

## **SOCIAL RIGHTS IN THE EUROPEAN UNION AFTER THE LISBON TREATY**

**Summary:** The author in this paper analyzes development of social rights within the European Union, with special reference to the changes in this area after the entry into force of the Lisbon Treaty. At the beginning of the process of European integration, social policy and thus social rights were marginalized, in such a way that the basic motives for the creation of the European Union were economic and political, while social rights were only slightly covered by the founding treaties, and almost predominantly remained within the competence of Member States. The situation, with the later development of integration processes, gradually changed, in the direction of wider regulation of social rights at the level of the European Union. In the context of social rights, social policy is very important, and it is only in the last two decades of the development of European integration processes that social policy become public policy. Social policy is one of the national public policies under the influence of the European legislator, in a way that the European Union by adopting regulations (hard law and soft law) in the field of social policy influences on the creation of national social policies of Member States, because their policies must be adjusted to the regulations, that is to the standards and principles of the European Union. Social policy is in the shared competence of the European Union and Member States, for the aspects set out in the Treaty on the Functioning of the European Union. Some important areas of social policy are excluded from the competences of the European Union. The Lisbon Treaty has made a great contribution to the development of social policy and social rights at the level of the European Union, by regulating some important aspects of establishment and development of social rights.

**Keywords:** European Union, public policies, social rights, social policy, Lisbon Treaty.

### **1. Introduction**

At the beginning of the process of european integration, social policy and thus social rights were marginalized, in a way that the basic motives for the creation of the European Union (hereinafter EU, Union) were economic and political, while social rights were only slightly covered by the founding treaties, and almost predominantly remained within the competence of Member States. „The common internal market was the basis for the emergence and strengthening

of the integration of the Economic Community and the foundation on which today's European Union rests."<sup>1</sup>

Jurisdiction over "social issues" is typically exercised at the national or sub-national level.<sup>2</sup> Social rights make an important component in the EU, and the member states enjoy autonomy in the application of those rights.<sup>3</sup>

The situation, with the subsequent development of integration processes, gradually changed, in the direction of wider regulation of social rights at the EU level. With the gradual development of relations within the EU, the scope of regulation of social policy is expanding, that is the normative and institutional framework is being strengthened. Social policy is included in the shared competence of the European Union and the Member States, for the aspects set out in the Treaty on the Functioning of the EU (hereinafter TFEU). Some important areas of social policy thus social rights are excluded from EU competences in accordance with Article 153 para. 5. TFEU, where it states that the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs. In addition, there are some other social rights that in accordance with Art. 153 st. 2. TFEU encompass social security and social protection of workers; protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5; conditions of employment for third-country nationals legally residing in Union territory; in which fields the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the Economic and Social Committee and the Committee of the Regions. For other social issues referred to in Article 153 TFEU, it is envisaged that the European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions. Also the author Ross points out that EU today, although very important for the daily life of Europeans, has few strong prerogatives of social policy, and it is partly because the founders did not prioritize social policy in their strategies for European integration.<sup>4</sup>

---

1 Edin Rizvanović, Željko Batinović, Bosanskohercegovački integracijski put: izazovi u ispunjenju pravnog i ekonomskog kriterija, Mostar: Print Team, 2020., p. 15.

2 Barbier Jean-Claude, Tracing the fate of EU "social policy": Changes in political discourse from the "Lisbon Strategy" to "Europe 2020", International Labour Review, Vol. 151 No. 4, 2012., p. 377, (377-400).

3 See: Rentea Georgiana-Cristina, Mobility within the European Union and the Access to Social Benefits: Challenges of Social Policies, Revista de Asistentă Socială, anul XIV, 2015, nr. 3, p. 100, (99-107).

4 See: Ross G, The Revenge of Neglected Issues: EU Founders and Social Policy, French Politics, Culture & Society, Vol. 29, 2011., No. 2, (90-102), p. 90. Available at: <http://www.berghahnjournals.com/view/journals/fpcs/29/2/fpcs290207.xml?pdfVersion=true> [31. januar 2019].

Policies created in the European Union are considered public policies and they affect the legal systems of the Member States. Only in the last two decades of the development of European integration processes has social policy become public policy. In the field of social policy, the EU is generally responsible for supporting and complementing the activities of the member states in certain areas, coordination of national policies and for the encouraging the exchange of Member States' practices and experiences. Therefore, the EU now has a more important place in the development of social policy than at the beginning of the European integration processes, because significant instruments of coordination of national policies are introduced and applied, leading to joint cooperation and approaching, and exchange of good practice between Member States.

The Lisbon Treaty has made a significant contribution to the further development of social rights and social policy at the EU level. With its provisions, it has expanded and strengthened the European social model, first through the introduction of new values of the Union, thus expanding the existing list of goals in the field of social policy.

The Lisbon Treaty gave the EU Charter of Fundamental Rights of the European Union<sup>5</sup> the same legal force as the Treaty has, then formally recognized the role of the social partners, incorporated an open method of coordination into the Treaty's provisions, and recognized public services of general interest (Protocol No. 9). Also, the previous Title XI on social policy was renamed, so that instead of the title "Social policy, education, vocational training and youth" a new Title X was introduced in the TFEU marked as "Social policy". It is also important, in the context of emphasizing the importance of the social dimension of the EU in the provisions of the Lisbon Treaty, that Chapter II, entitled "Provisions having general application" in the TFEU, inter alia, state in the Article 8. that in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women, and according to the Article 9. in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. In this paper will be presented in more detail the provisions of the Lisbon Treaty that represent an important contribution to the development of social rights and social policy in general at the Union level.

## **2. European Union policies - general overview**

The EU policies and European integration processes are seen as public policies and they influence the institutional and legal systems of the Member States. In order to understand EU public policies, it is first necessary to clarify the

---

<sup>5</sup> Charter of Fundamental rights of the European Union, OJ C 364, 18.12.2000.

concept of public policies in general, that is to determine what are the essential elements that define certain policies as public. It is obvious why are public policies necessary and important in social communities, but their definition is not unambiguous, and depends on the aspect from which the concept is defined, whether by determining the content of issues covered by public policies, or with regard to the procedure of formulating and adopting public policies or through their actors.<sup>6</sup>

“Most definitions emphasize a network of decisions and actions that address some issues that are important to all citizens, society as a whole, or to particular groups of citizens.”<sup>7</sup>

Policy making is a special process that implies meeting certain conditions and implementing the appropriate stages in the process, which involves the action of several different main actors. Traditionally, the main actors in the process of making public policies are considered to be state authorities or state institutions. However, they are no longer the only or dominant actors in policy making, because it is now strengthened the participation of various social actors who are not formal holders of power but have strong support from citizens and act as various NGOs, associations, research centers, think tank organizations, but also citizens as individuals can be actors, then various entrepreneurs and stakeholders. In addition, the role of actors in policy-making has recently been given to various special regional and international communities and organizations such as the European Union. It is through its main institutions that the EU acts in the field of policy creation and implementation.<sup>8</sup>

“Who participates in public policies?” First of all, state actors participate: holders of executive, legislative and judicial power. It is sometimes forgotten that litigation can also have a strong influence in defining public policies. A special group are the European institutions. Since the EU is a political creation of its kind, we single them out because they are not a classic state actor, but they also differ from other international organizations. These are the basic European institutions: the European Parliament, the Council of the EU, the European Commission, the European Council, the European Court of Justice. Here must be added a number of agencies and committees, as well as directorate - generals, which are often crucial for policy-making.”<sup>9</sup>

“It is precisely in the transition countries and the countries entering the European Union that the structural difficulties and the difficulties related to the actors operating within these structures are clearly seen. This ranges from

---

6 For more on defining public policies see: Žiljak T., *Javne politike*, Zbornik Javne politike, Institut alternativa, Podgorica, 2014., p. 9.

7 Hill (2014), in: Žiljak, *ibid.*

8 For more about the public policy process see: Žiljak, *op.cit.*, pp. 12-16. For more about public policy actors see: Žiljak, *op.cit.*, pp. 16-17., Marović J., *Civilno društvo i javne politike*. Zbornik Javne politike, Institut alternativa, Podgorica, 2014., pp. 40-44.

9 Žiljak, *op.cit.*, p. 16.

inconsistencies in institutional arrangements to a lack of administrative capacity to implement changes or difficulties for actors to align their beliefs and habits with new patterns of behavior and action. This is why the beliefs of actors are important in public policies. Beliefs are ideas that are generally accepted as unquestionable truths, thus enabling actors to navigate and make decisions at all stages of the policy-making process. The time dimensions that actors need to recognize are also important. This applies in particular to determining the right time when it is possible to implement a particular policy (timing) and the speed of policy implementation (pace).”<sup>10</sup>

Within the EU public policies have also been created and implemented, under the auspices of European institutions that operate within established competencies. It turned out that the actors of public policies of the EU are its central institutions, as the main carriers of creative legislative activity and implementation of EU legislation, but also its other institutions, various committees and the like. Therefore, it should be reminded that the process of creating public policies is not only reserved for the domain of nation states, but is also realized at the level of various organizations such as the EU or the OECD.

“The European policy process has a multinational or multilateral character, consisting of a series of forms arising from the different traditions of the member states. Not only because the participants are numerous, but also because they bring different languages, cultures and different work habits to the forum. Therefore, the dominant style of behavior stems from a mixture of these different forms.”<sup>11</sup>

“In the European Union, 80% of public policies are adopted at the level of the central government. The governments of the Member States control those public policies that make up a large part of public spending (education, health, social policy and defense), with exclusive national competences over tax policy.”<sup>12</sup>

“Most of the regulation is carried out today at the level of the Union. (...) The European level is therefore primarily a level of regulation, while the actual decision-making of the basic policies, especially those that are the pillar of the welfare state, belongs to other levels of government.”<sup>13</sup>

Social policy is one of the examples of public policy of the European Union that is created in the process of action of the institutions of the European Union.

“Union legal initiatives in social policy are broadly supported by economic factors or the implementation at Union level of global social norms agreed by the Member States.”<sup>14</sup>

---

10 Ibid., p. 10.

11 Babić Krešić I., Javne politike u procesu globalizacije i europeizacije i politika zapošljavanja. Nova prisutnost 12, 2014., p. 417.

12 Grubiša (2012), in: Babić Krešić, op.cit., p. 417.

13 Petak Z, Europeizacija javnih politika u Hrvatskoj. In: Puljiz V, Ravlić S, Visković V (eds) Hrvatska u Europskoj uniji. Kako dalje? Centar za demokraciju i pravo »Miko Tripalo«, Zagreb, 2012., p. 27.

14 Watson (2009), in: Babić Krešić, op.cit., p. 424.



The creation of the EU public policies is related to the processes of globalization and europeanization, where the EU through these processes influences the creation and adjustment of national public policies of Member States to european standards and norms.<sup>15</sup>

Based on the review of the literature in the field of public policy, it can be concluded that social policy is one of the national public policies under the influence of the European legislator, in a way that the EU by adopting regulations (hard law and soft law) in the field of social policy also affects the creation of national social policies of the Member States, because their policies must be adjusted to the regulations, that is to the standards and principles of the EU.

### **3. Development of the EU social rights and social policy before the Lisbon Treaty**

Over the time, social policy has developed and strengthened within the EU, and has moved from a marginalized position to a more significant place in the process of European integration. In the beginnings of the European integration processes, economic issues had priority, while the social dimension of the EU did not have a significant place in that process. It was considered that the development of economic aspects of integration would simultaneously address social issues that would arise in the EU.

The economic identity of the EU has always had a priority over social identity, so the social rights that developed at the EU level were in the service of realizing its economic aspects, that is they were subordinated to them.<sup>16</sup> Social policy was not left out even within the initial phase of the creation of the EU, however, the Treaty of Rome essentially provided for the social area to be left under national jurisdiction. Social policy was important, but other issues were given priority, such as the internal market and free trade, the customs union and the like.<sup>17</sup>

Although the Community was said to be giving priority to the economic and monetary aspects of European integration over the social aspects, or even to their detriment, still it is enough to look at the first of the European Treaties establishing the European Coal and Steel Community<sup>18</sup>, to understand that from

---

15 More on Europeanization and globalization of public policies see: Babić Krešić, *ibid.*, pp. 416-422.

16 For more see: Hadžić M., *Evropski stup socijalnih prava*, Godišnjak Pravnog fakulteta u Sarajevu, 2017., LX: 199-225., p. 220.

17 See: Rutkauskiene L., *Social Policy in the European Union: Variety and Challenges*. Public Administration, Vol. 1/2, 2010., Issue 25/26., pp. 26., 30. and 31.

18 Treaty establishing the European Coal and Steel Community (ECSC), also known as the Treaty of Paris, was signed on 18 April 1951 by six founding states: Germany, France, Italy and the Benelux countries (Belgium, the Netherlands and Luxembourg). It entered into force on July 24, 1952. It was concluded for 50 years and expired on July 23, 2002.

the beginning social preoccupations were present in the Treaty.<sup>19</sup>

Even the first Founding Treaty regulated certain aspects of social policy in the EU, but only in fragments and without significant interventions in the social aspects of integration.

In the context of the EU's social dimension, the objectives of the ECSC included the creation of employment, the financing of employment and education programs, and improvement of living standards and working conditions of nationals of the Member States.<sup>20</sup>

However, the social policies were less important than the social policies and rights adopted at the national level and in the comparison with the economic policy in the ECSC.<sup>21</sup>

The main objectives of the Treaty establishing the European (Economic) Community (Treaty of Rome)<sup>22</sup> were primarily economic, and although it contained a special title 'Social Policy', these provisions did not have a significant impact on regulating this area, that is they had a limited scope. However, social goals were not completely left out, for example the Treaty of Rome contained provisions on improving working and living conditions, but this was not enough, as the social components in the development of the EU remained behind the integration processes.

There was little attention initially paid to social issues, and although worker mobility and the expansion of skilled labour force were important for creating a common market, the Treaty of Rome was based on the assumption that the benefits of the common market would improve the lives of all European workers.<sup>23</sup>

The primary objectives of the Treaty were to establish a common market, approximate the economic policies of the Member States, promote the harmonized development of economic activities within the Community, increase stability and raise living standards, and promote closer relations between the Member States.<sup>24</sup>

In the preamble of the EEC/EC Treaty it is stated that the signatories of the Treaty are determined to ensure the economic and social progress of their countries through joint action aimed at removing the borders that divide Europe. At the same time, this is the basis of the content of the common social policy of

---

19 Mathijssen P.S.R.F., *A Guide to European Union Law*, 7th edn, Sweet & Maxwell, London, 1999., p. 379.

20 See: Hadžiahmetović A., *Ekonomija Evropske unije*. University Press: Magistrat, Sarajevo, 2011., p. 265.

21 Geyer R. R., *Exploring European Social Policy*. Polity Press, London, 2000., p. 1797.

22 It was signed in Rome on March 25, 1957, and entered into force on January 1, 1958. This Treaty was signed under the title Treaty establishing the European Economic Community, which was amended by the Maastricht Treaty in 1992 into the Treaty establishing the European Community.

23 McCormick J., *The European Union: Politics and policies*. 2nd edn, Westview Press, 1999., p. 252.

24 Craig P., Gráinne d. B., *EU Law: Text, Cases, and Materials*, 5th edn. Oxford University Press, 2011., p. 6.

the EU, which is considered a necessary factor for the realization of the European project and the overall improvement of the living standard of EU citizens.<sup>25</sup>

During the 1960s, there was no significant shift in the development of the EU social rights and social policy, it was a period of stagnation, except for a few important moments, such as the Hague Summit held in December 1969, which returned the focus to social policy in the context of the process of creating a European Monetary Union. Subsequently, summits were held in 1972 and 1974, but without major results in the field of social policy.

Overall, the period from the signing of the Treaty of Rome until the early 1970s was marked by the Community's indifferent attitude towards social policy. However, during the 1970s, the Community's approach to social issues changed, giving these issues more importance.<sup>26</sup>

The Council Resolution of 21 January 1974 adopted the Social Action Program, and the following basic goals have been set: achieving full and better employment, improvement of working and living conditions, increased involvement of workers and employers in the Community decision making process on economic and social development issues, as well as on the issues of workers.

The 1990s marked the beginning of the reform of the Community as a whole, including the field of social policy. The Treaty on European Union, often referred to as the Maastricht Treaty<sup>27</sup> was adopted, and in Article 2 (now amended Article 3 TEU) it stipulated that the Union's task will be to promote sustainable and non-inflationary growth within the Union while respecting ... high levels of employment and social protection, raising the standard of living and quality of life, and economic and social cohesion and solidarity among the Member States. In order to achieve these objectives, the Union has also been given new activities referred to in Article 3 i, j, k, q, p EC, supplemented by the Maastricht Treaty, which referred to 'policy in social sphere involving the European Social Fund', 'strengthening economic and social cohesion', and 'contribution to education and quality training'. These additional activities enshrined in the Treaty are contained in Part Three concerning Common Policies in a specific chapter/Title VIII entitled "Social policy, education, vocational training and youth" in respect of which the Union is given new competence (Articles 117 -127, and now Articles 151-166 TFEU). The Treaty included Article 3b EEC (later Article 5 EC - now Article 5 TEU), which for the first time introduced the concept of conferred competences, and the principles of subsidiarity and proportionality.<sup>28</sup> The most important amendments to the Treaty concern the expansion of EU competencies extending to the field of labour law and social security law, then the number of areas in

---

25 See: Hadžiahmetović, op.cit., p. 264.

26 See: Vuković D., *Socijalna politika Evropske unije*. Univerzitet u Beogradu, Fakultet političkih nauka, Beograd, 2011., pp. 310-311.

27 Treaty on European Union (Treaty on Maastricht), from 7.2.1992., OJ C 191 of 29.7.1992. It entered into force on 1 November 1993.

28 See: Barnard C, *EU Employment Law*. Fourth Edition, Oxford University Press, 2012., p. 15.



which decisions can be made by a qualified majority has been increased, and the provisions on European social partners have been reformulated.<sup>29</sup> Based on the provisions of the Treaty, various directives were adopted, which expanded the area of common social policy. Interestingly, in an effort to agree on new social provisions in the Treaty, due to resistance from the government of the United Kingdom (hereinafter UK), it was given an opt out position to the UK. Namely, in order to ensure that the UK does not refuse to agree to the adoption of the EU Treaty, a special exception was made, by waiving these changes in the Treaty itself, and they were separated into the Agreement on Social Policy (hereinafter the Agreement) and the Protocol on Social Policy (hereinafter the Protocol) which represented the so-called social chapter. The new provisions were incorporated into the Agreement signed by 11 Member States, meaning all Member States except the UK, and the Agreement was annexed to the Treaty on the basis of the Protocol. With the Protocol on Social Policy all Member States agreed that the new social provisions of the Agreement will be binding for only 11 Member States. Thus, the Agreement was binding only for its signatories, and not for the UK, which remained bound only by the earlier provisions on social policy (before Maastricht). The UK has thus secured an opt out position, that is it secured an exemption from the application of the above mentioned provisions, as well as from the provisions on economic and monetary union. This Agreement was based on the Protocol on Social Policy of 1992, which was adopted with the EEC Treaty, and gave the power to adopt secondary legislation in the field of labour rights.<sup>30</sup>

“In this way, the provisions on social policy began to formally develop on two tracks, until the United Kingdom signed the Charter of Fundamental Social Rights of Workers, after the Labour Party came to power in 1997.”<sup>31</sup>

The principles expressed in the Charter have been transposed into the Agreement on Social Policy, which further establishes the division into two decision-making systems within social issues. In this way there were indicated the areas of social policy in which decisions are made by qualified majority without the participation of the UK, and the areas where decisions are made unanimously. The situation changed when Labour Party replaced the previous government in the UK in May 1997, and among their first activities was the adoption of the Social Chapter from the EU Treaty. The Agreement on Social Policy was also introduced in the Treaty, so those provisions were now binding on the UK as well. The UK's agreement to commit to the social chapter came after five years, during which time certain measures of secondary legislation were adopted, which included only four directives: on European works councils, parental leave, part-time work and the burden of proof. The UK has now acceded to these directives by re-adopting them by reference to the legal basis contained in the provisions of the Treaty itself. It is noted that no high legislative activity was recorded in

---

29 See: Vuković, *op.cit.*, p. 288.

30 See: Barnard, *op.cit.*, pp. 15-16., Vuković, *op.cit.*, pp. 288-289.

31 Vuković, *ibid.*, p. 318.

11 Member States until the UK adopted the Social Chapter, and its subsequent inclusion did not create a problem in the implementation of the adopted measures. Given the number of directives adopted over a period of five years, however, this is a negligible legislative activity of the Member States in this field during the opt-out position of the UK.<sup>32</sup>

Further progress in the development of social policy was expressed through the adoption by the Commission of the White Papers and Green Paper on EU Social Policy: the 1993 White Paper on Growth, Competitiveness and Employment<sup>33</sup>, the EU Green Paper on Social Policy ('Options for the Union')<sup>34</sup>, and the White Paper on Social Policy<sup>35</sup>.

Significant changes in the field of social policy have occurred with the Treaty of Amsterdam<sup>36</sup>, when the attitude towards EU social policy is changing. With the Treaty of Amsterdam it was agreed to amend the chapter on social policy and renumber the articles, now including the Agreement on Social Policy in the EU Treaty. Articles 117-128 of the Treaty of Rome on social provisions and the European Social Fund have been replaced by Articles 136-150 and incorporated into the Treaty together with the provisions of the Agreement on Social Policy.

"The Treaty of Amsterdam devotes a special section in Chapter XI to social policy (Art. 136 et seq. TEU). The provision of Article 136 para. 1. of the Treaty contains the recognition of fundamental socio-political rights and sets out the socio-political objectives of the Community. The scope of Community action in social matters extends, according to Art. 137 para. 1. UEZ, on:

- improvement, especially of the working environment, in order to protect the health and safety of workers;
- working conditions;
- informing and consulting workers;
- integration of persons excluded from the labour market, without prejudice to the application of Art. 150 .;
- equal opportunities for women and men in the labour market and equal treatment in the workplace."<sup>37</sup>

---

32 See: Shaw J., Law of the European Union. 3rd edn, Palgrave Law Masters, 2000., p. 77., Barnard, op.cit., p. 20.

33 Commission of the European Communities, Growth, Competitiveness, Employment: The Challenges and Ways Forward into the 21st Century - White Paper. COM (93) 700, 5. December 1993.

34 Commission of the European Communities, European Social Policy: Options for the Union - Green Paper, COM (93) 551, 17. November 1993.

35 European Social Policy - A Way Forward for the Union - A White Paper. COM (94) 333, 27. July 1994.

36 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Final Act, Official Journal C 340, 10/11/1997. The Amsterdam Treaty was signed on October 2, 1997, and entered into force on May 1, 1999.

37 Herdegen M., Europarecht. Pravni fakultet Sveučilišta u Rijeci, Europsko pravo. (trans: Edita Čulinović Herc ... et al.) Rijeka, 2002., p. 281.

The Treaty of Nice<sup>38</sup> did not substantially change the provisions relating to social policy. A significant contribution of this Treaty is the adoption of the Charter of Fundamental Rights of the European Union<sup>39</sup>, which was signed on 7 December 2000 and entered into force on 1 December 2009. Within the provisions of the Charter regulation of social rights is included as well. In the Title IV: „Solidarity“, from the Article 27 to 35 the social rights have been recognised. Different rights have been regulated, such as the rights of workers, children, families, elderly. In this paper we will emphasize the Article 34 which regulates the social security and social assistance. In Paragraph 1 of the Article 34 it is said that the Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices. In Paragraph 2 it is declared that everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices. In the Paragraph 3 it is said that in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

On the one hand, there is a clear agreement on the content and scope of the EU's economic identity, while on the other hand, European social identity implies the development of individual social dimensions that are not strong enough or complementary to represent the hard core of that identity.<sup>40</sup>

Despite the strengthening of the EU social policy, this is still an area that is a protected zone of the Member States, although it is included in the shared competence between the EU institutions and the Member States. Thus, the Strategy Europe 2020<sup>41</sup> also promotes the “european social model”, but primarily focused on the use of soft law instruments. Consequently, the instruments of coordination of national policies of the Member States, cooperation and development of good practices between the member states are in use in the EU legal system.

---

38 Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Official Journal C 080, 10/03/2001. The Treaty of Nice was signed on February 26, 2001, and entered into force on February 1, 2003.

39 See: Barnard, op.cit., p. 26.

“With the Treaty of Nice as the further valid basis of the EU legal order, the EU Charter of Fundamental Rights was solemnly proclaimed as a catalog of fundamental rights of this legal order.” Gradašćević-Sijerčić J., Radno zakonodavstvo BiH u svjetlu načela komunitarnog radnog prava. Godišnjak Pravnog fakulteta u Sarajevu, broj XLIX, Sarajevo, 2006., p. 129.

40 Hadžić, op.cit., p. 201.

41 European Commission (2010) Communication from the Commission: Europa 2020 A Strategy for Smart, Sustainable and Inclusive Growth. Brussels, COM(2010)2020 final.

The social dimension of the EU was not significantly developed until the mid-1980s, and a major shift in its recent development occurred with the adoption of the Strategy Europe 2020, in response to the 2008 economic crisis which had negative consequences for the EU labour market as well. The Strategy 2020 aims to create the conditions for smart, sustainable and inclusive (comprehensive) growth, and this is sought to be achieved by setting five main targets<sup>42</sup>. Although there are limitations on the EU's competence to adopt hard law acts in the field of social policy, soft law mechanisms and instruments are used to achieve harmonization in social issues, such as the open method of coordination, that is coordinating strategies and European social dialogue.

“In parallel with EU hard law, which includes legislation such as directives or regulations, the EU also coordinates the social and employment policies of the Member States through soft law, such as legally non-binding guidelines and recommendations.”<sup>43</sup>

It can be said that the development of social rights is one of the expected results of the existing promotion and commitment to the improvement of social welfare characteristic for the developed countries of Western Europe and at the same time part of the activities towards the creation of the internal market.

With the entry into force of the Lisbon Treaty in 2009, there was a major turning point in development of the EU social rights and social policy, which will be analyzed in more detail below.

#### **4. The Lisbon Treaty - a significant shift in the EU social rights and social policy**

The Lisbon Treaty<sup>44</sup> from 2009. amends the Treaty on European Union (hereinafter TEU) and the Treaty establishing the European Community

42 The Commission proposes the following EU headline targets in the Strategy: – 75 % of the population aged 20-64 should be employed. – 3% of the EU's GDP should be invested in R&D. – The “20/20/20” climate/energy targets should be met (including an increase to 30% of emissions reduction if the conditions are right). – The share of early school leavers should be under 10% and at least 40% of the younger generation should have a tertiary degree. – 20 million less people should be at risk of poverty. European Commission (2010) Communication from the Commission: Europa 2020 A Strategy for Smart, Sustainable and Inclusive Growth. Brussels, COM(2010) 2020 final, p. 5.

43 Butković H et al., Hrvatska i Europska unija – prednosti i izazovi članstva. In: Tišma S, Samardžija V, Jurlin K (eds) Hrvatska i Europska unija – prednosti i izazovi članstva. Institut za međunarodne odnose – IMO, Zagreb, 2012., p. 108.

44 The Lisbon Treaty was signed in Lisbon on 13 December 2007 and entered into force on 1 December 2009; Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, Official Journal C 326, 26/10/2012, or Consolidated version of the Treaty on European Union OJ C 202, Volume 59, 7.6.2016; Consolidated version of the Treaty on the Functioning of the European Union OJ C 202, Volume 59, 7.6.2016.

(hereinafter TEC). The Lisbon Treaty has renamed the Treaty establishing the European Community into the Treaty on the Functioning of the European Union. In regard to social policy it is important to mention that the Agreement on Social Policy is an integral part of the Lisbon Treaty.<sup>45</sup> The Treaty seeks to reform and modernize the legal bases, instruments and institutions of the EU in the context of enlarged membership, because the stated goal failed to be achieved by the Constitution of the European Union, ie the Treaty establishing a Constitution for Europe.<sup>46</sup>

Social policy is included in the shared competence of the European Union and the Member States, for the aspects set out in the Treaty on the Functioning of the EU. Some important areas of social policy thus social rights are excluded from EU competences in accordance with Article 153 para. 5. TFEU, where it states that the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs. In addition, there are some other social rights that in accordance with Article 153 para. 2. TFEU encompass social security and social protection of workers; protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5; conditions of employment for third-country nationals legally residing in Union territory; in which fields the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the Economic and Social Committee and the Committee of the Regions. For other social issues referred to in Article 153 TFEU it is envisaged that the European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions, and here is used qualified majority voting.

Several points which represent the contribution of the Lisbon Treaty to the further development of social rights and social policy at the level of the Union stand out.

With its provisions, the Lisbon Treaty has expanded and strengthened European social model, first by introducing new values of the Union, thus expanding the existing list of objectives in the field of social policy. First of all, the TEU has expanded the list of values in Article 6 (now Article 2) according to which the Union is based on values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the

---

45 The Agreement on Social Policy states the following socio-political objectives:

- Improving employment,
- Improving living and working conditions,
- Providing adequate social protection,
- Social dialogue,
- Human resources development,
- Fight against social exclusion.

46 This legal act was signed on October 29, 2004, but did not enter into force because it was not ratified by two Member States, France and the Netherlands, which refused to ratify it in referendums.



rights of persons belonging to minorities (values of respect for human dignity and equality were additionally introduced). Then in the same Article 2 it is stated that these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. The greater significance of the social dimension of the EU thus confirmed is also visible in the next Article 3 para. 3. TEU according to which the Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among member states. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced. It can be clearly concluded from these provisions that the Union refers to a greater connection between economic and social issues, especially bearing in mind that the interdependence of economic and social policy has come to the fore through the Union's previous activities.<sup>47</sup> In order to find the right answers to the crisis in the labour market, the EU has recognized the need to adapt legislation in the field of labour and social policy to economic changes, given the identification of the EU as a social market economy.

In addition to the already mentioned changes related to the values and goals of the Union, there are other significant innovations. The Lisbon Treaty gave the EU Charter of Fundamental Rights of the European Union the same legal force as the Treaty has, formally recognized the role of the social partners, incorporated an open method of coordination into the Treaty's provisions, and recognized public services of general interest (Protocol No. 9). Also, the previous Title XI on social policy was renamed, so instead of the Title "Social policy, education, vocational training and youth" a new Title X was introduced in the TFEU marked as "Social policy".<sup>48</sup> It is also important, in the context of emphasizing the importance of the social dimension of the EU in the provisions of the Lisbon Treaty, that under the Title II, entitled „Provisions having general application“ in the TFEU, it is stated that, inter alia, in Article 8. in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women. Also according to the Article 9. in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health, and in the Article 10. it states that in defining and implementing its policies and

---

47 See: Barnard, op.cit., p. 27.

48 See: Vuković, op.cit., pp. 277-279.

activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In Article 4, para. 2. of the TFEU shared competence between the Union and the Member States shall apply, inter alia, in the field of social policy for the aspects set out in that Treaty. In accordance with Article 2, para. 2. TFEU when the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence. These provisions represent progress in regulating social policy at the EU level.

Furthermore, Article 5 (1) of the TEU (former Article 5 TEC) states that the limits of the Union competences are governed by the principle of conferral. The use of the Union competences is governed by the principles of subsidiarity and proportionality. In the paragraph 2. of the same Article it is stated that under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. Paragraph 3. states that under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol. According to the paragraph 4. under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality also in accordance with the above mentioned Protocol. Further application of the principles of subsidiarity and proportionality, which is even more stressed with the Lisbon Treaty, could only hinder the adoption of legislation at EU level, given that the Protocol on the Application of These Principles provides for a complex procedure for its application, weakening the role of the Commission and strengthening control over their implementation. This could also have a negative impact on the regulation of social policy at the EU level, which has long resisted the effort to regulate at the Union level with legally binding force.<sup>49</sup>

“However, these provisions do not in themselves give the Union the right

---

49 See closer: Weiss M., Introduction to European Labour Law: European Legal Framework, EU Treaty Provisions and Charter of Fundamental Rights. In: Schlachter M (ed) EU Labour Law: A Commentary. Kluwer Law International BV, The Netherlands, 2015., pp. 7-8.

to adopt regulations in the social sphere that would be binding on the Member States and harmonize national social legislation. The general provisions of the Treaty can only serve as a means of interpreting existing EU secondary legislation concerning social issues.”<sup>50</sup>

A Protocol on the exercise of shared competence (Protocol No 25) was added to the Treaties, and contains only one article, which states that with reference to Article 2(2) of the Treaty on the Functioning of the European Union on shared competence, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.

The area of social policy as previously mentioned is now covered by a special title in Chapter X TFEU, named “Social policy”. Accordingly, the Article 151 (formerly Article 136 TEC) states that The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion. To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy. They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action. The Lisbon Treaty did not make major changes to the provisions on European social dialogue. Formal recognition of the role of the social partners is established in accordance with Articles 152, 154 and 155 TFEU. According to Article 152. the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.<sup>51</sup>

Article 153 para. 1. TFEU (formerly Article 137 TEC) clearly defines the EU’s competences in the field of social affairs, by emphasizing that with a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the member states in the following fields:

(a) improvement in particular of the working environment to protect workers’ health and safety;

---

50 Sokol T., *Europska socijalna politika*. In: Mintas H. Lj (ed) *Europska unija*. Mate d.o.o., Zagreb, 2010., p. 486.

51 See: Vuković, op.cit., p. 279.

- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Union territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 166;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

In accordance with Article 153 para. 2. the European Parliament and the Council have two options:

- they may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- they may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions. In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g).

In accordance with Article 153 para. 3. a Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 155. In this case, it shall ensure that, no later than the date on which a directive or a decision must be transposed or implemented, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to

take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive or that decision.

In accordance with Article 153 para. 4. the provisions adopted pursuant to this Article: — shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof, — shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.

In accordance with Article 153 para. 5. the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

This exclusion we can explain by the genesis of the Social Protocol to the Maastricht Treaty, because the European social partners did not want the European legislator to interfere in their affairs.<sup>52</sup>

According to Article 154 TFEU (formerly Article 138 TEC) in para. 1. the Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties. According to paragraph 2. to this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action. In accordance with paragraph 3. if, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation. According to paragraph 4. on the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

According to Article 155 TFEU (formerly Article 139 TEC) in paragraph 1. should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements. According to same article, paragraph 2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed. The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2).

In conformity with Article 156 TFEU (ex Article 140 TEC) with a view to achieving the objectives of Article 151 and without prejudice to the other provisions

---

<sup>52</sup> Weiss, *op.cit.*, p. 7.



of the Treaties, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Chapter, particularly in matters relating to: — employment, — labour law and working conditions, — basic and advanced vocational training, — social security, — prevention of occupational accidents and diseases, — occupational hygiene, — the right of association and collective bargaining between employers and workers. To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed. Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

According to Article 157 para. 1. TFEU (former Article 141 TEC) each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. In paragraph 2. it is stated that for the purpose of this Article, ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job. According to para. 3. the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. According to para. 4. with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any member state from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

According to Article 158 TFEU (ex Article 142 TEC) Member States shall endeavour to maintain the existing equivalence between paid holiday schemes. According to Article 159 TFEU (ex Article 143 TEC) the Commission shall draw up a report each year on progress in achieving the objectives of Article 151, including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee. According to Article 160 TFEU (ex Article 144 TEC) the Council, acting by a simple majority after consulting the European Parliament, shall establish a Social Protection Committee with advisory status to promote cooperation on social

protection policies between Member States and with the Commission. The tasks of the Committee shall be: — to monitor the social situation and the development of social protection policies in the Member States and the Union, — to promote exchanges of information, experience and good practice between Member States and with the Commission, — without prejudice to Article 240, to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative. In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour. Each member state and the Commission shall appoint two members of the Committee.

According to Article 161 TFEU (ex Article 145 TEC) the Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament. The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.<sup>53</sup>

In the provisions 162–164 TFEU (ex Article 146–148 TEC) European Social Fund has been regulated. This Fund is very important for making the employment of workers easier and increasing their geographical and occupational mobility within the Union.

The Treaty of Rome already established the European Social Fund, with the task of creating opportunities for improving employment and easier territorial and professional mobility of the labour force.<sup>54</sup>

In comparison with the beginning of the European project when social policy was not on the agenda of the Community, we can say that a great progress has been made so far, because the legal framework has changed significantly, and the results of the European legislator are quite notable.<sup>55</sup>

Despite some difficulties in making hard law in the area of social policy, the EU's role in this area is much stronger than it was in the EEC.<sup>56</sup>

---

53 More about the various aspects of setting up a Social Constitutionalism, as well as promoting labour force participation after Lisbon see: Dagmar S, Ulrike L, Hildegard S (eds), *European Economic and Social Constitutionalism after the Treaty of Lisbon*. Cambridge University Press, 2011.; Christian v. S. et al., *Life After Lisbon, Europe's Challenges to Promote Labour Force Participation and Reduce Income Inequality*. RAND Europe, 2011.

54 See: Rizvanović Edin, *Državna pomoć u zemljama Evropske unije: iskustva za Bosnu i Hercegovinu*, Fojnica: Štamparija „Fojnica“, 2005, pp. 31–32.

55 Weiss, op.cit., p. 26.

56 Weiss, op.cit., p. 26.

## 5. The future of social development in the EU27

In early 2017, the European Commission adopted a White Paper on the Future of Europe - Considerations and Scenarios for the EU27 to 2025.<sup>57</sup> This document was adopted at a time when growing insecurity and distrust of EU citizens in its successful operation, as a result of economic, financial and social crisis has also hit the EU in recent years. This document presents five possible scenarios for Europe 2025<sup>58</sup>, with the aim of leading a debate among Member States on the future of Europe, and encouraging them to think about them and decide together which combination of characteristics of these five scenarios they believe would be the best solution in the interest of the citizens of the Union.<sup>59</sup>

Also, a little later in the field of employment and social security, a document called the Review Paper on the Social Dimension of Europe<sup>60</sup> was adopted. In this document, three options for Europe's social future are presented, as follows: - limiting the "social dimension" to free movement; on the contrary, those who want more do more in terms of social issues; or the EU-27 could work together to strengthen the social dimension. The document states that the chosen political option will have consequences that go beyond social issues, including Europe's competitiveness, its ability to take advantage of and shape globalization, the stability of economic and monetary union, cohesion within the Union and solidarity among its inhabitants. It was also indicated that each policy option should also be considered in the light of the challenges identified, questioning where action at EU level can provide added value. It was also explained that since each of the three options offers many concrete proposals for action, challenges must be taken into account in selecting possible instruments, and that most examples from the second option apply to the third option and vice versa.<sup>61</sup>

Then, the next step towards strengthening social Europe was the adoption of the document European Pillar of Social Rights<sup>62</sup>. The European Pillar of Social Rights was first announced in 2015. The European Pillar of Social Rights was

---

57 White Paper on the future of Europe - reflections and scenarios for the EU27 by 2025, European Commission COM(2017) 2025 of 1 March 2017.

58 Scenario 1: Carrying On, Scenario 2: Nothing but the Single Market, Scenario 3: Those Who Want More Do More, Scenario 4: Doing Less More Efficiently, Scenario 5: Doing Much More Together. See: White Paper on the future of Europe - reflections and scenarios for the EU27 by 2025, op.cit., pp. 15-25.

59 Ibid., p. 15.

60 Reflection paper on the Social Dimension of Europe, European Commission COM(2017) 206 of 26 April 2017.

61 Ibid., p. 25.

62 The European Parliament, the Council and the Commission, European Pillar Of Social Rights, available at: [https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf) [17. april 2019].

first announced by President Juncker in a speech he gave on the state of the Union in 2015, and the Commission then presented it in April 2017. On 17 November 2017, European Union leaders solemnly proclaimed the European Pillar of Social Rights at the Fair Employment and Growth Summit in Gothenburg, Sweden. This document sets out 20 principles and rights that are key to achieving fair and functional labour markets and social systems in 21st century Europe. This is the first set of rights proclaimed by the EU institutions since the adoption of the Charter of Fundamental Rights. It is said that the pillar will help make the Union as ambitious as possible for the benefit of all citizens across the EU.<sup>63</sup> This document derives the principles of law in three main areas, as follows: equal opportunities and access to the labour market, fair working conditions, social protection and inclusion.<sup>64</sup> Fulfillment of the principles and rights of this Pillar is a shared responsibility of the institutions of the European Union, the Member States, the social partners and other stakeholders.<sup>65</sup>

However, this Pillar does not bring major changes in terms of recognition of social rights in the EU, as it is a document that establishes a set of principles and is a soft law that is not legally binding on Member States. These principles should be respected and applied by states, but they do not legally bind them, as would be the case with a directive or regulation.<sup>66</sup> Due to this fact, the main bearer of this Pillar should be the social dialogue of the social partners. But it will not be easy because there is already disagreement between the social partners, since the representatives of the employers accept the Pillar as a good solution, while the trade union associations have a negative critical attitude, and it is unlikely that an agreement will be reached.<sup>67</sup>

“There is a need for greater integration of the different social models of the Member States based on values that are considered to be common European values<sup>68</sup>, as a way of creating and maintaining a European social model.”<sup>69</sup>

Common European values are reflected through action as well as EU legislation, and in particular through new aspects of the partnership between the

---

63 See: [http://europa.eu/rapid/press-release\\_STATEMENT-18-6390\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-6390_en.htm) [16. april 2019].

64 See: European Commission, European Pillar of Social rights, op.cit., p.1.

65 Ibid., p. 2.

66 See: Hadžić, op.cit., pp. 220-221.

67 Ibid., p. 222.

This part of the paper where is analyzed the future of social development of the EU27 is presented according to: Hasanagić E., Uspostavljanje evropskog socijalnog modela, Sui Generis – naučno-stručni časopis o evropskim integracijama, Godina IV, Broj 6, Direkcija za evropske integracije, Sarajevo, 2019., pp. 97-99.

68 Common European values include: solidarity and cohesion, equal opportunities and the fight against all forms of discrimination, protection of health and safety at work, sustainable development and involvement in civil society. See: Gradašćević-Sijerčić J., Pravo socijalne sigurnosti u Evropskoj uniji, Godišnjak Pravnog fakulteta u Sarajevu, LIV, Sarajevo, 2011., p. 127.

69 Hasanagić, op.cit., p. 101.

EU and the Member States. These aspects are also visible in the efforts to make the modernization of the labour market and the adjustment of social systems, the main components aimed at creating an environment full of employment, growth and new jobs. Through integrated guidelines for growth and employment, as well as their link with social security coordination at EU level, cooperation between Member States in finding appropriate solutions to share risks and responsibilities between the state and citizens is increasing.<sup>70</sup>

## **6. Conclusion**

Policy making is a special process that involves meeting certain conditions and implementing the appropriate stages in the process, which involves the action of several different actors. In the EU, public policies are also created and implemented, under the auspices of European institutions that operate within established competencies. It turned out that the actors of public policies of the EU are its central institutions, as the main carriers of creative legislative activity and implementation of EU legislation, but also its other institutions, various committees and the like. Therefore, the process of creating public policies is not reserved only for the domain of nation states, but is also realized at the level of various organizations such as the EU.

Social policy is one of the national public policies under the influence of the European legislator, because the EU by adopting regulations (hard law and soft law) in the field of social policy also affects the creation of national social policies of the Member States, because their policies must be adjusted to the regulations, that is the standards and principles of the EU. Over time, social policy has developed and strengthened within the EU, and has moved from a marginalized position to a more significant place in the process of European integration especially after the entry into force of the Lisbon Treaty. In the beginnings of the European integration processes, economic issues had priority, while the social rights in the EU did not have a significant place in that process. It was considered that the development of economic aspects of integration would simultaneously address social rights that would arise in the EU. Despite the strengthening of the EU social policy, this is still an area that is a protected zone of the member states, although it is included in the shared competence between the EU institutions and the Member States. Certain important areas of social policy remain excluded from the EU competences. Thus, the Strategy Europe 2020 promotes the “European social model”, but primarily focused on the use of soft law instruments. Consequently, the instruments of coordination of national policies of the Member States, cooperation and development of good practices between the Member States are in use in the EU legal system.

The Lisbon Treaty has made a significant contribution to the further

---

<sup>70</sup> See: Gradašćević-Sijerčić, 2011., op.cit., p. 127.



development of social rights and social policy at the EU level. With its provisions, it has expanded and strengthened the European social model, first through the introduction of new values of the Union, thus expanding the existing list of goals in the field of social policy. The Lisbon Treaty gave the EU Charter of Fundamental Rights of the European Union the same legal force as the Treaty has, then formally recognized the role of the social partners, incorporated an open method of coordination into the Treaty's provisions, and recognized public services of general interest (Protocol No. 9). Also, the previous Title XI on social policy was renamed, so that instead of the title "Social policy, education, vocational training and youth" a new Title X was introduced in the TFEU marked as "Social policy". It is also important, in the context of emphasizing the importance of the social dimension of the EU in the provisions of the Lisbon Treaty that Chapter II, entitled "Provisions having general application" in the TFEU, *inter alia*, states in the Article 8. that in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women, and according to the Article 9. in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

After having analyzed in this paper in more detail the relevant provisions of the Lisbon Treaty, it can be concluded that after its entry into force there has been a significant shift in the regulation of social rights at the Union level towards its greater and stronger regulation.

## References

1. Babić Krešić I., Javne politike u procesu globalizacije i europeizacije i politika zapošljavanja. *Nova prisutnost* 12, 2014., 3: 413-430
2. Barbier Jean-Claude, Tracing the fate of EU "social policy": Changes in political discourse from the "Lisbon Strategy" to "Europe 2020", *International Labour Review*, Vol. 151 No. 4, (377-400), 2012.
3. Barnard C, *EU Employment Law*. Fourth Edition, Oxford University Press, 2012.
4. Butković H et al., Hrvatska i Europska unija – prednosti i izazovi članstva. In: Tišma S, Samardžija V, Jurlin K (eds) *Hrvatska i Europska unija – prednosti i izazovi članstva*. Institut za međunarodne odnose – IMO, Zagreb, 2012., p 107-113
5. Christian v. S. et al., *Life After Lisbon, Europe's Challenges to Promote Labour Force Participation and Reduce Income Inequality*. RAND Europe, 2011.

6. Craig P., Gráinne d. B., EU Law: Text, Cases, and Materials, 5th edn. Oxford University Press, 2011.
7. Dagmar S, Ulrike L, Hildegard S (eds), European Economic and Social Constitutionalism after the Treaty of Lisbon. Cambridge University Press, 2011.
8. Geyer R. R, Exploring European Social Policy. Polity Press, London, 2000.
9. Gradašćević-Sijerčić J., Radno zakonodavstvo BiH u svjetlu načela komunitarnog radnog prava. Godišnjak Pravnog fakulteta u Sarajevu, broj XLIX, Sarajevo, 2006., 123-148
10. Gradašćević-Sijerčić J., Pravo socijalne sigurnosti u Evropskoj uniji, Godišnjak Pravnog fakulteta u Sarajevu, LIV, Sarajevo, 2011., (113-144)
11. Hadžiahmetović A., Ekonomija Evropske unije. University Press: Magistrat, Sarajevo, 2011.
12. Hadžić M., Evropski stup socijalnih prava. Godišnjak Pravnog fakulteta u Sarajevu, 2017., LX: 199-225
13. Hasanagić E., Uspostavljanje evropskog socijalnog modela, Sui Generis – naučno-stručni časopis o evropskim integracijama, Godina IV, Broj 6, Direkcija za evropske integracije, Sarajevo, 2019., (85-105)
14. Herdegen M., Europarecht. Pravni fakultet Sveučilišta u Rijeci, Europsko pravo. (trans: Edita Čulinović Herc ... et al.) Rijeka, 2002.
15. Marović J., Civilno društvo i javne politike. Zbornik Javne politike, Institut alternativa, Podgorica, 2014., 36-47
16. Mathijsen P.S.R.F., A Guide to European Union Law. 7th edn, Sweet & Maxwell, London, 1999.
17. McCormick J., The European Union: Politics and policies. 2nd edn, Westview Press, 1999.
18. Petak Z, Europeizacija javnih politika u Hrvatskoj. In: Puljiz V, Ravlić S, Visković V (eds) Hrvatska u Evropskoj uniji. Kako dalje? Centar za demokraciju i pravo »Miko Tripalo«, Zagreb, 2012., 17-41
19. Rentea Georgiana-Cristina, Mobility within the European Union and the Access to Social Benefits: Challenges of Social Policies, Revista de Asistentia Sociala, anul XIV, 2015., nr. 3, (99-107)
20. Rizvanović Edin, Državna pomoć u zemljama Evropske unije: iskustva za Bosnu i Hercegovinu, Fojnica: Štamparija „Fojnica“, 2005.

21. Rizvanović Edin, Željko Batinović, Bosanskohercegovački integracijski put: izazovi u ispunjenju pravnog i ekonomskog kriterija, Mostar: Print Team, 2020.
22. Ross G, The Revenge of Neglected Issues: EU Founders and Social Policy, French Politics, Culture & Society, Vol. 29, 2011., No. 2, (90-102) p. 90. Available at: <http://www.berghahnjournals.com/view/journals/fpcs/29/2/fpcs290207.xml?pdfVersion=true> [31. januar 2019].
23. Rutkauskiene L., Social Policy in the European Union: Variety and Challenges. Public Administration, Vol. 1/2, 2010., Issue 25/26: 26-33
24. Shaw J., Law of the European Union. 3rd edn, Palgrave Law Masters, 2000.
25. Sokol T., Europska socijalna politika. In: Mintas H. Lj (ed) Europska unija. Mate d.o.o., Zagreb, 2010., p 477-506
26. Vuković D., Socijalna politika Evropske unije. Univerzitet u Beogradu, Fakultet političkih nauka, Beograd, 2011.
27. Weiss M., Introduction to European Labour Law: European Legal Framework, EU Treaty Provisions and Charter of Fundamental Rights. In: Schlachter M (ed) EU Labour Law: A Commentary. Kluwer Law International BV, The Netherlands, 2015., p 3-27
28. Žiljak T., Javne politike, Zbornik Javne politike, Institut alternativa, Podgorica, 2014., p 7-19
29. Commission of the European Communities, Growth, Competitiveness, Employment: The Challenges and Ways Forward into the 21st Century - White Paper. COM (93) 700, 5. December 1993.
30. Commission of the European Communities, European Social Policy: Options for the Union - Green Paper, COM (93) 551, 17. November 1993.
31. Commission of the European Communities, European Social Policy - A Way Forward for the Union - A White Paper. COM (94) 333, 27. July 1994.
32. European Commision (2010) Communication from the Commision: Europa 2020 A Strategy for Smart, Sustainable and Inclusive Growth. Brussels, COM(2010)2020 final.
33. European Commision (2010) Communication from the Commision: Europa 2020 A Strategy for Smart, Sustainable and Inclusive Growth. Brussels, COM(2010) 2020 final.
34. Charter of Fundamental rights of the European Union, OJ C 364, 18.12.2000.

35. Treaty establishing the European Coal and Steel Community (ECSC)
36. Treaty establishing the European Economic Community
37. Treaty on European Union (Treaty on Maastricht), from 7.2.1992., OJ C 191 of 29.7.1992.
38. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Final Act, Official Journal C 340, 10/11/1997.
39. Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Official Journal C 080, 10/03/2001.
40. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, Official Journal C 326, 26/10/2012; or Consolidated version of the Treaty on European Union OJ C 202, Volume 59, 7.6.2016; Consolidated version of the Treaty on the Functioning of the European Union OJ C 202, Volume 59, 7.6.2016.
41. White Paper on the future of Europe - reflections and scenarios for the EU27 by 2025, European Commission COM(2017) 2025 of 1 March 2017.
42. Reflection paper on the Social Dimension of Europe, European Commission COM(2017) 206 of 26 April 2017.
43. The European Parliament, the Council and the Commission, European Pillar Of Social Rights, available at: [https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf) [17. april 2019].
44. [http://europa.eu/rapid/press-release\\_STATEMENT-18-6390\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-6390_en.htm) [16. april 2019].

## **SOCIJALNA PRAVA U EVROPSKOJ UNIJI NAKON LISABONSKOG UGOVORA**

**Sažetak:** Autorica u ovom radu analizira razvoj socijalnih prava u okviru Evropske unije, s posebnim osvrtom na promjene u ovoj oblasti nakon stupanja na snagu Lisabonskog ugovora. Na početku procesa evropskih integracija socijalna politika odnosno socijalna prava su bila marginalizirana, na način da su osnovni motivi nastanka Evropske unije bili ekonomske i političke prirode, dok su socijalna prava samo neznatno bila obuhvaćena osnivačkim ugovorima, te gotovo dominantno ostala u nadležnosti država članica. Situacija se, kasnijim razvojem integracijskih procesa, postepeno mijenjala, u pravcu šireg reguliranja socijalnih prava na nivou Evropske unije. U kontekstu socijalnih prava, socijalna politika je veoma važna, a tek u posljednje dvije decenije razvoja evropskih integracionih procesa socijalna politika postaje javna politika. Socijalna politika jedna je od nacionalnih javnih politika pod uticajem evropskog zakonodavca, jer Evropska unija usvajanjem propisa (tzv. čvrstog prava – *hard law* i mehkog prava – *soft law*) u oblasti socijalne politike djeluje i na stvaranje nacionalnih socijalnih politika država članica, jer njihove politike moraju biti prilagođene propisima, odnosno standardima i principima Evropske unije. Socijalna politika uvrštena je u podijeljenu nadležnost Evropske unije i država članica, za aspekte utvrđene u Ugovoru o funkcionisanju Evropske unije. Određene značajne oblasti socijalne politike isključene su iz nadležnosti Evropske unije. Lisabonski ugovor dao je veliki doprinos razvoju socijalne politike i socijalnih prava na nivou Evropske unije, regulirajući pojedine značajne aspekte uspostavljanja i razvoja socijalnih prava.

**Ključne riječi:** Evropska unija, javne politike, socijalna prava, socijalna politika, Lisabonski ugovor.