BRIEFING

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Regulating working conditions through EU directives – EU employment law outlook and challenges

KEY FINDINGS

The European Union has a long-standing tradition of developing its social dimension through the regulation of labour and employment matters. Different instruments of labour and employment legislation have come into existence, including rules on health and safety, working time, equality, flexible work, working conditions, business restructuring and collective rights.

However, labour law is still strongly rooted in Member States' systems and traditions. The legislative competences of the EU are significant, but also limited (areas that are excluded are: pay, freedom of association, right to strike). Due to legal (in terms of legislative competences) and policy restrictions, the outlook for EU labour and employment law shows some gaps and highly relevant issues remain unregulated, including minimum wages, collective bargaining and employment termination.

Due to the lack of a uniform definition of worker in the existing framework, EU labour law 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, it has not yet delivered a uniform approach for all existing EU directives, making a revision involving all relevant instruments highly recommended.

The European Pillar of Social Rights, adopted in 2017, and the future outlook for labour markets give rise to new challenges for the regulation of work. Areas of improvement for labour and employment regulation concern the growing digitalization of the world of work and new ways of working. Issues are related to new forms of work, coverage of self-employed persons (all or certain types), working time flexibility and sovereignty, techno-stress, health and safety, human-in-command approaches and worker privacy in a digital and robotized work environment.

Regulatory strategies will have to take into account the position of the European social partners. Their role in the formulation of working conditions and the law making process is enshrined in the Treaty. Their strategic involvement in policy making is part of the European social model.

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Introduction

This paper highlights the main features and elements of European labour and employment law through the lens of regulation in an EU context. While the purpose is to be primarily informative, it indicates the main elements of EU labour law debate and includes a brief outlook of the challenges for labour law in the light of new labour market developments.

Firstly, the paper briefly sets the general context and background of EU labour law, as this subject is to be understood through its connection with broader EU policy dynamics. EU labour and employment law is then explained within the broader European Treaty framework, in which different parts and areas play a role. Attention is paid to the relevant existing legislative instruments in the area of labour and employment law. An overview is provided of the main EU employment directives in force. Subsequently, the paper looks at issues and gaps in the current EU legislative competences. This is followed by challenges for labour law in the light of the current debate on labour law, labour market developments and the wider European policy context. It takes into account the existing competences of the EU in the area of labour and employment law and their relevance for future EU initiatives.

Context and background

In the absence of a harmonised approach to labour law, the European Union Member States are (and remain) key actors with relatively strong powers and traditions in the area of employment law, labour relations and welfare services. Essential aspects of labour law (such as pay, freedom of association and the right to strike) are excluded from the regulatory competences in the social chapter of the Treaty on the Functioning of the European Union (article 153.5 TFEU). The European Union addresses labour law only partially. This means that legal conditions for workers and businesses remain quite different and labour conditions are strongly dependent on national law.

Nevertheless, EU intervention in the area of labour and employment matters has strongly increased over the past decades. In the mid-1980s, ambitions for social policy were strengthened through the idea of "l'Europe sociale". When, on 15 March 1989, the European Parliament adopted a resolution on "the social dimension of the single market", it called for "the adoption at Community level of fundamental social rights" and expressed the need to strengthen the social dimension of the internal market[1]. On 9 December 1989, at the Strasbourg Summit, the Heads of State and Government of 11 Member States adopted, in the form of a declaration, the text of the Community Charter. It paved the way for the adoption of a social chapter at Treaty level, with the Maastricht Treaty in the early 1990s. Since then, positive regulation in the area of labour and employment law has been characteristic of European social policy.

Over the years, the social dimension of European integration has been not only a strong complement to the EU's economic ambitions, but has become a stand-alone strategic purpose in its own right. Some major documents and declarations serve as landmarks. The 1989 Charter was followed by a European action programme[2]. The Charter of Fundamental Rights of the EU, solemnly proclaimed by the presidents of the three EU institutions on 7 December 2000, contains important and binding fundamental social rights (such as the right to fair and just working conditions, or the right to collective bargaining). In order to reinforce the role of social and labour rights in the EU, as called for by the European Parliament[3], the 'European Pillar of Social Rights' was adopted and officially proclaimed on 17 November 2017 by the EU leaders. The 'Pillar' contains 20 themes with rights and principles, serving as strong commitments with regard to the EU's social progress and the development of labour law.

Departing from existing EU competences, the Pillar sets principles for current and future challenges taking into account the needs of people and the changing world of work[4]. While the Pillar uses the language of

new rights, it is "designed as a compass" and serves as "a guide"[5]. It creates a new policy dynamic and requires further action from EU institutions and actors, social partners and Member States.

A brief explanation of the broad Treaty framework in the area of labour and employment law

To get an overview of the Treaty framework for labour and employment law, some major areas of EU competence, in different sections of the TFEU, need to be taken into account. These policy areas affect or deal with labour law to varying degrees and from different perspectives. Overall, labour and employment law is affected by the following major Treaty areas.

1. Social policy:

Serving as the prime legal basis for EU regulation of labour and employment matters, the 'social chapter' (technically "Title X – Social Policy", article 151-161 TFEU) provides for major legislative competences. On the basis of article 153 TFEU, the European Parliament and the Council may adopt, by means of directives, minimum requirements in listed areas. For some of the issues, qualified majority voting in the Council applies: improvement in particular of the working environment to protect workers' health and safety; working conditions; information and consultation of workers; 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 regulation of other areas requires unanimity in the Council: protection of workers where their employment contract is terminated; 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 European Commission has, however, proposed to use the 'passerelle' clause in article 153.2 TFEU, which makes it possible to switch from unanimous to qualified majority voting in these areas[6].

Some important matters of labour and employment law, however, are excluded from these regulatory competences. In article 153.5 the TFEU expressly excludes the following areas: pay, the right of association, the right to strike and the right to impose lock-outs.

A dimension to be taken into account in the regulation of labour and employment law, is the role of industrial relations. Based on articles 154 and 155 TFEU, the social partners are involved in the law making process and their autonomy to make agreements is respected.

2. Employment policy:

An important Treaty area for labour and employment law is "Title IX – Employment" (articles 145-150 TFEU), introduced with the 1997 Amsterdam Treaty. The Employment Title confers employment policy competences on the European level, 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 institutions is more of a 'coordination role'. Instead of using regulation, it applies EU guidelines, Member State action plans, exchange of views and practices. This contrasts with the classic European legislative methods in the field of social policy, primarily the use of directives. However, this rather 'soft' and open method of coordination in employment policies has helped to develop many EU initiatives beyond its limited 'hard' competences. It has put (and pushed) labour law reform and modernisation of labour law onto the agenda.

3. Internal market:

The internal market provisions covering free movement rights (persons, services, goods, capital) are major cornerstones of EU law. The law on free movement of persons (article 45 TFEU), developed through the case law of the Court of Justice of the EU, has become a strong reference for real and enforceable social rights, enshrining social citizenship and solidarity[7]. Labour market mobility has also been enhanced through social security coordination (article 48 TFEU)[8]. However, some of the market freedoms, in particular related to services, have caused critical debate in labour law. The posting of workers, through the free movement of services, has triggered controversy about social dumping and how to balance the protection of workers and the freedom of services[9]. The proposal for a European Services Directive instigated a broad debate about the 'European social model' and ultimately led to substantial modifications in the final text, leaving labour law largely 'unaffected'[10]. The clash of the internal market's freedoms with nationally-rooted social and labour policy authority, also became clear in the European Court cases Viking (C-438/05) and Laval (C-341/05), in which the exercise of the right to collective action was seen as a problematic limitation of the employer's free movement rights under EU internal market law[11].

4. Competition:

An area that has proved to be increasingly important for labour law, in particular collective bargaining, relates to the rules on competition, laid down in Title VII of the TFEU. Article 101.1(a) TFEU prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions". Collective agreements, laying down working conditions, including pay, have a restrictive effect on competition and may be considered as price fixing and a violation of anti-trust rules. However, the Court of Justice of the EU exempted collective agreements from EU competition law (C-67/96). Judging a (national and sector-wide) collective agreement, the Court held that "it is beyond question that certain restrictions of competition are inherent in collective agreements between organisations representing employers and workers. However, the Court concluded that "the social policy objectives pursued by such agreements would be seriously undermined if management and labour were subject to article 101.1 TFEU [former article 85.1] when seeking jointly to adopt measures to improve conditions of work and employment" (par. 59). Collective agreements providing for working conditions, including pay, were thus not considered as anti-trust violations[12]. However, with the increasing significance of non-standard forms of employment and the rise of the gig economy, which includes forms of self-employment, the question arises of how provisions on working conditions in collective agreements in such contexts relate to EU anti-trust provisions (see below)[13].

5. Economic governance:

A rather new field, indirectly relevant for labour law, is the European economic governance mechanism, based on the European Semester. This system, strongly driven by the European Commission itself, has been subject to criticism because it triggers national labour law reform, based on economic and financial parameters rather than social policy deliberations. The European Pillar of Social Rights may lead to improvement in this field. Recently, it has been suggested, in the annual cycle of economic policy coordination, that "the euro area and country analysis and recommendations will reflect and promote the development of social rights"[14]. One of the more recent elements in economic governance is the "Social Scoreboard", which includes indicators to compare Member States' development in the Joint Employment Report. It gives input into the country reports in the European Semester and should give a more socially driven assessment[15].

An overview of the main employment directives in force

A wide range of EU labour and employment directives have come into existence. Furthermore, some other EU legislation in connected policy areas, is also relevant. The main directives in force are:

Individual labour law:

- Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the **safety and health** of workers at work (89/391/EEC);
- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of **working time**;
- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on **fixed-term** work concluded by ETUC, UNICE and CEEP;
- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on **part-time** work concluded by UNICE, CEEP and the ETUC;
- Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on **temporary agency work**;
- 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;
- Directive 2019/1158 of 20 June 2019 of the European Parliament and of the Council on **work-life balance** for parents and carers and repealing Council Directive 2010/18/EU.

Collective labour law:

- Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to **collective redundancies**;
- Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of **transfers of undertakings**, businesses or parts of undertakings or businesses;
- Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the **insolvency of their employer** (Codified version);
- Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a **European Works Council** or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;
- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for **informing and consulting employees** in the European Community.

Equality law:

- Council Directive 2000/78/EC of 27 November 2000 establishing a **general framework** for equal treatment in employment and occupation;
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of **racial or ethnic origin**;
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and **equal treatment of men and women** in matters of employment and occupation (recast).

Other relevant legislation:

- Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a **European Labour Authority**, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344;
- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the **posting of workers** in the framework of the provision of services (amended by Directive (EU) 2018/957);
- Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System;
- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a **European company** with regard to the involvement of employees.

Openings or gaps in the legislative competences

In light of the Treaty competences provided in the social chapter, and given the relevance of some key subjects of labour law, three main areas are generally indicated as gaps in the legislative competences or in the use of these competences: (minimum) wages/income, (European) collective bargaining and employment termination[16]. These elements merit particular attention in the light of the role they played in addressing the financial and economic crisis[17] and given the guiding rights and principles of the European Pillar of Social Rights. A fourth issue, however, is the (lack of) definition or conceptualisation of a (legal) worker notion in European directives.

With regard to **wages**, one must remain mindful that pay is an excluded area from the regulatory competences[18] in article 153, 5 TFEU. The autonomy of the Member States as well as of the social partners in collective bargaining have been indicated as reasons for keeping this out of the EU's regulatory competence. This means that wages and wage costs in the different Member States of the European Union continue to diverge strongly, and also that it is difficult to bring about EU legislation, notwithstanding the Social Pillar's ambitions to promote fair wages and minimum wages. The idea of a European minimum (or reference) wage was already advanced by different actors in 1993, including the European Parliament's Committee for Social Affairs[19]. In academic research, the minimum/reference wage strategy is advised in the fight against (working) poverty[20]. It is indicated that European-wide measures that would bring minimum wages up to a level of 60 % of the national median/average wage, would have a positive impact on (workers') poverty[21]. However, due to the exclusion of pay, mentioned in article 153, 5 TFEU, realizing such a strategy through legislation seems difficult. In legal terms, however, the exclusion of pay is relative and does not hinder the coverage of pay in legislation of subjects for which the EU has explicit competences[22]. This, for example, has allowed EU legislation providing equality clauses concerning pay in equality law, temporary work, part-time work or fixed term work (as well, beyond social policy, in the posting of workers area). Furthermore, while initiatives relying on yet unexplored competences (e.g. article 153.1, h TFEU: integration of persons excluded from the labour market) could be envisaged, they will remain legally debatable. Therefore, the two most relevant pathways that remain are softer strategies of coordination of policies at EU level, further feeding the European Semester with the 'social scoreboard', including social exclusion and wage inequality, or relying on the voluntary initiative of the European social partners. Any agreement between the social partners, however, will be entirely dependent on their autonomy and its implementation through a Council decision will be problematic given the lack of EU competences[23].

In the EU, industrial relations and the (European) social partners have always played a fundamental strategic role. While the importance of it was recently confirmed in the Statement of the Presidency of the Council of the EU, the European Commission and the European Social Partners[24], there is no (secondary) legislation on **European collective bargaining** itself, neither in terms of its processes nor in terms of the legal meaning of its results[25]. The Treaty itself gives social dialogue a prominent role. Not only are the social partners involved through consultations in the legislative process under the social policy chapter (article 154 TFEU), but also, according to article 155 TFEU, the social partners can voluntarily engage in dialogue between them at European level and this may lead to agreements. Article 155.2 TFEU provides that these agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by the social chapter, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. Based on these provisions, some European social dialogue initiatives have been successfully translated into legislation (fixed term work, part-time work and parental leave – revised in 2009) through the form of a directive. However, a number of European agreements have not been implemented through European legislation (e.g. telework, stress at work, harassment and violence at work, inclusive labour markets). The implementation is then left, according to article 155.2 TFEU, to the practices specific to the Member States.

In the absence of any direct legal recognition in national legal systems, and in the absence of European regulation, the legal meaning of these Europe-wide agreements remains, in such cases, a question mark[26]. The same is true for the growing number of sectoral and transnational company agreements, based on the voluntary initiative of management and labour[27]. A European legislative approach in this area, however, remains problematic. While the European Pillar of Social Rights promotes the conclusion of European agreements, the (problematic) Treaty competences in social policy do not leave much room, given the exclusion of the freedom of association in article 153, 5 TFEU[28]. In any case, strong political will would be necessary before bringing this to the table as the absence of Treaty competence is obviously related to the diversity of Member States' industrial relations systems.

Employment termination is a centre-piece of labour law and the relevance of job (in)security has increased since the financial and economic crisis[29]. European legislative competences, mentioned in article 153, 1, (d) cover "the protection of workers where their employment contract is terminated". Both the Charter of Fundamental Rights of the EU and the European Pillar of Social Rights promote protection in case of dismissal. Taking into account the Member States' autonomy in this rather sensitive field of labour protection, the EU has not yet exercised its competence in this area. The existing European legislation on fixed-term work has, nevertheless, immediate relevance in this area, as fixed-term work is used as a flexible alternative for strict protection for employment contracts of indefinite duration and thus indirectly plays a role in dismissal law[30]. While the Court of Justice of the EU held that "the benefit of stable employment is viewed as a major element in the protection of workers" (Case C-144/04, par. 64), many European countries have followed their own strategies in reforming their law on dismissal, all in their own manner[31]. Different European approaches in this area have been suggested, for example the formulation of a common floor of rights or principles, or addressing the employment protection of specific vulnerable groups or precarious workers at the labour market[32].

An important legal discussion is that on the scope of EU labour and employment law directives, which generally lack a uniform **European worker concept**[33]. The scope of application of European labour and employment directives is often dependent on how the worker notion is defined under national labour law. This is different from the primary law of the Treaty (e.g. article 45 TFEU; article 157 TFEU), where an autonomous concept is applied by the Court of Justice of the EU, clearly keeping the scope of application as broad as possible, mainly to give useful effect to the established Treaty rights[34].

One established EU labour law directive that uses its own definition of worker is the Health and Safety Directive 89/391 (listed above). It defines as a worker "any person employed by an employer, including trainees and apprentices but excluding domestic servants" (article 3(a)). An employer is defined as "any natural or legal person who has an employment relationship with the worker and has responsibility for the

undertaking and/or establishment". This implies a broad concept of worker and thus a wide scope of application, regardless of national law. However, other EU labour law directives refer to the national worker concept or the national understanding of an employment contract. For example, the directives implementing the European framework agreements concluded by the social partners (part-time work, fixed-term work, parental leave) point for their scope of application to persons 'who have an employment contract or employment relationship as defined by the law, collective agreement or practice in each Member State'. The Transfer of Undertakings Directive (listed above) uses the notion of 'employee' defined as (article 2, 1(d)) "any person who, in the Member State concerned, is protected as an employee under national employment law." Given the absence of a harmonized approach and the diversity in the Member States, the scope of application of these directives is not consistent. This not only affects the uniform implementation of the directives in the various national systems, it also presents the problem of bogus self-employment, as explained in Preamble 8 of the Transparent and Predictable Working Conditions Directive (TPWD, listed above), adopted in 2019: "Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations." As a response to this, the TPWD has attempted to use a European worker notion and mentions in Preamble 8 that the case law of the Court of Justice of the European Union must be followed, where criteria for the status of a worker have been provided. However, article 1.2 of this directive complicates the scope by referring to "every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice". The reference to national law, with references to EU case law, still leaves room for discussion.

For EU labour law directives that do not expressly use a definition of worker, such as the Collective Redundancies Directive or the Working Time Directive (both listed above), the Court of Justice of the EU (CJEU) has interpreted the concepts in an autonomous way. For example, the CJEU held that, for the application of the Collective Redundancies Directive, it is necessary to regard as a worker a person, while not receiving remuneration from his employer, performs real work within the undertaking in the context of a traineeship in order to acquire or improve skills or complete vocational training (C 229/14). The CJEU's case law has not yet delivered a uniform approach for all existing EU directives. Since most EU directives (still) leave room for discussion, it could be envisaged to expressly provide a European worker concept in the existing labour and employment law directives, implying a revision involving all relevant instruments.

Future labour law trends in a changing world of work

The changing world of work brings new challenges for labour law. Literature refers to globalisation, flexibilisation and technological development as central drivers of change[35]. Also the 'fourth industrial revolution' opens new discussions in relation to work[36]. The regulation of work receives broad reflection[37]. Already years ago, the crisis of the traditional regulatory model was foretold[38]. Labour markets have grown into new ways of working[39]. Not only have flexible work patterns (fixed-term, part-time, temporary work) taken a more significant place next to standard forms of work (the open-ended employment contract), **new forms of work**, including zero-hours contracts, crowd-sourcing platforms, gig work[40], lead to further fragmentation and casualization of the labour market, leaving a range of workers outside the scope of labour law protection[41]. Precariousness and job insecurity, furthermore, produce significant negative side-effects beyond working life[42]. In the context of this increasing diversification and casualization of work, the question arises as to how the scope of labour law should be defined and how rights, including working conditions, should be envisaged.

In its resolution on the European Pillar for Social Rights of 2017, the European Parliament called for adequate social protection for all workers, including **all forms of employment**[43]. It was followed by a Commission initiative[44] and consultations with the social partners[45]. The action mainly covers access to social security benefits and welfare. However, also working conditions of **self-employed persons** are an important point

of attention (e.g. health and safety, job security). There is an increase in the numbers of '**dependent self-employed**' persons (self-employed persons who are not subordinated but economically dependent on another party[46]). Currently, even if self-employed persons actually work quasi as employees, they still often fall outside the scope of (national and EU) labour law. The issue of regulating traditional employment contracts received attention during the drafting of the Transparent and Predictable Working Conditions Directive (listed above). The European Parliament proposed to supplement the definition of worker by using the criterion of "dependency", as an alternative for "subordination"[47]. This would have made it possible to include categories of dependent self-employed persons within the scope of a labour law directive. The amendment, however, did not make it to the final draft (see above). Future initiatives may nevertheless refer back to this initiative, or redefine rights for persons engaged to provide labour, while not genuinely operating a business on her or his own account[48].

Recent research indicates that, while there is much attention being devoted to new forms of employment in various European countries, there is no emerging strategic approach with regard to providing answers or solutions to the new problems that they pose[49]. This finding may strengthen the case for European intervention.

Working conditions for self-employed persons requires a clarification of the relationship between **labour law and (European) competition law** (article 101.1 TFEU). In the FNV Kunsten-case (C 413/13), the Court of Justice of the EU had to deal with a collective labour agreement with minimum fees for (substitute) orchestra members, applying to those who carried on their activities under a contract for professional services without being regarded as 'employees' (self-employed substitutes). The Court was not unwilling to grant an exemption for this collective agreement under EU anti-trust law (article 101.1 TFEU), but in the view of the Court, that could only be the case if the self-employed service providers are 'false self-employed', in other words, service providers 'in a situation comparable to that of workers'[50]. The meaning and scope of this judgement still leaves problems of interpretation[51]. As there is no reason of principle why, in cases of dependency, self-employment would fall outside the scope of labour law, positive regulation in the EU labour law area may help to clarify this issue.

Working time is another important area for the future labour law agenda, given new developments. There is growing European case law on the concept of working time, in light of the Working Time Directive (listed above), related to flexible working patterns such as availability services or on-call work[52]. The typical 9-to-5-job is steadily making way for new work schedules, in which flexibility is important for both employers and workers[53]. Furthermore, technology makes strict concepts of 'time' and 'place' redundant (working 'anytime anywhere')[54]. The European social partners have addressed the issue of 'telework' before through a framework agreement (16 July 2002). However, a future labour law agenda would need to include new regulatory questions such as **time sovereignty**, workers' **work-life balance**[55], **techno-stress**[56], or **the right to disconnect**[57] . These are issues that can be looked at through the lens of working time law, but also more generally through **occupational health and safety law**.

Due to the impact of robots and artificial intelligence in the world of work[58], a **human-in-command** (or **humanization**) approach, putting people first in a machine and AI driven workplace, is emerging[59]. The European Parliament, adopting a resolution on robotics and artificial intelligence in 2017[60], launched a major attempt to look for regulatory strategies on robotics in our societies. It referred to "a set of new risks owing to the increasing number of human-robot interactions at the workplace", for example relating "to guaranteeing health, safety and the respect of fundamental rights at the workplace"[61]. Also the ILO Global Commission on the future of work[62] noted such risks. When humans and robots work together, there are evident reasons to carefully consider conditions and quality of work. **Health and safety** is in this context a crucial entry point for labour law[63].

A connected area is the regulation of worker privacy. With the adoption of the 'General Data Protection Regulation' (GDPR) on 27 April 2016[64], the awareness of the right to privacy increased in a broad range of areas, including data processing, electronic monitoring, and the use of **artificial intelligence**[65]. Article 88 of the GDPR refers to the possibility to make "more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context". Attempts have been made in the past to regulate employment privacy at EU level[66]. It would be very timely and appropriate to relaunch an initiative in this area.

1 O.J. 17 April 1989, C96, p. 61.

2 COM(89) 568 final.

3 Cf. European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)).

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5 Preamble p. 12.

6 COM(2019) 186 final.

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18 Cf. Opinion of Advocate General Kokott, par. 172, Case C-268/06, *Impact*.

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