

EU SOCIAL POLICY UNDER PRESSURE: CRISES, COURT DECISIONS AND NEW LABOUR MARKET REALITIES*

*AB Sosyal Politikası:
Krizler, Mahkeme Kararları ve Yeni İşgücü Piyasası Gerçeklikleri*

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Abstract

The member states of the European Union have adopted the principle of free movement of workers to promote economic integration and achieve the single market. This principle has been supported by various regulations throughout history, yet it has been tested by global crises, technological changes, political transformations, and unforeseen events such as the pandemic. This study examines the agreements and frameworks developed from the Treaty of Rome to the present from the perspective of EU social policy and labor law, highlighting the vulnerability of systems during crises, their capacity to recover, and the need for reforms. The emergence of new job types, the spread of flexible work models, and the rise of the platform economy have introduced uncertainties in the labor market. Furthermore, in light of European Court of Justice rulings, the study explores the boundaries of free movement, collective action, and the right to strike, examining the delicate balance between fundamental rights and economic freedoms, as well as the interaction between long-term social policy goals and economic integration, pointing to the need for future reforms.

Keywords: European Union, Social Policy, Freedom of Movement of Workers, CJEU Case Law, EU Integration.

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Özet

Avrupa Birliği üye devletleri, ekonomik bütünleşmeyi ilerletmek ve tek pazar hedefini gerçekleştirmek için işçilerin serbest dolaşımı ilkesini benimsemiştir. Bu ilke, tarih boyunca farklı düzenlemelerle desteklenmiş, ancak küresel krizler, teknolojik değişimler, siyasi dönüşümler ve pandemi gibi beklenmedik olaylarla sınanmıştır. Çalışmada, AB sosyal politikası ve iş hukuku perspektifi çerçevesinde, Roma Anlaşması'ndan günümüze kadar geliştirilen anlaşmalar ve mutabakatlar ele alınmış; özellikle kriz dönemlerinde sistemlerin kırılganlığı, toparlanma kapasitesi ve reform gerekliliği üzerinde durulmuştur. Yeni iş tanımlarının ortaya çıkışı, esnek çalışma modellerinin yaygınlaşması ve platform ekonomisinin yükselişi, iş gücü piyasasında belirsizlikler yaratmıştır. Ayrıca, Avrupa Adalet Divanı kararları ışığında, işçilerin serbest dolaşımı ile toplu eylem ve grev haklarının sınırları, temel haklar ve ekonomik özgürlükler arasındaki hassas denge incelenmiş; AB sosyal politikalarının uzun vadeli hedefleri ile ekonomik bütünleşme arasındaki etkileşim ve geleceğe dönük reform ihtiyaçları değerlendirilmiştir.

Anahtar Kelimeler: Avrupa Birliği, Sosyal Politika, İşçilerin Serbest Dolaşım Özgürlüğü, ABAD İçtihat Hukuku, AB Entegrasyonu.

INTRODUCTION

The free movement of goods, services, people, and capital, which forms the foundation of the European Union's (EU) economic structure, is crucial for its economic system. The EU's rules regulating state aid provided by member states to companies are significant and have global impacts on maintaining economic balance. The free movement of workers helps match labor supply and demand, allowing companies to find more skilled workers while also giving employees the chance to find better job opportunities across the EU. Although this principle has clear benefits for economic growth and equality, it has also faced some challenges.

The EU made important changes and progress during its journey to its current form. Related to this progress one key topic in European Integration is allowing workers to move freely. Within the Union, the free movement of workers includes the right to travel, live, and work in other member states, apply for jobs freely, carry out their jobs, and enjoy the same social rights as citizens of the country they live in.

Workers from other EU countries have the same social and labor rights as local workers, such as joining trade unions, accessing healthcare, and receiving unemployment benefits if needed. This principle ensures that EU citizens are treated fairly when looking for work in other EU countries. However, there are still challenges to fully exercising these rights, as different countries may interpret

and apply them in various ways, creating difficulties for workers. Workers might also face discrimination or have trouble getting their qualifications recognized, limiting their ability to use their rights. Despite these issues, the EU is working to improve workers' protections, so they can move freely and enjoy equal treatment in other member states' labor markets.

The European Union member states have embraced the principle of free movement to boost their economies and achieve the goal of a single market. This objective is both reasonable and understandable, leading to numerous reforms over time. However, these reforms have faced challenges due to global changes, technological advancements, political events such as Brexit, wars, and crises, as well as health emergencies like the Covid-19 pandemic. In such situations, the reforms made by the European Union are crucial. While systems vulnerable in times of crisis struggle to recover, it is significant that the EU implements reforms with a forward-thinking approach that considers the long-term impact of social policies. Additionally, the emergence of new job definitions, shifting away from traditional labor concepts, and the rise of gig economies and smart contracts create uncertainty. Reforms in these areas, particularly concerning platform workers and the gig economy, which have become global issues, are necessary for progress.

This study explores the European Court of Justice's (ECJ) evolving approach to the free movement of workers and the broader economic dimensions of EU labor law. Despite extensive literature on landmark cases like Viking and Laval, the gig economy presents unprecedented challenges to traditional employment binaries. Accordingly, the primary research question is: To what extent do recent ECJ rulings (e.g., Yodel, FNV Kiem) and the European Pillar of Social Rights succeed in restoring the balance between economic freedoms and collective social rights amid new labor market realities? By addressing this, the article seeks to determine whether EU social policy is undergoing a structural renaissance or merely applying outdated tools to precarious work models. Methodologically, the study employs a contextualized doctrinal legal analysis, relying on primary EU legislative instruments and evolving ECJ jurisprudence to evaluate the continuous tension between market integration and social protection.

I. THE FREEDOM OF MOVEMENT OF WORKERS

Freedom of movements is a key area of EU law that affects employment practices and often leads to significant debate. One of the most important goals of the European Union, the Single Market, relies heavily on the free movement of production factors¹. These factors are goods, capital, services, and workers, and we must approach these factors holistically.

¹ Uluç Çağatay, 'Avrupa Birliğinde İşçilerin Serbest Dolaşımı ve Türk İşçilerinin Durumu' (2009) 8(16) Journal of Social, Economic Research 1, 3.



The free movement of goods is generally based on the concept of a customs union. Services, unlike goods, are intangible and cannot be stored². The free movement of capital includes shares in partnerships, real estate investments, securities, loans, banking transactions, stock market transactions, as well as loans, guarantees, and sureties. The mobility of workers and companies in the internal market is a key element in the further economic, social and cultural construction of Europe. The positive impact of mobility on the living and working conditions of mobile workers has won broad support for mobility in Europe. However, negative perceptions of mobility and its consequences for workers and citizens in both sending and receiving countries cannot be ignored. The concept of cross-border labor mobility encompasses both the free movement of workers and the temporary mobility of workers (secondment) in the context of cross-border service provision³.

In relation to the main topic, which lays the foundation for this section, the free movement of workers is that EU citizens are permitted to work in any EU Member State, that is, they may choose where to pursue their economic activities⁴. People see free movement differently based on their situation, with mobile individuals viewing it as an opportunity, while stayers may see immigration and transnational rights as a national issue or even a threat, and according to some writers EU citizenship has failed to create a shared European identity because it mainly benefits those who move, while the majority, despite being affected by EU policies, do not feel the same connection⁵. As of 2017, 3.8% of the EU labour force live and work in another member state⁶. The free movement of workers is a key principle in the EU, as outlined in Article 45 of the Treaty on the Functioning of the European Union and shaped by EU laws and rulings of the Court of Justice⁷. Free movement includes the rights of movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State⁸. The legal basis for this is grounded in

² Çağatay, n (1) 3.

³ Report on joint work of the European social partners on the ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases (19 March 2010).

⁴ Federal Ministry Republic of Austria, Labour and Economy, [https://www.bmaw.gv.at/A.D. 14 December 2024](https://www.bmaw.gv.at/A.D.14%20December%202024).

⁵ S Börner, 'Marshall revisited: EU social policy from a social-rights perspective' (2020) 30(4) Journal of European Social Policy 421 <https://doi.org/10.1177/0958928720904330> A. D. 4 March 2026.

⁶ www.ihrec.ie (Access Date: 16.12.2024); In 2017, 3.8% of working-age EU citizens (20-64) lived in a different Member State from their own, up from 2.5% ten years earlier, but this varies by country, and only those staying for at least 12 months are included, not short-term moves, more info look, Grandovska / Agafitei / Ivan, 2018.

⁷ employment-social-affairs.ec.europa.eu (Access Date: 15.12.2024)

⁸ A Kennedy, Free Movement of Workers, Fact Sheets on the European Union (March 2024) <https://www.europarl.europa.eu> accessed 14 December 2024.

Article 3(2) of the Treaty on European Union (TEU); Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU)⁹.

TFEU Article 45 prohibits discrimination against the workers. EU workers also have the right to accept a job offer made in another EU country, to move freely within the country, to stay for the purpose of employment, and to stay on afterward under certain conditions¹⁰. The prohibition of discrimination applies to Member States and to employers as well. Prohibitions also exist against discrimination on grounds of gender, age, ethnic origin, sexual orientation, religion or belief.

The fundamental right of free movement of workers has been developed in various regulations and directives since the 1960s¹¹. Free movement of workers has been achieved in three phases through three regulations issued by the Council, based on Article 49 of the Treaty. These regulations have direct applicability in member states; first phase is between September 1, 1961, and April 30, 1964, is regulated by the provisions set out in Regulation No. 15/61, dated August 16, 1961. This regulation mainly addresses issues such as equal pay, working conditions, union membership, and dismissals, and during this period, the right to free movement required a clear job offer in the host member state¹². The second period, between May 1, 1964, and November 8, 1968, was defined by Regulation 38/64, adopted on March 25, 1964, which set its priorities. The regulation reduced restrictions on workers and their families' movement and residence rights; the third period, starting from November 9, 1968, was defined by Regulation 1612/68 dated October 15, 1968, and the 68/360 Directive. With these regulations, restrictions on workers' free movement were removed, granting workers from one Member State the same rights as local workers in another Member State¹³.

The European Parliament supported the creation of the European Labour Authority (ELA) in 2019 and pushed for a single portal for free movement and joint inspections. It aims to improve the enforcement of EU labour mobility and social security rules, It also highlighted the importance of tackling undeclared work. It helps mobile workers and employers, supports cross-border cooperation among Member States, and assists in resolving disputes, ELA also manages initiatives like the EURES job mobility portal and the platform to address undeclared work¹⁴. In 2024, Parliament called for strengthening and expanding the ELA's mandate for the future.

⁹ Ibid. 4.

¹⁰ Ibid. 4.

¹¹ Ibid. 4.

¹² Çağatay (n 1) 4.

¹³ Ibid. 5.

¹⁴ Kennedy (n 8).



It is worth mentioning that the family members of workers from the EU have certain rights that derive from the freedom of movement for workers: family members of a worker from the EU who is employed in another EU country are entitled to reside and work in that country. The worker's children have the right to a school education in that country¹⁵. The persons considered as family members are: spouses or registered partners, children and grandchildren as long as they are supported by the worker, and parents and grandparents who are supported by the worker. The category also includes an unmarried partner living in civil partnership with the worker as well as other family members¹⁶.

Article 45 says that the provisions of this Article shall not apply to employment in the public service. Member states may impose exceptions to free movement on grounds of public order, public security, and public health under the principle of proportionality, but they cannot do so for economic reasons¹⁷. Consequently, any measure that infringes upon the free movement of workers cannot be validated by the implementation of a separate corrective measure; such an act still constitutes a breach of the right to free movement and falls outside the scope of permissible exceptions.

Furthermore workers from other member countries also have the right to join trade and labour unions. Their right to join unions cannot be blocked by citing public order as a reason¹⁸.

II. DEFINING SOCIAL POLICY

Social policy originates from the values of a society and cannot be understood outside of its social context. Welfare systems reflect the culture and politics of the society they belong to. Furthermore, social policy focuses on the needs society must meet to continue, which are collectively recognized and addressed. It concerns the collective responsibility for people in dependent situations, such as the very young, the elderly, or those facing economic hardship. Ultimately, it aims to integrate individuals into society—not just to meet individual needs—and focuses on creating social benefits such as equality, the rule of law, and public health for the whole community¹⁹.

¹⁵ www.bmaw.gv.at (Access Date: 14.12.2024).

¹⁶ www.bmaw.gv.at (Access Date: 14.12.2024).

¹⁷ V Demiray, 'Avrupa Birliğinde İşçilerin Serbest Dolaşım Hakkı ve Türk İşçilerinin Durumu' (European Union Specialization Thesis, Turkish Labour and Social Security Ministry, 2014) 16.

¹⁸ Ibid. 20.

¹⁹ D Reisman, 'The Definition of Social Policy' in Richard Titmuss (ed), Palgrave Macmillan (2001) https://doi.org/10.1057/9780230512917_2



Community social policy developed in phases, the first phase (1958-1972) focused on social security and free movement, but lacked significant legislation, the second phase began in 1972 with the Paris Summit addressing the gap between economic growth and citizens' quality of life, leading to the "Social Action Programme" of 1974, the third phase started in 1986 with the adoption of the SEA, which renewed focus on social policy through a strategy of completing the internal market, furthering political integration, and creating a "human face" for the Community²⁰.

Social challenges, such as inequality and job shortages, are intrinsically linked to the market. While the Internal Market is a highly integrated system governed by EU law, market needs must be balanced with social requirements to maintain stability. Although the Common Market has significantly improved economic performance, it has also introduced new challenges regarding social cohesion. In this context, digital transformation offers potential solutions to these issues without conflicting with national traditions²¹. EU social policy regulates labor rights, social protection, and welfare, ensuring equal treatment for workers and better living and working conditions, while also supporting the stability of the single market and citizens' well-being²². EU social policies must align with economic integration goals, ensuring both market efficiency and workers' rights, but this integration has led to debates over national sovereignty and EU competencies, with the future likely seeing a deeper connection between economic policies and social protections. EU social policy has shifted from focusing solely on economic integration to balancing both social and economic goals, requiring future cooperation among member states to address social issues while promoting growth and managing social rights and economic freedoms²³.

After discussing the definition of social policy and its application in the European Union, it is important to understand the main approach of social policy in relation to the labor market in the EU. In this context, the Market-Making Thesis argues that EU social policy aims to promote labor mobility and turn the labor market into a single market²⁴. However, EU social policies face challenges due to the diverse social systems and welfare models across member states, with the harmonization of policies being complicated by the

²⁰ D O'Keeffe, 'The Uneasy Progress of European Social Policy' (1996) 2(2) Columbia Journal of European Law.

²¹ DR Troitño, S Ivic, O Hamulak and A Fedorova, 'Social Policy in the European Union: Genesis, Obstacles and Digital Future' (2023) 10(1) European Studies – The Review of European Law, Economics and Politics 15 <https://doi.org/10.2478/eustu-2023-0001>

²² C Barnard, EU 'Social' Policy: From Employment Law to Labour Market Reform (3rd edn, BC 2024)

²³ Barnard (n 22) 714.

²⁴ Ibid. 714.



need to respect national sovereignty, and issues such as social dumping and labor market flexibility continue to hinder effective implementation. EU social policies aim to balance economic growth with social justice, but challenges arise when social protections clash with economic freedoms like free movement of workers and services, requiring future policies to harmonize both while meeting the needs of all citizens.

III. HISTORY OF EU SOCIAL POLICY

A. The Treaty of Rome

The Treaty of Rome, or Treaty establishing the European Economic Community, was signed on 25 March 1957²⁵. The Treaty of Rome created the European Economic Community (EEC), bringing together Belgium, Germany, France, Italy, Luxembourg, and the Netherlands to encourage growth through trade which it set up a common market where goods, people, services, and money could move freely²⁶.

In the first version of the Treaty of Rome (1957), social policy was not very important, and social partners had no role²⁷. However, it still provided the first legal basis for social policy at the EU level. Social policy was not very important, and social partners had no role. Explicit legislative competence in areas such as free movement of workers²⁸. The treaty aims to create a single economic area. And also it shows clearly that the aim is to ensure, at the same time, the economic and social progress of the member countries²⁹.

The social policy rules in the Treaty of Rome are not as clearly defined as the economic rules. Unlike the economic rules, most of the social policy rules are not mandatory, except for a few that directly affect the creation of the common market³⁰. The treaty of Rome established the coordination of Member States' social security systems for free movement of workers³¹. It enshrined the

²⁵ consilium.europa.eu (Access date: 11.12.2024)

²⁶ consilium.europa.eu (Access date: 11.12.2024)

²⁷ M Borzaga, 'EU Social Policy, Social Partners, and the Rule of Law' in L Antonioli and C Ruzza (eds), *The Rule of Law in the EU* (Springer 2024) https://doi.org/10.1007/978-3-031-55322-6_15

²⁸ C Finn and B Vaughan, 'Perspectives on the Evolution of European Social Policy' (National Economic and Social Development Office (NESDO)) 4.

²⁹ JD Neirinck, 'The Rome Treaty Social Policy and EEC Applied Labour Economics' (1969) 22(3) *Chronique de politique étrangère* 267.

³⁰ Ibid. 270.

³¹ S Goodger and M Makay, *Social and Employment Policy: General Principles, Fact Sheets on the European Union* (May 2024) <https://www.europarl.europa.eu> accessed 16 December 2024.



principle of equal pay for men and women, which the European Court of Justice recognised as being directly applicable³², and provided for the establishment of the European Social Fund (ESF)³³. In legal scholarship, this was not considered labor and social law rules, as the goal was not to protect workers but to help them find jobs in other EU countries without discrimination, with the European Economic Communities (EEC) having only real labor law power, being equal pay for men and women³⁴.

The 1986 Single European Act changed the 1957 Treaty of Rome to improve the common market, seen as key to better living and working conditions, but since this would not happen automatically, it included new rules on social policy, with Articles 118A and 118B giving the EEC more power in labor and social law and recognizing the importance of trade unions, employers' organizations, and social dialogue³⁵.

However EU laws based on this Treaty rule needed all Member States to agree, but strong opposition, especially from the UK during the 1980s and early 1990s, slowed down progress³⁶.

B. The Community Social Charter 1989

In June 1988, at the Hanover Summit, the European Council recognized the importance of the social aspects of the single market, and later that year, at the Rhodes Summit, the Council stated that the completion of the single market should not be seen as an end goal. Soon after, the Economic and Social Committee proposed a set of basic social rights that it believed should be established alongside the single market. In December 1989, the Charter was adopted by eleven out of the twelve member states, with the UK being the exception, and it included social rights related to the labor market, vocational training, equal opportunities, and the work environment³⁷.

The Charter has sixteen introduction clauses explaining its legal basis, mentioning worker movement, the right to work in another country, social laws, better working conditions, talks between workers and employers, equal pay for men and women, job training, economic and social unity, and making laws more similar³⁸. The charter allows free movement for all jobs and workers

³² Mentioned under title of E. The Role of the Court of Justice in Shaping a Unique EU Social Policy in this work.

³³ Goodger and Makay (n 31) 2024

³⁴ Borzaga (n 27) 2024.

³⁵ Borzaga (n 27) 2024.

³⁶ A O'Neill QC, 'Social Rights in the Charter: Employment and Social Security' (paper) 2.

³⁷ Finn and Vaughan (n 28) 6.

³⁸ GM Kraw, 'The Community Charter of the Fundamental Social Rights of Workers' (1990) 13(3) Hastings International and Comparative Law Review 467, 471.

without any work or workplace restrictions. Freedom of movement is the first right in the Charter, with restrictions only for public order, safety, or health; any citizen can work anywhere in the Community under the same conditions as nationals, and both nationals and non-nationals are treated equally in employment, working conditions, and social protection; residence rules will be harmonized, especially for family reunification, and obstacles like unrecognized diplomas will be removed; the Charter also focuses on improving living and working conditions for citizens in border areas³⁹.

C. The Maastricht Treaty

The Maastricht Treaty, signed on February 7, 1992, and effective from November 1, 1993, introduced the concept of “Union citizenship” into the EU’s founding treaties⁴⁰. With this treaty, the principle of free movement was extended to include not only workers and self-employed individuals but also those not engaged in economic activities also free movement rights began to be recognized as a fundamental right⁴¹.

The Maastricht Treaty introduced important changes to the 1957 Rome Treaty, gradually moving towards economic and monetary union, establishing European citizenship, creating common action in security and foreign policy, and granting the Community more powers in certain areas⁴². In Article 21, all EU citizens and their family members the right, in principle, to move and reside freely within the EU⁴³.

The Maastricht Treaty marked the beginning of new cooperation among member countries. For example, it included areas like defense, justice, and internal affairs⁴⁴. The European Community became the most important pillar of the European Union, which was established as a three-pillar structure under the Maastricht Treaty⁴⁵.

Although the above-mentioned Maastricht Treaty did not introduce different regulations in the area of social policy compared to the Rome Treaty. Due to

³⁹ Ibid. 473.

⁴⁰ Demiray (n 17) 9.

⁴¹ Ibid. 10.

⁴² F Turgay, ‘Trade Union Rights Are a Package that Includes the Right to Organize, Collective Bargaining, and the Right to Strike, Which Is Part of Collective Action’ (2012) 1(14) ISGUC Industrial Relations and Human Resources Journal 27, 30.

⁴³ www.ihrec.ie (Access Date: 16.12.2024)

⁴⁴ AM Yazıcı, ‘European Development of Social Policy and Turkey’s European Social Policy Compliance’ (2016) 44 Journal of Anadolu Bil Meslek Yüksekokulu 1 <https://dergipark.org.tr/en/pub/abmyoder/issue/46666/585098> accessed 4 March 2026, 10.

⁴⁵ A Çelik, *Avrupa Birliği Sosyal Politikası ve Türkiye* (Kitap Yayınevi 2014) 126.

the UK's negative stance, the Maastricht Treaty failed to achieve the expected European Social Union, and no changes were made to the social policy provisions of the Rome Treaty (Articles 117–128). For this reason, Maastricht is sometimes called a “blind agreement”⁴⁶. It is argued that post-Maastricht social policy steps were created to “sweeten the bitter pill of deregulation” for the idea of Social Europe⁴⁷.

D. Amsterdam Treaty

The Amsterdam Treaty, signed on October 2, 1997, entered into force on May 1, 1999, introducing amendments to the Maastricht Treaty. The Amsterdam Treaty made significant changes to the Rome Treaty⁴⁸. This treaty emphasized that Union citizenship does not replace national citizenship but complements it⁴⁹. The treaty aimed to clarify and simplify the treaty articles, focusing on justice, security, freedom, and foreign policy. It strengthened the European Parliament's powers and introduced more flexible decision-making. Financial and foreign policy coordination was improved, though few changes were made in the Common Foreign and Security Policy (CFSP). The major change was the introduction of a “common strategy,” where EU states agreed to align on shared interests, as outlined in Article J.3 of the treaty⁵⁰. The issue of a double legal basis caused by the UK's opt-out was resolved with the Amsterdam Treaty (1997), where all Member States, including the UK, agreed to include the Agreement on Social Policy into what later became the TFEU⁵¹.

It marked several key achievements in social policy, including the reversal of the UK opt-out on social agreements, which was a major step for the development and strengthening of EU employment and social policy, as well as the confirmation of social rights outlined in the 1961 European Social Charter and the 1989 Social Charter⁵². The Treaty of Amsterdam expanded the EU's social policy by broadening gender equality to cover all labor issues, not just pay, and extending health and safety to all working conditions, with gender equality now under QMV⁵³. Since the Amsterdam Treaty, the Open Method of Coordination (OMC) expanded soft law to cover employment, pensions, and social inclusion, shifting from a ‘market economy’ to a ‘social market economy’ focused on full

⁴⁶ Ibid. 126-127.

⁴⁷ Ibid. 127.

⁴⁸ Ibid. p. 128.

⁴⁹ Demiray (n 17) 10.

⁵⁰ Yazıcı (n 44) 11.

⁵¹ Goodger and Makay (n 31) 2024

⁵² Finn and Vaughan (n 28) 8

⁵³ Ibid

employment, social progress, and strong protection⁵⁴.

The Amsterdam Treaty added promoting employment as an EU objective and tasked the Community with supporting Member States through a coordinated strategy, known as the European Employment Strategy (EES)⁵⁵. In this treaty, European leaders added a separate section on employment (Articles 125-130) and, for the first time, declared that employment policy is a shared European responsibility. The Amsterdam Treaty marked the EU's recognition of employment as a common European issue⁵⁶. The Amsterdam Treaty seems to have been a high-water mark in terms of the development of a common EU position on social policy⁵⁷. The Amsterdam Treaty's emphasis on employment combined with member-states' determination to maintain their primacy in this area seemed to confirm that the immediate prospect was for consolidation with few new initiatives. This seems to support the 'sovereignty' view that the relationship between European integration and national social policy was quite minimal and they were destined to walk along separate paths⁵⁸.

E. The Lisbon Strategy and The Nice And Lisbon Treaties

At the Nice Summit, EU member states and those signed to the European Convention on Human Rights adopted a unified system. The 2000 Nice Summit saw the adoption of the Charter of Fundamental Rights of the EU⁵⁹. The founding EU treaties include principles on fundamental rights, equality, and anti-discrimination. These principles were carefully considered by the EU founders. The EU's financial integration supports this approach. The Social Protection Committee (SPC) is an EU advisory policy committee for Employment and Social Affairs Ministers in the Employment and Social Affairs Council (EPSCO), established by the Treaty of Nice (Treaty on the Functioning of the EU, article 160). It is composed of national experts and monitors social conditions in the EU and the development of social protection policies in member countries⁶⁰. Also The Court of Justice has an important role in ensuring fundamental rights, despite facing some criticism⁶¹. The Nice Treaty came into force in February 2003⁶². The Nice

⁵⁴ A Plomien, 'EU Social and Gender Policy beyond Brexit: Towards the European Pillar of Social Rights' (8 January 2018).

⁵⁵ Goodger and Makay (n 31) 2024

⁵⁶ Çelik (n 45) 129.

⁵⁷ Finn and Vaughan (n 28) 15

⁵⁸ Finn and Vaughan (n 28) 16

⁵⁹ Goodger and Makay (n 31) 2024

⁶⁰ www.eurodiaconia.org, (Access Date: 10.01.2025)

⁶¹ Yazıcı (n 44) 12.

⁶² Çelik (n 45) 130; JT Addison, 'In the Beginning, There Was Social Policy: Developments in

Treaty implemented a series of institutional reforms, and the Nice Declaration called for a comprehensive debate on the future of the European Union, in light of the impending accession of countries from Eastern and Southern Europe⁶³.

Member States have agreed to establish mid-term objectives, indicators and political pressure to work together and tackle social challenges. This is a soft law process, that is to say resting on political encouragement and pressure. This process was fully acknowledged and named “Open Method of Coordination” at the Lisbon Summit (2000)⁶⁴. And also The Lisbon strategy, with three pillars - economic, social, and environmental - aimed to make the EU the world’s most competitive economy, offering better jobs and more social cohesion, with the social pillar focusing on education, training, and active employment policies⁶⁵. A key feature of the Lisbon strategy is its approach to implementation, where some areas, like completing the single market, were under the EU’s control, while others, such as education, training, and labor market policy, were mainly the responsibility of the Member States⁶⁶.

The need to reform the European Union led to the drafting of a constitutional treaty in the early 2000s. The Constitution was adopted at the June 2004 Brussels summit. The most important feature of the EU Constitution was that it simplified the very fragmented EU legislation (the Treaty of Rome and its amendments, the Single European Act, the Treaty of Maastricht, the Treaty of Amsterdam and the Treaty of Nice). Then the constitution dropped off the EU agenda and the idea of a more limited reform treaty took its place. The Lisbon Treaty emerged from this framework⁶⁷. The Lisbon Treaty abolished the three-pillar structure of the EU⁶⁸. The European Community disappeared, replaced by the European Union. The EU gained legal personality and the power to fulfill legal procedures⁶⁹. In 2006, the renewed Lisbon Strategy introduced a new framework for social protection and inclusion, requiring member states to create National Plans in three areas: Social Protection, Pensions, and Health and Long-Term Care, using OMC-type processes⁷⁰.

Social Policy in the European Union from 1972 through 2008’ (Professional Report 01_09, Rimini Centre for Economic Analysis 2009) 17.

⁶³ Addison (n 62) 17.

⁶⁴ www.eurodiaconia.org, (Access Date: 10.01.2025)

⁶⁵ Finn and Vaughan (n 28) 8

⁶⁶ Ibid

⁶⁷ Çelik (n 45). 136.

⁶⁸ Ibid

⁶⁹ Ibid. 137.

⁷⁰ Finn and Vaughan (n 28) 12

With the Treaty of Lisbon, which came into force on December 1, 2009, the provisions regarding the free movement of workers remained unchanged. However, these provisions were renumbered under the new title, the Treaty on the Functioning of the European Union (TFEU), and are now listed between Articles 45 and 48⁷¹. This treaty made only a few changes compared to earlier treaties. The European Union was redefined as a single legal entity, and the distinction between the EU and the community was removed⁷². Apart from these institutional changes, the most important aspect of the Lisbon Treaty was the legal binding nature of the EU Charter of Fundamental Rights⁷³. The Lisbon Treaty encourages deeper integration through enhanced cooperation, but its impact depends on member states' political will and could lead to divisions in the EU⁷⁴.

F. Collective Rights In European Union

The EU Charter of Fundamental Rights contains an explicit recognition of the "right to collective bargaining and action" (Article 28), which is binding on all EU members except three Member States. Article 28 seeks to support and promote the common use of collective bargaining in most European countries as a basic right⁷⁵. In this context, there is no need to include a social progress protocol in the Treaty⁷⁶. The Strasbourg Court has interpreted Article 11 of the ECHR to encompass workers' rights, including public service employees, to participate in collective bargaining and industrial action, recognizing the right to strike as an essential part of collective bargaining⁷⁷.

Trade union rights are a package that includes the right to organize, collective bargaining, and the right to strike, all of which are forms of collective action⁷⁸. The right to strike has been confirmed through case law created by the ILO's Freedom of Association Committee, based on its interpretation of Convention No. 87⁷⁹. As stated in the rulings of the European Court of Human Rights (ECtHR), if the right to form a trade union for workers or public servants is granted without including the rights to collective bargaining or the right to strike, it is considered

⁷¹ Demiray (n 17) 10.

⁷² Yazıcı (n 44) 13.

⁷³ Çelik (n 45) 137.

⁷⁴ A Jacobs, 'Labour Law, Social Security Law and Social Policy after the Entering into Force of the Treaty of Lisbon' (2011) 2(2) European Labour Law Journal 98.

⁷⁵ B Veneziani, 'European Labour Law and the EU Charter of Fundamental Rights' (Summary Version, in B Bercusson (ed), ETUI 2002) 55.

⁷⁶ Report on 19 March 2010.

⁷⁷ O'Neill (n 36) 29.

⁷⁸ Turgay (n 42) 28.

⁷⁹ Veneziani (n 75) 58.

to be lacking in substance⁸⁰. In EU law, trade union rights should be viewed as a cohesive whole. Strike action is naturally a last resort when all negotiations have failed or been refused, and trade unions are assumed to make such decisions carefully, as strikes can harm workers' interests by causing unpaid days or risking company stability that secures jobs, but international labour law allows Member States to set legal requirements for a strike's legitimacy⁸¹.

In the EU primary sources include the treaties that establish the Community (such as the ECSC Treaty, EEC and the EAEC Treaty), along with their annexes and the treaties that amended these (including the Single European Act, the Maastricht, Amsterdam, Nice, and Lisbon Treaties mentioned above). Secondary sources are legal documents produced by the Community institutions based on the treaties. These include regulations, directives, recommendations, opinions, and decisions.

The Community Social Charter emerged from the need to establish a set of minimum social rules at the Community level. It was inspired by the ILO conventions and the 1961 European Social Charter. The Community Charter is the third document that explicitly mentions the right to strike, following the European Social Charter and the United Nations International Covenant on Economic, Social, and Cultural Rights⁸².

The Social Policy Protocol, which is part of the Maastricht Treaty, is an extension of the Community Social Charter. The protocol, which grants the Union the power to issue directives setting minimum standards in social policy, changed the decision-making process for social policy issues. It expanded the scope of the qualified majority voting system established by the Single European Act. However, areas such as strikes and lockouts remain outside the scope of the EU's regulatory powers⁸³. The Amsterdam Treaty did not introduce any new regulations on trade union rights.

International Labour Organization's (ILO) Convention No. 87, as interpreted by experts, strikes can only be prohibited in essential services, meaning services whose disruption could threaten the life, safety, or health of the population, and in its 2010 report, the Committee of Experts criticized ECJ rulings, like in the BALPA case (English case), for likely restricting the right to strike in ways that conflict with the Convention⁸⁴.

⁸⁰ Turgay (n 42) 28.

⁸¹ A Veldman, 'The Protection of the Fundamental Right to Strike within the Context of the European Internal Market: Implications of the Forthcoming Accession of the EU to the ECHR' (2013) 9(1) Utrecht Law Review 115.

⁸² Turgay (n 42) 30.

⁸³ Ibid. 31.

⁸⁴ Veldman (n 81) 114.

There are views that during the European Union harmonization process, trade union rights were excluded from the harmonization agenda because EU institutions do not have the authority to make decisions in this area⁸⁵.

The most important decision of the Court on trade union rights is undoubtedly the so-called Albany Case. This judgment is of vital importance for the protection of the right to collective bargaining. In the Albany Case (67/96, 115-117/97 and 219/97), the ECJ rejected a Dutch company's claim that collective bargaining agreements violated the Community's competition rules and upheld the legality of collective bargaining agreements under Union law⁸⁶. The social partners decided to establish a pension fund for the textiles sector, asked the authorities to make membership mandatory for all workers in that sector, faced arguments that this would breach EU competition rules by restricting firms from choosing other pension providers, but the ECJ highlighted the Treaty's social objectives, including the promotion of collective bargaining⁸⁷. This case was important because it involved a textile business refusing to contribute to a mandatory pension fund established under a collective agreement in the Netherlands, with Albany invoking the competition rules under Article 81(1) of the EC Treaty to argue that this harmed its competitiveness. The Court emphasized the equal importance of social policy and competition objectives, referring to the Agreement on Social Policy, which aims for social dialogue and collective bargaining. As a result, the Court ruled that such negotiations should be considered outside the scope of the competition provisions of the EC Treaty⁸⁸. The Albany decision has key implications for labor law, as EC law treats trade union rights as equal to or above competition law, unlike UK law, and these rights are supported by EC Treaty Articles 2 and 3, though their relevance may change due to the Treaty of Amsterdam's revisions⁸⁹.

The Court of Justice's approach is very different from the Court of Human Rights' (ECtHR), which starts with the fundamental right to strike, as recognized in *Demir and Baykara* and *Enerji-Yapı Yol*, and views any restriction on this right as unlawful unless it is justified and the measures are proportionate⁹⁰. All EU countries accept collective agreements as a part of labour law, and in some

⁸⁵ Turgay (n 42) 38.

⁸⁶ Çelik (n 45) 172.

⁸⁷ ACL Davies, 'One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ' (2008) 37 *Industrial Law Journal* 126, 140.

⁸⁸ Finn and Vaughan (n 28) 26-27

⁸⁹ B Bercusson, 'Protecting Collective Agreements' (1999) 41 *Thompson Labour and European Law Review* 1.

⁹⁰ C Barnard, 'Social Europe After Lisbon: Putting the Social into the Market Economy' (2013) *Hungarian Yearbook of International Law and European Law* 8.

countries, especially in Nordic ones, these agreements are the main source of employment rights, with strong respect for the autonomy of social partners, but this principle sometimes clashes with internal market law, as seen in the *Commission v. Germany* (occupational pensions) case⁹¹.

Just as there are numerous limitations on economic freedoms, there may also be limits on the exercise of social fundamental rights, such as the right to collective action. This also applies to other fundamental rights, such as freedom of expression. According to the established case law of the ECJ, rights such as the right to life or the prohibition of torture are not subject to restrictions, whereas rights such as freedom of expression or freedom of assembly are not absolute⁹².

IV. THE ROLE OF THE COURT OF JUSTICE IN SHAPING A UNIQUE EU SOCIAL POLICY

A. Social dumping and decisions on equality

The EU's social dimension is tied to gender equality, rooted in its legal framework, starting with equal pay in the 1957 Treaty of Rome, strengthened by directives, action plans, and mainstreaming gender in policymaking, reflecting equal treatment, opportunities, and outcomes to transform unequal gender relations, though inequalities remain⁹³.

Employment rules are important to make sure workers are treated fairly, as jobs play a key role in people's lives and incomes, linking fairness at work to fairness in society⁹⁴. The principle of equal treatment for both EU workers and third-country nationals is crucial for preventing discrimination, supporting the integration of migrant workers, and avoiding social dumping⁹⁵. Social dumping happens when a country with weak labor standards exports goods at lower costs than competitors in countries with higher standards, creating an unfair trade advantage. An additional criterion helps assess whether a company is intentionally avoiding or violating social norms⁹⁶. An example of indirect

⁹¹ Ibid. 9.

⁹² Report on 19 March 2010.

⁹³ Plomien (n 54) 2018. Also see, *Collins v sos for work and pensions* 2004 judgment and *Van duyn v home Office* 1974 judgment.

⁹⁴ J Rubery and A Piasna, 'Labour Market Segmentation and the EU Reform Agenda: Developing Alternatives to the Mainstream' (Working Paper 2016) 20.

⁹⁵ www.socialistsanddemocrats.eu (Access Date: 16.12.2024). For a comprehensive discussion on social dumping and the debate on a multilateral social clause, see Inmaculada Hurtado and Patricia Argerey, 'Social Dumping: The Debate on a Multilateral Social Clause' (2008) 8(1) *Global Economy Journal* 1, 1. Also see Teodora Dimitrova, *Social Dumping: Theoretical and Empirical Aspects* (PhD thesis, University of Konstanz 2007).

⁹⁶ M Bernaciak, 'Social Dumping: Political Catchphrase or Threat to Labour Standards?'



discrimination could be a job in Germany requiring German language skills that are not actually necessary. If German skills are truly needed, the employer can ask for proof, but they cannot require a candidate to pass a language exam in Germany. Also, employers cannot disadvantage EU citizens just because they live in another member state⁹⁷.

The ECJ has made many decisions about discrimination and equality. Here are some examples, in the *Defrenne v. Sabena* case (C- 43/75) established that the principle of equal pay for men and women has direct effect, meaning individuals can invoke it before national courts; in the *Marshall v. Southampton and South-West Hampshire AHA* case (C- 152/84) highlighted that dismissing an employee on the grounds of gender was a violation of EU law; another case which is *Dekker v. Stichting Vormingscentrum* (C-177/88) case ruled that refusing employment to a pregnant woman constitutes discrimination under EU directives. Although not directly about equality, some important ECJ decisions include: banning work on Sundays under free movement of workers (C-312/8), banning night work under competition law (C-155/80), and allowing temporary workers in member states to apply for minimum wage standards (*Rush Portuguesa*, C-113/89).

B. Viking Case

In the Viking Case⁹⁸ the Finnish Viking Line company has *Rosella*⁹⁹ ship, which was losing money due to competition from Estonian boats that followed the same route with lower costs. Instead of selling the ship, Viking planned to re-register it under the name of Estonia or Norway to join a collective labor agreement with a workers' union based in one of those countries. The re-flagging would allow Viking to replace the predominantly Finnish crew with Estonian seafarers, and to negotiate cheaper terms and conditions of employment with an Estonian trade union. In this case, although the ECJ seemed to leave the decision to national courts, some jurists argue that its strict interpretations influenced the outcome¹⁰⁰. In Finnish law, the right to strike is protected under Article 13 of

(European Trade Union Institute Working Paper 2012).

⁹⁷ www.bmas.de (english version) (Access Date: 16.12.2024)

⁹⁸ Case C-438/05; [eur-lex.europa.eu legal context](http://eur-lex.europa.eu/legal-context) (Access Date: 14.12.2024). For an analysis of the *Laval* case in Sweden, see, Alban Davesne, 'The Laval Case and the Future of Labour Relations in Sweden' (2009) <https://hal.archives-ouvertes.fr/hal-02405269>. Also see, Thomas Blanke, 'The Viking Case' (2006) 12(2) *Transfer: European Review of Labour and Research* 251.

⁹⁹ The *Rosella* is Finnish flag and has a predominantly Finnish crew who benefit from a collective agreement negotiated by the Finnish Seamen's Union (FSU). See Simon Tans, 'Case Report on Laval, 18 December 2007 (Case C-341/05) and Viking, 11 December 2007 (Case C-438/05)' (2008) 10 *European Journal of Migration and Law* 249.

¹⁰⁰ AA Bilgin, 'Divan'ın İkilemi: Temel Haklar ve Temel Özgürlükler Arasında Denge' (2011)

the Finnish Constitution, which guarantees freedom of association¹⁰¹. This law allows the FSU to take strike action to protect its members' jobs and enforce better working conditions for crews on vessels operating from Finnish ports. ITF and FSU argue that this right is consistent with the EU's social policy and is recognized as a fundamental right under the EC Treaty. It is concerned when there is a conflict between the economic agenda and the social agenda of the European Community. This case deals with the constitutional balance to be struck between the economic and social factors within the now enlarged Internal Market; therefore the issue is of great political importance for the development of the EU¹⁰². It is mentioned above that the EU institutions have committed themselves to respecting the rights set out in the EU Charter of Fundamental Rights, proclaimed in Nice in December 2000. This includes the right to take collective action, including strike action¹⁰³. The rules about the legality of cross-border collective action are unclear after the Viking case, and it is disappointing that the ECJ has not clarified this, especially as social dumping and cross-border actions have become more important after the EU's enlargement¹⁰⁴.

C. Laval Case

In the Laval Case¹⁰⁵, a Latvian company, Laval, entered into a contract in Sweden to build a school and sent Latvian workers there. A union action was taken to force Laval to sign a collective agreement that went beyond the Directive's rules on temporary workers' conditions. The Latvian company agreed to pay the minimum wage in the Swedish collective agreement, even though it was not required by the Directive. However, Laval refused to meet the union's request for the average wage. Laval was not opposed to collective bargaining, but the union's demand for the average wage for all workers was unrealistic and outside the Directive's scope.

In the Albany case, the Court excluded collective bargaining and action from free movement rules, but later rulings, like the Laval quartet, prioritized free movement rights (Articles 43 and 49) over fundamental rights, emphasizing

13(1) Journal of Dokuz Eylül University Law Faculty 51, 75. Also see, Niklas Bruun, 'The Viking Line Case' (2007) 13(4) International Union Rights 8 <https://www.jstor.org/stable/41936400>

¹⁰¹ www.etuc.org (Access Date: 14.12.2024)

¹⁰² www.etuc.org (Access Date: 14.12.2024)

¹⁰³ www.etuc.org (Access Date: 14.12.2024)

¹⁰⁴ R Zahn, 'The Viking and Laval Cases in the Context of European Enlargement' (2008) Current Legal Issues; for some writers the decisions in Viking and Laval are not surprising, but they are disappointing, see more, Davies (n 87) 147.

¹⁰⁵ Case C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others, eur-lex.europa.eu legal content (Access Date: 14.12.2024)

liberal principles over social protections¹⁰⁶. With its judgments in the Viking and Laval cases, the European Court of Justice has ruled on the extent to which the exercise of workers' fundamental social rights can constitute a legitimate justification for limiting economic freedoms such as freedom of settlement and freedom to provide services¹⁰⁷. In the Laval case, one can see that the Court obligates the parties to the conflict, through the referring court, to perform the necessary balancing, thereby shifting the burden of providing mutually acceptable justifications to the parties themselves¹⁰⁸. Some writers believe that the problems revealed by the Laval case were not caused by the actions of the social partners (like unions or employers), but rather by the Swedish government's failure to properly adjust the country's industrial relations system to fit European standards. In other words, the issue was not with the social partners' behavior, but with how Sweden had not fully aligned its labor laws with EU expectations, which led to complications¹⁰⁹. In these cases, the ECJ decided that when industrial action interferes with an employer's rights to freedom of establishment under Article 43 EC or to provide services under Article 49 EC, these Treaty rules can directly apply to unions organizing the action; according to the ECJ, unions are not considered public bodies, which shows that the effect is truly horizontal¹¹⁰.

These judgments have sparked controversy on the adequacy of existing EU rules to protect the rights of workers in the context of the freedom to provide services and the freedom of establishment¹¹¹. In the Viking and Laval cases, the ECJ ruled that collective action is a fundamental right and part of EU law. However, it emphasized that this right is not superior to other EU rights, such as the freedom to provide services and the freedom of establishment. Some writers and trade Unions found this decision wrong on the other hand some writers found it right¹¹². The positions taken by the Commission and Member States in the Viking and Laval/Vaxholm cases, and, in particular, their interventions before the ECJ, will influence debates around the future of the Constitutional

¹⁰⁶ S Picard, 'Collective Action vs Free Movement: The Laval and the Viking Cases' (2008) 1 Transfer 1, 161. Also see, Dan Holke, 'The Laval Case' (2007) 13(4) International Union Rights 22 <https://www.jstor.org/stable/41936409>

¹⁰⁷ Report on 19 March 2010; *The Viking case has created a huge legal uncertainty that calls into question the exercise of the fundamental right to collective action. This puts the sustainability of industrial relations systems at risk.*

¹⁰⁸ Finn and Vaughan (n 28) 34

¹⁰⁹ Ibid. 35.

¹¹⁰ Davies (n 87) 2008.

¹¹¹ Report on 19/03/2010, Joint Report.

¹¹² M Cerutti, 'ATAD'ın Viking, Laval, Rüffert ve Lüksemburg Davalarına İlişkin Verdiği Kararlar' (2009) 16 Sicil İş Hukuku Dergisi 234, 235.

Treaty¹¹³. Some writers also believed that it is unreasonable to think that the right to collective action is an unlimited right¹¹⁴. Some writers believe that the ECJ may not apply the principle of proportionality effectively in a specific field like labor law. Therefore, they argue that such matters should be left to the jurisdiction of national courts¹¹⁵. Also employers' organizations consider that the ECJ judgments do not affect the relationship between fundamental social rights and economic freedoms, nor do they favor one over the other¹¹⁶. For some writers the ECJ does not always force decisions that push countries into deeper integration, instead it allows member states to follow EU law while also considering their own legal and social customs, though it is a tricky balance and many countries do not always get it right, but this does not mean that the EU always has a negative or unfair impact on national welfare systems¹¹⁷.

D. Rüffert Case

In the Rüffert case¹¹⁸ the company Objekt und Bauregie GmbH & Co won a public contract for construction work in Niedersachsen/Germany. It subcontracted the work to a Polish company and promised to ensure that the wages paid would match the rates already set by the collective agreement for the site. However, when it was found that the workers were earning only 46.57% of the minimum wage for the construction sector, the Niedersachsen authorities canceled the contract and demanded payment of penalties. The company then took legal action. The Court found that the Niedersachsen law did not establish a rate of pay in accordance with the procedures outlined in the Posted Workers Directive (PWD). The Court stated that requiring foreign service providers to apply the wage rates set in the collective agreement could impose an additional economic burden, potentially restricting the free movement of services. Such a restriction cannot be justified on the grounds of worker protection since it applies only to public contracts and not to private ones. Some writers and trade unions

¹¹³ www.etuc.org (Access Date: 14.12.2024)

¹¹⁴ Cerutti (n 112) 235.

¹¹⁵ Bilgin (n 100) 77, according to the author, the ECJ has been criticized for treating fundamental rights as secondary to free movement due to its approach in both rulings. Critics argue that the Court's decisions leaned more towards liberal economic interests rather than social protections.

¹¹⁶ Report on 19 March 2010; also employer's argue that these 4 decisions increase legal certainty.

¹¹⁷ Finn and Vaughan (n 28) 36

¹¹⁸ Case C-346/06 Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v Land Niedersachsen, eur-lex.europa.eu legal content (Access Date: 14.12.2024). Also see, Silvia Borelli, 'Social Clauses in Public Contracts, the Posted Workers Directive and Article 49 EC: The Rüffert Case' (University of Ferrara, 3).



also consider that this decision has bad effects¹¹⁹. They criticized this decision as harmful and an encouragement for social dumping, and they also warned that it might increase public opposition to the internal market¹²⁰. Some writers considered that in the Laval and Rueffert judgments, the ECJ has considerably narrowed down the possibilities for Member States and trade unions to guarantee equal terms and conditions of employment for migrant workers regardless of nationality¹²¹. There is disagreement as to whether the ECJ judgment in the Rüffert case makes it more difficult for public authorities and social partners to integrate respect for social considerations - in particular considerations relating to industrial relations and collective bargaining in cases of cross-border service provision - into public contracts¹²².

E. Luxembourg Case

In the Luxembourg case¹²³, court concerning the transposition of Directive 96/71/EC on the posting of workers, in which it found against Luxembourg on all the points at issue. That judgment, concerning the Law of 20 December 2002 transposing Directive 96/71/EC, prompted a wide-ranging debate about its implications for Luxembourg employment law and for Social Europe¹²⁴. Some trade unions and legal scholars think that this ruling demonstrates, once again, that the right of businesses to do what they want, when they like, overrides trade union rights¹²⁵. On the other hand the Confederation of European Business agrees, maintaining that Luxembourg had exercised an ‘overly wide interpretation of the

¹¹⁹ Also about some cases among labour unions there is anxiety over the implications of many recent ECJ cases concerning the free movement of workers, Finn and Vaughan (n 28) 26.

¹²⁰ The European Trade Union Confederation (ETUC), www.etuc.org (Access Date: 14.12.2024)

¹²¹ John Monks, *Commission v Luxembourg C-319/06* Briefing note, ETUC, 4.

¹²² Report on 19 March 2010; The overly strict conditions imposed in the Rüffert judgment effectively discourage public authorities from integrating local collective agreements based on social criteria into public procurement.

¹²³ Judgment of the Court (First Chamber) of 19 June 2008 — Commission of the European Communities v Grand Duchy of Luxembourg (Case C-319/06), eur-lex.europa.eu/legal-content. Also, see, Philippe Gerber, Tai-Yu Ma, Olivier Klein, Julien Schiebel and Samuel Carpentier-Postel, ‘Cross-Border Residential Mobility, Quality of Life and Modal Shift: A Luxembourg Case Study’ (2017) 104(C) *Transportation Research Part A: Policy and Practice* 238.

¹²⁴ D Ghailani, ‘The Rüffert and Luxembourg Cases: Is the European Social Dimension in Retreat?’ in *Social Developments in the European Union 2008* 205.

¹²⁵ www.people.ie (Access Date: 15.12.2024); John Monks, General Secretary of the ETUC said: ‘*This is another hugely problematic judgment by the ECJ, asserting the primacy of the economic freedoms over fundamental rights.*’; The Confédération syndicale indépendante du Luxembourg (OGB-L) and the Fédération des syndicats chrétiens luxembourgeois (LCGB) expressed their disagreement with the European verdict at a joint press conference held by their shared European secretariat on 20 June 2008; Ghailani (n 124) 218.

PWD and unclear and unjustified control measures'¹²⁶. According to European Companies, the ECJ was right in the Viking, Laval, Rüffert, and Luxembourg cases, and the ECJ does not prioritize economic freedoms over social rights or interfere with the right to collective bargaining¹²⁷. However, certain trade unions think that the Luxembourg case has increased uncertainty for posted workers and employers¹²⁸.

These cases raise two main questions: how to decide priority when social rights conflict with market laws, and what limits exist on member states' freedom to create their own social policies¹²⁹. In these judgments, the ECJ gave in particular its interpretation of the relationship between the fundamental social rights of collective bargaining and collective action and economic freedoms in the internal market¹³⁰. The cases indicate the challenges trade unions face due to changes in opportunities and rules caused by "Europeanisation"; some authors also find the ECJ's decisions in the Viking and Laval cases difficult to evaluate because of the sensitive political nature of the issues¹³¹. In these cases, the ECJ agreed that collective action is acceptable to fight social dumping. This demonstrates the European Community's focus on social issues and highlights the challenge that moving companies and lower wage demands from new Member State workers bring to both the older European labor market and the established trade unions in those countries¹³². The ECJ decided not to follow the Albany solution. Instead, it made the free movement rules apply directly to all situations, which allowed them to consider collective action as a restriction that could be justified. This added a legal aspect to labor relations.

Some authors argue that, as interpreted by the ECJ, the focus seems to have shifted toward internal market goals, which was also emphasized in the later Rüffert case, suggesting that the Court views collective bargaining as separate from collective action, even though the ECJ in the Viking case acknowledged their close connection but used this to bring collective action under Article 49 TFEU¹³³. In the Laval case, the ECJ banned collective action after case-by-case bargaining with foreign employers due to the Posted Workers Directive, but it allowed bargaining beyond the Directive's terms if the foreign firm voluntarily

¹²⁶ www.people.ie (Access Date: 15.12.2024)

¹²⁷ Cerutti (n 112) 236.

¹²⁸ Report on 19 March 2010.

¹²⁹ Jacobs (n 74) 2011.

¹³⁰ Report on 19 March 2010.

¹³¹ Zahn (n 104) 2008.

¹³² Ibid

¹³³ Veldman (n 81) 108.



signs an agreement, separating collective action from collective bargaining¹³⁴. Still, in *Viking* and *Laval*, the ECJ did not consider the unique features of national social systems or the national traditions of industrial relations, which are sometimes rooted in constitutional principles, especially in cases where achieving social policy goals is left to the independent role of social partners. Some argue that the case law shows the protection of the fundamental right to strike alone cannot justify restrictions on free movement; instead, this right must be exercised to achieve a broader legitimate aim, such as protecting workers, and it must be appropriate for that purpose¹³⁵. After the ECJ's *Laval* rulings questioned whether Member States could set labor rules for posted workers, the Commission aimed to clarify the law and balance social rights with free movement, but its 2012 proposal, the 'Monti II regulation' on cross-border strikes, faced strong opposition from national governments and social partners and was eventually abandoned¹³⁶.

Employers are also concerned, the CEEP (European Centre of Enterprises with Public Participation) is particularly affected by these rulings because public authorities and enterprises are losing their ability to include social factors in public contracts, and the freedom of social partners in collective bargaining is being limited¹³⁷. And the introduction of "proportionality" to balance conflicting rights in these cases is hard to align with collective relations, as it can be flexible enough to satisfy both employers and trade unions in some cases, but also allows for broad interpretation by national courts and political influences, which could lead to inconsistencies in the protection of collective action across EU member states, a situation that trade unions did not support¹³⁸.

V. THE REORIENTATION OF THE EU'S APPROACH TO LABOUR MARKET REGULATION

The EU's founding treaties focus on promoting a free market by encouraging competition and reducing restrictions. The European Commission and the European Court of Justice have worked to prevent unfair competition and limit state aid. However, this approach has sometimes negatively impacted social rights, employment, social security, and public services¹³⁹.

Labour market segmentation does not happen because of employment regulation,

¹³⁴ Ibid. 115.

¹³⁵ Barnard (n 22) 718, BC 3; same opinion, Veldman (n 81) 109.

¹³⁶ S Schreurs, 'EU Social Policy and the Subsidiarity Principle: The End of an Illusion?' (2024) 15(2) European Labour Law Journal 346.

¹³⁷ Ghailani (n 124) 217.

¹³⁸ Zahn (n 104) 2008.

¹³⁹ Jacobs (n 74) 2011.

as labour markets allow many ways to change job terms and conditions that do not match workers' actual productivity, but dividing workers into 'insiders' and 'outsiders' based on contracts is too simple, ignoring how social class, education, family duties, location, age, and discrimination shape labour supply¹⁴⁰.

After the Maastricht Treaty, social policy focused on social dialogue and employment, and in 1993, the EU published the Green Paper on priorities and policy proposals¹⁴¹. The Commission's Green Paper highlights that labor law was originally created to address economic and social inequality in employment, focusing on employment status as the basis for rights, while also acknowledging that this traditional model is built on key assumptions about employment¹⁴². Following discussions on the Green Paper, the White Paper, a final report, was published in 1994. The White Paper covers priority social policy issues for the EU. In the face of rising unemployment, the White Paper does not stop at setting "job creation" as the highest priority objective, but emphasizes both human resource development and social dialogue as a means of reducing social antagonisms¹⁴³.

As social policies evolve, different approaches have emerged to address labor market challenges and social inequality. One of these is the Third Way, which offers an alternative to traditional welfare state models by focusing on active labor market policies and social inclusion. The Third Way focuses on preventing social exclusion and promoting equal opportunities, unlike traditional welfare states that redistribute wealth through social aid, aiming instead to help individuals become self-sufficient through education, training, and employment, with governments and employers providing access to necessary services, reducing unemployment and labor market inequalities, using anti-discrimination laws to increase workforce participation, especially for disadvantaged groups, though it faces criticism for potentially pushing people into insecure jobs rather than providing direct financial support¹⁴⁴.

Regulation plays a key role in creating fairness between capital and labour, as well as among different worker groups, but this does not mean employment regulation does not need updates, as older policies that supported social inclusion may now cover fewer jobs, making it essential to focus on building inclusive labour markets that protect workers, encourage productivity, and raise employment standards without lowering conditions under the guise of equality¹⁴⁵.

¹⁴⁰ Rubery and Piasna (n 94) 25.

¹⁴¹ Çelik (n 45) 130.

¹⁴² Barnard (n 22) 708.

¹⁴³ Çelik (n 45) 130-131.

¹⁴⁴ Barnard (n 22) 713.

¹⁴⁵ Rubery and Piasna (n 94) 25.



Adopted in 2010 during the financial crisis, the Europe 2020 strategy prioritized inclusive growth, focusing on high employment and social cohesion¹⁴⁶.

In 2019, the European Labour Authority was set up in Bratislava to help ensure fair and effective enforcement of EU rules on labour mobility and social security. That year, key laws were introduced such as The Work-Life Balance Directive improved family leave and flexible work options, promoting gender equality in the workplace, The Transparent Working Conditions Directive gave workers more rights, like clear job information, limits on probation periods, and bans on exclusivity clauses, a Council recommendation aimed to close gaps in social protection for workers and the self-employed¹⁴⁷.

Several social policy initiatives were introduced, such as the European Child Guarantee in June 2021, the EU Health and Safety Framework for 2021-2027 in October, the European Platform on Combating Homelessness in June, and the disability rights strategy for 2021-2030 in March¹⁴⁸. On 14 June, the EPSCO Council adopted conclusions on teleworking, emphasizing the EU's limited role, referencing the social partners' framework on digital work, and urging the European Commission to assess whether current EU laws ensure fair conditions for teleworkers, including the right to disconnect¹⁴⁹.

In addition parliament urged the Commission to speed up the development of a digital European social security pass (ESSPASS) to help mobile workers transfer their social security rights. This was highlighted in both an oral question on 27 October 2021 and a resolution on 25 November 2021¹⁵⁰.

Also there is a MoveS network of independent experts in the field of intra-EU mobility¹⁵¹. MoveS stands for Free Movement of Workers and Social Security Coordination. The network is funded by the European Commission. The network offers legal expertise to the Commission on worker mobility and social security coordination through reports and analysis. MoveS helps increase knowledge about the free movement of workers and social security coordination by organizing seminars, sharing information, and connecting stakeholders¹⁵².

The October 2022 Directive aims to ensure that national minimum wages are sufficient for workers to live decently, thereby reducing in-work poverty.

¹⁴⁶ Goodger and Makay (n 31) 2024

¹⁴⁷ Ibid

¹⁴⁸ A Atanasova and F Moja, 'The European Union in 2021: Key Events' in Social Policy in the European Union: State of Play 2022 (2022) 157, 165.

¹⁴⁹ Ibid

¹⁵⁰ Kennedy (n 8) 2024.

¹⁵¹ employment-social-affairs.ec.europa.eu (Access Date: 14.12.2024)

¹⁵² employment-social-affairs.ec.europa.eu (Access Date: 14.12.2024)

Although setting these wages is up to each country, they must guarantee adequate wage protection for workers¹⁵³.

EU social policy has been significantly affected in recent years, with the increase in Member States causing difficulties in the legislative process, as the expansion led to a loss of homogeneity due to the differences between new and old Member States, and the Central and Eastern countries, with their unique labor law systems, didn't fit into existing groups, which complicated the situation and slowed down the integration process, especially in adopting new social policy laws like directives and collective agreements¹⁵⁴.

VI. NEW JOB FORMS CHALLENGES

This legislative stagnation and the growing complexity of harmonizing traditional labor laws across an expanded EU were soon overshadowed by a more structural disruption. While European policymakers were struggling to integrate standard employment models, the labor market itself was rapidly evolving away from them. This shift towards atypical employment was initially evident in national trends; for instance, by 2012, nearly one in five workers in Germany were employed in non-standard arrangements such as part-time work, mini- and midi-jobs, fixed-term contracts or agency work, with younger people, migrants, women, single parents and the low-skilled particularly represented, while agency employment remained more male-dominated¹⁵⁵. Since the 1980s, various legal reforms have institutionally legitimized and expanded atypical forms of employment, facilitating the use of fixed-term contracts, providing tax and social security benefits for small-scale jobs (Mini-Jobs), and increasingly institutionalizing temporary agency work (Leiharbeit)¹⁵⁶.

The gig economy is defined as a system that changes the traditional relationship between employers and employees through technology, platforms like Uber, Lyft,

¹⁵³ Goodger and Makay (n 31) 2024

¹⁵⁴ Borzaga (n 27) 2024.

¹⁵⁵ Petra Böhnke, Janina Zeh and Sebastian Link, 'Atypische Beschäftigung im Erwerbsverlauf: Verlaufstypen als Ausdruck sozialer Spaltung?' (2015) 44(4) *Zeitschrift für Soziologie* 234, 235–236. Also see, Gérard Valenduc, 'New Forms of Work and Employment in the Digital Economy' in Amparo Serrano-Pascual and Maria Jepsen (eds), *The Deconstruction of Employment as a Political Question: 'Employment' as a Floating Signifier* (Springer Nature 2019) 63 <https://doi.org/10.1007/978-3-319-93617-8>. See, Jerzy Wratny, 'New Forms of Employment. A Panoramic View of the Issues' in Jerzy Wratny and Agata Ludera-Ruszel (eds), *New Forms of Employment: Current Problems and Future Challenges* (Springer Fachmedien Wiesbaden 2020) 3 <https://doi.org/10.1007/978-3-658-28511-1>. For an overview of atypical employment in Europe up to 2011, see, Jutta Allmendinger, Lena Hipp and Stefan Stuth, *Atypical Employment in Europe 1996–2011* (WZB Discussion Paper No P 2013-003, Wissenschaftszentrum Berlin für Sozialforschung 2013).

¹⁵⁶ Böhnke, Zeh and Link, (n 155), 234-239.



DoorDash, and Instacart are key examples of the gig economy, and the issue of whether workers on these platforms are employees or independent contractors is highly debated, with some arguing that the gig economy does not fit into the categories of “employee” and “independent contractor,” requiring a new legal framework¹⁵⁷. In recent years, the number of workers participating in the gig economy has rapidly increased with the spread of technology and digital platforms, traditional employer-employee relationships are becoming more flexible but, according to academic circles, they are turning into an insecure structure due to the rise of the gig economy¹⁵⁸. It is not just academic circles; nowadays, we also see that workers are hired only for specific projects or fixed periods and then let go, which ultimately means they do not secure permanent jobs.

Along with the gig economy, there are also smart contracts, which are blockchain-based automatic contracts, when pre-determined conditions are met, the contract automatically comes into effect and performs tasks like payments, traditionally, gig platforms (Uber, Upwork, etc.) act as intermediaries between employers and workers, but with smart contracts, employers and workers can interact directly, reducing the role of platforms, however, this system, like standard contracts, can also reduce workers’ bargaining power over their working conditions¹⁵⁹.

Traditional labor regulations are designed to protect full-time employees, but the gig economy has disrupted this system, benefits like unemployment insurance, retirement rights, overtime, and union rights do not apply to gig workers, existing labor law frameworks do not protect gig workers adequately, so the idea of adapting traditional labor law to this new model is dominant¹⁶⁰.

The European Commission’s proposal for a Platform Work Directive attempts to introduce the first EU rules on algorithmic management and the use of AI in the workplace, potentially setting the standards for the protection of workers’ rights in the overall labour market in view of the digital transition¹⁶¹. The EU Platform Work Directive, effective from December 1, 2024, requires member states to implement it by December 2, 2026, addressing the classification of platform workers, imposing obligations on companies using digital platforms, and setting rules for contact persons and responses to worker challenges, though the consequences of noncompliance are still unclear¹⁶².

¹⁵⁷ A Kondo and A Singer, ‘Labor Without Employment: Toward a New Legal Framework for the Gig Economy’ (2020) 34 ABA Journal of Labor & Employment Law 331.

¹⁵⁸ SC Oranburg and L Palagashvili, ‘The Gig Economy, Smart Contracts, and Disruption of Traditional Work Arrangements’ (2021) 50 Journal of Legal Studies S219.

¹⁵⁹ Ibid

¹⁶⁰ Ibid

¹⁶¹ T Grossi, L Rayner, D Brady and X Dervishi, ‘The Social Pillar and the Future of the EU Social Agenda’ (Policy Study, February 2024) 22.

¹⁶² Ogletree / Smoak / Stewart, P.C., 2025.

In cases related to platform workers, particularly in the context of Uber, the Amsterdam Court in the Netherlands ruled that Uber drivers cannot be considered “self-employed” and should be classified as employees of the company¹⁶³. Similarly, the UK Supreme Court ruled that Uber drivers are entitled to worker rights¹⁶⁴. Additionally, the European Court of Justice ruled in a case brought by taxi drivers in Barcelona against Uber, stating that Uber operates as a platform providing taxi services and is subject to the relevant regulations¹⁶⁵. In our opinion, Uber workers are employees because, unlike those on platforms like Booking.com or Airbnb, they do not directly interact with passengers to set their terms and can be penalized by the platform¹⁶⁶.

However, the ECJ’s jurisprudence demonstrates that not all gig economy arrangements automatically constitute an employment relationship. In the Yodel case¹⁶⁷, the Court clarified the boundaries of genuine self-employment within platform-based delivery services. The ECJ ruled that a courier engaged as an independent contractor does not fall under the concept of a ‘worker’ for the purposes of the Working Time Directive (2003/88/EC) if they possess significant operational autonomy. Specifically, the Court highlighted several criteria demonstrating that such independence is not merely fictitious. First, if a courier utilizes subcontractors or substitutes, the putative employer must exercise only limited control over this choice based on purely objective criteria (e.g., basic skills) rather than personal preference. Second, the courier retains an absolute right to reject assigned tasks and can unilaterally set a binding limit on the volume of tasks they perform. Third, true autonomy is evidenced by the courier’s freedom to provide similar services in parallel and simultaneously to third parties, including direct competitors. Finally, the Court clarified that while deliveries must occur within specific time slots, this is inherent to the very nature of the delivery service to ensure proper performance, rather than a definitive marker of subordination. This pivotal order establishes that the absence of a hierarchical, subordinate relationship precludes the classification of a ‘worker’ even within the gig economy.

¹⁶³ Uber BV v. Vereniging van Taxipediteurs, Rechtbank Amsterdam, Judgment of 14 December 2021, Case No. 2020/6392

¹⁶⁴ Uber BV v. Aslam & Ors, Supreme Court of the United Kingdom, Judgment of 19 February 2021, Case No. UKSC 2019/0149

¹⁶⁵ Asociación Profesional Elite Taxi v. Uber Systems Spain, CJEU, Judgment of 20 December 2017, Case No. C-434/15, Asociación Profesional Elite Taxi v. Uber Systems Spain SL

¹⁶⁶ S Doğan, ‘Uber Platformu Çalışanlarının Hukuki Statülerine İlişkin Yaklaşımlar’ (2020) 5(1) Çankaya University Law Faculty Review; M Kutlu, ‘Platform Çalışanlarının Hukuki Statüsü: Uber-Aslam ve diğerleri Kararına İlişkin Bir Değerlendirme’ (2021) 25(2) Ankara Hacı Bayram Veli University Law Review 271.

¹⁶⁷ Court of Justice, Order C-692/19, 22 April 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62019CO0692> A. D. 16.07.2026.



Beyond individual classification, the ECJ has also addressed the collective rights of atypical workers at the intersection of labor and competition law. In the landmark *FNV Kiem* case¹⁶⁸, the Court confronted the issue of false self-employment. Generally, genuine self-employed individuals are considered undertakings subject to EU competition rules (Article 101 TFEU), which prohibits them from collectively bargaining for minimum fees as it constitutes price-fixing. However, the ECJ ruled that if an independent contractor acts under the direction of an employer, does not share the commercial risks, and forms an integral part of the employer's undertaking, their independence is merely notional. Such "false self-employed" individuals are in a situation comparable to employees. Consequently, collective labour agreements setting minimum fees for these misclassified workers fall outside the scope of competition law prohibitions and are protected as legitimate social policy measures. This ruling provides a vital legal shield for gig workers, ensuring that those misclassified as independent contractors can collectively bargain for decent working conditions without facing antitrust penalties.

As more workers join digital platforms with irregular hours and algorithmic management, the Parliament and the Council passed a directive to improve conditions for platform workers¹⁶⁹.

A. The EU's Response to Crises

The process of European integration has repeatedly been shaped by crises—from the post-war reconstruction to the Eurozone crisis, the migration crisis, Brexit, the COVID-19 pandemic and the war in Ukraine—forcing policymakers to adapt and highlighting culture, increasingly inscribed into EU policy frameworks, as a constructive factor in strengthening resilience and legitimacy across Member States¹⁷⁰.

1. Financial Crisis

Before the global financial crisis hit in early 2008, the EU economy was seen as its strongest ever, with strong growth in the euro area and rising employment¹⁷¹. The strong impact is due to the systemic and widespread nature of the crisis,

¹⁶⁸ Judgment Of The Court, C-413/13, 4 December 2014, <https://irshare.eu/wp-content/uploads/2025/01/C-41313-EN.pdf>, A. D. 16.07.2026.

¹⁶⁹ Goodger and Makay (n 31) 2024

¹⁷⁰ Marija Dorotić, 'Towards the Empowerment of Culture: The EU's Response to Recent Crises Through Its Cultural Policy and Beyond' (2023) 3 *Studia Europejskie – Studies in European Affairs* 7, 8–9. For a comprehensive overview of EU crises, see Marianne Riddervold and Jarle Trondal (eds), *The Palgrave Handbook of EU Crises* (Palgrave Macmillan 2021) <https://doi.org/10.1007/978-3-030-51791-5>.

¹⁷¹ J Welch, 'The Financial Crisis in the European Union: An Impact Assessment and Response Critique' (2011) 2(4) *European Journal of Risk Regulation* 481.

as financial crises usually last longer and hit harder than non-financial ones, and also to differences in sectors and institutions, causing severe job losses in some euro area countries but only mild and short-term effects in others¹⁷². While debating the 2007-08 financial crisis, Parliament called for an EU commitment to preserving European social models and a strong social Europe¹⁷³.

The differences in outcomes partly reflect the two phases of the crisis: the first phase, known as the “Great Recession” of 2008-09, was a sharp global downturn in activity and trade, while the second, longer-lasting “second dip” mainly affected the most stressed economies¹⁷⁴. Some groups, such as the young, the unskilled, those on temporary contracts, and workers displaced from overheated construction sectors, were hit particularly hard, and the crisis also caused a significant rise in long-term and structural unemployment in some countries¹⁷⁵.

The economic plan recognizes the modern economy and crisis as global, emphasizes the need for a global solution, and highlights the importance of cooperation with international partners for a coordinated EU response¹⁷⁶. Following the 2008 crisis, many EU countries took more action in different policy areas, first to protect jobs and incomes from the crisis, and later to make labor markets more adaptable¹⁷⁷.

The EU developed crisis-management tools like the European Stability Mechanism, but these relied too much on national budgets and lacked a unified European approach, while financial market integration improved slightly with the Banking Union plan, though progress stalled after establishing a joint banking supervisor¹⁷⁸.

After this crisis and rising youth unemployment, EU countries began to focus more on segmentation, making changes to employment protection laws, with lower dismissal costs for permanent workers and some new rules for temporary contracts, which slightly reduce the gap between the two types of contracts¹⁷⁹. Further reforms to collective bargaining, allowing firm-level wage agreements to reflect local labour market conditions and productivity, and enabling greater wage differentiation, would improve signals about demand for different types of workers¹⁸⁰.

¹⁷² ECB, 49.

¹⁷³ Goodger and Makay (n 31) 2024

¹⁷⁴ ECB, 50.

¹⁷⁵ ECB, 67.

¹⁷⁶ Welch (n 169) 485.

¹⁷⁷ A Turrini, G Koltay, F Pierini and others, ‘A decade of labour market reforms in the EU: insights from the LABREF database’ (2015) 4 IZA Journal of Labor Policy 12.

¹⁷⁸ High-Level Group on Post-Covid Economic and Social Challenges, 2022.

¹⁷⁹ Eichhorst / Marx / Wehner, 2017.

¹⁸⁰ ECB, p. 67.

After the 2008–2009 recession, additional reforms were implemented in areas such as labor market policies, labor taxes, welfare benefits, and unemployment benefits, aimed at reducing job losses during the temporary crisis and improving social safety nets. In the second phase period of 2010–2011, reforms focused more on job protection, wage rules, and working hours, especially in Southern Europe, with changes often reducing regulations, increasing benefits, and raising labor taxes in some countries¹⁸¹. Labour market reforms were intensely implemented in countries receiving international financial aid, like Ireland, Greece, Spain, Cyprus, and Portugal, but progress across the euro area has been partial and uneven, taking time to show full effects, with more needed to ensure flexibility compatible with a monetary union, while increasing labour mobility across regions and countries helps reduce high local unemployment rates¹⁸².

2. European Social Pillar (ESPR)

In April 2017, the Commission introduced the European Pillar of Social Rights (EPSR) with 20 principles to improve living and working conditions. These focus on (i) equal opportunities, (ii) fair working conditions, and (iii) social protection. At the 2017 Gothenburg Summit, the Parliament, Council, and Commission adopted a joint declaration supporting the EPSR. A “social scoreboard” was also created to track progress¹⁸³. With this, the European Commission aimed to turn the principles into action, setting three headline targets to be achieved by 2030¹⁸⁴. The EPSR was not just a legal framework but a declaration of principles and a potent political message¹⁸⁵. Some writers believe that, unlike earlier social frameworks like the European Employment Strategy and the Social Investment Package, the EPSR is a real political action aimed at revitalizing Europe’s social sector¹⁸⁶. ESPR highlights the need to build a strong social Europe¹⁸⁷.

The EPSR was adopted as a declaration by the EU institutions in November 2017, establishing a solid foundation for European social policy. Further progress in the social dimension depends heavily on the implementation of the EPSR¹⁸⁸.

¹⁸¹ Turrini et al. 15.

¹⁸² ECB, p. 67.

¹⁸³ Goodger and Makay (n 31) 2024

¹⁸⁴ Grossi et al, 17. For a detailed discussion on the Social Pillar, see, Antonino Ali, ‘The Principle of Legality as a Pillar of the EU’s Rule of Law: Bridging the Gap between International and National Law’ in Luisa Antoniolli and Carlo Ruzza (eds), *The Rule of Law in the EU: Challenges, Actors and Strategies* (Springer Nature 2024) 225.

¹⁸⁵ Ibid

¹⁸⁶ Ibid

¹⁸⁷ Börner, (n 5) 8.

¹⁸⁸ KM Anderson and E Heins, ‘After the European Elections and the First Wave of Covid-19: Prospects for EU Social Policymaking’ in Bart Vanhercke, Slavina Spasova and Boris

The EPSR redefines social goals for fair labor markets and welfare systems, blending old and new elements, with commitments to gender equality, using hard and soft law, indicators, and the European Semester to drive reforms, but its success depends on member states, uneven applicability across the EU, and addressing inconsistencies between social and economic policies¹⁸⁹. The ESPR could be interpreted as a response to the multidimensional crisis affecting the EU in economic, political, and social terms demanding action to address the complex and persisting inequalities across the EU¹⁹⁰.

The European Pillar of Social Rights Action Plan lists specific steps to apply its principles further, created together by the Member States and the EU, with support from social partners and civil society, while a consultation from January to November 2020 received 1,041 contributions from social partners, businesses, and citizens¹⁹¹.

In March 2021, the Commission released an action plan for the European Pillar of Social Rights (EPSR), detailing its commitments until 2024. These targets were confirmed at the Porto Social Summit in May 2021, where the Porto Social Commitment was adopted by EU institutions and the Heads of State or Government. National EPSR goals were presented in June 2022¹⁹².

3. Covid-19 Pandemic

The Europe 2020 Strategy, created by the European Commission, views graduate employment data as crucial for designing, delivering, and evaluating higher education courses¹⁹³. The report predicts that by 2020, 35% of all EU jobs will require high-level qualifications, envisioning a highly skilled and competitive labour market, but some argue this optimism conflicts with rising unemployment among European graduates¹⁹⁴.

Fronteddu (eds), *Social Policy in the European Union: State of Play 2020* (2021) 13.

¹⁸⁹ Plomien (n 54) 2018.

¹⁹⁰ Ibid

¹⁹¹ ILO Advancing social justice, promoting decent work, 1 March 2023.

¹⁹² Plomien (n 54) 2018.

¹⁹³ I Nuñez and I Livanos, *Temps by Choice? An Analysis of Reasons for Temporary Employment among Young European Workers* (ESRC Seminar Series: Young Workers and Precarious Employment, University of Warwick 2011). For comprehensive an analysis of social policy responses to Covid-19 in Europe, see, Daniel Béland, Bea Cantillon, Rod Hick, Bent Greve and Amílcar Moreira, 'Policy Legacies, Welfare Regimes, and Social Policy Responses to COVID-19 in Europe' in Stefanie Börner and Martin Seeleib-Kaiser (eds), *European Social Policy and the COVID-19 Pandemic: Challenges to National Welfare and EU Policy* (Oxford University Press 2023) 3 <https://doi.org/10.1093/oso/9780197676189.001.0001>

¹⁹⁴ Ibid



The COVID-19 outbreak in early 2020 disrupted the EU's plans. The spread of Covid-19 across Europe from January 2020 complicated the 2020 strategy in a short time. The Commission and Parliament have struggled with deep economic recessions due to lockdowns and the EU budget shrinking with the UK's departure on January 31, 2020. But the pandemic has added urgency to the development of a coordinated European response to the health and economic challenges posed by Covid-19¹⁹⁵.

The Commission and Parliament faced major challenges due to the rapid economic downturn from the lockdown and the reduced EU budget after the UK left the EU on January 31, 2020¹⁹⁶. The COVID-19 pandemic caused major restrictions on the free movement of workers in the EU, especially with the reintroduction of border controls. These measures mainly affected seasonal, cross-border, and posted workers (Foreign workers temporarily working in a member state). Interestingly, health care workers were allowed to travel despite the bans, and EU rules kept focusing on the free movement of important workers. In April, the EU advised Member States to make it easier for health workers to cross borders, without talking about the number of workers available in their own countries. When Covid-19 struck, countries imposed restrictions on the movement of goods and people, closed borders, and issued export bans. These measures, often lacking strong public health justification, violated internal market rules and undermined European solidarity¹⁹⁷. To address this, the EU Commission issued guidelines on worker mobility, and the Council recommended a coordinated approach, including waiving quarantine for essential workers¹⁹⁸.

During the COVID-19 pandemic, the EU introduced measures to address the crisis's effects on jobs and society¹⁹⁹. These included the Coronavirus Response Investment Initiatives (CRII and CRII+) and temporary support to reduce unemployment risks²⁰⁰. Furthermore, the European Parliament passed resolutions to protect cross-border and seasonal workers. In 2020, it called for EU coordination to help workers, highlighting the vulnerability of mobile

¹⁹⁵ Anderson and Heins, 'After the European Elections and the First Wave of Covid-19: Prospects for EU Social Policymaking' 13.

¹⁹⁶ Ibid

¹⁹⁷ E Brooks, A de Ruijter and SL Greer, 'Covid-19 and European Union Health Policy: From Crisis to Collective Action' in Bart Vanhercke, Slavina Spasova and Boris Fronteddu (eds), *Social Policy in the European Union: State of Play 2020* (2021).

¹⁹⁸ Kennedy (n 8) 2024.

¹⁹⁹ The EU Council and Parliament emphasized culture's significance for both the economy and social well-being during the COVID-19 crisis, while adopting measures to accelerate digital and green transitions, see. Dorotić, (n 166), 19-20.

²⁰⁰ Goodger and Makay (n 31) 8

workers. In 2021, it pushed for better enforcement of the Posting of Workers Directive and a one-stop digital service for labour mobility²⁰¹.

SURE (Support to Reduce Unemployment Risks in an Emergency), a temporary mechanism, was established in response to Covid-19²⁰². SURE was created to help with sudden rises in public spending, supporting jobs through short-term work programs and health measures, with loans backed by voluntary guarantees from all EU countries, showing solidarity with workers and businesses, and each country's contribution is based on its share of the EU's total GNI²⁰³. The Commission's temporary loan tool, like SURE, helps workers by supporting short-time working schemes, with time limits in place to ensure the Commission's extra power is not permanent²⁰⁴.

4. Brexit

Public opinion in the United Kingdom (UK) was influenced by concerns about immigration from EU countries following the 2004 enlargement of the EU's job market, perceived limits on sovereignty, and the cost of EU membership. Anti-EU sentiment grew due to a protest vote from those affected by austerity policies following the financial crisis. The 2015 refugee crisis may have pushed the UK referendum vote in favor of leaving the EU. Additionally, there were other near-exits, like the potential Greek exit in 2011-2012, when Greece negotiated a bailout under austerity conditions. Some suggested that Greece leaving the Eurozone and devaluing its currency could have been a better solution. The term "Czexit" emerged in 2015 in Czechia, with President Milos Zeman supporting a referendum on whether to stay in the EU after Brexit. Exit campaigns were also active in countries like Denmark, France, the Netherlands, Poland, and Romania²⁰⁵.

Brexit also complicates the EU's equality efforts, as it may allow faster progress on social rights without the UK, but also creates challenges with political instability, while likely causing setbacks on social and gender issues in the UK, leaving the EU focused on addressing social problems through the Pillar without UK involvement²⁰⁶. With the UK leaving the EU, the free movement of workers no longer applies, but labor migration will continue under new conditions set

²⁰¹ Kennedy (n 8) 2024.

²⁰² Anderson and Heins, 'After the European Elections and the First Wave of Covid-19: Prospects for EU Social Policymaking' 13.

²⁰³ High-Level Group on Post-Covid Economic and Social Challenges, 2022.

²⁰⁴ T Tesche, The European Union's Response to the Coronavirus Emergency: An Early Assessment (LEQS Paper No 157/2020, June 2020).

²⁰⁵ High-Level Group on Post-Covid Economic and Social Challenges, 2022.

²⁰⁶ Plomie (n 54) 2018.



by the UK and EU Member States, outside the EU's free movement system²⁰⁷.

Brexit ended freedom of movement of workers between the UK and the EU-27 on 31 December 2020. The rights of the EU-27 citizens already living and working in the UK and those UK citizens who were living and working in the EU-27 are covered under the Withdrawal Agreement, which allows for their continued right to remain or work, ensures non-discrimination and protects their social security rights²⁰⁸.

5. Russia's Aggression against Ukraine

Since the war started, the EU has imposed sanctions on Putin and his inner circle, aimed to weaken Russia's ability to continue the war, while also strengthening integration in foreign policy, security, asylum, migration, and energy²⁰⁹. In 2022, while it was expected to be a year when the pandemic would end and international human mobility would return to normal, millions of Ukrainians were forced to flee their homes and lands following Russia's invasion of Ukraine in February, with many seeking refuge in neighboring countries and some moving from the war-torn eastern regions to the western parts of the country²¹⁰.

European countries, having reached a high level of development, managed to stay distant from the problems in other parts of the world, but when faced with the refugee crisis from troubled regions, they implemented strict policies to keep refugees away from Europe²¹¹.

The terms 'refugee' and 'migrant' are often used interchangeably in media and public discussions, but they have a key legal difference, confusing them can cause issues for refugees, asylum-seekers, and States handling mixed movements, as well as misunderstandings in migration discussions. Refugees are people who leave their country due to persecution, conflict, violence, or public order disruptions and need international protection, while 'forced migration' is a broad, non-legal term used by social scientists for different kinds of involuntary

²⁰⁷ Hanne Verschueren, 'Employment and Social Rights of Labour Migrants Post-Brexit' in Dora Kostakopoulou and Daniel Thym (eds), *Research Handbook on European Union Citizenship Law and Policy* (2022) 343.

²⁰⁸ Ibid; Kennedy (n 8) 2024.

²⁰⁹ Federico Fabbrini, 'The War in Ukraine and the Future of the EU: Prospects for Reform' in *Social Policy in the European Union: State of Play 2022* (2022) 11. For the impact of the war in Ukraine and the migration crisis on EU cultural policy, see, Jeronim Dorotić, 'Towards the Empowerment of Culture: The EU's Response to Recent Crises Through Its Cultural Policy and Beyond' (2023) 3 *Studia Europejskie – Studies in European Affairs* 7.

²¹⁰ Özgür Işığçok and Selçuk Kariman, 'Evaluation of Europe's Perspective on Refugees Through the Case of Ukrainian Refugees' (2022) 7 *International Journal of Historical Researches*.

²¹¹ Ibid

movement across borders or within a country, with no universal definition²¹². An asylum seeker is someone who is seeking international protection from dangers in their home country, but whose claim for refugee status hasn't been legally determined²¹³.

People left Ukraine in large numbers to escape the violence, mostly moving to neighboring countries and EU member states, the European Union was unprepared for this sudden mass migration, and they granted temporary protection status to asylum seekers²¹⁴. The primary concern of EU countries is the security of the Union, so their decisions are often insufficient to solve existing problems, meetings usually result in cautious statements to calm public reactions, EU countries struggle to act together on migration issues and fail to establish a common standard representing the Union²¹⁵.

However, after Russia's invasion of Ukraine, millions fled to the EU. The European Commission activated the Temporary Protection Directive, giving refugees residence permits, access to education, and the labor market. Efforts have been made to help them integrate into the EU labor market and recognize their qualifications. As of November 2023, over 4.2 million Ukrainian refugees are benefiting from this protection²¹⁶. And the Cohesion's Action for Refugees in Europe (CARE) was created to help Member States and regions provide emergency aid to people. It also used funds from the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) programme²¹⁷.

Like past crises in EU history, the war in Ukraine has led to progress in European integration, but it has also exposed weaknesses in the EU's response to the conflict on its Eastern border²¹⁸. The Ukraine war has shown the EU's strength and determination, but it also exposed through the Ukraine crisis that EU member countries' dependence on military, economic, trade, and energy sectors negatively affects the future of the EU, highlighting the need for alternative projects; renewable energy is part of long-term plans, and coal, LNG, and renewable

²¹² <https://www.unhcr.org/us/news/stories/refugees-and-migrants-frequently-asked-questions-faqs> (Access Date: 27.01.2025)

²¹³ www.rescue.org (Access Date: 27.01.2025)

²¹⁴ Gülerce / Bayram, 2023.

²¹⁵ Işığçık and Kariman (n 208) 2022.

²¹⁶ Kennedy (n 8) 2024. Also the EU provided direct support to Ukraine's cultural and creative sectors by launching special Creative Europe funding calls, facilitating artist mobility, and initiating projects such as SUM – Save the Ukraine Monuments to safeguard cultural heritage digitally, see Dorotić, (n 166), 21-22.

²¹⁷ Goodger and Makay (n 31) 2024

²¹⁸ Fabbrini, (n 207) 2022.

sources are seen as alternatives to ensure energy security²¹⁹. During this process, Conference on the Future of Europe (CoFoE) has proposed some solutions and recommendations. Implementing CoFoE's solutions requires treaty changes, and the EU institutions and Member States must act on its recommendations, but the real challenge is having enough political will to make it happen²²⁰.

CONCLUSION

The free movement of workers is closely linked with the free movement of goods, services, and capital in the EU's internal market. This includes the right for any EU citizen to work or seek work in other member states, guarantees of equal treatment for workers and their families, mutual recognition of professional qualifications, and issues related to citizens' rights and social security. While labor mobility within the EU is not at its highest level today, these regulations contribute significantly to the efficiency of the single market, alignment of economic policies, and the progress towards political unity.

Since the development of social policy in the European Union from the 1970s to today has matured significantly, achieving a status comparable to economic integration, it now rests on a clear treaty foundation and, through the Charter, has arguably expanded further, while previous Commissions managed to implement much of their core agendas, establish a network of employment regulations, and garner support for additional social legislation, even using unemployment crises as opportunities to introduce new dimensions of social policy into foundational treaties²²¹.

It is unclear if mutual recognition of collective agreements would help free movement of labor and services from new Member States while keeping social standards in old ones, the ECJ tried to balance the interests of old and new states by leaving decisions on collective action to national courts, but this creates issues by possibly disrupting labor relations autonomy, as demonstrated by the prolonged debates over Viking and Laval, the ECJ's vague yet strict criteria for proportionality do not always favor trade unions, heavily depending on the prevailing political and economic context²²².

²¹⁹ S G Tokatlı, 'Ukrayna Krizi'nin Avrupa Politikalarına Yansımaları' (2022) 17 Journal of Euro Politic 65.

²²⁰ Fabbrini (n 207) 2022.

²²¹ Addison (n 62) 21. European social policy was initially regarded as secondary to economic integration; however, with the development of the single market, the EU's influence has increasingly expanded to areas such as the free movement of workers, the harmonisation of social rights, and anti-discrimination measures, see. Dorotić, (n 166), 7.

²²² Zahn (n 104) 2008.

As discussed in the sections E, the ECJ's stance on this issue, particularly in the Viking and Laval cases, has faced significant criticism from both academic circles and practical sectors like labor unions. The main criticism is the European Union's strict stance on the single market goal, especially regarding the free movement of workers, and its refusal to recognize processes such as strikes and collective bargaining within the framework of proportionality. While workers in free movement have the right to equal treatment with workers in their home countries, when it comes to posted workers or downward pressure on labor standards due to the relocation of labor to other Member States, true equality cannot be achieved solely through negative integration. Therefore, establishing a genuine European industrial relations system is imperative to alleviate the destructive economic competition over labor conditions²²³. The confinement of social solidarity to the national level and the absence of a common social security system at the European level remain limited in resolving the inherent tension between the right to free movement and the principle of solidarity within the European Community/European Union. Although the rulings of the Court of Justice partially address this gap, the burdens on national welfare systems continue to grow²²⁴. Returning to the primary research question, the transition from traditional posting of workers to the modern gig economy reveals that EU social policy is currently caught between a structural renaissance and the limitations of outdated legal tools. The gig economy fundamentally disrupts the traditional employer-employee binary through tripartite relationships and algorithmic management. Recent ECJ jurisprudence illustrates a nuanced, albeit fragmented, response to this disruption. On one hand, as seen in the FNV Kiem case, the Court has progressively expanded the protective umbrella of EU law to 'false self-employed' workers, shielding their collective bargaining rights from strict competition law prohibitions. On the other hand, the Yodel order demonstrates that the ECJ remains anchored to traditional, 20th-century criteria of subordination and operational autonomy. If a platform worker possesses significant latitude—such as the right to substitute or work for competitors—they remain outside the 'worker' classification, leaving profound gaps in their social protection.

The relationship between the labor market and social policy is key to achieving economic growth, employment opportunities, and social equality. Social policy aims to create equal opportunities, support disadvantaged groups, and improve working conditions in the labor market. The way the labor market functions directly affects the success of social policies, as market inequalities can limit their effectiveness. Strengthening social policies can increase participation in

²²³ Veldman (n 81) 116.

²²⁴ Stefano Giubboni, 'Free Movement of Persons and European Solidarity' URGE Working Paper 9/2006.



the labor market and provide fairer opportunities, supporting both economic and social stability.

The gig economy is a work model made up of people who do not have full-time positions in a specific organization, working remotely and with flexible hours. The focus in determining the employment status of platform workers and addressing other issues is the difficulty of legally categorizing the parties in platform work, which involves a tripartite relationship. It seems that this issue cannot be resolved with current regulations and concepts. In platform work, there are many different working methods and rules, making it difficult to determine whether the workers are employees or independent contractors. Even if regulations are made regarding this issue, it may not be possible to find a solution for every specific case. In the uncertain environment created by the growth of the gig economy and platform workers, the EU Platform Work Directive has been published. However, despite its publication, some uncertainties (such as ensuring occupational health and safety or collective labor rights) still persist. The fact that member states have until 2026 to adapt it to their national processes suggests that these uncertainties will continue. Ultimately, while the introduction of the Directive and progressive rulings like the FNV Kiem case signal a timid renaissance in EU social policy—shifting towards a ‘market-correcting’ paradigm—the heavy reliance on traditional subordination tests suggests that the EU is still retrofitting outdated legal tools to 21st-century precarious work models. Until a unified legal classification and a pan-European social framework are established, the structural pressure on both national welfare systems and collective rights will undoubtedly persist.

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