

FOREWORD

This International Labour Law Handbook aims to give a comprehensive overview of the development and current status of labour law and industrial relations issues, including globalization and international labour standards. In this Handbook, the reader will find reference to current achievements, debates, ideas and programmes, as highlighted in the various reports of the ILO Director-General in the last few years. Moreover, there are cross-references to international labour standards and European Union directives, resolutions and regulations. In this respect, the reader will notice that some of the definitions from the public domain are taken from legislative and specialised texts dealing with international standards and institutions in general.

The International Handbook touches on the most relevant issues surrounding the global debate on the 2030 UN Agenda on sustainable development and on the Future of Work Initiative of the ILO. It has been conceived as an educational tool, and aims to be a storehouse of practical definitions providing practitioners and scholars with advice and suggestions that may be taken into account in their day-to-day activities. The definitions given go further than suggesting specific tools, approaches and policies to practitioners. Government, workers and employers can also profit from this Handbook by familiarizing themselves with recognised and accepted international labour practices in a number of domains of interest to them.

Therefore, even where definitions of certain industrial relations topics and/or standards are not of immediate practical relevance to their daily work, the Handbook should nevertheless give readers a useful perspective on the subject-matter in question, which can broaden their horizons, sharpen their awareness of possible future problems and ultimately be used when they are faced with specific challenges. We hope that this International Handbook can also contribute to the overall development of a sound social dialogue and industrial relations system at different levels of the economy. However, it is in no way intended to offer an exhaustive and detailed treatment of all labour law and industrial relations issues, rather a reference tool on selected issues found in international instruments and/or social institutions.

With this objective in mind, and to make the significant provisions of labour law and industrial relations more understandable to a wider audience, certain liberties have been taken by the authors when reformulating and, in several cases, simplifying the terminology involved. We hope that this has been accomplished without distorting the meaning of the various standards or their interpretation by the competent supervisory bodies. Moreover, we have sought – wherever relevant – to sketch the practices surrounding the various provisions and to elaborate on their significance and the possible utility of certain provisions for workers, employers and government representatives. The Handbook should not be used or regarded as an authoritative text on individual international labour standards or on European Union labour law, but as an easy reference work for practitioners and scholars in the field of comparative labour law and industrial relations.

Gianni Arrigo
Giuseppe Casale

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INTRODUCTION

1. Labour Law: definition and articulation

Labour law, taken as a whole, has been developing since the second half of the nineteenth century in the countries of progressive industrialisation. It consists of various rules and sources, kept together by the aim of protecting at different levels the weakest part of the employment relationship (i.e. the employee) and other subjects deemed worthy of protection. Traditionally, these rights are distinguished in trade union law, labour law and social security law in their respective strict sense. For example, trade union law refers to freedom of association, the right to collective bargaining and the right to strike. Labour law strictly regulates the legal relationship between the parties of the employment contract (employer and employee). The social security law deals with the protection of persons against harmful events during their life (accidents, disability, old age, unemployment, etc.).

2. Definition of trade union law

Trade union law is that part of labour law which deals with the system of regulations and provisions adopted by the State or by workers' and employers' organisations and which, in open market economies, govern the dynamics of the conflict of interests produced by the unequal distribution of power in economic processes. In its formulation, adoption and implementation, trade union law runs parallel to the history of the workers' movement and reflects, in its development, the continuous dynamic between capital and labour that was one of the most specific consequences of the industrial revolution and persists, albeit in conditions that are often radically different, in today's service-based society. It has developed since the second half of the 19th century as both a manifestation of and regulatory system for the autonomy of different occupational groups. Therefore, trade union law is a modern phenomenon. In the past, some analogies were felt to exist with the au-

onomous rules governing occupational groups – or crafts – that were typical of the organisation of economic life in the late Middle Ages. It soon became clear that this analogy would not stand up just because the organisation of production and trade in the two historical eras were radically different: a) the mediaeval economy, at least in its most typical and commonly recurring aspects, was structured around organised occupational groups, the merchant or craft-based corporations or guilds. These took the form of coalitions of small-scale craftsmen or merchants in which conflicts of interests were noticeably lacking. The position of apprentices was in some ways similar to that of modern workers, since they were in a subordinate position to the master craftsman, but only for that period of time, which in some cases could be very long, required for the apprentice to become a “master”; b) one essential feature of the organisation of economic life in the modern period and the social structure thus generated is, by contrast, the existence of a conflict of interests between workers and employers employing them. The latter, being owners of the means of production and therefore of decision-making powers over the way these means are organised and used, occupy a (pre) dominant position with respect to workers. In order to contain and combat such dominant position, the trade union movement came into being.

The expression *industrial conflict* is generally understood as the conflict between capital and labour and can also be applied in economic sectors other than the industrial sector. Industrial conflict is classified as an element of the “class struggle” between the owners of the means of production and those who, not owning these means, are obliged to sell their labour to those who do. Several authors¹ have extended the scope of the concept to encompass all possible forms of conflict with the authority exercised in the organisation of labour, whatever its economic purpose and regardless of whether it is publicly or privately “owned”. Indeed, conflict also occurs in publicly owned undertakings and in the bureaucratic structures of the State and other public bodies, while it has long been known that large corporations are in actual fact controlled not so much by their owners (the shareholders) as by their management. Moreover, conflict – insofar as it is connected not with ownership but with a division and organisation of labour inspired by hierarchical models – was to be found even in the systems, by now largely belonging to the past, of so-called “real Socialism” that were typical of countries where the ownership of the means of production was collectivised. Essen-

¹ See, among others R. DAHRENDORF, *Classi e conflitto di classe nella società industriale*, Laterza, Bari, 1963 and G. GIUGNI, *Diritto sindacale*, Cacucci, Bari, 1992.

tially, the real or structural sub-stratum (industrial conflict) may assume different political and institutional forms and significance and may or may not assume the typical features of the traditional class struggle. It thus follows that trade union law may be permeated by different ideological and political inspirations and reasons, often with similarities in terms of formal institutions².

3. Trade unionism

The first spontaneous response of workers to the unbalanced growth situation was the creation of a coalition among themselves to stand as a group and to negotiate better working conditions. The means of achieving this end was through the exercise of the right to strike and to convince the employer to negotiate equal working conditions for the entire category of workers through the signing of a collective labour agreement.

The journey of trade unionism was long and difficult, going through repeated up and downs. The organisational forms of the trade union have been historically different. At the beginning, the first model was that of craft unionism, that is belonging to a category carrying out a precise craft (e.g. carpenters, masons, miners) in any industrial sector. The consequence was that the individual enterprise could have to deal with several unions and hence with different collective agreements, characterised by several conflicts and by several labour disputes settlements.

Afterwards, there were the industrial unions which organised all the workers employed in a specific industry regrouping blue and white collar workers at the same time. Today, the trade union has become a very complex organization. In many countries, workers are organised into different confederations each of which has its ideology and its *raison d'être*, as well as a contractual strategy. The confederation is composed of vertical and horizontal organizations. Vertically, the confederation regroups various national unions, each of which has its own structure (for example, regional, provincial, municipal, territorial instances). Horizontally, the confederation regroups national or local level organizations which are the most peripheral instances of union representation. These instances usually serve at providing

² B. VENEZIANI, *Stato e autonomia collettiva. Diritto sindacale italiano e comparato*, Cacucci, Bari, 1992.

services for workers and sometime have had a specific political-trade union role to play with a view to promoting solidarity.

The evolutionary process of trade unionism went hand in hand with the social policies promoted between the XIX and XX centuries. The classical doctrine has distinguished three stages, according to the perspective with which the State has faced the social question: a) prohibition; b) tolerance; c) recognition.

In this regard, it should be noted that the evolution of labour law followed these three stages albeit at a different degree of development and implementation.

4. Repression

In all countries, the first step was to use repression against trade unionism. Within the liberal conception (rigidly understood), it was believed that there was no room for change working conditions through the trade union struggle. The wage level had to be determined spontaneously from the interplay between supply and demand. Therefore the strike was considered a crime and was repressed. The union as such was outlawed. In adherence with the French Revolution spirit, the social law *Chapellier* of 1791 left totally free the individuals to treat their own business. The State was there only to ensure public order and national defence (notion of the minimum State).

This stage was characterised by the first unions – constituted in defence of the workers' interests – and the liberal state which began to consolidate its own legitimacy on the non-intervention with a view to maintaining public order and to avoiding interferences in the economic and labour markets. In this period, the non-intervention state moved beyond its own ideology by severely repressing workers' organizations. In fact, it was common to find several laws incriminating the trade union action.

5. Tolerance

At a certain point, due to the social pressure exerted by the unions or because of the democratic roots of some States, the union repression ceased and sanctions against unions were abolished. However, this was still far

from accepting trade union action. The tolerant attitude of States towards the labour agenda was characterised by a growing parallel action by the State of the implementation of more and more administrative rules and procedures on the workers' organisations. This phase is characterised by a technical intervention in labour relations, which resulted in the elaboration of reports prepared by renowned sociologists and economists who gave an account of labour problems, all of which formed the background for the formulation of normative proposals for labour regulation.

6. Recognition

The recognition phase happened when the State began to intervene in labour relations, recognizing a set of labour rights. The first labour rights to be recognised were precisely: a) minimum working hours; b) minimum wage; c) occupational safety and health.

With regard to collective labour relations, the State began to establish basic conditions for the development of trade union activities. From this point of view, it can be said that it focused on the conflict between employers and workers, no longer as pathology, but as an inherent aspect of labour relations. In that sense, in several countries the state intervention in labour relations was consolidated through the creation of the administrative authority for labour issues, a body specialised on labour relations issues, such as the mediation and arbitration committees.

7. Social legislation

Social legislation appeared in many countries at different times and with various degrees of development. In all countries, the very first social legislation dealt with the work of women and children. It focused on the working hours, the banning of night work, the prohibition of dangerous occupational activities. In this regard, there was a significant advance over traditional civil law and it was gaining ground for being distinguished as a separate discipline of what we call today labour law.

8. Consolidation of labour law: constitutionalisation and internationalisation

8.1. *The constitutionalisation of labour rights*

In the liberal legal tradition, the Constitution was considered as an organic text law of the State, which regulated the relations between public authorities and individuals. In fact, the Civil Code was generally considered as the main normative body of the, since it was in charge of regulating legal-economic relations between individuals in society. The Constitution of Querétaro (Mexico) of 1917 and the Constitution of Weimar (Germany) of 1919 are the two pioneering Constitutions that, for the first time, contemplated in their articles social rights. Both constitutional texts represent the original landmarks for future Constitutions which expanded rapidly in Europe and other countries, particularly in Latin America. The centrality of labour rights in this process is known and labour rights occupy a major place in the catalogue of new social rights. For this reason, labour law experts talk about the “constitutionalisation of labour law” or of “constitutional labour law”.

According to the late Oscar Ermida, the constitutionalisation of labour law has important consequences for the legal system³. In fact, the elevation of labour rights to the text of the Constitution denotes: (i) the high value of the interests protected by labour law; (ii) its intangibility by legislative norms; (iii) consideration of specific fundamental labour rights; (iv) from a functional perspective, such constitutional rights operate as a limit to de-regulatory tendencies.

Regardless of the implications of the constitutionalisation of labour rights for the system of normative sources regulating labour relations, what should be noted is that this process of constitutionalisation of social rights started from the phase of the liberal state towards the social state of law, which is characterised by the intervention in labour relations to correct the inequalities existing in society.

It is interesting to note that labour codes or other forms of comprehensive labour legislation and ministries of labour were not introduced until the 20th century. The first labour code (which, like many of its successors, was a con-

³O. ERMIDA URIARTE, *La constitución y el derecho laboral*, in *Treinta y seis estudios sobre fuentes del Derecho del Trabajo*, Montevideo, diciembre 1995, p. 111 ss.

solidation rather than a codification) was projected in France in 1901 and promulgated in stages from 1910 to 1927. Among the more advanced formulations affecting the general conditions of labour were, as mentioned above, the Mexican Constitution of 1917 and the Weimar Constitution of Germany of 1919, both of which gave constitutional status to certain general principles of social policy regarding economic rights. Provisions of this kind have become increasingly common and are now widespread in many regions of the world.

Departments or ministries of labour responsible for the effective administration of labour legislation and for promoting its future development were established in Canada in 1900, in France in 1906, in the United States in 1913, in the United Kingdom in 1916, and in Germany in 1918. They became more general in Europe and were established in India and Japan during the following years and became common in Latin America in the 1930s. A labour office was established in Egypt in 1930, but only in the '40s and '50s did similar arrangements begin to take root elsewhere in Asia and Africa. Of course, under different political circumstances there continue to be wide variations in the authority and effectiveness of such administrative machinery.

8.2. *Internationalisation of labour law*

Throughout the twentieth century, there has been the so-called “internationalisation” of labour law, which has run on two fronts: universal and regional. Thus, to the extent that labour rights were included in international human rights treaties, a generic framework was incorporated that incorporates labour rights into economic, social and cultural rights. The development of labour rights in generic international instruments has been progressive since they have been a constant concern of governments. However, there are in the universal scope instruments of specific content, produced by the International Labour Organization, which, since its creation in 1919, has become the main body producing international labour standards. Its main characteristic is its tripartite composition, since all its internal organs are integrated by the governments, workers and employers.

The ILO’s normative production focuses on two types of instruments: Conventions and Recommendations. Both Conventions and Recommendations seek to “establish a minimum level of social protection in all States”, forcing States to adopt this level of protection in its domestic legislation, while ensuring compliance⁴. Thus, the closes link between this process and

⁴CRUZ VILLALÓN, *Jesús*. “*Compendio de Derecho del Trabajo*”, Madrid, Tecnos, 2008, p. 60.

the constitutionalisation of labour rights⁵ can be clearly seen, both of which complement each other in their objective that is to say the effective protection of workers' rights.

Finally, on the internationalisation of labour law carried out under ILO instances, it should be noted that the ILO's programme of action has had to adapt itself to the different conjunctures that the world was facing in the 20th and 21st centuries, starting from the development of its principles enunciated in 1919, then moving towards the need for economic and social cooperation between nations after World War II. This has brought to the transformation of the world (and rights) of work to its present configuration⁶.

The general tendency in the modern development of labour law has been the strengthening of statutory requirements and collective contractual relations at the expense of rights and obligations of individual employment relationships. How important these remain depends, of course, on the degree of freedom in the given society as well as the autonomy of both employers and workers permitted. In matters such as hours of work, health and safety conditions, or industrial relations, the statutory or collective elements may define most of the substance of the rights and obligations of the individual worker, while with respect to items such as the duration of appointment, the level and extent of responsibility, or the scale of remuneration are provided essentially in individual contracts.

It has long been recognised that some fundamental principles and rights at work need to be respected at all events, regardless of the level of development of the country. While the laws on employment conditions (especially pay) depend on the state of economic development of each country, the fundamental rights can be conceived as preliminary conditions for the free market. Only where the fundamental rights have been defined and respected, it is said, will the labour market function in such a way as to enable a real improvement in employment conditions and a fair distribution of resources and the benefits of economic progress. These rights essentially take the form of internationally recognised human rights, sanctioned at the level of customary law, charters or similar provisions, and therefore binding on the international community.

⁵ For Ermida, the labour content of the Constitutions is complementary to the international standards on human rights. ERMIDA URIARTE, *Óscar*, cit., p. 117.

⁶ See G. CASALE, *International Labour Law: The role of the ILO*, in *Sui Generis, Festschrift til Stein Evju*, Universitetsforlaget, Oslo, 2016.

The ILO has been active in putting forward the protection and respect of some of the fundamental human rights. This question was inserted in the agenda of the 86th Session of the International Labour Conference (1998), which adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up. Taking its inspiration from its own Constitution, the ILO's 1998 Declaration is a new type of legal instrument, distinguished by its promotional nature from the other international agreements on labour. The intention is to encourage ILO member States to observe a certain number of the Organization's core standards.

The adoption of the Declaration marked the seal on the universal acceptance of a set of core labour standards that are recognised as having a special status in the context of the global economy. By virtue of the constitutional value of the Conventions recognised as being "fundamental", both within and outside the ILO, the 1998 International Labour Conference declared that all member states, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation.

At the time the Declaration was adopted, seven Conventions were considered to be fundamental: (a) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); (b) Right to Organise and Collective Bargaining Convention, 1949 (No. 98); (c) Forced Labour Convention, 1930 (No. 29); (d) Abolition of Forced Labour Convention, 1957 (No. 105); (e) Minimum Age Convention, 1973 (No. 138); (f) Equal Remuneration Convention, 1951 (No. 100); (g) Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Worst Forms of Child Labour Convention (No. 182), which was adopted in June 1999 and entered into force on 17 November 2000, was added later.

The Declaration underlines that the Organization is obliged "to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources" (para. 3). The Declaration expressly indicates that these means include the mobilisation of its own resources and external support, and that the Organization should encourage other international organi-

zations with which it has established relations to support these efforts. More specifically, paragraph 3 lists three forms of support: (a) offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions; (b) assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realise the principles concerning fundamental rights which are the subject of those Conventions; (c) helping the Members in their efforts to create a climate for economic and social development.

The ILO Declaration of 1998 is a valuable document for the promotion of fundamental rights at work. It established a follow-up mechanism that would give a certain level of effectiveness to its content, where member States would prepare annual reports on their progress in the field of labour protection and even report their progress on matters contained in non-binding agreements.

8.3. *Labour law at regional level*

As for the progression of the rights and the defence of employment at the regional level, it was mainly in Europe that a “social model” emerged and whose fundamental elements were based on national constitutions as well as on social standards adopted at international and European level under the aegis of the United Nations and the Council of Europe.

The already mentioned consideration of rights at work is an expression, in the national ambit, of the importance given by the Constitutions to specific social rights, such as: i) equality, not only through principles but also through effective measures to help those who are excluded or less-privileged; ii) affirmation of the State’s commitment to free its citizens from life’s anxieties, as long as it can be addressed in the community; iii) recognition of the groups organised by civil society and their rights to defend their interests in a context of common wellbeing; iv) freedom to work as a right.

In a modern State, characterised by democratic values and the full recognition of the social values, work comes as the key priority for the promotion of fundamental rights. Such rights, principles and values are incorporated in the European Union labour law. For example, the Treaties refer to expressions such as pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men, to be found in Article 2 of the Treaty on European Union (TEU). These values must be read in the context of the objectives of the EU listed in Article 3(3) TEU: the imperatives of a “highly

competitive social market economy”. The fact that these values are explicitly incorporated in the TEU requires that all European Union member States play an active role in pursuing goals of social equity hand-in-hand with the other objectives. These five words – **highly competitive social market economy** – are immediately followed by a reference to the goals of full employment and social progress. The wording of Article 3(3) suggests that a highly competitive social market economy is one of the elements – together with economic growth, price stability and environmental protection – which constitute the basis for Europe’s sustainable development. Within that context of sustainable development, the syntax of Article 3(3) indicates that full employment and social progress are to function as guideposts for the interpretation of the social market economy notion. In this regard, it is clear the direct connection between the economic and social development, and the efforts made to ensure greater coherence between economic and social policies. New mainstreaming provisions have also been introduced. In particular, Article 9 of the Treaty on the Functioning of the European Union (TFEU) requires the Union to take into account the promotion of “a high level of employment, the guarantee of adequate social protection, [and] the fight against social exclusion ...”. At the same time, Article 3(1) TEU provides that “The Union’s aim is to promote peace, its values and the well-being of its peoples”.

Other key elements include Article 119 TFEU which requires the member States and the Union to respect the principle of an open market economy with free competition; and Protocol 27 on the Internal Market and Competition which confirms that the Union’s internal market is still characterised by a system of distorted competition.

Although it lacks an explicit definition of the European Social Model in the Treaties, it can be said that such a model is well rooted in the European construction and enshrined in primary and secondary law. The European Social Model can be characterised by its comprehensive nature, since its aim is to encompass all important social areas and to cover the greatest number of people, something that has been achieved over decades. European community legislation has progressively been extended to cover more and more labour issues, but also has extended its coverage to new categories of workers. Its different elements constitute part of the EU acquis that the EU member States – depending on different circumstances – have all been implemented in various ways: basic workers’ rights and working conditions; universal and sustainable social protection; inclusive labour markets; effective social dialogue; services of general interest; social cohesion. Compared with other

countries and regions in the world, EU countries are also characterised by high expenditure on social protection, grounded on the principles of solidarity, equality and social cohesion that represent the cement of European “social market economy”.

Nothing similar to the European Social Model can be found in other parts of the world. The model is distinctive, rooted in shared values that have not been replicated so far. It differs sharply from policies and developments in other countries of the G20, for example. The EU model is also more concerned with reducing inequalities. Another force shaping the competitive environment of a country is the distinction between a system that promotes individual risk and one that preserves social cohesiveness. The so-called Anglo-Saxon model is characterised by emphasis on risk, deregulation, privatisation and the responsibility of the individual through a minimalist approach to welfare, even more exacerbated by the recent Brexit. In contrast, the Continental European Model, despite the setbacks of economic and financial crisis and the difficulties of cohesion and political integration of the European Union (of which the Brexit is a serious symptom) relies heavily on social consensus, a more egalitarian approach to responsibilities and an extensive welfare system.

Even though social policy has not been eroded everywhere in Europe, we might question the survival of the European Social Model if its dismantling continues in a number of countries, especially with the aim of improving competitiveness by lower wage costs and poorer working conditions. Also important in this regard is the fact that, to date, the European Social Model has depended strongly on shared values and principles that are under threat from “free-rider” strategies. Undoubtedly, they have had a strong impact on the social side, with unprecedented waves of social conflicts, increased low pay and poverty, as well as increasing inequalities. These policies also have not fulfilled initial economic expectations, with increased unemployment, lack of growth recovery and falling consumption.

For the first time in Europe, a generalised erosion of the middle class could be observed, calling into question the viability of the policies implemented so far. There is no doubt that more balanced economic policies are required. They certainly require a more active place for social dialogue, social protection and social cohesion. This requires that EU countries discuss possible alternative policies and implement the right mix of policy reforms without losing the main elements and features of the European Social Model, which is still considered to be a point of reference in other parts of the world, thus helping Europe to preserve its identity.

9. European Pillar on Social Rights

Since its creation, the European Union (EU) has aimed to promote convergence among its Member States. Achieving higher economic growth in low-income Member States and reducing labour market and social imbalances between all countries and regions have indeed been at the core of the European integration process. More generally, economic and social convergence has been regarded as a key condition for the continued political support to the European integration project⁷.

Over the past few years, however, the process of economic and social convergence has stalled. Disparities persist in the European Union with respect to employment opportunities, income distribution and social inclusion, creating specific challenges to the euro area in particular. A range of factors are underpinning these gaps and there is a risk that the gaps within and across countries will widen in the context of rapid changes in the nature of employment and skill requirements.

Against this backdrop, in September 2015 the President of the European Commission, Jean-Claude Juncker, announced in his State of the Union speech the establishment of a European Pillar of Social Rights. The main objective is to create the construction of a fair and truly pan-European labour market and complement what was already achieved when it comes to the protection of workers in the EU while acknowledging the profound changes taking place in the world of work. In this regard, the Social Rights Pillar ought to be applicable to all euro area Member States and serve as a compass for renewed convergence within the euro area. The Commission underlined the central role to be played by the social partners in this endeavour. Since March 2016 there is a wide one debate whose results will form the basis of the White Paper on the future of the European and Monetary Union (EMU) expected later this year⁸.

The approach proposed by the European Commission takes into account the fact that labour market and social policies in the EU are mainly the result of national developments. However, it should be noted that consideration needs to be given to the past and current shortcomings in the European gov-

⁷ ILO, *Building a social pillar for European convergence*, International Labour Office, Geneva, 2016.

⁸ EU, COM(2016) 127 of 3 March 2016 on *Launching a consultation on a European Pillar of Social Rights*.

ernance framework such the continuous prioritisation of economic and financial concerns over employment and social issues.

If adequate resources are given to the socio-economic convergence, notably allocation of resources to employment and social objectives at the national level, the construction of a European Pillar of Social Rights could really make a significant contribution to the 2030 Agenda for Sustainable Development of September 2015. In particular such a Pillar could be relevant to the achievement by EU Member States of Goal No. 1 on ending poverty and Goal No. 8 on the promotion of inclusive and sustainable economic growth, employment and decent work for all⁹.

The promotion of economic and social convergence is at the heart of the European integration project although key indicators shows that EU Member States are either diverging in terms of socio-economic performance or converging towards deteriorating outcomes, such as worsening inequality and widening structural imbalances, including higher levels of poverty and inequality for the EU as a whole.

In addition, the changing nature of work characterised by the intensification of new technologies and increased fragmentation of production could exacerbate both income polarisation within countries and income divergence across EU Member States.

At the same time, traditional work patterns are being challenged by an increase in the diversity of non-standard forms of employment, and new forms of work are emerging between dependent employment and self-employment. The result is a need for increased legal clarity on workers' employment status and employers' responsibility.

These trends point to some degree of imbalance in the European socio-economic governance process. Unlike the procedures established to monitor and correct Member States' macroeconomic situations, which are binding, the so-called "soft" coordination mechanisms used in the employment and social fields have failed to achieve upward convergence. Policy coordination in these areas would be more effective if it were built upon common social conditions in all Member States. By bringing the employment and social performance of the Member States to the fore, the European Pillar of Social Rights offers an opportunity for a more balanced EU governance framework.

⁹ UN, A/Res/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*.

Convergence towards better socio-economic outcomes, underpinned by such the Social Rights Pillar, could be the foundation for a more integrated and stable Europe and a fully functioning EMU. Moreover, fostering upward convergence of socio-economic conditions is a necessary condition for political and societal support for the continued construction of the EU.

A range of policy and institutional tools at the EU level, many guided by international labour standards, could strengthen existing rights, improve social standards and foster upward convergence in the social and employment fields. A number of critical areas could assist in reducing low-wage competition and promote sustainable enterprises and economic development¹⁰.

– ***Minimum income***: The establishment of national adequate minimum income guarantees covering as many people as possible, based on obligations arising from European and ILO treaties and assessed as part of comprehensive national social protection systems, would help make sure that no one is left behind in the EU. A common approach could focus on ensuring that: (i) there is effective coverage of everyone in need; (ii) the levels of benefits provided are adequate to allow life in dignity; (iii) social partners and other relevant organizations participate in the design and review of the schemes.

– ***Work and family reconciliation***: Increased policy coordination at the EU level to reconcile work and family life in line with relevant ILO standards could raise living standards, reduce inequalities and narrow gender gaps. Work–family policies have been found to be effective in increasing women’s labour market participation in several EU Member States and in influencing longer term trends in population and labour supply. Key principles on which to promote a common approach at the EU level could focus on encouraging men’s involvement in care, investing in care services and promoting workplace arrangements through social dialogue and collective bargaining.

– ***Employment promotion and unemployment protection***: Stronger linkages between ALMPs and unemployment benefits provide much needed income support, improve skills attainment and act as an effective economic stabiliser. The effectiveness of unemployment benefit schemes should also promote employment and employability at the same time. A smart bench-

¹⁰ Cfr. ILO, *op. cit.*

marking strategy for ALMPs and unemployment benefits at the EU level should be demand driven and flexible, both across economic cycles and country characteristics and circumstances. It would require focusing on the level of expenditure and, consequently, on the coverage across countries, as well as on the quality of the services provided. A set of principles strengthening upward convergence of unemployment benefits could be set up, structured around both a qualitative and a quantitative framework, incorporating relevant ILO standards, which are widely ratified by the EU Member States.

– *Skills development*: The speed and nature of globalization, technological evolution, changes in work organization and demographic trends have profound effects on the world of work. Policies focusing on human capital and skills development are essential to turn these structural changes into an opportunity for all, by increasing productivity levels and quality of life in the EU. Based on relevant ILO standards, policies should include anticipating skills needs and adapting policies, reinforcing the role of training and work-based learning and enhancing the adaptability of workplaces.

All in all, the European integration project cannot work without social dialogue. While the dynamism of social dialogue is uneven across the EU Member States, investing in effective and inclusive dialogue is in the interests of all.

10. Conclusion

As noted above, the basic subject matters of labour law can be considered under the following broad heads: employment; individual employment relationships; wages and remuneration; conditions of work; health, safety, and welfare; social security; trade unions and industrial relations; the administration of labour law; and special provisions for particular occupational or other groups. All these elements are treated in the entries of this handbook highlighting the development stages and those of recent stagnation or decline, determined by restrictive social policies adopted by many countries, partly as a result of the economic and financial crisis of the first decade of the XXI century. Under the formidable influence of this great economic crisis, labour law undertook a process of relevant change, affecting the individual and collective elements of its historical model, due to the difficulty of responding to the challenges generated by the transformation of the economic and technological paradigm, and the deep changes under the pressure of globalization, that requires structural reforms of labour market.

As a matter of fact, labour law is modifying its scientific paradigm and its disciplinary matrix. The employment relationship is no longer considered as a system of powers to be balanced, within the more general framework of the relations of production, but, as a market relationship, in which the informational asymmetries need to be corrected, referring to structural measures of welfare: income protection, active labour market policies, etc. From a collective perspective, the strong tendency of a company level collective bargaining, which characterises the decentralisation of some European countries, seems to represent the beginning of a de-construction of the union rights, while the trend becomes more realistic to mechanisms of unilateral management of the company. Within these dynamics, and in the related decision about policy law, the question is to understand if this deep transformation is continuing to give labour law a real function of balancing/conciliating the various interests in the complex relationship between economic and social rights, or if the traditional axiological-protective value of labour law and Constitutions is permanently over – in the context of opposition between capital and labour. In this second perspective, new regulatory scenarios are replacing the old certitudes based on the rights, benefitting mobile, unstable and procedural prerogatives as in the model of capabilities and new “procedural” social rights. Therefore, it is necessary to ponder on the ideological and real dimension and idea of labour law, and thus, identifying the essential points of the discipline and its possible function of social regulation.

In approximately two centuries of history, labour law has been forged as an autonomous discipline, which regulates the subordinate provision of services of the worker. In historical terms, it is a relatively short period, especially if we consider the various phases that have taken place and the profound transformations in some cases that have occurred in our discipline throughout this time. It was born and matured quickly, but not without little effort, establishing a protective logic that tries to level the original inequality that exists between the parts of the employment contract, and guaranteeing the worker’s freedom and dignity through the imposition of minimum legal standards (heteronomous norms) and of the conventional or autonomous regulation, product of the union action. In this evolution, the ILO action and, in his footsteps to a decisive extent, the European Union’s social policies have contributed. But the flexibilisation which has endured the Labour Law in the last decades and in the era of globalization of the economy seems to mark, for some, the beginning of its decline and the progressive dismantling of a model that, at least in its fundamental principles, can still be considered as protector.

A

Ability to pay/capacity to pay

One of several criteria used to determine wage increases and reflecting the financial capacity of an enterprise, an industry or the economy as a whole to sustain such increases. The capacity to pay can be influenced by a range of factors, including profitability, productivity, growth and the competitive situation.

See: Equal pay for men and women; Wages

Abolition of forced labour

See: Child labour (ILO); Forced labour (EU Legislation); Forced labour (abolition of)

Accra Agenda for Action

Designed to strengthen and deepen implementation of the *Paris Declaration*, the Accra Agenda for Action (2008) takes stock of progress and sets the agenda for accelerated advancement towards the Paris targets. It proposes the following four main areas for improvement: 1) *ownership*: Countries have more say over their development processes through wider participation in development policy formulation, stronger leadership on aid coordination and more use of country systems for aid delivery; 2) *inclusive partnerships*: All partners - including donors in the OECD Development Assistance Committee and developing countries, as well as other donors, foundations and civil society - participate fully; 3) *delivering results*: Aid is focused on real and measurable impact on development; 4) *capacity development*, to build the ability of countries to manage their own future.

See: Paris Declaration on aid effectiveness; European Union's development policy

Acquis communautaire

Acquis communautaire (or Community *acquis*) refers to the body of common rights and obligations that bind all Member States within the European Union

(EU). It is based principally on the Treaties and the instruments that supplement them, as well as a wide range of secondary legislation enacted under these Treaties. It is constantly evolving and comprises: a) the content, principles and political objectives of the treaties; b) the legislation adopted in the application of the treaties and the case law of the European Court of Justice; c) the declarations and resolutions adopted by the EU; d) measures relating to the common foreign and security policy; e) measures relating to justice and home affairs; f) international agreements concluded by the Community and those concluded by the Member States between themselves in the field of the EU's activities.

Thus, the Community *acquis* comprises not only Community law in the strict sense, but also, above all, the common objectives laid down in the Treaties.

Applicant countries have to accept the Community *acquis* before they can join the EU. Exemptions and derogations from the *acquis* are granted only in exceptional circumstances and are limited in scope. The EU has committed itself to maintaining the Community *acquis* in its entirety and developing it further. There is no question of going back on its contents. To integrate into the EU, applicant countries will have to transpose the *acquis* into their national legislation and implement it from the moment of their accession.

In preparation for the accession of new Member States, the Commission examines with the applicant countries how far their legislation conformed to the Community *acquis*.

See: European Union law; Treaties

ACP-EU Partnership Agreement

The ACP-EU Partnership Agreement is a framework for trade and economic cooperation between the ACP States (except Cuba) and the European Union. It gives the ACP States preferential access to the EU markets and other benefits. The Agreement entered into force on 1 March 2000 for 20 years as the successor to the Lomé Convention, one of the major differences from the Lomé Convention is that the part-

nership is extended to new actors such as civil society, private sector, trade unions and local authorities. These will be involved in consultations and planning of national development strategies, provided with access to financial resources and involved in the implementation of programmes. The ACP-EU Partnership Agreement is based on five pillars: a) a comprehensive political dimension; b) participatory approaches to ensure the involvement of civil society in beneficiary countries; c) a strengthened focus on poverty reduction; d) a framework for economic and trade cooperation; e) a reform of financial cooperation. The Partnership Agreement, first amended in Luxembourg on 25 June 2005 and for the second time in Ouagadougou on 22 June 2010 (“ACP-EU Partnership Agreement”), provides for the definition of financial protocols for each five-year period. The Agreement entails wide-ranging cooperation in trade-related areas including, among others, trade in services, competition policy, trade and environment and trade and labour standards.

ACP Group

The African, Caribbean and Pacific Group of States (ACP) is an Organization created in 1975 by the Georgetown Agreement. ACP is composed of 48 countries from Sub-Saharan Africa, 16 from the Caribbean and 15 from the Pacific. All of them, save Cuba, are signatories to the Cotonou Agreement (23 June 2000), also known as the “ACP-EU Partnership Agreement” which binds them to the European Union. Many small island developing states are ACP states. (**ACP Countries:** Angola - Antigua and Barbuda - Belize - Cape Verde - Comoros - Bahamas - Barbados - Benin - Botswana - Burkina Faso - Burundi - Cameroon - Central African Republic - Chad - Congo (Brazzaville) - Congo (Kinshasa) - Cook Islands - Cote d’Ivoire - Cuba - Djibouti - Dominica - Dominican Republic - Eritrea - Ethiopia - Fiji - Gabon - Gambia - Ghana - Grenada - Republic of Guinea - Guinea-Bissau - Equatorial Guinea - Guyana - Haiti - Jamaica - Kenya - Kiribati - Lesotho - Liberia - Madagascar - Malawi - Mali - Marshall Islands - Mauritania - Mauritius - Micronesia - Mozambique - Namibia - Nauru - Niger - Nigeria - Niue - Palau - Papua New Guinea - Rwanda - St. Kitts and Nevis - St. Lucia - St. Vincent and the Grenadines - Solomon Islands - Samoa - Sao Tome and Principe - Senegal - Seychelles - Sierra Leone - Somalia - South Africa - Sudan - Suriname - Swaziland - Tanzania - Timor Leste - Togo - Tonga - Trinidad and Tobago - Tuva-

lu - Uganda - Vanuatu - Zambia - Zimbabwe).

The ACP Group’s main objectives are: a) sustainable development of its Member-States and their gradual integration into the global economy, which entails making poverty reduction a matter of priority and establishing a new, fairer, and more equitable world order; b) coordination of the activities of the ACP Group in the framework of the implementation of ACP-EU Partnership Agreements; c) consolidation of unity and solidarity among ACP States, as well as understanding among their peoples; d) establishment and consolidation of peace and stability in a free and democratic society.

Responsible for the administrative management of the ACP Group is the ACP Secretariat, which assists the Group’s decision-making and advisory organs in carrying out their work. The ACP Secretariat’s headquarters is located in Brussels. It is headed by an Executive Secretary-General who is responsible for implementing the Group’s international policy, as well as directing and coordinating its cooperation policy. The Secretariat is responsible for: a) carrying out the tasks assigned it by the Summit of ACP Heads of State and Government, Council of Ministers, Committee of Ambassadors and the ACP Parliamentary Assembly; b) contributing to the implementation of the decisions of these organs; c) monitoring the implementation of the ACP-EU Partnership Agreement; d) assisting the ACP organs and joint institutions created in the framework of the ACP-EU Partnership Agreements; e) acting on proposals from the Committee of Ambassadors, the Council of Ministers determines the structure of the ACP Secretariat and lays down its Staff Regulations.

The Secretary-General, appointed by the ACP Council of ministers, is the principal authority at the ACP Secretariat. The Secretary-General is responsible for: a) ensuring the quality of the technical and administrative support and services provided by the Secretariat to the members and organs of the ACP Group; b) managing staff, projects and programmes; c) implementing the Group’s international policy, as well as directing and coordinating its cooperation policy.

Adjudication

See: Arbitration

Adolescent

Any young person of at least 15 years of age but un-

der 18 years of age, who is no longer subject to compulsory full-time schooling under national law.

See: Age (minimum age: ILO; EU Legislation); Child; Child labour; Convention on the Rights of the Child; Health and safety at work; Youth employment

Advisory Committee on Equal Opportunities for Women and Men (EU)

The Advisory Committee on Equal Opportunities for Women and Men, created in 1981 by a Commission Decision, subsequently amended in 1995, 2003, 2005 and 2008, has the remit of assisting the Commission in formulating and implementing the Union's activities aimed at promoting equal opportunities for women and men, and shall foster ongoing exchanges of relevant experience, policies and practices between the Member States and the various parties involved. To achieve these aims, the Committee shall:

- assist the Commission in the development of instruments for monitoring, evaluating and disseminating the results of measures taken at Community level to promote equal opportunities;
- contribute to the implementation of Union action programmes in the field, mainly by analysing the results and suggesting improvements to the measures taken;
- contribute, through its opinions, to the preparation of the Commission's annual report on progress made towards achieving equality of opportunity for women and men;
- encourage exchanges of information on measures taken at all levels to promote equal opportunities and, where appropriate, put forward proposals for possible follow-up action;
- deliver opinions or submit reports to the Commission, either at the latter's request or on its own initiative, on any matter of relevance to the promotion of equal opportunities in the Union.

The Committee is composed of one representative from each Member State appointed by the respective Government from among the officials of Ministries or Government Departments responsible for promoting equal opportunities; one representative from each Member State appointed by the Commission upon a proposal from the organization concerned, from among the members of national committees or bodies specifically responsible for equal opportunities; seven members representing employers' organizations at Community level, and seven members representing employees' organizations at

Community level. Two representatives of the European Women's Lobby shall attend meetings of the Committee as observers. Representatives of international and professional organizations and other associations making duly substantiated requests to the Commission may be given observer status. The Committee elects a Chairperson and two Vice-Chairpersons from among its members for a period of one year. The Chairperson may invite any person who is specially qualified in a particular subject on the agenda to take part in the work of the Committee as an expert. The Committee will be convened by the Commission and will meet at least twice a year at the Commission's headquarters. The Committee's deliberations are based on requests for opinions made by the Commission and on opinions delivered on its own initiative. They are not followed by a vote.

Advisory Committee on Safety, Hygiene and Health Protection at Work (EU)

The Advisory Committee on safety and health at work (ACSH) is a tripartite body set up in 2003 by a Council Decision (2003/C 218/01) to streamline the consultation process in the field of occupational safety and health (OSH) and rationalise the bodies created in this area by previous Council Decisions - namely the former Advisory Committee on Safety, Hygiene and Health Protection at Work (established in 1974) and the Mines Safety and Health Commission for safety and health in the coal mining and the other extractive industries (established in 1956). To ensure continuity concerning questions previously dealt with by the Mines Safety and Health Commission, a Standing Working Party (SWP) on the mining industry has been established within the Committee (Article 5.4, of the Council Decision 2003/C 218/01).

The Committee's remit is to assist the European Commission in the preparation, implementation and evaluation of activities in the fields of safety and health at work, in particular by:

- giving opinions on EU initiatives in the area of OSH (e.g. draft proposals for new legislation, EU programmes/strategies, any other EU initiatives having impact on health and safety policy);
- contributing pro-actively to identifying OSH policy priorities and to establishing relevant programmes/strategies;
- encouraging the exchange of views and experience between Member States and stakeholders, operating as in interface between EU and national level.

The Committee is composed of three full members per Member State, representing national governments, trade unions and employers' organizations. Two alternate members are appointed for each full member. Members from national governments, trade unions and employers' organizations are organised in three separate interest groups within the Committee, each of them designating a spokesperson and a coordinator.

The Committee meets twice a year in a plenary. Its activities are coordinated by a "Bureau", composed of two representatives from the Commission and the spokespersons and coordinators designated by the interest groups. The Committee is chaired by the Commission. The Committee's annual work programme is prepared by the Bureau for adoption by the Committee. A number of working parties are established within the Committee to deal with specific technical issues and to prepare draft opinions for adoption by the Committee.

See: Health and safety at work (EU); OSH Framework Directive (EU); Occupational Safety and Health (OSH) Strategic Framework 2014-2020

Age (minimum age) (EU)

Directive 94/33/EC (young workers) aims to lay down minimum requirements for the protection of young people at work. The directive gives legal definitions for the terms "child", "adolescent", "young person", "light work", "working time" and "rest period". Member States shall take the necessary measures to prohibit work by children. They shall ensure, under the conditions laid down by this Directive, that the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling - as imposed by national law - ends or 15 years in any event. The Directive shall apply to any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State. Exceptions can be adopted by Member States for occasional work or short-term work, involving domestic service in a private household or work regarded as not being harmful, damaging or dangerous to young people in a family undertaking.

The Directive defines "young people" as people under the age of 18 and "children" as young people under the age of 15 or who are still in full-time compulsory education in accordance with national legislation. Adolescents are young people between the

ages of 15 and 18 who are no longer in full-time compulsory education in accordance with national legislation.

Member States may make legislative exceptions for the prohibition of work by children not to apply to children employed for the purposes of cultural, artistic, sporting or advertising activities, subject to prior authorisation by the competent authority in each specific case; to children of at least 14 years of age working under a combined work/training scheme or an in-plant work-experience scheme, provided that such work is done in accordance with the conditions laid down by the competent authority; and to children of at least 14 years of age performing light work. *Light work* can also be performed by children of 13 years of age for a limited number of hours per week in the case of categories of work determined by national legislation.

"Light work", as defined in the Directive, shall mean all work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed is not likely to be harmful to the safety, health or development of children, and is not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

Employers shall adopt the measures necessary to protect the safety and health of young people, taking particular account of the specific risks which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured. Employers shall implement such measures on the basis of a comprehensive assessment of the hazards to young people in connection with their work according to Art 6/2 of the Directive. The assessment must be made before young people begin work and when there is any major change in working conditions.

The employer shall inform young people and their representatives of possible risks and of all measures adopted concerning their safety and health.

Member States shall prohibit the employment of young people for: a) work which is objectively beyond their physical or psychological capacity; b) work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health; c) work involving harmful exposure to radiation; d) work involving the risk of accidents which it may be assumed cannot be recog-

nised or avoided by young person owing to their insufficient attention to safety or lack of experience or training; e) or work in which there is a risk to health from extreme cold or heat, or from noise or vibration.

In addition, the Directive contains provisions relating to working hours, night work, rest periods, annual leave and rest breaks. Each Member State is responsible for defining the necessary measures applicable in the event of infringement of the provisions of this Directive; these measures must be effective and proportionate to the offence.

See: Adolescent; Child labour; Health and safety at work

Age (minimum age) (ILO)

Child labour has been a subject of standard-setting for the ILO ever since its foundation in 1919. The conventions adopted over the years deal with a diversity of subjects: a) the setting of a minimum age for admission to employment or work (C5, C10, C33, C59, C60, C123, C138); b) the prohibition of night work by young persons (C6, C79, C90); c) the requirement for medical examinations (C77, C78, C124); d) the prohibition of the worst forms of child labour (C182). ILO child labour conventions can be distinguished according to the scope of application. The earlier conventions all related to particular sectors or activities (such as agriculture, industry, non-industrial employment, and underground work). With the adoption of Convention No. 138, minimum age standards were collected into a common framework for all sectors, maintaining, however, some of the inter-sectoral differentiation contained in the earlier conventions. During the 1990s, major changes have been made to the ILO child labour regime. These culminated in the 'Declaration on Fundamental Principles and Rights at Work' of 1998 and the adoption of Convention No. 182 on the worst forms of child labour in 1999.

Age (non-discrimination on grounds of age) (EU)

European Union citizenship confers the right to protection from discrimination on the grounds of, among other things, age. A ban on age discrimination was introduced by the EU through the European Council's Directive 2000/78/EC, which establishes a general framework for equal treatment in employ-

ment and occupation³ (the Employment Equality Directive), and covering age among other grounds of differential treatment. Notwithstanding, as early as the *Mangold* case [C-144/04 [2005]], the CJEU stated that the principle of non-discrimination on grounds of age is to be regarded as a general principle of EU law. Age is also among the non-discrimination grounds in the (non-exhaustive) list in Article 21 of the EU Charter on Fundamental Rights 2000, a part of primary law after the Lisbon Treaty (cf. Art. 6 TEU). The EU Charter's Article 25 also contains a more general rule on the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life, Article 34.1 mentions social security and social assistance in the case of old age and Article 15 refers to the right to work, more generally. The prohibition of discrimination on the grounds of age is potentially an important legal mechanism to promote active ageing in relation to different aspects, such as combating premature resigning, making people work beyond pensionable age and facilitating the employment of older workers.

See: Charter of Fundamental Rights of the European Union; Citizenship of the European Union; Discrimination (employment and occupation) (EU); Fundamental rights (EU)

Age (non-discrimination on grounds of age) (ILO)

Discrimination based on age has become a matter of increasing concern in many countries in recent decades and the International Labour Conference dealt with this subject in a special part of the Older Workers Recommendation, 1980 (No. 162), which is designed to supplement the 1958 instruments on this point. The Recommendation applies to all workers who are liable to encounter difficulties in employment and occupation because of advancement in age. It defines, in terms comparable to those of the 1958 instruments, the measures to be taken to prevent any discrimination in employment against older workers, having regard to the special nature of their situation due to age, the need for the adjustment of working conditions and the problems of access to retirement. Does the setting of a mandatory retirement age constitute discrimination based on age? The Recommendation No. 162 addresses this question somewhat cautiously. It recommends adoption of the principle