

Date of the seminar:

Wednesday 29th April 2009 from 12h45 to 13h45
(sandwich included during the conference)

Location of the seminar:

Faculty of Law, Economics and Finance
BRC 2.01 (2nd floor)
148, avenue de la Faïencerie
L-2511 Luxembourg

Language:

English

Registrations:

- Free seminar
- Maximum number of registrations: 40
- **Registrations** by email:
fdef-colloques@uni.lu (Last name, first name, institution)

Information:

Tel: +352 46 66 44 6619
Contact person: Mrs Armelle Arnould

Lunchtime Seminar

Work in Progress

**The *Rechtsstaat* and
Social Europe:
How a Classical Tension Resurfaces
in the European Integration Process**

*By Prof. Dr. Christian Joerges,
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Centre of European Law and Politics and Collaborative
Research Centre "Transformations of the State",
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Lunchtime “Work in progress” Seminar

This research seminar is intended to bring together legal scholars interested in debating recent research and work in progress in the area of law.

The format:

- The meetings will be held at lunch time – from 12h30 till no later than 14h00, on the campus of the university, in the meeting room in the Batiment Soupert, 148, Av de la Faiencerie)
- Sandwiches and drinks will be provided by the University for all participants.
- A speaker presents for 30 Minutes followed by a discussion with the participants.
- The meetings will take place several times per semester. At each event a chosen speaker will present a paper of his or her most recent work or of his or her work in progress. The participants engage in an active discussion from the point of view of their diverse background and specialities.

The speakers:

- Speakers will be invited to present from people working in Luxembourg and from external visitors. The decisive issue is the cutting edge of their research and the potential to generate an interesting debate.
- Suggestions for speakers should be sent to the director of the Centre of European Law at the University of Luxembourg (herwig.hofmann@uni.lu)

The aim of the seminar:

- The goal is to achieve a lively and fruitful discussion for both the presenter and for all participants. This will contribute to a culture of interested debate in new ideas and approaches to the law at the University and in Luxembourg in general.

General information:

- The programme of the meetings and invitations will be distributed amongst all potentially interested researchers in Luxembourg.
- The language of the meetings is French, English and German. The programme sent to interested recipients will indicate the speaker's language of choice for presentation. Comments will be welcome also in any of the other languages.
- Material about the talk will be available also on the faculty's website at <http://fdef.uni.lu/>

Professor Herwig Hofmann, Director of the Centre of European Law of the Faculty of Law, Economics and Finance is pleased to invite you to a lunchtime seminar by

Prof. Dr. Christian Joerges

“The *Rechtsstaat* and Social Europe: How a Classical Tension Resurfaces in the European Integration Process”

“My presentation will build upon a series of papers which I have published more or less recently. All of them refer to traditions and debates of my own country. This is not some “*Deutschland über alles*” attitude. My message is rather that we have to remain or become aware of the historical, social and cultural context of our thinking in order to understand its specifics (and limitations!) and also of course to communicate more precisely with others. The German background is particularly important when it comes to the interdependence of the economic and the social order, the contrast (or co-originality) of private and public autonomy (of economic liberties and political rights) and the specifics of social rights. A remark of Ernst-Wolfgang Böckenförde, a former judge of the German Constitutional Court, to whom I refer captures my queries with “social rights” quite precisely: “European law cannot but realize a pure market economy because it does not have the means of establishing a social market economy”, Böckenförde asserted – and this remark is equally valid for most (not all!) social rights.

There are more dramatic and unfortunate reasons militating in favour of a contextual approach to our topic. The December 2007 judgments of the ECJ in *Viking* and *Laval* and the later judgment in *Rüffert* (I will not comment on the *Luxembourg* case) on the compatibility of national collective labour law with European prerogatives have reminded us painfully of the strong ties between the institutional structure of the EU and economic neo-liberalism. My paper seeks to put this debate in the constitutional perspectives I have just alluded to. In its first, admittedly very Germanic, part it reconstructs the *débat fondateur* in post war Germany on the new Basic Law which was focused essentially on the problematic of social rights (*Sozialstaatlichkeit*) and its alleged or real tensions with *Rechtsstaatlichkeit*, the commitment to the rule of law. Germany's “social market economy” was a reconciliation of both dimensions. This is the background for the contents of the following section. There the paper reconstructs in legal categories what Fritz W. Scharpf (political scientist and legal scholar) has characterized as a decoupling of economic integration from the various welfare traditions of the Member States. European constitutionalism, it is submitted, is bound to respond to this *problématique* and all of the three subsections elaborate on this thesis. Only the third subsection addresses the elements of “social Europe” as they have been developed since Maastricht and Amsterdam. The third section analyses the ECJ's recent labour law jurisprudence with its interpretation of the supremacy of European freedoms and its rigid interpretation of pertinent secondary legislation. The importance of this controversial move can hardly be overestimated. To come back to the beginning: Europe is about to get entangled in a fundamental debate in which the classical issues and tensions between *Rechtsstaatlichkeit* and *Sozialstaatlichkeit* are coming again to the fore.”