

Reviews

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Niklas Bruun, Klaus Lörcher, Isabelle Schömann (eds.)
The Lisbon Treaty and Social Europe. Hart Publishing,
Oxford, ISBN 978-1-84946-253-2, £40.00, 348 pages.

The Treaty of Lisbon that came into force on 1 December 2009 amended the Treaty on the European Union (TEU) and the old EC Treaty (now the Treaty on the Functioning of the European Union, TFEU). The authors of this book explore what the Treaty means for social law and social policy at the European level. The editors and contributors are members of the ETUI Transnational Trade Union Rights Experts Network. The book pays tribute to the late Brian Bercusson who delivered a paper with the same title for an ERA conference on Recent developments in European Labour Law that took place in Trier on 3-4 April 2008.

The first part of the book on the general framework looks for new foundations for Europe's Social market economy and questions the balance between fundamental social rights and economic freedoms. The very first contribution after the introduction is from Simon Deakin who sketches out in *In Search of the Social Market Economy* how the socio-economic thinking in Europe has shifted from what he calls 'ordoliberal' to 'neoclassical' market conceptions. In the old ordoliberal period of European integration the use of national labour law regimes served as a counterweight to transnational economic integration. The legislator and subsequent case law have radically altered the nature of the relationship between social policy and internal market law. Setting standards above a basic floor of rights was undermined by associating the application of labour laws of the Member States (in the Viking, Laval, Rüffert and Luxemburg cases) with the concept of distortion of competition and a race to the bottom between national systems was thus initiated. Though written in late 2011, his impressive contribution makes clear that, with the reaction to the financial crisis and the sovereign debt crises, social policy can no longer be seen as a marginal issue for the EU. In a last section he comes up with an agenda for a

social policy that is consistent with the EU's long term goal of promoting social progress in an open market economy.

In his contribution *Values and Objectives* Philip Dorsemont writes about the relationship between the EU and the European Convention on Human Rights (ECHR). The least that can be said is that accession of the EU to the ECHR will probably leave the specific characteristics of EU law untouched. The other contributions in the first part are dedicated to the Charter of fundamental rights and to the potential impact of the horizontal social clause that is enshrined in article 9 of the Treaty (TFEU). The fifth contribution addresses the possibilities for social partners to enlarge their role in labour law and industrial relations. One of the critical remarks is that reluctance on the part of the employers to contribute to 'hard law' in the field of labour legislation can easily be maintained because of the cumbersome decision-making procedures (and low ambitions) in the Council of Ministers.

The second part, on the social framework of the Lisbon Treaty, focuses on the development of the EU's competences. The authors evaluate the consequences of the new general framework on social competences, illustrated by detailed tables that compare the EU competences spread over the successive treaties, analyse the evolution of the principle of subsidiarity and its impact in the new Treaty, look at the coordination of economic policies in the light of fundamental rights, and analyse the adoption in the Treaty of a new architecture for services of general interest.

This interesting book ends with 58 very welcome recommendations on the effective application of Article 152 of the Treaty on the Functioning of the European Union (TFEU).