Bea Cantillon, Herwig Verschueren and Paula Ploscar (Eds.), *Social Inclusion and Social Protection in the EU: Interactions between Law and Policy.* Cambridge: Intersentia, 2012. 234 pages. ISBN: 978-1-78068-056-9. EUR 55.

This edited collection addresses a gap in interdisciplinary research. The editors' short literature review is still current: in discussions of social policy at EU levels, either legal scholars combine forces, or scholars of social policy do so. The analysis can even be extended to criticize the fact that EU social policy research focuses overly on employment-related matters. (e.g. Barnard & Deakin, "Social policy and labour market regulation" in Jones, Menon & Weatherill, *Oxford Handbook on European Union* (2012)). Social inclusion and social policy receives less attention than employment policy (which is arguably a subsection of social inclusion) and labour rights in both disciplines. The book reviewed contributes to closing a gap in research in that it focuses on the neglected part of social policy research.

The editors' introductory chapter starts from a normative perspective with a reference to the expansion of the EU's aims by the Treaty of Lisbon, which added the combat of social exclusion and the promotion of social justice, social protection and social cohesion to the Unions aims (Art. 3 TEU) as well as the social horizontal clause (Art. 9 TFEU). They then recall that social protection has been an EU policy target for a long time, but also remind the reader that the Union is criticized for the lack of coherence in its social policy. The Union has responded to this critique by policy coordination through the Open Method of Coordination (OMC). Since this is the only space for social protection and social inclusion, this aspect of social policy is relegated to "the inspirational effect of good practices and peer pressure" (p. 2). In their view, the co-existence of social protection and social inclusion in the EU's new values and as a theme for the OMC necessitates a more intensive dialogue between legal and social policy scholars, which the volume intends to initiate.

This dialogue is organized by pairing a paper by one or more legal scholars and social policy scholars respectively on four themes: the normative framework of the debate, the EU's health policy, the EU's pension policy and the EU's policy on minimum incomes irrespective of employment, also known as social assistance. The "framing (of) the discussion" (p. 5) is undertaken by Ferrera for social policy scholarship (pp. 17–40) and Bruno de Witte and Dawson for legal scholarship (pp. 41–69). Ferrera starts by identifying as the main challenge for EU social policy the tension between opening (through the internal market logic) and closure (which, in his view, constitutes a precondition for welfare States, p. 19). As developed in his earlier work he identifies the emergence of social "semi-sovereignty" as a consequence of economic integration, and promotes a new nested architecture. Ferrera goes beyond his former work in that he addresses workers' rights to participate via industrial democracy and to equal treatment in employment alongside the more traditional pillars of the welfare State. However, his virtual nesting concept clearly needs a lot of adaptation to this wider perspective, which is only hinted at. De Witte and Dawson, in the longest chapter of the book, try to bridge the gap between analysing normative commitments established by the Treaty of Lisbon and

demonstrating the potential of different styles of governance, in particular governance through policy coordination. Their chapter, on the one hand, makes strong normative claims for the EU to pursue more seriously its social commitments. On the other hands, it identifies a lack of "concrete tools" in the hands of the European institutions to pursue that aim. Far from succumbing to a pessimistic assessment of the EU's capacity to engage in true social policy (e.g. Scharpf, "The asymmetry of European integration, or why the EU cannot be a 'social market economy'", (2010), *Socio-Economic Review*), they explore the innovations in EU law by the Treaty of Lisbon and the innovations in EU (social) policy by the Lisbon Strategy. They propose to utilize the objectives of social inclusion and social protection as a "set of values that must be mainstreamed and reflected in other fields of EU action" (p. 68). Specifically they demand a re-interpretation of the EU's competition law, State aid law and internal market law in the light of Articles 3 TEU and 9 TFEU to aim at "improving the functioning of the 'social market economy'", an extensive use of the new Article 14 TFEU for creating EU level social services of general interest and common standards for national ones, (pp. 60–62) and a progressive interpretation of the EU Charter of Fundamental Rights as supporting judicially enforceable social rights (pp. 62–66). In this latter regard they too address workers' rights for industrial action (p. 64).

Next Vanhercke and Wegener as the social policy team and Sauter as the legal scholar discuss the EU's health care law and policy. Vanhercke and Wegener carefully investigate the validity of the widespread belief that the OMC has little impact on social policy. They confirm a number of points raised in the critique by others: that Member States are reluctant to agree on specific targets (p. 80) and that peer review is often a futile exercise ("mainly an exercise for a select group of civil servants and experts", p. 83). However, they also go beyond this pessimistic picture in finding for Belgium that the OMC has enhanced national governance capacity and helped address health inequalities (pp. 86–88), that it has helped developing specific integrated guidelines for Europe 2020 (p. 89) and even impacts on the ECJ. Thus, they conclude that there is actually a learning process induced by the OMC, although not so much consisting of mutual learning between Member States but rather of learning by the EU institutions from inputs by a multiplicity of actors in a highly differentiated policy process. Sauter's chapter analyses the EU Patients' rights Directive as a "watershed" in the EU's involvement in healthcare, which overcomes the restrictions of negative integration by case law based on Article 56 TFEU and the mere coordination of national health care entitlements for free moving workers (Regulation 883/2004, based on Art. 48 TFEU). He contrasts "old patient rights" under the regulation and Article 56 TFEU with "new patients' rights". However, since the new patient mobility "appears to fit the mould of the standard interaction between positive and negative integration" (p. 126), Sauter identifies limits of progress in the new directive. In particular, substantive progress as regards the need to obtain prior authorization for funded treatment abroad is constrained by the Member States' success in retaining control of costs through the "planning exception". However, Sauter perceives the harmonization of transparency and accountability standards for treatment of free moving patients as truly innovative. Though these only apply to free moving patients, he also expects that these rights will with time come to be applied to all patients. (128) This would constitute a veritable spill-over of the harmonization initially prompted by restrictions of freedom to provide services and related case law – though no reference to the theoretical framework of neo-functionalism occurs. Even without such theoretical framework, the chapter complements well the arguments developed by Vanhercke and Wegener.

In the third set of chapters, Natali (social policy) and Stevens (law) investigate the EU's policy on pensions. Natali traces the Europeanization of pension systems through EU policies from two different fields: on the one hand policies inspired by the overarching aim of the EU's Economic and Monetary Union (EMU) of maintaining budget stability, and on the other hand policies aiming at improving social protection pursued under the OMC in Social Policy. He characterizes the EMU impact on national pensions as hard and indirect, and the social policy impact as soft and direct, characterizing both policy modes as post-regulatory (p. 132). In evaluating these, he identifies strategies of resistance in some Member States against the indirect and hard EMU method. For example, both Hungary and Bulgaria have required

citizens to re-align their private pension plans with the State pension system, thus reversing the "cherry picking" effects of privatization and marketization of pension systems, with the consequence that budget deficits have been reduced. As regards the OMC social policy coordination, Natali identifies more impact through the feedback cycles of peer review in convincing Member States to break path dependency and reduce public spending on old age security. Stevens pursues the question how far legislation and regulation can contribute to the social policy aims of securing adequate retirement pensions while enhancing sustainability. He finds that the EU only commands limited regulatory competences for impacting on statutory pensions. However, as regards occupational, supplementary and individual pensions, the EU does have some competences. These are not located in the chapter on social protection, but rather derive from fragmented sources spread between free movement of persons, sex equality and freedom to provide financial services. Stevens skilfully analyses an impressive array of directives and regulations from these fields, only to conclude in exasperation that the social policy discourse does not relate to these opportunities to engage in regulatory policies in the field in addition to post regulatory policies. The impression that these two chapters do not speak to each other underlines the need to establish a more sustainable dialogue between law and policy research as the editors have identified in the introduction.

The last duo of chapters by Cantillon and van Mechelen (social policy) and Verschueren (law) focuses on combating poverty by general welfare payments (social assistance). Cantillon and van Mechelen, while recalling Schmitter's "modest proposal" for EU social citizenship (Schmitter & Bauer, "A (Modest) Proposal for expanding social citizenship in the European Union", (2001) *Journal for European Social Policy*), pursue an EU level guarantee of a minimum income as an element of a true European social model (pp. 173–177). They offer a comparison of social assistance in the Member States, with a short look across the Atlantic in order to identify commonalities. Their interim conclusion is that social assistance only marginally contributes to combating poverty, since work and social security payments are more important, but that social assistance is central for preventing poverty of persons excluded from the labour market. EU policies under the Lisbon Strategy do not receive a sympathetic evaluation, as far as combating poverty for this group is concerned. The EU's increasing focus on economic growth and more jobs has resulted in a decline in social assistance payments at national levels, while the EU was committed to combating poverty. This increases, in the authors' view, poverty of those excluded from the labour market. The authors then turn to considering the potential of an EU guarantee of a minimum income. They defend a relative definition of poverty as more in line with European Social Models than the compilation of an EU wide bread basket, since combating social exclusion resonates better with the aim of avoiding stark income differentials. However, the do not consider an EU level minimum income approximating 60 % or even 40 % of the EU median income as practically feasible. Not only would the financial burden be insurmountable, but it would also establish "unemployment traps" because social assistance would exceed the minimum wages in many Member States. As a more realistic alternative they propose a country specific level of guaranteed minimum income at 40 % of the national median income, which should be granted only to child rearing families. Verschueren picks up where Cantillon and van Mechelen end, and investigates the normative base for EU level legislation to achieve that aim. As in the other parts of the book, the legal contribution highlights how legislative competences and existing legislation are much more prevalent where free movement of economically active persons is at stake than in achieving a general harmonization of policies. However, in this field free movement of economically inactive citizens, under EU citizenship law, also needs to be considered. Since the Member States are under an obligation to treat all migrants equally, as long as they do not refuse their right to residence, some claims for social assistance can be grounded on EU citizenship. Verschueren concludes that there is a lack of political will to harmonize social assistance at EU levels, corresponding to the difficulty of deriving a competence for the EU from the Treaties. Verschueren very cautiously states that the EU might have a competence derived from the task to integrate persons excluded from the labour market (Art. 153(1)h TFEU), though he also

mentions a potential contradiction between this competence and the exclusion of harmonizing measures in the field of combating social exclusion.

The editors' quest for links between social policy demands and legal discourse has established some interesting findings. While there is much development and policy discussion in the field of social inclusion and social protection, the scope for establishing EU level regulatory policies in these fields is surprisingly narrow. The chapters skilfully expose how this contrasts with the EU's commitment to social inclusion and social protection. In conclusion, the volume is a very welcome addition to the social policy literature on the EU social OMC and related matters on the one hand, and to the legal scholars' analysis of the EU's impact on national welfare States on the other hand. With hindsight, the book's ambition to highlight social protection and social inclusion as pivotal elements of the EU's social policy has become even more current in the light of the measures taken to overcome the government debt and euro crises. Policies that ensure sufficient social protection against risks such as poor health, old age and related loss of the capacity to work and poverty generally require solidarity of different factions in society. Once these policies become a co-responsibility of the EU and its Member States, solidarity is also necessitated between different societies in different Member States. The debates around the currency crisis illustrate that developing such solidarity is still a challenge. The volume remains an important reminder of the EU's obligation to actively contribute to social protection and social inclusion as well as of the limits of policy and legal approaches developed to date in fulfilling this obligation.

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