In and out of the crisis: building on a European social method*

1. A brief introduction on the «European method»

Ruth Nielsen is an inspired scholar, who has devoted energy and research for the construction of a European method oriented to the enhancement of social justice. It is an honour for me – as a woman and as a lawyer – to be included in this *liber amicorum* and to continue a conversation with her.

Her description of the legal method «referring to the doctrine of the sources of law and their interpretation» exploits the potentialities of comparative law within the framework of the «multi-layered EU legal order»[1]. Thus, the function of comparison is magnified in the original attempt to create a comprehensive legal theory, which helps the interpreter in building bridges and constructing interactions among different levels of deliberations. Such an attempt is connected with the understanding of other "experimentations" taking place in the European governance, which is also framed within a multi-layered system of decision-making[2].

This theoretical background sheds light on my paper, which addresses current issues of European social law, taking into account some repercussions of the economic and financial crisis. The difficult balance among economic freedoms and fundamental social rights has been and still is at the hearth of recent passionate discussions among European labour lawyers. The search for equilibrium, originated by controversial case law of the CGEU, has become even more cumbersome in observing social phenomena

* This paper will be published in the *Liber amicorum* offered to Ruth Nielsen, forthcoming DJØF Publishing 2013. I am very grateful to the publisher and the editors for permission to circulate my contribution.

[1] U. Neergaard, R. Nielsen (eds.), *European legal method in a multi-level EU legal order*, DJØF Publishing, 2012, p. 89. See also U. Neergaard, R. Nielsen, L. Roseberry (eds.), *The role of courts in developing a European Social Model. Theoretical and methodological perspectives*, DJØF Publishing, 2010.

[2] U. Neergaard, R. Nielsen (eds.), *European legal method*, cit., pp. 94-95.

that are taking shape, as a consequence of the austerity measures adopted in the EU[3].

Whereas in the Western European legal tradition fundamental social rights have been safeguarded, to face economic instability, while pursuing monetary integration, the current situation is potentially very critical. Austerity measures, adopted in emergency situations, are perceived as fierce attacks to collective social rights – the right to collective bargaining and to take collective action in particular – which are typically exercised in order to improve working conditions and counterbalance managerial prerogatives.

The most critical point is that all such attacks to social rights have been encompassed within institutional deliberations presented as unavoidable and, because of this, distant from a sound European method. Issues, that should continue to be considered relevant for the configuration of a balance of powers within collective bargaining, are dealt with abruptly in the cold language of «memoranda of understanding» imposed on countries at the edge of financial catastrophes[4].

The adoption of the Euro Plus Pact by the European Council[5] alerted national social partners even beyond the Euro area countries. In an annexed Protocol the Pact indicates the urgency to decentralise collective bargaining and to link wage increases to higher productivity, while pointing to the urgency to further increase flexibility in labour markets[6].

It can be argued that the exclusion of a legal basis in the Treaty, with regard to wages, is circumvented by the Council, which issues overall recommendations to Member States, grounding them on the urgent need to respond to the crisis. The underlying idea is to prompt governments to intervene in such matters accordingly, taking into account national traditions in collective bargaining. The result is to include, albeit in an indirect way, national social partners in attempts to coordinate wage policies, without making them express interlocutors of EU institutions. The weakness of some innovations brought about with the Lisbon Treaty – namely the introduction of art. 152 TFEU establishing the tripartite social summit for growth and employment – is shown by a decoupling of social policies by other emergency decisions dealing with the coordination of economic measures.

[3] M.C. Escande Varniol, S. Laulom, E. Mazuyer (eds.), *Quel droit dans une Europe en crise?*, Larcier, 2012.

[4] A. Lo Faro, *Europa e diritti sociali: viaggio al termine della crisi*, in R. Romei, L. Corazza (eds.), *Diritto del lavoro in trasformazione*, il Mulino, 2013, forthcoming; K. Tuori, *The European Financial Crisis: Constitutional aspects and implications*, EUI Working Papers Law n. 28/2012, http://hdl.handle.net/1814/24301.

[5] Conclusions of the European Council, 24-25 March 2011, EUCO 10/1/11 REV 1, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/133004.pdf.

[6] Comments in C. Barnard, *The financial crisis and the Euro Plus Pact: a Labour Lawyer's Perspective*, *ILJ*, 2012, vol. 41, p. 98 ff.

In view of exploring some of these issues, this paper will attempt to reconceptualise messages emerging from the law of the crisis, arguing in favour of starting new experiments in European social law and enhancing new action and new energy among the social partners.

The European method is now confronted with the presence of institutions active in pursuing objectives such as growth, employment and social cohesion, not at all extraneous to previous policies and yet in need to be better framed within new rules, as Ruth Nielsen has indicated in her research.

2. Governance of the crisis: the Fiscal Compact and the Barca Report

In the Fiscal compact[7] references to «governance of the euro area» are connected to measures aimed at strengthening the coordination of economic policies (art. 1). The promotion of employment, not entirely successful under the soft law procedures provided for in Title IX TFEU, is now presented as one element of the many strategies that should be enforced, in order to enhance a «proper functioning of the euro area» and contribute to «the sustainability of public finances» and to «reinforcing financial stability» (art. 9).

The language adopted evokes distinctive regulatory techniques of the Lisbon strategy and of the Open Method of Coordination (OMC), which attracted so much attention in the political and academic debate at the beginning of the years 2000. «Benchmarking best practices» is the aim assigned to this renewed attempt in coordinating economic policy, with an emphasis on *ex ante* discussions, which should involve the institutions of the EU (art. 11).

Moreover, Title V of the Fiscal compact is entitled «Governance of the Euro area» and is attentive to institutional balances of power, when it recalls the involvement of relevant committees of the European Parliament and of national Parliaments in setting up a conference of representatives, to discuss issues covered by the Treaty (art. 13).

The points to underline here have to do with a stronger emphasis put on methods of coordination. In past attempts dealing, for example, with different stages to be entered, in view of becoming a member of the Monetary Union, Member States had to be disciplined in fulfilling their obligations, in order to comply with European primary law. The technique encompassed in

[7] «*Treaty on stability coordination and governance in the economic and monetary union*», signed in the margins of the European Council meeting on 1-2 March 2012. See A. Lo Faro, *Social Europe: where do we go from the "Fiscal Compact" Treaty?*, *EJSL*, 2012, n. 1 , p. 2 ff.

the so called «phased obligations» implied that Member states would be bound to reach certain intermediary objectives, in order to fully meet the final deadline. Law was, in that case, able to shape consistently national policies and to direct policy-makers[8].

The *ex ante* investigation, which is now convincingly suggested for a correct enhancement of economic policies, reveals a different final aim, explicitly establishing closer control in restructuring national policies and correcting deficiencies. National legislative bodies are now empowered in all efforts to improve economic and fiscal governance. This is an indication that the Lisbon Treaty – and in particular Protocol n. 1, Title II, attached to it – are considered authoritative sources for the Euro area countries, even when they seem to be departing from a pure European method.

It has been debated whether turning to a Treaty can represent the right response to the crisis. It has also been stigmatized that decisions were, in the end, left to an *ad hoc* working group, departing from «a constitutional spirit that sees process, substance and legitimacy as interlinked»[9]. It is maintained that there is now more complexity than before in decision-making. This can potentially give rise to criticism and create frustration among citizens, as well as make them question on excessive delegation of powers to intergovernmental formations[10].

Other perspectives should be added to what is taking place in the Euro area, bearing in mind that in the overall reconstruction of Europe occurred during the crisis, employment policies and proactive measures to fight unemployment are at risk of being marginalised. This undisputable fact reveals the paradox of inconsistencies in the mechanism of coordination, which, in the original institutional framework, should have brought together the economic and the social spheres. This paradox is exacerbated by the constant reference in national debates to employment measures as one of the privileged roads to growth and recovery, whereas serious attacks have been made to the capacity of national governments and social partners to enhance proactive policies.

One should recall that *ex ante* scrutiny of national responses, including inquiring into the soundness of centralised and decentralised administrations, is pivotal to other measures under discussion, in order to improve re-

[8] F. Snyder, *EMU – Metaphor for European Union? Institutions, Rules and Types of Regulation*, in R. Dehousse (ed.), *Europe after Maastricht. An ever closer Union?*, Law Books in Europe, 1994, p. 63 ff.

[9] K. Armstrong, *Stability, coordination and governance: was a treaty such a good idea?*, http://eutopialaw.com/2012/03/08/stability-coordination-and-governance-was-a-treaty-such-a-good-idea/, posted on 8 March 2012.

[10] J. Pisani-Ferry, A. Sapir, G.B. Wolff, *The messy rebuildibg of Europe*, Bruegel Policy Brief, March 2012, http://www.bruegel.org.

course to structural funds. The Barca Report[11] – followed by numerous other suggestions on how to implement its policy recommendations – indicates that national and subnational levels of decision-making should join together in adopting partnership agreements, to be closely monitored before and after granting finances. Severe sanctions should be taken against Member States or subnational authorities non-complying with the new rules. A virtuous circle should be created to keep together access to funding and subsequent optimal use of the same. This combination should signal a new phase of social inclusion, whereby bottom-up democracy takes shape, as in the vision initially put forward by Jacques Delors[12].

This Report is the outcome of vast field research and ample consultations, so it is remarkable that the debate on the reform of the European budget should be influenced by it. The Commission, in fact, has been pursuing the idea that financial help should become more and more selective and supportive of the priorities included in «Europe 2020», aiming at a «smart, sustainable and inclusive growth»[13].

On 7-8 February 2013 the Council discussed the Multiannual financial framework (MFF) for the years 2014-2020 and explicitly stated that «spending should be mobilised to support growth, employment, competitiveness and convergence, in line with the Europe 2020 Strategy. At the same time, as fiscal discipline is reinforced in Europe, it is essential that the future MFF reflects the consolidation efforts being made by Member States to bring deficit and debt onto a more sustainable path»[14].

As for structural funds, aimed at supporting some of these policies, the Commission's suggestion is to foster new partnership on funds, with recourse to a EU code of conduct supplementing the common provisions regulations[15]. The Code of conduct should set specific phases and responsibilities, in view of concluding binding agreements. The interesting hybridization of governance techniques with hard law measures, which is suggested in this new formula, is possibly a symptom of the uncertainty running through the most recent institutional strategies. The economic and financial crisis has undoubtedly opened up unprecedented scenarios, so that

[11] F. Barca, *An Agenda for a Reformed Cohesion Policy*, April 2009, an independent report written for the Commissioner in charge of regional policies.

[12] M. Jouen, *The Cohesion Pact: Weathering the Crisis*, Policy Paper n. 52, Notre Europe, http://www.eng.notre-europe.eu/media/CohesionPolicy_M.Jouen_NotreEurope_April2012.pdf.

[13] European Commission, *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, COM(2010) 2020 final, 3 March 2010.

[14] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/135344.pdf.

[15] Commission Staff Working Document, *The partnership principle in the implementation of the Common Strategic Framework Funds. Elements for a European Code of Conduct on Partnership,* SWD (2012) 106 final, 24 April 2012.

reactions from all actors asked to intervene are difficult to predict[16]. However, recourse to a renewed version of local social pacts promoted by a broad Code of conduct, must be viewed as a positive solution, since it could lead to better empowerment of the social partners on proactive measures and – what is most urgent to asses – on ways to implement them.

3. The European Stability Mechanism

On 2 February 2012 the Treaty establishing the European Stability Mechanism (ESM) was signed by Euro area Member States. This new supranational financial institution is the outcome of lengthy negotiations at intergovernmental level in order to offer financial support to Members experiencing serious problems. The mobilisation of funding «to provide stability support» can also imply entering into «agreements or arrangements with ESM members, financial institutions or other third parties» (art. 3).

The procedure to grant stability support is initiated by Member States. The chairperson of the board, on receipt of the request, involves the European Commission and the ECB, in order to evaluate it and assess all connected risks. If a positive decision is reached, the International Monetary Fund (IMF) enters the scene «wherever possible» and takes part in the negotiations with the Member State concerned, in view of reaching a Memorandum of Understanding (MoU), reflecting the severity of the case and the measures to be adopted (art. 13.3).

The possible presence of the IMF does not entirely detach the procedure from its European roots, since it is established that «MoU shall be fully consistent with the measures of economic policy coordination provided for in the TFEU, in particular with any act of European Union law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned». Furthermore, the signature of the agreement is the task of the Commission, on behalf of the ESM (art. 13.4). However, the presence of IMF adds an institutional dimension, which is not only symbolically relevant, since it directly affects the balance of powers among negotiators.

It is by all means difficult to detect the status of a MoU within the framework of EU law. The origin of the ESM is, after all, to be found in an amendment of art. 136 TFEU, consisting in a new section added to it, following a simplified decision within the European Council. Precisely this latter amendment to the Treaty has been at the origin of a German Constitu-

[16] S. Laulom, E. Mazuyer, C. Teissier, C. E. Triomphe, P. Vielle, *How has the crisis affected social legislation in Europe*, ETUI Policy brief n. 2/2012, http://www.etui.org/fr/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/How-has-the-crisis-affected-social-legislation-in-Europe.

tional Court's ruling, trying to establish whether the signing of an international treaty such as ESM running parallel to EU primary law, hides an attack to statehood and implies a restriction of sovereignty[17]. As long as Germany's payment obligations are kept within the initially agreed contribution – the Federal Constitutional Court has argued – ESM can function properly, given the urgency to enforce common strategies within the EU.

This answer, given in a preliminary judgment, was predictable and confirms previous rulings, but the final judgment, still to be given by the Court, could present further and interlocutory points. Despite the green light given for the ratification of the ESM Treaty, the ruling reveals the delicate equilibrium on which supranational decisions implying the granting of financial support are based. In other words, emergency decisions do not provoke unconditional responses from Germany and the same could be true for other countries.

Furthermore, solidarity among Euro area countries is not embedded within EU primary law, but subject to negotiations and to intergovernmental compromises. The translation of solidarity into concrete measures to help people, as well as Member States, is entrusted to a source – such as a MoU – which is not institutionally designed to include collective actors representing large organised interests[18]. There is a danger to detach national systems of collective bargaining and other forms of consensus building from their national roots, without providing them with a supranational place in which collective deliberations can be taken, while listening to legitimate representatives of the interests under discussion. MoUs are hybrid sources, generated by a Treaty, which departs from the European method, even though pursuing objectives, which should be common for the EU as a whole.

In this discussion, the CJEU raised its voice. In *Pringle*[19] the CJEU had to consider a preliminary ruling procedure in which a member of the Irish

[17] F. Schorkopf, *Start the Engines. Comment on the ESM-judgment of the German Federal Constitutional Court of 12 September 2012*, *MJ*, 2012, vol. 19, p. 554 ff.

[18] ILO Committee on Freedom of Association, Case n. 2820 (Greece), complaint brought in 2010 by several Greek unions (Greek General Confederation of Labour - GSEE, Civil Servants' Confederation - ADEDY, General Federation of Employees of the National Electric Power Corporation - GENOP-DEI-KIE and Greek Federation of Private Employees - OIYE), supported by the ITUC, denouncing the austerity measures taken by the Greek government, under pressure after the deliberation of European institutions and the IMF, complaint also to Council of Europe (see the Report n. 365, in which the committee requests to be kept informed of development, November 2012, http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3087085).

[19] CJEU, Judgement of 27 November 2012, *Thomas Pringle v. Government of Ireland, Ireland and The Attorney General*, C-370/12, not yet published. See *The ESM Before the Court*, *GLJ*, Special Section, 2013, vol. 14, pp. 1-190.

Parliament brought proceedings against the Irish government, arguing that decisions taken to amend art. 136 TFEU would be unlawful and that in signing the Treaty establishing ESM Ireland would create a situation of incompatibility with its membership of the EU. This lengthy and highly technical judgment is significant in many respects, which cannot be fully analysed here.

However, one point to highlight has to do with the interpretation the Court offers of its own competence, clarifying that it can only intervene on the objectives pursued by ESM, not in the analysis of economic governance as a program, neither of the instruments therein adopted to meet the final goals of the Treaty. The Court frames EMS within the scheme of economic policies as matters of common interest provided for in the Treaty (articles 120 ff., and in particular 123 to 125, TFEU), subject to coordination in view of reaching the objectives set in art. 3 TEU. Preventive interventions, already existing in TFEU, become entwined with EMS, since the latter does not enter monetary policies, but only pursues «the management of financial crisis which, notwithstanding such preventive action as might have been taken, might nonetheless arise»[20]. The Court thus accomplishes its own function, arguing on the compatibility of ESM with both the objectives set in TEU and the regulatory technique enshrined in TFEU with regard to economic and monetary policies and interprets stability as an absolute priority.

What the Court cannot do in *Pringle* – but might be doing in the future[21] – is to interpret MoUs as instruments connected with the broad economic policies guidelines, which are part of EU law. As sources inherent to the ESM Treaty, they represent the long arm of supranational institutions, descending into national grounds. The point of view of social law cannot be ignored in this scenario; neither can the organizations representing collective interests be marginalised and asked to become the facilitators of dramatic choices to be made. It is correctly argued, at this regard, that fundamental social rights should not only be justiciable in courts, but also function as intrinsic limits to the enforcement of economic governance[22]. It is however still to be clarified in institutional terms how voices of collective organizations representing the stakeholders' interests should be heard, well beyond soft law techniques. We still miss decisive procedural steps in build-

[20] *Pringle* at 59.

[21] See the pending request for a preliminary ruling on Portuguese national law implementing the MoU concluded with Portugal, as a condition on Portugal's receipt of financial assistance from the European Financial Stabilization Mechanism and the European Financial Stability Facility (Case C-264/12, *Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial*).

[22] A. Lo Faro, cit., footnote n. 3.

ing up a European social method in and out of the crisis, similar to the ones enshrined in the TFEU, for the adoption of social policies (art. 154 ff.).

In that framework, the Commission «shall consult management and labour on the possible direction of Union action» (art. 154.2) and, should the action become advisable, «shall consult management and labour on the content of the envisaged proposal» (art. 154.3). These procedural steps allow the inclusion of social partners within the institutional law making, notwithstanding the differences of all actors involved. This source of inspiration, which has also been at the origin of important experiments in adopting social law Directives, could be considered for future developments of the European social law method.

4. «Towards a genuine economic and monetary union»

In December 2012 a Report signed by the Presidents of the European Council, the European Commission, the Euro group and the Central Bank was published[23]. The underlying rationale of this policy document is that a stronger monetary union protects national economic systems from external shocks and fosters social cohesion. Euro area Member States should enter into binding contractual relations with European institutions in order to keep together decision-makers, when they consider national budgets. This should be functional to achieving an even closer coordination of economic and employment policies, which then have to be included in the drafting of National job plans. One can recall that this technique is not entirely new, but very similar to the enforcement of what is now Title IX TFEU, specifically dealing with OMC in employment policies.

However, wider implications are now envisaged. The Council's intention is pursuing, in not too long, the creation of a Single Supervisory Mechanism (SSM), in order to control the recapitalisation of banks and to make a first step towards a financial market union. In the long run, an integrated budgetary framework is portrayed as the institutional foundation on which to build sustainable growth and macroeconomic stability. Other measures to strengthen fiscal stability are still in the legislative process. They fit in the picture of a governance structure whereby *ex ante* coordination of national budgets should become crucial in allowing surveillance to countries experiencing financial difficulties.

It is impossible to explain in full length the detailed contents of this Report, which follows very closely the European Council's Conclusions on

[23] *Towards a genuine economic and monetary union*, 5 December 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134069.pdf.

completing EMU of 18-19 October 2012[24]. In relation to the aim of this paper – namely the preoccupation that social law, departing from a European method, be interpreted as an ancillary measure in restructuring the internal market – one point to underline is that coordination is, once more, proposed as the answer to all deficiencies of the system. It is difficult to trace back the democratic legitimacy of all such strategies, put in place by EU institutions, but not impossible, if only national parliaments were to become the real addressees of guidelines and be responsible for the implementation of binding agreements, as suggested in the Report.

In some relevant passages it is pointed out that a centralised network of protections for states exposed to instability should be the outcome of a supranational and generalised fiscal competence of the EU. Employment policies should thus become an essential part of the negotiations undertaken with Member States. It could be maintained that in all such steps the institutional presence of actors in representing organised interests – and in particular of management and labour, as in the consolidated tradition of EU social law – be guaranteed as a pre-condition for the adoption of measures affecting employment and working conditions. Rather than being implicit, this option should become explicit and address the issue of legitimacy of the collective actors to be involved in the negotiations taking place with Member States

One question remains unanswered, underneath all these complex policy documents, namely who should address the centrality of wage policies in rethinking a European social method in and out of the crisis. The exclusion of competence in the TFEU, with regard to pay (art. 153.5) must be counterbalanced by the observation that a recurring theme in MoUs is the enforcement of wage moderation, imposed on national social partners in ways that may resemble, as the ILO points out, an undue invasion of collective autonomy, as well as a violation of core labour rights[25].

Furthermore, the whole mechanism of the European semester, started by the Commission to bring efficiency in the overall machinery of institutional guidelines, followed by national responses[26], should take into account that

[24] Conclusions of the European Council, 18-19 October 2012, EUCO 156/12, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/133004.pdf.

[25] See the *Memorandum of understanding on specific economic policy conditionality*, addressed by the ILO Committee on Freedom of Association to the Greece on 9 February 2012.

[26] The Commission proposed in May and June 2010 to create an European Semester (European Commission, *Reinforcing economic policy coordination*, COM(2010) 250 def., 12 May 2010; European Commission, *Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance*, COM(2010) 367 def., 30 June 2010). This new governance architecture was approved by the Member States on 7 September 2010. The first cycle took place in 2011.

policies are now even more interconnected than before. The urgency to revise the European budget is undisputable and the recent criticism presented by the European Parliament to the proposals put forward by Member States[27] is yet another clear indication of the need to strengthen the European method.

The Maduro Report[28] is structured around the idea that the reform of the European budget is a necessary stage in democratizing the EU and in re-establishing a transparent political ground for European institutions. The process of European integration should become functional to the creation of supranational wealth, to prevent future crises. A special stability fund should be created, using the reformed budget, and asymmetries within the monetary union should be corrected adopting positive incentives and addressing them to Member States, in order to re-politicize national debates and foster systemic reforms.

Once more, the urge to change current mechanisms of communication within the EU is referred to the dissatisfaction that Member States have shown during the crisis and with the disillusion that citizens have developed, organizing unprecedented and, at times, violent protests[29]. In policy making, the most reasonable solutions that have been put forward have to do with the enhancement of cohesion measures, as well as with revitalizing employment policies, addressing groups hardly hit by the crisis and redistributing support to poorer regions. The *ex-ante* institutional control, previously mentioned with regard to various options now available for institutional reforms, must be confirmed as a guiding principle in accompanying, not in substituting, national allocations of funding[30]. Technocratic top-down solutions are best enforced when they become part of sound and efficient administration at the national level, thus proving that transfer of assistance at a technical level is both necessary and beneficial.

[27] http://www.europarl.europa.eu/pdfs/news/public/focus/20110429FCS18370/20110429FCS18370_en.pdf.

[28] M. Poiares Maduro, *A New Governance for the European Union and the Euro: Democracy and Justice*, RSCAS Policy Papers n. 2012/11, http://cadmus.eui.eu/handle/1814/24295, produced for the European Parliament at the request of the Committee on Constitutional Affairs.

[29] References to the large Greek protests in A. Koukiadaki, L. Kretsos, *Greece*, in M.C. Escande Varniol *et al.*, cit. at footnote n. 3, p. 189 ff.

[30] B. Marzinotto, *The growt effects of EU cohesion policy: a meta-analysis*, Bruegel Working Paper n. 2012/14, http://www.bruegel.org/publications/publication-detail/publication/754-the-growth-effects-of-eu-cohesion-policy-a-meta-analysis/#.UVA6u46AMoE.

5. Re-thinking the European social method

This paper starts by acknowledging Ruth Nielsen's influence in building a theoretical approach to social law. Her inspiring contributions in this field can profitably be adapted to the understanding of current phenomena, which are shaking the foundations of European social law. The most relevant point to stress is that methodological choices are never neutral, nor extraneous to the contents of academic research. This is the reason why they can be adapted and modelled in ways that should always attempt to understand changes occurring in the legal systems.

An undisputable point of reference in the construction of a European social method has been the role played by the social partners, progressively included into a web of rules, which has become part of an institutional equilibrium. However, formal responsibilities of European social partners are not entirely acknowledged within the still imprecise method that is emerging in and out of the crisis. One point, underlined in this paper, has to do with the weak role recognised to the trilateral summit and to its unclear follow ups in the Council's meetings addressing economic and monetary policies. There is an underlying inconsistency between decisions taken by governments and the social actors that should, in practice, build up the necessary consensus, in order to disseminate the acceptance of austerity measures. The latter are, instead, imposed in dramatic circumstances, notwithstanding the explosion of national contradictions in labour markets and the emergence of unacceptable disparities in social spheres.

This is a good reason to continue academic research along the lines of a new legal realism in European social law, along the lines enthusiastically and competently promoted by Ruth Nielsen.