Social and employment policy

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ABOUT THE PUBLICATION

This leaflet contains a compilation of Fact Sheets provided by Parliament’s Policy Departments and Economic Governance Support Unit on the relevant policy area.


ABOUT THE PUBLISHER

Author of the publication: European Parliament

Department responsible: Unit for Coordination of Editorial and Communication Activities
E-mail: editorial-secretariat@europarl.europa.eu

Manuscript completed in April, 2018
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The social dimension of European integration has been greatly developed through the years. It is a key aspect of the Europe 2020 strategy, which aims to ensure ‘inclusive growth’ with high levels of employment and a reduction in the number of people living in poverty or at risk of social exclusion.

**LEGAL BASIS**

Article 3 of the Treaty on European Union (TEU), and Articles 9, 10, 19, 45-48, 145-150 and 151-161 of the Treaty on the Functioning of the European Union (TFEU).

**OBJECTIVES**

The promotion of employment, improved living and working conditions, 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 are the common objectives of the EU and its Member States in the social and employment fields, as described in Article 151 TFEU.

**ACHIEVEMENTS**

A. From the Treaty of Rome to the Maastricht Treaty

In order to allow workers and their families to take full advantage of the right to move and seek employment freely throughout the common market, the Treaty of Rome provided for the coordination of the Member States’ social security systems. It enshrined the principle of equal pay for men and women, which was recognised by the Court of Justice as being directly applicable, and provided for the establishment of the European Social Fund (ESF).

Concerns about structural imbalances and uneven growth in Europe later led to a more proactive social policy at Community level. In 1974, the Council adopted the first Programme of Social Action.

The Single European Act (SEA) introduced provisions for the harmonisation of health and safety conditions at work. Acting by qualified majority in cooperation with Parliament, the Council adopted a number of directives laying down minimum requirements in this area. The SEA also made it possible for the social partners at European level to negotiate collective agreements, and established a Community policy for economic and social cohesion.

Consensus grew around the need to pay more attention to the social aspects connected with the completion of the internal market. Following long debates, the Community Charter of the Fundamental Social Rights of Workers (Social Charter) was adopted at the Strasbourg Summit in December 1989 by the Heads of State or Government of 11 Member States, with the United Kingdom opting out.

With the signing of the Maastricht Treaty, the promotion of a high level of employment and social protection was officially introduced as one of the tasks conferred on the
European Community (EC). However, having been unable to reach a unanimous agreement during the intergovernmental conference, 11 Member States decided to move ahead by concluding an Agreement on Social Policy, thereby exempting the UK from participation (Protocol No 14 to the Treaty).

B. From the Amsterdam Treaty to the Treaty of Lisbon

The awkward situation of having a double legal basis, created by the UK opt-out, was finally overcome with the signing of the Amsterdam Treaty, when all the Member States, including the UK (following a change in government), agreed to incorporate the Agreement on Social Policy into the text of the EC Treaty with some slight changes (Articles 151-161 TFEU). In Article 153, the co-decision procedure replaced cooperation and was also extended to provisions relating to the European Social Fund (2.3.2), the free movement of workers and social security for Community migrant workers (2.3.4). The new Article 19 conferred on the EC the ability to ‘take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. On this basis, two directives were soon adopted: Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC on a general framework for equal treatment in employment and occupation.

The Amsterdam Treaty also included the promotion of a high level of employment among the EU objectives and conferred on the EC a responsibility to support and complement the activities of the Member States in this area to encourage cooperation between them and to develop a ‘coordinated strategy’, namely the European Employment Strategy (EES) (Articles 145-150 TFEU), based on an open method of coordination (OMC) (2.3.3).

When launching the Lisbon Strategy in March 2000, aimed at making the EU the most competitive economy in the world, the Heads of State also recognised that economic growth was not in itself sufficient to fight poverty or the danger of social exclusion. The OMC would later be extended to pensions, health and long-term care as part of the ‘social OMC’.

The year 2000 also saw the adoption, at the Nice Summit, of the Charter of Fundamental Rights of the EU, drafted by a special Convention. A Social Protection Committee was created to promote cooperation between Member States and the Commission (Article 160 TFEU) on social protection policies, but all proposals to expand the co-decision procedure were rejected.

In the light of the mid-term review of the Lisbon Strategy in 2005, the employment guidelines adopted as part of the EES were incorporated into the integrated guidelines for growth and jobs, and the Lisbon reform process was synchronised with the social OMC on the basis of three-year cycles.

A new social agenda for the 2006-2010 period was adopted in 2005 to accompany the re-launch of the Lisbon Strategy. An EU programme for employment and social solidarity, called Progress, was established for the 2007-2013 period to support the implementation of the EU’s objectives in the social field (2.3.9). In 2007, a European Globalisation Adjustment Fund (EGF) was created to provide support for workers made redundant as a result of changing global trade patterns (2.3.2).

The Treaty of Lisbon was signed on 13 December 2007, allowing for further progress in consolidating the social dimension of European integration. The Treaty on
European Union now emphasises the EU's social objectives, including full employment and solidarity between generations (Article 3); Article 6 recognises the Charter of Fundamental Rights as having the same binding force as the Treaties. The Charter itself recognises so-called 'solidarity rights', such as workers' right to information and consultation, as well as the rights to collective bargaining, fair and just working conditions, social security and social assistance. A horizontal social clause was introduced into the TFEU, reading as follows: 'in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9).

C. Developments since the Lisbon Treaty

Adopted in 2010 against a background of financial and economic crisis, the Europe 2020 strategy establishes inclusive growth — fostering a high-employment economy that delivers social and territorial cohesion — as one of its priority areas. The strategy also sets five headline targets, including a landmark social objective (lifting 20 million people out of the risk of poverty by 2020), and a renewed commitment to employment (a target of 75% employment for the 20-64 age group). Seven flagship initiatives were set up to help achieve these targets. These include the Agenda for New Skills and Jobs, which focuses on revamping flexicurity policies, Youth on the Move, which is designed to enhance mobility and improve education and training, and the European Platform against Poverty and Social Exclusion (see fact sheet 2.3.9). The progress of these initiatives is being monitored within the annual cycle of the EU economic governance: the European Semester. In response to increasing poverty levels, in 2014 the Fund for European Aid to the Most Deprived (FEAD) was established. It provides food and basic material assistance, together with social inclusion activities.

In April 2017, in a bid to build a fairer and more social Europe, the Commission presented a communication on the European Pillar of Social Rights (EPSR), which sets out 20 key principles and rights to support a renewed process of convergence towards better living and working conditions in Europe. These are structured around three categories: (i) equal opportunities and access to the labour market, (ii) fair working conditions, and (iii) social protection and inclusion. At the Social Summit in Gothenburg in November 2017, the European Parliament, the European Council and the Commission underlined their shared commitment by adopting a common proclamation on the European Pillar of Social Rights. A number of legislative and non-legislative initiatives, in areas such as workers' right to information and consultation, access to social protection and work-life balance, support implementation. Furthermore, the Commission plans to establish a European Labour Authority to enhance fair employment mobility. The Social Pillar is accompanied by a ‘social scoreboard’ to monitor progress (2.3.9), and by a new approach to mainstream social priorities into all policies, such as the Investment Plan for Europe and the Energy Union.

ROLE OF THE EUROPEAN PARLIAMENT

Although Parliament’s role has long been a purely consultative and supervisory one, it has always been active in the development of EU action in the field of employment and social policy, with a view to strengthening the EU's capacity to combat unemployment and improving working and living conditions for all. Since the early stages of European integration, Parliament has often called for a more active policy in the social field so as to
reflect the increasing importance of the Union in the economic area, and has supported
the Commission’s different proposals in this area. Parliament was more closely involved
in the preparation of the Treaty of Amsterdam than in previous Treaty revisions, and
some important innovations reflect its recommendations, such as the incorporation of
the Social Agreement and the insertion of an employment chapter.

At the time of the Lisbon Strategy, Parliament insisted on the role that employment and
social considerations should play in the design of growth strategies to be implemented
at EU and national level. It recalled that a high level of social protection was central
to the Lisbon Strategy, considering it unacceptable that people should be living below
the poverty line or in a position of social exclusion. Parliament also took the view that
the Lisbon Strategy did not set sufficiently binding targets in the social sphere, and
called on the Member States to monitor closely the employment and social impact of
the reforms implemented as part of the Europe 2020 strategy. Along the same lines,
one of the messages conveyed by Parliament while debating the economic crisis was
a firm call for an EU commitment to preserving European social models and a strong
social Europe.

Since the headline targets of the Europe 2020 strategy are monitored and implemented
as part of the European Semester process, Parliament has repeatedly insisted on
incorporating the employment and social goals more effectively into the European Semester, inter alia through making social indicators binding and extending indicators
to cover child poverty and decent work, for example. It also deeply regrets the fact
that its role in the European Semester is of a limited nature, and has called for an
interinstitutional agreement enabling it to become more involved in the process.

Finally, Parliament has been critical as regards measures, such as economic
adjustment programmes, taken outside the supranational framework. In March 2014,
Parliament stated that only genuinely democratically accountable institutions should
steer the political process of designing and implementing the adjustment programmes
for countries in severe financial difficulties.

Parliament has also confirmed its attachment to social values in deciding on the
use of financial resources from the EU budget. It is thanks to Parliament that in the
current 2014-2020 programming period, the European Social Fund (ESF, see also
2.3.2) — Europe’s main tool in the fight against unemployment and social exclusion —
will account for 23.1% of total EU cohesion funding, and 20% of each Member State’s
ESF allocation will have to be spent on social inclusion.

In its resolution of 25 February 2016 on the European Semester for economic
policy coordination, Parliament called on the Commission and the Member States to
take action to boost upward social convergence in the Union. It also called on the
Commission to define and quantify its concept of social fairness. A similar call was
stressed once again in Parliament’s resolution of 15 February 2017.

On 19 January 2017, Parliament adopted a resolution on the European Pillar of Social
Rights. While fully embracing the Commission’s initiative in this field, the resolution
underlined the importance of enforcing a core set of rights for everyone and called on
the social partners and the Commission to work together to present a proposal for a
framework directive on decent working conditions.

Susanne Kraatz
The European Social Fund (ESF) was set up under the Treaty of Rome with a view to improving workers’ mobility and employment opportunities in the common market. Its tasks and operational rules were subsequently revised to reflect developments in the economic and employment situation in the Member States, as well as the evolution of the political priorities defined at EU level.

LEGAL BASIS

Articles 162-164, 174, 175, 177 and 178 of the Treaty on the Functioning of the European Union.

Following the entry into force of the Lisbon Treaty, the adoption of general rules applicable to the Structural Funds is now subject to the ordinary legislative procedure.

OBJECTIVES

According to Regulation (EU) No 1304/2013, the ESF is meant to improve employment opportunities, strengthen social inclusion, fight poverty, promote education, skills and lifelong learning, and develop active, comprehensive and sustainable inclusion policies.

In accordance with its priorities, the ESF aims to:

— Promote high levels of employment and job quality, improve access to the labour market, support the geographical and occupational mobility of workers and facilitate their adaptation to industrial change;

— Encourage a high level of education and training for all and support the transition between education and employment for young people;

— Combat poverty, enhance social inclusion and promote gender equality, non-discrimination and equal opportunities.

ACHIEVEMENTS

A. Previous programming periods

The ESF was the first Structural Fund. During the transition period (until 1970), it reimbursed Member States 50% of the costs of vocational training and resettlement allowances for workers affected by economic restructuring. In total, it assisted more than 2 million people during this period. In 1971, a Council decision substantially increased the fund’s resources and modified the system by replacing retroactive funding with new rules requiring Member States to submit advance applications for assistance. In 1983, a new reform (under Council Decision 83/516/EEC of 17 October 1983) resulted in greater concentration of the fund’s operations, which were to be directed mainly at the fight against youth unemployment and at those regions most in need. By incorporating into the EC Treaty the objective of economic and social cohesion within the Community, the Single European Act (1986) set the scene for a comprehensive reform (under regulations of 24 June and 19 December 1988) aimed essentially at introducing a coordinated approach to the programming and operation of the Structural Funds. The Treaty of Maastricht expanded the scope of ESF support, as
described in Article 146, to include ‘adaptation to industrial changes and to changes in production systems’. For the following programming period (1994-1999), the level of funding allocated for economic and social cohesion was doubled (ECU 141 billion). Following a number of pilot schemes during the previous programming period, Community initiatives were confirmed for 1994-1999 and allocated a more substantial budget (9% of the Structural Funds' total resources). The ESF co-financed two such programmes aimed at supporting innovative transnational projects: ‘Adapt’, which was meant to help employers and workers to anticipate industrial change and deal with its effects, and ‘Employment’, whose four strands promoted labour market integration for vulnerable groups.

As part of Agenda 2000, the overall framework of the Structural Funds was simplified for the 2000-2006 programming period. The ESF, then endowed with a EUR 60 billion allocation, was entrusted with the dual responsibility of contributing both to cohesion policy and to the implementation of the European Employment Strategy (EES) (2.3.3); the scope of its intervention was redesigned accordingly. The EQUAL Community initiative focused on supporting innovative, transnational projects aimed at tackling discrimination and disadvantages in the labour market. It was the only one co-financed by the ESF in the 2000-2006 programming period.

For the 2007-2013 programming period, only three Structural Funds remained: the ESF, the European Regional Development Fund (ERDF) and the Cohesion Fund. Jointly they were to achieve the objectives of convergence (channelling 81% of resources), regional competitiveness and employment (channelling 16% of resources to non-convergence regions), and European territorial cooperation aimed at promoting harmonious development throughout the EU (2.5% of resources).

The Structural Funds' resources are allocated among the Member States in accordance with a formula which takes into account population (and its density), regional prosperity, unemployment and levels of education; it is negotiated by the Member States at the same time as the multiannual financial framework (MFF) for a given period. One main feature of the Structural Funds is the principle of additionality, according to which Member States cannot use the Structural Funds to substitute for domestic spending on activities they had already decided to carry out anyway.

In the 2007-2013 period, the ESF, together with the other financial instruments of European cohesion policy, had a key role to play in the European Recovery Action Plan adopted by the European Council in December 2008, and in the coordinated European Economic Recovery Plan presented by the Commission in November of the same year.

B. Current programming period (2014-2020)

1. Five Structural Funds governed by common rules

The five European Structural and Investment Funds for the 2014-2020 programming period, i.e. the ERDF, the ESF, the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), are now governed by a set of common rules. In addition, fund-specific regulations define areas of intervention and other particularities. Regulation (EU) No 1303/2013 of 17 December 2013 defines common principles, rules and standards for the implementation of the five European Structural and Investment Funds. Regulation (EU) No 1304/2013 of 17 December 2013 establishes the missions of the European Social
Fund (ESF), including the scope of its support, specific provisions and the types of expenditure eligible for assistance.

2. European Social Fund and Youth Employment Initiative

The role of the ESF has been reinforced for the 2014-2020 period through the introduction of a legally binding minimum share of 23.1% of total cohesion funding. With an overall allocation of EUR 74 billion (compared with the planned sum of EUR 75 billion for the 2007-2013 period), the ESF co-finances national or regional operational programmes which run for the seven-year duration of the MFF and are proposed by the Member States and approved by a Commission decision.

The new ESF Regulation for the 2014-2020 period was adopted in December 2013. It focuses on the following four thematic objectives:

— Promoting sustainable and quality employment and supporting labour mobility;
— Promoting social inclusion, combating poverty and discrimination;
— Investing in education, training and vocational training for skills and lifelong learning;
— Enhancing the institutional capacity of public authorities and stakeholders and efficient public administration.

The ESF thus benefits people, including young people, women and people from disadvantaged groups, with a view to fostering social inclusion. The ESF also supports workers, enterprises and entrepreneurs. Finally, the ESF helps Member States improve the quality of their public administration and governance.

The current ESF Regulation includes the Youth Employment Initiative (YEI), which is funded from three sources: ESF national allocations (EUR 3.2 billion), a specific EU budget (EUR 3.2 billion) and national co-financing of the ESF part. It supports young people not in education, employment or training (NEETs) in regions experiencing youth unemployment rates above 25%. In February 2015, the Commission proposed an amendment to the ESF Regulation to increase the YEI pre-financing rate to be paid after the adoption of the Operational Programmes in its 2015 budget allocation from 1-1.5% to up to 30% in order to speed up implementation in the Member States.

Celebrating the 60th anniversary of the Fund in early 2017, the Commission reported that during the 2007-13 period alone it had helped almost 10 million Europeans to find a job. Commissioner Marianne Thyssen spoke of the ESF as being ‘60 years of success stories’ and emphasised that it represented direct investment in people. This occasion also marked the start of reflections on the EU’s human capital funding beyond 2020.

Until 8 March 2018, the Commission is conducting a public consultation in preparation for the new MFF, with a particular focus on questions concerning the ESF and related instruments (see below). The outcomes of the consultation will feed into the Commission’s proposals for the next generation of financial programmes.

3. Instruments for labour market integration complementing the ESF

The European Globalisation Adjustment Fund (EGF) was created as an instrument of competitiveness — not cohesion — policy for the 2007-2013 MFF in order to provide support for workers made redundant as a result of major structural changes in world trade patterns caused by globalisation. While the EGF responds to specific emergencies, such as mass redundancies resulting from globalisation, for a limited
period of time, the ESF supports multiannual programmes aimed at achieving the long-term structural objectives of keeping people in the labour market or reintegrating them into it.

In view of the crisis, the EGF Regulation (Regulation (EC) No 1927/2006) was temporarily amended until the end of 2011 to cater for the resulting redundancies, providing co-financing rates ranging from 50% to 65%. The new EGF Regulation for the 2014-2020 period (Regulation (EU) No 1309/2013) was adopted by Parliament and the Council in December 2013, with a budget of up to EUR 150 million. In addition to redundancies caused by structural changes stemming from globalisation, it includes redundancies resulting from global financial and economic crises.

The new EU Employment and Social Innovation (EaSI) programme has incorporated the previous Progress programme as one of its three axes. With a budget of EUR 550 million, it aims to promote a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty and improving working conditions.

**ROLE OF THE EUROPEAN PARLIAMENT**

Parliament’s influence over the ESF has grown over the years. Under the Treaty of Maastricht it had to give its assent to the general provisions governing the funds, whereas under the Treaty of Amsterdam the adoption of implementing rules for the ESF is subject to the codecision procedure. Parliament regards the ESF as the EU’s most important instrument for combating unemployment. It has therefore always advocated the efficient operation of the fund and called for simpler legislation and procedures, which could improve the effectiveness and quality of ESF assistance.

For the 2007-2013 programming period, Parliament supplemented the Commission’s proposal for a regulation on the ESF with amendments which helped to redesign the fund as a major tool aimed at facilitating the implementation of the EES. Parliament amended the text of the draft regulation to expand the scope of ESF assistance to include efforts to combat inequalities between men and women, discrimination and social exclusion by facilitating access to employment for vulnerable groups.

Parliament supported the Commission proposal on the ESF’s contribution to tackling the economic crisis and approved the relevant legislation aimed at accelerating access to the fund. In its resolution of 7 October 2010, Parliament called for the ESF to be strengthened as the main driver for implementing the Europe 2020 objectives, for example through greater flexibility and the simplification of checks and procedures.

Thanks to Parliament, in the current 2014-2020 programming period the ESF will account for 23.1% of total EU cohesion funding, and 20% of each Member State’s ESF allocation will have to be spent on social inclusion. Parliament also insisted that the EGF be made available to new categories of beneficiaries such as self-employed people.

Faced with the recent influx of refugees, Parliament, in its resolution of 5 July 2016, noted that professional integration is a stepping stone to social inclusion, and emphasised the availability of the ESF for measures to facilitate the integration of refugees into European labour markets, while calling for the Fund to be given greater importance.

Stefan Schulz
Creating more and better jobs is one of the main goals of the Europe 2020 strategy. The European employment strategy (EES), with its employment guidelines and supporting programmes such as the Employment and Social Innovation (EaSI) programme, is designed to contribute to growth and jobs, labour mobility and social progress.

LEGAL BASIS

Article 3(3) of the Treaty on European Union (TEU) and Articles 8-10, 145-150, 156-159 and 162-164 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Important principles, objectives and activities mentioned in the TFEU include the promotion of a high level of employment by developing a coordinated strategy, particularly with regard to the creation of a skilled, trained and adaptable workforce and labour markets responsive to economic change. According to the horizontal clause in Article 9 of the TFEU, the objective of a high level of employment must be taken into consideration in the definition and implementation of Union policies and activities.

ACHIEVEMENTS

A. The early stages (1950s to 1990s)

As long ago as the 1950s, workers were benefiting from ‘readaptation aid’ in the European Coal and Steel Community (ECSC). Aid was granted to workers in the coal and steel sectors whose jobs were threatened by industrial restructuring. The European Social Fund (ESF) (2.3.2), created in the early 1960s, was the principal weapon in combating unemployment.

In the 1980s and early 1990s, action programmes on employment focused on specific target groups, and a number of observatory and documentation systems were established.

To encourage free movement and help workers to find a job in another Member State, the former SEDOC system was improved and renamed EURES (European Employment Service) in 1992. EURES is a network for cooperation between the Commission and the public employment services of the EEA Member States (plus Switzerland) and other partner organisations.

B. Towards a more comprehensive employment policy


In a context of high unemployment in most EU countries, the White Paper launched a debate on Europe’s economic and employment strategy by bringing the issue of employment to the top of the European agenda for the first time.
2. The contribution of the Amsterdam Treaty (1997)

The new Employment title in the Amsterdam Treaty, which entered into force in May 1999, provided the basis for setting up the European Employment Strategy and the permanent, Treaty-based Employment Committee with advisory status to promote the coordination of the Member States’ employment and labour market policies. The sole competence for employment policy remains, however, with the Member States. The inclusion of a ‘social protocol’ in the Treaty enhanced the involvement of the social partners.

3. Luxembourg process: European employment strategy 1997-2004

The extraordinary Luxembourg Job Summit in November 1997 launched the European employment strategy (EES) together with the open method of coordination — the so-called Luxembourg process, which is an annual coordinating and monitoring cycle for national employment policies based on the Member States’ commitment to establishing a set of common objectives and targets. The strategy was built around the following components:

— Employment guidelines, formulated by the Commission and adopted by the Council;
— National action plans (NAPs);
— Joint Employment Report, published by the Commission and adopted by the Council;
— Country-specific recommendations (CSRs), formulated by the Commission and adopted by the Council.

The EES set a high level of employment on the same footing as the macroeconomic objectives of growth and stability.

4. The Lisbon strategy (2000-2010)

In 2000, the Lisbon European Council agreed on the new strategic goal of making the EU ‘the most competitive and dynamic knowledge-based economy in the world’, embracing full employment as an overarching objective of employment and social policy, and on concrete targets to be achieved by 2010.

The EES was reviewed in 2002 and re-launched in 2005, with the focus on growth and jobs and with the aim of simplifying and streamlining the Lisbon strategy. Revisions included the introduction of a multiannual time framework (the first cycle being 2005-2008). Since 2005, the employment guidelines have been integrated into the broad economic policy guidelines (BEPG).

5. The Europe 2020 strategy (2010-2020)

This 10-year strategy for jobs and smart, sustainable and inclusive growth defined for the first time a number of headline targets, including:

— Labour market: increase the labour market participation of people aged 20 to 64 to 75% by 2020;
— Social inclusion and combating poverty: lift at least 20 million people out of the risk of poverty and exclusion;
— Improving the quality and performance of education and training systems: reduce the proportion of early school leavers to 10% (from 15%), and increase the
share of 30-34-year-olds having completed tertiary or equivalent education to at least 40% (instead of 31%).

All five headline targets must be translated by Member States into national targets, taking into account their relative starting positions and national circumstances.

The 10 integrated guidelines contain six broad economic policy guidelines (Article 121 of the TFEU) and four employment guidelines (Article 148 of the TFEU). The employment guidelines adopted by the Council in October 2010 provided for increasing labour market participation by women and men, reducing structural unemployment and promoting job quality; developing a skilled workforce responding to labour market needs and promoting lifelong learning; improving the quality and performance of education and training systems at all levels and increasing participation in tertiary or equivalent education; and promoting social inclusion and combating poverty.

In October 2015, the Council adopted revised guidelines showing a strong labour market orientation:

— Boosting demand for labour (job creation; labour taxation; wage setting);
— Enhancing labour supply, skills and competences (relevant skills and competences; necessary investment; tackling structural weaknesses in education and training systems; reducing barriers to employment, in particular for disadvantaged groups);
— Enhancing functioning of labour markets (‘flexicurity principles’ to reduce labour market segmentation; involvement of social partners; improved active labour market policies; better public employment services; labour mobility);
— Ensuring fairness, combating poverty and promoting equal opportunities (modernising social security systems, healthcare and long-term care systems; principles of ‘active inclusion’; targeted social policies to prevent early school leaving and social exclusion).

6. Supporting financing instruments and policy initiatives

The EU programme for employment and social innovation (EaSI) 2014-2020, adopted by Parliament and the Council, brings together three existing programmes:

— PROGRESS (Programme for Employment and Social Solidarity), which provides for the generation of analytical knowledge and supports information-sharing and mutual learning;
— EURES (European Employment Services), which is a job mobility network that provides information, guidance and recruitment/placement services EU-wide;
— Microfinance and Social Entrepreneurship, which includes access to microfinance for individuals and micro-enterprises and capacity-building for micro-credit providers, and fosters social enterprises, i.e. businesses whose main purpose is social.

While the European Social Fund (ESF) can support a broad range of initiatives in the Member States, the European Council agreed in February 2013 to create a Youth Employment Initiative. Its budget accounts for EUR 8.8 billion (4.4 billion from the ESF and 4.4 billion from a specific budget line) for the 2014-2020 period (2.3.2). It targets young people aged 15-24 who are neither in employment nor in education or training (NEETs) in regions particularly affected by unemployment.
These and other European funding instruments help to support policy initiatives in the field of employment, such as the:

— Council Recommendation on establishing a European Youth Guarantee (April 2013), which aims at ensuring that all young people under the age of 25 receive a good-quality offer of employment, continued education, an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education;

— European Alliance for Apprenticeships (launched in July 2013);


In December 2016, the Commission proposed establishing a new European Solidarity Corps for young people with a focus on help in the event of natural disasters or social issues in communities. Further policy initiatives were launched to cope with challenges from the crisis and changing labour markets.

In February 2016, the Council adopted the Commission's proposal for a Council recommendation on the integration of the long-term unemployed into the labour market. Its focus is on registration with an employment service, an individual in-depth assessment and a job integration agreement.

The New Skills Agenda for Europe, a policy package issued by the Commission in June 2016 brings together 10 key actions to equip citizens with skills relevant for the labour market (e.g. Council Recommendation of 19 December 2016 on upskilling pathways for adults, the revision of the European Qualifications Framework (EQF) adopted by the Council in May 2017, and a Commission proposal for a decision by Parliament and the Council on the revision of the Europass Framework (October 2016).

To improve working conditions, including social protection and fair mobility, all three European institutions supported in November 2017 the European Social Pillar in a common proclamation (2.3.1).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament’s role in this area has developed gradually. Since the Amsterdam Treaty came into force, Parliament must be consulted on the employment guidelines before they are adopted by the Council. In addition, the open method of coordination has enhanced the role of parliaments — not only that of the European Parliament, but also that of the national parliaments, which should be involved in the setting and achievement of national targets.

Resolutions and other contributions reflect the fact that the European Parliament considers employment and social inclusion to be one of the EU’s most important priorities, and believes that the EU and the Member States need to coordinate their efforts.

During the 1996 Intergovernmental Conference, Parliament called for a specific employment chapter in the Amsterdam Treaty.

Parliament has given its strong backing to the Europe 2020 strategy. A number of the initiatives aimed at combating youth unemployment go back to Parliament proposing
concrete, practical actions, namely the EU Youth Guarantee and minimum standards on internships. Since 2010, Parliament has strongly supported the establishment of the Youth Guarantee Scheme, and it monitors its implementation. In its resolution of 17 July 2014, it called for a European legal framework introducing minimum standards for the implementation of the youth guarantee, including the quality of apprenticeships and also covering young people aged 25-30. As regards the European Solidarity Corps, in its resolution of 6 April 2017 Parliament called on the Commission to include in its future legislative proposal a clear description of the budgetary arrangements in order to avoid a negative impact on existing EU programmes aimed at young people. Furthermore, Parliament supported the approach taken in the Recommendation on long-term unemployment in its resolution of 29 October 2015. Parliament's intensive work on skills development had an impact on the New Skills Agenda for Europe issued by the Commission in June 2016.

Susanne Kraatz
01/2018
The coordination of social security systems is necessary to support the free movement of people within the territory of the EU. A fundamental reform modernising the whole legislative system has been in force since May 2010 replacing legislation from the 1970s, and further legal acts have improved the protection of workers’ rights when they avail themselves of their free movement rights. As of the end of 2016, it was proposed to revise the system in order to adapt it to modern economic and social realities in the EU.

LEGAL BASIS

Articles 48 and 352 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The basic principle enshrined in the Treaty of Rome is the removal of obstacles to the free movement of persons between the Member States (4.1.3; 2.1.5). To achieve this, it is necessary to adopt social security measures which prevent EU citizens who are working and residing in a Member State other than their own from losing some or all of their social security rights.

ACHIEVEMENTS

In 1958, the Council issued two regulations on social security for migrant workers, which were subsequently superseded by Regulation (EEC) No 1408/71, supplemented by an implementing regulation (Council Regulation (EEC) No 574/72). Nationals of Iceland, Liechtenstein and Norway are also covered, by the European Economic Area (EEA) agreement, and Switzerland by the EU–Swiss agreement. In 2004, Regulation (EC) No 883/2004 (the coordination regulation) was adopted to replace and extend Regulation (EEC) No 1408/71. It was amended by Regulation (EC) No 988/2009, and supplemented by Regulation (EC) No 987/2009 (the implementing regulation), which was intended to clarify the rights and obligations of the various stakeholders, as it defines the measures necessary for the persons covered to travel to, stay in or reside in another Member State without losing their social security entitlements. The ‘modernisation coordination package’ is the legislative package that has been in force since May 2010.

A. The four main principles of Regulation (EEC) No 1408/71

Given that each Member State remains free to design its social security system independently, the coordination regulation serves to determine under which country’s system an EU citizen should be insured where two or more countries are involved. Generally speaking, social security cover is to be provided by the country of employment or, in the absence of employment, by the country of residence. The coordination regulation thus replaced all pre-existing social security agreements between Member States covering the same scope. It relies on four main principles, as follows (articles cited refer to the coordination regulation):
1. Equal treatment (Articles 4, 5)

Workers and self-employed persons from other Member States have the same rights and obligations as the host state's own nationals. The right to equal treatment applies unconditionally to any worker or self-employed person from another Member State who has resided in the host state for a certain period of time. Additionally, if in a Member State legal effects are attributed to the occurrence of certain facts (e.g. being married) or events (e.g. having had an accident) or to the receipt of social security benefits (e.g. people drawing unemployment benefits are also entitled to a tax break), that Member State has to take account of like facts or events, or receipt of equivalent benefits, occurring in another Member State as though they had taken place in its own territory.

2. Aggregation (Article 6)

This principle guarantees that previous periods of insurance, work or residence in other countries will be taken into account in the calculation of benefits of workers. It applies where, for example, national legislation requires a worker to have been insured or employed for a certain period of time before he or she is entitled to certain benefits. The aggregation principle means that the competent Member State must take account of periods of insurance and employment completed under another Member State's legislation in deciding whether a worker satisfies the requirements regarding the duration of the period of insurance or employment.

3. Principle of single applicable law

This principle is intended to prevent anyone from obtaining undue advantages from the right to freedom of movement. Each beneficiary is covered by the legislation of one country only and pays contributions in that country only (Article 11(1)). Contributing to compulsory social security systems in two or more Member States during the same period of insurance does not confer the right to several benefits of the same kind (Article 10).

4. Exportability (Article 7)

This principle means that social security benefits can be paid throughout the Union, and prohibits Member States from reserving the payment of benefits to people resident in the country, but it does not apply to all social security benefits. Special rules apply, for instance, to unemployment benefits.

B. Persons covered

Originally, Regulation (EEC) No 1408/71 only covered workers, but, with effect from 1 July 1982, its scope was extended to cover the self-employed too. This regulation also covered members of workers’ and self-employed persons’ families and their dependants, as well as stateless persons and refugees. Through Council Regulation (EC) No 1606/98 of 29 June 1998, the Council extended the scope of Regulation (EEC) No 1408/71 in order to set civil servants on an equal footing with the rest of the population as regards the general statutory pension rights provided for in the Member States. Council Regulation (EC) No 307/1999 of 8 February 1999 further extended its scope to include all insured persons, particularly students and persons not in gainful employment. Council Regulation (EC) No 859/2003 of 14 May 2003 again extended the scope of Regulation (EEC) No 1408/71 to cover nationals from third countries, provided they are legally resident on EU territory.
The most recent legal act, Regulation (EU) No 1231/2010, which has been in force since January 2011, extended these modernised EU social security coordination rules to third-country nationals legally resident in the EU and in a cross-border situation (who were not already covered by these rules solely on the grounds of their nationality). The cover now also applies to their family members and survivors if they are in the EU.

Cross-border workers who work as employed or self-employed persons in a Member State and reside in another Member State to which they return as a rule daily or at least once a week are also covered through the legislation in force.

Posted workers are an exceptional case as they do not integrate into the receiving Member State’s labour market but are sent there by a company for a temporary assignment. They remain insured for social security reasons in their home Member State for a maximum duration of 24 months. Only healthcare benefits in kind can be drawn in the Member State of residence.

C. Benefits covered

Article 3 of Regulation (EC) No 883/2004 lists the social security benefits covered by the regulation:

— Sickness, maternity and equivalent paternity benefits; however, means-tested social and medical assistance is not covered, as it is not dependent on previous contributions to the social security system;
— Old-age, survivors’ and invalidity benefits;
— Benefits in respect of accidents at work and occupational diseases;
— Death grants;
— Pre-retirement benefits;
— Unemployment benefits;
— Family benefits;
— Special non-contributory cash benefits, which are not exportable under Article 70 of the coordinating regulation.

D. The modernisation of the system

Since 1971, Regulation (EEC) No 1408/71 has been amended on numerous occasions in order to take account of developments at EU level, changes in legislation at national level and the case law of the Court of Justice.

1. Towards better coordination of social security systems

In April 2004, the European Parliament and the Council approved Regulation (EC) No 883/2004, replacing Regulation (EEC) No 1408/71. The new coordination regulation is based on the same four principles of Regulation (EEC) No 1408/71, but its aim is to simplify the existing EU rules for the coordination of Member States’ social security systems by strengthening cooperation between social security institutions and improving the methods of data exchange between them.

The following main aspects are covered by Regulation (EC) No 883/2004 and its implementing regulation:

— Improving the rights of insured persons through the extension of cover in respect of persons and of scope within the social security areas covered;
— Expanding the social security fields covered by the regulation to include statutory pre-retirement schemes;
— Strengthening the general principle of equal treatment and the principle of exportability of benefits;
— Introducing the principle of good administration: Member State institutions are obliged to cooperate with one another and to provide mutual assistance for the benefit of citizens;
— Setting up a special system (Electronic Exchange of Social Security Information — EESSI) to allow the secure exchange of data between national institutions, which is to be fully implemented by mid-2019.

2. European health insurance card

European citizens travelling within the EEA may henceforth use the European health insurance card, issued by the health insurance services in the country of the insured person. This card facilitates access to medical care in the event of unanticipated health needs during a visit to another EEA country for personal or professional reasons, on the same terms and at the same cost as people insured in that country; the purpose of the visit may not be seeking health services. The costs are then reimbursed by the social security system of the country of the insured person.

3. Supplementary pension rights

On 16 April 2014, after years of negotiations, Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights was signed. It only applies to labour market pension schemes, and thus neither to voluntary contributions to individual pension schemes nor to state pensions, which are covered under the coordination regulation. The directive stipulates that vesting or waiting periods should not exceed three years and that the vested pension rights of outgoing workers can remain in the scheme in which they vested (‘dormant pension rights’) or be paid out to the worker as a capital sum. Dormant pension rights must be treated in line with the value of the rights of active scheme members or benefits currently being paid out. Where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the supplementary pension scheme shall reimburse the contributions paid by the outgoing worker.

4. Prospects for reform

The Commission funds a network of independent experts on European social security (known as trESS from 2004 to 2013, and FreSsco since 2014), which has produced a range of useful reports on the subject.

After a specific consultation on the coordination of long-term care benefits and unemployment benefits in 2013 and a general consultation on EU social security coordination in 2015, the Commission proposed in December 2016, as part of its Labour Mobility package, a revision of Regulation 883/2004 and implementing Regulation 987/2009 in order to respond to the new social and economic reality in Member States. The revision is focused on more closely linking the payment of benefits to the Member State which collected the social security contributions, thus making the system fairer and more equitable.
The proposal, besides offering national authorities better tools to verify the social security status of posted workers in order to better address potentially unfair practices and abuse, focuses on:

— Unemployment benefits: beside a new rule which prescribes a period of three months before insurance or employment periods can be aggregated, workers should now be able to export their unemployment benefits for six months instead of three in order to look for work in another Member State. After working for one year in a Member State, cross-border workers can claim unemployment benefit in their employment state instead of their residence state;

— Long-term care benefits: the proposal defines long-term care benefits and the cases where mobile citizens can claim such benefits in a separate chapter;

— Family benefits intended to replace income during child-raising periods are proposed as individual and personal rights, thereby permitting a secondary competent Member State the right to pay the benefit in full to the second parent. This removes potential financial disincentives for parents to take family leave at the same time.

The proposal also aims to align the legal rules in force with the Court of Justice’s recent jurisprudence on access to social benefits for economically inactive citizens (2.1.5).

Furthermore, in order to strengthen labour mobility, the Commission is working on a proposal to establish a European Social Security Number in spring 2018. This would aim to simplify the interactions of mobile citizens with public authorities and facilitate administrative cooperation across national borders.

The proposal is currently being discussed in Parliament’s EMPL Committee.

**ROLE OF THE EUROPEAN PARLIAMENT**

Parliament has always shown a keen interest in the problems encountered by migrant workers, border workers, the self-employed, and third-country nationals working in Member States other than the one that admitted them, and has adopted various resolutions with a view to improving their lot. Parliament has, on several occasions, deplored the persistence of obstacles to full freedom of movement and has called on the Council to adopt pending proposals, such as those intended to bring early retirement pensions within the scope of Regulation (EEC) No 1408/71, to extend the right of unemployed persons to receive unemployment benefit in another Member State, and to widen the scope of legislation to include all insured persons. Some of these demands were met by the final adoption of the modernised Regulation (EC) No 883/2004.

Since the entry into force of the Lisbon Treaty, the ordinary legislative procedure has applied and social security rights for workers have been subject to qualified majority voting in Council (Article 48). However, a Member State can ask for a draft legislative act to be referred to the European Council if it ‘declares that the draft legislative act would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system’.

In its resolution of 14 January 2014 on social protection for all, including self-employed workers, Parliament called on the Commission to review legislation and monitor the implementation and coordination of social security systems especially as regards
providing adequate cover for those in transition or employment under part-time or temporary contracts.

In its resolution of 14 September 2016 on social dumping, Parliament highlighted the changes brought about by the digital and sharing economy and requested that European legislation be adapted to ensure fair competition and the protection of workers’ rights.

Marion Schmid-Drüner
02/2018
Improving health and safety at work has been an important issue for the EU since the 1980s. The introduction of legislation at European level set minimum standards for the protection of workers, without preventing Member States from maintaining or introducing more stringent measures. When the Lisbon Treaty entered into force, the Charter of Fundamental Rights of the European Union became legally binding, making health and safety policy an even more important area of EU legislation.

LEGAL BASIS

Articles 91, 114, 115, 151, 153 and 352 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

On the basis of Article 153 TFEU, the EU encourages improvements in the working environment by harmonising working conditions in order to protect workers’ health and safety. To this end, minimum requirements are laid down at EU level, allowing Member States to introduce a higher level of protection at national level if they so wish. The Treaty also stipulates that the directives adopted must not impose administrative, financial or legal constraints which would hold back the creation and development of SMEs.

ACHIEVEMENTS

A. Institutional development

Under the auspices of the European Coal and Steel Community (ECSC) created by the Treaty of Paris in 1951, various research programmes were carried out in the field of health and safety at work. The need for a global approach to occupational safety and health became more manifest with the establishment of the EEC by the Treaty of Rome in 1957. The Advisory Committee for Safety, Hygiene and Health Protection at Work was set up in 1974 to assist the Commission in the preparation and implementation of activities in that field. Minimum occupational health and safety requirements were needed in order to complete the European single market. This led to the adoption of a number of directives, such as Directive 82/605/EEC (replaced by Directive 98/24/EC) on protection against the risks associated with metallic lead, Directive 83/477/EEC (last amended by Directive 2003/18/EC) on asbestos, and Directive 86/188/EEC (last amended by Directive 2003/10/EC) on noise.

1. Single European Act

The adoption of the Single European Act in 1987 brought health and safety at work into the EEC Treaty for the first time in an article laying down minimum requirements and allowing the Council to adopt occupational health and safety directives by qualified majority. The aims of the article were: to improve workers’ health and safety at work; to harmonise conditions in the working environment; to prevent ‘social dumping’ as completion of the internal market progressed; and to prevent companies from moving to areas with a lower level of protection in order to gain a competitive edge. Although the
‘Social Charter’ (the Community Charter of the Fundamental Social Rights of Workers) of 1989 was not legally binding, it affirmed that ‘the same importance must be attached to the social aspects as to the economic aspects’ of the single market.


The Amsterdam Treaty strengthened the status of employment issues by introducing the title on employment and the Social Agreement. For the first time, directives setting out minimum requirements in the field of health and safety at work and working conditions were adopted by both Parliament and the Council by means of the codecision procedure.


The Lisbon Treaty contains a ‘social clause’ under which social requirements must be taken into account in the Union’s policies. Upon the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union became legally binding, with due regard for the principle of subsidiarity pursuant to the general provisions of Chapter VII of the Charter.

B. Milestones: Directives and European Agency for Occupational Health and Safety


Article 137 of the Treaty of Nice (now Article 53 TFEU) formed the basis for EU efforts to improve the working environment with a view to protecting workers’ health and safety. The adoption of Framework Directive 89/391/EEC, with its specific focus on the culture of prevention, was a milestone. It provided for preventive measures, information, consultation, balanced participation and training for both workers and their representatives in the public and the private sector.

The framework directive not only forms the basis for more than 25 individual directives in different areas and for Council Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work, but has also had an impact on other legislative acts relating to temporary agency workers and aspects of working time in various directives.

The individual directives include the following:

— Health and safety requirements for the workplace (89/654/EEC) and the provision of safety and/or health signs at work (92/58/EEC);

— The use of work equipment (89/655/EEC amended by Directive 2001/45/EC and Directive 2009/104/EC); of personal protective equipment (89/656/EEC) and work with display screen equipment (90/270/EEC) and manual handling (90/269/EEC);

— Sectors: temporary or mobile construction sites (92/57/EEC); mineral-extracting industries (drilling) (92/91/EEC; 92/104/EEC) and fishing vessels (93/103/EC);

— Groups: pregnant workers (92/85/EEC) and protection of young people at work (94/33/EC);

— Agents: exposure to carcinogens (90/394/EEC), and the Directive on protection of workers from the risks related to exposure to carcinogens or mutagens at work (2004/37/EC); chemical agents (98/24/EC amended by Directive 2000/39/EC and Directive 2009/161/EU); biological agents at work (2000/54/EC) and protection against ionising radiation (Directive 2013/59/Euratom repealing previous related directives); protection of workers potentially at risk from explosive atmospheres
(99/92/EC); exposure of workers to the risks arising from physical agents (vibration) (2002/44/EC), noise (2003/10/EC), electromagnetic fields (2004/40/EC amended by Directive 2013/35/EU) and artificial optical radiation (2006/25/EC);


Updating Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work is an ongoing process. A first batch of 13 substances was covered in a proposal from late 2016, which was finally adopted in December 2017, while a second proposal from January 2017 reviewing limits for a further seven substances is currently at first reading stage in Parliament.

Social partner agreements concluded within the Social Dialogue are another way to initiate social legislation (2.3.7). In April 2016, the Commission released a proposal for a directive to improve working conditions in the fishery sector, giving effect to an agreement reached by the social partners in 2013. However, giving effect to a social legislation initiative took more than four years in the case of the social partners’ agreement on health and safety in the hairdressing sector. This was due to the review of the whole body of occupational health and safety legislation as part of the Commission’s Regulatory Fitness and Performance programme (REFIT).

2. European Agency for Safety and Health at Work (OSHA)

The European Agency for Safety and Health at Work was set up in 1996 and is based in Bilbao (Spain). Its aim is to foster the sharing of knowledge and information in order to help promote a culture of risk prevention. It develops the web-based platform for Online interactive Risk Assessment (OiRA) containing SME-friendly sectoral assessment tools in all languages, such as for hairdressers and private security. In 2013, the Commission, implementing a request by Parliament, launched a pilot project on the health and safety of older workers, to be carried out by OSHA up to the end of 2015. Furthermore, the Agency launched a campaign under the title ‘Healthy Workplaces Manage Stress’ in 2014 to raise awareness of work-related stress and psychosocial problems, which contribute to about half of all lost working days. The Agency is also studying benchmarking practices in the field of occupational health and safety with a view to successful initiatives.

C. Community action programmes and strategies on health and safety at work

Between 1951 and 1997, ECSC research programmes operated in the field of health and safety at work. The European Social Agenda was adopted in 2000, contributing to a more strategic approach to health and safety at work at EU level. Subsequently, the Community strategy on health and safety at work for 2002 to 2006 adopted a global approach to wellbeing in the workplace.

The Community strategy for 2007 to 2012 focused on prevention. Its aim was to achieve a continuous reduction in occupational accidents and diseases in the EU, in particular through the definition and implementation of national strategies, the improvement and simplification of existing legislation, and better implementation of that legislation through the exchange of good practices, awareness-raising and improved information and training.

In June 2014, the Commission published the EU Strategic Framework on Health and Safety at Work 2014-2020, which was adopted by the Council in March 2015. Based on the evaluation of the previous strategy and public consultation, the Framework aims to
tackle three major challenges: improving and simplifying existing rules, strengthening the prevention of work-related diseases, including new risks, and taking account of the ageing workforce. Particular attention is given to the needs of microbusinesses and small businesses.

**ROLE OF THE EUROPEAN PARLIAMENT**

Parliament has frequently emphasised the need for optimal protection of workers’ health and safety. It has adopted many resolutions in which it calls for all aspects directly or indirectly affecting the physical or mental wellbeing of workers to be covered by EU legislation. Parliament has had a significant influence on directives which improve working conditions. It supports the Commission in its efforts to improve the provision of information to SMEs. It takes the view that work must be adapted to people’s abilities and needs, and not vice versa, and that working environments should be developed in such a way as to take greater account of the special needs of vulnerable workers. Parliament has urged the Commission to investigate emerging risks that are not covered by current legislation, e.g. exposure to nanoparticles, stress, burnout, violence and harassment in the workplace.

In particular, it has been instrumental in the adoption by the social partners of a Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector, which was implemented by Council Directive 2010/32/EU adopted on 10 May 2010. Parliament has also called for improvements to be made to the existing legislation on the protection of pregnant workers, as well as on the protection of workers from musculoskeletal disorders. Further key requests include establishing a directive laying down minimum standards for the recognition of occupational diseases, and extending the scope of Framework Directive 89/391/EEC to include certain groups of workers (such as the armed forces, self-employed people, domestic workers and home workers).

In June 2010, Parliament rejected the Commission’s proposal to amend the directive on the working time of mobile road transport workers, because it did not agree that self-employed workers should be excluded from the scope of the directive. As a result, the Commission withdrew its proposal.

In its resolution of 25 November 2015, Parliament, responding to the Commission’s adoption of the Framework on Health and Safety at Work 2014-2020, expressed regret that no specific targets had been set in the framework (e.g. indicative reduction targets for occupational diseases and accidents at work). It also called for more concrete legislative and non-legislative measures to be included after the mid-term review in 2016.

Beyond amending proposed legislation, and monitoring and encouraging the Commission’s other work in the field of occupational health and safety, Parliament also approaches the subject in a forward-looking manner, looking into potential new risks associated with technological innovation and related changes in work organisation within a working group on the labour market impacts of digitalisation, robotics and artificial intelligence, set up by the Committee on Employment and Social Affairs (EMPL) in October 2015.

**Stefan Schulz**
The European Union complements the Member States’ activities with regard to the right of workers to information and consultation through measures designed to encourage cooperation between the Member States, or by adopting minimum requirements by means of directives.

LEGAL BASIS


OBJECTIVES

The EU supports and complements the Member States’ activities relating to employee involvement with a view to helping to achieve the core objectives of European social policy as set out in Article 151 TFEU, which include improved living and working conditions, proper social protection, lasting high employment and the combating of exclusion.

ACHIEVEMENTS

A. Background

The right of workers to information, consultation and participation has been a key theme in European debate since the first Social Action Programme was adopted by the Council in 1974. The 1989 Community Charter of the Fundamental Social Rights of Workers (Social Charter) stresses the desirability of promoting employee participation. The Commission’s proposals in this area have often encountered resistance, however. A proper legal basis for Community legislation in the field of workers’ right to information and consultation was not in place until the Treaty of Amsterdam incorporated the Agreement on Social Policy into the text of the EC Treaty. Previously adopted legislation was based mainly on Treaty articles providing for Community measures aimed at attaining freedom of establishment or the approximation of laws in the common or internal market. The first relevant directive in this field, on the European Works Council (Council Directive 94/45/EC), was adopted in accordance with the Agreement on Social Policy; it was subsequently extended to the United Kingdom in 1997. As regards employee involvement, Article 153 TFEU entrusts Parliament and the Council with the power to adopt:

— Measures designed to encourage cooperation between Member States;
— Directives setting out minimum requirements for gradual implementation.

The ordinary legislative procedure is applicable in this field, with prior consultation of the European Economic and Social Committee and the Committee of the Regions.

B. Legislation in force

Although information and consultation systems exist in some national public administrations, to date none of the directives concerning the right of workers to
be informed and consulted applies to public administrations (see Court of Justice Cases C-583/10, Nolan and C-108/10, Scattolon), other than that public undertakings are covered where they carry out an economic activity, whether or not for gain. When negotiating the directive on a general framework for informing and consulting employees in the European Community in 2001, Parliament tried to have the scope of the directive extended to the public sector, but this was rejected by the Council. However, in December 2015 the Sectoral Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety. To become binding on all Member States, the agreement has to be implemented by a Council decision on a proposal from the Commission. In accordance with the Commission’s practice (2.3.7), an impact assessment should soon be launched to assess the potential impacts of its transposition. The Commission will further examine in particular the representativeness of its signatories, the legality of the clauses of the Agreement vis-à-vis the EU legal framework and whether it respects the subsidiarity and proportionality principles.

A first group of directives deals with the right of workers to be informed and consulted at national level on a number of important issues relating to a company’s economic performance, financial soundness and future development plans which could affect employment:


— Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (consolidating Council Directives 77/187/EEC and 98/50/EC), under which workers must be informed of the reasons for such a transfer and its consequences; it also contains material provisions on safeguarding employees’ jobs and rights in the event of transfer;


These three directives have undergone a fitness check by the Commission, following which it concluded in July 2013 that they are broadly fit for purpose and their benefits outweigh the costs, but that some gaps remain – notably their application to public service workers, seafarers and SMEs – and certain definitions need further examination and discussion (SWD(2013)0293). A recast of the information and consultation directives (C(2015) 2303) was contemplated, but now seems to be off the table, as neither the 2016 nor the 2017 Commission Work Programmes mention it.

As regards seafarers, Parliament’s July 2015 plenary session adopted the report on the Seafarers Directive, on which the social partners conducted negotiations within
the framework of the Sectoral Social Dialogue Committee on Maritime Transport. This directive will put an end to the exclusion of seafaring workers from the existing directives on information and consultation of workers in the European Union.

A second group of directives encompasses the rights of workers to be informed and consulted in situations with a transnational component:

— Council Directive 94/45/EC of 22 September 1994, as revised by Directive 2009/38/EC of the European Parliament and of the Council on the introduction of European Works Councils: this directive contains general rules aimed at ensuring that workers in large multinational companies and merging undertakings are informed and consulted. European Works Councils bring together central management and employee representatives across Europe to discuss matters such as a company’s performance, prospects and employment, restructuring and human resources policies. Workers have also been granted certain rights to information and consultation with regard to the working environment. By April 2011, 18 000 employee representatives sitting on European Works Councils were representing the interests of 18 million workers;

— Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, pursuant to which the employees of the companies concerned, or their representatives, should be given an opportunity to state their views on the foreseeable effects of such a bid on employment; the usual rules on informing and consulting employees also apply;

— Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 on mergers of public limited liability companies (codifying and repealing Directive 78/855/EEC), pursuant to which workers in companies that merge are protected to the same extent as that laid down in the directive on the transfer of undertakings.


A third group of directives aims to lay down rules applicable to situations with a transnational component, granting partial rights to participation in decision-making:

— Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees: the Statute for a European public limited liability company, adopted by Council Regulation (EC) No 2157/2001, is complemented by a directive establishing rules on the participation of workers in decisions concerning the strategic development of the company. Not only are employees informed and consulted through a body similar to a European Works Council, but provision is made for board-level employee participation where this form of participation was applied in the national founding companies, as is the case in the national systems of many Member States (the so-called ‘before-and-after’ principle);

— Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society (Council Regulation (EC) No 1435/2003) with regard to the involvement of employees: this directive sets rules on the mechanisms to be provided for in European Cooperative Societies (ECSs) in order to ensure that employees’ representatives can exercise influence on the running
of the undertaking. Cooperatives have a specific governance model based on joint ownership, democratic participation and control by members;


In the absence of further rights at European level for workers to participate in decision-making in supervisory boards, in July 2017 the Court of Justice held in case C-566/15 Erzberger that national rights in this regard can legitimately be restricted to enterprises operating in the national territory. While Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by Union nationals of the fundamental freedoms guaranteed by that article, it does not apply to a worker who, after having been granted a mandate as representative in a supervisory board, during his/her period of employment in an establishment located on that national territory moves to a subsidiary established in the territory of another Member State and thereby loses his/her representation right, as Article 45 TFEU cannot guarantee to a worker that moving to a Member State other than his Member State of origin will be neutral in terms of conditions of employment.

Having withdrawn its proposals in 2006, in 2012 the Commission proposed a Statute for a European Foundation (FE). It then withdrew this proposal in March 2015. On 14 March 2013, MEPs asked the Commission to present without delay ‘one or more proposals allowing mutual societies to act on a European and cross-border scale’. This idea is meeting with opposition from some Member States, any of which could block a proposal drawn up under the currently preferred legal basis of Article 352 TFEU (subsidiary powers), which requires unanimity and the consent of Parliament. The Commission therefore decided recently not to carry out the usual public consultation and impact assessment conducted in the case of a legislative proposal. Instead, it has, as announced in the Social Business Initiative (COM(2011) 0682), set up a multi-stakeholder group (GECES) with diverse Member State and external experts to address, within the existing legislative framework, the challenges which mutual societies appear to encounter when seeking to operate cross-border. In October 2016, this expert group finalised a report, making research-based recommendations for concrete actions to boost the development of the social economy and social enterprises that covered aspects such as increasing their visibility, helping them to access finance, providing a favourable legal and regulatory framework and increasing EU funding support. The next meeting will be in December 2017.

The fourth group consists of: two cross-sectoral agreements between social partners as implemented by the Council (Council Directives 97/81/EC on part-time work and 99/70/EC on fixed-term work), Directive 2008/104/EC on temporary agency work, and several health and safety directives, all containing implicit information and consultation provisions. For example, fixed-term workers have to be informed by their employer about vacancies for permanent positions.

C. Other initiatives

Companies and workers’ representatives have begun concluding transnational company agreements (TCAs), against the background of the growing international dimension of company organisation and the increasing emphasis on corporate social responsibility, including new approaches to dialogue between management and
employees. The texts of TCAs take various forms and are drawn up jointly for application in more than one Member State by representatives of a company or group of companies, on the one hand, and one or more workers’ organisations, on the other. At the end of 2016, there were 265 such agreements in 178 companies worldwide, covering more than 10 million employees. However, this kind of practice can raise legal and political issues regarding the relationship between the different vertical levels of social dialogue (international, European and national) and its horizontal spheres of application (cross-sectoral, sector-specific and company-level). Furthermore, discrepancies can arise between the transnational scope of agreed TCAs and national norms and references, and few dispute resolution mechanisms are in place.

The EU aims to accompany and monitor the development of transnational company agreements by supporting exchanges of experience and research.

Following a public consultation in 2016, the Commission published the European Pillar of Social Rights in April 2017, which Parliament, the Council and the Commission proclaimed at the Social Summit for fair jobs and growth in Gothenburg on 17 November 2017. This entitles all workers in all sectors to be informed and consulted directly or through their representatives on any matter relevant to them, such as the transfer, restructuring and merger of undertakings and collective redundancies. It looks beyond the current Union acquis in that it applies regardless of the staff numbers involved and, with the right being not just to receive information but also to be consulted about any such corporate action, it implies an exchange of views and the establishment of ongoing dialogue with the employer.

**ROLE OF THE EUROPEAN PARLIAMENT**

Parliament has adopted several resolutions calling for workers to have the right to be involved in company decision-making. The right to information, consultation and participation in decision-making should apply in both national and transnational companies, irrespective of their legal status. Parliament reiterated its call for public-sector workers to be included in the scope of the information and consultation directives in its resolution of 19 February 2009 on the implementation of the General Framework Directive, as a matter of equal treatment of all employees.

Going beyond mere information and consultation, Parliament’s position is that workers should also have the right to participate in decision-making on issues such as the introduction of new technologies, changes in the organisation of work, production and economic planning. Currently, an own-initiative report on participation in decision-making in supervisory boards is going through Parliament. Its draft report (2015/2222(INI)) advocates introducing EU minimum rules in existing directives, including the requirement that a company’s registered offices must be identical with its actual place of business, to avoid circumvention of employee representation rights on supervisory boards. The draft report calls for standard rules on employee representation on supervisory boards, which could be applied as a universal model to all European corporate law directives. It further recommends minimum standards, e.g. on the equal rights of workers’ representatives as compared to management representatives, and gender balance on the supervisory board.

In its resolution of 15 January 2013 with recommendations to the Commission on ‘information and consultation of workers, anticipation and management of
restructuring’, Parliament called on the Commission to submit as soon as possible a proposal for a legal act which should make provision for employee representatives to be fully informed in good time of any proposed restructuring operation, including the reasons for the choice of measures envisaged, and stipulate a meaningful timeframe for consultation. This timely consultation should enable the companies concerned and their workers’ representatives to negotiate collective agreements covering the issues arising from the restructuring. Subsequently, on 13 December 2013, the Commission adopted a communication presenting an EU Quality Framework for anticipation of change and restructuring (QFR) (COM(2013) 0882), which requires certain principles and good practices regarding anticipation of change and management of restructuring activities within companies, as well as by public authorities, to be better identified, applied and monitored. However, in its resolution of 22 October 2014 on ‘the European Semester for economic policy coordination: implementation of 2014 priorities’, Parliament reiterated its call for a legal act in order to ensure economic and socially responsible adaptation to change by EU industry in such a way as to maintain workers’ rights without placing an excessive regulatory burden on companies, in particular SMEs.

The Commission will present a report on the implementation of the QFR in 2017, which will take into account the findings of an independent study, the experience of recent restructurings such as the Caterpillar case, and the results of the public consultation on the European Pillar of Social Rights which ended on 31 December 2016, to assess whether stronger action is warranted.

More recently, Parliament, in its resolution of 19 January 2017 on a European Pillar of Social Rights, recalled the value of involving workers in decision-making and company management with a view to making good use of new forms of work organisation and to anticipating economic change, and pointed to social economy enterprises, such as cooperatives, as a good example in terms of creating quality employment, supporting social inclusion and promoting a participatory economy.

In its resolution of 5 October 2016 on the need for a European reindustrialisation policy in light of the recent Caterpillar and Alstom cases, Parliament called on all relevant authorities to ensure that all parties involved comply fully with national and European regulations on information and consultation of workers, especially during restructuring.

On 13 June 2017, Parliament in its resolution on cross-border mergers and divisions, stressed the importance of avoiding ambiguities in the application of national penalties for failure to respect legislation on workers’ rights and called for improvements to minimum standards of information, consultation and co-determination of workers.

Marion Schmid-Drüner
02/2018
Social dialogue is a fundamental component of the European social model that gained full recognition in the Treaty with the Amsterdam reform. The social partners (representatives of management and labour) are thus able to contribute actively to designing European social policy.

LEGAL BASIS
Articles 151-156 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES
Under Article 151 TFEU, the promotion of dialogue between management and labour is recognised as a common objective of the EU and the Member States. The aim of social dialogue is to improve European governance through the involvement of the social partners in decision-making and in the implementation process.

ACHIEVEMENTS
A. Bipartite social dialogue

According to the original wording in the Treaty of Rome, one of the Commission’s tasks in the social field was to promote close cooperation between Member States with regard to the right of association and collective bargaining between employers and workers. It was only after many years, however, that this provision started to be implemented.

Set up in 1985 at the initiative of Commission President Jacques Delors, the Val Duchesse social dialogue process aimed to involve the social partners, represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Public Enterprises (CEEP), in the internal market process. A number of joint statements on employment, education, training and other social issues resulted from the meetings of these social partners.

In 1992, the Social Dialogue Committee (SDC) was established as the main forum for bipartite social dialogue at European level. The SDC currently meets three or four times a year and comprises 64 members (32 representing employers and 32 representing workers) from either European secretariats or national organisations. Meanwhile, the Single European Act created a legal basis for the development of a ‘Community-wide social dialogue’. In October 1991, UNICE, ETUC and CEEP adopted a joint agreement which called for mandatory consultation of the social partners on the preparation of legislation in the area of social affairs and a possibility for the social partners to negotiate framework agreements at Community level. This request was acknowledged in the Agreement annexed to the Maastricht Protocol on Social Policy, which was signed by all Member States with the exception of the United Kingdom. At national level, the social partners were thereby given the opportunity to implement directives by way of collective agreement.

The incorporation of the Agreement on Social Policy into the EC Treaty following the entry into force of the Treaty of Amsterdam finally allowed for a single framework to apply to social dialogue within the EU. Cross-industry results of this process were the
adoption of framework agreements on parental leave (1995), part-time working (1997) and fixed-term work (1999), which were implemented by Council directives.

At EU level, according to Article 154 TFEU, the Commission must consult the social partners before taking any action in the field of social policy. The social partners may then choose to negotiate among themselves an agreement on the subject of the consultation and stop the Commission’s initiative. The negotiation process can take up to nine months and the social partners have the following possibilities:

— they may conclude an agreement and jointly ask the Commission to propose that the Council adopt a decision on implementation, or

— having concluded an agreement among themselves, they may prefer to implement it in accordance with their own specific procedures and practices and those of the Member States (‘voluntary’ or, later on, ‘autonomous’ agreements), or

— they may be unable to reach an agreement, in which case the Commission will resume work on the proposal in question.

Negotiations between the social partners on a framework agreement on temporary agency work ended in failure in May 2001. Thus, in March 2002, the Commission adopted a proposal for a directive based on the consensus that had emerged among the social partners. After a modification of the proposal in November 2002, the process culminated in the adoption of Directive 2008/104/EC. Similarly, after the social partners had expressed their unwillingness to engage in negotiations, in 2004 the Commission put forward a proposal on the revision of Directive 2003/88/EC concerning certain aspects of the organisation of working time, including recent developments such as on-call work and flexible weekly working time. Parliament, the Commission and the Council were subsequently unable to agree on the issue, and the European social partners tried to find an agreement during a year-long negotiation process, which also broke down in December 2012 due to major differences on the treatment of on-call time as working time. In 2013, the Commission resumed the review and impact assessment process, conducting a broad public consultation in 2015, while at the same time preparing an implementation report as required by the Directive, all of which should help define the future outcome of the review. The Commission Work Programme 2017 now includes a non-legislative initiative on the implementation of the Working Time Directive. In its resolution of 19 January 2017 on a European Pillar of Social Rights, Parliament called for updating European social standards, including the provisions on working time.

From 1998, following a Commission decision to establish specific bodies (Commission Decision 98/500/EC of 20 May 1998), sectoral social dialogue was also strongly developed. Several committees were created in the main economic fields and they produced valuable results. Sectoral social dialogue produced three European agreements on the organisation of working time for seafarers (1998), on the organisation of working time for mobile workers in civil aviation (2000) and on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services in the railway sector (2005). These agreements were implemented by a Council decision. The ‘Agreement on workers’ health protection through the good handling and use of crystalline silica and products containing it’, signed in April 2006, was the first multi-sector outcome of the European social partners’ negotiations. In 2014, the Council implemented, by means of a directive, a sectoral agreement concerning certain aspects of the organisation of working time in inland waterway transport from 2012. In July 2017, the Commission proposed a directive aimed at
improving the working conditions of seafarers on board EU-flagged vessels, in order to transpose an agreement between social partners in the maritime transport sector into EU law ([COM(2017) 0406]). It still has to be adopted by the Council.

In April 2012, the social partners in the hairdressing sector concluded an agreement on clear guidance for hairdressers to work in a healthy and safe environment throughout their careers, and requested a Council implementing decision. Since some Member States opposed parts of the agreement, the implementation through a Council decision did not proceed further. Instead, in June 2016, the social partners in the hairdressing sector signed a new European Framework Agreement on the protection of occupational health and safety, again requesting implementation by a Council decision. In accordance with the Better Regulation agenda, the Commission will now, before submitting a proposal for an implementation decision to the Council, carry out a proportionate impact assessment, focusing in particular on the representativeness of the signatories, the legality of the agreement within the EU legal framework and respect for the subsidiarity and proportionality principles. In their open letter to President Juncker of 21 November 2016, the social partners concerned object to using the impact assessment process to justify not referring the agreement to the Council for its implementing decision and request to be fully informed about the different phases of the impact assessment process and the criteria for decision that the Commission will be using. In its answer to a parliamentary question of 31 March 2017, the Commission confirmed in June 2017 that it had already kept the social dialogue committee on hairdressing informed about the state of play concerning the assessment of the agreement at its previous three meetings.

Other ongoing implementation requests concern sea-fishing (concluded in 2013) and central government administrations (concluded in 2015, 2.3.6).

The agreement on teleworking concluded in May 2002 was implemented for the first time in accordance with the procedures and practices specific to the social partners and the Member States. ‘Autonomous agreements’ were also concluded by the social partners on work-related stress and on the European licence for drivers carrying out a cross-border interoperability service in 2004, as well as on harassment and violence at work (April 2007) and on inclusive labour markets (March 2010). In March 2017, EU employers and trade unions approved a framework agreement on active ageing and an intergenerational approach, which will now be implemented by the members of the signatory organisations across Europe.

Following the changes introduced by the Treaty of Amsterdam, the consultation process has become even more important, since it covers all the fields now falling under Article 151 TFEU.

With the entry into force of the Lisbon Treaty, a new article (Article 152 TFEU) has been inserted, stating that ‘the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy’. Article 153 TFEU also gives Member States the possibility to entrust the social partners with the implementation of a Council decision adopted on ratification of a collective agreement signed at European level.

However, since the economic and financial crisis started, social dialogue has increasingly suffered when crisis measures were implemented, being weakened by its decentralisation, a decline in bargaining coverage and state intervention in the area
of wage policy. Against this background, and in view of the finding that the Member States in which the social partnership is strongest have been the most successful in overcoming the crisis, the new Commission undertook in November 2014 to re-launch and strengthen the dialogue with social partners, especially in the new economic governance set-up, as a prerequisite for the functioning of Europe’s social market economy. In June 2016 Vice-President Dombrovskis and Commissioner Thyssen signed a joint statement on a ‘new start for social dialogue’, agreeing with social partners to involve them more in the European Semester and in EU policy and law-making in general, and emphasising capacity-building. Following a public consultation in 2016, the Commission published in April 2017 the European Pillar of Social Rights, which Parliament, the Council and the Commission proclaimed at the Social Summit for Fair Jobs and Growth in Gothenburg on 17 November 2017. Among other aspects, it provides for respecting the autonomy of social partners in wage-setting and recognises social partners’ right to be involved in the design and implementation of employment and social policies, encouraging them to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. It also supports their stronger involvement in policy and law-making while taking into account the diversity of national systems.

B. Tripartite social dialogue

From the very start of the European integration process, it was considered important to involve economic and social stakeholders in drawing up Community legislation. The Consultative Committee for Coal and Steel and the European Economic and Social Committee bear witness to this. Since the 1960s a number of advisory committees have existed, the role of which is to support the Commission in formulating specific policies. In general, these committees such as the Committee on Social Security for Migrant Workers are made up of representatives of national employers’ organisations and trade unions, as well as representatives of the Member States. From 1970, the key tripartite social dialogue forum at European level was the Standing Committee on Employment, composed of 20 representatives of the social partners, equally divided between trade unions and employers’ organisations. Reformed in 1999, the Committee was fully integrated into the coordinated European employment strategy. On the basis of a joint contribution from the social partners to the Laeken Summit in December 2001, the Council launched a Tripartite Social Summit for Growth and Employment in March 2003 (Council Decision 2003/174/EC) which has replaced the Committee on Employment. Facilitating ongoing consultation between the Council, the Commission and the social partners on economic, social and employment questions, it meets at least once a year and one of its meetings must be held before the Spring European Council.

Formalising a process that had been developing since 1997, the Summit now officially consists of the current EU Council presidency and the two subsequent presidencies, the Commission and the social partners. The three Council presidencies are normally represented by the heads of state or government and the ministers in charge of employment and social affairs; equally, the Commission has two representatives, who are usually its President and the Commissioner responsible for employment and social affairs. The social partners’ members are divided into two delegations of equal size, comprising 10 workers’ representatives and 10 employers’ representatives, with special attention being paid to the need to ensure a balanced participation between men and women. Each group consists of delegates of European cross-industry organisations either representing general interests or more specific interests of supervisory and
managerial staff and small and medium-sized businesses at European level. Technical coordination is provided for the workers’ delegation by ETUC and for the employers’ delegation by UNICE. Following the ratification of the Lisbon Treaty, the role of the Tripartite Social Summit for Growth and Employment is now acknowledged under Article 152 TFEU.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has taken the view that social dialogue is an essential element in the traditions of the Member States and has called for a greater role for the ‘trialogue’ at European level. Its Committee on Employment and Social Affairs has extended frequent invitations to the social partners at EU level to present their views before a report or opinion on any relevant issues is delivered. It has also often reminded the Commission of the need for a coherent industrial policy at European level, in which the social partners should play a key role. The Lisbon Treaty has introduced a clear right for Parliament to be informed about the implementation of collective agreements concluded at Union level (Article 155 TFEU) and about the initiatives taken by the Commission to encourage cooperation between the Member States under Article 156 TFEU, including matters relating to the right of association and collective bargaining between employers and workers.

In the midst of the economic crisis, Parliament has reiterated the fact that social dialogue is vital in order to achieve the employment targets set out in the EU 2020 Strategy (2009/2220(INI)). In January 2012, it stressed that, in focusing on fiscal consolidation, the Annual Growth Survey’s recommendations would hamper not only job creation and social welfare, but also social dialogue as such. Furthermore, in its resolution of 15 February 2017 on the 2017 European Semester cycle, Parliament once again stressed the importance of social dialogue and called for reinforcement of the role of social partners in the new economic governance process. Since 2014, their involvement at EU level has increased somewhat, although the picture remains disparate at national level and at both levels social partners consider their involvement as being informative rather than genuinely consultative. Regarding the economic adjustment programmes in the countries most affected by the crisis, Parliament, in its resolution of 13 March 2014 on employment and social aspects of the role and operations of the Troika (the European Central Bank, the Commission and the International Monetary Fund) with regard to euro-area-programme countries, stressed that the social partners at national level should have been consulted or involved in the initial design of programmes.

Parliament reiterated its stance in its resolution of 19 January 2017 on a European Pillar of Social Rights[1], calling on the Commission to step up concrete support for strengthening and respecting social dialogue at all levels and in all sectors.

Marion Schmid-Drüner
02/2018

Equality between women and men is one of the objectives of the European Union. Over time, legislation, case-law and changes to the Treaties have helped shore up this principle and its implementation in the EU. The European Parliament has always been a fervent defender of the principle of equality between men and women.

LEGAL BASIS

The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957 (today: Article 157 TFEU). Besides, Article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in matters of employment and occupation. Within this framework, Article 157 TFEU furthermore authorises positive action to empower women. In addition, Article 19 TFEU enables legislation to combat all forms of discrimination, including on the basis of sex. Legislation against trafficking in human beings, in particular women and children, has been adopted on the basis of Articles 79 and 83 TFEU, and the Rights, Equality and Citizenship programme finances, among others, measures contributing to the eradication of violence against women, based on Article 168 TFEU.

OBJECTIVES

The European Union is founded on a set of values, including equality, and promotes equality between men and women (Articles 2 and 3(3) TEU). These objectives are also enshrined in Article 21 of the Charter of Fundamental Rights. Besides, Article 8 TFEU gives the Union the task of eliminating inequalities and promoting equality between men and women through all its activities (this concept is also known as ‘gender mainstreaming’). The Union and the Member States have committed themselves, in Declaration No 19 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, ‘to combat all kinds of domestic violence […], to prevent and punish these criminal acts and to support and protect the victims’.

ACHIEVEMENTS

A. Main legislation

EU legislation, mostly adopted by the ordinary legislative procedure, includes:


— Directive 92/85/EEC of 19 October 1992 introducing measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;

— Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services;
— in 2006, a number of former legislative acts were repealed and replaced by Directive 2006/54/EC of 5 July 2006[1] on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). This directive defines direct and indirect discrimination, harassment and sexual harassment. It also encourages employers to take preventive measures to combat sexual harassment, reinforces the sanctions for discrimination, and provides for the setting-up within the Member States of bodies responsible for promoting equal treatment between women and men. At present, Parliament is seeking the revision of this directive as regards provisions on equal pay[2] and has adopted an implementation report on the basis of several studies commissioned by the European Parliamentary Research Service (EPRS);


— Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. This directive replaces Council Framework Decision 2002/629/JHA and provides for the approximation of sanctions for trafficking in human beings across Member States and of support measures for victims, and calls upon the Member States to ‘consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation […] with the knowledge that the person is a victim [of trafficking]’ in order to discourage demand; it also establishes the office of the European anti-trafficking coordinator;

— Directive 2011/99/EU of 13 December 2011 establishing the European Protection Order with the aim of protecting a person ‘against a criminal act by another person which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity’ and enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State; this directive is reinforced by Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters, which ensures that civil protection measures are recognised all over the EU;


B. Progress in case-law of the European Court of Justice (ECJ)

The ECJ has played an important role in promoting equality between men and women. The most notable judgments have been:

— *Defrenne II* judgment of 8 April 1976 (Case 43/75): the Court recognised the direct effect of the principle of equal pay for men and women and ruled that the principle not only applied to the action of public authorities but also extended to all agreements which are intended to regulate paid labour collectively;

— *Bilka* judgment of 13 May 1986 (Case 170/84): the Court ruled that a measure excluding part-time employees from an occupational pension scheme constituted ‘indirect discrimination’ and was therefore contrary to former Article 119 if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on grounds of sex;

— *Barber* judgment of 17 May 1990 (Case 262/88): the Court decided that all forms of occupational pension constituted pay for the purposes of Article 119 and the principle of equal treatment therefore applied to them. The Court ruled that men should be able to exercise their pension rights or survivor’s pension rights at the same age as their female colleagues;

— *Marschall* judgment of 11 November 1997 (Case C-409/95): the Court declared that a national rule which, in a case where there were fewer women than men in a sector, required that priority be given to the promotion of female candidates (‘positive discrimination’) was not precluded by Community legislation, provided that the advantage was not automatic and that male applicants were guaranteed consideration and not excluded a priori from applying;

— *Test Achats* judgment of 1 March 2011 (Case C-236/09): the Court declared the invalidity of Article 5(2) of Directive 2004/113/EC as being contrary to the principle of equal treatment between men and women in the access to and supply of goods and services. Consequently, for men and women, the same system of actuarial calculation has to be applied to determine premiums and benefits for the purposes of insurance.

C. Latest developments

Below is an overview of the most recent action taken by the EU in the field of equality between men and women.

1. The multiannual financial framework (MFF 2014-2020) and the Rights, Equality and Citizenship programme

The programme Rights, Equality and Citizenship finances projects aimed at achieving gender equality and ending violence against women (Article 4). Together with the Justice Programme (Regulation 2013/1382), it has been attributed EUR 15 686 million until 2020 (MFF Regulation 1311/2013) and consolidates six programmes of the 2007-2013 funding period, among them the *Daphne III Programme* (Decision 779/2007) and both the ‘Anti-discrimination and Diversity’ and ‘Gender Equality’ sections of the *Programme for Employment and Social Solidarity (PROGRESS)* (Decision 1672/2006/EC).

The annex thereto specifies that the promotion of gender equality will be funded together with other anti-discrimination measures under Group 1, to which a share of
57% of the financial allocations is attributed. Combating violence against women is included in Group 2, with 43% of the overall financial envelope of the programme.

For 2017, the budget line 33 02 02 (promoting non-discrimination and equality) has EUR 35 064 000 in commitment appropriations and EUR 24 000 000 in payments, which represents an increase in payments compared with 2015 or 2016 and means that the implementation of this programme is advancing. In addition, the budget line 33 02 01 has been allocated EUR 26 451 000 to contribute, among other objectives, to combating and protecting against all forms of violence against women.

A study published in autumn 2016 at the request of the FEMM committee provides an overview on the EU budget spent on gender equality[3] in selected Member States.

2. The European Institute for Gender Equality (EIGE)

In December 2006, the European Parliament and the Council established a European Institute for Gender Equality, based in Vilnius, Lithuania, with the overall objective of contributing to and boosting the promotion of gender equality, including gender mainstreaming in all EU and national policies. It also combats discrimination based on sex and raises awareness on gender equality by providing technical assistance to the European institutions through collecting, analysing and disseminating data and methodological tools (see the EIGE’s online Resource and Documentation Centre: [http://eige.europa.eu/content/rdc](http://eige.europa.eu/content/rdc)).

3. The Women’s Charter and the Strategic engagement for gender equality 2016-2019

On 5 March 2010, the Commission adopted the Women's Charter with a view to improving the promotion of equality between women and men in Europe and throughout the world[4].


The Strategic engagement focuses on the following five priority areas:

— Increasing female labour market participation and equal economic independence;
— Reducing the gender pay, earnings and pension gaps and thus fighting poverty among women;
— Promoting equality between women and men in decision-making;
— Combating gender-based violence and protecting and supporting victims;
— Promoting gender equality and women’s rights across the world.


5. Sustainable Development Goals

The United Nations General Assembly adopted on 25 September 2015 the resolution on the post-2015 development agenda entitled ‘Transforming our world: the 2030 Agenda for Sustainable Development’[^9]. The 2030 Agenda entails 17 Sustainable Development Goals (SDGs) and 169 Targets, which came into force on 1 January 2016. The SDGs are built on the Millennium Development Goals (MDGs). However, in contrast to the MDGs, which were intended for action in developing countries only, the SDGs apply to all countries. SDG 5 ‘Achieve gender equality and empower all women and girls’ contains five Targets.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has played a significant role in supporting equal opportunity policies, in particular through its Committee on Women’s Rights and Gender Equality (FEMM). In the area of equal treatment on the labour market, Parliament acts on the basis of the ordinary legislative procedure (codecision), for example regarding:

— the proposal for a directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012) 0614) (see Parliament’s position at first reading, adopted at the end of 2013)[^10],

— the revision of Directive 92/85/EEC (see above); at first reading[^11] Parliament advocated a longer period of fully-paid maternity leave, namely 20 weeks[^12]. As there was no agreement reached between Parliament and the Council on the Commission proposal, the Commission has now withdrawn the proposal and replaced it with a Roadmap for the initiative ‘A new start to address the challenges of work-life balance faced by working families’[^13].

[^9]: Resolution 70/1 adopted by the UN General Assembly on 25 September 2015.
[^11]: European Parliament resolution of 20 October 2010 on improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Texts adopted, P7_TA(2010) 0373.
In addition, Parliament contributes to overall policy development in the area of gender equality through its own-initiative reports, and by drawing the attention of other institutions to specific issues, including:

— combating violence against women by adopting a legislative own-initiative report requesting a legislative initiative on the part of the Commission on the basis of Article 84 TFEU promoting and supporting the action of Member States in the field of prevention of violence against women and girls (VAWG); this resolution includes a number of recommendations[14]; the FEMM committee has established a special working group to follow up this resolution;

— empowerment of women and girls: International Women’s Day 2017 focused on the economic empowerment of women, and the FEMM committee adopted an own-initiative report on the issue;

— gender equality in international relations, in particular regarding the developments since the so-called ‘Arab Spring’ in North Africa[15].

Parliament is also seeking gender mainstreaming in the work of all its committees[16]. To this end, two networks on gender mainstreaming have been established, which are coordinated by the FEMM committee. The network of Chairs and Vice-Chairs for Gender Mainstreaming brings together MEPs who support the introduction of a gender dimension into the work of their respective committees. They are supported by a network of Gender Mainstreaming Administrators in each committee secretariat. The High-Level Group on Gender Equality promotes training and awareness-raising about gender mainstreaming among the staff of the European Parliament and the political groups.

Martina Schonard
10/2017

By supporting Member States in the fight against poverty, social exclusion and discrimination, the European Union aims to reinforce the inclusiveness and cohesion of European society and to allow all citizens to enjoy equal access to available opportunities and resources.

LEGAL BASIS

Articles 19, 145 to 150 and 151 to 161 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Combating poverty and social exclusion is one of the specific goals of the EU and its Member States in the field of social policy. In accordance with Article 153 TFEU, social inclusion is to be achieved solely on the basis of non-legal cooperation — the open method of coordination (OMC) — while Article 19 TFEU allows the EU to take action to fight discrimination both by offering legal protection for potential victims and by establishing incentive measures.

ACHIEVEMENTS

A. Fight against poverty and social exclusion

Between 1975 and 1994, the European Economic Community conducted a number of pilot projects and programmes designed to combat poverty and exclusion. However, Community action in this area was continually being contested in the absence of a legal basis.

The situation changed with the entry into force in 1999 of the Treaty of Amsterdam, which enshrined the eradication of social exclusion as an objective of Community social policy. As provided for in Article 160 TFEU, a Social Protection Committee was established in 2000 to promote cooperation between Member States and with the Commission.

The Lisbon Strategy, launched in 2000, created a monitoring and coordination mechanism consisting of objective setting, poverty measurement on the basis of a set of indicators and benchmarks, guidelines for the Member States, and national action plans against poverty. The OMC was also applied in parallel with other social protection sectors.

In 2005, the Commission proposed streamlining the ongoing processes into a new framework for the OMC on social protection and inclusion policies (the ‘social OMC’). The overarching objectives of the social OMC include: social cohesion, equality between men and women and equal opportunities for all through efficient social protection systems; effective and mutual interaction between the Lisbon objectives of growth, jobs and social cohesion; good governance; and the involvement of stakeholders.
With its Recommendation on the active inclusion of people excluded from the labour market of October 2008, the Commission updated Council Recommendation 92/441/EEC and stated that ‘Member States should design and implement an integrated comprehensive strategy for the active inclusion of people excluded from the labour market combining adequate income support, inclusive labour markets and access to quality services’.

One of the major innovations brought about by the Europe 2020 strategy for smart, sustainable and inclusive growth adopted in 2010 was a new common target in the fight against poverty and social exclusion: to reduce by 25% the number of Europeans living below the national poverty line and to lift more than 20 million people out of poverty.

To achieve this objective the Commission launched, in December 2010, the European platform against poverty and social exclusion, together with a list of key initiatives to be completed, such as an assessment of active inclusion strategies at national level and a White Paper on Pensions (COM(2010)0758). Since 2011, an Annual Convention of the platform has brought together policymakers, key stakeholders and people who have experienced poverty.

Faced with an increasing number of people in Europe at risk of poverty due to the crisis, the Commission adopted two further initiatives in 2013.

In its communication ‘Towards Social Investment for Growth and Cohesion — Social Investment Package’ of February 2013, the Commission urges the Member States to prioritise social investment in people with a view to investing in children in order to break the cycle of disadvantage.

Further, in October 2013, the Commission presented a proposal to strengthen the social dimension in the governance of the Economic and Monetary Union, responding to calls by the European Council. A key component is the social scoreboard, which is an analytical tool for detecting developments across the EU that require closer monitoring. It comprises five key indicators: unemployment; youth unemployment and the proportion of young people not in education, employment or training (NEETs); household disposable income; at-risk-of-poverty rate; and income inequalities. Since the 2014 European Semester exercise, the scoreboard has been included in the Joint Employment Report of the Annual Growth Survey, which sets out strategic policy priorities. Moreover, in 2015 three employment indicators (activity rate, long-term unemployment rate and youth unemployment rate) were added to the Alert Mechanism Report of the Macroeconomic Imbalance Procedure, though not triggering any further steps, as the Commission presumes that they do not in themselves imply an aggravation of the macro-financial risks.

In April 2017, in order to support convergence towards better living and working conditions in increasingly flexible labour markets the Commission launched the European Pillar of Social Rights. All three of the main EU institutions expressed their commitment in a joint proclamation. The Pillar sets social protection and inclusion as one of three key areas (2.3.1).

B. Anti-discrimination legislation

1997 can be regarded as a turning-point, as a new article — Article 13 — was introduced into the Treaty Establishing the European Community (TEC) (this article is today Article 19 TFEU), empowering the Council to take action to deal with discrimination on a whole range of new grounds, including racial or ethnic origin, religion
or belief, age, disability and sexual orientation. In 2003, this article was modified by the Treaty of Nice to allow the adoption of incentive measures.

Subsequently, a number of directives were adopted:

— the Racial Equality Directive (2000/43/EC);
— the Employment Equality Directive (2000/78/EC);
— the Equal Treatment Directive (2006/54/EC), merging a number of previous directives dedicated to equal opportunities for men and women.

A comparative analysis of non-discrimination law in Europe (2017) underlines that such directives have tremendously enhanced legal protection against discrimination across Europe, despite minor gaps in transposition in a few Member States.

Two further Commission proposals for directives enhancing equality are awaiting consensus in the Council: the directive on gender balance on company boards (2012) and the directive on implementing the principle of equal treatment between persons outside the field of employment (2008). Another directive, on maternity leave (2008, amending a directive of 1992) and backed by Parliament, was withdrawn in July 2015 after years of deadlock in the Council. Instead, in April 2017 the Commission presented a proposal for a directive on work-life balance for parents and carers as one of the deliverables of the European Pillar of Social Rights (2.3.1). This takes a broader perspective on sharing caring responsibilities between women and men.

C. Incentive measures

In December 2002, Parliament and the Council adopted Decision 50/2002/EC establishing a programme of Community action encouraging cooperation between Member States for the purpose of combating social exclusion. A specific Community action programme to combat discrimination was established on the basis of Article 13(2) TEC (now Article 19(2) TFEU); it covered all of the grounds set out in Article 13, with the exception of sex, which was dealt with separately by the European Community’s gender equality programme.

In 2007, all existing Community funding programmes in the area of employment and social affairs were integrated into a single framework with the adoption of the Progress programme. In order to further rationalise administration, the current Employment and Social Innovation (EaSI) programme for the 2014-2020 period incorporated the Progress programme as one of three axes (2.3.2).

In March 2014, Parliament and the Council adopted Regulation (EU) No 223/2014 on the Fund for European Aid for the Most Deprived (FEAD). The fund supports Member States’ actions to provide material assistance, in combination with social inclusion measures, to the most deprived. The budget earmarked for 2014-2020 amounts to EUR 3.8 billion in real terms, plus an additional 15% in national cofinancing by the Member States in accordance with their national programmes.

The main funding instrument is the European Social Fund (ESF), which makes EU funding available to cofinance actions aimed at combating discrimination and helping the most disadvantaged to access the labour market (2.3.2).

D. EU strategies for specific groups

gender equality, a new programme, the Strategic engagement for gender equality 2016-2019, follows on from the Commission’s Strategy for Equality between Women and Men 2010-2015, which defines key priorities. Faced with a high number of jobless young people, in 2012 the Commission proposed a Youth Employment Package. Additionally, in February 2016 the Council adopted a recommendation on the integration of the long-term unemployed, as proposed by the Commission. Moreover, in December 2016 the Commission launched the European Solidarity Corps to create new opportunities for young people (2.3.3).

**ROLE OF THE EUROPEAN PARLIAMENT**

The Treaty of Lisbon endowed Parliament with the power of consent in relation to the adoption of non-discrimination legislation under Article 19(1) TFEU. Parliament was an active player in the debate that led to the inclusion of this article, and it has often called on the Commission and the Member States to ensure the full and timely implementation of the directives of 2000. Parliament has repeatedly adopted resolutions with the goal of strengthening EU action aimed at improving the conditions and prospects of the socially disadvantaged and reducing poverty. In addition, several of its reports stress the role of quality employment in preventing poverty. Further resolutions welcome the Commission’s strategy of active inclusion and the European platform against poverty (resolutions of 6 May 2009 and 15 November 2011).

In its resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe, Parliament supports a minimum income (at a level equivalent to at least 60% of the median income in the relevant Member State) and minimum wages set at a decent level (i.e. above the poverty threshold). Six years later, Parliament invited the Commission to evaluate the manner and the means of providing at Member State level an adequate income so as to support social convergence across the Union (see resolution of 14 April 2016, ‘Meeting the antipoverty target in the light of increasing household costs’).

Moreover, Parliament was very active in pushing for the continuation of, and adequate funding for, the EU’s food distribution programme for the most deprived (e.g. resolution of 7 July 2011 on the scheme for food distribution for the most deprived people in the Union), and agreed a rescue plan with the Council in February 2012. Following negotiations in 2013, the Council agreed to Parliament’s request to increase the FEAD budget from EUR 2.5 billion to EUR 3.5 billion. Moreover, in a resolution of 26 October 2016 Parliament called for a considerable increase in payment appropriations for the FEAD.

In several resolutions since 2012, Parliament criticises the fact that the full potential of the Lisbon Treaty regarding employment and social policies has remained untapped. Parliament welcomes the Commission initiative to strengthen the social dimension and supports the establishment of a scoreboard. Further, Parliament calls on the Commission to define concrete benchmarks in the form of a social protection floor (see resolution of 20 November 2012, ‘Towards a genuine Economic and Monetary Union’ and resolution of 21 November 2013, ‘Strengthening the social dimension of the EMU’).

A number of resolutions embody Parliament’s concern that the EU is a long way from achieving the employment and social targets, in particular the poverty target. Parliament argues that in general, employment and social considerations should be put on a par with macroeconomic considerations. It supports a growth-friendly and
differentiated fiscal consolidation which would allow Member States also to tackle unemployment. The efficiency of public spending should be increased without essential public and social services being jeopardised (e.g. resolutions of 15 February 2017, 25 February 2016 and 24 June 2015).

As regards the social scoreboard, Parliament calls for the inclusion of additional indicators, such as child poverty levels and homelessness, and for greater use of the social scoreboard in policy formulation (see resolutions of 11 March 2015 and 25 November 2014).

Moreover, Parliament pushes for combating inequalities as a lever to boost job creation and growth, taking into account gender inequalities. It calls for the mainstreaming of gender equality in budgets and policymaking, and for gender impact assessments to be carried out when establishing any new policy. Resolutions also express concern about the gender dimension of poverty and the gender pension gap (e.g. resolutions of 16 November 2017, 14 June 2017 and 26 May 2016).

Susanne Kraatz
01/2018
THE EUROPEAN UNION AT A GLANCE

The aim of the Fact Sheets is to provide an overview of European integration and of the European Parliament’s contribution to that process.

Created in 1979 for Parliament’s first direct elections, the Fact Sheets are intended to provide non-specialists with a straightforward and concise – but also accurate – overview of the European Union's institutions and policies, and of the role that Parliament plays in their development.

The Fact Sheets are grouped into six chapters:

- **How the European Union works**, which addresses the EU's historical development, legal system, institutions and bodies, decision-making procedures and financing;
- **Citizens’ Europe**, which describes individual and collective rights;
- **The internal market**, which explains the principles and implementation of the internal market;
- **Economic and Monetary Union**, which outlines the context of EMU and explains the coordination and surveillance of economic policies;
- **Sectoral policies**, which describes how the EU addresses its various internal policies;
- **The EU’s external relations**, which covers foreign policy, security and defence, trade, development, human rights and democracy, enlargement and relations beyond the EU’s neighbourhood.

Drafted by the Policy Departments and the Economic Governance Support Unit, the Fact Sheets are reviewed and updated at regular intervals throughout the year, as soon as Parliament adopts any important positions or policies.


The Fact Sheets are updated regularly and published on the website of the European Parliament in 23 languages.