010/18/EU implementing the revised Framework Agreement on parental leave.

²⁷ Directive 91/533/EEC.

Awareness of rights is also ensured through the Directives adopted in view of a more effective enforcement of existing EU rules in the fields of posting of workers²⁸ or of free movement of workers.²⁹ They include obligations to ensure effective access to information on rights as established in the EU law and transposed into national law, via the use or setting up of dedicated tools or specific bodies through the availability of effective mechanisms for dispute resolution, or similar judicial or administrative proceedings.

3.1.4. Equal treatment regardless of type of contract

Three separate EU labour law Directives, concerning fixed-term work, part-time work and temporary agency work are aiming to provide equal treatment and prevent abuse of 'atypical' contracts.³⁰ Where a worker is employed under such an atypical contract, he or she should generally not be treated in a less favorable manner than comparable permanent and/or fulltime staff concerning employment conditions unless there are objective reasons for different treatment. Under the Temporary Agency Work Directive for instance, from the first day of their assignment, temporary agency workers have to have the basic working and employment conditions that would apply if they were recruited directly by the user firm to occupy the same job. These conditions cover pay, as well as the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays. To allow flexibility for workers and employers, they allow deviations from this principle in specific circumstances. The Fixed-Term Work Directive also includes an 'anti-abuse' clause to impede unjustified successions of such contracts. An additional directive extends the EU rules on occupational health and safety to temporary workers, generally more exposed to the risk of accidents at work and occupational diseases.³¹

3.1.5. Limitation of working time

The Working Time Directive³² provides a limit to weekly working time, which must not exceed 48 hours on average, including overtime. There can be an individual opt-out of this maximum on the basis of a written agreement between the worker and the employer, if the Member State has allowed the use of this derogation. This opt-out does not apply to the minimum rest provisions of the Directive, which prescribe a minimum daily rest period of 11 consecutive hours, a rest break during working hours if the worker is on duty for longer than 6 hours, and a minimum weekly rest period of 24 uninterrupted hours for each 7-day period. The Directive also lays down the right to minimum paid annual leave of 4 weeks. The Working Time Directive allows flexibility to accommodate differences between national rules or the requirements of specific activities. There is substantial scope for flexible working arrangements through collective bargaining (e.g. yearly accounting of working time) and derogations are also available to address circumstances where continuity of service is crucial (e.g. hospitals). In addition to the Working Time Directive, specific directives apply to a number of transport sectors.³³

²⁸ Directive 2014/67/EU.

²⁹ Directive 2014/54/EU.

³⁰ Fixed-Term Work Directive 1999/70/EC; Part-time Work Directive 97/81/EC; Temporary Agency Work Directive 2008/104/EC.

³¹ Directive 91/383/EEC.

³² Directive 2003/88/EC.

³³ Minimum standards for working time in the civil aviation sector are laid down in Directive 2000/79/EC. Directive 2005/47/EC implements the Social Partners agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Directive 2002/15/EC in turn sets the framework for the organisation of working time for mobile workers in road transport activities and self-employed drivers. Regulation (EC) No 561/2006 provides for minimum requirements on the daily and weekly driving times, minimum breaks and daily and weekly rest periods for drivers engaged in the carriage of goods and passengers by road. These provisions reinforce the existing rules on the organisation of the working

3.1.6. Protection of health and safety

EU rules in the social policy area guarantee workers' right to occupational health and safety (OSH). A Framework Directive and 23 individual directives provide rules on the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors.³⁴ The Framework Directive establishes general principles for managing safety and health, such as responsibility of the employer, rights/duties of workers, using risk assessments to continuously improve company processes, and workplace health and safety representation. All individual directives follow these common principles, tailoring the principles of the Framework Directive to specific tasks, specific hazards at work, specific workplaces and sectors, and specific groups of workers. The individual directives define how to assess these risks and, in some instances, set limit exposure values for certain substances or agents.

3.1.7. Posted workers

To ensure fair and just working conditions also in the context of the temporary provision of services across borders, the Posting of Workers Directive³⁵ provides that a host State is required to apply to workers posted to its territory certain basic standards of its own labour law system (e.g. minimum wage, working time, holidays) as laid down in national legislation or universally applicable collective agreement. The Enforcement Directive allows host States more effective methods of enforcing labour standards in these situations.³⁶

3.1.8. Third country nationals

Legal migration of third-country nationals to the EU is partly regulated by EU Directives which set out the conditions of entry and residence and also minimum of rights that third-country nationals should enjoy, in particular equal treatment with nationals. The Long-term Residence Directive created a single status for non-EU long-term residents. A Directive on family reunification establishes the rules and conditions under which non-EU nationals who are residing lawfully on EU territory may exercise the right to family reunification. The EU also harmonised national legislation concerning the entry of students and non-remunerated trainees and researchers. To attract talent and high skills workers, the European Union adopted the EU Blue Card Directive in 2009. A Directive on seasonal work sets important labour standards for third country nationals engaging in seasonal work in the EU.³⁷ The Directive provides the principle of equal treatment between third country nationals and Union nationals, particularly as regards the freedom of association and the right to strike, concerning terms of employment, working conditions and social security benefits.

time and are strictly monitored by means of recording equipment. The working time of seafarers is regulated by Directive 1999/63/EC.

³⁴ Framework Directive 89/391/EEC and Directive 89/654/EEC on minimum safety and health requirements for the workplace; 92/57/EEC on temporary or mobile construction sites; 92/91/EEC on the mineral-extracting industries through drilling; 92/104/EEC on workers in surface and underground mineral extracting industries; 93/103/EC on fishing vessels; 92/29/EEC on improved medical treatment on board vessels; 89/656/EEC on personal protective equipment; 90/269/EEC on the manual handling of loads; 90/270/EEC on work with display screen equipment; 92/58/EEC on safety and/or health signs at work; 2009/104/EC on work equipment; 92/85/EEC on pregnant workers; 2013/35/EU on electromagnetic fields; 1999/92/EC on explosive atmospheres; 2002/44/EC on mechanical vibration; 2003/10/EC on noise; 2006/25/EC on artificial optical radiation; 2000/54/EC on biological agents at work; 2010/32/EU on sharp injuries in the hospital and healthcare sector; 98/24/EC on chemical agents; 2004/37/EC on carcinogens or mutagens; 2009/148/EC on asbestos.

³⁸ Directive 96/71/EC.

³⁹ Directive 2014/67/EU.

³⁷ Directive 2014/36.

The Single Permit Directive establishes a single application procedure for a single permit to work in the EU and a common set of rights for third country workers legally residing in a Member State.³⁸ A common set of rights for intra-corporate transferees when working in the EU, facilitating their entry and mobility between Member States is provided by Directive on the conditions of entry and residence of third country nationals in the framework of intra-corporate transfers.³⁹

3.1.9. Protection in the event of termination of employment

Article 153 TFEU provides for the possibility for the EU to support Member States in ensuring the protection of workers where their employment contract is terminated, notably through the adoption by unanimity voting of directives laying down minimum standards. There is no secondary EU law to implement this right. Similarly, there are no EU rules regarding the length of probation periods.

Three different directives are concerned with the potential termination of the employment contract in the event of structural changes in companies. They embody the basic right to protection against unjustified dismissal, but only in 'collective' circumstances. The Insolvency Directive ensures payment of employees' outstanding claims in the event of the employer's insolvency.⁴⁰ The Collective Redundancies Directive regulates the situation of workers affected by decisions of employers to lay off a group of employees.⁴¹ The Transfer of Undertakings Directive⁴² protects employees' rights in the event that an undertaking, business, or part of an undertaking or business is transferred from one employer to another, stipulating *inter alia* that such a transfer does not in itself constitute valid grounds for dismissal. The Directives on transfer of undertakings and collective redundancies provide for information and consultation rights. The Maternity Leave Directive⁴³ prohibits women's dismissal from work because of maternity for the period from the beginning of their pregnancy to the end of the period of maternity leave, save exceptional circumstances, for which the employer needs to give justification in writing. The Recast Directive⁴⁴ furthermore sets out that workers taking paternity or adoption leave should be protected against dismissal due to exercising those rights.

The Directive establishing a framework for equal treatment in employment⁴⁵ protects workers against dismissal where there is discrimination on a prohibited ground, including victimisation.⁴⁶

3.1.10. Organisation, information and consultation of workers

The promotion of social dialogue is enshrined as a common objective of the EU and the Member States in Art 151 TFEU. The rights of association, collective bargaining, to strike or to impose lock-outs are excluded from the application of this article. The role of the social partners is recognised at EU level, taking into account the diversity of national systems and their autonomy (Art 152 TFEU). Eight social partner agreements have been implemented either by EU law or by the social partners.⁴⁷

³⁸ Directive 2011/98/EU.

³⁹ Directive 2014/66/EU.

⁴⁰ Directive 2008/94/EC.

⁴¹ Directive 98/59/EC.

⁴² Directive 2001/23/EC.

⁴³ Directive 92/85/EEC.

⁴⁴ Directive 2006/54/EC.

⁴⁵ Directive 2000/78/EC.

⁴⁶ Other EU anti-discrimination directives (such as Directive 2006/54/EC or Directive 2000/43/EC) also provide specific protection against unfair dismissal.

⁴⁷ Articles 153 and 154 TFEU. Examples of such cross-industry agreements are: Parental leave (revised) (2009), Fixed-term contracts (1999); Part-time work (1997); Parental leave (1996). Autonomous Framework agreements implemented by social partners: Inclusive labour markets (2010); Harassment and violence at work (2007); Work-related stress (2004); Telework (2002).

The General Information and Consultation Directive⁴⁸ establishes a framework for informing and consulting employees at enterprise level. Information and consultation are required on the development of the activities, economic situation and employment, and particularly anticipatory measures where there is a threat of restructuring, and likely changes in work organisation or in contractual relations.

The European Works Council Directive⁴⁹ provides for the creation of a Works Council (a body representing the employees of a transnational company, to inform and consult them on the progress of the business and any decisions significant for their working conditions) at the request of 100 employees of at least two undertakings or establishments in at least two Member States, or on the initiative of the employer. The involvement of employees, including at board level, is also provided by company law directives.⁵⁰ Finally, the Cross-Border Mergers Directive⁵¹ provides for detailed rules of employee participation in the event of mergers of limited liability companies.

3.1.11. The prohibition of child labour and protection of young people at work

The Young People at Work Directive⁵² requires Member States to take the necessary measures to prohibit work by children, particularly that the minimum working age is not lower than the minimum age at which compulsory full-time schooling ends, or 15 years in any event. Exceptions can be adopted by Member States for occasional work or short-term work, involving domestic service in a private household or work regarded as not being harmful, damaging or dangerous to young people in a family undertaking, for cultural, artistic, sporting or advertising activities, subject to prior authorisation by the competent authority in each specific case, for children of at least 14 years of age working under a combined work/training scheme, and for children of at least 14 years of age performing light work. The Directive provides specific limits to maximum weekly working time, night work and minimum rest periods for children and adolescents when they engage in employment.⁵³

3.2. Social protection

The EU *acquis* in the area of social protection is rather limited. Though the EU may adopt legislation in the area of 'security and social protection of workers' (Article 153(1)(c)), it does not have the competence to adopt legislation for 'the combatting of social exclusion' (Article 153(j)) or for 'the modernisation of social protection systems' (Article 153 (k)).

⁴⁸ Directive 2002/14/EC.

⁴⁹ Directive 2009/38/EC.

⁵⁰ Firstly, Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees provides that the establishment of a European company will not mean the disappearance or watering down of existing employee involvement arrangements, calling for agreement between the employer and the representatives of employees and providing subsidiary rules applicable in the absence of agreement. Secondly, Directive 2003/72/EC on the information, consultation and participation rights of employees in a European Cooperative Society provides that information, consultation and in some cases, participation procedures at transnational level are to be used whenever a European Cooperative is created.

⁵¹ Directive 2005/56/EC.

⁵² Directive 94/33/EC.

⁵³ See also Commission Recommendation of 31 January 1967 to the Member States on the protection of young workers and the Commission Recommendation of 15 September 2000 on the ratification of International Labour Organisation (ILO) Convention No 182 of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

3.2.1. Social security coordination

The rules on social security coordination apply to national legislation on sickness, maternity and equivalent paternity benefits, old-age pensions, pre-retirement and invalidity benefits, survivors' benefits and death grants, unemployment benefits, family benefits, benefits in respect of accidents at work and occupational diseases.⁵⁴ The Directive on patients' rights in cross-border healthcare clarifies citizens' rights to receive healthcare services in another EU Member State; guarantees the safety, quality and efficiency of care that they will receive there; and promotes cooperation between Member States on healthcare matters.⁵⁵

3.2.2. Equal treatment in social security and social integration

The equal treatment for women and men in matters of social security is ensured by the Directive on the protection against discrimination in the scope, contributions and benefits of social security schemes.⁵⁶ The Gender Recast Directive moreover ensures respect for the principle of equal treatment for men and women in occupational social security schemes. The Racial Equality Directive gives protection against discrimination based on race or ethnic origin in social protection (including social security and healthcare) as well as access to goods and services, including housing.⁵⁷

Finally, some legislation exists in order to promote access to necessary goods and services for ensuring adequate livelihoods. The Directive on Payment Accounts seeks to improve access to low income individuals for basic bank accounts.⁵⁸ The European Commission's recent proposal for a European Accessibility Act,⁵⁹ currently under discussion between co-legislators, also seeks to ensure that people with disabilities can access products, transportation, information and communications technologies, and other facilities/services that are necessary for their full inclusion in society.

4. Soft law

In addition to the legally binding instruments, the EU has adopted 'soft law' measures. As they are 'soft law', they do not confer social rights in the strict sense. Nevertheless, they provide a policy framework for such rights.

4.1. Policy coordination

The EU has competences to coordinate the employment policies of the Member States. This coordination was formalised in the context of the Europe 2020 strategy and is implemented annually through the European Semester. To meet the Europe 2020 objectives, five headline targets have been agreed for the whole EU to achieve by the end of 2020. These include achieving an overall employment rate of 75% for 20-64 year-old women and men as well as reducing by at least 20 million the number of people in or at risk of poverty and social exclusion.

⁵⁴ See most notably Regulation (EC) 883/2004 on the coordination of social security systems, which was adopted on the basis of Article 42 EC (now Article 48 TFEU) and Article 308 EC (now Article 352 TFEU) and its implementing Regulation (EC) 987/2009.

⁵⁵ Directive 2011/24/EU.

⁵⁶ Directive 79/7/EC.

⁵⁷ Directive 2000/43/EC.

⁵⁸ Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

⁵⁹ Proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (COM(2015) 615 final).

On education, a twofold headline target is set on reducing the rates of early school leaving below 10% and ensuring at least 40% of tertiary graduates. To measure progress, each EU headline target is declined into national targets.

The Employment Guidelines include common priorities and targets for employment and social policies. The current guidelines reflect the new approach to economic policy-making built on investment, structural reform and fiscal responsibility.⁶⁰ They aim to boost demand for labour, covering job creation, labour taxation and wage-setting and to enhance labour and skills supply, by reinforcing education and training systems, and by tackling youth and long-term unemployment. To improve the functioning of labour markets, they call for reducing labour market segmentation and the development of active measures and mobility. They also aim to increase fairness, combating poverty and promoting equal opportunities.

The European Semester includes a stronger emphasis on employment and social performance, under more focused Country-Specific Recommendations.⁶¹ In recent years, the European Semester has been taking better account of employment and social objectives by upgrading the employment indicators in the Macroeconomic Imbalances Procedure and by seeking to strengthen the involvement of social partners at both EU and national level in the process.

The European Semester also aims to better integrate national and euro area dimensions. A recommendation for the economic policy of the euro area was issued for the first time in 2015 together with the Annual Growth Survey 2016 in order to better coordinate Member States' reforms, individually and collectively, to address imbalances and promote upwards convergence.⁶²

In the area of social policies, the Open Method of Coordination (OMC) supports the definition, implementation and evaluation of social policies based on common objectives and indicators. The method supplements the legislative and financial instruments of social policy. It applies to the eradication of poverty and social exclusion; to adequate and sustainable pension systems; and to the provision of accessible, high-quality and sustainable health care and long-term care.⁶³

The Education and Training 2020 strategic framework for European cooperation in education and training covers the following four objectives: making lifelong learning and mobility a reality; improving the quality and efficiency of education and training; promoting equity, social cohesion and active citizenship; enhancing creativity and innovation, including entrepreneurship, at all levels of education and training.⁶⁴ Cooperation between Member States is supported through a set of benchmarks and through mutual learning processes.

⁶⁰ Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015.

⁶¹ Communication on steps towards completing Economic and Monetary Union COM (2015) 600 final.

⁶² Recommendation for a Council Recommendation on the economic policy of the euro area, COM(2015) 692 final.

⁶³ A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion COM(2008) 418 final.

⁶⁴ 2015 Joint Report of the Council and the Commission on the implementation of the strategic framework for European cooperation in education and training (ET 2020) New priorities for European cooperation in education and training.

4.2. EU funding

Article 174 TFEU provides *inter alia* that, in order to strengthen its economic, social and territorial cohesion, the Union is to aim at reducing disparities between the levels of development of the various regions. On that basis, European Structural and Investment Funds (ESIF) are the main source of investment at EU level to help Member States to restore and increase growth and ensure a job rich recovery while ensuring sustainable development, in line with the Europe 2020 objectives.⁶⁵ In this context, the European Social Fund (ESF) helps people get the right skills for the right job, by improving the quality of and access to education and training from early childhood to later life. The European Regional Development Fund (ERDF) provides support to both infrastructure and direct creation of job-rich activities, by supporting housing, childcare infrastructure, healthcare facilities, education and training infrastructure, employment creation and entrepreneurship measures and urban regeneration. The European Agricultural Fund for Rural Development (EAFRD) supports training and advice for farmers and other rural SMEs wishing to grow their businesses. The European Maritime and Fisheries Fund (EMFF) promotes social cohesion and job creation in fisheries-dependent communities, through diversification into other maritime sectors and training in fishing communities, including fishers, fish farmers and their relatives.

4.3. Recommendations

EU soft law on social matters may also take the form of policy coordination, exchanges of good practice, benchmarking, frameworks of action and codes of conduct, aimed at shaping consensus and creating incentives for national or company-level action.

In accordance with Article 288 TFEU, recommendations do not have binding force. In addition, Council recommendations in the field of social policy are also limited in scope by Article 153 TFEU. Nevertheless, they can be important tools for agenda setting, can be used by the CJEU in its interpretation of EU law,⁶⁶ and can be used in the context of cooperative mechanisms.

4.3.1. Work environment and access to work

Under the Youth Guarantee, Member States should ensure that, within four months of leaving school or losing a job, young people under 25 can either find a good-quality job suited to their education, skills and experience; or acquire the education, skills and experience required to find a job in the future through an apprenticeship, traineeship or continued education.⁶⁷ The Youth Guarantee requires early intervention and activation, as well as reforms of training, job-search and education systems to improve the transition from school to work and the employability of young people.

The Quality Framework for Traineeships proposes guidelines enabling trainees to acquire high-quality work experience based on a written traineeship agreement, with learning and training objectives, under safe and fair conditions, thus increasing their chances of finding a good quality job.⁶⁸

⁶⁵ See the Common Provisions Regulation (EU) No 1303/2013; European Regional Development Fund Regulation (EU) 1301/2013; European Social Fund Regulation (EU) No 1304/2013; Cohesion Fund Regulation (EU) 1300/2013; Regulation on the European Agricultural Fund for Rural Development (EU) 1305/2013; Regulation on the European Maritime and Fisheries Fund (EU) 508/2014.

⁶⁶ Case C-322/88, *Grimaldi*.

⁶⁷ Council Recommendation of 22 April 2013 on establishing a Youth Guarantee.

⁶⁸ Council recommendation of 10 March 2014 on a Quality Framework for Traineeships.

The Council Recommendation on the integration of the long-term unemployed in the labour market offers guidance on encouraging the registration of long-term unemployed, on enhancing and simplifying support by an individual in-depth assessments and offering a job integration agreement identifying a single point of contact to all registered long-term unemployed at the very latest at 18 months.⁶⁹

The Council Recommendation on the promotion of employee ownership and participation promoted the use of financial participation schemes, with the direct involvement of the social partners.⁷⁰

In 2008, the Commission issued a recommendation on the active inclusion of people excluded from the labour market. The recommendation covers policy guidance on providing adequate income support together with help to get a job, on inclusive labour markets and on access to quality services helping people participate actively in society, including getting back to work.⁷¹

The Commission has issued recommendations or opinions on topics such as the protection of young workers (1967),⁷² an equitable wage (1993)⁷³ and the ratification of ILO Conventions on home work (1998),⁷⁴ seafarers' working hours (1999)⁷⁵ and child labour (2000).⁷⁶

4.3.2. Social protection

The 1992 Council Recommendation on common criteria concerning sufficient resources and social assistance in social protection systems⁷⁷ sets out that persons residing in the EU should have access to sufficient resources and assistance to live in a manner compatible with human dignity. The Recommendation defines the common principles for implementing this principle in all the Member States in order to progressively cover all instances of exclusion.

The 1992 Council Recommendation on the convergence of social protection objectives and policies⁷⁸ recommends guaranteeing a level of resources in keeping with human dignity, access to all legal residents to protection of human health and support for social integration and integration into the labour market. It also calls for a wide coverage of a replacement or benefits and for strengthening appropriate social protection for self-employed persons.

⁶⁹ Council Recommendation of 15 February 2016 on the integration of the long-term unemployed in the labour market.

⁷⁰ Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of employee participation in profits and enterprise results, including equity participation.

⁷¹ Commission Recommendation 2008/867/EC of 3 October 2008 on the active inclusion of people excluded from the labour market.

⁷² 67/125/EEC: Commission Recommendation of 31 January 1967 to the Member States on the protection of young workers.

⁷³ Commission opinion on an equitable wage COM (93) 388 final.

⁷⁴ 98/370/EC: Commission Recommendation of 27 May 1998 on the ratification of ILO Convention No 177 on home work of 20 June 1996.

⁷⁵ 1999/130/EC: Commission Recommendation of 18 November 1998 on ratification of International Labour Organisation (ILO) Convention 180 concerning seafarers' hours of work and the manning of ships, and ratification of the 1996 Protocol to the 1976 Merchant Shipping (minimum standards) Convention.

⁷⁶ 2000/581/EC: Commission Recommendation of 15 September 2000 on the ratification of International Labour Organisation (ILO) Convention No 182 of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

⁷⁷ 92/441/EEC Council Recommendation of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems.

⁷⁸ 92/442/EEC: Council Recommendation of 27 July 1992 on the convergence of social protection objectives and policies.

Work-life balance measures were promoted through the 1992 Council Recommendation on child care focusing on childcare for parents who are working or who are following education/training; special leave for parents and improving the environment, structure and organization of work for working parents with children.⁷⁹ The 2013 Commission Recommendation on investing in children also provided a set of recommendations to improve child outcomes and reduce the intergenerational transmission of disadvantage, including by stepping up affordable, quality early childhood education and care services.⁸⁰ The Council Recommendation on effective Roma integration measures promotes effective policy measures in the areas of access to education, employment, healthcare and housing.⁸¹

4.3.3. Education and training

The Recommendation on key competences for lifelong learning aims to equip young people with key competences for further learning and working throughout their lives.⁸² In 2011 Member States were asked to implement comprehensive policies to tackle early school leaving, encompassing prevention, intervention and compensation measures.⁸³

The European Qualifications Framework relates national qualifications systems through common European reference levels for knowledge, skills and competences.⁸⁴ The European Quality Assurance Reference Framework for Vocational Education and Training provides common European references to develop, improve, guide and assess the quality of vocational education and training.⁸⁵ The European Credit System for Vocational Education and Training (ECVET) allows validation and recognition of work-related skills and knowledge acquired in different systems and countries.⁸⁶ The proposal for a Council Recommendation on the validation of non-formal and informal learning aims to establish arrangements for the identification, documentation, assessment and certification of learning outcomes.⁸⁷

4.1.4. Health

The Council Recommendation on smoke free environment⁸⁸ recommends Member States to provide effective protection from exposure to tobacco smoke in indoor workplaces, indoor public places, public transport and other public places.

The Council Recommendation on prevention of injury and the promotion of safety⁸⁹ promotes better use of existing data and the development, where appropriate, of representative injury surveillance and reporting instruments to obtain comparable information, monitor the evolution of injury risks and the effects of prevention measures over time.

⁷⁹ 92/241/EEC: Council Recommendation of 31 March 1992 on child care.

⁸⁰ Commission Recommendation Investing in children: breaking the cycle of disadvantage, C(2013) 778.

⁸¹ Council recommendation of 9 December 2013 on effective Roma integration measures in the Member States.

⁸² Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning (2006/962/EC).

⁸³ Council Recommendation on policies to reduce early school leaving (2011/C191/01).

⁸⁴ Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong-learning.

⁸⁵ Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training.

⁸⁶ Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Credit System for Vocational Education and Training (ECVET).

⁸⁷ COM/2012/0485 final.

⁸⁸ Council Recommendation on smoke free environment, 2009/C 296/02.

⁸⁹ Council recommendation on prevention of injury and the promotion of safety, 2007/C 164/01.

5. Social rights and principles as laid down in international law

The EU Charter, the European Social Charter and the European Code of Social Security of the Council of Europe, as well as those defined by the International Labour Organisation (ILO), can be a source of inspiration for both the EU legislator and the CJEU.

The EU is not party to most of the international conventions that requires membership of the organisations where they are enacted. However there are exceptions and new developments. The UN Convention on the Right of Persons with Disabilities (CRPD) was ratified by the EU in December 2010. The CRPD is an integral part of EU law and takes precedence over secondary EU legislation.

A number of ILO conventions are ratified by all 28 EU Member States (core labour standards, labour inspection) or by the large majority of them (social security conventions, human resources development). All EU Member States have ratified the eight fundamental ILO conventions and most of the priority conventions covering labour market governance (employment policy, tripartite consultations, labour inspection). These instruments cover all possible enterprises, institutions and activities (formal and informal economy) with very limited exceptions and cover all workers without distinction. For other conventions on for example skills, working conditions, employment protection legislation, minimum wages fixing, social security and OSH, the ratifications vary according to subject.

The second important international source of social rights and principles is the Council of Europe, with in particular its EU Charter of 1961 and the Revised Social Charter of 1996. All Member States have ratified either the 1961 or the 1996 Social Charters.⁹⁰ The importance of the Social Charters is acknowledged in the EU legal order in Article 151 TFEU, which provides that the EU and Member States should have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion, “*having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961*”. It reflects the common views and traditions of the Member States and can be considered a declaration of the fundamental principles held dear by the EU and its Member States.⁹¹

The ratification by EU Member States of ILO conventions, classified as up to date by ILO, and the acceptance of the different articles of the (Revised) European Social Charter, in particular on working conditions, income and employment relationships, is uneven. Many EU Member States have used the possibility to opt out to some of the provisions such as on minimum wages, working time or social inclusion and protection.

EU law is enforceable and more detailed than international standards, and can be made effective through a strong legal framework ensuring fair remedies for both citizens and businesses.⁹² International standards remain an important reference, as they can express common views on minimum labour and social protection.

⁹⁰ http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp.

⁹¹ See Opinion of Advocate General Trstenjak in Case C-282/10, *Maribel Dominguez*, paragraph 104.

⁹² ILO standards and the European Social Charter cover a wider range of aspects, including minimum wages, the right to skills and human resources development, protection against individual dismissals, minimum standards for social security and unemployment benefits, as well as governance aspects such as labour inspection, collective bargaining and tripartite consultations.