

EU Collective Labour Law edited by Beryl ter Haar and Attila Kun [Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2021, 468 pp, ISBN 978 1 78811 638 1]

Acceptance Date November 20, 2023; Advanced Access publication on November 30, 2023.

This new collection featuring leading labour law scholars from across Europe takes as its starting point the question of whether there is Collective Labour Law at the EU level at all, given that the EU has no explicit competence in many of the key areas of what we can define as collective labour law (eg, freedom of association, and the right to collective bargaining and collective action). This fundamental question, in itself, certainly justifies, as the editors point out, a collection such as this, which aims to tease out what features such a system might incorporate.

The collection approaches this issue in a four-part structure. Part I outlines some key conceptual issues. In particular, Ales (in Chapter 2) and Porta and Sachs (in Chapter 3) offer direct (if nuanced) answers to the fundamental question interrogated by the collection. For Ales, one can conclude that EU Collective Labour Law does exist but to the extent that we consider it as ‘*a vertically and horizontally combined (national and supranational) embedded jurisdiction*’ which is dependent upon ‘the kind and extent of the recognition by the pre-existing legal orders, considering the combined nature of the supranational jurisdiction’ (p. 55; emphasis in the original). The consequence of this (and the vertical aspect, in particular) is to put the Court of Justice at the very heart of EU Collective Labour Law; as many of the following chapters address (in the context of analyses of case law on, *inter alia*, collective action, competition law and social dialogue), this has the effect of creating significant unpredictability for the nature, and indeed existence of EU Collective Labour Law. For Porta and Sachs there is also an identifiable EU Collective Labour Law, but one which lacks any *theory of representation* to support it. By using the example of European Works Councils (EWCs), the authors demonstrate how the architecture of the EWC Directive promotes a *procedural* perspective on employee representation (leaving much to Member States’ discretion). However, as the authors point out, there are EU-level constraints that contribute to shaping national collective labour laws and the transnational EWC institutions (notably, the teleological interpretation by the Court of EU legal texts), which do contribute to the effectiveness of this EU procedural concept of collective representation. The authors conclude by optimistically (but cautiously) outlining that a certain idea of the ‘collective’ is gradually taking shape at the EU level.

Looming large over these contributions, however, is the decision in the *EPSU* case (Case C-928/19 P), delivered in September 2021 (presumably, just as the collection was ready to go to press). In this case, the General Court (and, on appeal, the Court of Justice) upheld the Commission's decision *not* to submit a proposal to the Council for the implementation of the 'General Framework for informing and consulting civil servants and employees of central government administrations', an agreement concluded by the relevant Social Partners on the basis of Art. 155(1) TFEU. In essence, the Court weighed a clash between two fundamental principles of the EU; the sole right of legislative initiative of the Commission, and Social Dialogue (and Social Partner autonomy) as an essential part of EU social policy and law-making. The Court came down firmly in this case on the side of the Commission, essentially affirming that the Commission and the Council are not bound to give effect to a joint request of the Social Partners, notwithstanding that the promotion of Social Dialogue is a fundamental EU objective.

This decision features significantly in Part II of the collection, which looks at Social Dialogue. Chapters 8 and 9, by Copeland and Munkholm, are complementary in that Copeland contextualizes Social Dialogue and outlines, in particular, what he sees as the drivers behind the relatively limited achievements of the European Social Partners (the global free movement of capital and resulting competition between workers, the diverse and non-aligned motivations of the partners and the divisions between the Member States in the Council). Munkholm's chapter (one of the highlights of the collection) follows on from this in extensively, but clearly, outlining the Social Dialogue procedure set down in the TFEU, and, in a dynamic closing section raises, and reflects on, some fundamental issues relating to Social Dialogue, including questions as to appropriate representativeness, conceptions of autonomy, the scope of the Commission's power (in the light of *EPSU*, in particular) and the question of repeal or revision of existing Social Partner framework agreements (and consequent Directives).

Part III of the collection looks at an array of issues to do with employee involvement and collective bargaining. This involves analysis of the role of employee representatives in terms of, *inter alia*: information and consultation rights (a careful analysis of Directive 2002/14, and its implementation problems in a number of Member States, by Brameshuber in Chapter 15); acting as EWC members (an interesting combined legal and industrial relations analysis by Senatori and Rauseo in Chapter 16, including a case study of the EWC at ENEL) and; collective redundancies (Coelho Moreira and

Carvalho Martins in chapter 21). Chapter 22, by Pisarczyk and Wieczorek, is another highlight using the issue of transfer of undertakings (and the resulting implications of the transferred employment relationship) to interrogate fundamental tensions between balancing protective collective labour rights, on the one hand, and, on the other, the freedom to conduct a business (especially in the context of transnational transfers), with a careful and forensic analysis by the authors of EU legislation and case law. This section of the book also looks at the interaction (and tension) between labour law and collective labour rights at the EU level and other key areas of the EU legal order such as equality law (Chapter 24), competition law (Chapter 23) and company law (Chapter 20).

Part IV is the concluding section, with an overview chapter by Petrylaitė (which, in fact, would have served as a lovely opening to the book) and an appropriately forward-looking chapter by Novitz, reflecting on some potential implications of Covid-19 and Brexit, and emphasizing the need (still ...) for the EU to present its ‘human face’.

As this attempt at an overview demonstrates, the book is richly diverse in terms of subject matter, perspective and contributors (a mix of disciplines, as well as contributions from labour judges, labour inspectorates and representatives of international labour organizations). Unfortunately, this is not always a strength. Reading the entire volume is at times rather frustrating. The editors are clear in the introduction that the ‘book as a whole does not imply a normative, uniform position regarding whether, to what extent, or how EU Collective Labour Law should and/or could influence labour law at EU as well as national level (p. 18)’. This is absolutely fair, and it may be impossible in such a collection to adopt a different approach, but there is a sense that a tighter structure, grouped around a smaller number of themes, might have produced a more coherent whole; less may well have been more here. As it is, the collection feels a little scattered. This is true from a methodological standpoint also. There are various excellent sections of the collection, which adopt, at various points, a legal analysis, an IR perspective, a practitioner angle and which use different approaches (such as the case study, noted above). On their own, these contributions generally work very well; they do not always hang together as a coherent collection. The editors point out in the introduction that the book could be used as a student textbook, as a guide for practitioners or (in parts) as a research handbook; unfortunately, the reader is left with a feeling that it might have been better to narrow the target audience and produce a more focussed outcome. This applies similarly to the internal structure of the chapters, some of which

stick more closely to the ‘recipe’ outlined in the Introduction than others; a general introduction to the particular issue of Collective Labour Law, followed by sections which are more contemplative, reflective and analytical.

Such a criticism might be overlooked as being overly subjective (which is undoubtedly the case), and, to be fair, it seems to be the intention of the collection that readers will dip in and out of sections and chapters of interest. However, it is also a little disappointing that the individual chapters do not engage overmuch with some of the key themes (‘megatrends’) outlined in the Introduction as being key challenges for EU action, and to which Collective Labour Law should be centrally connected. Leaving aside the Covid-19 crisis (which was in its infancy at the time the contributions were being finalized), there is no great engagement in the chapters with digitalization (a short reference to platform work in Jaspers’ chapter on competition law, notwithstanding) or with climate change. Given the immense implications for labour (and labour law) of these transnational challenges, this is surprising.

Ultimately, however, the quality of the contributions (including the Introduction by the editors) more than justify a hearty recommendation of the collection, which is fizzing with ideas, and could (and should) spawn many imitators and (perhaps) sequels.

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<https://doi.org/10.1093/indlaw/dwad031>