

## Preface

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In times when the political and legal ‘battle’ surrounding the project of a new EU Constitution has demonstrated the fragility of the ‘joint European project’ and its underlying parameters of social construction, this book considers the influence that the prospect of EU membership has on transition countries in general and specifically on the drafting of commercial law, and in particular company law, in transition economies. In order to understand the extent of this influence the enlargement of the Union is examined in its historical context, looking at the political, economic and security reasons for the imposition of ever more complex conditionality over the years. The focus is on the political, economic and security reasons underlying the decision of the Union to extend its membership from the initial six members to the current 25 and potentially to 27 or more.

The ‘values’ informing this conditionality are critically considered. Philosophies underlying property rights and human rights have a controversial heritage and the authors do not feel that they can just be taken for granted in the way that countless pre-accession programmes and projects have done. The study reveals that the question ‘what kind of Europe do we want?’ is strongly related to the question ‘transition to what?’. Once we set aside the membership question, parallels can also be drawn with the EU development discourse from Lomé to Cotonou which has applied the same underlying philosophies to the relations with ACP countries. The third question is therefore ‘development of what?’, and it shows that the EU project’s parameters of (‘internal’) social construction are strongly linked to those which should guide the economic, political and legal making of a global society.

The book claims that alternatives to the criteria applied by the EU transition and development discourses are necessary in order to create a sustainable democratic European and global society which takes into account the social, legal and institutional traditions and potentials of their changing local environments. As regards the construction of a commercial law which fits into such a project, the book moves on to suggest how, using a risk assessment method, an alternative methodology for commercial law drafting can be developed. Such a method needs to take account of the EU *Acquis* if EU membership is at stake, while, at the same time, making sure that a law can be properly embedded in the local social and economic context. There is no space for pure transplantation.

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The second part of the work sets out a complete draft of a model company law for transition (and development) economies, drafted following this methodology. It would, of course, need fine tuning to particular societies but the authors hope that it might be considered a starting point for discussion.

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