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Social and Employment Policy Trends in the European Union and their Impact on Lithuanian Social Law

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Summary. The article addresses Lithuania‘s compliance with labour, employment, and social policy laws of the European Union (EU) after its accession to the EU. It highlights the significance of social and employment policies within the EU framework, as noted in the Lisbon Strategy and the European Pillar of Social Rights, and emphasises the continuous need to update national legislation to conform with expanding EU regulations.

The authors examine legislative advancements in the European Union throughout the previous ten years, examining social policy patterns and obstacles, including the COVID-19 pandemic, migration, and the economic downturn of 2007–2008. With an emphasis on the difficulties of the last ten years, they want to evaluate the development of social policy and labour law in the EU and in Lithuania.

According to the article, during the past decade, the EU has changed its approach to social policy and labour relations, from harmonisation to coordination. Recent European Commission proposals focus on economic matters, with a growing emphasis on the use of soft-law measures for social regulation. The EU‘s equal opportunities policy is changing,

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especially with regard to gender equality and work-life balance. The European Commission is pushing for legislation to improve work-life balance options, such as parental and paternity leaves. The goal of the EU Minimum Wage Directive 2022/2041 is to end wage dumping and reduce poverty among workers, especially those earning the minimum wage. It creates procedural principles for minimum wage setting in Member States but does not impose a uniform minimum pay level throughout the EU. Lithuania will have difficulty implementing this directive into national legislation, nevertheless, as its current collective bargaining and minimum wage models might not adhere to the directive's standards.
Keywords: labour law, social policy, paternity leave, reconciliation of work and family responsibilities, minimum monthly wage.

Socialinės ir užimtumo politikos tendencijos Europos Sąjungoje ir jų poveikis Lietuvos socialinei teisei

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Santrauka. Straipsnyje analizuojama, kaip Lietuva, būdama Europos Sąjungos (ES) valstybe nare, įgyvendina ES darbo, užimtumo ir socialinės politikos principus. Jame taip pat pabrėžiama socialinės ir užimtumo politikos svarba ES teisės sistemoje, aptariama Lisabonos strategijos ir Europos socialinių teisių ramsčio įtaka, akcentuojama nuolatinė būtinybė atnaujinti nacionalinius teisės aktus, kad jie atitiktų vis atnaujinamas ES teisines nuostatas. Autorės nagrinėja Europos Sąjungos teisėkūros pokyčius per pastaruosius dešimt metų, analizuoja ES socialinės politikos pokyčius ir kliūtis, įskaitant COVID-19 pandemiją, migraciją ir 2007–2008 metų ekonomikos krizę.

Straipsnyje konstatuojama, kad per pastarąjį dešimtmetį ES pakeitė savo požiūrį į socialinę politiką ir darbo santykius – nuo derinimo prie koordinavimo, t. y. pastarųjų metų Europos Komisijos pasiūlymuose daugiausia dėmesio skiriama ekonominiams klausimams, o socialinės ir darbo politikos klausimai vis labiau reguliuojami *soft law* instrumentais. Keičiasi ES lygių galimybių politika, ypač lyčių lygybės ir darbo bei asmeninio gyvenimo pusiausvyros srityse. Todėl Europos Komisija ragina valstybes nares priimti teisės aktus, kuriais būtų pagerintos darbo ir asmeninio gyvenimo pusiausvyros galimybės, pavyzdžiui, suteikiant tėvystės atostogos. Tuo tarpu ES minimalaus darbo užmokesčio direktyvos ((ES) 2022/2041) tikslas – panaikinti darbo užmokesčio dempingą ir sumažinti darbuotojų, ypač gaunančių minimalų darbo užmokestį, skurdą. Ja nustatomi procedūriniai minimalaus darbo užmokesčio nustatymo valstybėse narėse principai. Nors direktyva neunifikuoja paties minimalaus darbo užmokesčio dydžio, bet joje keliami tikslai nėra paprastai įgyvendinami. Todėl straipsnyje nurodoma, kad Lietuvai gali būti sunku įgyvendinti šią direktyvą nacionalinėje teisėje, nes dabartiniai kolektyvinių derybų ir minimalaus darbo užmokesčio modeliai turi būti sistemiškai keičiami, kad atitiktų direktyvos standartus.
Pagrindiniai žodžiai: darbo teisė, socialinė politika, tėvystės atostogos, darbo ir šeimos pareigų derinimas, minimali mėnesinė alga.

Introduction

Lithuania's accession to the European Union has inevitably necessitated a fundamental revision of national legislation and implementation of EU law by transposing it into legal acts regulating labour, employment and social areas. This process has not lost its relevance now when Lithuania is a full member of the European Union. Lithuania has to respond to the constant evolution of EU law by constantly revising and supplementing the legal acts regulating labour, social security and employment. Social and employment policy is of particular importance in the European Union. It was already in the Lisbon Strategy that was adopted in 2000 that these areas were recognised as fundamental, aimed at the European Union's economic growth, job creation, labour market modernisation, social inclusion, and other socio-economic developments. These objectives are definitely long-term and their importance has not diminished, however, recent developments (the economic crisis, the emergence of new forms of employment, migration, greater mobility of people, etc.) require additional impetus, additional

measures and their improvements at both EU and national level. As a result, the importance of social and employment policies remains high. And the main proof of this is the European Pillar of Social Rights, adopted in 2017. Its principles provide clear guidelines, firstly, on the measures to be taken by the European Union and, secondly, on how these measures are to be implemented in national systems. This article explores the legislative developments in the European Union over the last decade in order to improve the legal instruments for social and employment policies. To achieve this goal, the article discusses the social policy trends in the European Union in the last decade; analyses the challenges faced by the European Union's legal initiatives, starting with the 2007–2008 economic crisis, and examines the decisions taken by the Lithuanian legislator in implementing the relevant provisions of the European Union in the labour and social area, with an emphasis on the two most relevant areas of recent times – regulation of work and personal life balance, and minimum wage. In this study, the authors provide a systematic analysis of information from legal sources (official European Union and national legislation, other documents) and scientific literature.

It can be noted that the overall trends of social and employment policy in the European Union are not often analysed as a whole. More often, studies focus on individual objects and initiatives of European Union legislation, for example, reconciliation of work and family responsibilities (Kavoliūnaitė-Ragauskienė, Mačernytė-Panomariovienė, Petrylaitė, Beliūnienė, 2013; Klimašauskienė, 2015; Davulis, 2021), the impact of the 2008 crisis on labour and social security (Kūris, 2015). One of the most comprehensive studies analysing the overall evolution of labour law and related areas as well as the implementation of individual institutes in Lithuania was carried out as early as 2008 (Petrylaitė, Davulis, Petrylaitė, 2008). The authors' research covered the first years of Lithuania's membership in the European Union and the challenges the national law faced in the alignment with the already extensive *acquis communautaire*. These authors developed their research in their subsequent publications dedicated to the 10th anniversary of Lithuania's membership in the EU (Lithuanian Legal System under the Influence of European Union Law, 2014).

In this article, the authors aim to continue the previous research and provide an assessment of the subsequent developments in EU and Lithuanian labour law and social policy. The article focuses in particular on the last decade and the challenges the European Union faced at that time, including the economic crisis of 2007, the refugee crisis of 2016, and the COVID-19 pandemic.

The authors do not seek or attempt to cover all issues and solutions on the social agenda of the European Union. After describing the key issues of the labour law and social policy of the European Union, the authors choose two European Union legislative instruments they consider relevant for Lithuanian labour and social security law and discuss the specifics of their incorporation into national law.

1. Last decade's trends in the social policy of the European Union

The last decade has been one of the most important for social and employment policy in the agenda of the European Union's (EU) institutions and Member States. The need to initiate both European legislative measures and a debate on the prospects of a European and national dimension in addressing current issues in the field of social policy and related areas has been triggered by a number of challenges encountered by the region, starting with the Eurozone recession of 2007–2008 that swept through all the Member States of the European Union[1], the refugee crisis that began in 2016 (European

[1] In Lithuania, the Government officially recognised the economic crisis on 14 October 2009 (Resolution of the Government of the Republic of Lithuania No. 1295 of 14 October 2009 "On the Economic Hardship". *Official Gazette*, 2009, No. 125-5380).

Commission, 2017), and, eventually, the pandemic of the COVID-19 disease, which locked down the whole world and Europe in 2020.

After the 2007 financial crisis, the focus was on Europe's economic and budgetary policies and austerity programmes. Later, and in particular when Jean-Claude Juncker was President of the European Commission (2014–2019), new social issues were put on the European agenda and European social policy showed signs of acceleration towards a new quality and a revision of values.

The European Pillar of Social Rights was announced by President Juncker in his State of the Union Address to the European Parliament on 9 September 2015. The President of the Commission stated in his **speech**: "We have to step up the work for a fair and truly pan-European labour market. [...] As part of these efforts, I will want to develop a European Pillar of Social Rights, which takes account of the changing realities of Europe's societies and the world of work. And which can serve as a compass for the renewed convergence within the euro area. The European Pillar of Social Rights should complement what we have already jointly achieved when it comes to the protection of workers in the EU. I will expect social partners to play a central role in this process. I believe we do well to start with this initiative within the euro area, while allowing other EU Member States to join in if they want to do so." (European Commission, 2016).

When presenting an outline of the Pillar of Social Rights, the European Commission noted that, in line with the principle of subsidiarity, Member States are primarily responsible for the definition of their employment and social policy, which includes labour law and the organisation of welfare systems. Such competence of the Member States is recognised in the EU Treaties and the EU, in its own turn, supports and complements the activities of the Member States. It was also emphasised that action at EU level reflects the founding principles of the Union and builds on the conviction that economic development should result in greater social progress and cohesion and that social policy should also be conceived as a productive factor, which helps reduce inequality, maximise job creation and allows Europe's human capital to thrive. The EU implements its social mission and objectives on the basis of Article 153 of the Treaty on the Functioning of the European Union (TFEU) on social policy. The Union is competent to support and complement the activities of the Member States in a number of fields for people both inside and outside the labour market: workers, jobseekers and the unemployed. The objective is to improve working conditions, social security and social protection, ensure workers' health and safety, information and consultation, and promote the integration of persons excluded from the labour market. Given that the Member States participating in the Pillar of Social Rights are encouraged to implement this initiative in areas of their primary responsibility, this initiative is also relevant in areas where the EU has no powers to adopt legislation, but where guidance and exchange of experience would be desirable (Communication …, 2016).

After almost a year of consultations and debate in the European area, on 26 April 2017, the Commission presented the European Pillar of Social Rights (EPSR or Social Pillar), which sets out 20 key principles and rights to support a renewed process of convergence towards better living and working conditions. They are divided into three categories: (i) equal opportunities and access to the labour market, (ii) fair working conditions, and (iii) social protection and inclusion (Commission Recommendation, 2017). At the Social Summit in Gothenburg in November 2017, the Parliament, the Council and the Commission highlighted their shared commitment by adopting a common proclamation on the EPSR.

The European Pillar of Social Rights has, to some extent, completed the movement of the European Union from a "market-making" to a "social dimension" orientation. There are, however, a number of sceptical voices among scholars who are wary of yet another set of principles – the European Pillar of Social Rights. They say that this inflated rhetoric is not backed by legislative actions. It is also noted

that initiatives for regulating social policy issues by European secondary law have actually declined over the last decade, t. y. instead of "hard" secondary law, non-binding declarations and soft-law mechanisms have recently dominated European social policy governance (Grohs, 2019, p. 21–35).

There have also been similar intentions to give the EU market a "social face" in the past, for example, with the adoption of the equally non-binding Charter of Fundamental Social Rights in 1989 (The Charter of the Fundamental Social Rights of Workers, 1989). When the Charter was adopted, it was seen as a sort of social pillar used by Jacques Delors, President of the European Commission at that time, in order to boost European instruments in health and safety issues, employment area and initiate European Social Dialogue.[2] It should be noted that, when the Treaty on European Union was replaced by the Treaty of Amsterdam (1997), it contained a direct reference to the Charter, thus making the principles of social policy, which were enshrined in the Charter, an integral part of primary EU law. As a result, in the coming years, some of them were implemented in a number of EU labour law directives (such as the directive on working conditions, maternity protection, collective redundancies, youth employment protection, part-time jobs, etc.).

Another example of soft-law transformation to EU primary law is the European Charter of Fundamental Rights adopted in 2000. Following the entry into force of the Lisbon Treaty in 2009, the Charter of Fundamental Rights has the same legal value as the European Union treaties (Rodríguez Guillén; Clemente Soler, 2020, p. 32–52). On the other hand, the 2000s marked a new political era in Europe. The 2000s witnessed a neoliberal turn, thus opening a third period characterised by the decline of social integration in Europe. Often seen as an institutional innovation, new mechanisms for coordinating domestic social policies without legal constraint have reflected the absence of political agreement on what should be done at the EU level. Both social regulation in the internal market and the European social dialogue have lost momentum. The Court of Justice of the EU has had a tremendous impact on the development of EU social law. Its jurisprudence has often been aggressive and contributed to the extension of social rights (e.g., for mobile citizens or discriminated groups). However, a linear, continuously progressive trend should not be taken for granted. Over the past ten years, it has proved more cautious in making certain social rights included in the EU Charter of Fundamental Rights effective (Coman, Crespy, Schmidt, 2020, p. 199, 201; Zahn, 2017, p. 92–116).

Since 2000, however, EU legislative processes in the field of social issues started stagnating, for example, lengthy debates did not result in amendments to the Working Time Directive and regulation of the opt-out rules (Picard, 2012), the Maternity Directive and *inter alia* the extension of compulsory maternity leave from two weeks to six weeks after birth (European Commission, 2015; Summary of Responses…, 2010), and the adoption of the Directive on gender balance among directors of listed companies (Directive (EU) 2022/2381) took even 10 years (from proposal in 2012 to its adoption in 2022). At that time, Member States were encouraged to take liberalising decisions in the field of regulation of employment relations (Petrylaitė, 2008, p. 116–124). In its invitation to the public to discuss the future of labour law in November 2006, the European Commission published a Green Paper on modernising labour law to meet the challenges of the 21st century (Commission Green Paper…, 2006). This document stated that "the modernization of labour law constitutes a key element for the success of the adaptability of workers and enterprises". The paper noted that, for the last few decades, instead of moving towards a single European social model and unified regulation of labour and social issues in the European Union, the practices of individual Member States had, on the contrary, diverged and,

[2] The decade under the presidency of the French socialist Jacques Delors is referred to theoretical works as "the golden age of social Europe" (for more, see: Coman, Crespy, Schmidt, 2020, p. 196–216).

in the interests of greater flexisecurity, formed highly segmented labour markets, based on different national laws and practices. In 2007, the European Commission, following the debate on the Green Paper on Employment Law, adopted the Communication "Towards Common Principles of Flexicurity: More and better jobs through flexibility and security" (Communication from the Commission…, 2007), which identified four main orientations for the flexicurity guidelines: (i) *flexible and reliable contractual arrangements* through modern labour laws, collective agreements and work organisation; (ii) *comprehensive lifelong learning strategies* to ensure the continual adaptability and employability of workers, particularly the most vulnerable; (iii) *effective active labour market policies* that help people cope with rapid change, reduce unemployment spells and ease transitions to new jobs; (iv) *modern social security systems* that provide adequate income support, encourage employment and facilitate labour market mobility (systems should include social protection provisions, such as unemployment benefits, pensions and healthcare, as well as help people combine work with private and family responsibilities).

The above-discussed steps taken by the European Commission in the area of regulation of labour and social issues show the ambition of the EU to build an effective European social model based on social partnership, civil and business responsibility, integrating the existing twenty-seven separate national systems of labour relations. This model was to become a key instrument for the competitiveness of the EU and its Member States in the global market, foster creativity, provide more information and responsibility for the parties to employment relations, and to enable them to achieve good social protection through an active employment policy.

The modernisation of the labour market, however, was not a panacea and did not yield expected results when the EU encountered the economic recession and migrant crisis. On the contrary, it only increased poverty and exclusion, as stated by the European Commission in its Communication Europe 2020 (EUROPE 2020 A strategy for smart..., 2020). Labour law scholars, in their own turn, considered that the "modernisation" or "future" debate has pushed labour law into a sort of regulatory crisis. It was referred to as the crisis of the traditional socio-economic regulatory model (Hendrickx, 2017).

It was in this social policy climate that the European Social Pillar was adopted. This non-binding document, as already mentioned, is a set of guidelines consisting of 20 principles and objectives to "serve as a guide towards efficient employment and social outcomes when responding to current and future challenges, which are directly aimed at fulfilling people's essential needs, and ensuring better enactment and implementation of social rights".

There are a number of sceptical voices among scholars who are cautious of yet another set of principles that make up the European Pillar of Social Rights and argue that this inflated rhetoric is not backed by legislative action (Schutter, 2018). They also note that initiatives for the regulation of social policy issues by European secondary law have actually declined over the last decade, i.e. instead of "hard" secondary law, non-binding declarations and soft-law mechanisms have recently dominated European social policy governance (Grohs, 2019, p. 196–216).

Yet some other critics consider that there is still a lack of consistency between the logic of rights of the pillar, the logic of soft coordination of the European Semester and the logic of investment of the European Social Fund. Moreover, the document covers issues of a very different legal nature – those that are already regulated by EU law (such as safe and healthy working environment or information on working conditions) and those that fall exclusively within the competence of the Member States and depend on the goodwill of their policy-making (such as social dialogue, access to housing, flexible employment). These authors, therefore, take the position that there is wide scepticism across the board as to whether, in the current political context, the European Pillar of Social Rights is not doomed to fall short of expectations (Coman, Crespy, Schmidt, 2020, p. 196–216).

2. Situation of the social *acquis communautaire*

The boom in EU labour law directives took place between 1994 and 2002, when, after the Maastricht Treaty, the European Commission, together with the social partners, took advantage of a more active social dimension in the EU political area and adopted a number of important labour law directives harmonising labour law institutes, such as information & consultation, fixed-term work, part-time work, non-discrimination, equal treatment in employment and working environment, etc. However, since 2002, this trend has faded and soft law mechanisms have taken over as the preferred method for achieving an approximation of labour standards across the EU (Zahn, 2020, p. 84).

We can agree with the authors who argue that the EU social *acquis communautaire* has undergone a shift from harmonisation to coordination over the last decade. EU governance is no longer confined to regulating the social aspects of the single market, but seeks to reach further into domestic welfare state reforms, though with poor results in terms of progressive modernisation (Coman, Crespy, Schmidt, 2020, p. 196–216). At the core of the new socio-economic governance of the EU now lies the European Semester,[3] designed to enhance macroeconomic and systemic convergence across the Eurozone and the Union (Schutter, 2018). From a normative point of view, requirements for the EU to generate social justice depend on how one conceives of the social relations binding European citizens. Many share the diagnosis that, depending on the country and type of socio-economic model which they belong to, not all citizens have benefited equally from European integration (Coman, Crespy, Schmidt, 2020, p. 196–216). This is why the European Commission's recent proposals in the field of the social *acquis communautaire* have taken the form of solutions to certain economic issues, such as the unemployment insurance fund or a common standard for minimum wages. The European Commission has traditionally included in its agenda a policy of equal opportunities in reconciling work and family responsibilities and the development of rules on working conditions as well as information about them.

2.1. Balance between work and private life

The policy of equal opportunities has always had a prominent place on the social policy agenda of the EU. Therefore, in order to bring about real changes in the area of protection of the rights of workers with family responsibilities and in the implementation of the principles of the European Pillar of Social Rights, in particular those focusing on gender equality, equal opportunities, work-life balance, childcare and support to children, and long-term care, after the discussions with the European social partners in 2017, the European Commission presented potential legislative proposals for the so-called "work-life balance" package or a new Directive (Proposal for a Directive…, 2010).

The social risk of maternity and paternity is considered to be, perhaps, the most changing in recent decades, as the attitude towards family responsibilities and the involvement of men and women in bringing up children or caring for sick family members has changed significantly, and this has led to the need for a qualitatively new legal standard. Different Member States of the European Union have a wide range of experience in regulating the legal protection of maternity and paternity. For example, in 1877, Switzerland prohibited employment of pregnant women two weeks prior to and six weeks after childbirth and a similar prohibition was introduced in Germany in 1878. The issue of wage protection

[3] The European Semester is established under Article 2a (2) of Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, O*J L 306,* 23.11.2011, p. 12–24.

for childbearing workers had not yet been raised at that time as it was considered the man was the main "breadwinner". It was only in the middle of the 20th century that the issue of other types of "parental" leave and payment guarantees for such leave came up. For example, Sweden introduced 3 months of maternity leave in 1955 (Norway in 1956, Finland in 1964, Denmark in 1967) and provided that payment equivalent to unemployment insurance or sickness benefits would be paid for that period of time. Sweden was the first to introduce parental leave in 1974, soon followed by Slovenia and France, and Norway three years later (1977). Traditionally, however, childcare and breaks from employment remained women's domain. It is interesting to note that the first attempt to introduce compulsory parental leave, which could be taken by either parent, was made in the EU as early as in 1983. However, it was not successful (Canaan, Lassen, Rosenbaum, Steingrimsdottir, 2022, p. 4–5).

Fundamental changes at EU level in the unification of social benefits, and in particular special leave for workers with children, began in the 1990s. Initially, EU legislation (Directive 92/85/EEC) focused on mothers (pregnant workers and workers who have recently given birth) and granted to them the right to a minimum of 14 weeks of maternity leave, which had to be paid at least at the national sick pay level. Subsequently, a right of at least 3 months of parental leave was introduced in 1996 (Directive 96/34/EC) for each parent, male or female, but with no obligation to compensate the leave. This right was reinforced several years later in 2010 (Directive 2010/18/EU) by increasing the minimum period to 4 months and by designing the extra month on non-transferable basis (the father could not transfer this part of the leave to the mother). Despite the good intention of this reform, which intended to incentivise the take-up of the leave by fathers, it was unsuccessful, as the leave remained unpaid (Oliveira, Rodriguez, Lutz, 2000, p. 295–323).

Taking into account the existing situation, the differences in national systems and evolving attitudes, as well as the modernisation of family policy, the European Commission invited the social partners back in 2015 to consultations on a new "work-life balance" legal initiative, i.e. proposed to introduce a new type of paternity and carers' leave at directive level and to strengthen the existing legal protection of parental leave (European Commission, 2016). As the European social partners were unable to reach agreement on the legal regulation of "family-related" leave (maternity, paternity, and parental leave), the European Commission kept moderating the initiative and presented a proposal for a Directive in April 2017. The Commission stressed in its proposal that the new Directive aims to: (i) improve access to work-life balance arrangements – such as leaves and flexible working arrangements; (ii) increase take-up of family-related leaves and flexible working arrangements by men (Proposal for a Directive…, 2010). The Directive was adopted on 20 June 2019 and had to be transposed into national law by 2 August 2022 (Directive (EU) 2019/1158). Recital 9 of the Directive states *inter alia* that the Directive has been adopted in the light of Principles 2 and 9 of the Social Pillar on gender equality and work-life balance.

This Directive has been most discussed because it has introduced compulsory non-transferable part of paternity leave: "each worker has an individual right to 4 months' paid parental leave, 2 months of which are non-transferable between the parents" (Article 5(1)). In addition, the Directive provided that (i) fathers or equivalent second parents have the right to take paternity leave of 10 working days on the birth of a child; (ii) a minimum leave of 5 working days for workers caring for relatives (carers) in need of support due to serious medical reasons; these rules also apply to a person who lives in the same household as the worker; (iii) workers with children up to a specified age, but at least 8, and carers have the right to request flexible working arrangements for caring purposes. Both the adoption of the Directive and its transposition into national law have sparked heated debates in many Member States. While in some countries, national law was *a priori* in line with the standards of the Directive

and, most importantly, with the traditions where childcare was shared by both parents while in others it gave rise to not only legislative-level but also social discussions (Treľová, 2021, p. 348–352; Porte, Jie Im, Pircher, Szelewa, 2023, p. 549–563).

Even before the implementation of Directive (EU) 2019/1158 in Lithuania, it was acknowledged that some of its principal provisions had been implemented in Lithuania and even to a greater extent than required by the EU legislation in force at the time or by the new Directive. For example, Lithuania had provided for individual parental leave, the duration of which was one of the longest compared to other EU countries. Also, Lithuanian legislation granted equal rights to parental leave not only for both parents of the child but also other close relatives. This was considered as positive approach that could improve the conditions for mothers to integrate better into the labour market (Mačernytė-Panomariovienė, Krasauskas, 2021, p. 179–202). However, in order to achieve the objective of Directive (EU) 2019/1158, Lithuania needed to find and establish a mechanism for non-transferable parental leave.

Directive (EU) 2019/1158 was transposed in Lithuania by amending the relevant provisions of the Labour Code (Law Amending…, 2022). Amendments to Article 134 of the Labour Code provided that the two-month part of parental leave could be taken by each of the child‘s parents (guardians, adoptive parents) until the child reaches the age of 18 or 24 months and that this part of the leave could not be transferred to anyone else. Each parent (adoptive parent, guardian), when taking parental leave until the child reaches the age of 18 or 24 months, must first of all use the two-month part that cannot be transferred to anyone, i.e. when each of the parents (adoptive parent, guardians) takes parental leave before the child reaches the age of 18 or 24 months, he/she shall first use the non-transferable two-month period (it should be noted that this is relevant for the payment of benefits as this non-transferable part of the parental leave is subject to the highest benefit). Parental leave may be taken in parts and alternating with the other parent, however, the non-transferable two-month period of parental leave cannot be taken by both parents (adoptive parents, guardians) at the same time. The non-transferable two-month period of parental leave should not be regarded as a separate type of leave, as it is the same as parental leave by its substance (purpose), granting procedure and within the meaning of Directive (EU) 2019/1158, except that this part cannot be transferred to any other person referred to in Article 134(1) to (2) of the Labour Code and is granted only to the parents (adoptive parents, guardians). As it is a non-transferable part of parental leave, if one of the persons does not take it before the child reaches the age of 18 or 24 months, this has negative implications for the other person. It should be stressed that such negative implications do not affect the duration of the leave – the person taking it still retains the right to the maximum duration guaranteed by the Labour Code. The negative implication is the loss of the right to parental benefit for the period of the unused non-transferable part (maximum of two months). As Lithuania has decided to limit the right to compensation for the leave rather than the leave itself (its duration), the provisions of the Law on Sickness and Maternity regulating the procedure for calculation and payment of parental benefits have been amended accordingly (Law Amending…, 2022).

In Lithuania, the new parental leave procedure with the non-transferable part came into force on 1 January 2023. Official statistical data on the actual situation are not yet available, but it should be noted that the previous year data of the State Social Insurance Fund Board (Sodra) shows that, although the number of men taking parental leave has been increasing over the last decades, they most often take the leave in the second year of parental care, but continue to work and the child is still cared for by the mother. For example, in 2020, 40% of the recipients of the parental leave benefit in the second year of childcare were men, and almost all of them, i.e. 90% or 7,500, kept working and the child was being cared for by the mother during that time (Explanatory letter on Draft Laws…). Therefore, there is a real possibility that parents with children will be encouraged to use the two-month parental

leave provided for in the Labour Code, which will not only be a step closer to one of the objectives of the EU Directive, i.e. to encourage the participation of both parents in child-rearing, and to promote gender balance in the labour market as, in the longer run, such sharing of the burden of parental responsibility should also lead to the reintegration of female workers, who have given birth and are bringing up children into the labour market. It would also allow parents to create the basis for a more equal distribution of responsibilities in the future; reducing the mother‘s burden would strengthen the parental relationship, and the father‘s greater engagement in the child’s care can mitigate the mother’s post-natal and depressive outcomes, as well as help build a very strong relationship with the children.

2.2. Minimum wage

Most debate, both in theory and in law, has been probably generated (Cova, 2022) by one of the most recent EU Directives (EU) 2022/2041 on adequate minimum wages in the European Union (Directive (EU) 2022/2041).

At the end of October 2020, the Commission published its proposal for a Directive on adequate minimum wages for workers across Member States. Putting forward a legislative proposal on minimum wages was one of the key promises made by European Commission President Ursula von der Leyen to European workers. The goal was to tackle in-work poverty, which increased from 8.3% to 9.4% between 2007 and 2018, and contribute to the implementation of the European Pillar of Social Rights. The Directive has found yet another purpose: protecting low-wage workers against inflation. The proposal did not receive the warmest welcome from the get-go though. Nordic countries were especially reluctant to see the EU legislate on such matter for fear of damaging their national welfare systems. In six EU countries (Sweden, Denmark, Finland, Austria, Italy, Cyprus), wages are set exclusively through collective bargaining and thus do not have a statutory minimum wage. Some central and eastern countries, in particular Hungary, were also finding the Directive to trample on their national sovereignty and would have preferred the issue to be left entirely up to the Member States. For others though, such as France, Luxembourg, Belgium, Italy and Spain, the Directive was seen as an opportunity to accelerate wage convergence in the EU, – the statutory minimum wage in Luxembourg is about 7 times higher than the one in Bulgaria, and about 3 times higher when we take into account national prices – and therefore fight social dumping (Kerneïs, 2022).

With this proposal for a Directive, the Commission has walked a fine line between social and economic objectives and legitimacy. This is because Article 153(5) TFEU excludes direct EU intervention on the level of wages. However, according to Article 153(1)(b) TFEU, interventions of coordination between the various national regulations concerning working conditions are allowed (Gentile, 2022). In response to its opponents concerning legal powers, the Commission states that it respects this limit, since the proposal does not contain measures directly affecting the level of pay and stresses that, by its proposal for a directive, it first of all seeks to implement Principle 6 of the European Pillar of Social Rights – establish the right to adequate minimum wages.

The Commission proposed legislation to provide more effective minimum wage protection across the EU as part of its commitment to improving living and working conditions. By way of background, some of the issues identified, which the Directive seeks to address, include the following: (i) statutory minimum wage rates in many Member States are inadequate because they are too low in relation to other wages and do not provide a decent standard of living; (ii) whilst minimum wage protection provided for in collective agreements in low-paid occupations is generally adequate, many workers are not covered by collective agreements; (iii) even where minimum wage protection exists, non-compliance and lack of enforcement in some Member States means that it is ineffective; (iv) low-paid workers are

particularly vulnerable during an economic downturn and women, younger workers, migrant workers and people with disabilities are more likely to be disproportionately represented in this group (Proposal for a Directive…, 2020).

Following the negotiations between the European Parliament and the Council of the EU, the Directive on adequate minimum wages in the European Union has been adopted and Member States now have to transpose the applicable provisions in domestic legislation by 15 November 2024.

In order to allay the fears of Scandinavian trade unions that the Directive will adversely affect the tradition existing in their countries to set minimum wages exclusively by collective bargaining and that the statutory minimum wage will gradually be set under pressure from the employers, Article 1(2) of the Directive provides that "this Directive shall be without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and conclude collective agreements". However, at least for the time being, this does not ease the concerns of trade unions in the countries with a high standard of collective bargaining, who continue to fear a dual wage-setting situation. It is clear that no legal safeguard, not even the most stringent, offers maximum protection, and it is very likely that the provisions of this Directive and the most varying national wage-setting systems will, sooner or later, be put on the agenda of the Court of Justice of the European Union.

It should be noted that the Directive does not set a uniform minimum wage in the European Union, nor does it imperatively require to impose statutory minimum wage if a country has a long-standing tradition of collective bargaining. The Directive establishes the system to improve the adequacy of minimum wages and the access of workers to the protection of minimum wage protection across the EU. To achieve these objectives, the Directive aims to: (i) *to promote collective bargaining on wage-setting* – the Directive imposes an obligation on Member States to promote collective bargaining on minimum wages, to take measures to enable the social partners to exchange the information necessary for negotiations, to negotiate constructively, and to establish legal safeguards against adverse effects on the parties involved in negotiations (Article 4); moreover, the Directive provides that the Member States where the collective bargaining coverage rate is less than 80% shall establish an action plan to promote collective bargaining; (ii) *to establish statutory minimum wage procedures* – the Directive imposes an obligation on the States where minimum wages are generally set by law to establish clear procedures and criteria to be taken into account in the setting of such wages (Article 5); it also sets out 4 mandatory criteria (Article 5(2)) (iii) *to ensure access to minimum wages* – the Directive imposes an obligation on Member States to establish an effective institutional and administrative framework for the supervision and control of this right, including a labour inspectorate (Article 8).

Hence, the provisions of this Directive are not aimed at establishing a single mechanism for wage setting but instead leaves the various Member States free to choose the implementation methods to guarantee this appropriate minimum treatment, such as collective bargaining and the statutory minimum wage. The purpose of such an intervention is to counter the spread of low wages and wage dumping in the European context (Gentile, 2022).

Member States have until November 2024 to adopt the measures required by the Directive on adequate minimum wages in the European Union. The impact for employers will vary across Member States depending on existing national arrangements around minimum wage protection. The prevalent view is that the implementation of the Directive is likely to have the greatest consequences for CEE industrial relations systems: with an increase and upward convergence in minimum wage levels among European countries (Cova, 2022).

Lithuania is attributed to the EU Member States where the minimum wage is set by legislation (in accordance with Article 141 of the Labour Code, the minimum wage is approved by the Government

on the recommendation of the Tripartite Council). It should be noted that, although the Labour Code (Article 141(4)) allows collective agreements to set a higher minimum wage than the statutory minimum wage, no such collective agreements have been concluded in Lithuania.

Neither the Labour Code nor any other legal act of Lithuania details the indicators and economic trends that the Government and the Tripartite Council should take into account when setting the minimum wage. For a number of years, no specific criteria have been applied in general and negotiations used to be conducted by the Tripartite Council members, who proposed the minimum wage level that they considered adequate. In the recent years, since the Labour Code (Article 141(3)) introduced the requirement to take into account the indicators and trends of development of the national economy when setting the minimum wage, the Bank of Lithuania and the Ministry of Finance present their conclusions on the economic and social situation of the country to the Tripartite Council at the request of the Government. It should be noted that, in the autumn of 2017, the Tripartite Council discussed the minimum wage criteria and formula and decided after lengthy discussions: "In order to depoliticise the setting of the minimum wage, to propose to the Government to establish that the ratio of the minimum monthly wage to the average monthly wage should not be less than 45% and not more than 50%, and should correspond to the average of one fourth the EU Member States with the highest ratio between the minimum monthly wage and the average monthly wage, as determined on the basis of the data for the last three years published by the Statistical Office of the European Union" (Minutes No. TTP-16…, 2017). It can, therefore, be stated that the social partners have tried, to some extent, to determine the minimum wage criteria as early as in 2017, however, it is clear that they are not adequate and appropriate in the context of Article 5 of the Directive (Petrylaitė, D., Petrylaitė, V., 2024, p. 353–368). For its part, the Government of Lithuania, in response to the adoption of the Directive and the obligation to create the national legal preconditions for an [adequate] minimum wage, stated that "Lithuania has a well-functioning procedure for setting minimum wages, developed together with the social partners. Lithuania applies 3 out of the 4 criteria set out in the EU Directive when determining the minimum wage level and will have to take into account the purchasing power, i.e. the cost of living, as an additional consideration in the implementation of the Directive" (Position of the Minister of Social Security…, 2023).

As noted by economist Justas Mundeikis (Mundeikis, 2020), despite numerous discussions, the Tripartite Council has not, even once, defined the exact formula for the minimum monthly wage. The author has analysed the meeting recordings of the Tripartite Council in 2016–2018 and concluded that there is a general consensus that the formula for the minimum monthly wage is "MMW = coefficient ∗ AW", where the coefficient is calculated on the basis of the methodology provided by the Bank of Lithuania. The researcher goes further and finds that average wage (AW) has never been clearly defined: in 2017 and 2018, the current year's minimum monthly wage (MMW) projection was used to determine the AW, while the next year's AW was used in 2019. The Bank of Lithuania calculates the MMW coefficient on the basis of the ratio of the MMW to the AW in the five countries with the highest average ratio, according to Eurostat data. The economist criticises this methodology for calculating the MMW coefficient pointing out that it is likely that not all countries have provided data to Eurostat. The author's views can also be supported from the legal perspective – it could be considered that the formula for setting the MMW has at least some legal basis, i.e. it is established (agreed) in the Tripartite Council and recorded in its minutes, however, it is utterly unclear which legal document forms the basis for the MMW used by the Bank of Lithuania.

The fact that the MMW-setting formula and criteria, as they are referred to by the Government, are indeed controversial and unclear, is also demonstrated by the discussions that come up between

the social partners from time to time on the need to elaborate and specify these criteria, etc. (Minutes No. TTP-5…, 2023).

As for the other objective of the Adequate Minimum Wage Directive, which is to promote collective bargaining and to ensure that at least 80% of the workforce is covered by collective agreements, Lithuania is not in a fortunate situation either. Lithuania is known as one of the EU Member States with the lowest collective bargaining coverage. It should be noted that only trade unions can negotiate and sign collective agreements under the Labour Code. The estimations of the level of coverage of collective bargaining agreements have an inherent difficulty – different sources indicate different indicators, which may be due to both the calculation methodology used and the sources of information. We can, however, identify certain trends. According to the most recent data provided by the Ministry of Social Security and Labour (Social indicators (2023), the coverage rate in Lithuania has been recently increasing quite rapidly – from 14% in 2019, 21% in 2020 to 25% in 2021. On the other hand, for example, the coverage rate in 2019 was only 7.4% according to the data of the ILO (Statistics on social dialogue, 2023), and 7.9% according to the OECD (OECD and AIAS, 2021). Hence, the Government of Lithuania agrees and acknowledges that achieving the 80% coverage of collective agreements required by the Directive will require legal, social and political measures to promote collective agreements (Ministry of Social Security and Labour, 2022).

In conclusion, unfortunately, less than a year before the expected date of transposition of the Directive into national law,[4] neither the social partners nor the Government have even started any constructive debates and real steps in Lithuania to transpose the provisions of the Directive into national law and to take measures to consolidate the social and infrastructural schemes for the setting of the MMW and to promote collective bargaining. Quite the opposite, some reverse steps can be observed in law-making as a result of the adoption of amendments to the wage-setting model for civil servants and employees working in budgetary institutions. Their entry into force on 1 January 2024 even eliminates, if viewed theoretically, national collective bargaining, which (under the revised wage-setting model) at least formally was negotiated between the Government and trade unions regarding the wage level for the next year. Meanwhile, as of 1 January 2024, the base wage (salary) is set by a specific law, which does not provide for any prior negotiation with trade unions and, furthermore, does not even specify how often (in how many years) this wage is to be reviewed.

Conclusions

1. Over the last decade, the EU has seen a shift from harmonisation to coordination in the field of regulation of social policy and labour relations. As a result, the recent proposals of the European Commission in the field of the social *acquis communautaire* have taken the form of solutions to certain economic issues. The European Commission traditionally has equal opportunities on its agenda, seeks more favourable opportunities for the balance of work and family responsibilities. There is an increasing tendency to regulate social issues by soft-law measures, while the process of adopting new labour law directives has been used less frequently than at the juncture of the 20th and the 21st centuries.
2. The equal opportunities policy of the EU, in particular with regard to gender equality and the rights of workers in the area of reconciling work and family responsibilities, keeps changing and evolving. The European Commission started initiating legislative proposals to promote opportunities for

[4] The publication was prepared in December 2023.

work and life balance, including paternity and parental leave. When introducing the relevant legal innovations, new social trends and prevailing family needs were taken into account. Different EU Member States had and still have different traditions and legal instruments on paternity and parental leave, and the new requirements of EU law have given rise to much debate and required greater adaptation in individual countries. However, these developments are in line with the principles of the European Pillar of Social Rights and can be seen as important for gender equality and better reconciliation of family and work.

Even before the implementation of Directive (EU) 2019/1158 in Lithuania, it was acknowledged that some of its principal provisions had been implemented in Lithuania and even to a greater extent than required by the EU legislation in force at that time. A major change in Lithuanian national law is the non-transferable two-month part of parental leave, which has been applied since 1 January 2023. Although there is still no meaningful official statistics on how Lithuania has fared in the practical implementation of the parental leave innovations, we have no doubt that the new regulation will eventually contribute to greater engagement of men/fathers in childcare, which in turn will lead to a greater integration of women in the labour market and a better gender balance in the reconciliation of work and family responsibilities.

3. EU Directive (EU) 2022/2041 on adequate minimum wages in the European Union has triggered intense debate at both the theoretical and legal level. The Directive aims to achieve one of the objectives of the European Pillar of Social Rights – to reduce poverty among workers, in particular those earning the minimum wage, and to eliminate wage dumping in the European area. The Directive has not imposed a single minimum wage level to be valid throughout the EU, however, by establishing common requirements for the setting of minimum wages in national practice, it has laid down certain procedural guidelines, which should be applied uniformly in all Member States. One of the most important of these guidelines is the requirement to promote and develop collective bargaining and aim that the minimum wage agreed during the bargaining covers around 80% of all workers.

   The transposition of this Directive into national law is likely to create legal and organisational difficulties for Lithuania, as both the model for setting the minimum wage and the expansion of collective bargaining are not adequate and sufficient in Lithuania according to the requirements of the Directive. Less than a year before the expected date of transposition of the Directive into national law, neither the social partners nor the Government have even started any constructive debates and real steps in Lithuania to transpose the provisions of the Directive into national law and to take measures to consolidate the social and infrastructural schemes for the setting of the MMW and to promote collective bargaining.

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