Volume 24, No. 1
Winter 2011

European Union Studies Association

EUSA REVIEW

Inside the Winter 2011 *EUSA Review*:

:

EU Law After Lisbon: Taking Stock[1]

Guest Editor- Daniel Halberstam

Daniel Halberstam is the Eric Stein Collegiate Professor of Law and Director of the European Legal Studies Program at the University of Michigan. He is also Professor of Law in the European Legal Studies Department at the College of Europe, Bruges. A graduate of Columbia College (mathematics) and Yale Law School, he served as clerk to Justice David Souter (U.S. Supreme Court) and as judicial fellow for Judge Peter Jann (European Court of Justice). Halberstam has written widely on comparative federalism, European integration, and constitutional pluralism. He has lectured throughout Europe and serves on several academic advisory boards, including the Common Market Law Review, Cambridge Studies in European Law and Policy (Cambridge Univ. Press), the Max Planck Institute (Heidelberg), and the Institute for Advanced Study (Berlin).

Halberstam has reviewed the German reception of the Lisbon Treaty in "The German Constitutional Court Says 'Ja Zu Deutschland!,'" German Law Journal 10:9 (2009) (with C. Moellers), and has most recently written on "Systems Pluralism and Institutional Pluralism in Constitutional Law: Rethinking National, Supranational, and Global Governance" (working paper), both available on SSRN.

Whose internal market? Companies' or Workers', Judges' or Politicians'

Stephen Weatherill

The December 2007 rulings of the Grand Chamber of the Court of Justice in *Viking Line* (Case C-438/05 [2007] ECR I-10779) and *Laval* (Case C-341/05 [2007] ECR I-11767) reveal much about the internal market as an exercise in deregulation and economic freedom. So much so that, for those engaged in protecting the interests of workers in the 'old' Member States, the decisions have become shorthand for all that is wrong with the EU project. More than three years and a notoriously evasive revision of the Treaties later, the rulings continue to provide ample proof of the frequently insuperable difficulty in the EU of replacing judicial interpretation of the meaning of the Treaty by political choices.

Viking Line, stripped down to its core, involved the question whether EU free movement law protected a shipping firm wishing to reflag one of its vessels, the *Rosella*, from the Finnish flag to that of Estonia from collective action by labour unions aimed at deterring corporate migration. The potential losers: Finnish workers. The potential winners: corporate interests seeking lower costs, and Estonian workers. In the longer term, the balancing of winners and losers invites assessment of the type of internal market that is being built: freedom to trade? freedom to act collectively to compete effectively against corporate power? *Laval* had many similarities and some differences, and arose out of action by Swedish labour unions aimed at blockading worksites owned by Laval, a Latvian company which was employing workers posted to Sweden from Latvia who were not subject to the relatively generous terms and conditions enjoyed by Swedish workers.

The unions are private parties, not public bodies, but the Court has long taken the view that such entities are subject to the Treaty rules governing the free movement of persons, including companies. It did not deviate from that approach. Nor did it find a way to exclude the collective action from the scope of the Treaty on the basis that the EU lacks *legislative* competence in regard to the right of association and the right to strike (see now Article 153(5) TFEU). The rules of free movement apply even in areas where the EU's legislative reach is exhausted: here too the Court was following its own orthodox approach. This left the Court to conclude that it was dealing with a restriction on cross-border economic activity. What mattered was whether the restrictive effects of the collective labour action were *justified*. And here the Court was breaking new ground. Although it had in the past dealt with cases pitting fundamental economic rights against fundamental social and political rights – such as *Schmidberger* v *Austria* (Case C-112/00 [2003] ECR I-5659) in which it held that, given the the importance of freedom of expression, there was no violation of EU law where environmental protests blocked the motorway though the Brenner Pass to the detriment of cross-border trade – it had never before addressed the need to reconcile fundamental (but not absolute) rights in the context of labour disputes. And it was forced to do so without any helpful map or priority list in the Treaty (NicShuibhne 2009).

Corporate mobility or protecting the rights of (Scandinavian) workers? The Court accepted in principle that the right to take collective action to protect workers is a legitimate interest which justifies a restriction of economic freedoms guaranteed by the Treaty. It added that the Community, now Union, has 'not only an economic but also a social purpose' (para 79 *Viking Line*, para 105 *Laval*). But who actually wins? This is ultimately a matter for the national court before which the litigation had been initiated but the Court of Justice in *Viking Line* explained that that court must ascertain whether the objectives pursued by means of the collective action concern the protection of workers; and that 'even if that action – aimed at protecting the jobs and conditions of employment of the members of that union liable to be adversely affected by the reflagging of the *Rosella* – could reasonably be considered to fall, at first sight, within the objective of protecting workers, such a view would no longer be tenable if it were established that the jobs or conditions of employment at issue were not jeopardised or under serious threat'.

If this test means that it must be checked *in the particular circumstances of this case* whether the collective action is apt to achieve its stated ends of protecting workers' jobs and employment conditions, then the judgment is relatively narrow in its impact – although even here the required assessment of whether the action does not go beyond what is necessary to attain its objective is awkward and promises unpredictability. If, by contrast, the ruling means that *only* action aimed at protecting the jobs of union members is recognised as capable of being justified under EU law, then the Court has excluded the possibility of more long-term strategic action taken by unions and even the 'political strike' in so far as it impedes cross-border economic activity. That constitutes a dramatic incursion into the permitted scope of collective labour rights.

The ambiguity of the Court's judgment is troubling. It empowers actors at national level seeking to propel reform of the 'social partnership' to the benefit of employer interests: it is likely to place a deterrent effect on collective labour action. All the more so because of the risk that if action is found to be unlawful, the union may be liable to pay compensation to commercial operators whose business has been caused harm: exactly this occurred as a result of a subsequent ruling of a Swedish court in the *Laval* litigation, in which it was concluded that discrimination had been suffered by the Latvian company because of Swedish refusal to take account of collective agreements applicable in Latvia (Reich 2010). The litigation in *Viking Line* itself was settled out of court shortly after the Court's judgment, but the consequence was a general anxiety that the Court had stumbled into the shaping of collective labour law and policy, an area in which it has little expertise and in which it has adopted a test which significantly favours corporate interests over worker protection (Davies 2008; Azoulai 2008; Barnard 2009). The critiques have covered not only outcome but purpose: to weigh matters of social constitutional law against economic considerations goes beyond the democratic failure of nation states against which free movement law is correctly targeted and asserts, beyond the proper scope of the Treaty, a setting aside of locally determined welfarist choices (Joerges and Rödl 2009).

In the 'older' Member States in particular the rulings generated high levels of hostility from labour unions and those with political concern to be seen to protect such interests: although voices from Central and Eastern Europe occasionally observed that 'this is why we joined'. But the law, before the entry into force of the Lisbon Treaty, rests heavily on the *justification* entertained by the Court for such practices.

The storm that devastated the Treaty establishing a Constitution was in part whipped up by anxiety about the perceived destructive effect of unfettered competition. In France, in particular, the fear of the 'Polish plumber' arriving to steal French jobs (and, rarely was it added, to offer French consumers a more competitive market, thereby to stimulate economic growth and create more jobs) was a factor in the 'No' referendum vote of 2005. *Viking Line* and *Laval* fanned the flames. Adjusting the image of the EU's purpose was a key political aim in negotiating what became the Treaty of Lisbon – not least in order to prepare an excuse for withholding any opportunity for a further national referendum (except in Ireland).

The Treaty now commits the Union to *inter alia* a 'social market' (Article 3(3) TEU). Before the entry into force of the Lisbon Treaty on 1 December 2009 it was provided that the activities of the EC shall include 'a system ensuring that competition in the internal market is not distorted.' Now, post-Lisbon, Article 2 EU provides only that 'The Union shall establish an internal market'. The commitment to 'a system ensuring that competition is not distorted' has been relegated to a Protocol attached to the Treaties. Article 28 of the Charter of Fundamental Rights provides *inter alia* that workers have the right to take collective action to defend their interests, including strike action – and, as a result of the Lisbon Treaty, this is now a binding provision.

So does this mean the EU has shifted its focus? Is it no longer so aggressively 'economic'?

With particular reference to *Viking Line* and *Laval* is collective labour action now protected, even where it impedes cross-border activity? No. The Lisbon alterations alter the tone of the Treaty, but the Member States were not able to agree definitively to change the heartland of the law of the internal market. Clearly, were one seeking to defend the (trade-restrictive) expression of social and political freedom before the Court, one would now argue that post-Lisbon the emphasis has shifted: the rise of the 'social market' and the Charter of Fundamental Rights and the relegation of the commitment to undistorted competition all lend support to

the claim that pursuit of economic freedom has been legally braked. But the Treaty provisions on free movement have not been changed: undistorted competition is a commitment found now only in a Protocol, but a Protocol is legally binding. Although there is scope for the Court to adopt an adjusted interpretation of the free movement rules which gives greater weight to justification of practices that tend to inhibit cross-border commercial activity, the Lisbon reforms are too legally 'soft' to *require* that outcome (Semmelmann 2010). Barnard's contribution to this issue offers comparable assessment of the Charter of Fundamental Rights, converted by Lisbon into a legally binding instrument: it may achieve a re-balancing of priorities with consequences sympathetic to social protection but such an impact is far from guaranteed. Ultimately the Court continues to enjoy a great degree of interpretative autonomy.

The process of Treaty revision is in principle able to set aside decisions of the Court about the interpretation of Treaty provisions. But this very rarely happens because it requires all 27 Member States to sign up to the change. It's a familiar story: the famous *Bosman* ruling, applying free movement law to sport (Case C-415/93) [1995] ECR I-4921), has been bitterly attacked but never set aside because there is no unanimity among the 27 Member States about its alleged pernicious effects. And, after *Viking Line* and *Laval*, for all the bullying perpetrated by some of the 'older' Member States, especially France, there was never any likelihood of the Central and Eastern European states surrendering the competitive advantage of their low-cost economies by agreeing to insulate the economies of the older Member States from the (admittedly ambiguous) disciplining effect of the law of the internal market. And so the Lisbon Treaty reforms merely nod to the fear of the migrant Polish plumber but do not definitively change her legal position.

The tension between trading freedom and collective labour rights endures post-Lisbon: *Viking Line* and *Laval* remain high-profile. The 'Monti report' of May 2010 – *A New Strategy for the Single Market: at the service of Europe's Economy and Society* (Monti 2010) - states that: 'There is a broad awareness among policy makers that a clarification ... should not be left to future occasional litigation before the ECJ or national courts. Political forces have to engage in a search for a solution, in line with the Treaty objective [Art 3(3) TEU] of a social market economy'. This seems initially appealing – and yet what sort of solution might be thought politically acceptable? The subsequent Commission Communication issued in October 2010 (Commission 2010) declares that 'Economic freedoms and freedoms of collective action must be reconciled', and advises that likely 'clarification of the exercise of fundamental social rights within the context of the economic freedoms of the single market' can be expected in 2011. But it seems highly improbable that a 'solution' can be extracted through the political process. Even granted a background broad political consensus and an ability to navigate past the obstacles created by the Court's interpretation of the Treaty, it would be fiendishly difficult to draft a legislative text of a sufficiently concrete nature to prove operationally useful in resolving these collisions between economic rights and political and social interests. And in the EU there is in any event no such consensus: the interests of the Member States with relatively lightly regulated, low-wage economies diverge sharply from those with heavier and more costly regulatory environments. It is hard to expect much more than platitudes and legislative tinkering to emerge from political negotiation. The Services Directive (Directive 2006/123) offers a notorious example of how deep political disagreement tends to generate legislative texts strewn with sectoral exclusions, evasion of principle and deliberate textual ambiguity (Barnard 2008, Hatzopoulos 2007). By agreeing laws of this imprecise type politicians delegate power to judges. And therefore the Court's interpretative choices retain deep political significance in the shaping of the internal market.

Stephen Weatherill, Law Faculty & Somerville College, University of Oxford

References

Azoulai, Loic (2008). "The Court of Justice and the Social Market Economy: the emergence of an ideal and the conditions for its realisation" Common Market Law Review, Vol. 45, Issue 5, pp. 1335-56.

Barnard, Catherine (2008). "Unravelling the Services Directive", Common Market Law Review, Vol. 45, Issue 2, pp. 323-394.

Barnard, Catherine (2009). "Fifty Years of Avoiding Social Dumping? The EU's Economic and Not So Economic Constitution" pp. 311-342 in Michael Dougan and Samantha Currie, Fifty Years of the European Treaties: Looking Back and Thinking Forward (Oxford: Hart, 2009).

Commission, 2010. "Towards a Single Market Act: For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another", COM (2010) 608, available at http://ec.europa.eu/internal_market/smact/docs/single-market-act_en.pdf.)

Davies, Anne (2008). "One Step Forward, Two Steps Back?", Industrial Law Journal, Vol. 37, Issue 2, pp. 126-148.

Hatzopoulos, Vassilis (2007). "Que reste-t-il de la Directive sur les Services?" Cahiers de Droit Européen, Vol. 43, Nos. 3-4, pp. 299-358.

Joerges, Christian, and Rödl, Florian (2009). "Informal Politics, Formalised Law and the 'Social Deficit' of European Integration: Reflections after the Judgments of the ECJ in *Viking* and *Laval*'", European Law Journal, Vol. 15, Issue 1, pp. 1-19.

Monti, Mario (2010). "A New Strategy for the Single Market: at the service of Europe's Economy and Society" available at http://ec.europa.eu/internal_market/strategy/docs/monti_report_final_10_05_2010_en.pdf

NicShuibhne, Niamh (2009). "Margins of appreciation: national values, fundamental rights and EC free movement law", European Law Review, Vol. 34, Issue 2, pp. 230-256.

Reich, Norbert (2010). "Laval 'Vierter Akt'". Europäische Zeitschrift für Wirtschaftsrecht, Vol. 21, Heft 12, pp. 454-457.

Semmelmann, Constanze (2010). "The European Union's Economic Constitution under the Lisbon Treaty: soul-searching shifts the focus to procedure", European Law Review, Vol. 35, Issue 4, pp. 516-541.

Endnotes

1 For an additional recent contribution to this discussion please see the Fall 2010 EUSA Review contribution by Chiara Zilioli

The EU Charter of Fundamental Rights: Happy 10th Birthday?

Catherine Barnard

1. Introduction

The EU Charter has been greeted with brickbats and bouquets. The bouquets come largely from interest groups who see it both as an important way of reigning in the excesses of the EU as its competence expands to areas as diverse as immigration, asylum and police cooperation, and as a potentially dynamic tool to challenge existing EU law.[1] The brickbats come from the awkward squad states with a dominant Eurosceptic press (UK, Poland and the Czech Republic) who (incorrectly) see the Charter as bringing in new laws which would destroy jobs'[2] and affecting 'policies on abortion, immigration and public services and forc[ing] an end to the ban on secondary picketing in industrial disputes.'[3] As a result, when negotiating the IGC mandate for the Lisbon Treaty, one of the UK government's 'red lines' was to protect the UK from the consequences of the change of status of the Charter of Fundamental Rights.[4] The principal and most public demonstration of this desire was the adoption of what became Protocol 30 on the application of Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, referred to in the (probably incorrect) short-hand as the 'opt-out'.

The aim of this contribution is to provide a brief assessment of the Charter ten years after its original adoption and just over a year after it came into force: how has it be used to date, what effect does Protocol 30 have, and what are the prospects for the future?

2. The Charter

The EU Charter of Fundamental Rights, first solemnly proclaimed in December 2000, was intended to make existing fundamental rights more visible.[5] Based on, variously, the European Convention on Human Rights, the Community Social Charter 1989 and the Council of Europe's Social Charter 1961, as well as the constitutional traditions common to the Member States, the Charter was intended to codify – and act as a showcase for - existing rights. It was not intended to create new rights.[6] Although not initially legally binding, it was nevertheless regularly referred to in the pre-Lisbon period by the Advocates-General, the General Court and, latterly, by the Court of Justice to reinforce the interpretation of existing provisions of EU law.[7]

The legal position of the Charter was changed by the Lisbon Treaty. Article 6(1) TEU says the Charter has 'same legal value as the Treaties'. In other words, it forms part of the primary law of the EU, with the result that its provisions have legal effect and can be enforced

before the European Court of Justice, as well as before the national courts when Union law issues are at stake. This has given rise to a number of concerns, especially in the UK.

What, then, is the nature of these concerns? The Charter includes social and economic rights in the same document as civil and political rights.[8] This is unusual in international human rights instruments. Generally, the two groups of rights are placed in separate documents due to the (contested) argument that while civil and political rights are essentially negative and so do not require state resources, economic and social rights are positive and do. While the UK is prepared to accept that traditional civil and political rights are *rights* (eg Article 2 'Everyone has the right to life', Article 11 'Everyone has the right to freedom of expression'), it is concerned about the potential budgetary implications of the economic and social rights. It is particularly worried about the implications of the Solidarity Title (where the economic and social rights are predominantly located), in particular Article 28 on the right to strike, for UK law. The UK has therefore argued that the economic and social rights, are not actually 'rights' but 'principles' which are not intended to be justiciable (ie they cannot be relied on directly before the courts). The UK secured an amendment to the Charter at the time of the Constitutional Treaty to make this clear: as Article 52(5) now puts it, the provisions of the Charter containing principles 'may be implemented by legislative and executive acts' of the Union and the Member States when implementing Union law. Such provisions 'shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality'. In other words principles will not be directly effective in the national courts.

However, the stumbling block remains that the Charter does not identify which provisions contain rights and which principles. The revised explanations accompanying the Charter - 'drawn up as a way of providing guidance in the interpretation of this Charter' and which must be 'given due regard by the court of the Union and of the Member States'[9] - were intended to address this problem. They give examples of principles, drawn from the Solidarity Title of the Charter, including Article 25 on the rights of the elderly ('The Union *recognises and respects* the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life'), Article 26 on the integration of persons with disabilities and Article 37 on environmental protection.

Confusingly, the explanations also state that some articles may contain elements of rights and principles, such as Article 23 on equality between men and women, Article 33 on family and professional life and Article 34 on social security and social assistance (Articles 33 and 34 are in the Solidarity Title). Therefore, this suggests that some social and economic rights will not be mere principles but may in fact give rise to justiciable rights,[10] a view confirmed by the (pre-Lisbon) decision of the Court of Justice in *Viking.*[11] As Weatherill discusses in this journal, the case concerned strike action which interfered with freedom of establishment under Article 49 TFEU. The Court, referring to Article 28 of the Charter on the '*right* to negotiate and conclude collective agreements … and to take collective action to defend [the] interests [of workers], including strike action', said the right to strike is a 'fundamental *right* which forms an integral part of the general principles of law' (emphasis added). As we shall see below, concerns that the Solidarity Title might include rights, and not just principles, influenced the drafting of the UK/Poland Protocol No. 30. Before considering the Protocol, we need to consider the scope of application of the Charter.

3. To whom/what does the Charter Apply?

Article 51(1) of the Charter says the Charter applies firstly to the institutions, bodies, offices and agencies of the Union, with due regard for the principle of subsidiarity. It also applies to the Member States but only when they are implementing Union law, a point emphasized by the Czech Republic in its (non-binding) Declaration on the Charter. This says 'The Czech Republic stresses that [the Charter's] provisions are addressed to the Member States only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law.'[12] In other words, purely national issues will not be affected by the Charter.[13]

The meaning of Article 51(1) is – to an extent - clarified in the explanations:[14] Article 51 'seeks to establish clearly that the Charter applies *primarily* to the institutions and bodies of the Union, in compliance with the principle of subsidiarity'.[15] The institutions include the European Court of Justice. This raises the tantalizing prospect that the Charter, drafted primarily to govern vertical relationships (individual v. EU, individual v. Member State), might acquire some quasi-horizontal or indirect effect (individual v. individual)[16] through judicial interpretation (see eg *Kücükdeveci*[17]). *Kücükdeveci*, a case concerning a private sector employer discriminating against his employee on the grounds of age, also appears to suggest that general principles of law may have some form of horizontal effect, at least in so far as they can be used to disapply conflicting provisions of national law, and, as Article 6(3) TEU makes clear, fundamental rights are general principles of law. [18] The general principles may thus be broader in their field of application than the Charter.

The significance of the fact that the actions of the EU institutions are subject to review under the Charter has already been felt. In *McB*,[19] the Court considered in detail whether the orthodox interpretation of the Brussels II bis Regulation 2201/2003[20] should be reconsidered in the light of the Charter, albeit that it ultimately concluded that the Charter did not affect the Regulation's interpretation. In *Volker and Schecke*[21] the Court went further. The case concerned an EU Regulation requiring individuals to agree that, in order to receive money from EU agricultural funds, their name, address and the amounts they receive had to be recorded on a publicly accessible website. In a robust retort to its critics that it doesn't take rights seriously,[22] the Court used the Charter to strike down the Regulation for its incompatibility with an individual's fundamental right to privacy, in part because the Council and Commission had failed to consider whether there were any less restrictive alternatives to achieve the objective of transparency.

While the Charter applies 'primarily' to the EU institutions, it also applies to the Member States but, apparently, only when 'implementing' EU law. This has prompted some controversy: according to the case law of the Court, general principles of law (which, as we have seen, include fundamental rights) apply when Member States implement (*Wachauf*[23]), derogate (*ERT*[24]), and, more generally, act within the scope of (*Annibaldi*[25]) EU law. Does this mean that the Charter is limiting the earlier case law? The general view is not, not least because the explanations add: 'As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law' (citing the very cases *Wachauf*; *ERT* and *Annibaldi*).[26] If the Charter is meant to be a clarification of the existing law, then the term 'implementing' would cover the two broader uses.[27] And even if the Charter applies only to Member States when implementing EU law, in the narrow sense, this may not matter as much as would first appears due to the continued role of general principles of European Union law, principles first developed by the Court and now given Treaty recognition, which will apply in this situation.

4. Does the Charter expand the EU's competence?

During its drafting, a number of states were concerned about the Charter being used as a Trojan horse to expand the EU's competence to legislate. The horizontal provisions found in Title VII of the Charter try to reassure the Member States. The second sentence of Article 51(1) provides that the Union institutions and the Member Sates must 'respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties'. In addition, Article 51(2) provides that 'The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.'[28] This careful ring-fencing of competence in Title VII of the Charter had satisfied the UK since there is no reference to it in Protocol No.30. The Czech Republic and Poland were less certain. In its Declaration on the Charter, the Czech Republic emphasises: that the Charter does not extend the field of application of Union law and does not establish any new power for the Union. It does not diminish the field of application of national law and does not restrain any current powers of the national authorities in this field.[29]

Poland was also keen to ensure that the Charter did not curtail its right to legislate. Its Declaration says:

> The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity.

This raises the question as to the nature and function of Protocol No 30 for the UK and Poland (soon to be joined by the Czech Republic at the next Accession).

5. The non-opt-out opt-out

The original intention behind Protocol 30 was to 'clarify the application of the Charter'.[30] It was therefore meant to be a document which all the Member States could sign up to. In the event, only Poland and the UK agreed to it. The Protocol thus promptly assumed the look of an 'opt-out', a view reinforced by the then Prime Minster's statement in Parliament that 'It is absolutely clear that we have an opt-out from both the charter and judicial and home affairs.'[31] Yet, if Protocol 30 is compared with other genuine 'opt-outs', such as the UK/Denmark opt-out from EMU, it looks nothing like it. So what does Protocol 30 do?

The clarificatory nature of the Protocol can best be seen by looking at Article 1(1):

> The Charter *does not extend* the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of

> Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.[32]

This provision, when read in conjunction with the Preamble ('Whereas the Charter reaffirms the rights freedoms and principles recognised by the Union and makes those rights more visible, but does not create new rights or principles'), appears to suggest that since the Charter is simply a reaffirmation of the previous law, it will apply to the UK and Poland. In other words, to the extent that the Charter is merely a restatement of the existing law, then the Protocol is not an opt-out and the Charter will apply to the UK/Poland. This view is reinforced by the existence of Article 1(2) of the Protocol (see below) as well as the fact that Article 2 of the Protocol provides that 'To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom'. Both Article 1(2) and 2 proceed on the assumption that the Charter will apply to the UK and Poland.[33]

The fact that the Protocol is not an opt-out is further confirmed in public statements made first by the Labour, and now by the Coalition, government. For example, in its evidence to the House of Lords Select Committee, the Department of Work and Pensions' (DWP) said that 'The UK Protocol does not constitute an "opt-out". It puts beyond doubt the legal position that nothing in the Charter creates any new rights, or extends the ability of any court to strike down UK law'.[34] More significantly, the UK's lawyers told the Court of Appeal in *Saaedi*[35] in 2010 that:

> the Secretary of State accepts, in principle, that fundamental rights set out in the Charter can be relied on as against the UK, and submits that [Cranston J, the first instance judge] erred in holding otherwise. … The purpose of the Charter protocol is not to prevent the Charter from applying to the United Kingdom, but to explain its effect.

All this seems pretty conclusive: Protocol 30 is not apparently an opt-out.

But is there any wriggle room for the UK/Poland to argue that *in extremis*, Protocol 30 does provide an opt-out. There are two possibilities. The first is derived from an *a contrario* reading of Article 1(1). If the Charter does, in fact, go further than pre-existing law (eg in respect of Article 13 on the freedom of the arts?), the UK/Poland might be able to argue that they have an opt-out from this new rule.

The second possibility concerns Article 1(2) of the Protocol. This says: In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 1(2) therefore appears to refer back to the rights/principles dichotomy discussed above. The Article makes clear that the provisions in Title IV, the Solidarity Title of the Charter, contain principles and not rights, and principles, as Article 52(5) of the Charter makes clear, are not justiciable. But Article 1(2) appears to leave open the door to the possibility of the UK/Poland having an opt-out from any provisions in Title IV which might be considered, in the future, to contain rights, rather than principles. However, even if the UK/Poland do enjoy a limited opt-out, litigants will still be able to resort back to relying on the general principles of law to enforce their fundamental social rights.

There is a perplexing irony about the UK and Polish position under Article 1(2) of the Charter. The UK had a labour government at the time when Protocol 30 was adopted. The Labour party's origins lie in the workers' movement. Yet it is a labour government which originally identified the Solidarity Title as problematic. This problem is all the more acute in Poland where the Solidarity movement was so influential in challenging the Communist regime. This point was admitted by the Polish government in its Declaration on the Protocol:[36]

> Poland declares that, having regard to the tradition of social movement of 'Solidarity' and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.

This Declaration appears to undermine significantly any potential use of the Article 1(2) 'opt-out' in respect of Poland. In truth, as this Declaration shows, Poland's concerns are not with social and labour rights. Poland's real fears lie with subjects such as gay marriage and abortion but the Protocol (and the Charter) do not expressly touch on these.

One final point about Article 1(2), a point which shows the creative potential offered by the Charter to interest groups. Article 1(2) says that nothing in Title IV of the Charter creates justiciable rights 'except in so far as Poland or the United Kingdom has provided for such rights in its national law'. So if the provisions in Title IV do contain rights, not principles, they will be enforceable against the UK/Poland to the extent that the UK/Poland already have such rights in their system. There are many uncertainties about this turn of phrase, but it might be argued that if Article 28 confers a right (the right to strike), and because the UK has an equivalent 'right' (albeit that the right is actually drafted in the UK as an immunity[37]), then Article 28 might be justiciable even in the UK in the context of a dispute equivalent to the one in *Viking* arising today. Now Article 28 is not absolute: the right to strike is subject to Union law (namely the conditions laid down in *Viking* that the strike action must be for the protection of workers where the jobs or conditions of employment of the trade union's members are in fact jeopardised or under serious threat, and that the strike action must be the last resort), as well as national law. In the UK the national law limitations are extremely strict: trade unions must comply with 'detailed and legalistic'[38] balloting and notice provisions before a strike can benefit from the statutory immunity in tort. Could it now be argued that since these national rules are giving effect to Article 28 of the Charter, a point emphasized by Article 2 of the Protocol, these *national* limitations on the right to strike must be subject to a proportionality review under Article 52(1) of the Charter? That would certainly put the cat among the pigeons.

6. Conclusions

The Charter has already proved legally significant. In the longer term its psychological impact may be almost as great. No longer is the EU merely a free trade area with human rights as a bolt on extra. Instead it is an organisation with human rights at its core. Already the Commission is scrutinizing all of its proposals for their compatibility with the Charter.[39] The Fundamental Rights Agency is engaged in collecting, recording and analyzing data on human rights.[40] These changes in focus may well spillover into the judicial sphere. The *Viking* decision was much criticized for prioritizing the economic right of free movement over the social right to strike. The free trade orientation of much of its case law, as exemplified by the *Säger* market access approach,[41] inevitably led it in that direction. However, the incorporation of the Charter might require a re-evaluation of the competing rights. No longer can it be assumed that the economic freedoms should take priority. Rather there should be a more genuine balancing between the competing interests. This is what Advocate General Trstenjak forcefully argued in *Commission* v. *Germany (occupational pensions)*. [42] There are signs that the Court was somewhat swayed by her views in that case.

These are exciting times for the Charter. As it approaches its adolescence, we as lawyers shall enjoy the thrills and spills of the Charter's teenage years. The general public might not, however, feel the same. All the talk of the opt-out lingers and they may well be surprised to discover that the Charter can be successfully invoked to help unpopular causes, such as failed asylum seekers and foreign nationals convicted of murder, giving then rights and preventing them from being deported.

Catherine Barnard, Trinity College, Cambridge

Endnotes

1 An early example of this was the – ultimately unsuccessful – challenge to the British government's refusal to ban the export of sodium thiopental to the US, a widely used anaesthetic but one which the state of Tennessee used to render the prisoner unconscious before putting him to death by lethal injection: *R (on the application of Zagorski and Baze) v. Secretary of State for Business, Innovation and Skills* [2010] EWHC 3110 (Admin).

2 J. Lyons 'EU Traitor', *The News of the World,* 24 June 2007.

3 'How Brussels will get its way', *Sunday Express,* 21 October 2007.

4 As Tony Blair MP, then British Prime Minster, said to the Liaison Committee of the 18 June 2007 (reported in the House of Commons' European Scrutiny Committee's 35th Report, para. 52): 'First we will not accept a treaty that allows the charter of fundamental rights to change UK law in any way. …'

5 The Cologne Presidency conclusions, para. 44.

6 See also the Preamble to the Protocol 'WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;'

7 See eg Case C-540/03 *Parliament v Council (Family reunification)* [2006] ECR I-5769; Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633; Case C305/05 *Ordre des barreaux francophones et germanophone and Others* [2007] ECR I5305; Joined Cases C-402/05P and C-415/05P *Kadi* and *Al Barakaat International* [2008] ECR I-6351.

8 See Lord Goldsmith, 'A Charter of Rights, Freedoms and Principles' (2001) 38 *CMLRev*. 1201, 1212.

9 Article 52(7) of the Charter.

10 See, e.g. eg Article 31 'Every worker has the right to working conditions which respect his or her health, safety and dignity'.

11 Case C-438/05 *Viking* [2008] ECR I-10889.

12 Declaration 53, first paragraph. See also new Art. 4(1) TEU and Art. 5(2) second sentence.

13 Despite the attacks on the wholly internal rule led by AG Sharpston in Case C-212/06 *Government of the French Community and Walloon Government* v. *Flemish Government* [2007] ECR I-1683 and Case C-34/09 *Gerardo Ruiz Zambrano*, opinion of 30 Sept. 2010, the Court does not seem prepared to use the Charter to reverse the rule: Case C-339/10 *Estov* v. *Ministerski savet na Republika Bulgaria*, Order of 12 Nov. 2010.

14 Explanations relating to the Charter of Fundamental Rights OJ [2007] C303/17.

15 Emphasis added. The institutions already consider themselves bound by the Charter: Commission Communication, *Compliance with the Charter of Fundamental Rights in Commission Legislative Proposals*, COM(2005) 172. See also House of Lords EU Select Committee: *Human Rights Proofing EU Legislation*, 16th Report of Session 2005–06, HL Paper 67.

16 See P.Craig, *The Lisbon Treaty: Law, Politics and Treaty Reform* (Oxford, OUP, 2010) who also points out that analogous reasoning could equally apply to national courts since they are part of the Member States: Case C-224/01*Köbler* [2003] ECR I-10239.

17 Case C-555/07 *Kücükdeveci* v *Swedex GmbH & Co. KG*, judgment of 19 January 2010, para. 22.

18 See eg Case 29/69 *Stauder* [1969] ECR 419; Case 11/70 *Internationale Handelsgesellschaft mbH* v *Einfuhr und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125, para. 4.

19 Case C-400/10 PPU *McB* v. *LE*, judgment of 5 October 2010.

20 Reg. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ [2003] L338/1).

21 Case C-92/09 and C-93/09 *Volker and Schecke*, judgment of 9 November 2010.

22 J. Coppel and A. O'Neill, "The European Court of Justice: Taking Rights Seriously" (1992) 14 *Legal Studies* 227

23 Case 5/88 *Wachauf* [1989] ECR 2609.

24 Case C-260/89 *ERT* [1991] ECR I-2925.

25 Case C-309/96 *Annibaldi* [1997] ECR I-7493.

26 The explanation adds 'Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.'

27 Although it is not expressly discussed, the Court had no hesitation in applying the Charter to a situation of derogation in Case C-578/08 *Chakroun* v. *Minister van Buitenlandse Zaken*, judgment of 4 March 2010. The British courts have taken a similar view: *R (on the application of Zagorski and Baze) v. Secretary of State for Business, Innovation and Skills* [2010] EWHC 3110 (Admin), per Lloyd Jones J, para. 70.

28 See also Art. 6(1) TEU and Declaration 1 of the Final Act of the Treaty of Lisbon'

29 Declaration 53, second paragraph.

30 Protocol 30, 8th Preamble.

31 http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070625/debtext/70625-0006.htm (accessed 22 Dec. 2010)

32 Emphasis added.

33 I am grateful to Paul Craig for this point.

34 House of Lords EU Select Committee, *The Treaty of Lisbon: An Impact Assessment*, 10th Report, 2007-8, HL Paper 62, para.5.86.

35 [2010] EWCA Civ 990, para. 8. A question on the effect of the Protocol has now been referred to the Court of Justice in Case C-411/10 *NS* which has been joined with a case from Ireland, C-493/10 *ME*. Protocol 30 does not apply to Ireland.

36 Declaration 62.

37 *Metrobus v. Unite the Union* [2009] EWCA 829, para 37, Lloyd LJ: 'English law does of course recognise a right to strike, and exempts trade unions from the tortious liability that they would otherwise be under for calling a strike.'

38 *Metrobus v Unite the Union* [2009] IRLR 851, para. 119, per Maurice Kay LJ.

39 See eg Compliance with the Charter of Fundamental Rights in Commission legislative Proposals: *Methodology for systematic and rigorous monitoring* COM(2005) 172; Commission Strategy for the Effective Implementation of the Charter COM(2010) 573.

40 Reg. No. 168/2007 (OJ [2007] L53/1).

41 Case C–76/90, *Säger* [1991] ECR I–4221.

42 Case C-271/08 [2010] ECR I-000.

The Lisbon Treaty and the European Union's external relations

*Panos Koutrakos**

Group therapy for too long, expectations too high

Throughout the group therapy process in which the EU has engaged in the last nine years, from the fateful Constitutional Treaty to the Lisbon Treaty, its foreign affairs have been viewed as of paramount importance. This was made clear in the Laeken Declaration, which kick-started the process in 2001, and raised this question: '[d]oes Europe not, now that it is finally unified, have a leading role to play in a new world order, that of a stabilising role worldwide and to point the way ahead for many countries and peoples?'[1]

This emphasis on the EU's international role also informed the Lisbon Treaty. Launching the Intergovernmental Conference which led to its drafting and adoption, the European Council stated that '[i]n order to secure our future as an active player in a rapidly changing world and in the face of ever-growing challenges, we have to maintain and develop the European Union's capacity to act…'.[2] Such statements become even more interesting in the light of the Union's ambitions: the European Security Strategy, for instance, states that 'Europe should be ready to share in the responsibility for global security and in building a better world'.[3]

The Union's institutions have been tireless in their praise for the significance of the new provisions. Acording to the European Council, the Lisbon Treaty 'will bring increased efficiency to our external action'.[4] In its Opinion on the 2007 Intergovernmental Conference, the European Commission stated that the latter 'will give Europe a clear voice in relations with our partners worldwide, and sharpen the impact and visibility of our message'.[5] And President Sarkozy of France wrote during the Russia-Georgia crisis in August 2008 that, had the new Treaty entered into force, the Union would have had the institutions it needed in order to cope better with international crisis.[6]

This note suggests that such enthusiasm is exaggerated. For reasons of space, it does so by focusing on the main amendments introduced at Lisbon in the area of external political relations.

The pillars are dead, long live the pillars

A major innovation of the Lisbon Treaty, the significance of which has been hailed by its supporters incessantly, is the abolition of the pillar structure. A constant since the Maastricht Treaty, it divided the activities of the Union in three distinct sets of rules, the European Community, the Common Foreign and Security Policy (CFSP), and, since Nice,

Police and Judicial Cooperation in Criminal Matters. These sets of rules also reflected different models of integration, the first pillar characterised by distinct supranational features, whereas the remaining were clearly intergovernmental.

This coexistence of different sets of rules made the Union legal system appear puzzling in its complexity. The abolition of the pillars at Lisbon led to the integration of CFSP, as well as Judicial and Police Cooperation in Criminal Matters, into a unitary framework, the EU, hence rendering the EC a thing of the past.

However, the formal abolition of the pillars has not necessarily given rise to a truly integrated legal order. Whilst the old third pillar is now fully integrated within the Union legal order, the CFSP framework maintains its very distinct legal character which differentiates it from all other EU external policies. This is clear from the structure of the Treaties (the substantive CFSP provisions are still set out in TEU whilst all other EU policies are set out in TFEU), as well as their wording (Article 2(4) TFEU refers to the Union's competence in the area of CFSP as a category distinct from all the other categories of competence). Furthermore, Article 24(1) TEU states that the 'common foreign and security policy is subject to specific rules and procedures'. If anything, the Lisbon Treaty underlines the distinct legal nature of CFSP, and renders its preservation a matter of constitutional significance.[7]

The existence of CFSP as a distinct pillar within the Union architecture is also illustrated by the substantive provisions of the new Treaty. In terms of decision-making, the prevailing role of unanimity is maintained,[8] and any derogations are limited, clearly prescribed, and entirely consistent with the logic of the exceptions introduced by the previous constitutional arrangements. In terms of enforcement, CFSP is still excluded from the jurisdiction of the Court of Justice. Whilst Lisbon introduces two exceptions,[9] these either acknowledge what has always been the case and merely extend the application of existing practice. Similarly, in terms of the legal instruments available to the Union in this area, whilst the Lisbon Treaty subsumes the previous CFSP-specific instruments into one, namely decisions, these carry out precisely the same function as their precursors.

This brief overview suggests that the Lisbon Treaty abolishes the pillar structure in name only. It transposes the previous set of rules into a unitary structure albeit with their legal characteristics intact. The logic of the pillar structure still permeates the Union constitutional order after Lisbon: whilst Member States are determined to broaden the scope of their cooperation in areas deemed to be closer to the functions traditionally carried out by States, and whilst they deem it sensible to rely upon institutions and processes of what used to be the Community legal order, they wish to do so at a different pace, in accordance with a different model of integration, and in order to achieve qualitatively different objectives. It was this fundamental differentiation that the establishment of the complex pillar structure sought to convey. The abolition of the appearance of that structure by no means makes it any less present. Similarly, whilst the previous pillar-structure was viewed as complex, the removal of the appearance of complexity does not necessarily make the new legal structure any easier to manage.

Re-organisation of external policies

The other structural change introduced at Lisbon is the reorganisation of all EU external policies, including the CFSP, under a common set of values, principles and objectives. These policies include the Common Commercial Policy (CCP), development cooperation, economic, financial and technical cooperation with third countries, humanitarian aid, sanctions, CFSP, and CSDP. Whilst they were set out in different parts of primary law, each carried out in order to pursue its specific objectives, the Lisbon Treaty brings them together, and lays down a set of common principles and objectives which all these policies should pursue, irrespective of their specific legal characteristics.

The principles are set out in Article 21(1) TEU and include, rather predictably, democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The objectives are set out in Article 21(2) TEU, and, whilst no less predictable, are noteworthy for both their range and ambition, and include political, economic, security and environmental objectives, with strong emphasis on effective multilateralism.

These principles guide not only the conduct of the Union's external policies, but also the external aspects of the Union's other policies.[10] Whilst the 'depillarization' of the Union seeks to signify the formal integration of its foreign affairs system, the above provisions aim to bring about its substantive integration. To that effect, the Lisbon Treaty introduces the term 'external action', rather than 'external relations' or 'policies' to cover all external economic, political and security strands. This term, complete with the singular in which it is couched, signifies the design, and therefore conduct, of the Union's foreign affairs as a coherent whole.

Institutional changes

The Lisbon Treaty has also reorganised the Union's institutional machinery in the area of external relations by introducing a new actor, namely the High Representative of the Union for Foreign Affairs and Security Policy, and assigning to it a new service, namely European External Action Service (EEAS).

The aim of this innovation is to provide the Union's foreign affairs with a face and to facilitate the coherence of external policies and provide a single point of contact. The High Representative is responsible for the conduct of the CFSP. To ensure the coherence of the policy she is a Vice President of the Commission and chairs the Foreign Affairs Council. Whilst this dual institutional configuration appears sensible to ensure the coherence of the Union's external action, in legal and policy terms a number of issues arise. First, the Treaty is strikingly vague about the role of the High Representative. It is silent as to which specific areas of EU foreign affairs are under her supervision, apart from CFSP, and provides no guidance as to how she is to interact with other EU institutions and bodies. As the present incumbent Baroness Ashton put it in an interview a few months after assuming her position, 'when I got the job it was me and the treaty... nobody handed me a blueprint and said, "Congratulations, here is the plan"'.[11]

Second, the double-hatting of the High Representative may prove to be deeply problematic. For instance, Article 218(3) TFEU provides that the High Representative, instead of the Commission, would recommend that the Council authorise the opening of negotiations of international agreements in areas where the subject-matter of the agreements relates 'exclusively or principally' to the CFSP. In practice, however, the question of the delimitation between the CFSP and other external policies has given rise to very considerable inter-institutional disputes.[12]

Third, whilst the appointment of the High Representative was intended to bring clarity to the Union's international posture and coherence in the conduct of its external action, in practice she is not the only player active in the area of foreign affairs. She coexists with the President of the European Council, the President of the Commission, and the rotating Presidency, each of whom is assigned a role in the conduct of EU external action in terms that are hardly clear. Therefore, the international representation of the Union is still not the responsibility of just one actor, and the determination of who speaks for the Union would depend, again, on the interaction between various actors and their ability and willingness to delineate theirrespevctive roles.

It follows from the above that the Lisbon Treaty merely sets out a broad and flexible framework which *may* allow the various institutional actors to act in a way that *may* enhance effectiveness and coherence. This, and the scope for compromise, political disagreements, and the inter-institutional skirmishes it entails, are illustrated clearly by the process of establishing the European External Action Service ("EEAS").

Considered 'one of the most significant changes introduced by the Treaty of Lisbon',[13] the EEAS aims to assist the High Representative by working in cooperation with the diplomatic services of the Member States. The EEAS shall consist of Commission and Council officials, as well as diplomats seconded from the Member States.[14] The Lisbon Treaty, however, is once again silent on specifics: the distribution of posts amongst the Council, the Commission, and the Member States, the scope of the policies it oversees, the definition of the lines of authority between the Union institutions involved, and its precise function in the conduct of the Union's foreign affairs are all left open.

Against this blank canvass, the organisation and management of the EEAS provided a perfect playground for just the kind of inter-institutional disputes which its establishment purported to address. They have been about, amongst other things, development policy and the involvement of the European Parliament. Following intense inter-institutional haggling, a compromise was reached, and the EEAS was set out in July 2010.[15] The founding Decision is drafted in vague language, and the arrangements which it sets out are complex. Amongst many problems raised by the compromise is the extent to which diplomats of Member States would be willing to share intelligence with EEAS as a matter of practice.

All in all, the institutional innovations introduced by the Lisbon Treaty in the area of foreign affairs do not provide a definitive answer to the Union's problems in foreign affairs and they do not fundamentally change the factors that have been shown to slow down the Union's ability to act. Instead, they set out a new framework within which all the different interests and factors which shape the Union's foreign affairs are rearranged. It is a new terrain which enables the Union's actors to reconstitute their role in ways which, depending on a range of variables, might (or might not) enhance the Union's ability to act as a credible international partner.

Common Security and Defence Policy

The Lisbon Treaty pays considerable attention to the area of security and defence. It renames this Common (rather than European) Security and Defence Policy (CSDP), and groups its provisions together under a distinct section within Title V TEU (the latter setting out the general provisions of the Union's external action and specific provisions on the CFSP). Finally, Article 42(1) TEU states that the CSDP 'shall be an integral

part of the common foreign and security policy'.

In terms of substantive content, the Lisbon Treaty expands the range of activities which fall within the scope of CSDP, albeit merely formalising existing practice.[16] In particular, there are three areas in which the Lisbon Treaty introduces interesting changes. First, in relation to military capabilities, the Treaty imposes a duty on Member States to 'make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council'.[17] Furthermore, it provides for a special intergovernmental body, namely the European Defence Agency (EDA), which is intended to be active in the area of defence capabilities development, research, acquisition, and armaments.[18]

Both developments are less spectacular in their implications than might appear at first sight. On the one hand, the duty imposed on Member States is vague in its scope and silent as to its implications. This duty also needs to be considered in the light of the numerous reminders in primary law that the Member States are the locus for the organisation of their defence.[19] On the other hand, EDA was established in 2004, that is, well before the Lisbon Treaty was even drafted, and even before it became clear that the Constitutional Treaty was dead.[20] Furthermore, whilst the work that the Agency has been doing is positive and sensible and well received, it is also limited in its scope, and has been marred by disagreements between Member States as to its approach and budget.

It becomes, thus, clear that the Lisbon provisions on military capabilities may play only a very limited role in any real progress in that area of Union operations. However, a number of factors are noteworthy: security and defence is at the very core of national sovereignty, the States are fully responsible for their defence as well as prioritising their defence spending and availability of resources, the financial crisis is under way and has given rise to cuts in defence budgets of the EU military powers, and the character of cooperation in this area as set out in primary law is distinctly intergovernmental. In the light of all this, it is hardly surprising that the role of legal provisions such as those in the Treaties is inherently limited.

The second interesting innovation introduced at Lisbon is flexibility. In other words, the new Treaty allows for formal arrangements which would enable groups of Member States to act together, either in a form of the 'willing and able',[21] or in the context of a more 'permanent structured cooperation'.[22] In an entity as diverse in membership and defense capacity as the EU is, flexibility would enhance its ability to assert its identity on the international scene. However, two points are worth-making. First, there is already a considerable degree of flexibility in how the Union currently carries out its defense policy. Second, the CSDP flexibility provisions are couched in such broad terms that there are hardly any solid criteria to assess compliance - once again, it is for the Member States to determine what to make of them.

Finally, for the first time in the Union's constitutional history, the Lisbon Treaty introduces a mutual assistance clause. This is laid down in Article 42(7) TEU, and refers to cases where a Member State is the victim of armed aggression on its territory. In this case, the other Member States 'shall have towards it an obligation of aid and assistance by all means in their power, in accordance with Article 51 of the United Nations Charter'.

This clause imposes on Member States a very broad duty accompanied by equally broad caveats. However, the question Article 42(7) TEU raises is how far are Member States required to go in order to comply with their duty of solidarity, and how rigorous can the enforcement of this duty be. Its wording is vague, and the inherently indeterminate criteria it sets out do not lend themselves to a rigorous mechanism of verification or control. After all, the EU is not a military alliance, and the mutual assistance clause does not render it one. Instead, this new clause appears significant in rather symbolic terms.[23]

Conclusion

Despite the focus of the Lisbon Treaty on CSDP, in the last two years only one operation has been launched (EUTM Somalia, contributing to the training of Somali security forces). This illustrates clearly the point made in this note: instead of providing the answers to questions about a more effective and coherent foreign policy, the new Treaty shapes a new negotiating environment within which the political will of the Member States may decide how to use the new toolkit. The inter-institutional skirmishes which have characterised the Union's international action will not become a thing of the past, and the practical problems which have hampered the development of a truly effective security policy will not evaporate. As all these form part and parcel of the Union's deeply idiosyncratic constitutional set up, they will continue to affect the conduct of foreign affairs in the revamped framework set out by the Lisbon Treaty. This assessment does not have to be negative: to acknowledge the limitations of legal arrangements in this area is to accept that more energy should be spent on practical, sensible initiatives focused on the management of the essential prerequisites for a common foreign, security and defence policy. Whether the practice of EU actors since Lisbon entered into force is promising in this respect is another matter altogether....

Panos Koutrakos, University of Bristol,
University of Antwerp.

Endnotes

1 European Council, December 14-15, 2001, p2.

2 European Council Conclusions (21-22 June 2007), para. 2.

3 *A Secure Europe in a Better World – European Security Strategy* (Brussels, 12 December 2003), 1.

4 EU Declaration on Globalisation, annexed to Brussels European Council Presidency Conclusions, December 14, 2007, at p25.

5 Opinion of the European Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the governments of the Member States convened to revise the Treaties, July 13, 2007, Council 11625/07 POLGEN 83, p8.

6 *Le Figaro*, 18 August 2008.

7 See Art. 40 TEU which provides that CFSP will not be affected by the procedures and powers related to the other EU external policies, a provision inserted in primary law for the first time at Lisbon.

8 Art. 31(1) TEU.

9 See Art. 24(1) TEU which refers to Art. 40 TEU and Art. 275(2) TFEU.

10 Art. 21(3) TEU.

11 *Financial Times,* 10-11 July 2010 (Life and Arts 3),.

12 See Case C-403/05 *Parliament v Commission (re: border support to Philippines)* [2007] ECR I-9045, Case C-91/05 *Commission v Council (re: small arms and light weapons)* [2006] ECR I-1145.

13 Council Conclusions of 26 April 2010 (8967/10), p8.

14 Art. 27(3) TEU.

15 Dec. 010/427/EU [2010] OJ L 201/30. This Decision is accompanied by a Declaration by the High Representative on political accountability ([2010] OJ C 210/1, and [2010] OJ C 217/12) which sets out the practicalities of the interactions between the High Representative and the European Parliament.

16 Art. 43(1) TEU.

17 Art. 42(3) TEU which also provides that Member States 'shall undertake progressively to improve their military capabilities'.

18 Art. 42(3) second subpara and Art. 45 TEU.

19 See, for instance, Declarations 13 and 14 concerning the common foreign and security policy.

20 See Council Joint Action 2004/551/CFSP [2004] OJ L 245/17.

21 Arts 42(5) and 44 TEU.

22 Art. 46 TEU. See also Art. 2 of the Protocol on permanent structured cooperation established by Article 42 TEU.

23 See P Koutrakos, 'The Law in Common Security and Defence Policy: Functions. Limitations, and Perceptions' in P Koutrakos (ed.), *European Foreign Policy: Legal and Political Perspectives* (Cheltenham: E Elgar Publishing, 2011) 235.

Congratulations to EUSA Prize Winners!

EUSA Award for Lifetime Achievement in European Studies

Jeremy Richardson

EUSA Award for Best Book Published in 2009 or 2010

Sara Hobolt *Europe in Question*

Honorable Mention

Paul Craig *The Lisbon Treaty: Law, Politics and Treaty Reform*

Marc Howard *The Politics of Citizenship in Europe*

EUSA Award for Best Dissertation Defended in 2009 or 2010

Nikoleta Yordanova
Legislative Organisation of the European Parliament: The Role of Committees

EUSA Award for Best Paper Presented at the 2009 EUSA Conference

Tina Freyburg "Planting the Seeds of Change"

Latin America and the European Union Interest Section

The Impact of EU Norms in Latin America

Roberto Domingez, Suffolk University, Boston, MA

The EU enlargement process provided evidence of the transformational effect of regional integration and was the object of study *par excellence* in the literature on EU external influences in domestic democratization. More recently, the analysis of the external relevance of the EU as a norm diffuser has focused on policies and resources created to engage new candidate members in the Balkans as well as non-candidates in the immediate neighbourhood. However, as geographical distance increases between Europe and other parts of the globe and the EU incentives fade away, the influence of the EU decreases. From the norm diffusion perspective, what is the impact of EU norm diffusion on Latin America?

Analytical Framework

The study of diffusion of norms in countries where EU membership is not an option demands more analytical instruments than in cases where there are prospects of EU enlargement. Three theoretical tools are useful for the analysis of norm diffusion in Latin America. The first is both the strength of linkages, defined as "the density of ties to the European Union, the United States, and Western-dominated multilateral institutions," and leverage, which is "governments' vulnerability to external democratizing pressure" (Levitsky and Way 2005, 520). The linkages and leverage of the United States in Latin America are greater than the role of the EU in the region and sometimes both perspectives oppose one another. Cuba epitomizes the competing views between the long-standing embargo of the United States and the cautious engagement of the European Union. In other cases, the density of the linkages of the EU is also undermined when governments diversify and intensify their relations with alternative powers: this is the case of China's investment in Latin America and Venezuela's growing military ties with Russia.

The second element is the power of conditionality. The literature on norm diffusion indicates that without the incentive of potential membership, EU's influence over other countries' domestic political developments is likely to be minimal (Schimmelfennig 2007). In the case of Latin America, while there is no incentive of membership, the negotiation and conclusion of association agreements with Mexico and Chile have constituted positive incentives to reinforce the democratic practices in both countries. In other cases where the rule of law is broken, the EU has used negative incentives such as suspension of aid in Honduras.

The third element is the active participation of Latin America in adopting and adapting EU norms, namely, appropriateness (Kelly 2004). The experience of norm diffusion indicates that the EU has actually found that over time the top down approach of the EU democracy promotion faces limitations (Borzel and Risse 2007, 5). It is crucial to look at the orientation of the policies of the recipient countries, the development of domestic ownership of the process, and the permanent dialogue (Jonasson 2009). For example, Cuba embraces an orientation of democracy and norms that contradicts the policies of the EU. Similarly, in the past decade Venezuela has revisited the fundamentals of democracy and implemented policies that produced acrimony in the relations with Western countries. Conversely, Mexico and Chile were able to negotiate association agreements once they had moved forward in the process of democratization. With regard to ownership, the EU has gradually offered grants through different programs to NGOs and local governments to promote human rights and democracy in Latin America. Relating to dialogue, in the relationship between the EU and Latin America, the region-to-region dialogues have been in place for more than a decade and more recently civil society has been included in the cases of Mexico, Chile and Brazil

Quality of Democracy in Latin America

The end of the Cold War renewed the expectations of improving democracy in Latin America. While all Latin American countries are electoral democracies today, there have been setbacks, disruptions and unfulfilled goals producing hybrid regimes (Morlino and Magen 2009) or illiberal democracies (Zakaria 2004) in numerous cases. The multidimensionality of democracy in Latin America has produced four groups of governments according to their political orientation: communism—at least nominally (Cuba), radical socialism (Venezuela, Bolivia, Ecuador and Nicaragua), moderate left to centrism (Argentina, Chile, Uruguay, Brazil, Haiti, Paraguay, Peru, Panama, Costa Rica, Guatemala and the Dominican Republic) and conservative of right centre (Colombia, El Salvador and Mexico) (Emmerich 2009). From the perspective of EU diffusion of norms, nominal communist countries and radical socialist governments are less willing to embrace EU norms. Venezuela and Bolivia have actually expelled US diplomats and human rights activists or nationalized European and US companies in the past years. On the contrary, countries such as Mexico or Chile have signed most of the human rights international conventions and also negotiated association agreements with the EU where democracy clauses are included.

Mexico and Venezuela: Contrasting Cases

Mexico is a case study in which the conjunction of domestic transformations and the adaptation and adoption of EU norms brought about stimulating results. In 2008, Freedom House ranked Mexico as a Free State while the global governance scores of the World Bank indicated that in the area of rule of law and corruption Mexico has slightly decreased its performance and increased or maintained stability in the areas of government effectiveness between 1996 and 2008 (Kaufmann, Kraay and Mastruzzi 2009).

The negotiation of the *Agreement on Economic Partnership, Political Coordination and Cooperation,* which came into force in 2000 and was the first between the EU and a Latin American country, was an incentive for democratization. The negotiation was protracted initially due to Mexico's reluctance to include the democracy clause; however, the Mexican government quickly realized it had no other choice but to accept the democracy clause, which was a *sine qua non* condition to conclude the negotiation. A second element that the EU propelled in the democratization of Mexico was the pressure on the Mexican government to accept European funding for NGOs to monitor elections.

Since the *Association Agreement* came into force, the European support to modernization and adaptation of norms has increased. As for concrete areas of cooperation, for the period 2007-2013, the EU earmarked €55 million for Mexico, focusing on three sectors: a) Social cohesion and support to related policy dialogues; b) Sustainable Economy and c) Competitiveness (European Commission 2007a). Cooperation in the human rights sector has also substantially increased because the European Initiative for Democracy and Human Rights (EIDHR) has sponsored 19 projects in Mexico for a total of approximately €3.2 million since 2002. The Commission has also negotiated two targeted projects with the UN Office of the High Commissioner for Human Rights (OHCHR) with a total EU contribution of €1.4 million.

The *Association Agreement* has also developed mechanisms of dialogue to include NGOs and civil society, igniting a sense of ownership of the projects. In the case of civil society, there is a bi-annual meeting of Mexican and European civil society organizations, which is emulated in the case of Chile and the EU. Despite the relatively small size and value compared to bilateral cooperation, NGO co-financed projects in Mexico (7 projects / €4.5 million) have an important impact as their thematic and grass-roots focus is highly relevant to the social, cultural and economic situation of the country.

The deterioration of the quality of democracy has been a trend in the past decade in Venezuela. In 2008, Freedom House downgraded it to non-electoral democracy (Freedom House 2009) and in the index of political freedom changed it from Free to Partially Free in 1999,while the World Bank indicates that in the area of rule of law, corruption and government effectiveness, Venezuela's rank has been steadily dropping (Kaufmann, Kraay and Mastruzzi 2009).

The role of the European Union has been quite limited in the promotion of democracy in Venezuela. Economically, the United States is the main trade partner of Venezuela (35%), followed by the European Union, which represents only 8.9% of Venezuela's total trade. Alternatively, Venezuela has been forging deeper relations with Iran, China, and Russia, particularly in the area of oil resources, which represents 80% of its exports.

The course of the reforms in Venezuela is to some extent opposed to the type of policies the United State and the European Union embrace. Venezuela opposed the Free Trade Area of the Americas and has proposed the Bolivarian Alternative for Latin America and the Caribbean. As a testimony to these contrasting views, the President of the European Commission, José Manuel Barroso, stated that "whether this political attitude prospers (*in reference to Venezuela*), European businesses will not be harmed as a consequence because there are abundant investment opportunities in other regions, and the victims will be poor people in Latin America" (Barroso 2006).

Despite the limited leverage of the EU, the Union has reacted in several occasions in light of the deterioration of democracy in Venezuela. The use of declarations to condemn or support significant events in Venezuelan politics has been used often times (curtail of freedom of speech in 2007 or supporting the December 2007 referendum).

Concerning EU assistance to Venezuela, the main focus of the Country Strategy Papers has been economic modernization. In the 2001-2006 CSP, prevention and reconstruction (due to the floods in 1999) and trade diversification (fisheries) were the two priority areas, while in the 2007-2013 CSP the EU supported the decentralization of the Venezuelan state and the diversification of the economy. With regard to human rights and democracy, the EIDHR has sponsored 7 projects with local NGOs as of the end of 2009 and the EU Commission approved a project to assist the OAS in implementing the agreement reached between the OAS, the Venezuelan government and the opposition after social unrest in 2002 (European Commission 2007b).

Final Considerations

In contrast to the prospects of membership in Central and Eastern European countries, in which there were strong incentives for internalizing EU norms, the transformative power of the EU is limited in Latin America. Nonetheless, this has not precluded the EU from investing political and economic resources to help improving the quality of democracy in Latin America. All limits considered, the successful implementation of EU policies in Latin America should include a) the setting for norm diffusion, b) positive and negative conditionality, and c) elements conducive for the appropriateness of the recipient (orientation, ownership and dialogue).

Roberto Domingez, Suffolk University

References

Barroso, José Manuel. 2006. *Speech to Heads of State and Governments at the 4th EU-Latin American and Caribbean Summit*, SPEECH/06/295, Vienna, 12 May

B***örzel***, Tanja and Thomas Risse. 2007. "Venus Approaching Mars? The EU as an Emerging Civilian World Power." Presented at the Bi-Annual European Union Studies Association Conference, May 17-19, Montreal.

Emmerich, Gustavo. 2009. *Democracy Building in Latin America and the Caribbean: Can the European Union Contribute?* Sweden: Institute for Democracy and Electoral Assistance.

European Commission. 2007a. *Country Strategy Paper: Mexico*. E/2007/1063. May 5.

European Commission. 2007b. *Country Strategy Paper: Venezuela*. E/2007/622. November 4

Jonasson, Ann-Kristin. 2009. "The Prospects for EU Democracy Promotion towards its Muslim Neighbors around the Mediterranean: A Theoretical Framework." Presented at the 21st International Political Science Association World Congress, July 12-16, Santiago, Chile.

Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2009. Governance Matters VIII: Governance Indicators for 1996-2008. Washington D.C., World Bank.

Kelley, Judith. 2004. *Ethnic Politics in Europe. The Power of Norms and Incentives*. Princeton NJ, Princeton University Press.

Levitsky, Steven and Lucan Way. 2005. "Ties that Bind? Leverage, Linkage, and Democratization in Post-Cold War Era." *International Studies Review* 7 (September): 519-524

Magen, Amichai and Leonardo Morlino, eds. 2009. *International Actors, Democratization and the Rule of Law*. London, Routledge/UACES Contemporary European Studies

Schimmelfennig, Frank and Hanno Scholtz. 2007a. EU Democracy Promotion in the European Neighborhood: Conditionality, Economic Development, and Linkage. Presented at the Bi-Annual European Union Studies Association Conference, May 17-19, Montreal.

Zakaria, Fareed. 2004. *The Future of Freedom: Illiberal Democracy at Home and Abroad. (Revised Edition).* New York, W. W. Norton & Company.

EU Public Opinion and Participation Interest Section

European Publics and the Lisbon Agenda

Maurits van der Veen

At the European Council meeting in March 2000 in Lisbon, the national political leaders of the European Union (EU) member states set themselves 'a new strategic goal for the next decade': 'to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion' (European Council, 2000). Ten years later, the Lisbon agenda is widely seen as a failure; nevertheless, European leaders have decided to continue to pursue the same goals for another decade, now under the ambit of the Europe 2020 program. In what sense has the Lisbon agenda failed, and why does the European Union continue to pursue the same basic agenda? In this note, I suggest that analyzing public opinion about the Lisbon strategy can shed light on both of these questions.

It is striking how little effort was made to explain the Lisbon agenda to European citizens; all the more so in light of the prominence of debates about the EU's democratic deficit during the past decade. The *Economist's* Charlemagne, in assessing 10 years of the Lisbon strategy, implies that perhaps the omission was deliberate on the part of European leaders: most European voters may not have wanted the Lisbon agenda to be any more successful than it was, since they "prefer security to dynamism". Charlemagne's analysis is familiar but superficial, noting that lots of Europeans "like long holidays, restrictive labour laws, generous welfare states and 35 hour weeks" ("Do Europeans want a dynamic economy?," 2010). That is certainly true, but such preferences need not prevent dynamism; nor, more generally, is it the case that dynamism is incompatible with security, as Charlemagne implies.

In fact, it would be exceedingly strange if Europeans did not like the benefits offered by a generous welfare state. This does not mean, however, that they might not willing to exchange some of those benefits for improved economic performance, if a case were made that such an exchange was necessary and feasible. The problem is that the Lisbon agenda did not convincingly made this case; moreover, to the extent that it made the case at all, this was rarely conveyed to the public. As we shall see, the latter appears to be bemused, at best, by its leaders' insistence on the urgency of the Lisbon (and now Europe 2020) agenda.

European publics have rarely been polled on the Lisbon strategy *per se*. In fact, Eurobarometer surveys appear to have investigated awareness of the strategy just twice: in May/June 2006 (EB 65.3) and May/June 2009 (EB71.2).[1] Given the dearth of public information on the Lisbon strategy, the low levels of awareness observed do not come as a surprise. In 2006, just 15.7% of respondents in the EU member states reported that they had heard of "the EU's 'Lisbon Strategy' for Growth and Jobs" (question QC1). In 2009, that figure had risen to 24.38% (QD1), but much of the rise is likely due to confusion with the Lisbon Treaty, which was going through the ratification process in 2008-2009. Respondents were also asked about the Erasmus program (intra-EU student exchanges). This program is older than the Lisbon agenda, so it has had more time to become known, but it is also much narrower in scope. Nevertheless, in 2006, 24.93% said they had heard of this program, while in 2009 the figure was 28.39%. In other words, more people were aware of a program open only to university students than of an initiative intended to revitalize the entire economy.

Of course, low awareness does not mean lack of support for the Lisbon strategy's goals. The most extensive Eurobarometer polling on the Lisbon agenda took place in the Fall of 2004 (EB62.1), as the EU was conducting a midterm review of the strategy. However, respondents were not asked whether they had any idea what the strategy entailed; instead, after saying "Now, let's talk about the Lisbon Agenda," the survey simply proceeded to ask a set of broad questions about the economic situation in Europe. Terminating the set is a question (QB13) that appears intended to gauge public confidence in achieving the Lisbon agenda's goal of becoming the world's most competitive and dynamic economy: "In your opinion, could the European Union become the world's top economic power within the next five years?"

Just under 40% of respondents (39.72%) thought the EU could 'certainly' or 'probably' do so, with those in Southern or Eastern states comparatively more likely to answer in the affirmative. When the question was asked again the following Spring (EB 63.4), the EU-wide figure had fallen to 38.6%, with even lower rates in core EU countries such as France (27.67%) and Germany (21.91%). Such low scores might lead one to conclude that the European public did not support the Lisbon goals. However, the question is poorly phrased. First, it is not obvious that the most competitive and dynamic economy would automatically also be the world's top economic power. More generally, it is unclear what would make a country the top economic power; the question clearly assumes the EU was not, but measured by total GDP — an obvious choice — it already was. Finally, if the EU indeed was not (yet) the top power, just how far was it from reaching this position? Given such lack of clarity, answers to this question are of little help in assessing public confidence in the Lisbon agenda.

If observers like the *Economist*'s Charlemagne are correct about European voters wanting the Lisbon agenda to fail, we should be able to find evidence that Europeans were opposed to increased competition. A promising indicator here is question QB6 in EB62.1. Noting that "the single market increased competition in a number of domains such as transport, telecommunication services, banking services and insurances," the question asked: "In general, would you say that this has a … effect?" Perhaps surprisingly, 62.86% of respondents felt that increased market competition had a very positive or rather positive effect. Even among the French — popular targets for those who lampoon European anti-globalization fears — 59.24% felt that the increased competition had been positive.

European economy was performing better than the American economy, and more than half (51.43%) thought it was performing as well or better. Once again, question phrasing leaves something to be desired, since respondents undoubtedly interpreted the "performance"

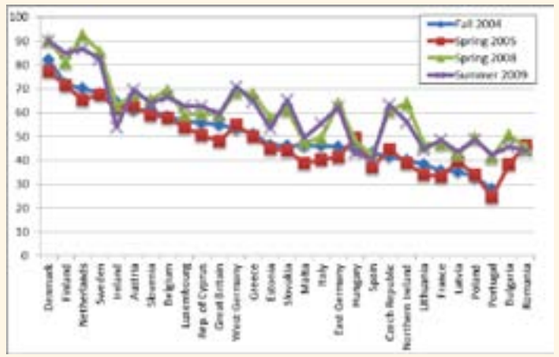

Figure 1. Percentage of respondents that feels the European economy performs better than or as well as the American economy.

The most illuminating question in Eurobarometer 62.1 is one that goes to the heart of the motivation for the Lisbon agenda. QB5 asks: "In general, would you say that the European economy is performing better, performing worse or performing as well as the <American, Japanese, Chinese, Indian> economy?" Since the Lisbon agenda was quite explicitly inspired by concerns that EU economic performance lagged behind that of the United States (e.g. Kok, 2004, p. 8), respondents' assessments of performance relative to that country are of obvious interest. In the Fall of 2004, more than a quarter (26.84%) of EU respondents felt that the

of the economy to mean a variety of different things. Nevertheless, it is striking that more than half of all respondents apparently did not share the worries that inspired their leaders to consider the Lisbon strategy a failure until that point (e.g. "Prodi attacks failed growth plans," 2004).

Even more interestingly, this same question has been asked several times in the ensuing years. We have data not just for the Fall of 2004, but also for the Spring of 2005 (EB 63.4), the Spring of 2008 (EB 69.2), and the Summer of 2009 (EB 71.3). Figure 1 shows the percentage of respondents that felt the European economy was doing as well as the American economy or better at each of these four time points. Countries are sorted from most to least positive about Europe in the Fall of 2004. One immediate conclusion from the figure is that, by the public's estimates, the relative performance of the European economy improved considerably in the second half of the decade. In recent years about 60% of respondents felt that European performance at least matched that of the United States (60.35% in 2008 and 59.7% in 2009).

As always, overall averages hide considerable cross-national variation. Nevertheless, in the Summer of 2009, 4 in 10 respondents in Spain — the least optimistic country —still felt Europe matched or outperformed the United States, and in Ireland, ravaged by the economic crisis, a majority (54.18%) actually felt this way. The three Nordic member states and the Netherlands were particularly positive about Europe's economic performance, each scoring over 80% on this count. Indeed, roughly two thirds of the respondents in these four countries felt that the European economy outperformed the United States. (In the Spring of 2008, before the worst of the economic crisis hit, the latter figure was as high as 83.86%, in the Netherlands.)

The data thus suggest a different conclusion from that put forward by Charlemagne and other observers. It is not the case that Europeans did not want the Lisbon strategy to succeed; instead, Europeans were less convinced of the urgency of the Lisbon strategy than were their political leaders at the time of the strategy's midterm review in 2004-2005. Moreover, towards the end of the strategy's decade, most felt that the European economy's performance relative to that of the United States had improved further. Finally, they were largely positive in 2004 about increased competition — the opposite of what one would expect if they wanted Lisbon to fail because it might threaten their security.

One might argue that Europeans simply deceive themselves or are uninformed. Interestingly, the EU's own interpretation of these survey results was that respondents "have a fairly accurate view of the economic reality in the EU… [but] their knowledge of the European Union's economic performance in relation to its main global competitors tends to be weak" (2005, p. 60). This assessment represents a clear, albeit probably unintended, indictment of the way European leaders tackled the Lisbon agenda — an indictment that also comes through implicitly in the survey data reviewed here. As I suggested at the beginning of this note, it was never entirely clear what the Lisbon agenda entailed, even for its main supporters. That lack of clarity led to muddled public messaging at best, which in turn produced a public that was largely bemused by the urgent language used in official Lisbon declarations.

Even after a decade of discussion on the Lisbon agenda, it is hard to pin down its goals. There is little doubt that its key supporters were convinced, first, that knowledge-based economic activities were crucial to sustained economic growth, and, second, that Europe was lagging behind the United States in this area. Neither of these perceptions were new; in fact, they had been put forward repeatedly since the early 1990s (cf. Krugman, 1994, p. 29). The key problem was that the first hypothesis was generally taken on faith (and, in any case, essentially untestable), while the empirical accuracy of the second depended on one's choice of metric. This made it difficult to make a strong case for either, let alone propose specific target policies.

In fact, the strategies proposed in the original declaration were strikingly vague: 'better policies for the information society and R&D', 'structural reform for competitiveness and innovation', 'completing the internal market', 'modernising the European social model' 'investing in people', 'combating social exclusion', and 'applying an appropriate macro-economic policy mix'. Some benchmarks were suggested as well: 'regain[ing] the conditions for full employment', 'strengthen[ing] regional cohesion in the European Union', and achieving 'an average economic growth rate of around 3%'. Implementation was to take place 'by improving the existing processes' and by assigning a 'stronger guiding and coordinating role for the European Council'.[2] All of these relied on inoffensive, generally accepted buzzwords, with, at best, an uncertain connection to economic logic or actual policy choices.

More importantly, the original Lisbon declaration failed to make the case either that the resulting outcomes were crucial to Europe's future, or that certain welfare state benefits needed to be relinquished in order to achieve such key outcomes. As a result, European leaders were faced with a difficult challenge. They were convinced serious structural reforms were necessary, but could offer no unambiguous metrics to substantiate that conviction. At the same time, most structural reforms would need to be implemented at the national, not the European level — it wasn't the European level that was broken, so to speak (an impression that also

comes through in the Eurobarometer data). Moreover, the countries with the most extensive welfare states were among the most dynamic and competitive within the EU, undermining the rhetoric about the need to "modernize" the welfare state. Finally, any real reforms would create groups of losers as well as winners, something governments preferred to avoid. It is not all that surprising that political leaders punted, attempting to sell Lisbon by falling back on the rhetoric of competitiveness. As Krugman has noted, "many of the world's leaders have found the competitive metaphor extremely useful as a political device" (1994, p. 40).

We have seen the implications for European public opinion: Europeans, on balance, feel the European economy is doing as well as or better than the American economy, and they do not see the need for serious structural reforms. This, in turn, has had a clear impact on the achievements — or lack thereof — of the Lisbon agenda. The 2010 'Lisbon Strategy evaluation document' acknowledged that 'the overall pace of implementing reforms was both slow and uneven' and that 'EU-level targets were too numerous and did not sufficiently reflect differences in starting positions between the Member States' (European Commission, 2010, pp. 4-6). More significantly for our purposes, the evaluation document proposed as a key metric of success "whether the Strategy shaped reform agendas by forging greater consensus amongst stakeholders on challenges and policy responses" (2010, p. 1). On this count, it should be clear, we have to consider the strategy a failure, at least with respect to European publics as stakeholders.

As far as most Europeans are concerned, there is little evidence that the United States economy is better positioned to produce sustainable economic growth than the European economy. Indeed, those EU member states whose social model appears to differ most from that in the United States — the Nordic countries — appear to perform best at generating sustainable growth. Moreover, they have also taken the lead in information technology and related industries. To the extent that this overall perception is widely shared, any attempt to motivate structural reform by pointing to the alleged lead of the United States in these same areas is bound to fail. If European leaders are certain the perception is false, they have to offer clear metrics to support that conclusion. If they are convinced structural reforms are needed for other reasons, it will be more useful to offer specific arguments for specific reforms.

Writing in these pages a decade ago, Martin Rhodes hopefully framed the Lisbon agenda as the product of "a quest for a new synthesis in EU social policy." As the Eurobarometer questions about Lisbon indicated, however, most European leaders have sold it primarily as "the EU's 'Lisbon Strategy' for Growth and Jobs." Rhodes already noted that a focus on welfare state reform "requires confrontation with often well-organized vested interests", and pointed out that "enormous political will is required" to even begin this task (2000). The past ten years made clear what happens when that political will is lacking, with political leaders sidestepping confrontation and pointing to a non-verifiable — and to most Europeans, unconvincing — leadership position of the American economy in terms of competitiveness, dynamism, and information technology. For Lisbon's successor, Europe 2020, to have more of an impact, on public opinion as well as on outcomes, some confrontation will be necessary. It remains to be seen whether emphasizing the "three mutually reinforcing priorities" of smart growth, sustainable growth, and inclusive growth will convince European publics that real reforms are needed.[3]

Maurits van der Veen, College of William & Mary

References

Do Europeans want a dynamic economy? (2010, 8 Jan.). Economist.

European Commission. (2005). Special Eurobarometer 215 /Wave 62.1: Lisbon. Brussels: European Commission.

European Commission. (2010). Lisbon Strategy evaluation document. Brussels: European Commission.

European Council. (2000). Presidency conclusions, Lisbon European Council 23 and 24 March 2000. Retrieved from http://www.europarl.europa.eu/summits/lis1_en.htm.

Kok, W. (2004). Facing the challenge: The Lisbon strategy for growth and employment.

Krugman, P. (1994). Competitiveness: A dangerous obsession. Foreign Affairs, 73(2), 28-44.

Papacostas, A., & European Commission. (2006). Eurobarometer 63.4: European Union enlargement, The European Constitution, economic challenges, innovative products and services, May-June 2005. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.

Papacostas, A., & European Commission. (2009). Eurobarometer 69.2: National and European identity, European elections, European values, and climate change, March-May 2008. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.

Papacostas, A., & European Commission. (2010a). Eurobarometer 62.1: The future of the European Union, vocational training, environment, IT at work, and public services, October-November 2004. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.

Papacostas, A., & European Commission. (2010b). Eurobarometer 65.3: Neighbors of the European Union, services of general interest, employment and social policy, energy technologies, and family planning, May-June 2006. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.

Papacostas, A., & European Commission. (2010c). Eurobarometer 71.2: European employment and social policy, discrimination, development aid, and air transport services, May-June 2009. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.

Papacostas, A., & European Commission. (2010d). Eurobarometer 71.3: Globalization, personal values and priorities, European identity, future of the European Union, social problems and welfare, and European elections, June-July 2009. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.

Prodi attacks failed growth plans. (2004, 25 October). *BBC News*. Retrieved from http://news.bbc.co.uk/2/hi/business/3950399.stm

Rhodes, M. (2000). Lisbon: Europe's "Maastricht for welfare?". *ECSA Review, 13*(3).

Endnotes

1 This article references six different Eurobarometer surveys. Their official citations are: EB 62.1 (Papacostas & European Commission, 2010a), EB 63.4 (Papacostas & European Commission, 2006), EB 65.3 (Papacostas & European Commission, 2010b), EB 69.2 (Papacostas & European Commission, 2009), EB 71.2 (Papacostas & European Commission, 2010c), and EB 71.3 (Papacostas & European Commission, 2010d).

2 The overall goal was listed in paragraph 5 of the Presidency Conclusions of the Lisbon summit, as were the key strategies. The benchmarks, such as they are, were listed in paragraph 6, and the implementation suggestions in paragraph 7 (European Council, 2000).

3 Front page of the Europe 2020 website, at http://ec.europa.eu/europe2020/index_en.htm (accessed 6 February 2011).

Interested in serving as a "Guest Editor" for the EUSA Review?

If so send a proposal, including the thematic topic to be addressed, potential forum authors (2-3), as well as a list of 3-4 related recently published books for the book review section, to Amie Kreppel (kreppel@ufl.edu). Please use the phrase "EUSA Review Guest Editor Proposal" as the subject line. Representatives from the various official EUSA interest Sections are especially encouraged to consider guest editorship.

Enlargement and EU development policy

Simon Lightfoot

Each enlargement of the European Union (EU) has altered the geographical focus of development policy. The 1973 enlargement brought the former British colonies into the fold, whilst the 1986 enlargement to Spain and Portugal shifted focus to Latin America. It was therefore clear that the enlargement of the EU in 2004 to Central and Eastern Europe could alter the nature of the EU's development policy, especially its geographic focus. The 2004 enlargement of the EU was also significant because never before had so many recipients of EU aid joined the Union and taken on the commitment to become aid donors. This piece therefore explores both phenomena: to what extent has enlargement altered EU development policy and the extent to which the EU-12 group of new donors have taken on board the acquis.

Orbie and Versluys (2008) show that the EU-12 have two clear priorities for EU development policy. The first is the strengthening of the "eastern dimension" of EU external relations as a part of the European Neighbourhood Policy and the second appears to be related to the objectives of development cooperation, which many of the EU-12 see as an instrument to achieve broader foreign and security policy aims, rather than to reduce poverty as an end in itself (Orbie and Versluys 2008, p. 87). We have seen the EU-12, especially those states from Central and Eastern Europe, who have limited historical connections to developing countries in Africa and tend to direct their bilateral aid to neighbouring states within Europe, adding to the voices within the EU questioning the EU's relations with the African, Caribbean and Pacific (ACP) states. Since enlargement we have seen subtle changes in attitudes towards the ACP group within the EU. Looking at the Human Development Index we can see part of the problem, with two ACP states coming higher up the league table than four EU states, all of whom are new members. There is therefore a sense within many new states that they should not be paying to support the former colonies of France and the UK and this has given a spur to the 'normalization' of relations with ACP states which has been slowly happening over the last two decades (see Holland, 2004).

At the same time we have seen an increasing focus on the Eastern dimension. The majority of aid from the EU-12 states goes to Moldova, Ukraine and Georgia, along with the former Yugoslavia and they wish to see a strengthening of EU action in this area. The Slovenian Presidency of early 2008 gave us the first real evidence of this shift in focus, with their very clear sense of priority in the field of development being the Western Balkans. The creation of the Eastern Partnership in 2008 by Poland and Sweden was a significant development, and seen as a priority by the Czech presidency of early 2009. In addition, although the Czech presidency argued that it would implement EU-Africa Strategy however, at the same time, it plans to emphasize 'geographical balance within the relations between the EU and other regions'. Their Presidency had set out to promote the "three E" priorities: economy, energy and the EU in the world, including global development. However, according to Horky (2010), throughout the course of the presidency, the third "E" came to stand for eastern Europe, at the cost of a focus on the development of the South.

We have also seen some examples of where EU-12 states have flexed their muscles in relation to the EU's relations with the developing world and added weight to different coalitions of states. In 2008 there was a large CAP underspend which prompted a debate as to how it should be spent: should it be used to assist farmers in the developing world to increase productivity in the face of the world food crisis or top-up farm subsidies? EU-12 states tended to align themselves with the European subsidy camp. We also saw concern raised by many of the EU-12 in the run up to the Copenhagen about EU plans to spend money on climate change mitigation in developing countries. The problem was that some of these states, notably Poland, objected to the sums of money being suggested, especially during the recession. In particular, they objected to the idea that contributions should be based upon historic emissions. Poland feared that a past-emissions formula will leave it with an 'unfair' and 'excessive' amount to pay. Polish finance minister Jacek Rostowski said wealthier member states 'cannot expect the poorer countries of the EU to be the ones who are disproportionately helping the poorest countries in the Third World'. An excellent example where some EU-12 states tried to alter the political focus of an EU policy was the whole question of Sexual and Reproductive Health and Rights. There were plans to include references to these rights in the EU-Africa Strategy, which prompted a number of member states, including Ireland, Malta and Poland, to object.

Yet having said all this it is clear that all the recent changes to EU development policy highlighted by Carbone (2010) have all occurred since enlargement. The radical changes forecast by some NGOs have not happened, which is linked to the salience of the development issue in most EU-12 states. Despite the new development commissioner coming from Latvia and the new humanitarian aid commissioner coming from Bulgaria, development policy is not a high profile issue. It is felt that governments in the EU-12 lack commitment to development issues, which is unsurprising given the lack of a significant constituency for development cooperation. This can be seen in relation to their acquis target to provide 0.33% GNI as Official Development Assistance (ODA) by 2015. Nearly all the EU-12 states, and to be fair many old states, are a long way off reaching this target. Part of the problem is that the acquis here is seen to be 'soft law' or political rather than legal commitments and the political will is lacking, especially during recession.

This situation is not helped by weak legal and political frameworks, such as the lack of detailed laws or multi-annual budgets. International development policy is therefore in a precarious position within many states. This could be seen in the aftermath of the financial crisis of 2008/9 with nearly all states cutting their development budgets. Bulgaria cut its budget by 27%, whilst Hungary cut theirs by 9%. Having said all this it must be borne in mind that Greece and Italy saw huge cuts in their international development budgets. In sum this produces a situation, where in the Slovakian parliamentary discussion following the first reading of the *Development Act*, the former Minister of Foreign Affairs Eduard Kukan could state that: '*Nobody will get mad if we will not fulfil the targets and we have to defend it internationally that we cannot be compared with Scandinavian and other countries active in this area for years and that we can reach required percentages gradually'* (Drążkiewicz, 2008). This point is crucial and relates to both the domestic points outlined above plus the relative weakness of the acquis in the field.

So what are the overall implications of enlargement for EU Development Policy? To a large extent, the EU-12 states do not at present have the political and public will, nor the government structures in place to try and significantly alter its current direction. Development is still not a high political priority, due, in part, to a low level of public familiarity with development aid issues. The low level of public awareness, combined with high levels of poverty within many EU-12 states, accounts for the lack of political will. Most aid money is spent in neighbouring states where the rationale for aid is clear and there is also a perceived benefit to the donor state, be it in security or trade terms. However, we are seeing small signs that the EU-12 states are willing to push their own agendas on development policy, especially in relation to aid spending. The addition of the EU-12 states gives increased weight to the pro-Eastern neighbours' coalition and weakens the pro-ACP group. 2011 and 2012 will give us a much clearer idea on the direction of travel for EU development policy proposed by the EU-12 states given the current Hungarian and forthcoming Polish and Cypriot Presidencies. Simon Maxwell and Mikaela Gavas recently posted a blog about the EU-12. They concluded that the *Green Paper on EU development policy in support of inclusive growth and sustainable development* and the Financial Perspectives debate will dominate the discussions and will be shaped in part by the interests of the EU-12 states. Perhaps ten years on from becoming donors we will see the interests of these states better reflected in EU development policy with all the implications this may have for the historic development relationship with the ACP.

Simon Lightfoot, Leeds University

References

Carbone, M (2004). 'Development', in N. Nugent (ed.), *European Union Enlargement* (Basingstoke: Palgrave), pp. 242-252

Carbone, M (2010), 'Development Policy, the Treaty of Lisbon and the EU's role in the International Arena', *EUSA R*eview, 23 (1), pp. 11-15.

Drążkiewicz, E. (2008) Official Development Assistance in Visegrad Countries, Polish Green Network: Warsaw._

Holland, M., "Development Policy: the normalisation of a privileged partnership?" in M. GreenCowles and D. Dinan (eds) ***Developments in the European Union 2***, Palgrave, London, 2004, pp.275-295

Horky, O. (2010) Europeanization of Development Policy. DIE/IIR Discussion Paper.

Lightfoot, S (2008) Enlargement and the challenge of EU development. *Perspectives on European Politics and Society*, **9(2),** pp128-142.

Lightfoot, S (2010) 'The Europeanisation of International Development Policies: The Case of Central and Eastern European States', Europe-Asia Studies, 62: 2, 329 — 350

Maxwell, S. & Gavas, M (2011) An EU-12 perspective on European development cooperation, http://international-development.eu/2011/02/02/informal-retreat-for-eu-12/

Orbie, J. & Versluys, H. (2008) 'The European Union's International Development Policy: Leading and Benevolent?' in Orbie, J. (ed.) (2008) Europe's Global Role (Farnham, Ashgate)

Wolf Sauter and **Harm Schepel**. *State and Market in European Union Law: The Public and Private Spheres of the Internal Market before the EU Courts.* Cambridge: Cambridge University Press, 2009.

In the European Union, there is a lively debate on the interaction between free movement rules and competition rules. One could argue that these rules have the same aim which is the optimal functioning of the internal market (e.g. C-412/93 *Leclerc*), so that interpretations of their scope and permissible justifications should converge. But arguments can equally be made against this reasoning, as the Treaty itself is drafted in such a way as to entail two different sets of provisions – (arguably) those relating to the state and those relating to undertakings (e.g. 177&178/82 *Van de Haar*).

Sauter and Schepel's book deals with these very current issues by looking at the concepts of the "market" and the "State", concepts of private and public spheres, and it discusses not only where the line between the concepts is and what the areas where they interact are, but also how these issues are dealt with by the European Courts. The authors place their analysis in the context of European economic constitutionalism, German *Ordo*liberalism and the French doctrine of *service public* (p. 2), although they eventually concede that these concepts are not particularly helpful for understanding what the Court is doing in the field of the internal market (p. 219).

The main part of the book convincingly presents the Court's case law on free movement and competition rules. The changes in case law which have occurred over the decades are explained as reflections of the principles of functionalism, subsidiarity and pre-emption intended to preserve a balance in the division of power between the EU, its Member States and the market. For example, an argument is put forward that these principles can be seen in the fact that the broadening of the scope of what is now Art. 34 TFEU in 8/74 *Dassonville* and 120/78 *Cassis* was accompanied by the extension of permissible justification (rule of reason and mandatory requirements); or in the fact that the later narrowing of the scope of Art. 34 TFEU in C-267-8/91 *Keck* was accompanied by the article's "horizontal advance", e.g. in C-292/92 *Hunermund*, where self-regulatory associations are treated equally as public authorities (e.g. pp. 45, 73).

Especially interesting is the analysis of the cross-application of free movement and competition rules. On the one hand, the authors identify cases where free movement rules have been applied to private parties either through the official recognition of horizontal direct effect (e.g. C-415/93 *Bosman*, C-281/98 *Angonese*) or through the extended understanding of vertical situations so as to cover cases where states have allowed obstacles to free movement raised by individuals (e.g. C-265/95 *C. v. France – Spanish Strawberries,* C-112/00 *Schimidberger*). On the other hand, the authors put forward cases where competition rules have been applied to the state (e.g. 13/77 *INNO v. ATAB*). Against the background of these cases, the authors discuss where the line is between the "state" and an "undertaking" and how one knows which rules to apply. The authors see the development of the case law as a combination of the Court's functional approach to free movement and the teleological interpretation of the *effet utile* on which competition rules are based (p. 128).

The contribution of this book to the abundant academic literature on the internal market lies in that it focuses on the interaction of two main sets of provisions – on free movement and on competition – which, being a "moving target", as the authors say (p. 211), has remained underexplored to the present day. Particularly useful is the analysis of this public private interface in four specific areas: commercial state monopolies; public undertakings and special and exclusive rights; services of general economic interest; and state aids. What in my view is not sufficiently covered in the analysis, although the authors have consciously left this out, is the third element of the internal market jigsaw – the Court's approach to positive integration, particularly to the competence of EU institutions to regulate the market in order to remove obstacles to free movement or appreciable distortions of competition. Still, the book's clear and detailed reasoning with its logical structure make it a good read.

Tamara Perisin, University of Zagreb

Andrew Jordan, **Dave Huitema**, **Harro van Asselt**, **Tim Rayner**, and **Frans Berkhout** (eds). *Climate Change Policy in the European Union: Confronting the dilemmas of Mitigation and Adaptation?* Cambridge: Cambridge University Press, 2010.

This useful volume has three stated aims: to describe policies related to climate change in the European Union, as they are and as they have developed over time; to examine the underlying dimensions of choice that gave rise to these policies; and to explore alternative scenarios for further development of policies over the next 10 to 30 years.

It is on the first of these aims that the volume provides its most significant contribution, a through description of current policies, their historical development, and their institutional setting. Early chapters provide concise introductions to EU institutions, major landmarks of their development, and the major contending theoretical accounts of them – sufficient to bring readers up to speed on the EU context. There then follow separate histories of several strands of climate-related policy – policies for burden-sharing among member states, renewable energy, the greenhouse-gas emissions-trading system, and adaptation to climate change. The accounts are admirably cogent, providing a great deal of political, institutional, and historical detail that has not previously been offered in any single, widely available source. They cover the period from the first emergence of climate change as a policy issue in the 1970s, through preparation of the EU negotiating position for the Copenhagen climate meetings in December, 2009.

The volume's second aim, examining underlying choices, relies on a simple conceptual scheme that identifies six dimensions of policy choice – what problem to address; at what level to act; when to act; what specific action (policy) to adopt; how to distribute costs and benefits; and how to implement and enforce policy choices – plus five "paradoxes" of EU policy-making that complicate choices on these six dimensions. The six dimensions of policy choice are used to organize the interpretive sections of the chapters on specific policy areas. This approach gives the collection an unusual degree of organizational consistency and conceptual coherence for a multi-author edited volume, but it is unclear how much benefit beyond this the scheme provides. The taxonomy does not offer much conceptual traction, and its intended uses in the scheme of the whole book are not entirely clear. The six dimensions of choice are in some chapters identified as "governance dilemmas," but it is not clear what it means for them to be dilemmas, beyond the obvious observation that any significant policy choice is difficult. Similarly unclear is the relationship of these choice dimensions to the five "paradoxes" of EU governance –a set of loosely stated contradictions between the declared aspirations of EU climate policy and its realization – which appear in the volume's introduction and conclusion, but of which little use is made in the analysis of specific policies.

The third aim, exploring future policies, is developed in two chapters. One provides a methodological background on scenario methods and policy exercises, while the other reports on a preliminary use of these methods to structure discussions with two groups of EU policy participants and experts. The discussion is stimulating and the exercises appear to have provoked a useful discussion. One of the most interesting aspects of the project, however, was its aspiration to draw mutually enriching connections between the analysis of past policies and the exploratory examination of future ones, and this is only a little realized. One hopes the authors will take this aspect of the work further.

Two further brief critical notes: First, the discussions of policy challenges do not always distinguish clearly enough between issues related to the specific EU institutional setting, and general characteristics of climate-change policy that manifest in multiple domains. A prominent example is the discussion of the diffuse treatment of adaptation and its problematic separation from mitigation: this is characteristic of climate policy virtually everywhere, not just in the EU. Second, the chapter on water policy – while a fine history of EU policy on this issue – fits rather awkwardly in the volume, since one of its major points is that considerations of climate change have played virtually no role in this policy thus far, although they clearly ought to. These and other nits aside, this is a useful volume. It will be a particularly valuable read for scholars and practitioners of climate-change policy who need a one-stop presentation of the institutional, political, and historical complexities of these policies in the EU.

Edward A. Parson, University of Michigan

Christian Twigg-Flesner (ed.). *The Cambridge Companion to European Union Private Law.* Cambridge: Cambridge University Press, 2010.

Well into its teens by now, the private law of the European Union has its own companion. The very appearance of a publication of this sort is indeed a coming-of-age moment for a discipline whose existence was hard to fathom until the 1980s. Member states' judges and lawyers have come full circle, from resisting European Union private law as an intrusion into a quintessentially national sphere, to embracing it as a natural consequence of market integration. The question is no longer whether or not to approximate the private laws of the member states. The question is *how* to do it. This remarkable shift in attitude is the result of relentless efforts spearheaded by the Commission in the name of a seamless market. The fact that legal scholars throughout the Union have collaborated, in different ways but with reliable enthusiasm, to the study of private law harmonization is a function both of ear-

marked EU funding and of the socio-cultural pay-offs of the enterprise: the rejuvenation of the disciplines of comparative law and legal history, the opportunity to rationalize and modernize obsolete branches of economic law and, for some at least, the chance to engage in a long overdue discussion on the distributive effects of private law rules and standards.

This Companion, while concise and austere by design, partakes of the richness of the scholarly debate built around European private law over the last two decades. The word 'politics' appears sparingly in the book, but strong opinions run through text and subtext of the contributions. At least four different loci of disagreement are apt to polarize the discussion.

First, the politics of federalism: in the legal tradition of continental Europe, a centralized private law regime is as essential to sovereign unity as a common flag or currency; on the other hand, it is not clear that the production of EU-based private law finds adequate legal basis in the EU Treaty; and in so far as national culture is tied to private law making, full harmonization might be neither possible nor desirable.

Second, the question of democratic input and institutional competence: what role for national legislators in a process of harmonization dominated by the Commission, by neo-corporatist bodies and by a closely knit academic network? And what role for courts, domestic and European, in the development of EU-made private law?

Third, the issue of distributive justice: all agree that European Union private law performs a regulatory function, but opinions range widely when it comes to deciding whether and how far to protect weaker parties against abuses of private autonomy, or to which extent to accommodate environmental, cultural and socio-economic concerns in the interstices of private law rules.

Fourth, the relevance of internal coherence in private law regimes: to some, making private law at the EU level endangers the fundamental taxonomies of member-state legal systems; to others, the ongoing disintegration seems unavoidable, the added layer of complexity manageable, and the new possibilities exciting. Attentive readers will recognize these themes in each contribution, no matter how technically phrased or buried under detail.

In line with German private law tradition, the book begins with contributions that are meant to be general and theoretical; the second half of the volume is instead focused on different branches of private law harmonization (contracts, torts, property, competition, and narrower subjects such as travel law). As a matter of fact, large questions of taxonomy, purpose and political impact are nicely sprinkled throughout the book, and the promised partition between general and special contributions is hardly visible. The book must therefore be read as a whole – a task made possible by the clear and engaging prose of all the contributors and by the relative brevity of the volume.

Diligent readers will be rewarded by the richness of the resulting picture, but they will have by no means exhausted the field (the *further reading* section is an essential part of the volume). European Union private law has outgrown its infancy, but it has certainly not achieved maturity, and no book at this stage can keep up with the ongoing changes in this realm. The Commission's green paper of July 1st 2010, building upon extensive academic work, points at several possibilities for development, which may change the status of European private law in the near future. Choices must and will be made in matters of process. Further harmonization may be pursued by binding laws or with optional instruments, sector by sector or via horizontal measures, by progressive accrual of grass-root practices or by centralized command. Substantively, multiple directions are on the table as well. Given these vagaries, the private law of the European Union may soon need new companions.

Daniela Caruso, Boston Unversity

EUSA members interested in reviewing recent EU-related books, please contact the reviews editor:

Dr. Amie Kreppel
Center for European Studies
3324 Turlington Hall PO 117342
University of Florida
Gainesville Florida 32611-7342, USA
Kreppel@ces.ufl.edu

Publishers should send two review copies of books directly to Dr. Kreppel.

EUSA Lifetime Membership

What is it?
Simply put, it is a one-time dues payment to EUSA of US$ 1500.

What does it include?
The Lifetime Membership includes all regular membership benefits for life. Among those benefits currently are subscription to the quarterly EUSA Review, receipt of occasional EUSA monographs, discounted registration rates at the EUSA International Conference, subscription to our e-mail List Serve, and the opportunity to join EUSA interest sections.

Are there any other benefits?
By making a one-time membership payment, you not only avoid the task of renewing each year, but gain the twin advantages of securing lifetime membership at today's dollar values and avoiding future dues increases.

Who should do this?
Any person wishing to support the endeavors of the European Union Studies Association—the fostering of scholarship and inquiry on the European integration project. For U.S. taxpayers, an additional benefit is a receipt for a one-time $500 charitable contribution to EUSA, tax-deductible to the extent allowed by law (reducing your tax liability for the year in which you become a Lifetime Member).

How do I become a Lifetime Member?
Simply mail your check, in US$ and made payable to "EUSA," to the European Union Studies Association, address given at right. (We can not accept lifetime membership payments by credit card.) We will send you a receipt and letter of acknowledgment.

EUSA Review

The EUSA Review (ISSN 1535-7031) [formerly the ECSA Review] is published four times yearly by the European Union Studies Association, a membership association and non-profit organization (founded in 1988 as the European Community Studies Association) devoted to the exchange of information and ideas on the European Union. We welcome the submission of scholarly manuscripts. Subscription to the EUSA Review is a benefit of Association membership.

Editor: Amie Kreppel
Book Reviews Editor: Amie Kreppel
Managing Editor: Joseph Figliulo

European Union Studies Association ®
415 Bellefield Hall
University of Pittsburgh
Pittsburgh, PA 15260 USA
Web www.eustudies.org ®
E-mail eusa@pitt.edu
Telephone 412.648.7635