



# University of Oslo

University of Oslo Faculty of Law Legal Studies

Research Paper Series

No. 2013-29

Stein Eyju

Professor, University of Oslo, Faculty of Law

**Introducing: Cross-Border Services, Posting of Workers, and  
Multilevel Governance**

# **Introducing: CROSS-BORDER SERVICES, POSTING OF WORKERS, AND MULTILEVEL GOVERNANCE**

– a book from the research project *FORMULA* – Free movement, labour market regulation and multilevel governance in the enlarged EU/EEA – a Nordic and comparative perspective.

*FORMULA* is an international, interdisciplinary project devoted to studying EU/EEA labor market regulation in the context of cross-border provision of services involving in particular posting of workers. The book now published presents up-dated contributions from the project's second phase focusing on national responses to EU regulation and ECJ case law concerning posting of workers, spearheaded by an in-depth, comprehensive study of case law developments at the EU level pertaining to cross-border movement of workers and services and the posting of workers. This penetrating study is followed by country studies on national responses in seven countries, Denmark, Germany, the Netherlands, Norway, Poland, Sweden, and the UK. An in-depth study of the exceptional political process resulting in the EU Services Directive added to by a legal analysis of that Directive in a labour law context round off a set of novel studies adding new perspectives to the European and international debate on the issues concerned.

In this paper, reproducing the book's Chapter 1, Professor Stein Evju, Professor of Labour Law in the Department of Private Law, University of Oslo, and Director of the *FORMULA* project outlines the background of the project and the contributions included in the book, including its Table of contents and information on the contributors.

# The FORMULA Project: Introduction and Backdrop

*Stein Evju*

## 1. Introduction

The object of this opening chapter is in part to introduce the FORMULA project and its status at an intermediate stage of the project, at the second of the three phases of the project as a whole. It is also intended to introduce the contributions in the following chapters and briefly to point ahead to the results of the project's third and final phase, which are due to be published in a next book.

The FORMULA project has been devoted to studying the development and interplay at the European and national levels of the regulation of labour relations in the context of cross-border provision of services. Part of the background for and platform of the FORMULA project was the increasing focus on cross-border service mobility in the wake of the EU enlargements in 2004 and 2007, epitomised by the strife over the 'Bolkestein proposal' and a Services Directive,<sup>1</sup> and the highly controversial cases – then pending – before the European Court of Justice (ECJ)<sup>2</sup> in *Viking Line*<sup>3</sup> and *Laval*<sup>4</sup>. In this regard the elaboration of the project anticipated imminent events. The ECJ's decisions in those two cases were handed down right at the start of the FORMULA project period, whereas the Services Directive was adopted in 2006 to be implemented by late 2009. The Directive, the ECJ decisions, and the subsequent developments have obviously influenced FORMULA project issues and research efforts. And not just that. It is no exaggeration to say that the research based literature on topics such as those at the centre of the FORMULA project virtually exploded after the ECJ's decisions in *Viking Line* and *Laval* and the corollaries to the latter, the Court's 2008 decisions in *Rüffert*<sup>5</sup> and

---

<sup>1</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [2006] OJ L 376/36.

<sup>2</sup> Now the Court of Justice of the European Union (CJEU). As the case law and the time period involved here precede the changes following the entry into force of the Lisbon Treaty ([2007] OJ C 306, in force 1 December 2009), here I mainly remain with the previous appellations and abbreviations, also for the Treaties concerned.

<sup>3</sup> Case C-438/05 *International Transport Workers' Federation, Finnish Seamen's Union v Viking Line ABP, OÜ Viking Line Eesti* [2007] ECR I-10779.

<sup>4</sup> Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet* [2007] ECR I-11767.

<sup>5</sup> Case C-346/06 *Rechtsanwalt Dr Dirk Rüffert v Land Niedersachsen* [2008] ECR I-1989.

*Luxembourg*,<sup>6</sup> jointly referred to as the ‘Laval Quartet’. Thus the FORMULA project is set squarely at the centre of an ongoing and still vivid debate at European level and among EU/EEA Member States, in academic research as well as among social partners and EU institutions.

## **2. The project, aims and methods**

FORMULA – short for ‘Free movement, labour market regulation and multilevel governance in the enlarged EU/EEA – a Nordic and comparative perspective’ – is an international and interdisciplinary project. In general terms, FORMULA is focused on legal regulation, legislative developments and industrial relations structures and actors, and the interplay between them in a national, supra-national and multilevel governance context, in the field of cross-border provision of services involving cross-border movement of workers. This implies that the aims and methods are not just those of legal science. They encompass also social science perspectives and research, and the interplay between perspectives and methodological approaches is a key element in the project, generally and with regard to the comparative analyses that are also a central part of the project.

In more specific terms, as set out in the project application and description, the aim of the comparative analyses is to develop new, applicable knowledge about:

- 1) How the interplay between extension of the EU/EEA market, growth in cross-border services, supra-national regulations and national responses influence the evolving multilayered regime of labour market regulation, industrial relations and interest intermediation in the EU/EEA; this includes national reactions to and influence on EU legislative initiatives and different forms of adaptation in transposition.
- 2) The impact of these processes and of the application of the Posted Workers Directive and the Services Directive in particular, on the national regimes of labour market regulation in the Nordic countries, Germany, Poland, and the United Kingdom; and
- 3) the aims, strategies, and institutional channels through which the political authorities and the social actors in these countries try to influence EU policies and regulations in this field.

Through (1)–(3) the overriding ambition is to:

- 4) deepen the understanding of how interacting political, legal, socio-institutional and economic logics influence the interplay between the different institutions and organized actors shaping supra-national decision-making and national adjustments in the emerging multilayered European polity, with particular regard to the formation, adaptation and application of legal regimes in the labour market.

---

<sup>6</sup> Case C-319/06 *Commission of the EC v Luxembourg* [2008] ECR I-4323.

Also, FORMULA is a problem-driven project; it rests on a ‘grounded’ approach to the research issues. Thus the project did not set out to employ or test a certain theory but is rather concerned with facts and their impact. Theory-driven approaches are not fruitful to the issues and objectives with which the FORMULA project is concerned. Whereas one may conceive of various actor or interest perspectives that might be employed in analysing the different issues and conflicts with which FORMULA is concerned, the foundational perspective of the project is that of labour law and industrial relations. Regulating transnational labour is a process and the project is concerned with how this emerges in a multifaceted environment. The protection of labour rights in international human rights is another foundational element. The FORMULA project is not aimed at revising or rewriting human rights conventions or case law pertaining to them. Part of the project’s object is rather to confront and assess EU legal developments within the project’s remit with international human rights norms. A brief sample is given later in this chapter.

For the project as a whole, the chapters in this book stem from a stage which was a step on the way and thus were not aimed at drawing firm conclusions. They are, rather, part of the ‘groundwork’ forming the platform for the third and final stage of the FORMULA project. Its first phase, concluded in 2009, was devoted to developments at EU level. The second phase, concluded in September 2010, was devoted to developments at national level in the states covered by the project – Denmark, Finland, Norway and Sweden, and Germany, the Netherlands, Poland and the United Kingdom,<sup>7</sup> and in addition to undertake foundational studies of the elaboration and process of adoption of the Services Directive. In this introductory chapter I shall not venture to summarize the developments in these areas; that is a too far-reaching task to be undertaken here.<sup>8</sup> The chapters that follow speak better for themselves.

In this introduction I limit the presentation to some key issues that form the backdrop against which the topics that are dealt with in the following chapters are set and then briefly add some observations pointing ahead to the third and final phase of the FORMULA project.

### **3. Points of departure – private international law and national autonomy**

In the field of cross-border provision of services and conjunct movement of workers a fundamental part of the background is that of private international law, or conflict of laws. Despite its appellation, private international law at the outset is *national* law, regulating conflicts of laws and matters of jurisdiction in transnational contexts. Within the EU a certain harmonization was achieved with the 1980 Rome Convention (now

---

<sup>7</sup> All countries are represented in the FORMULA group of researchers; its members, who are more than the contributors to this volume, are presented at the project website, at [www.jus.uio.no/ifp/english/research/projects/freemov/members/](http://www.jus.uio.no/ifp/english/research/projects/freemov/members/).

<sup>8</sup> Working Papers from phase 1 and phase 2 of the project are available at the FORMULA website, [www.jus.uio.no/ifp/english/research/projects/freemov/index.html](http://www.jus.uio.no/ifp/english/research/projects/freemov/index.html), under ‘Publications’.

superseded by the Rome I Regulation 593/2008/EC).<sup>9</sup> Simplified, parties to employment contracts are free to choose the applicable law, in other words, which law shall govern the contract. If no law is chosen, the contract is governed by the law of the country where work is ‘*habitually*’ carried out. For workers moving from one country to another, individually or, more importantly, as employees of a service provider to temporarily perform work in another country, this implies that it is the law of the home state and not that of the host state that would apply. The host state can, however, apply mandatory rules of law, that is, rules that cannot be derogated from by contract – now termed ‘overriding mandatory provisions’ meaning ‘provisions the respect for which is regarded as crucial by a country for safeguarding its public interests’; Article 9(1) Rome I.

Within this general setting, national regimes differed quite significantly. Simplifying once more, in one category we can place states with a ‘globalist’ approach, whereby all labour and employment law rules apply also to workers from abroad on a temporary assignment in the host country, the United Kingdom and Poland<sup>10</sup> being primary examples:

It has long been a rule of British law that provided the individual falls within the personal scope of the relevant provision and has worked the relevant period of service, UK employment rights will apply, irrespective of the individual’s nationality and the duration of his or her employment in the UK.<sup>11</sup>

In another category we have states drawing a distinction between mandatory rules, often considered as rules of public law, and private law rules pertaining to the employment contract. Within this category considerable differences exist, however. The notion of ‘*ordre public*’ and the role accorded to norms of that kind in labour market regulation differ widely. This is aptly illustrated by Belgium and France, on one hand, where the larger part of public and private labour law is considered *ordre public*,<sup>12</sup> and on the other hand, Denmark, where contract regulation and contractual freedom predominate.

---

<sup>9</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L 177/6.

<sup>10</sup> For Poland this is amply demonstrated by Andrzej Świątkowski’s presentation in Chapter 7 of this volume.

<sup>11</sup> See C Barnard, ‘The UK and Posted Workers: The Effect of *Commission v Luxembourg* on the Territorial Application of British Labour Law: Case C-319/06 *Commission v Luxembourg*, Judgment 19 June 2008’ (2009) 37 *Industrial Law Journal* 122.

<sup>12</sup> On French law see, in particular, N Meyer, *L’ordre public en droit du travail: Contribution à l’étude de l’ordre public en droit privé* (LGDJ 2006); for Belgium e.g. Joined Cases C-369/96 and C-376/96 *Jean-Claude Arblade, Arblade & Fils SARL, as the party civilly liable, and Bernard Leloup, Serge Leloup, Sofrage SARL, as the party civilly liable* [1999] ECR I-8453. The situation in Luxembourg is similar, as illustrated by the *Luxembourg* case (above n 4). – Now Norway also offers an illustration, albeit more narrow and specific, with the Supreme Court decision of 5 March 2013 in the so-called ‘shipyards case’, see chapter 6, section 7.3, this volume.

This was furthered by the fact that the Rome Convention did not define the term ‘mandatory rule’ clearly. The margin for a national appreciation of what should be deemed a mandatory rule was used by the states to continue their different traditions in this field, in particular with regard to the extent to which and the reason why the applicable employment law is set aside by overriding mandatory rules and rules of public policy.<sup>13</sup>

Also, immigration law was employed to curtail labour immigration, including cross-border provision of services, and to protect the domestic labour market by imposing an obligation to pay wages in line with those prevailing, pursuant to collective agreements or otherwise, upon domestic and foreign employers alike. Here, Norway presents a very straightforward example, as illustrated in Chapter 6.

It is easily appreciated that in such varied legal settings uncertainty would be a factor, for service providers as well as for their employees. In the project, we have been able to demonstrate how legislative efforts to harmonise Member States’ law on this ground were initiated by the EC long before the emergence of plans for a single (internal) market. Those specific initiatives did not result, however; they dwindled into nothing and were shelved after the adoption of the Rome Convention in 1980. But we have also shown how those initiatives were brought back into the legislative process and how major features were retained in the drafting of the Posting of Workers Directive (PWD), 1996.<sup>14</sup> The latter legislative process was set in the framework of the single market, implemented in 1992, and was triggered in particular by a key ECJ decision, the seminal *Rush* judgment of March 1990.<sup>15</sup> The Court’s broad *dictum* in that case, seemingly granting Member States virtually unlimited discretion to decide to apply domestic labour law rules to foreign workers employed by a foreign service provider was obviously problematic to reconcile with the tenets of a single market and the Treaty-based freedom to provide services<sup>16</sup> in that context.<sup>17</sup>

In this context the private international law dimension is essential to the issues with which the FORMULA project is concerned. In short, key issues in the project are (i) what wages and working conditions are to be applied to workers who are moving to work (temporarily) in the territory of another Member State, (ii) should the employment relationship of these workers be governed by the law of the host state or the home state,

---

<sup>13</sup> Cf. M Houwerzijl, *The Dutch understanding of posting of workers in the context of free services provision and enlargement: A neutral approach?* FORMULA Working Paper No. 23 (2010), at 5.

<sup>14</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18/1.

<sup>15</sup> Case C-113/89 *Rush Portuguesa Ld<sup>a</sup> v Office national d’immigration* [1990] ECR I-1417.

<sup>16</sup> Then Articles 59 and 60 EEC, subsequently Articles 49 and 50 EC, now Articles 56 and 57 TFEU (Treaty on the Functioning of the European Union [2010] OJ C 83/47).

<sup>17</sup> The issues referred to in this paragraph are discussed in considerably more depth in a contribution in a subsequent book collecting the final papers from the FORMULA project.

or (iii) should terms and conditions of employment partly be regulated by both of the national laws?

#### **4. Restricting national autonomy – ‘positive’ and ‘negative’ integration**

Here is where the Posting of Workers Directive and ECJ case law pertaining to it have fundamentally altered the terrain, retreating territoriality in favour of supra-national EU law. Put differently, the economic has taken precedence over the social – the intended ‘social dimension’ of the single market has had to yield to market freedoms as construed on the basis of Treaty law. This is common ground by now; here I shall briefly recall only the essential features, which are quintessential to the overall perspective of the FORMULA project.

The Posting of Workers Directive does not regulate private international law issues comprehensively but lays down a ‘catalogue’ (or ‘list’) of types of provisions in a host state’s national law that are to apply, coupled with requirements as to their adoption, ‘whatever the law applicable to the employment relationship’ (Article 3(1)). The very essence of this is that the rules thus designated are *mandatory* rules, taking precedence over the worker’s home state law or a choice of applicable law made in the employment contract – save for *more favourable* terms and conditions applying by way of *home* state (or the chosen) law, pursuant to Article 3(7). For example, a Polish service provider posting workers to Norway cannot remunerate work performed in Norway according to Polish provisions on pay if minimum wages are properly set in Norway. In that case, the service provider is obligated to pay its workers at the Norwegian rates.

The Directive was perceived by many at the outset as a *minimum* directive that allowed a host state to impose other types of terms and conditions than those specified in the Directive and also to fix higher standards than such as otherwise obtain in the labour market (subject to not being discriminatory on grounds of nationality). However, the ECJ, considering the PWD in light of Treaty provisions, has emphatically construed EU (Community) law to the effect that Article 3(1) (and article 3(10)) PWD lays down a *maximum* regulation. By the *Laval*, *Rüffert* and *Luxembourg* sequence of decisions the Court has laid down that a foreign service provider *cannot* be compelled to abide by host state provisions beyond the scope of Article 3(1), and within this scope higher standards than those applying as mandatory minima in the national labour market, or the relevant part of it, cannot be imposed. Consequently, for the rest home state law or the employment contract parties’ choice of law will prevail.

Moreover, and more important in the present context, the Court in *Laval* and the joint *Viking Line* decision (on free establishment, Article 43 EC) proceeded to lay down supra-national norms on a point where the EU does not have competence to adopt secondary legislation, that is, on issues concerning industrial action (strike, lockout and so on – cf Article 137(5) EC, now Article 153(5) TFEU). It is a common denominator of the two decisions that the possible recourse by a trade union to industrial action for

the purpose of pressing for the acceptance of a demand relating to employment and terms and conditions is considered a ‘restriction’ under Articles 43, 49 EC. Just the *prospect* of being met with industrial action in the host state as a means for a trade union to impose demands on an employer amounts to a restriction on freedom of movement, at any rate if demands go beyond the scope permitted under Article 3(1) PWD or if industrial action is a means linked to demands for collective bargaining if the outcome is not clearly prescribed in advance or if bargaining may be long-lasting.<sup>18</sup> The Court effectively held that it is sufficient to constitute a ‘restriction’ that a transnational service provider *may* be met by collective action as a means to be forced to sign a collective agreement or to be forced to enter into collective bargaining of ‘unspecified duration’ with a host country trade union. It can hardly be stated more emphatically that the *state of domestic law* as such is a restriction in Community law; a threat to undertake industrial action or the actual implementation of such action is not a prerequisite.

Also in both decisions, the Court paid homage to the right to strike as ‘a fundamental right which forms an integral part of the general principles of Community law’. But this was immediately subjected to the reservation that such a right still must be within the bounds of general principles of Community law, namely those pertaining to the safeguarding of freedom of movement. The exercise of a fundamental right such as the right to take collective action, said the Court, ‘must be reconciled with the requirements relating to rights protected under the Treaty and in accordance with the principle of proportionality ...’, and from that follows, in the Court’s view, ‘that the fundamental nature of the right to take collective action is not such as to render Community law inapplicable to such action’.<sup>19</sup> Thus, having been placed squarely within the reach of Community law the right to take industrial action is immediately subjected to the general principles of ‘justification’ for restrictions on free movement to be permissible. This, in short, is a two-pronged issue. First, the question is for what purposes may collective action be used, or, in the standard language of free movement law, which objectives may constitute ‘an overriding reason of public interest’. The second question is how the *proportionality* test is to be conducted.

Again, I shall not go into any detail on this.<sup>20</sup> It must be noted, however, that the Court’s approach in these cases in principle is nothing new and thus the outcome arguably should not be surprising. That said, there is a strong line of argument that demonstrates how the Court, had it so considered, could have reached different

---

<sup>18</sup> See, in particular, *Laval* (above n 2) paras 91–111.

<sup>19</sup> Cf *Laval* paras 94–95.

<sup>20</sup> For a further discussion see S Evju, ‘Norway’, in R Blanpain and AM Świątkowski (eds), *The Laval and Viking Cases: Freedom of Services and Establishment v. Industrial Conflict in the European Economic Area and Russia*. *Bulletin of Comparative Labour Relations* 69 (Kluwer Law International 2009) 123, 131–133.

conclusions.<sup>21</sup> As regards fundamental rights, however, the same approach as in *Viking Line* and *Laval* is manifested in the *Schmidberger* and *Omega* decisions.<sup>22</sup> Concerning areas in which the EC/EU does not have power to legislate directly, case law demonstrates the same kind of approach to limiting the freedom to regulate by Member States, for example, in the fields of tax law, social security law and pay within the meaning of Article 136(5) EC.<sup>23</sup> And, it may be added, the overall pattern of recent directives prior to the decisions was to subordinate fundamental rights to economic concerns.<sup>24</sup> Nonetheless, as regards industrial action, with its conjunct collective bargaining, the ‘negative integration’ imposed by the ECJ decisions in the ‘Laval Quartet’ is of a far-reaching nature. What matters here is the principled approach of subjecting the lawful recourse to industrial action to market economic considerations, restricting the scope of interests to be pursued and to impose a proportionality standard.

## 5. Topics of the present volume, and pointing ahead

The comments may serve as a backdrop to the following chapters. The cursory observations above touch on developments that are discussed in more detail in the papers that are the body of this book. Concurrently these developments are central to many of the issues being discussed in the third and final phase of the FORMULA project.

In Chapter 2 Erik Sjødin provides a comprehensive, in-depth analysis of ECJ case law involving posting of workers, tracing developments from the very beginning up to and beyond the ‘Laval Quartet’ decisions. This serves as a platform and frame of reference for the studies in chapters 3 to 9 devoted to the various national situations in the countries covered by the FORMULA project.<sup>25</sup> The common, overarching focus of these contributions is on the individual national regimes being confronted with the Posting of Workers Directive and the implementation of the PWD into domestic law, and subsequent reactions and responses to the developments at the EU level with regard primarily to the ‘Laval Quartet’ case law of the ECJ. Issues pertaining to the Services Directive are also included, however more cursorily. The different presentation, as well as that in Chapter 11, vividly demonstrate how national responses to the Posting of Workers

---

<sup>21</sup> See for an in-depth discussion B Bercusson, ‘The Trade Union Movement and the European Union: Judgment Day’ (2007) 13 *European Law Journal* 279.

<sup>22</sup> Case C-112/00 *Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich* [2003] ECR I-5659; Case C-36/02 *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn* [2004] ECR I-9609. See also Case C-265/95 *Commission of the European Communities, supported by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland, v the French Republic* [1997] ECR I-6959.

<sup>23</sup> See on the latter Case C-307/05 *Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud* [2007] ECR I-7109.

<sup>24</sup> See S Fredman, ‘Transformation or Dilution: Fundamental Rights in the EU Social Space’ (2006) 12 *European Law Journal* 41, 48.

<sup>25</sup> With the exception, for pragmatic reasons, of Finland.

Directive and, later, to the ‘Laval Quartet’ case law vary according to national situations and traditions. Concurrently, differing interpretations and views on the impact of that case law surface in the course of the individual discussions.

The two final chapters 10 and 11 turn specifically to the Services Directive, discussing the highly controversial ‘Bolkestein proposal’ and the equally controversial further genesis of this particular piece of EU secondary legislation. The two chapters however rest on different approaches. In chapter 10, Jon Erik Dølvik and Anne Mette Ødegård present a ground-breaking political science and sociology study of the legislative process and the role and influence of the different actors involved, and discusses the possible lasting effects of such factors on legislative decision-making in the EU context. In the final chapter, Monika Schlachter and Philipp Fischinger provide a penetrating analysis of the initial ‘Bolkestein proposal’ and the eventual Directive as adopted from a legal perspective, concluding her presentation by discussing its relation to the legal issues otherwise pertaining to the posting of workers.

The contrasts emerging from the national presentations, also with regard to the Services Directive, are striking and amply illustrate differences between legal and industrial relations regimes across EU/EEA member states and how the impact of EU level developments also differ significantly. While essentially applying a legal perspective to the issues in question these national level analyses thus also may, along with Dølvik and Ødegård’s study, feed into the broader field of social science research and, more particularly, research in the field of industrial relations generally and the line of research denominated by the collective term ‘varieties of capitalism’.<sup>26</sup>

They serve, also, as a bridge to forthcoming papers of the third phase of the FORMULA project, which is dedicated to ‘horizontal’ analyses of the many issues with which the project is concerned. A broad-ranging study of the genesis and salient features of the Posting of Workers Directive is a prelude to an in-depth study of the private international law aspects that are at the core of the legislative efforts in the field. This is added to by a social sciences based analysis of the role of the social partners in Europe’s multilevel governance with regard to the establishment of an effective floor of wages and working conditions in view of the challenges posed by the growth in cross-border labour mobility and posting of workers. The project’s third phase moreover include studies of cross-cutting issues of monitoring compliance with the legislation involved and sanctions for collective action in breach of EU law. The latter is a highly topical issue in view of the Swedish sequel to the *Laval* judgment and ensuing developments as regards manifest or prospective conflicts with international labour standards, in particular at the level of the ILO and the Council of Europe. The former is currently in debate, once again a highly controversial debate, on a possible ‘enforcement directive to supple-

---

<sup>26</sup> See, eg, PA Hall and D Soskice, ‘An Introduction to Varieties of Capitalism’ in PA Hall and D Soskice (eds), *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage* (OUP, 2001); G Menz, *Varieties of Capitalism and Europeanization. National Response Strategies to the Single Market* (OUP, 2005).

ment and underpin the Posting of Workers Directive. The perspectives are further broadened by studies of public procurement law and the role of labour clauses and of EU legislative efforts on third country nationals with regard to cross-border movement of labour. In closing, the issues addressed by the various contributions concerned and the overall perspectives of the FORMULA project are discussed with a view in particular to the reform efforts epitomized by the so-called 'Monti II' package of legislative measures, however already manifestly unsuccessful in part,<sup>27</sup> and an outlook on the possibilities of 'squaring the circle' in this highly complex field of multilevel governance and conflicting interests, horizontally between national actors and nation states and vertically between international, EU/EEA, and national levels. Altogether, the many contributions of the FORMULA project feed into and are fit to enrich the wide-ranging and continually topical debate on the numerous and many-faceted issues at stake.

---

<sup>27</sup> For some preliminary observations on this and related issues, see S Evju, 'Implementing EU Law on Services: National Diversity and the Human Rights Dilemma', 5 *Arbeidsrett og arbeidsliv* (2011), 287.

## TABLE OF CONTENTS

<b>Preface</b> .....	3
<b>The authors</b> .....	7
<b>Chapter 1 - <i>Stein Evju</i></b> The FORMULA Project: Introduction and Backdrop .....	9
<b>Chapter 2 - <i>Erik Sjødin</i></b> Labour Market Regulation as Restrictions A Developmental Study of ECJ Case Law at the Interface between Free Movement and Posting of Workers .....	19
<b>Chapter 3 - <i>Martin Gräs Lind</i></b> Danish Law on the Posting of Workers .....	85
<b>Chapter 4 - <i>Monika Schlachter</i></b> The Posting of Workers Directive – German Reactions and Perceptions .....	137
<b>Chapter 5 - <i>Mijke Houwerzijl</i></b> The Dutch Understanding of Posting of Workers in the Context of Free Services Provision and Enlargement: A Neutral Approach? .....	177
<b>Chapter 6 – <i>Stein Evju</i></b> Safeguarding National Interests Norwegian Responses to Free Movement of Services, Posting of Workers and the Services Directive .....	225
<b>Chapter 7 - <i>Andrzej Marian Świątkowski</i></b> Polish Response to European Developments .....	261
<b>Chapter 8 - <i>Kerstin Ahlberg</i></b> The Age of Innocence – and Beyond .....	297
<b>Chapter 9 - <i>Tonia Novitz</i></b> UK Implementation of the Posting of Workers Directive 96/71/EC .....	329
<b>Chapter 10 - <i>Jon Erik Dølvik and Anne Mette Ødegård</i></b> The Struggle over the Services Directive: The role of the European Parliament and the ETUC .....	359
<b>Chapter 11 - <i>Monika Schlachter and Philipp Fischinger</i></b> From Bolkestein to the Services Directive – and further .....	383

## **Contributors:**

Kerstin Ahlberg	Director, Institute for Social Private Law, Faculty of Law, Stockholm University
Jon Erik Dølvik	Senior Researcher, Fafo Institute for Labour and Social Research, Oslo
Stein Evju	Professor of Labour Law in the Institute of Private Law, Faculty of Law, University of Oslo; Director of the Formula Project
Philipp Fischinger	Post-Doctoral Research Fellow, LL.M. (Harvard), University of Regensburg
Mijke Houwerzijl	Professor of Labour Law at Tilburg University and Professor of European and Comparative Labour Law at the University of Groningen
Martin Gräs Lind	Advocate, Associate Professor in Labor Law (part time), Aarhus University
Tonia Novitz	Professor of Labour Law, University of Bristol Law School
Monika Schlachter-Voll	Professor, Chair for International and European Labour Law and Civil Law, Faculty of Law, University of Trier; Director, Institute for Labour Law and Industrial Relations in the European Union IAAEU, Trier
Erik Sjödin	Doctoral Research Fellow, Faculty of Law, Uppsala University
Andrzej Świątkowski	Jean Monnet Professor, Chair for Labour Law and Social Policy, Faculty of Law and Administration, Jagiellonian University in Kraków
Anne Mette Ødegård	Researcher, Fafo Institute for Labour and Social Research, Oslo

---

## **Cross-border Services, Posting of Workers and Multilevel Governance**

Institutt for privatretts skriftserie nr. 193. Oslo 2013. 419 s. ISBN 978-82-7236-229-3. ISSN 1890-4955.

The book may be ordered from

- Akademika Bokhandel  
St. Olavs plass 5  
NO-0165 OSLO, Norway  
Phone: +47-40 76 13 64 / Telefax: +47-22 98 02 22  
E-mail: [juridisk@akademika.no](mailto:juridisk@akademika.no)

or by e-mail to Privatrettsfondet

- [bestilling-skriftserien-ifp@jus.uio.no](mailto:bestilling-skriftserien-ifp@jus.uio.no)

**Price: NOK 320,-** + postage