

IS HARMONIZATION OF LABOUR RELATED LAWS AT THE EU LEVEL POSSIBLE AND ECONOMICALLY JUSTIFIED

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ABSTRACT

European Union formally represents a single market with the aim to enhance economic and social cohesion among EU member states based on social inclusion and equality among all citizens. These principles directly influence the labour market which should support freedom of movement for workers and ensure equal minimal employment standards across the entire EU.

One of the major factors that shape the dynamics and competitiveness of the labour market is legislative framework related to labour and employment. According to chapter 2 of the Acquis EU migrant workers must be treated in the same way as national workers, but labour-related legislation is an internal issue that each EU member state can define at their own discretion. The only limiting factor related to implementation of labour related laws at the national level are EU directives that ensure that all member states have equal minimal standards of working conditions and employee rights.

This article groups labour related laws into three broad groups of laws and legal acts; legislation that regulates workers' rights and obligations together with the relationship to an employer, tax legislation that regulates the tax burden imposed on workers and social and healthcare security legislation that refers to laws and legal acts that regulate worker's contribution for health insurance and retirement plan. For each group, from the economic perspective, a critical review is made of major similarities and differences among EU member states. Furthermore, differences in local legislation are explained through the employers' perspective.

KEY WORDS

labour market, labour law, EU legislation

CLASSIFICATION

JEL: E24, J08, J32, J80, K31

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INTRODUCTION

European Union is constantly evolving trying to find the answers to local and global challenges. One of these challenges is the harmonization of the labour market that should be regulated under the same principles throughout the entire EU. That is also stressed by the *acquis*, “the body of common rights and obligations that is binding on all the EU member states” [1] that all EU candidate countries should fulfil before becoming full EU members. In the *acquis*, labour market is addressed through two *acquis* chapters [1]:

- Chapter 2. Freedom of movement for workers – stresses that the workers from the other EU member states must have the same working conditions, social benefits and tax advantages as national workers,
- Chapter 19. Social policy and employment – defines minimum standards related to labour law, equality, health and safety at work and anti-discrimination.

Despite the *acquis* rules, throughout the EU legal framework that regulates the labour market including workers’ rights and laws that define the tax burden among different member states varies a lot. That situation has discriminatory elements; employers from different EU member states have different limitations and financial burden regarding present and future employees, the role of the trade unions differs and the level of employee legal protection is inconsistent, making some EU member states more attractive for prospective work force and employers than the others. The harmonization of labour-related laws at the EU level is an ideal that appears difficult to reach.

LABOUR RELATED LEGAL FRAMEWORK

Labour related legal framework is an extension of the wider economic policy, which has the task “to create conditions for maintaining the existing and creating more and more and better jobs” [2]. In that manner, legal framework that pertains to the regulation of labour market should be viewed beyond laws and legal acts that regulate employment and working conditions. Legal acts that directly influence labour market can be divided into three large groups; legislation that regulates workers’ rights and obligations together with the relationship to an employer, tax legislation that regulates tax burden imposed on workers and social and healthcare security legislation that refers to laws and legal acts that regulate worker’s contribution for health insurance and retirement plan. Although legal framework among different member EU member states is based on the similar principles each state has its own set of rules pertaining for regulating the aforementioned areas.

WORKERS’ RIGHTS AND RELATIONSHIP WITH THE EMPLOYER

Legislation that regulates workers’ rights and obligations together as well as relationship with an employer is far from harmonised at the EU level. The main reasons for lack of harmonization can be found in the principle of subsidiarity within the European Union, the specifics of the labour markets of each EU member state, and the different socio-economic, and political contexts between the states. The principle of subsidiarity gives the autonomy of different EU member states to create laws at the state level without the intervention of the Union in cases “when an issue can be dealt with effectively by Member States themselves at central, regional or local level” [3]. EU gives just the framework for the local legislation that should be based on The European Pillar of Social Rights European Commission [4] especially in areas related to labour market access, working conditions and social protection and inclusion [1]. In other words, the EU aims to set minimal standards i.e. equal treatment and non-discrimination, safety and health issues of workers and issues like working hours, maternity and parental leave, temporary contracts, etc. These minimal standards are addressed through EU directives like

Council Directive 91/533/EEC that defines the obligation of the employer to inform employee about all the aspects and conditions of their employment relationship [5, 6] or Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union [7].

Specific aspects of the labour market also directly influence legislation as there are significant differences among different member states. There are several examples that can be mentioned:

- Differences in size of the informal (shadow or grey) economy as percentage of GDP. The informal economy refers to economic activities that contribute to calculated GDP but are unregistered [8]. Informal economy represents 14% GDP on average in the EU, but country-specific differences are substantial, between 10% and 30% of GDP [9].
- Youth unemployment rate that varies from 6,9% in Germany up to 25.8% in Spain [10]. Youth unemployment rate has direct impact on future wellbeing and poverty levels [11].
- Difference in the structure of economy. More service-oriented economies make “reallocation to growing white-collar professional occupations from declining blue-collar occupations” [12].
- The proportion of public sector employees in the total workforce – where “higher levels of public sector employment lead to a reduction in private sector employment” [13] making economy overall less productive and therefore less competitive.

That means that economic conditions of different member states also vary; i.e. the role of trade unions is much higher in Nordic countries [14]. Laws pertaining to workers’ rights and their relationship with the employer regulate employment contracts, mode of working hours, rights of the specific labour groups on the labour market (e.g. under-aged employees, pregnant women, mothers with toddlers and disabled people) also differ a lot. These laws also regulate collective bargaining and regulations that protect the lives and health of workers.

Not every member state has a single, comprehensive law that lays out the basic rules regarding employment issues. Member states such as Croatia, Portugal, Greece and Malta have approach to regulation of workers:

- they recognize the same basic types of employment contracts, both permanent term contracts, fixed term contracts and seasonal contracts
- they all regulate normal working hour on a weekly basis
- they all have defined minimum wage

Furthermore, in addition to above mentioned basic types of employment contracts different states recognize different subtypes of employment contracts such as zero-hour employment contracts (Ireland, Netherlands and Denmark) where employees are not guaranteed a minimum number of working hours and employers hire them usually on short notice with flexible hours and pay them for the time they actually work.

The bottom line is that legislation across EU member states has different approach to basic framework related to workers’ rights. They set up different regular working time, some states limit amount of overtime work, maternity leave differs in term of duration as well as if it is paid or not, Table 1. All of these factors make labour markets in different member EU states more or less attractive to existing and new workers.

Table 1. Definition of key working factors by EU member state (continued on pp.604-606).

EU member state	Regular weekly working hours	Overtime hours		Breaks		Sunday work salary surcharge	Minimal duration of annual leave	Maternity leave	
		Legal maximum	Premium	Duration	Paid			Max duration	Pay
Austria	40	20 hours per week	50%	30 min minimum	only night shifts	100%	30 days (Saturdays included), after 25 years of service, 6 weeks	16 weeks	responsible health insurance company
Belgium	38	120 per annum (up to 360 with collective agreement)	50%	15 min	yes	compensatory rest, otherwise only if overtime (100%)	20 calendar days for 5 days week or 24 days for 6-day week	410 days for each child, 45 day prior to birth; minimum 42 after childbirth	from social security
Bulgaria	40	150 per annum	50%	30 min	yes	75% (on day of rest)	20 calendar days		the National Social Security Institute
Croatia	40	180 per annum (up to 250)	defined by collective agreements	30 min	yes	50%	4 weeks		Heath Insurance Fund
Cyprus	40	8 hours per week	50% on working days, 100% nonworking days	30 min	no	100%	4 weeks	18 weeks, 4 weeks prior to childbirth	social insurance fund
Czechia	40	150 per annum	at least 25%	30 min	no	at least 10%	4 weeks	28 weeks (37 weeks for multiple births)	from social security
Denmark	37	defined by collective agreements or individual contracts	defined by collective agreements	30 min	no	not defined	2,08 days per working month (25 days)	24 weeks, 4 weeks prior to childbirth	based on individual employment agreements or collective bargaining agreements
Estonia	40	8 hours per week	compensation in time off, unless agreed upon compensation in money (50%)	30 min	no	not defined	28 calendar days	140 days	social insurance

Table 1. Definition of key working factors by EU member state (continuation from p.603, continued on pp.605-606).

EU member state	Regular weekly working hours	Overtime hours		Breaks		Sunday work salary surcharge	Minimal duration of annual leave	Maternity leave	
		Legal maximum	Premium	Duration	Paid			Max duration	Pay
Finland	40	138 in 4 months, 250 per annum maximum up to 330 in special circumstances	50% for first two hours, 100% beyond that	60 min	no	100%	2,5 days per working month, 2 days for month on holidays	105 working days, 30 working days before childbirth	from social security
France	35	220 hours per annum	min 10% in the absence of the agreement, 25% for the first 8 hours, 50% for the subsequent hours on weekly basis	20 min	yes	100%	2,5 day per working month (30 day per year)	16 weeks, 6 weeks prior to childbirth	employers, full salary
Germany	40	8 hours averaged over 6 months	50%	30 min	no	75%	4 weeks	14 weeks maternity leave (at least 6 weeks before and 8 weeks after childbirth)	statutory health insurance
Greece	40	up to 3 hours per day and 150 hours per annum	40%	15-30 min	no	no, alternate days of weekly rest	20 working days	17 weeks, 8 weeks prior to childbirth	the state social insurance fund and the Hellenic Manpower Employment Association
Hungary	48	250 per annum (up to 400)	50%	20 min	no	50%	20 working days	24 weeks	unpaid
Ireland	48	not defined	not mandatory	30 min	no	not defined, reasonable allowance	4 working weeks	26 consecutive weeks (additional 16 weeks of unpaid leave)	not mandatory

Table 1. Definition of key working factors by EU member state (continuation from pp.603-604, continued on p.606).

EU member state	Regular weekly working hours	Overtime hours		Breaks		Sunday work salary surcharge	Minimal duration of annual leave	Maternity leave	
		Legal maximum	Premium	Duration	Paid			Max duration	Pay
Italy	40	250 per annum	min 10%, in the absence of the agreement, 25% for the first 8 hours, 50% for the subsequent hours on weekly basis	10 min		usually defined through collective agreements, 30% most common	4 weeks	5 months	from social security
Latvia	40	max 144 in 4 months	100%	30 min	no	100%	4 weeks	112 calendar days	State Social Insurance Agency
Lithuania	40	180 hours per annum, with collective agreement more	at least 50%	30-120 min	no	not defined	20 working days	126 calendar days (70 days before delivery)	from social security
Luxembourg	40	2 hours per day	at least 40%	not defined		70%	26 working days	20 weeks (8 weeks prior to childbirth)	National Healthcare Fund
Malta	40	8 hours per week, possible more with employee consent	50%	15 min	no	not defined	192 hours	18 weeks, 4 weeks prior to childbirth	the first 14 weeks pays the employer, the additional 4 weeks pays the Government
Netherlands	48	up to 30% of regular working hours	not mandatory	30 min	no	not defined	4 times the number of hours worked per week	16 weeks	employer, later reimbursed by social security
Poland	40	150 hours per annum	50%	15 min	yes	alternate days of weekly rest or 100 % premium	20 working days	20 week for the first child, up to 37 weeks for the 5th child	from social security

Table 1. Definition of key working factors by EU member state (continuation from pp.603-605).

EU member state	Regular weekly working hours	Overtime hours		Breaks		Sunday work salary surcharge	Minimal duration of annual leave	Maternity leave	
		Legal maximum	Premium	Duration	Paid			Max duration	Pay
Portugal	40	150 hours per annum up to 200 hours	25% for the first hour, 37,5% for consecutive hours	60-120 min	no	50%	22 working days	maximum of 120 days (up to 150 days with paternity leave)*	from social security
Romania	40	8 hours per week	compensatory time-off or 75% premium	according to collective agreement	no	150% on rest days	20 working days	126 calendar days, at least 42 days before childbirth	National Social Security Fund
Slovakia	40	9 hours per week	25%, (35% in case of working in hazardous activities)	30 min	no	min 3,58 € per hour (3,22 € if the Sunday work is on regular basis)	4 weeks	34 weeks, 37 weeks for single mothers, 43 weeks for mothers who give birth to 2 or more children	employer, later reimbursed by social security
Slovenia	40	170 per annum (up to 230)	defined through a collective agreement or employment contract	30 min	yes	defined through a collective agreement or employment contract	4 weeks	105 days + 260 days of parental leave	government
Spain	40	80 hours per annum	premium pay or compensation with equal time off defined by employer	15 min	yes	not defined	30 calendar days	16 weeks, 6 weeks must be taken after the childbirth	social security
Sweden	40	150 hours up to 200 in special circumstances	defined through a collective agreement or employment contract	according to a collective agreement or employment contract	yes	defined through a collective agreement or employment contract	25 working days	at least 7 weeks	social security

TAX LEGISLATION

In case of the EU, which is a common market, all citizens of the EU can work in all member states. When making decision about their place of work, one of the key determinants for each individual are possible net earnings. Net earnings are directly related to taxation policy that defines the cost of one employee for the employer. It can be assumed that countries with lower tax burden would be more attractive for potential new workers. Tax burden, or the tax wedge (“the difference between an employer’s cost of an employee and the employee’s net disposable income”) [15] besides supply also determines demand on labour market as the countries with bigger tax wedge make their markets less attractive for new companies. Empirical data shows that a 10% tax wedge increase decreases employment rate by 2% [16]. EU member states differ significantly in tax wedge rates as a percentage of labour costs, it spans from 34,3 % for Poland up to 52,7% for Belgium [17]. Differences in personal income tax rates are even greater, spanning from 10% for Bulgaria up to 55,9% for Denmark [18]. That situation potentially leads to loss of high profile, talented workforce at specific labour markets across EU [19]. In addition, high taxation tends to decrease overall economic output due to the fact that people tend to work less, go to earlier retirement making them decrease consumption and therefore economic activity overall [20].

SOCIAL AND HEALTHCARE SECURITY LEGISLATION

Health care organization and services in EU are primary responsibility of each EU country [21]. That means that approach to public health policies, legal forms of organization and sources of funding vary a lot. The EU efforts were aimed at establishment of common EU public health policies that were shaped in 1992 by the Maastricht Treaty (Article 129), in 1997 by the Amsterdam Treaty Article 152) and in 2007 by the Lisbon Treaty (Article 168) [22]. It should be noted that Article 168 stresses that health systems organization and financing is under discretion of each EU member state. Precisely how the health care system is financed directly influences cost of work and remuneration policies. Health care systems in Europe are financed through taxes (s.a. Sweden) or through mandatory health insurance (s.a. Germany). It should be noted that out of pocket payment also varies to a great extent between EU member states, from 8.67% in Luxembourg up to 35,08% in Bulgaria) [23].

When addressing the issue of social security, from the prospective worker point of view, this issue primarily relates to pension system [4]. Pension system influences labour market based on two distinguished factors; what is the amount of the gross salary that should be put aside for the pension fund, and the adequacy of pension fund to maintain standard of living of retired worker before his retirement. Most EU member states have three pillar pension system where first pillar is organised by the government with pay as you go approach (where current pensions are paid by current employees), second pillar refers to employment and third pillar represents personal savings for future use [24]. All of these pillars directly influence total labour costs as well as available net income of an individual employee. As there is no unified approach to pension systems in EU, mandatory social security rates vary a lot, i.e. in Finland statutory social insurance contribution for employee’s pension is 24,81% of employee’s monthly gross wage [25], in Croatia mandatory pension contribution insurance is 15% for the first pillar and 5% for the second pillar [26] whereas in Poland old-age pension insurance rate is 19,52% [27]. Furthermore, when working for certain amount of time in one of the member states, employee is entitled to state pension. This can make retirement age very comfortable, such as in Luxembourg, with 2 575 € average pension expenditure per beneficiary, or very poor, such as in Romania, with 382 € average pension expenditure per beneficiary [28].

All of these contributions, for health care and for pension fund, directly influence the total cost of labour and the net amount of disposable income, Figure 1. The bottom line is, in each particular country, labour costs are direct consequence of the local legal framework.

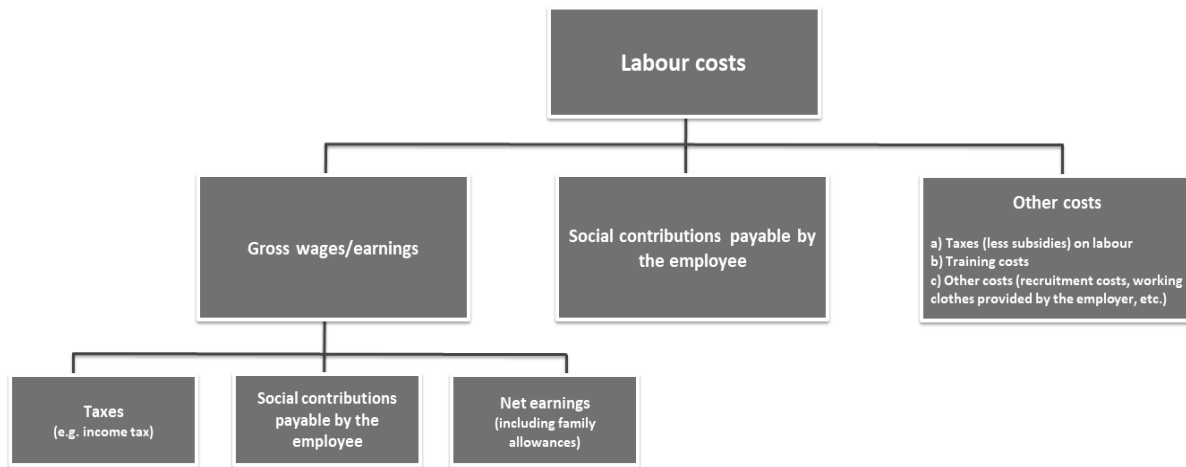


Figure 1. Labour cost components [29].

HARMONIZATION OF EU LAWS – EMPLOYER’S PERSPECTIVE

In 2022 the European Union had over 32 million enterprises that employed more than 160 million people. Here should be noted that large companies represented 0,2% of total enterprises registered in EU with total of 56,5 million employees and net turnover of 19,2 trillion euro [30]. In other words, at least one third of employees are working for the companies in EU that are present in several EU member states. This situation makes the human resource management function very challenging and potentially very expensive. This contradicts the EU’s effort to have globally competitive workforce and companies because if an enterprise is present at several EU markets it needs to ensure that it is compliant to local labour law framework that directly influences job security and adaptability of the company to local market conditions meaning approach to employees in different countries.

The EU has tried to harmonize minimum legal requirements among its member states and therefore it addressed some of the issues centrally:

- Discrimination in hiring new personnel is addressed through the EU Employment Equality Directive [31] that basically makes an emphasis on implementation of mandatory non-discriminatory hiring practices making the entire selection process of new employees transparent.
- The mandatory elements of an employment contract are addressed through EU Written Statement Directive (91/533/EEC) [5, 6].
- Working hours, resting periods and annual leave are regulated by the European Working Time Directive [32].
- Working conditions and employee protection are regulated by the so-called framework directive [33] that refers to workplace safety.
- Termination of employment is addressed by EU Collective Redundancies Directive [34]. that proscribes procedure of employee dismissal, severance pay and documentation.
- The issue of functioning of trade unions and collective bargaining is addressed by EU Information and Consultation Directive [35].

In spite of the EU’s effort to make a common ground for the legal framework, as described before, there are still significant differences between the member states. To better understand

these differences, it should be noted that different approach to the issue of labour law comes from the differences in culture of each country. In other words, to harmonize society and the legal framework “laws must be adopted to the culture and existing laws must be made a culture of the society” [36]. This situation is challenging for the companies because the employees from different member states have different expectations. In other words, a female from Ireland does not expect to have paid maternity leave while in Poland maternity leave is mandatory; workers in France expect to have 100% surcharge for Sunday work while in Ireland the surcharge for Sunday work is not defined.

Although large companies try to impose corporate policies that apply to all employees, they should make sure that they conform to local specifics of an approach to workers’ rights. That is also one of the reasons why multinational companies have set up their branches as a local company that abides to local legislation (i.e. Hofmann la Roche [37], Lidl [38], Drogerie Markt – DM [39], Raiffeisen Bank International [40], Q8 [41], to name the some). EU gives the possibility to register one company for the entire EU market. That doesn’t sound very convenient as they state that in any case the EU company must be aware and abide to local regulatory framework that sets up different rules for different EU member countries that “may affect which authorities you need to liaise with or what arrangements on employee participation you might have to follow” [42]. In other words, it is more convenient to set up a branch – separate legal entity in the form of limited liability company for each EU member state than having dependant branches in each EU market because in each market different limited company exposes the company’s investors to the risk of debt that equals company’s assets [43] therefore, reducing operational risks of the parent company such as lawsuits claims of existing or past employees.

For existing employees of multinational companies that change their positions in the company reallocation to a different EU member country within the same company has the legal consequence similar to switching companies. Primarily they need to sign the contract that is harmonized with the local legal framework and pay the taxes, social security and health care contributions in a manner that is proscribed in the country of residence [44]. For managers, especially in HRM field, this is very challenging as the managers, especially when reallocating, need to be aware of the differences between the countries so that they can avoid potential penalties and lawsuits with workers, related to labour law violations and contract breaches.

The best example is that of overtime work. Although the Working Time Directive [32] proscribes that the average working time for each seven-day period must not exceed 48 hours (including overtime and depending on national legislation and/or collective agreements), the 48-hour average is calculated over a reference period of up to 4, 6, or 12 months, which can make national legislation misleading. For instance, in Ireland, national legislation basically didn’t limit the number of hours of overtime work, whereas in Austria, an employee is allowed to work up to 20 hours of overtime per week (with a theoretical maximum of 1040 hours per annum). These are examples of inconsistent national legal frameworks that clash with EU directives. In situations like these, EU directives always have priority. On the opposite end, Spain proscribes a maximum of 80 hours of overtime per annum. In other words, a single company must have different employment policies for different EU countries.

The existence of such differences would lead to the conclusion that the labour legal framework would determine the attractiveness of different EU countries for doing business. Data on correlation between foreign direct investments (FDI) and employment protection legislation (EPL) lead to mixed conclusions. Experience with FDI shows that EPL directly influences investment decisions related to different markets [45]. But, when comparing strictness of EPL

among EU member countries [46] with number of FDI projects by [47] it can be seen that stricter countries such as Portugal or Italy had more FDI projects in 2023 than Ireland with loose EPL. On the other hand, research shows that strict labour laws impede corporate innovation [48].

ECONOMIC PERSPECTIVE ON HARMONIZATION OF EU LAWS

The economic impact of EU labour legislation has several distinctive perspectives. They can be grouped into four general perspectives: the EU level, the national level, the multinational company perspective and the local company perspective. In this article, we should mention only some of arising issues to illustrate the point as labour legislation economic impact requires more detailed research.

EU LEVEL PERSPECTIVE

The EU level perspective is the broadest one. It deals with ensuring that national legislation conforms to EU directives. The EU doesn't supervise court rulings automatically; rather it provides the opportunity for appeals at the Court of Justice of the European Union (CJEU). The ruling of CJEU can have far reaching economic consequences as rulings directly determine the working regime and the price of work. One of the examples is the ruling related to stand-by times [49] and the ruling related to on-call service [50]. On top of that, duration of CJEU rulings have direct economic consequences to remuneration perspectives of employees because primarily because of expiration of demands that can be demanded through the national court systems. According to the last data, the average time of the duration of preliminary ruling proceedings before the CJEU was 17,3 months in year 2022 [51]. It should be noted that CJEU deals with cases that have already been dealt with at the national level for several years before.

INTERNATIONAL PERSPECTIVE

Companies go international primarily because they want to increase profits and exploit the economies of scale more fully [52]. By entering foreign markets, the talent pool also increases and therefore it can be expected that by being present at the entire EU market, companies would benefit from attracting the best work force at lower prices as the EU member states have significant variations in baseline salaries. As salaries are just one part of cost, economic consequences for the international companies also include adaptation to local legal system and local employee culture. In reality, this means that company policies should be adapted to local specifics. Also, the various dynamics of the legal framework change between different EU member states induces additional costs of adaptation. All of these require development of localized team with a deep understanding of local labour market conditions [53]. So, if consider the entire EU we are potentially discussing 27 localized teams. Consequently, an economy of scale in HRM would be limited.

LOCAL COMPANY PERSPECTIVE

International companies take advantage of lower-cost labour when operating in foreign markets [54]. The same is true for the EU member states, when making decisions to open a branch in different EU member states, the cost of labour is a significant determinant [55]. as well as low regulatory risk [56] (in other words, stability). By entering a new market, an international company increases the demand for the most skilled and productive workers at the market often offering working conditions that local companies cannot meet. In this way, local companies are threatened by the risk of losing their best workers and experiencing a higher employee turnover rate. A high employee turnover rate makes doing business more expensive because of the adjustment costs and negative externalities incurred by the employer [57].

Therefore, EU countries with the most favourable labour law regulations for the companies would potentially make small, local enterprises less competitive.

CONCLUSORY REMARKS ON THE ECONOMIC PERSPECTIVE ON HARMONIZATION OF EU LAWS

The four perspectives presented stress the sophistication of the link between the labour law regulatory framework specifics of each EU member country and economic consequences at the local level. Each of presented perspectives should be more examined to determine the true dynamics of doing business, labour market and different regulatory frameworks.

CONCLUSION

It seems that EU is moving into the direction of harmonization of national laws through a set of directives. The same is true for labour related framework. However, the EU is very culturally diverse, and, as mentioned before, its legal system is the by-product of local specifics and the culture with different legal system in each EU member state (i.e. monist and dualist systems [58]). For many Europeans, the harmonization of regulatory framework at the EU level is a question of national identity and a matter of conservation of national heritage, without sound economic or legal rationale. So, from that point of view, true harmonization of labour related laws at the EU level is far from reach. The crucial role of EU directives in harmonizing key elements of national law has been undervalued, as has the influence of the European Court of Justice (ECJ). The ECJ's judgments are significant because they serve as precedents that interpret and operationalize these directives.

The economic justification for harmonizing the legal framework is clear: a predictable and simple regulatory regime contributes to the development of new investments, which consequently boosts employment and personal income. Although the EU is considered a common market, the significant legal framework differences among member states regarding worker-employer relationships mean that it cannot be concluded that the EU has a common labour market in practice. Therefore, harmonized labour laws would make doing business in the EU much easier, making companies – as well as the entire EU – more competitive on a global scale. However, the harmonization of a legal framework could jeopardize cultural diversity across the EU.

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