

EU integration and legal harmonisation:

The 28th regime as an innovative policy tool

- Overview of instruments: Open method of co-ordination, recommendation, directive, regulation
- The institutional setting and the decision making-processes after the reform treaty
- Law making at the EU level – The example of Employee Financial Participation

(2 hours per week) 6/9 ECTS
Tuesdays 11:00 am - 1:00 pm
Venue: GD 05 (Start: 16 October 2012)
MES modules: ZB Wirtschaft, Recht, Politik, WPM 1, 6
Lecturer: Prof. Dr. iur. Jens Lowitzsch

This course is the continuation of the seminar in English language (Summer 2012) – for new participants an introductory session at the beginning of the semester will give an overview to the topic.

In the European Reform Treaty of Lisbon, entered into force on 1 December 2009, the EU for the first time expressly commits itself to the European Social Model as one of the pillars of its policy. Summarizing the alterations introduced by the Reform Treaty in the field of social policy the seminar specifically addresses policy instruments and the associated decision-making processes.

The example of employee participation, in this case specifically of a European concept for employee financial participation (EFP), will be used to develop options for implementing similar concepts in the political sphere. The PEPPER IV Report presented conclusive evidence for a significant rise in EFP in the EU-27 between 2000 and 2005. The most recent 2010 round of cross-country surveys now confirms these empirical findings noting that the expansion of EFP in Europe continues in spite of the financial crisis, albeit at a much slower rate.

Law making at the EU level – Financial Participation, a Challenge for Legal Policy

Best practice cases show that a stable legal framework supporting EFP ensure sustainable employee share ownership (ESO). By contrast, less successful cases clearly show that discontinuation of political support leads to a rapid decline and indicate that the stability of political support is more important than the volume of incentives. The "Building Block Approach" to employee financial participation presented in this context takes into consideration existing national participation models and best practice with regards to both the type of participation scheme and the incentives that may be granted based on the principle of voluntariness.

As an alternative to the creation of a European recommendation or directive on financial participation, the application of existing national company law rooted in the 2nd Council Directive on Company Law is looked upon in the context of the "Open Method of Co-ordination" (OMC). Further, the amendment of existing European Company Law, i.e., the European Company Statute is considered.

Focus: the 28th regime as an alternative tool for EU legal integration

Given the above described difficulties in finding a solution that balances both European and national needs, the most feasible way seems to be the so-called 28th regime. Such an optional European EFP regime would be conceived as a "2nd Regime" in each Member State, thus providing parties with an option between two regimes for EFP schemes, one originating in national legislation and one – i.e., the 28th regime – in European legislation.

The 28th regime would be defined at EU level and enacted by EU instruments, i.e., a EU regulation. At the same time, containing provisions of mandatory law it would ensure a high level of protection for employees, similar to those granted by the EU or national mandatory rules. Last but not least, a crucial point is to limit the option of the parties to a choice of the entire instrument thus avoiding the possibility of "cherry-picking" or a "race to the bottom" with regards to quality standards. Of course, even as an optional sectoral instrument the 28th regime requires a set of general principles of private law.

Language: The working language of the seminar will be English.

Participation requirements, performance test and credits:

Proficiency in English.

ECTS: 6/9. Regular attendance; presentation (5-7 min.) of the term paper concept by mid-November; first draft of the term paper by the end of November; submission of the final term paper by the end of the semester.

For registration, please contact: kelso-professorship@europa-uni.de

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Literatur – register for Dropbox:

Jens Lowitzsch, Neuausrichtung der Sozialpolitik im Europäischen Reformvertrag Umsetzungsprobleme am Beispiel der Mitarbeiterbeteiligung, ZESAR 5-6/2010.

Jens Lowitzsch et al., Financial Participation for a New Social Europe [DE / EN / FR / IT / PL / RU], Berlin/Rome 2008/09, 144 p.

Jens Lowitzsch, Iraj Hashi et al., Employee Financial Participation (EFP) in Companies' Proceeds, Study for the European Parliament, Sept 2012.

Jens Lowitzsch, Iraj Hashi, Richard Woodward (Eds.) , The PEPPER IV Report: Benchmarking of Employee Participation in Profits and Enterprise Results in the Member and Candidate Countries of the European Union, Berlin 2009, 250 p.

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