

The consequences of Brexit for the labour market and employment law: challenges for the EU from a Polish perspective

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Abstract

One of the most important problems arising from Brexit will concern labour law and the labour market – specifically the future development of labour law at the European level, the situation in domestic labour markets, and (as a consequence) changes in national legislations. At present, it is difficult to draw any precise conclusions regarding the impact of Brexit; however, it is possible to identify some of the more likely scenarios and consequences. There are substantial questions concerning: the future of EU law after Brexit and how Brexit will affect British labour law; the situation of multinational labour law institutions (e.g. European Works Councils), as well as the posting of workers. A lot depends on the final agreement between the UK and the EU. A close economic partnership may enforce the maintenance of the most important labour standards and mechanisms which are necessary to guarantee equilibrium between the partners.

Keywords: Brexit; employment; labour; market; standards; protection; worker; employer

1 Introduction

One of the most important problems arising from Brexit will concern social legislation and the labour markets, not only in the UK, but throughout the EU. The most profound question is related to European social policy after the withdrawal of the UK: is this a threat or a chance for European social policy to accelerate? Brexit will inevitably influence British labour (employment) law; it is, however, unclear to what extent and in what areas.¹ The position of migrant workers, who were perceived as one of the most important reasons for the dissatisfaction of British citizens, is particularly delicate.² It is also worth asking if Brexit may influence other labour law systems – particularly those of the home countries of

1 This problem was discussed, inter alia, by Jeremias Prassl, 'When the Tide Goes Out: UK Employment Law after Brexit' (Conference on the EU without the UK: Implications and Legal Consequences of Brexit, University of Warsaw, 26 November 2016). According to media analyses, those voting to leave were frequently convinced that large numbers of migrant workers were entering the UK, which was said to have had an immensely negative impact on public services and the social security system (see polling evidence available at <<http://lordashcroftpolls.com/2016/06/how-the-united-kingdom-voted-and-why>>; <www.bsa.natcen.ac.uk/media/39149/bsa34_brexit_final.pdf>); for a critical assessment see Niamh Nic Shuibhne, 'Reconnecting Free Movement of Workers and Equal Treatment in an Unequal Europe' (2018) 43(4) European Law Review 477, 478ff.

2 Unless specified otherwise, throughout this article the terms migrant and migrant worker(s) refer to EU citizens moving to other EU Member States and not to non-EU citizens moving to the EU.

migrant workers. The next point is the future of transnational institutions with British involvement (e.g. posting of workers, European Works Councils (EWCs), transnational collective agreements). Finally, one should consider the potential consequences Brexit may have on labour markets, both in the UK and in the home countries of migrant workers, as well as labour markets in countries to which those workers may migrate. At present it is difficult to draw any precise legal conclusions.³ A lot depends on the final results of negotiations between the UK and the EU. However, it is possible to identify some of the more likely scenarios and consequences,⁴ as well as to articulate some proposals. This article examines the consequences of Brexit, using a Polish perspective for developing such proposals with reference to UK and European institutions. Selecting the Polish case is justified by the scale of Polish immigration to the UK, as well as the position and structure of the Polish labour market, which is the largest one in Central and Eastern Europe (CEE).⁵ The Polish example is, to an extent, symptomatic of the whole region. Moreover, strong Eurosceptic views have been observed in Poland. While Poland's dependency on EU subsidies might mitigate against this, another EU exit scenario does not presently seem improbable.

2 Legal background

When the two-year period for the UK's withdrawal from the EU under Article 50 of the Treaty on European Union (TEU) ends on 29 March 2019, the Treaties will cease to apply and EU legislation will be converted into British law.⁶ It is still not yet known how those laws will be amended in the future. The British government has declared that it intends to maintain workers' rights, but has specified no time frames. Modifications to the

3 In any case, more transparency is needed. Such a need has been confirmed by other trade talks, e.g. concerning TTIP (Transatlantic Trade and Investment Partnership) and CETA (EU–Canada Comprehensive Economic and Trade Agreement) see: European Trade Union Confederation (ETUC), 'Brexit Negotiating Guidelines: ETUC Calls for Workers' Rights to Be Resolved Rapidly' (Press Release, ETUC, 31 March 2017) <www.etuc.org/press/brexit-negotiating-guidelines-etuc-calls-workers-rights-be-resolved-rapidly#.WstIxS_UToA>.

4 When it comes to the British perspective, see further: Secretary of State for the Home Department by Command of Her Majesty, 'The United Kingdom's Exit from the European Union. Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU', presented to Parliament, June 2017, Cm 9464, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621847/60093_Cm9464_NSS_SDR_Print.pdf>.

5 According to the data published by the UK Office for National Statistics, the largest group of migrants from CEE are Polish citizens. At the moment, there are around 1,021,000 Polish citizens in the UK. With regard to the dynamics of immigration over recent months, there has been an increase in the numbers of workers from Bulgaria and Romania <www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationalityunderlyingdatasheets>. Polish immigration is divided into two groups: the old immigrants and the new immigrants. The old immigration encompasses people who remained or emigrated to the UK just after the Second World War and during the communist period in Poland. The new immigration began after the Polish accession to the EU in 2004. At the same time Poland is the largest labour market in CEE. In the first quarter of 2018, the number of employed persons in Poland amounted to 16,344,000 <<https://tradingeconomics.com/poland/employed-persons>>.

6 See European Union (Withdrawal) Act 2018 (An Act to repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the United Kingdom from the EU, 2018) ch 16 <www.legislation.gov.uk/ukpga/2018/16/introduction>. In short, under this legislation EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day. However, the Charter of Fundamental Rights is not part of domestic law on or after exit day. See also Jonathan Cooper, 'The Fate of the Charter of Fundamental Rights in English Law after Brexit is Sealed' (*Oxford Human Rights Hub*, 20 June 2018) <<http://ohrh.law.ox.ac.uk/the-fate-of-the-charter-of-fundamental-rights-in-english-law-after-brexit-is-sealed>>.

mechanisms connected with the labour market will be influenced heavily by whatever model of cooperation between the UK and the EU emerges after Brexit. Theoretically, an alternative is the so-called Norwegian model. The UK could join the European Economic Area (EEA) (via the European Free Trade Agreement) with all freedoms comprising the foundation of the EU, including freedom of movement for workers. This would imply the application of European legislation. However, this seems unlikely for many reasons. First, such a change would not lead to the achievement of the political goals declared by Brexiteers (including regaining sovereignty). Second, the UK would lose its influence on the creation of legal standards. Third, the UK would be deprived of some privileges derived from membership without appropriate compensation. Fourth, the results of the Brexit referendum may be interpreted as an opposition to closer cooperation (especially when it comes to the free movement of workers).⁷

According to recent statements, membership in the EU Internal Market will be replaced by an as-yet undefined ‘close economic partnership’.⁸ As the jurisdiction of the Court of Justice of the EU (CJEU) will no longer apply to the UK, the provisions for EU residents under British law will necessarily change.⁹ Some doubts have been clarified in the Joint Report from EU and UK Brexit negotiators¹⁰ and the subsequent Draft Withdrawal Agreement.¹¹ However, neither the report nor the Draft Withdrawal Agreement are legally binding, and there are recurrent reports on potential further changes. Moreover, these documents address only a part of Brexit consequences. The overall objective of the Withdrawal Agreement with respect to citizens’ rights is to provide reciprocal protection for Union and UK citizens, to enable the effective exercise of rights derived from Union law and based on past life choices, where those citizens have exercised free movement rights by the specified date. All EU citizens, regardless of when they arrived in the UK, will need to apply to the Home Office for permission to stay and, if successful, will receive a document enabling them to continue to live and work legally

7 See e.g. Adam Lazowski, ‘Norwegian Model for the UK: Oh Really?’ (*The UK in a Changing Europe*, 30 March 2016) <<http://ukandeu.ac.uk/norwegian-model-for-the-uk-oh-really/>>.

8 See HM Government, ‘The Future Relationship between the United Kingdom and the European Union’ (Policy Paper, July 2018) <<https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>>.

9 Secretary of State for the Home Department by Command of Her Majesty, ‘The United Kingdom’s Exit from the European Union. Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU’, presented to Parliament, June 2017, Cm 9464, at 4. The problem could be that negotiations concerning workers constitute a part of trade talks, see ETUC (n 3); while worker rights should not be used as bargaining chips, see Statement Adopted by the Executive Committee, ‘Statement of the ETUC on the Notification of the UK to Withdraw from the European Union’, Malta 15–16 March 2017 (ETUC, 20 March 2017) <www.etuc.org/documents/etuc-statement-notification-uk-withdraw-european-union#.WstRoy_UTVo>.

10 Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union, 8 December 2017 <https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf>.

11 European Commission TF50 (2018) 35 – Commission to UK <https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf>.

in the UK.¹² However, the British government may wish to limit access to the labour market.¹³ Finally, if the UK and the EU achieve close economic partnership, the maintenance of specific labour standards may turn out to be necessary (in particular to avoid inequality between the partners). There is still a possibility of regulating some institutions and mechanisms, particularly those of a cross-border nature, although a lot depends on the final shape of the agreement.

3 European labour law

There is a substantial question concerning the future of EU law after Brexit. There are some expectations that the Union without the UK will be able to accelerate in the social sphere. Although Brexit is considered to be a serious threat for the whole idea of European integration, some positive aspects for social policy are also indicated. The UK played a very specific role as regards the adoption of employment standards within the Union. For many years the British government blocked attempts at a more active social policy.¹⁴ Eventually, this was reflected in the concept of a two-speed EU. Even after the Lisbon Treaty,¹⁵ the UK has been rather reluctant to embrace social reforms. The British Protocol to the Charter of Fundamental Rights was of a symbolic character – its aim was to demonstrate that there is no agreement in the UK to more interference from Europe in British domestic affairs. At the same time, the need to further develop the social field has become obvious.¹⁶ Economic freedoms, however, important in and of themselves, cannot guarantee sustainable development. Without stronger social reforms, the European project will be put at risk.

From this perspective Brexit may eliminate one of the obstacles to social development.¹⁷ The Union is trying to capitalise on this opportunity and change the relationship between its economic and social objectives. It is hardly an accident that the Union proclaimed the European Pillar of Social Rights during Brexit negotiations. The idea of the Pillar is to deliver more effective but also new rights for individuals. The social goals have been divided into three groups: equal opportunities and access to the labour market; fair working conditions; and social protection and inclusion.¹⁸ As President Jean-Claude Juncker has suggested, the Pillar would give citizens the opportunity to avoid

12 See the Statement of Intent by the UK Home Office on the UK Settlement Scheme <www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent> which does not fully comply with the Report: see Dagmar Schiek, 'The Home Office "Statement of Intent" for EU Citizens' Settled Status in the UK: For What It Is Worth' (*QPOL*, 26 June 2018) <<http://qpol.qub.ac.uk/home-office-statement-intent-settled-status>> and the subsequent draft statement of change to immigration rules, establishing the basis for a trial by selected EU citizens <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727752/CCS207_CCS0718116274-001_Cm_9675_Immigration_Rules_Accessible.pdf>.

13 Secretary of State for the Home Department (n 9) 7–8. See also the UK government's White Paper on the UK's new partnership with the EU, 32ff <www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>.

14 See e.g. Roger Blanpain, *European Labour Law* (14th revised edn, Kluwer Law International 2013) 72. The UK adheres to legal non-interventionism (91).

15 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 [2007] OJ C 306/1.

16 See Anthony Arnall, 'Protocol (No 30) on the Application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: Part II – Reflections on the EU Charter of fundamental Right* (Hart 2014) 1599–1602.

17 See on this Konstantinos Polimakarkis, in this issue.

18 See Sacha Garben, 'The European Pillar of Social Rights: Effectively Addressing Displacement?' (2018) 14 *European Constitutional Law Review* 210–30.

social dumping and social fragmentation. It is slated to be one of the instruments aimed at strengthening the Union and overcoming current difficulties. Concurrently, the Pillar emphasises goals which (in some respects) would be unacceptable to the UK.

Of course, the Social Pillar must be seen in a broader perspective. There have been a lot of factors encouraging a more active social policy. The economic crisis changed a lot. However, Brexit has been a strong stimulus because it revealed the weakness of the European project, for example, the deficit of appropriate social protection. Of course, it may turn out that the legal instruments offered by the Pillar are considered to be soft and insufficient, nor can we predict the future results of balancing European values. But, even in the past, the economic approach was criticised (see the reactions to *Viking*, *Laval* etc.)¹⁹ and the Pillar may therefore support a more social approach to European values.²⁰

One should avoid overstating the UK's relevance here, as the British approach is not the only hindrance to social development. Nevertheless, without the UK some changes will probably be easier to carry out, since opponents of harmonisation of working conditions will lose an important ally, easing the promotion of protective solutions common in the 'Old Union'. The first signal was the discussion about the revision of the Posted Workers Directive. Despite the opposition of some CEE countries, the amendments discussed have been adopted.²¹ One can expect that further initiatives will also be successful, which process will lead to the application of a social model characteristic of advanced capitalist countries. From this perspective, Brexit may cause significant changes for the whole Union.

Paradoxically, the CEE countries might step into the void left by the UK. Social partners and politicians in the CEE countries are concerned that the adoption of a more advanced European social model by CEE countries will considerably raise the cost of labour and thus eliminate one of the most important comparative advantages of their countries.²² CEE countries find themselves confronted with a difficult choice: either to increase the level of protection (also in the field of remuneration) or be pushed out from the main stream of European integration. Brexit and new social standards may finally change the structure of investments in Europe (limiting transfers to the East), whilst

19 See e.g. A C L Davies, 'One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ' (2008) *Industrial Law Journal* 126–48; and Christian Joerges, Florian Rödl, 'Informal Politics, Formalised Law and the "Social Deficit" of European Integration: Reflections after the Judgments of the ECJ in Viking and Laval' (2009) *European Law Journal* 1.

20 See e.g. Zane Rasnaca and Sotiria Theodoropoulou 'Strengthening the EU's Social Dimension: Using the EMU to Make the Most out of the Social Pillar' (ETUI Policy Brief No 5, 2017) <www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Strengthening-the-EU-s-social-dimension-using-the-EMU-to-make-the-most-out-of-the-Social-Pillar>.

21 Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance), *Official Journal of the European Union* L 173/16, 9 July 2018.

22 According to the Eurostat, in 2017 average hourly labour costs were estimated at €26.8 in the EU28. However, there are significant gaps between EU Member States. The lowest hourly labour costs are to be found in Bulgaria (€4.9) and Romania (€6.3), while the highest are to be found in Denmark (€42.5) and Belgium (€39.65), while Polish hourly labour costs (€9.6) are just above a third of the median and the UK (€25.7) hovers around the median (€26.7) <https://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs>. Béla Galóczi attributes the low labour costs in CEE countries to their heritage rather than a deliberate strategy of low-cost competition, while suggesting that the low-wage economy has reached its limits: 'Why Central and Eastern Europe Needs a Pay Rise?' (European Trade Union Institute, 2017) 22, 18.

weakening the position of undertakings from new Member States which are currently able to compete thanks to lower labour costs.²³

Problems with the adoption of new European standards appeared in relation to the draft of a new Directive on work–life balance for parents and carers.²⁴ According to the draft, Member States will take the necessary measures to ensure that workers have an individual right to parental leave of at least four months to be taken before the child reaches a given age which shall be at least 12. Where Member States allow one parent to transfer their parental leave entitlement to the other parent, they shall ensure that at least four months of parental leave cannot be transferred. In Poland, the proposed law has been seriously criticised by the social partners (mainly employers) and also by the Polish Parliament.²⁵ The Union has been accused of attempting to destroy the traditional family model because fathers will be forced to participate in parental leave (otherwise families will lose four months of that leave). According to such allegations, it will change the current structure of leave connected with parenthood.²⁶ Although the draft concerns only selected social matters, it reflects different approaches to employee rights and the safeguarding of the individual's position.²⁷

The increase of the role of social rights may fundamentally change the Union. It could even be a new way and a new opportunity for the development of Europe. However, it is too early to assess the importance of the Pillar in balancing the values on which the EU is founded.

23 Doubts were formulated, for example, during the discussion on the amendments to the Posted Workers Directive: see e.g. European Parliament Briefing, 'The Revision of the Posting of Workers Directive' (Policy Department for Economic, Scientific and Quality of Life Policies, October 2017) <www.europarl.europa.eu/RegData/etudes/BRIE/2017/607346/IPOL_BRI%282017%29607346_EN.pdf>. See also Commentary of the Union of Entrepreneurs and Employers on the text of the revised Directive on the posting of workers (PWD – Posting Of Workers Directive 96/71/EC) <<http://zpp.net.pl/en/commentary-of-the-union-of-entrepreneurs-and-employers-on-the-text-of-the-revised-directive-on-the-posting-of-workers-pwd-posting-of-workers-directive-9671ec>>. One could even suspect that, alongside providing for employee protection, the countries which constitute the core of the Union want to protect their internal markets (in some sense contrary to the idea of integration).

24 See 'Proposal for a Directive of the European Parliament and the Council on work–life balance for parents and carers and repealing Council Directive 2010/18/EU', Brussels, 26 April 2017, COM(2017) 253 final, 2017/0085 (COD); Council of the European Union, 'Proposal for a Directive of the European Parliament and of the Council on work–life balance for parents and carers and repealing Council Directive 2010/18/EU – Progress report' (2017/0085 (COD)) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A253%3AFIN>>.

25 Council of the European Union (n 24); Mateusz Adamski, 'Unia chce obowiązkowego 4-miesięcznego urlopu rodzicielskiego dla ojców' ('The Union Wants Mandatory 4-Month Parental Leave for Fathers' (*Rzeczpospolita*, 17 May 2017) <www.rp.pl/Kadry/305179940-Unia-Europejska-chce-obowiazkowego-4-miesiecznego-urlopu-rodzicielskiego-dla-ojcow.html>; Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 22 czerwca 2017 r. w sprawie uznania projektu dyrektywy Parlamentu Europejskiego i Rady w sprawie równowagi między życiem zawodowym a prywatnym rodziców i opiekunów oraz uchylającej dyrektywę rady 2010/18/UE za niezgodny z zasadą pomocniczości (Resolution of the Lower House of Polish Parliament of 22 June 2017 on recognition of the draft Directive of the European Parliament and of the Council on work–life balance for parents and carers and repealing Council Directive 2010/18/EU as incompatible with the principle of subsidiarity (22 June 2017) <www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/NP/2018/03-27/1129470PL.pdf>.

26 See more Zbigniew Hajn and Leszek Mitrus, 'Poland' in Roger Blanpain and Frank Hendrickx (eds), *International Encyclopaedia of Laws: Labour Law and Industrial Relations* (Kluwer Law International 2016) 161–2.

27 It does not matter that a part of the allegations is not justified. See further Council of the European Union (n 24).

4 Transnational institutions and mechanisms

A further problem will be the situation of transnational labour law institutions. The most obvious example is that of EWCs (more than 200 of which are based in the UK). One will need to distinguish between EWCs established under the jurisdiction of an EU Member State (will British members of EWCs retain their mandates?) and EWCs established in Britain. At the Conservative Party Conference held in Birmingham, government members declared on 2 October 2016 that the legislation concerning EWCs will not be amended.²⁸ Thus EWCs in the UK, a large proportion of which were established prior to adoption of the relevant domestic rules, and membership of British representatives in other EWCs would be retained. Irrespective of such retention, Brexit will most likely result in the necessity to renegotiate the current rules governing the operation of EWCs.²⁹ After Brexit, the UK will not be bound by European legislation and CJEU judgments any more, which may seriously affect the position of councils established under British law. As a result, some companies, to avoid uncertainty, may try to move their councils to other jurisdictions (e.g. to Ireland).³⁰ This, in particular, may apply to non-EEA-headquartered companies (i.e. in about 23% of cases). Approximately 25 per cent of these EWCs have chosen British EWC implementation laws as applicable.³¹

Some problems may also arise for European Framework Agreements, frequently concluded in the context of transnational companies which also have EWCs. At the moment they are concluded on a voluntary basis with dubious legal effects,³² which means that Brexit will probably not cause additional problems with their application. Although there are currently no such plans, the situation may change if the EU decides to create a legal framework for European Framework Agreements.³³

Another problem that will arise concerns the mechanism for the posting of workers. Although the principles of the EU's Posted Workers Directive are not implemented in a separate legal Act, they essentially correspond to EU standards.³⁴ Posted workers from EU countries are not registered, and there are no control procedures. Among the EU Member States, the UK currently has the seventh largest number of posted workers (around 50,000);³⁵ that number has increased steadily. British workers are, of course, also

28 EWC Academy, 'Brexit: What Consequences for European Works Councils?' <<https://www.ewc-academy.eu/en/consulting/brexit.html>>.

29 Rebecca Gumbrell-McCormick and Richard Hyman, 'What about the Workers? The Implications of Brexit for British and European Labour' at 8 <<http://eprints.bbk.ac.uk/18986/3/18986.pdf>>.

30 Denis McShane, 'European Works Councils: Another Brexit Victim' (*Social Europe*, 5 January 2017) <www.socialeurope.eu/european-works-councils-another-brexit-victim>.

31 Stan De Spiegelare and Romuald Jagodziński, 'European Works Councils and SE Works Councils in 2015: Facts and Figures' (European Trade Union Institute 2015) <www.etui.org/Publications2/Books/European-Works-Councils-and-SE-Works-Councils-in-2015-Facts-and-figures> 17.

32 See e.g. Silvana Sciarra, Maximilian Fuchs and André Sobczak, 'Towards a Legal Framework for Transnational Company Agreements' (Report to the ETUC 2014) 12.

33 Compare e.g. 'Building and Enabling Environment for Voluntary and Autonomous Negotiations at Transnational Level between Trade Unions and Multinational Companies (ETUC 2016).

34 Jeffrey Kenner, 'The United Kingdom and Posted Workers: Before and after Brexit' (Seminar on Posting of Workers, European Union and National Legal Orders: Problems and Perspectives, University of Naples Federico II, 13 October 2017). However, there are some problems connected with the implementation. There are questions concerning the implementation of the nucleus of rights (in accordance with Luxembourg case EU-Court, C-319/06 *Commission v Luxembourg* [2008] ECR I-4323), the lack of extension on collective agreements in construction sector, or restrictions on strike action.

35 Alan Beattie, 'Curbs on Posted Workers Will not Fix the EU Labour Market' (*Financial Times*, 24 October 2017) <www.ft.com/content/8bf67744-b8a2-11e7-9bfb-4a9c83ffa852>.

sent to other Member States, and the problem of posted workers is thus not dissimilar to the issue of migrant workers. The UK could theoretically maintain the current rules after Brexit, as Norway does, but this could be difficult from a political point of view (as discussed above), and it seems more probable that restrictions will be established for companies sending workers to other countries.

At the same time, the whole mechanism of posting workers is undergoing serious changes. The coalition composed of CEE countries and the UK defeated the campaign to maintain liberal posting rules. The Directive limits the period of posting as well as extending the protection in the field of remuneration (ensuring equal pay with local workers).³⁶ It can be viewed as one of the first consequences of Brexit. First, as already discussed, the social approach prevailed over the liberal one and so the new rules are going to be more protective (illustrating the French idea of ‘a Europe that protects’).³⁷ It could also lead to amendments in the functioning of the common market. Secondly, the solution reflects the weakening position of the UK as it awaits its withdrawal from the EU. It needs to influence the position of countries that represent a more liberal approach to the European project. If the Brexit negotiations safeguard the posting mechanism, the amended standards may also influence the situation of workers posted between the UK and the EU.

5 Domestic institutions of labour law

Even if some migrant workers are formally allowed to stay in the UK, they may be forced to leave due to changes in the labour market or the system of social security. Some workers may choose to work in another Western European country where the remuneration is higher, while some will undoubtedly return to their home countries, including to Poland. Waves of returning workers may also have an adverse effect on local labour markets, again, for example, in Poland, and it may become necessary to adjust working conditions in response to changing circumstances.

Over recent years, the Polish government has taken a number of social initiatives intended to improve working and living conditions (worker-friendly reforms). These have included the introduction of special family allowances, increasing protection of workers who are not employees and lowering the pensionable age. These changes may contribute to convincing Polish migrant workers to return to their country. However, new social policies may also pose some risks. The Polish economy in some areas still depends on direct foreign investment and increasing labour costs may therefore deter potential investors, although workers’ protection in Poland will certainly be increased. It is unclear whether the Polish economy is sufficiently strong and innovative to fill the gap. The reforms are relatively expensive and have been undertaken during a period of prosperity (visible growth in gross domestic product). Any economic slowdown may lead to serious financial problems. Moreover, Poland has not reformed the legal framework for collective relations, which are undergoing a deep crisis (its main manifestation being the very low level of coverage by collective agreements).³⁸ A wave of returning migrant employees could create new challenges for the labour market and the government may be forced to

36 Directive (EU) 2018/957 (n 21); European Commission, ‘Posted Workers’, <<http://ec.europa.eu/social/main.jsp?catId=471>>.

37 Sophie Maes, ‘EU: New European Rules for Posted Workers’ (*Ius Laboris*, 25 June 2018) <www.iuslaboris.com/en-gb/resources/insights/a/new-european-rules-posted-workers>.

38 See further Łukasz Pisarczyk ‘The Impact of the Economic Crisis on Collective Agreements in Poland’ in S Laulom (ed), *Collective Bargaining Developments in Times of Crisis* (Bulletin of Comparative Labour Relations 99, Kluwer Law International 2018) 63ff.

integrate a large group of workers with experience gained abroad and relatively high expectations. Some support for the employers may be also needed. While there is no typical autonomous instrument (collective agreement) which could reconcile what the workers expect with what the employers can offer, more flexible legislation may be needed.³⁹ To summarise, growing costs and new challenges may further slow down social reforms and bring some changes which will be unfavourable for workers.

There are also concerns about how Brexit will affect British labour law. Many of its institutions have been introduced or developed to implement European standards. Moreover, due to the lack of a written UK constitution, EU standards have played a role that in other countries is reserved for constitutional standards (international guarantees are usually not precise enough to maintain the level of protection).⁴⁰

It is difficult to predict how the economic situation of the UK will develop after Brexit. British companies may need structural support to compete internationally in an environment governed by World Trade Organization standards, and the deregulation of employment standards may be viewed as a solution. Although this can be treated as an internal problem for the UK, the level of protective standards may influence labour markets in countries with which the UK trades. Protective standards derived from EU law will become a part of the British domestic legal system. However, the UK, no longer bound by EU law and the judgments of the CJEU, will be able to change the legislation shaped during the period of its membership in the EU. The standards that have been introduced as regulations (i.e. secondary legislation) are the most exposed to changes. Moreover, 'sectoral collective bargaining has now largely disappeared from the private sector, removing an essential component of the pre-WTD [Working Time Directive] protections'.⁴¹

Employment standards can be divided into two groups. First, in some areas EU membership has induced a significant increase in the level of protection. An example is

39 The process of flexibilisation has been observed over recent years. For instance, in 2013, Poland introduced new instruments allowing for flexibilisation of working time. See Dagmara Skupień, Maciej Łąga and Łukasz Pisarczyk, 'Poland: Recent Development in Polish Labour and Social Security Law – The Social Dialogue, Flexibility and Welfare State' in Martin Stefko (ed), *Labour Law and Social Security Law at the Crossroads – Focused on International Labour Standards and Social Reforms* (Charles University in Prague Faculty of Law 2016).

40 Sandra Fredman, Alan Bogg, Alison Young and Meghan Campbell, 'The Human Rights Implications of Brexit' (*Oxford Human Rights Hub/The UK in Changing Europe* 2018) <<http://ukandeu.ac.uk/wp-content/uploads/2018/04/The-continuing-impact-of-Brexit-on-equality-rights.pdf>>.

41 Ibid. The UK government has stated that UK maternity leave is higher than required by EU legislation, as leave was extended to a maximum of 52 weeks by regulation in 2012, while the EU Pregnancy Directive only requires 14 weeks of maternity leave, of which at least two weeks must be compulsory (Directive 92/85/EEC, OJ L 348, 28 November 1992, at 1, consolidated version at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01992L0085-20140325>>). However, the requirement to claim maternity leave from one's employer 15 weeks before commencement limits maternity rights, as well as the additional requirement of having accrued 26 weeks of employment for the additional period. The limitations of maternity pay in the UK, and the protection against dismissal of pregnant women, constitute further practical barriers (dismissal of a pregnant woman or women on maternity leave is only deemed unfair if it is based on the leave or pregnancy itself (Maternity and Parental Leave etc. Regulations 1999, SI 1991/3312, last changed by Maternity and Parental Leave etc. (Amendment) Regulations 2014, SI 2014/3221)). There are concerns that the withdrawal from EU membership will affect the future trajectory of UK gender equality law, see Roberta Guerrina and Annick Masselot, 'Walking into the Footprint of EU Law: Unpacking the Gendered Consequences of Brexit' (2018) 17(2) *Social Policy and Society* 327.

the working time regulations following Directives 93/104⁴² and 2003/88.⁴³ Although the UK adopted a liberal model of protection in the area of working hours (through the option of waiving the mandatory daily and weekly norms of working time),⁴⁴ it was a significant change compared to the traditional approach to working time in Great Britain⁴⁵ with a maximum weekly norm of working hours (48) which, in some aspects, limited the freedom to organise working time and impacted the costs of economic activity. As a result, after 'Brexit' working time standards may become a target of liberalisation advocates.⁴⁶

From the perspective of freedom of economic activity, the protection of employees at the transfer of an undertaking is also contested (Directive 2001/23).⁴⁷ Before the implementation of the first transfer Directive, British law did not recognise the automatic change of employers as a consequence of a takeover of an undertaking (business) or its part.⁴⁸ The obligation to continue employment relationships with the same working conditions deeply affects the transferee position. Moreover, British legislation went relatively far by extending the concept of transfer to cover outsourcing procedures (even second-generation outsourcing). Far-reaching protection, such as the restrictions on harmonising conditions of work after the transfer, have been criticised for inconveniencing employers.⁴⁹ Some problems will also appear in the field of cross-border transfers. Even today it is unclear whether such changes are covered by the protection arising from Directive 2001/23. In case of a transfer between EU Member States and states that are outside the Union, it is problematic to expect that courts would hold the transferred entities to have retained their identity (taking into account a significant change of the attendant legal background).

Among other standards that will be maintained post-Brexit are fundamental rules which govern the relationship between the employer and the employee, predominantly anti-discrimination law.⁵⁰ The UK government has vowed to keep the standards arising

42 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time [1993] OJ L 307/18.

43 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299/9.

44 However, British law recognised opting out of the 48-hour working week (see reg 5 the Working Time Regulations 1998, SI 1998/1883).

45 See e.g. Stephen Hardy, *Labour Law and Industrial Relations in Great Britain* (3rd revised edn, Kluwer Law International 2007) 124–5; and Simon Honeyball, *Textbook on Employment Law* (13th edn, Oxford University Press 2014) 10–11.

46 Tony Dobbins, 'Tory Attack on Working Time Directive Signals a Post-Brexit Race to the Bottom' (*The Conversation*, 20 December 2017) <<http://theconversation.com/tory-attack-on-working-time-directive-signals-a-post-brexit-race-to-the-bottom-89395>>; Doug Pyper, 'Brexit: Employment Law' (Commons Briefing Paper 7732, 10 November 2016) <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7732>>.

47 Council Directive 2001/23/EC of 21 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertaking or businesses [2001] OJ L 82/16, replacing Council Directive 77/187/EEC of 14 February 1997 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of business [1977] OJ L 61/26.

48 About the implementation consequences see Hardy (n 45) 166ff.

49 Anthony Fincham, Finlay McKay, Alison Woods, Graham Paul, Gillian MacLellan and Sarah Ozanne, 'The Impact of Brexit on UK Employment Law' (*CMS Cameron McKenna LLP*, 2016) 3 <www.lexology.com/library/detail.aspx?g=4f793105-7fa5-4a01-82b2-9a91a52d6564>.

50 About the impact of Brexit on equality rights, see Sandra Fredman et al (n 40).

from EU law and unified in 2010.⁵¹ Moreover, the protection arising from the EU standards will be supported by the application of CJEU judgments which will be applied to preserve EU-derived law. However, there will be an important time limitation as only the judgments binding on the UK on the day of its departure from the EU will continue to apply.⁵²

6 Brexit and migrant workers

The first important question concerns the future rights of workers who arrived in the UK before Brexit (or before another date negotiated with the EU). Clear guarantees for this group of people were widely expected to be established in other EU Member States. Until Brexit, EU citizens will continue to enjoy the full rights guaranteed them by the Treaties. An important element of the new system is the so-called ‘settled’ status. EU citizens granted this status will be free to reside in the UK, undertake any lawful activity and continue to have access to social services. According to the Settlement Scheme, to obtain settled status EU citizens will generally need to have lived continuously in the UK for five years. Those with less than five years’ continuous residence will be granted pre-settled status and be able to apply for settled status once they reach the five-year point. There will be no change to the current rights until the end of the implementation period on 31 December 2020, and the deadline for applications to the scheme for those resident in the UK by the end of 2020 will be 30 June 2021.⁵³ The first applications have just been submitted. However, the scheme is not due to fully open until 30 March 2019.⁵⁴

The UK and the EU will also need to deal with the problem of migrant workers who wish to move to the UK in the future. A common market with freedom of movement could theoretically be maintained. This scenario is unlikely to become reality because ‘uncontrolled immigration’, inter alia in relation to its alleged impact on the labour market, was one of the key reasons for the Brexit vote, and the UK government has vowed that free movement will cease to exist.⁵⁵ The immigration policy that replaces freedom of movement will depend on the situation of the British labour market: despite claims to the contrary during the referendum campaign, there are numerous sectors of the British economy that rely on migrant workers. If the UK introduces a system of permits, the EU will probably expect a special (simplified) procedure for its citizens. Poland recently introduced a simplified procedure for workers from certain Eastern non-EU European countries, largely to facilitate the recruitment of Ukrainian workers. Although the regular procedure required permits to be issued by public authorities, the simplified procedure requires only that the public authorities be notified.⁵⁶

51 Department for Exiting the EU, ‘Legislating for the United Kingdom’s withdrawal from the European Union’, presented to Parliament by the Secretary of State for Exiting the EU by Command of Her Majesty, London, March 2017, Cm 9446, 16, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf>.

52 European Union Withdrawal Act 2018 (n 6) ch 16 does not provide any role for the CJEU in the interpretation of that new law, and does not require the domestic courts to consider the CJEU’s jurisprudence. In that way, the Act allows the UK to take control of its own laws.

53 Home Office, EU Settlement Scheme: Statement of Intent (21 June 2018) <www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>.

54 ‘Brexit: First Applications from EU Nationals for Settled Status’ (*BBC News*, 28 August 2018).

55 Secretary of State for the Home Department (n 9) 7.

56 Act of 20 April 2004 on employment promotion and labour market institutions (Journal of Laws, consolidated text from 2017, item 1265, and the implementing Acts, in particular Decree of Ministry of Family, Labour and Social Policy of 7 December 2017 on issuing work permits for foreigners and entry of declaration of entrusting work to a foreigner into the register of declarations (Journal of Laws from 2017, item 2345).

There are further doubts regarding the criteria applied to migrant workers. If the UK wants to limit immigration to skilled workers, it will be necessary to determine a set of qualifications, and perhaps to differentiate the period for which people of different levels of qualification are allowed to reside in the country. Regardless of how the UK revises its immigration policy, it is worth mentioning the International Labour Organization (ILO) Convention concerning Migration for Employment (revised 1949),⁵⁷ as well as obligations under other international instruments.⁵⁸ Obviously, the UK has declared that it will continue to honour its international commitments and follow international law.⁵⁹ In the past, the Committee of Experts assessed rather positively the British legislation in this area. The Committee noted, for example, that the Equality Act of 2010⁶⁰ prohibited discrimination on the basis of a number of grounds including sex, religion and race, which also includes nationality.⁶¹

The ILO Convention requires equal treatment of workers migrating for employment at the level of statutory standards and actions. The states bound by the ILO Convention are obliged to apply to immigrants lawfully within their territory – without discrimination in respect of nationality, race, religion or sex – treatment no less favourable than that which applies to their own nationals in respect of the following matters:

- (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities:
 - (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home-based work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (b) social security (in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to some limitations;⁶²

57 The term migrant for employment, under this Convention, refers to a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment (Article 11.1). The Convention does not apply to (a) frontier workers; (b) short-term entry of members of the liberal professions and artists; and (c) seamen; (International Labour Conference (32nd Session) Convention C097 Migration for Employment C097, Revised, 1949 (No 97), Geneva, 1 July 1949).

58 See Article 19 of the European Social Charter, under which migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

59 Department for Exiting the EU (n 51) 15: 'It is abundantly clear that the UK is in breach of international law if it does not uphold its treaty commitments. But at domestic level, little or no weight is given to this fact.' See Fredman et al (n 40).

60 Equality Act 2010.

61 <www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:2300593> However, there were some concerns, e.g. about the situation of overseas domestic workers.

62 '(i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition; (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension'.

- (c) employment taxes, dues or contributions payable in respect of the person employed; and
 (d) legal proceedings relating to the matters referred to in this Convention (Art. 6).⁶³

The ILO Convention allows, under certain conditions, for more detailed arrangements between states.⁶⁴

7 The situation of the UK and Polish labour markets

The UK is one of the largest labour markets in Europe and is often a destination of choice for EU citizens. Its popularity is due to the relatively high level of remuneration, a developed social protection system, access to non-material goods (culture, sport), and the opportunities offered by a multicultural society. These conditions have resulted in immigration on a large scale: more than 10 per cent of workers are foreign citizens⁶⁵ and between January and March 2017 approximately 7 per cent of workers were from other Member States.⁶⁶ There are various sectors of the British economy (e.g. agriculture) which particularly depend on this workforce.

While the Polish labour market is also one of the largest in the EU – there are around 16.5 million workers,⁶⁷ including around 13 million employees⁶⁸ – Poland has traditionally faced the problem of emigration. There have been several waves, starting in the immediate post-war period, and continuing throughout the 1970s and 1980s. After the central and eastern enlargement of the EU in 2004 the UK opened its labour market to workers from new Member States, which had serious social and economic consequences. In the early 2000s, the unemployment rate in Poland reached 20 per cent⁶⁹ (despite the introduction of labour law reforms), resulting in another wave of emigration to Ireland and the UK. The new wave of workers suffered from less favourable working conditions – including lower pay – accompanied by a low level of unionisation (around 8%; much lower than among UK workers). Due to lower costs of employment and a weaker bargaining position, these workers were considered to be more attractive than British workers; however, there were

63 'A migrant for employment who has been admitted on a permanent basis and members of his family who have been authorised to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides (Art. 8.1.) When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.'

64 'In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention (Art. 9).'

65 Cinzia Rienzo, 'Migrants in the UK Labour Market: An Overview' (*The Migration Observatory*, 17 March 2017) <http://migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Briefing-Migrants_in_the_UK_Labour_Market.pdf>.

66 Feargal McGuinness, 'Employment of Other EU Nationals in the UK' (House of Commons Briefing Paper, 3 August 2017) 3 <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8069#fullreport>>.

67 Trading Economics, 'Poland Employed Persons 2010–2018' <<https://tradingeconomics.com/poland/employed-persons>>.

68 Central Statistical Office of Poland, 'Quarterly Information on the Labour Market in the 3rd Quarter of 2017' <<http://stat.gov.pl/en/topics/labour-market/working-unemployed-economically-inactive-by-lfs/quarterly-information-on-the-labour-market-in-the-3rd-quarter-of-2017,8,27.html>>.

69 Central Statistical Office of Poland, 'Unemployment Rate 1990–2018' <<https://stat.gov.pl/en/topics/labour-market/registered-unemployment/unemployment-rate-1990-2018,3,1.html>>.

problems of social integration, and allegations that migrant workers were abusing the social security system. It led to an increase in tension between British citizens and migrant workers. Aversion to migrant workers has become a catalyst for a deterioration in attitude towards the EU and one of the reasons for the referendum result.⁷⁰

The Polish labour market has changed significantly, subsequent to Poland's accession to the EU. In 2017, the employment rate was the highest in recorded history (around 16.5 million),⁷¹ while the unemployment rate had decreased to around 6.5 per cent.⁷² Nevertheless, in many sectors a labour shortage could be observed. This applies to both low-skilled workers (e.g. in the retail sector) and highly skilled employees (e.g. in the healthcare sector). As it happens, Polish workers from these same sectors are emigrating to the Western EU countries, presently still predominantly to the UK. Such a situation provokes questions about the relationship between the education system and employment policy. Education in some areas (e.g. medical studies or IT studies) is very expensive and, for a large number of students, funded by the state. At the same time, young university graduates in these subjects emigrate to countries offering better working conditions and a higher level of remuneration than Poland. The demand for employees seen in Poland over recent years has caused some significant changes in the Polish labour market. First, it has led to an increase in remuneration. The statutory minimum wage increased from PLN824 in 2004⁷³ to PLN2100 in 2018.⁷⁴ The average remuneration in the national economy has now exceeded the threshold of PLN4200, whereas in 2004 it hovered around PLN 2300.⁷⁵ Thanks to this, the Polish labour market has become more attractive for workers, especially those from poorer European countries, including non-EU countries (predominantly Ukraine). From the Ukrainian perspective, Polish wages appear relatively high which, in combination with the liberalisation of immigration rules,⁷⁶ has contributed to a considerably increased migration of Ukrainian workers to Poland. Moreover, the Polish authorities expect that the current situation will also change the attitude of Polish workers by, it is hoped, reducing the rate of internal immigration within Poland and encouraging Poles living abroad to return. Second, there is also the necessity to fill the gap in the labour market, to which the liberalisation of immigration rules for citizens of some countries (including Ukraine) has contributed. On top of that, the government is striving to reverse current tendencies and encourage Poles living abroad (mainly in the UK) to return, in particular highly skilled employees. This was explicitly confirmed by the Polish Prime Minister during a recent visit to the UK. Brexit may only serve to enhance such trends. While some Poles may anticipate growing pressure and a less welcoming atmosphere,

70 Gumbrell-McCormick and Hyman (n 29). See also Catherine Barnard and Sarah Fraser Butlin, 'Free Movement vs Fair Movement: Brexit and Managed Migration' (2018) 55 *Common Market Law Review* 203–4.

71 *Trading Economics* (n 67).

72 Central Statistical Office of Poland, 'Knowledge Database Labour Market', <http://swaid.stat.gov.pl/en/RynekPracy_dashboards/Raporty_predefiniowane/RAP_DBD_RPRA_17.aspx>.

73 Regulation of Council of Ministers dated 9 September 2003 on the amount of minimum remuneration for work in 2004 (*Journal of Laws*, No 167, Item 1623) <<http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031671623/O/D20031623.pdf>>.

74 Regulation of Council of Ministers dated 12 September 2017 on the amount of minimum remuneration for work and minimum hourly rate in 2018 (*Journal of Laws* 2017, Item 1747) <<http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001747/O/D20171747.pdf>>.

75 Central Statistical Office of Poland, 'Average Monthly Gross Wage and Salary in National Economy 1950–2017' <<https://stat.gov.pl/en/topics/labour-market/working-employed-wages-and-salaries-cost-of-labour/average-monthly-gross-wage-and-salary-in-national-economy-1950-2017,2,1.html>>.

76 Act of 20 April 2004 (n 56).

others may be motivated by the much higher costs of living in the UK, in spite of the higher level of wages and quality of social protection in the Britain.

In the UK, the labour market has already started to change as a result of the Brexit referendum. Although there are still more EU citizens coming to the UK than leaving, the number of those leaving the UK has increased.⁷⁷ Some groups of migrant workers began to leave almost immediately after the Brexit referendum, due to uncertainty about their future employment status and an increasingly negative atmosphere for foreign employees. In general, there has been a decrease among workers from those Member States that joined the EU in 2004. This is due in part to the racially motivated abuse experienced in the aftermath of the referendum, but also to the stronger position of other nations within the common European labour market. Increasingly, Polish workers are searching for work in other European countries. Very popular directions are Germany, the Netherlands and (recently) Belgium.⁷⁸ Many workers are also choosing the Scandinavian countries. In the UK there has been an increase in the number of workers from Bulgaria and Romania, both of which joined the EU more recently.⁷⁹ Migrant workers are essential in those sectors (agriculture is one example) where the low pay and poor working conditions are not attractive for British citizens, and there are plans to establish special visa programmes for Ukrainian and Turkish citizens. These provisions, which will lead to maintaining the current rights of migrant workers in respect of access to the British labour market, however, raise questions about the real justification behind Brexit.

8 Conclusions

The implementation of Brexit will pose many challenges to the labour law systems at European and national levels. Brexit may eliminate one of the obstacles to social development. The Union is trying to capitalise on this opportunity and change the relationship between its economic and social objectives. It is hardly an accident that the Union proclaimed the European Pillar of Social Rights during Brexit negotiations. Paradoxically, the role of the UK could in future be taken over by CEE countries. For them, adoption of a more developed social model may lead to losing one of their most important advantages – the lower cost of work. However, after the withdrawal of the UK, the position of the ‘liberal group’ will get much weaker. This was clearly confirmed by the amendment to the Posted Workers Directive. A further problem will be the situation of multinational labour law institutions. However, there is still a possibility of regulating some of these issues in the Brexit agreement.

There are also concerns about how Brexit will affect British labour law. Many of its institutions have been introduced or developed to implement European standards. Waves of returning workers may also have an adverse effect on the labour market in their own countries, and it may become necessary to adjust working conditions in response to increased unemployment rates.

77 Office for National Statistics, ‘Migration Statistics Quarterly Report: July 2018 (rescheduled from May 2018)’ 2 <www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/july2018revisedfrommaycoveringtheperiodtodecember2017>.

78 Central Statistical Office of Poland, ‘Main Directions of Emigration and Immigration in the Years 1966–2014 (Migration for Permanent Residence)’ <<https://stat.gov.pl/en/topics/population/international-migration/main-directions-of-emigration-and-immigration-in-the-years-1966-2014-migration-for-permanent-residence,2,2.html>>.

79 Allan Travis, ‘Number of Romanians and Bulgarians in UK Rises to 413,000’ (*The Guardian*, 11 October 2017) <www.theguardian.com/uk-news/2017/oct/11/number-of-romanians-and-bulgarians-in-uk-rises-413000>.

The next question concerns guarantees for workers who are currently employed in the UK; it will then be necessary to establish new mechanisms regulating access to the British labour market, and to determine the length of the transition period. Although it seems unlikely that the current standard of freedom of movement will be maintained, there may end up being a clash between political expectations and the needs of the British economy. In addition, there are numerous technical questions that may hinder the application of the newly adopted rules. There are also fundamental questions concerning European labour law and transnational institutions after Brexit.

Finally, Brexit will affect labour markets in many other European countries. In the UK, there will naturally be consequences for British citizens while other Member States will experience a wave of returns. Numerous workers will leave Great Britain and move to their home countries or other European states, which may have the effect of threatening the current social equilibrium.

A lot depends on the agreements regulating Brexit and the UK's future cooperation with the EU. The closer this relationship is, the higher will be the standards of employment that have to be maintained. Moreover, there is also an opportunity to protect or re-establish transnational mechanisms and institutions which may be a trigger for future collaboration.