

The notion of ‘social dumping’ is controversial. It is closely related to the European Single Market and describes how a low level of social protection and low labour standards in national law enables providers to offer their goods and services at lower costs. It is questionable whether this is a regular consequence of the Member States’ right to regulate their social security systems autonomously or whether it constitutes illegitimate competitive advantages, giving way to a ‘race to the bottom’ in national social security legislation. Jan Buelens and Marc Rigaux have edited a collection of papers that were presented at a symposium on ‘Social Competition and Social Dumping’ in Antwerp in 2014. The book includes both scientific articles and field studies giving an insight into the practical consequences of different social standards, which are discussed under the umbrella of the fundamental rights of workers.

The first contribution by Marc Rigaux focuses on the right to human dignity, which the author regards as being endangered by European law. The author presents several examples of how the Single Market has changed and influenced social standards in a way that had not been intended. While labour law and social security law originally had the function of counterbalancing the negative effects of competition on the weakest members of society, it has now become an instrument of the commodification of workers by giving employers the opportunity to hire the cheapest available workforce. Moral aspects, like the adequacy of the income to make ends meet, seem to be ‘lost in competition’. The author describes how this leads to social exclusion and a violation of the workers’ human dignity, since they are unable to opt out of this system: it is either ‘accept bad working conditions or accept unemployment’. Although the author’s findings are very much to the point, the analysis is based on the assumption that EU policy is, by definition, neo-liberal. However, there is no homogenous concept of neo-liberalism and the author fails to outline its basic principles and thus to prove that his assumption is correct. The EU aims to secure decent standards of living

and EU law contains a broad range of rules – from labour protection standards to equal treatment provisions – promoting this end. However, crucial issues like wages and collective agreements are excluded from EU legislation. Hence, one can question whether it is the European legal framework alone that leads to a loss of ‘social morale’ and a growing disrespect for workers’ rights, or whether the Member States do their bit, too, by refusing to transfer their legislative competences to the supranational level in this respect.

Wolfgang Däubler presents a range of elaborated ideas on how to improve the evidently weak position of workers in the Single Market. He proposes strengthening trade unions, which have become inflexible and unwilling to accept new forms of collective action, by establishing a larger network that gathers information on employers who abuse legal provisions and eventually organises boycotts and other actions. Besides, he stresses the role of public opinion by referring to the *Schlecker* case, a chain of German drugstores that had thwarted the establishment of works councils and gave in after receiving bad press. In this regard, it is advisable to consider the use of social media for organising protest against unfavourable working conditions.

In the next chapter, Buelens and Michielsen return to the question of whether the European legal framework promotes social dumping. They explain their findings by referring to the road freight transport sector, which is not embedded in the framework of fundamental freedoms, but is regulated in a separate chapter of the TFEU. The authors refer to the case law of the ECJ on the posting of workers (*Rush Portuguesa*, *Vander Elst*, *Final Arte*, *Viking* and *Laval*), who are often hired by letterbox companies or through temporary work agencies, where the court has tried to find a balance between the free movement of services and workers’ rights. They show how fundamental freedoms can be restricted for reasons of public interest, such as the protection of workers or public safety. However, they argue that wage competition is accepted by the ECJ. The chapter concludes with some proposals for counteracting social dumping, ranging from the upward harmonisation of fiscal, labour and social security law to a better monitoring of employers. Of course, this proves the need to take into account the principle of conferred powers: it is the Member States’ responsibility to confer those competences on the EU institutions. This contribution relates to the chapter by van Overbeeke, who advocates a reform of the conflict-of-law-rules, especially regarding the transportation sector: instead of using the ‘habitual workplace’ to determine the applicable law, she pleads for the concept of ‘actual employment’ or for a separate legal system for the transportation sector instead of referring to Rome-I, which would include some overriding mandatory rules following the example of the Posting of Workers Directive.

Verschueren outlines the territorial scope of application of labour law, showing the interaction between labour law, which is still an exclusive national competence, private international law and the freedom of movement of workers. The author shows how the free movement of workers is adversely affected by the free movement of services. He points out that it is the task of the Member States – in the case of posting: the receiving

state – to monitor the compliance of employers with the core labour law provisions as established in the Posting of Workers Directive. However, their competences in this respect are restricted by the rule of reason, which had been established by the ECJ, although the fight against social fraud is also a legitimate aim for restricting free movement. The author argues for limiting the negative impacts of competition – not by harmonising national law but rather by giving more room to the Member States in regulating which labour law regime should be applicable.

In their contributions, Kresal (Chapter 5) and Roda (Chapter 8) favour a human rights approach to competition and the Single Market. They emphasise the need to de-commodify workers, which could be achieved by strictly applying the legally binding human rights that are laid down in the Charter of Fundamental Rights of the European Union, e.g. the right to fair working conditions. Based on these rights, it becomes clear that labour law is not to be regarded as an obstacle to the Single Market but rather as a means to realise human rights. It does not just establish a set of minimum standards; instead ‘decent work’ becomes the overall aim and means of international competition. Thus, one can question the economic system, if it does not produce decent standards of living rather than blame labour law for restricting economic interests. In conclusion, Kresal argues for common minimum wage standards, a reduction in working time, a stronger participation of the workforce and transnational collective bargaining. Her plea is ultimately oriented towards a fundamental change in primary law and a new allocation of competences within the supranational system of the European Union.

Balandi focuses on the role of public authorities in supplying services. This can be limited by either privatising the supply of services or by cuts in public expenditure, which lead to a stronger engagement of private actors. In this respect, social dumping can occur as a result of attempts to reduce costs: private employees may receive less favourable treatment, other forms of employment – like internships – can be abused, undeclared work may increase or collective agreements can be concluded at a local level in order to circumvent national collective agreements. What conclusion should be drawn, however, remains unclear.

The book concludes with three ‘testimonies from the field’, i.e. one country report from Austria and two from Finland, giving a short overview on legislative mechanisms for fighting social dumping. All this is very interesting to read. However, the order of the contributions in the first part of the book seems arbitrary, as does the choice of countries in the second part. It is not clear why Finland and Austria should be taken as examples of the other Member States and certainly, they are not the only Member States that have had the fight against social dumping on their agenda. Besides, it would have been useful to have a summary, categorising all the articles in the context of social dumping in order to be able to draw some overall conclusions for future social policy. One of the weaknesses of the book is the frequent criticism of the neo-liberal ideology of the EU, which seems a bit one-sided: both the concept of neo-liberalism and the outline of European primary law deserve a closer analysis of

their social dimensions instead of repeating stereotypes. This would probably make the book more appealing to advocates of free competition who could certainly gain a lot from the insights in the book.

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