The ongoing austerity crisis is being felt in all sectors of EU law, but has had a particularly severe impact on labour law. Silvana Sciarra, a leading judge and scholar of EU employment law, considers how solidarity regimes have been shaken by the crisis. She brings together existing European policies in social and employment law, to enhance synergies and developments in a post-crisis discourse. She looks at reactions of national constitutional courts to austerity measures and of international organizations in re-establishing respect of fundamental workers’ rights. Criticizing soft law approaches in employment policies, she favours recourse to binding measures connected with selective financial incentives through European funds. She highlights developments in European sector social dialogue and new horizons of transnational collective bargaining in large multinationals. Taking a positive, practical approach, Sciarra shows how social policies can enhance solidarity and social cohesion, through European financial support.

Silvana Sciarra is a Judge at the Constitutional Court of Italy and was previously a Full Professor of Labour Law and European Social Law at the University of Florence and at the European University Institute. She is co-editor, with Rochelle le Roux and Bob Hepple, of Laws against Strikes: The South African Experience in an International and Comparative Perspective (2015).
SOLIDARITY AND CONFLICT

European Social Law in Crisis

SILVANA SCIARRA
University of Florence
To A. and V.
My ‘twinkling stars’
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The book I published in Italian (L’Europa e il lavoro. Solidarietà e conflitto in tempo di crisi, Bari–Roma, Laterza 2013) addresses issues which are still of dramatic relevance in the current discussion on austerity measures within the European Union, adopted during an unprecedented economic and financial crisis. Different discourses have been taking shape in European social law, starting from the institutional changes brought about by the Lisbon Treaty, moving to developments in the social dialogue, as well as in the implementation of employment policies. Social measures have also been at the core of emergency legislation adopted at national level.

As a consequence of all this, both the notion and the practice of solidarity have progressively changed. On the one hand, consolidated collective interests are represented by large and well-established organisations; on the other hand the aspirations of poor and socially excluded groups request to be addressed.

Contradictions, which have long been present in the European Union, are now exacerbated by the flow of immigrants and asylum seekers, escaping from wars and shortages of essential means for surviving. This is yet another difficult challenge for solidarity, which calls into question, in the first place, Member States’ responsibilities.

Recourse to traditional forms of social conflict does not, by itself, unravel all such challenges, neither does it provide solutions. Therefore, solidarity and conflict carry with them new implications.

It is harder now, under such complex circumstances, to pull the red thread that keeps together my arguments, in search for alternatives, whenever the risk arises of marginalising social measures. This should be the time to thoroughly rethink the European architecture and find ways of reconciling European citizens with supranational institutions, perceived as distant and hostile. It is not my purpose to offer such a broad perspective. Neither do I intend to address the contentious topics connected with ‘Brexit’ and its implications in European social policies.
My intention is to show possible synergies among existing policies and to look at ways in which solidarity and conflict face new social demands. I do this looking at developments in recent years, well aware of the fact that there is a much longer history behind such events. Bibliography is intentionally selective and agile and precedence is given to documents and policy papers.

The preparation of this book, inspired by the Italian version, has been delayed, among other reasons, by a sudden change in my professional life. In November 2014 the Italian Parliament elected me to become a judge in the Constitutional Court. This meant that I had to give up my position as a Professor of European Labour and Social Law at Florence Law School and devote my energies to a new commitment.

The time lag between the Italian and the English book increases my debt of gratitude to Cambridge University Press, and in particular to Finola O’Sullivan for trusting me in the attempt to develop an updated and slightly different version of the book. I am also indebted to two blind referees who commented on my book proposal. I have taken their suggestions into account and changed in part the original structure of the Italian version.

Dr Giovanni Gruni, PhD at Oxford, now Assistant Professor, Europa Institute at Leiden University, provided a preliminary first draft of the translation from Italian into English, which I have revised, updated and, in substantial parts, rewritten. I am grateful for his initial help. However, all responsibilities for additions, omissions and mistakes are exclusively mine. Novella Caccavo, secretary at the Constitutional Court, helped me in arranging the final text, whenever we could find some time in between the preparation and editing of court cases.

The immense pride I carry with me for my new institutional responsibilities implies great respect for the Court and for all my colleagues. Opinions expressed in this book are the result of academic research I carried on. In no way do they involve the institution, which is now my home.

Rome and Florence, August 2017
S.S.