EUROPEAN UNION'S LIMITED COMPETENCE IN HARMONIZING LABOUR – HOW THIS MAY AFFECT THE NEW WAYS OF WORKING WITHIN THE MEMBER STATES

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Abstract

Considering the lack of a harmonized approach to labor law, the Member States are still the key actors with relatively independent standpoints and traditions in the employment law sphere. Critical aspects of labor law are excluded from the regulatory competences in the social chapter of the Treaty on the Functioning of the European Union ("TFEU"). This implies that legal conditions in this field of law remain quite different and labor requirements are heavily dependent on national law. Nevertheless, European Union's ("EU") intervention in employment matters has strongly increased in the last years, but since, as a rule, labor law cannot be legislated at European level by Regulations, Member States are reluctant to implement many of the prevailing legal guidelines and the provisions of the directives are not necessarily transposed in an efficient, coordinated, and timely manner.

Keywords: *new ways of working; digitalization; future of work, harmonizing European Union labor law.*

1. Introduction

In accordance with art. 4 of the Treaty on the European Union ("TEU"), „*competences not conferred upon the Union in the Treaties remain with the Member States*"[1]. In addition, in accordance to art. 5 TEU, „*the limits of Union competences are governed by the principle of conferral*"[2] and „*the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein*"[3].

Therefore, the EU can only exercise the competences that the Member States have conferred upon it through the Treaties on which its law order is based upon (namely, the Treaty on the European Union and the Treaty on the Functioning of the European Union). Or, as the German Constitutional Court put it in the so-called *Solange* cases, the Union „*lacks the power to determine the legal limits of its own competences*"[4], therefore having to rely solely on the competences conferred by the Member States.

Also, the EU can exercise its competence not whenever it deems necessary, as the States do, but in order to attain the objectives set out in the art. 3 of TEU. The attainment of these objectives is the background purpose of all the EU's actions, regardless of their domain and the type of competences exercised in each particular situation.

However, from this principle of conferral derives the fact that the EU not only has to exercise exclusively the competences conferred upon it by the Member States, but it also must exercise them in the manner prescribed in the Treaties. That is, in accordance with the principles laid down by the aforementioned Treaties and with the specific rules proper to each category of competences.

The aforementioned principles are, besides the principle of conferral, the principles of subsidiarity, proportionality and sincere cooperation.

For example, „*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level*"[5], while

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[1] Art. 4 para. 1 TEU.

[2] Art. 5 para. 1 TEU.

[3] Art. 5 para. 2 TEU.

[4] Carl-Johan Breitholtz*, From Costa to Constitution: The Case Continues…*, Faculty of Law – University of Lund Master Thesis supervised by Henrik Norinder, 2003, available at https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1556499&fileOId=1564009, accessed 20.04.2022.

[5] Art. 5 para. 3 TEU.

„*under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties*"[6]. This constitutes, in fact, the expression of an older philosophical principle „*used by the Catholic Church since 1891 and enshrined even in the Quadragesimo Anno Encyclical from 1930*"[7].

Finally, the principle of sincere cooperation states that „*the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties*"[8]. This, in turn, implies the existence of two types of obligations, one positive and the other one, negative. Under the first one, „*the Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union*"[9], while under the second one „*the Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardize the attainment of the Union's objectives*"[10].

Therefore, the EU exercises its competences set out in the Treaties, in order to achieve the objectives from art. 3 TEU, and it must do so according to the principles set out above.

Nevertheless, the EU must also act, in each category of competences, according to the specific rules of the category in which the specific domain or domains of the act it intends to adopt fall. These rules are laid down in art. 2-6 TFEU.

For example, as far as the exclusive competences are concerned, TFEU states that „*when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts*"[11].

Differing from that significantly, „*when the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence*"[12]. There can also be found areas where the „*Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas*"[13] and areas where the Member States shall coordinate their efforts, in the frameworks provided by the EU.

So, the general scheme of the EU decision process would be the following: the Union must act in order to achieve certain objectives, laid down in art. 3 TEU, observing the values set out in art. 2 TEU (which are not analyzed within the present study, as they have little connection to it), in accordance to the specific rules of each category of competences (depending of the category in which the subject area of the proposed act falls in), observing the applicable principles and the fundamental rights set out in the EU Charter of Fundamental Rights (which also, are not referred below).

What may have caused this extreme complexity is the fact that the EU decision process evolved as a result of the fact that „*the transfer of competences from the States to the Union was achieved gradually, with the economic and political evolution at national and international level*"[14], therefore resulting a number of compromises inherent to the effort to „promote the application of uniform juridical solutions to different social and cultural contexts"[15] while, at the same time, achieving the goal of integration. And the integration's complexity relies in the fact that is „*a process of unification (...) that cannot be realized by referring to the classical methods of inter-state cooperation, methods that rely mainly on the unanimous agreement of the states (consensus), but it must resort to much more energetical and forcefull processes for the Member States, in the frame of an organization that can be classified as supranational*"[16].

However, this complex scheme is even more complicated that it seems, as certain areas fall within different categories of competences and each area has its own specific rules, set out mainly in the TFEU, in the part dedicated to the EU policies. Hence, in order to

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[6] Art. 5 par. 4 TEU.

[7] Mihaela-Augustina Dumitrașcu, *Dreptul Uniunii Europene și specificitatea acestuia*, Editura Universul Juridic, București, 2015, pp. 68-69.

[8] Art. 4 para. 3 TEU.

[9] *Ibidem.*

[10] *Ibidem.*

[11] Art. 2 para. 1 TFEU.

[12] Art. 2 para. 1 TFEU.

[13] Art. 2 para. 5 TFEU.

[14] Oana Mihaela Salomia, Augustin Mihalache, *Principiul egalității statelor membre în cadrul Uniunii Europene*, in Dreptul no. 1/2016, pp. 166-174.

[15] Monica Florentina Popa, *Legal Taxonomies between Pragmatism and the Clash of Civilizations*, in Public Law Review / Revista de Drept Public no. 1/2016, pp. 58-67.

[16] C.-A. Colliard, L. Dubouis, *Institutions internationales*, 10th ed., Dalloz, 1995, p. 171, apud Roxana-Mariana Popescu, *Aspecte constituționale ale integrării României în Uniunea Europeană*, in Dreptul no. 3/2017, pp. 131-148.

get a glimpse of the Union's competence in the area of labor policy, a detailed analysis of this specific field must be carried on.

2. Introductory considerations. European Labor Law – challenges and opportunities

Critical aspects of labor law - such as income, right of strike and termination, are excluded from the regulatory competences in the social chapter of the Treaty on the Functioning of the European Union (art. 153.5). Also, the Directives are quite vaguely and minimally regulating many of the essential circumstances of the working relationships.

Historically, the EU's role is to address labor law only partially, although we cannot ignore it strongly increased over the past decades.

This may be caused both by the Member States reluctance to adjust their labor laws and by the fact that „*the 'market' values and criteria such as efficiency and utility tend to obscure and even to replace non-market values like social solidarity, equity or civic engagement, changing the allocation of resources within society*"[17].

Nonetheless, both social actors and labor law professionals have somehow naturally outgrown the older problems of the labor field and began to feel the need for greater alignment of the European social policy in this field, in the light of current and future challenges that are related to new forms of work (such as varieties of Kurzarbeit and the on-call work[18]), working time flexibility and sovereignty – which is the reason why the 9-to-5 job will become progressively harder to hold on to, health and safety, human-in-command approaches in artificial intelligence era and worker privacy in a digital work environment.

Nowadays areas of improvement for labor and employment regulation concern rather the growing digitalization of the world of work and new ways of working, as well as the right to disconnect[19], so it remains to be seen how European legislation can be uniformly aligned across all categories of EU countries - highly developed countries (such as Germany or France), or countries still developing (such as Romania or Poland).

The law-making process is enshrined in the TFEU, but these rules are just setting minimum standards to the Member States. In accordance with the Treaty – particularly art. 153 - the EU adopts laws (namely, Directives) that set minimum requirements for working and employment conditions, as well as informing and consulting workers. Positive harmonization (that is, the establishment of such minimum standards) is in fact recognized in all Social Action Programmes since the beginning in 1974[20].

Therefore, the open debate remains whether and to what extent the legislative bodies at EU level and the Court of Justice of the EU (through its rulings) can focus more on significant technological innovation, organizational and individual developments associated with new ways of working also considering massive digitalization, in a way that pressures Member States to implement uniform and consistent legal amendments and adjustments, so that the shock of EU-wide labor market differences is mitigated in the near future.

3. EU current legal framework in labor and employment law – brief incursion

The most important Treaty area for labor and employment law is "Title IX – Employment" (art. 145-150 TFEU), introduced with the 1997 Amsterdam Treaty.

This Title confers employment policy competences on the European level (*i.e.*, primarily the use of directives), while at the same time respecting the basic starting point that the Member States keep their competence for regulating employment policies.

The role given to the EU bodies is more of a "supervisory role", which contrasts with the classic European legislative methods in the field of social policy. For that matter, the originally predominant underlying principle in EU social policymaking was the need for a broad equivalence in labor standards, which imposed basic employment rights at an EU level[21].

This method of supervision in labor policies may have had helped to develop many EU initiatives while a wide range of EU labor and employment directives have come into existence, but the perennial question was and is to what extent the practical effects of the EU intention are implemented in practice in each of the Member States.

At the same time, we cannot deny the active involvement of EU bodies, within the limits allowed by the existing legal framework, as many directives have been adopted at EU level.

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[17] Monica Florentina Popa, *What the economic analysis of law can't do - pitfalls and practical implications*, Juridical Tribune no. 11/2021, pp. 81-94.

[18] Sarah de Groof, *Travelling Time is Working Time According to the CJEU… at Least for Mobile Workers*, European Labour Law Journal, vol. 6 (4)/2015, pp. 386-391.

[19] Pepita Hesselberth, *Discourses on disconnectivity and the right to disconnect*, New Media & Society 2018, vol. 20(5)/1994-2010, passim.

[20] Nick Adnett, Stephen Hardy, *The European Social Model - Modernisation or Evolution?*; Edward Elgar Publishing Limited, United Kingdom, 2005, p. 8.

[21] *Idem*, p. 39.

Yet, we also cannot ignore the fact that by 2022 the newest directives on employment and labor field, which address newer issues, are those such as Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union and Directive 2019/1158 of 20 June 2019 of the European Parliament and of the Council on work-life balance for parents and careers and repealing Council Directive 2010/18/EU.

Since Regulations with direct effect on national legislation are non-existent in this area, and although Directives have created fairly strong guidelines for national legislators, there are still noteworthy gaps in the legislative competences of EU bodies, such as (minimum) wages/income and employment termination[22]. No directives are currently in place to expressly address the novel problems of modern work - in the context of digitalization of the world of work and new ways of working.

Such policies however, we believe, are increasingly needed. We point out that there are still traditional labor field issues over which EU has no competence to harmonize national laws, so the problem of the lack of regulation on payment in the cases such as teleworking, on-call work or financial compensation (if any) in the case of the right to disconnect[23] (which is not to be confused with the right to rest leave or weekly rest days), creates the challenge of even greater pressure felt by the key players, in terms of the differences in these provisions between states.

It is also true that the principle of "mutual recognition", agreed by the "Cassis de Dijon"[24] judgement in 1979, stated that national standards and systems need not harmonize to an EU administrative norm,[25] but that it can be taken that the national standard or system is sufficient and should be recognized as such by the member states[26] - which perhaps should be looked at whether it is currently possibly applicable to the EU labor law regime.

The EU has been grappling with the differences in national law on work requirements and the related problems for many years, so two possible solutions shall be more thoroughly analyzed and speculated. The first is the better harmonization of technical requirements and the second is the principle of mutual recognition.

Furthermore, also in the category of principles governing the interpretation of the application of EU law in the Member States that should be applied more often in this area, is the principle of subsidiarity which was initially endorsed by the EU in the Single European Act and was later clarified in the TEU.

In consequence of this principle, the European Commission is obliged to explain why EU intervention is preferable to national action when addressing a matter. It must show that the proposed action is proportional to the problem that is being addressed[27].

So, as previously mentioned, the outlook for EU labor and employment law shows some gaps and highly relevant issues remain unregulated, precisely because these issues mentioned above do not typically characterize the EU's legal regulatory framework in labor law.

For example, In Romania, there are no specific termination requirements for certain types of contracts. The legislation regulates indefinite-term and fixed-term contracts of employment, fulltime and part-time contracts, temporary work contracts, home-working and apprenticeship contracts without mentioning any special rules in relation to the termination of these types of employment contracts.[28]

However, in Poland, there are special rules for: fixed-term contracts of employment, apprenticeship contracts, home workers. A fixed-term employment relationship terminates with the expiry of the agreed period. Neither party (the employer or the employee) may give notice of termination prior the expiry of the contract, unless a special agreement is made by the parties to this end who concluded such contract for at least a period of six months; in this case the notice period is two weeks. In case of contracts concluded with the purpose to substitute an absent employee, the period of notice is three working days. Home workers and apprentices are not considered to be employees under the labor legislation. Their contracts do not

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[22] A. Jacobs, *Labour law, social security and social policy after the entering into force of the Treaty of Lisbon*, ELLJ 2011, vol. 2 (2), p. 122, apud Manfred Weiss,, *The future of labour law in Europe: Rise or fall of the European social model?*, European Labour Law Journal, vol. 8(4)/2017, p. 349.

[23] "*The right to disconnect refers to a worker's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours*." (See: https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/right-to-disconnect.).

[24] Judgment of the Court of 20 February 1979, Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*; EU:C:1979:42, passim.

[25] Emer O'Hogan, *Employee Relations in the Periphery of Europe - The Unfolding Story of the European Social Model*, Palgrave Macmillan, 2002, p. 98.

[26] Kalypso Nicolaidis, *Mutual Recognition of Regulatory Regimes: Some Lessons and Prospects*, Jean Monnet Working Papers 7/97. http://www.jeanmonnetprogram.org/papers/9 7/97-07.rtf, 1997, accessed 20.04.2022.

[27] Emer O'Hogan, *op. cit*., pp. 98-99.

[28] European Commisison's Report - Termination of Employment Relationships Legal situation in the following Member States of the European Union: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia, consulted on: https://ec.europa.eu › social, f.a., p. 28.

constitute contracts of employment and their termination is subject to special rules. Moreover, summary dismissal/resignation is possible (*i.e.*, without a period of notice), if there is an important ground justifying prior termination of the contract.[29]

This is just a mere example of how different national laws are on an essential and historic issue of labor law – like that of termination of employment.

Apprenticeship and home-workers are not effectively and expressly covered by law in some new Member States – as Romania, some cover only part of this issue - such as Slovenia, where labor legislation regulates different types of the so called atypical, flexible contracts of employment: fixed-term employment, temporary work, homework (and tele-work) and part-time work. All of them are considered as employment contracts and labor legislation applies to them as a whole and, as a rule, part-time workers, temporary workers, home workers and workers with fixed-term contracts are subject to the same rights as all other types of workers.[30]

Another example of such inconsistency is that although in all new Member States, the employee is free to resign at any time, without presenting any reason, one must respect the period of notice. In certain exceptional cases, if there is a serious ground, a summary (immediate) resignation without a period of notice is possible. Such regulation is for example available in Poland, but not available in Romania, unless the employer conventionally agrees (which is already beyond national law).[31]

By comparison, in Romania the employee can resign without notice, according to the law, only if the employer does not fulfil its obligations under the individual employment contract.

Therefore, in these cases we find that two countries, despite their proximity in terms of distance and economic and social development, have quite different core labor law rules.

Similarly, tele-working (differing from homeworking) is (especially in the context of the pandemic) an extremely widespread form of work throughout the EU, although still a significant number of countries do not have specific regulations for this type of employment relationship or the existent regulation is rater narrow, while others have a comprehensive legislation already.

It is worth mentioning that although a recent initiative of the European Parliament dated 2021[32], which calls on the European Commission to propose a law aimed at recognizing the much-discussed "right to disconnect", no specific directives address expressly this right.

Likewise, it should be mentioned that no specific initiatives and directives focus on telework, although several directives and regulations address issues that are important for ensuring good working conditions for teleworkers.

The main EU regulation addressing telework was introduced through the EU Framework Agreement on Telework dated 2002[33]. This is an autonomous agreement that commits the affiliated national organizations to implementing the agreement according to the 'procedures and practices' specific to each Member State.[34]

Hence, the European Union's regulatory framework now lacks even the minimum conditions of telework, as well as definitions of telework (including mobile work, home-based telework and hybrid work); organization of working time; provision of equipment for working remotely; the right to disconnect; or protection against psychosocial risks such as isolation.

All these aspects make us wonder how EU employees can be effectively protected, as although they have the right to move and work in other Member States, they will face such different rules from one country to another and whether the benefit of minimum rights at EU level is still sufficient for today's reality.

4. Law harmonization capabilities that EU has in light of the current general legal framework – the technical perspective

Given the numerous requirements that govern the EU's action in its areas of competence, a question arises about the reasons why the Union's harmonization capabilities in the field of labor law are so feeble. Hereafter we will attempt to explain this.

Keeping in mind the general specifications of each category of competences, the first step in answering the aforementioned question is to check art. 3-6 TFEU for dispositions regarding the EU's competence in the labor field.

The first aspect that captures our attention is the fact that the social policy, for the aspects defined in the Treaty, falls under the shared competence between the Union and the Member States, according to art. 4 letter

[29] *Idem*, p. 27.
[30] *Idem* p. 28-29.
[31] *Ibidem*.
[32] European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).
[33] The Framework Agreement of the European social partners ETUC, UNICE, UEAPME and CEEP of 16 July 2002 concerning telework.
[34] Pablo Sanz de Miguel, Maria Caprile, Juan Arasanz (NOTUS), *Regulating telework in a post-COVID-19, European Agency for Safety and Health at Work, 2021*, consulted on: https://euagenda.eu/upload/publications/telework--20post-covid.pdf , accessed 20.04.2022.

b) TFEU. As a consequence, the general rules of exercising shared competences apply in this field.

However, this is not all given that art. 5 para. 3 TFEU states that „*the Union may take initiatives to ensure coordination of Member States' social policies*", while para. 2 of the same article states that „*the Union shall take measures to ensure coordination of the employment policies of the Member States*".

As regards the certain means that the Union has at its disposal for ensuring the coordination of Member States' social policies, art. 5 TFEU does not offer any more details. The competence to coordinate Member States' employment policies is stated under the Treaty „*in particular by defining guidelines for these policies*"[35].

The wording of this disposition indicates the Directive as the most probable instrument of choice, thus it „*shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*"[36], unlike the regulation, which „*shall have general application* (…) [and] *shall be binding in its entirety and directly applicable in all Member States*"[37] and the decision, which is binding in its entirety. However, it is to be noted that the Treaty indicates the Guideline as being the most likely instrument of choice, but not the only one, as deduced from the word *particularly*.

As we prior stated, knowing all these general specifications is not enough, and for understanding how EU's competence in the labor field is functioning, one must consult the specific provisions of TFEU's Title X.

The first article of this Title, art. 151, states the general objectives of the EU's social policy, as follows: „*the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labor, the development of human resources with a view to lasting high employment and the combating of exclusion*"[38]. These objectives must, however, be achieved taking into consideration „*the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy*"[39], diversity that not only does not exclude „*the approximation of provisions laid down by law, regulation or administrative action*"[40], but, according to the Treaty, makes it even more necessary.

This apparent conflict between harmonization and coordination is only partly resolved by separating the fields that are subject to each of them. For example, according to art. 152 TFEU, a Tripartite Social Summit for Growth and Employment is used for facilitating the dialogue between the social partners, their autonomy being respected in the process.

In a series of fields[41], art. 153 TFEU confers the Union a competence to „*support and complement the activities of the Member States*", exercised by the European Parliament and the Council by adopting „*measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences*"[42], with the important specification that **any harmonization of the laws and regulations of the Member States is expressly excluded by the Treaty** and by adopting, in the fields specified by the Treaty, „*minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States*"[43] directives that are also limited in their effects by the fact that they have to „***avoid imposing administrative, financial and legal constraints*** *in a way which would hold back the creation and development of small and medium-sized undertakings*"[44].

Also, after stating the legislative procedures applicable to each field (mainly ordinary legislative procedure, with some expressly stated exceptions, subject to special legislative procedures described by the dispositions imposing them) and the necessary majority in the Council, the Treaty also states several general limits to the provisions adopted according to art. 153 TFEU, as follows:

- on the one hand, they „shall not affect the right of Member States to define the fundamental principles of their social security systems and must not

[35] Art. 4 para. 2 TFEU.
[36] Art. 288 TFEU.
[37] *Ibidem*.
[38] Art. 151 TFEU.
[39] *Ibidem*.
[40] *Ibidem*.
[41] Improvement in particular of the working environment to protect workers' health and safety; working conditions; social security and social protection of workers; protection of workers where their employment contract is terminated; the information and consultation of workers; (f) representation and collective defence of the interests of workers and employers, including co-determination; conditions of employment for third-country nationals legally residing in Union territory; the integration of persons excluded from the labour market; equality between men and women with regard to labour market opportunities and treatment at work; the combating of social exclusion; the modernisation of social protection systems.
[42] Art. 152 para. 2 letter (a).
[43] Art. 152 para. 2 letter (b).
[44] *Ibidem*.

significantly affect the financial equilibrium thereof"[45];

- on the other hand, they „shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties"[46];
- and, finally, they „shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs"[47].

An exception from the feeble harmonizing conferred to the Union in the field of social affairs is the matter of equal payment between the sexes, area in which the European Parliament and the Council, in accordance to the ordinary legislative procedure, are entitled to „*adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value*"[48]. Practically, in this field, the European Parliament and the Council act like a veritable „*bicameral legislative of the European Union*"[49].

However, although this competence is a possible answer to the preoccupation that „*discrimination and deep indignation that can affect the balance on the labor market*"[50], the fact that other important fields remain subject to multiple limitations may severely diminish the efficiency of EU's action meant to combat the various challenges of present day labor market, undermining the need of the EU and member states to „*take joint action to identify, manage and limit them; to adopt positive measures to try to prevent the occurrence of cases of inequality*"[51].

Although we agree that „*such policies are characterised by a double conditionality: the legal framework, on one hand, and the economic content, on the other*"[52], we strongly consider that a more action-friendly Treaty frame is necessary in order for the objectives to be properly achieved.

5. Conclusions

EU labor law suffered and still suffers from inconsistency in its application and persons may fall outside the scope of protection. While the Court of Justice of the EU has attempted to intervene and to "regulate" several traditional matters of labor law, it has not yet delivered a uniform approach for all already existing EU directives.

Yet, the Court clarified at least, on a preliminary basis, some of the demanding challenges of modern labor. For example, until present time the Court is the only body which stated that travelling time is related as working time (*i.e.*, applicable to workers with no fixed office - where workers do not have a fixed or habitual place of work).

It is therefore clear that it will be some considerable time before these interventions regarding the new features of the "modern" labor market will take place and clearly even longer before these interventions are settled as "law".

Nevertheless, new issues of the modern era may prove being much more difficult to regulate, since new form jobs are emerging (*e.g.*, employed youtuber, app-developer) and new forms of works and skills and competences will be needed in the future job market. As such, these all will represent both challenges and opportunities for the EU.

It is also not to be ignored that technology provides incentives for employers to work remotely and in novel structures, but beyond technological change, many other factors shape the evolution of the employment landscape – for instance, the evolution of the labor market is currently looked more carefully at through the lens of occupational health and safety law (including the new emerged right to disconnect).

Consequently, supporting the alignment of the national labor legislations means that not only EU bodies would have to prove an invigorated approach on how these new circumstances of modern work can be regulated to a greater extent than hitherto, but also the Member States must keep up with this modern EU acquis.

Nevertheless, it is quite obvious that a number of major changes in the labor market will continue to be regulated by the EU - only as part of the positive harmonization scope, precisely because of the existing distinctive legal framework, which does not have as its

[45] Art. 153 para. 4.
[46] *Ibidem*.
[47] *Ibidem*.
[48] Art. 157 para. 3 TFEU.
[49] Augustin Fuerea, *Legislativul Uniunii Europene între unicameralism şi bicameralism*, in Dreptul no. 7/2017, pp. 187-200.
[50] Delia Mihaela Marinescu, *The discrimination - a risk factor for social security in the European Union*, in: Proceedings. The 15th STRATEGIES XXI International Scientific Conference, „Strategic Changes in Security and International Relations", vol. XV, Part 1, Bucharest, April 11-12, 2019, „Carol I" National Defense University, Security and Defence Faculty, pp. 59- 68.
[51] Delia Mihaela Marinescu, *Respecting equal opportunities - a guarantee for maintaining societal security in Romania and in the European Union*, in Proceedings of the „ Romania in the New International Security Environment" Conference, „Carol I" National Defense University, National Defence College, June 26, 2020, pp. 38-45.
[52] Monica Florentina Popa, *Law, economy and ideology in the Western democracies today: a typical carrot and stick interaction*, Perspectives of Law and Public Administration, vol. 11, Issue 1, March 2022, available online at: http://www.adjuris.ro/revista/articole/An11nr1/11.%20Monica%20Popa.pdf, 2022, pp. 88-102.

aim and vision the total harmonization of labor law within the EU.

This conclusion is derived particularly from the conflict between very distinctive social policies of the Member States, and the need of the creation of a community employment market.

In this respect, the European Commission shall ensure with more vigor a correct application and transposition of EU law across all Member States and shall reinvigorate its capacity to anticipate specific circumstances that could arise from the uneven application of EU law (including also the rulings of the EU Court of Justice).

Member States' efforts should increase so that compliance with EU Directives to become much more uniform, but this goal seems a long way from being achieved - the opportunity dimension of each country's labor and social policies may ultimately take priority over the strategy of aligning national legislation in the EU.

Not least, EU bodies, with the help of the European center of expertise in the field of labor law, employment and labor market policies created in 2016, shall also improve awareness and encourage public debate on topics of interest for EU labor law and legislation, as the final outcome is providing a clear framework of rights and obligations in the workplace (increasingly in the light of new ways of working) and protecting the health of the workforce.

We do believe that this approach of the EU legislative bodies needs to be more adapted both to the times we live in and even to its historical intent – where EU aims to promote social progress and improve the living and working conditions of the people of Europe, as the preamble of TFEU states.

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