The contribution of International Labour Law to the challenge of globalisation

Heerma van Voss, G.J.J.; Slot P.J., Bulterman M. (eds.)

Globalisation and Jurisdiction

Edited by Piet Jan Slot and Mielle Bulterman
Europa Instituut, Leiden University

KLUWER LAW
INTERNATIONAL

E.M. MEIJERS INSTITUUT
INSTITUUT VOOR
RECHTSWETENSCHAPPELIJK
ONDERZOEK

MI
75

Final editing TGV, Leiden
Lay-out AlphaZet prepress, Waddinxveen

ISBN 90 4112 307 5

Printed in the Netherlands

The contribution of International Labour Law to the challenge of globalisation

Gustav J.J. Heerma van Voss

1 INTRODUCTION

International competition has been a driving force for the internationalisation of Labour Law for a century. Yet, Labour Law depended highly on the regulation of national states and the power of unions in the national context. The recent development towards globalisation of economies seems to have had an important impact on Labour Law that is already in a process of reorientation as a result of changes in production methods: the industrial society is changing into an information- or service-society. At the turn of the century many labour lawyers expressed the idea that labour law was in some sort of identity crisis.[1] Are we watching the death-struggle of Labour Law or does it have answers?

2 HISTORY

Labour Law was developed since the 19th century as a result of the Industrial Revolution and the struggle of workers for better living conditions. By organising in unions and political parties the working class managed to influence the law. Labour Law was introduced as a new legal discipline that protected workers and compensated their unequal economic position towards employers.[2]

Soon it became clear that countries were depending on improving working conditions in other countries. If all countries were to develop labour standards it would not distort the competition on the world market: International Labour Law was born. At the end of World War I this idea was consolidated in the International Labour Organisation (ILO). The ILO developed a series of standards and is still doing so. Every year delegates from the ILO Member States (Governments as well as social partners) meet within the International Labour Conference at Geneva and formulate common standards. Every nation-state is free to accept the ILO-standards, and is encouraged to do so by the international community. However, this method meets two significant problems. Firstly, the standards set out in ILO-Conventions are worldwide stan-

---

1 Lord Wedderburn a.o., *Labour Law in the Post-industrial Era* (Aldershot, Dartmouth, 1994).

2 B. Hepple (ed.), *The Making of Labour Law in Europe, A comparative Study of Nine Countries up to 1945* (Mansell, London, 1986); H. Slomp, *Labor Relations in Europe, A History of Issues and Developments* (Greenwood Press, New York, 1990).

dards, and thus not always very effective in the developed western countries. Secondly, countries are free to accept or reject the standards. Many countries only accept ILO-Conventions that are in line with already existing legislation or with actual policies of the Government. However, there is no doubt that the ILO has done extremely important work by promoting its standards.[3]

Since World War II Labour Law has undergone a further development, especially in Europe: labour law became part of the constitution of several countries. Welfare states were developed. Within companies, the managerial prerogatives were restricted by the rule of law. A 'European social model' was designed: consultation of works councils, negotiation with unions, and protection of the incomes of the workers were generally accepted common elements of the systems, although every country has its specific features.[4] On the European level the European Social Dialogue is typical for this European Social Model of consultation rather than confrontation.[5] The basis for this system is considered to be found in two worldwide recognized constitutional rights of workers: the right to organize and the right to bargain collectively. The important role of the government, however, is specific for the European context.

> The acceptance of Labour Law in the European Society was clearly demonstrated when the Court of Justice had to decide whether labour conditions negotiated by unions in collective agreements with employer could be contrary to the Fair Competition-clause in the European Community Treaty. The Court concluded that a decision taken by organisations representing employers and workers in a given sector, in the context of a collective agreement, to set up in that sector a single pension fund responsible for managing a supplementary pension scheme and to request the public authorities to make affiliation to that fund compulsory for all workers in that sector does not fall within the scope of Article 81 EC-Treaty. Articles 3(1)(g), 10 and 85 of the EC-Treaty do not prohibit a decision by the public authorities to make affiliation to a sectoral pension fund compulsory at the request of organisations representing employers and workers in a given sector. Articles 82 and 86 EC-Treaty do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme in a given sector.[6] Thus, the Court gives room for exclusive pension schemes regulated by social partners that normally would not be excepted in a free market-economy. By this decision, the Court upholds the system of collective labour law, on which many of the EC-countries have basically based their labour relations.

But for the actual challenge of globalisation neither historic development provides an adequate answer.

---

3 M. Humblet a.o., *International Labour Standards, A global approach* (International Labour Organization, Geneva, 2002); N. Valticos & G. von Potobsky, *International Labour Law* (Kluwer, Deventer, 1995); L. Betten *International Labour Law, selected issues* (Kluwer, Deventer, 1993).

4 See for a theoretical basis for the European Social Model, M. Albert, *Capitalisme contre capitalisme* (Éditions du Seuil, Paris, 1991).

5 E. Franssen, *Legal aspects of the European Social Dialogue* (Intersentia, Antwerpen, 2002).

6 ECJ 21 September 1999, Cases C-115/97 to 117/97, Brentjens [1999] ECR I-6025. See also COJ 12 September 2000, Cases C-180/98 to CC-184/98, Pavlov [2000] ECR I-6451; ECJ 21 September 2000, Case C-222/98, Van der Woude [2000] ECR I-7111.

3 THE ACTUAL CHALLENGE OF GLOBALISATION

What is the problem? The construction of the identity of Labour Law has been tied to the nation-state.[7] But the economic markets are less and less regulated by nation-states. The influence of national government in Europe is restricted by the rules of the European Union. And the rules of the World Trade Organisation and the policies of the G-8 increasingly influence the European markets. Larger companies are either developing into multinational corporations or taken over by foreign investors. The impact of globalisation on Labour Law is not merely a matter of size or nationality. Globalisation also requires more flexibility. Companies have to adjust to market developments more rapidly than they were used to in the past. This requires fast adjustments of the workforce.[8] This has an impact on the employment contract. The relatively safe position of a worker with a full-time employment contract is threatened.[9] Employees have to be aware of the need to change the content of their work, their workplace or even their company more often than before. The traditional elements of Labour Law like the employment contract, dismissal protection and stable wage levels are under fire.[10] Labour relations are individualised. When people have to change jobs often, they feel no solidarity with the same group of workers, unions lose members and, finally, their influence.[11] Within the European Union, the emphasis on Economic Integration leads to less attention for Labour Law. The Economic and Monetary Union will lead to more integration in economic policies. The Labour Market will have to become more flexible as part of this policy. Labour Law as part of this development has not yet received much attention.

The ILO as an International Organisation is not able to meet the challenge. As was said before, the ILO is based on national Member States. Its conventions depend on the acceptance by the Member States and contain just basic norms. They do not influence the policies of multinational companies. Efforts to introduce codes of conduct to change this were not very successful. The codes of conduct are often not known, and their enforcement is not effective enough.

---

7 M. D'Antona, 'Labour Law at the Century's End: An Identity Crisis', in: J. Conaghan, R. M. Fischl & K. Klare, *Labour Law in an Era of Globalization, Transformative practices and possibilities* (University Press, Oxford, 2002), p. 31-49, 33.

8 R. Blanpain, 'The changing world of work', in: R. Blanpain & C. Engels, *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law International, The Hague, 1998), p. 23-50.

9 T. van Peijpe, *Employment Protection under Strain*, (Kluwer Law International, The Hague, 1998).

10 R. Blanpain & M. Weiss (eds.), *Changing Industrial Relations and Modernisation of Labour Law* (Kluwer Law International, The Hague, 2003); J.R. Bellace & M.G. Rood (eds.), *Labour Law at the Crossroads: Changing Employment Relationships* (Kluwer Law International, The Hague, 1997); L Betten (ed.), *The employment contract in transforming labour relations* (Kluwer Law International , The Hague, 1995).

11 J. Conaghan, R. M.Fischl & K.Klare, *Labour Law in an Era of Globalization, Transformative practices and possibilities* (University Press, Oxford, 2002); L. Betten & D. Mac Devitt, *The Protection of Fundamental Social Rights in the European Union* (Kluwer Law International, The Hague, 1996).

4 THE SOCIAL POLICY OF THE EUROPEAN UNION

Within the EU efforts have been made to meet the challenge of globalisation, even before the word as such was invented. The history of the European Social Policy can be divided into three periods.

First period: 1957-1970 – Free Movement of Workers

During the 1960s the attention of the European Community in the field of Labour Law was almost entirely focused on the introduction of the principle of Free Movement of Workers.

Free Movement of Workers

The Free Movement of Workers was one of the four basic freedoms that were necessary to establish the Common Market. The Free Movement of Workers was part of the EC Treaty (at present the Articles 39-42). But it was finally more precisely regulated in a Regulation of 1968 and in Directives on Movement and Residence (1968) and on Public Order, Public Safety and Public Health (1964). The co-ordination of social security systems was settled in regulations of 1971 and 1972. Directives on the residence of retired workers, students and other non-workers, and the protection of additional pensions completed this system in the 1990s.[12] The policy introduced the principle of equal treatment of EU citizens as worker in employment relations with national residents. The equal treatment also includes social rights and residence rights for family members. The case-law of the European Court of Justice gave a broad interpretation of these rights, giving EU citizens in other EC countries almost completely the same rights as national residents as soon as they find a job in that country.

Second period: 1970-1990 – Social Action Programmes

During the 1970s the Governments of the Member States became aware of a growing need to show the citizens that the European integration was not only attractive for companies.

The Commission launched Social Action Programmes to deal with this aspect. The Action Programmes originally related to two areas: the Restructuring of Enterprises and the Equal Treatment of Men and Women; later Health & Safety was added.

12 See for a comparison with the US system: A.P. van der Mei, *Free movement of persons within the European Community: cross-border access to public benefits* (Hart, Oxford, 2002).

Restructuring of Enterprises

The developing internal market promoted the Restructuring of Enterprises. Some companies were merging with or taking over other companies, while others had difficulties to remain competitive on the growing European markets. The population was beginning to protest against the unilateral economic approach of the European integration. Mere economic integration would ask too high a price of the citizens in terms of insecurity of work. The policy of the AKZO-company which realised collective redundancies in the countries with the lowest level of worker protection made the population anxious about further economic integration. To make this development more acceptable for the workers three important directives were introduced, concerning:

- collective redundancies in 1975, requiring companies to consult workers' representatives and to inform government in case of mass dismissals.[13]
- the transfer of enterprises and acquired rights for workers in 1977, maintaining workers' jobs and other rights in case of a take-over.[14]
- insolvency of the employer in 1980, guaranteeing worker's wages during a short period after a bankruptcy.[15]

All three directives showed the ambiguity of labour law in a market-economy and within the EC as a primarily economic organisation. Although collective redundancies, transfers of enterprises and insolvency are accepted as normal, and even sometimes necessary events in a free market economy, the most direct and hard effects for the workers are postponed or reduced, in order to make time for the employees to enable them to adjust to the new situation.

Equal treatment

During the 1970s the European Community also introduced legislation in the field of equal opportunities for men and women on the labour market. Women demanded equal rights and the Commission saw room for social action programmes in this field. In addition to the already existing rule of equal pay for men and women according to the EC-Treaty (article 119, presently 141) directives were introduced to emphasise the equal rights of women:

- Equal pay in 1975
- Equal rights in employment in 1976
- Equal rights in Social Security in 1979
- Equal rights in Private Pension Systems in 1986
- Equal rights of self-employed in 1986

---

13 Council Directive 75/129/EEC of 17 February 1975, today replaced by Council Directive 98/59/EC of 20 July 1998, [1998] OJ L 225/16.

14 Council Directive 77/187/EEC of 14 February 1977, today replaced by Council Directive 2001/23/EC of 12 March 2001, [2001] OJ L 82/16.

15 Council directive 80/987/EEC of 20 October 1980, [1980] OJ L 283/23.

The non-discrimination policies were extended at the end of the century (Treaty of Amsterdam, 1997), by introducing new provisions in the EC-Treaty (Articles 13 and 14), broadening the scope to other forms of discrimination like nationality, race, religion, handicap, age and sexual orientation.

New Directives in this field at this time concerned:

- The division of the Burden of Proof in 1997
- Race discrimination in 2000
- General Framework discrimination at work in 2000.

Besides this, there is an international development of promotion of fundamental rights in labour law that seems to be quite universal. Anti-discrimination law and protection of the privacy of the worker are addressed within the EU as well as in other industrialised countries.[16]

Health and Safety

During the 1980s the need for a more general approach to Labour Law on the European level was felt. In the Single European Act of 1987 Qualified Majority Voting in the Council on Directives with regard to Health and Safety was accepted. During the 1980s a series of directives in this field was introduced, setting the standards for protection of workers in several specific areas. More general were the directives on:

- Framework Directive on Health and Safety of 1989,
- Protection of Pregnant Women at Work of 1992,
- Aspects of Organisation of Working Time of 1993 and
- Protection of Young Workers of 1994.

Third period: since 1990 – Overall social policy

At the end of the 1980s the call for an overall European social policy became more influential. The European Commission under the presidency of Jacques Delors introduced the 1992 project, aiming to complete the Internal Market. As a sequel to this, Delors also reanimated the 'social dialogue'. The Organisations of Employers and Workers on the European Level were invited to have regular meetings and encouraged to negotiate on agreements. On the basis of such an agreement a new decision-making process in the field of social policy was introduced. It was part of an Agreement on Social Policy that was related to a protocol annexed to the Maastricht Treaty of 1992 that allowed 11 of the 12 Member States to make further reaching decisions in the social field. At that time, the Conservative Government of the United Kingdom did

16 B. Hepple (ed.), *Social and Labour Rights in a Global Context, International and Comparative Perspectives* (University Press, Cambridge, 2002); M. Bell, *Anti-Discrimination Law and the European Union* (University Press, Oxford, 2002); J.D.R. Craig, *Privacy and employment Law* (Hart, Oxford,1999).

not accept this policy, as it also refused to agree with a Community Charter on the Rights of Workers that was endorsed by the other Member States in Strasbourg 1989. However, after the Labour Government took over in Britain in 1997, it accepted the social policy of the other countries and in the Amsterdam Treaty of that year the Social Policy provisions were placed in the EC-Treaty and became an integral part of European Law (Articles 136-145).[17]

The new procedures include the consultation of the European Social Partners on new initiatives in the social field. They have the option to choose to open negotiations before the Council of Ministers introduces legislation. Should the negotiations lead to an agreement, they can ask the Council to make that agreement binding in the form of European Law.

Employment Contract

The new procedure was used with respect to some agreements with regard to employment contracts:

- Directive and Agreement on Parental Leave
- Directive and Agreement on Part-time Work
- Directive and Agreement on Fixed-Term Contracts.

Also some sectoral agreements with regard to working hours in the Transport Sector followed this model.

In the field of Employment Contract Law in 1991 already the Directive on Information of Workers' rights was enacted.

Information and consultation

A new area of social policy is the field of information and consultation of workers.

Since the decision-making process of the large companies is more and more on a trans-national basis, national states are less able to influence them. Therefore, in 1994 the EC-Directive on European Works Councils was introduced.[18] Since 1999 every Community-scale undertaking must have a works council on the European level or another form of information and consultation procedure. The same goes for the newly introduced European Company

---

17 See for general overviews on European Labour Law in English: J. Kenner, *EU Employment Law, From Rome to Amsterdam and beyond* (Hart Publishing, Oxford, 2003); A C. Neal, *European Labour Law and Social Policy, Cases and Materials* (Kluwer Law International, The Hague, 2002); R. Blanpain, *European Labour Law* (Kluwer Law International, The Hague, 2002); C. Barnard, *EC Employment Law* (University Press, Oxford, 2000); R. Nielsen, *European Labour Law* (Djøf publishing, Copenhagen, 2000); E. Szyszczak, *EC Labour Law* (Longman, Harlow, 2000); B. Bercusson, *European Labour Law* (Butterworth, London, 1997); N. Burrows & J. Mair, *European Social Law* (John Wiley & Sons, Chichester, 1996).

18 Council Directive 94/45/EC of 22 September 1994 (EWC); R. Blanpain & P. Windey, *European Works Councils, Information and consultation of Employees in Multinational enterprises in Europe* (Peeters, Leuven, 1996).

(SE).[19] With regard to the European Company also rules for the influence of workers on the board of directors are included. In 2002 a Framework Directive was accepted with regard to Information and Consultation of Workers on the National Level.

The European Social Policy as a whole seems to be quite effective in the European context. Even though globalisation is going further than the European borders, every company with plants in Europe has to comply with the national rules that were introduced to comply with the directives. The European Commission and the Court of Justice ensured that these directives were transposed into national legislation and effectively enforced.[20]

As a result of globalisation, the arrangements for the EU-countries will be not enough and the need will grow for agreements with more countries about this issue.[21]

5 Jurisdiction problems

Problems of conflicts of laws (private international law) within the European Union were settled in a Treaty, a Regulation and a Directive.[22]

Law on Contractual Obligations

The European Convention Regarding the Law Applicable to Contractual Obligations (hereinafter EC-Convention) dates from 1980 and at present has been adopted by all EC Member States.[23] In the future it will be replaced by a Regulation, making the European Court of Justice competent. At present that competence is dependent on the acceptance of an additional Protocol.

Labour Law used to fear that employers would abuse a complete freedom of choice of applicable law. On the other hand, the place of work as the only determining factor is also too simple. Therefore, the EC Convention prescribes in article 6, paragraph 1 that a choice of the parties in an employment contract for the law system of another country is valid, but 'shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice'. Al-

19 See Council Directives 2001/86/EC of 12 March 2001(SE) and 2003/72/EC of 22 July 2003 (SCE).

20 J. Malmberg (ed.), *Effective Enforcement of EC Labour Law* (Iustus Förlag, Uppsala, 2003).

21 See in this respect also the Communication of the Commission to the Council, the European Parliament and the Economic and Social committeee promoting core labour standards and improving social governance in the context of globalisation of 18 July 2000, COM (2001) 416 final, also published in: A.C. Neal, *European Labour Law and Social Policy, Cases and Materials* (Kluwer Law International, The Hague, 2002), Volume II, p. 80.

22 See F. Gamillscheg & M. Franzen, 'Conflicts of Laws in Employment Contracts and Industrial Relations', in: R. Blanpain & C. Engels, *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law International, The Hague, 1998), p. 161-179.

23 EC-Convention Regarding the Law applicable to Contractual Obligations of 1980.

though this might be seen as a form of protection of the national economic market, the rule is not simply providing the worker with the most favourable system. It just prevents the worker from being deprived of local labour protection and contributes to a fair competition within one Member State.

In the case of an absence of choice in the employment contract, article 6, paragraph 2 rules that the contract shall be governed:

> (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or
> (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated; unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

The result is that the place of work is normally decisive, but it is possible to argue that another factor is more connected.

If the law of another country is also involved article 7, paragraph 1 of the of the EC Convention prescribes:

> When applying under this Convention the law of a country, effect may be given to the mandatory rules of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Execution of decisions

For the effective execution of decisions of courts in other European countries the European Union has Regulation 44/2001.[24] Articles 18-21 deal specifically with individual obligations on the basis of employment contracts. A case against an employer can be brought before a court in the place where the employee usually works or has worked or, when the worker has not worked in one single country, the court of the place where the affiliation is or was located that employed the employee (Article 19). Article 20 provides that the employer can bring his claim only before the courts of the Member State where the employee lives. The parties are only allowed to agree otherwise after a conflict has been raised.

Posting of workers

Specifically in the construction sector problems have occurred with regard to the working conditions of workers who were posted in another Member State. In the Rush Portuguesa case, Portuguese undertakings were made subject to

24 Regulation (EG) 44/2001 on execution of decisions in civil and commercial cases.

labour regulations of France. The Court of Justice decided in 1990 that an undertaking established in Portugal under the EC-Treaty providing services in the construction and public works sector in another Member State may move with its own workforce which it brings from Portugal for the duration of the work in question. In such a case, the authorities of the Member State in whose territory the work is to be carried out may not impose on the supplier of services conditions relating to the recruitment of manpower in situ or the obtaining of work permits for the Portuguese workforce.[25]

The European Council and Parliament reacted with a Directive on posting of workers.[26] In this Directive the Member States were entitled to guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down by law or collective agreements in the construction sector:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- the minimum rates of pay, including overtime rates;
- the conditions of hiring-out of workers;
- health, safety and hygiene at work;
- protective measures with regard to pregnant women or women who have recently given birth, and with regard to children and young people;
- equality of treatment between men and women and other provisions on non-discrimination.

By imposing this rule the 'gap' between EC-law and national labour regulation in this field was restored. Some people, however, would consider this Directive as a new form of national protection of the construction market against foreign competitors. A basic principle of European Law now seems to be that this competition should not lead to the so-called 'social dumping', which means that countries compete by lowering labour standards.

6 New forms of social policy in the EU

The relatively high unemployment in the European Union is sometimes considered to be a result of the high degree of protection given to workers in the EC. However, it is important to realise that the level of unemployment differs from country to country and the nature of the unemployment (young or old workers, men or women) often varies greatly. Unemployment is often still considered to be a national problem above a European one.

Since the issue is also politically sensitive on the national level, EC-Member States are not very willing to harmonise their employment policies. How-

25 ECJ 27 March 1990, Case C-113/89, Rush Portuguesa [1990] ECR I-1417.

26 Directive 96/71/EG of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, [1997] OJ L 18/1.

ever, this item seems to be getting more importance as a result of the introduction of the Economic and Monetary Union. As part of the integration of the national economies, the employment policy also needs more co-ordination. To promote this, in the Treaty of Amsterdam of 1997 a new approach was introduced in the new Employment Title of the EC-Treaty. Typical for this Title is the emphasis on voluntary co-operation between the Member States in tackling unemployment in the EC. New instruments are introduced such as peer reviews, benchmarking, good practices, guidelines and reports of the Member States, that are evaluated by the Commission and the Council.

The European Commission suggested that for an effective employment policy four pillars should be given priority, which also implies a culture change in Europe:

- Entrepreneurship (fewer labour costs, promoting self-employment)
- Employability (modernising education and training, lifelong learning)
- Adaptability (promoting new technologies and investment in human resources)
- Equal opportunities (men and women; reconcile work and family life; facilitate return to work).

In introducing the Employment Guidelines for 2000, the European Commission found inspiration in the idea that the 'knowledge economy' requires a new social policy. Basic assumptions are:

- the expectation that by 2010 half of all jobs will be in industries that are producers or intensive users of information technology
- young people should be educated for employment in the knowledge economy
- the belief that employment in the information society is less stable than in the past and more dependent on high skills and adaptability.

The Guidelines also include separate guidelines for each Member State. The Guidelines are incorporated in national Action Plans of the Member States and the effects on the employment figures are evaluated every year. On the basis of this evaluation new guidelines are formulated. The Guidelines focus for instance on youth unemployment, the participation of women, and the participation of older workers.

It is difficult to evaluate at this time the effects of the new forms of social policy that were introduced in the EC during the last five years. Sceptics argue that since the Member States are not prepared to empower the EC with the competence to formulate employment policies by majority decision, we cannot take this policy, mainly based as it is on the idea of 'shame and blame', seriously. On the other hand, we must realise that some aspects do not make the process completely voluntary. First of all, there is a link with the Economic Policy of the EC. The Labour Market is important for the health of the European economy as a whole, linked together as it is, especially since the establishment of the Euro as a common currency. Secondly, European politicians are often confronted their electorates' concerns with globalisation as a force

that undermines their traditional certainties. They continuously have to assure to their citizens that Europe is not only an economic undertaking, but also a social one. They have to find new ways to maintain the so-called European social Model and to find new forms for it that fit into the economic developments in order to keep the confidence of the population.

7 Conclusion

In this paper I gave a general overview of the problems that result from the globalisation of the economy and also of labour markets. I also indicated how the European Union tries to cope with the problems resulting from this development. Most of the time the solutions of the European Union are just effective within the EU-territory. Multinational companies as well as workers from outside the EU will be affected by it, as far as they operate in EU-Member States.

In the future this will not be enough. Globalisation reaches further than Europe and therefore we will need closer co-operation between industrialised countries on a global scale to tackle the issues mentioned in this paper. It will probably take a long time to make progress in this respect. Newly introduced means of policy-making with emphasis on co-ordination and evaluation of best practices might be helpful.

The idea that globalisation leads to the death of labour law, as some analysts[27] suggest, seems too pessimistic. In my view, labour law has to adapt itself to the new situation, just as employees have to show flexibility these days. New forms of labour law may be created, fit for the 21st century. I choose for this option, not only to maintain my own job as a labour lawyer, but in the first place because I see it as essential for social cohesion in society to maintain or create an acceptable (or, even happy) working life for the actors on the globalising labour market.

27 H. Arthurs, quoted by D.M. Davies, in: J. Conaghan, R.M. Fischl & K. Klare, *Labour Law in an Era of Globalization, Transformative practices and possibilities* (University Press, Oxford, 2002), p. 159.