UDK 061.1(4EU)(05) ISSN 1845-5662

CROATIAN YEARBOOK OF EUROPEAN LAW & POLICY

Vol. 18 [2022]

Zagreb, 2022

CROATIAN YEARBOOK OF EUROPEAN LAW AND POLICY (CYELP)

Publisher
University of Zagreb – Faculty of Law

Editorial Board Address
Department for European Public Law, Faculty of Law, University of Zagreb, Ćirilometodska 4, 10000 Zagreb, Croatia
Web: www.cyelp.com and www.pravo.unizg.hr/EJP/CYELP
Email: cyelp@pravo.hr

Printed by
Studio HS internet d.o.o.
Printed in 100 copies

Submission of Manuscripts

CYELP is an open-access, peer-reviewed journal that publishes articles, notes, reports, comments and book reviews.

CYELP does not charge article processing or submission fees. All manuscripts should be submitted online at www.cyelp.com (through the 'Open Journal Systems' software). Authors should follow the submission instructions provided on the specified website. These instructions relate particularly to the submission's prior publication, layout, citation system, and methods of ensuring the anonymity of the review process. By submitting their manuscripts to CYELP, authors confirm that their articles represent original work, and have not been previously or simultaneously published or submitted for publication elsewhere.

All contributions are subject to a review procedure. According to the Croatian Classification System, contributions published as 'articles' are designated as 'izvorni znanstveni rad', and those published as 'comments', 'reports' and 'notes' are evaluated as 'pregledni znanstveni rad'.

All parties involved in the publication process, ie editors, authors and reviewers, observe rules and standards regarding publication ethics defined by the Committee on Publication Ethics (COPE). All cases of suspected or alleged research or publication misconduct (plagiarism, fraudulence) are dealt with by the Editorial Board in line with the COPE Code of Conduct for Journal Editors.

CYELP uses *PlagScan* software to detect plagiarism in order to help ensure only original work is published.

Subscription Information

Volume price: €50 for Europe, €60 for other countries. Student price: €25.

Subscription orders should be sent to the Editorial Board:

Department for European Public Law, Faculty of Law, University of Zagreb
Ćirilometodska 4, 10000 Zagreb, Croatia
Email: cyelp@pravo.hr

Databases

CYELP is available in electronic format through:

- HeinOnline – Foreign & International Law Resources Database
- EBSCO
- Hrčak
- The Judicial View

CYELP is indexed in:

- WoS – ESCI (Web of Science – Emerging Sources Citation Index)
- DOAJ (Directory of Open Access Journals)
- Scopus
- European Sources Online (ESO)
- International Bibliography of the Social Sciences (IBSS)
- PAIS International
- GESIS SocioGuide
- Hrčak

CYELP is financially supported by

- Ministry of Science and Education of the Republic of Croatia
- University of Zagreb – Faculty of Law
- EU Erasmus+ Project

CROATIAN YEARBOOK OF EUROPEAN LAW AND POLICY
VOL. 18 [2022]

Table of Contents

Editorial Note

Bruno De Witte, How Much Critical Distance in the Academic Study of European Law? VII

Articles

Tamás Szabados, The EU Regulation on the Import of Cultural Goods: A Paradigm Shift in EU Cultural Property Legislation? 1

Berrak Genç-Gelgeç, Regulating Digital Platforms: Will the DSA Correct Its Predecessor's Deficiencies? 25

Rok Dacar, Is the Essential Facilities Doctrine Fit for Access to Data Cases? The Data Protection Aspect 61

Martin Milán Csirszki, Is There Room for Food Sovereignty Considerations in EU Competition Policy? A Theoretical Framework .. 83

Helena Pullmannová, International Jurisdiction and the Law Applicable to Disputes Arising From Infringement of the Right to a Trade Name as an Industrial Property Right 107

Beatrice Monciunskaite, The Risks to Judicial Independence in Latvia: A View Eighteen Years Since EU Accession 129

Léa Schumacker, Proportionality of Internal Border Controls: From the Covid-19 Pandemic to the 2021 Proposal 151

Book Reviews

Jasminka Pecotić Kaufman, *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, Maciej Bernatt 199

Branka Marušić, *The Politics of European Legal Research: Behind the Method*, Marija Bartl and Jessica C. Lawrence (eds) 205

EU Bibliography

Aleksandra Čar, EU Bibliography 209

Editorial note

Bruno De Witte*

HOW MUCH CRITICAL DISTANCE IN THE ACADEMIC STUDY OF EUROPEAN LAW?

What is, in the field of European Union law, the proper role of academic scholars? And how, specifically, do they and should they relate to the work of the practitioners of European law who work in the various institutions of the European Union: in the Court of Justice, the European Commission, the European Parliament, the Council of Ministers and the many other bodies and agencies? This kind of question is situated in a growing sub-field within the academic discipline of European Union law. That sub-field deals with self-reflection about the academic field itself. For instance, there are more and more contributions on the research methods to be used in dealing with EU law. There are also contributions by legal scholars on the sociology-and-politics of EU law academia. This essay fits into the latter category. It is about the sociology and politics of EU law as an academic discipline, but seen from one particular angle, namely the way in which EU law academic research is intertwined with the legal work accomplished by the European institutions.

Knowledge of European law is co-produced, on the one hand, by those whose profession is to produce knowledge (that is, scholars who are mostly based at universities) and, on the other hand, by those whose profession is to practise European law – by making, applying or interpreting European law, they also produce new knowledge. These practitioners work in law firms, in business and civil society organisations, and also, above all, in the institutions of the European Union. It is the latter group that interests me here: how does the co-production of EU law knowledge work between academics and legal practitioners based in the EU institutions?

I will look at the mutual engagement between these two groups of lawyers in two steps. The first step is to describe how the institutions act towards, and within, academia. The second step will be to look at how academics deal with the institutions. In both directions, we find that there are 'close encounters'.

So, what are the main ways in which the EU institutions engage with the academic world, and especially with the little world of EU law scholarship?

* Emeritus Professor of European Union Law, Maastricht University, and part-time professor at the Robert Schuman Centre of the European University Institute, Florence (ORCID: 0000-0002-4034-5893). The text is based on a lecture given at Maastricht University on 7 October 2022, and the light footnoting reflects the oral nature of that lecture. DOI: 10.3935/cyelp.18.2022.477.

First, the EU institutions have always given, and are still giving, financial support to EU legal scholarship in many different ways:

- Through the funding of European Documentation Centres in many European universities, starting in the 1960s; these were made conditional upon the existence of teaching and research on European integration in the hosting institutions.
- Through the temporary funding of Jean Monnet chairs in European law, a scheme launched in 1989, and later complemented by the Jean Monnet Centres of Excellence.
- Through the funding of collective and individual research, both in the form of consultations requested by EU institutions on particular topics, and in the form of projects funded from the European Union budget, through the Horizon, Marie Curie, Jean Monnet and ERC grants.
- Through the funding of specialised academic institutions such as the College of Europe and the European University Institute, where the study of European law came to occupy a central place.
- And even through the funding of specialised journals, such as the European Equality Law Review.

It is clear that the European Union, especially the Commission, has actively and deliberately pursued the development of a specifically European dimension in the social sciences (law, political sciences, economics, history). This means that most EU law scholars, at one moment or another, have benefited from European Union funding for their research or teaching activities, and some of us, like myself, have directly or indirectly benefited from EU financial support throughout their whole career.

Next to financial support, a second way in which the institutions engage with EU law scholarship is when their members act like scholars themselves. Indeed, many practitioners of EU law are former academics, and some of them teach EU law courses at universities. Some of them publish textbooks on EU law, and articles in law journals. They give visiting lectures and speak at academic conferences. They sometimes sit on the editorial board of journals. This active presence of practitioners in the academic world of EU law has been described in the literature, most recently in an article by Päivi Leino-Sandberg.[1] There is an intellectual and social proximity between the world of scholarship and the world of legal practice, which is closer than in most other legal disciplines, certainly closer than in international law. The thin demarcation line is marked by the ritual sentence used by the practitioners from EU institutions when publishing their writings. They declare that the 'views and opinions expressed in their contribution are personal and do not bind in any way the institution' to which they belong. This ritual sentence is useful for the

[1] Päivi Leino-Sandberg, 'Enchantment and Critical Distance in EU Legal Scholarship: What Role for Institutional Lawyers?' (2022) 1 European Law Open 231.

academic audience, as it signals the opposite of what it says: it signals that we should be aware that, however interesting and competent those views are, they still stem from practitioners who owe a sense of loyalty to the institution for which they work, and we should read their publication in that light.

A third way in which the EU institutions seek interaction with academics is by organising direct dialogue on a topic of common interest. My impression is that this happens more frequently than before. The European Commission, the European Parliament, and the European Central Bank regularly organise 'policy dialogues' or 'workshops', in which European policy initiatives are discussed by academics and members of independent think tanks – in other words, here the EU institution acts in listening mode.

In all these three modes of interaction, the European institutions have no problem in keeping a critical distance from what academics write or say. In fact, the European institutions do not depend on legal scholarship in the same way as they depend on scientific expert knowledge, for example on the question of climate change or energy prices. The main reason for this is that the European institutions have their own legal expertise in house. The Commission, Council, the European Parliament, and the European Central Bank have their own legal services, and many of their other officials who are not part of the legal service do have a legal training. And the Court of Justice is, of course, entirely in the hands of jurists, both among the judges and among the *référendaires*. This diminishes the need to reach out for academic input to find solutions for their daily legal problems.

It does not mean that academic research is considered entirely superfluous. It may occasionally have a policy impact, and sometimes we see concrete evidence of this.

But, generally speaking, we do not know to what extent EU law practitioners take note of, or are being influenced by, academic research. Even if they do, the translation of such influence into the content of EU law depends on internal hierarchies and the political choices imposed through them. Notes by the legal services of the EU institutions do not refer, or only very exceptionally, to legal writing. We do, however, find numerous references to academic work in impact assessment reports that accompany new proposals for EU legislation. The Court of Justice never refers to legal writing in its judgments, but some Advocates General refer to academic writing, and many scholars are secretly proud when one of their writings happens to be cited in an Opinion of an Advocate General, especially when cited approvingly.

Let me now look at the other side of the divide, at the way in which academics engage with the work of the European institutions.

The reasons why legal scholars are seeking close encounters with the EU's institutional life are diverse. The main, and most obvious, reason is

that EU law scholars based at universities also teach EU law. Teaching in law schools is supposed to reflect the state of the law, and the state of European law depends on what the European institutions do. So, EU law scholars must necessarily take an interest in the activities of the legal practitioners in the EU institutions in order for their teaching to be relevant. Through their teaching, they diffuse legal knowledge to new generations of jurists and that knowledge will then indirectly affect the work of the EU institutions when some of these students become practitioners in the EU institutions. This is what one could call the traditional virtuous circle of EU knowledge production. The institutions make, apply, and interpret EU law, and the academics systematise it and transmit it to their students so as to prepare them, in turn, for making and applying EU law. It explains why a lot of EU legal writing is in explanatory mode. As EU law developments are often confusing and complicated, academics see it as their task to present developments in a structured way. Even though such presentations may include some critical comments, their primary purpose is expository. There is nothing wrong with this. I have done a lot of this kind of writing myself, including not so long ago an article on the Covid recovery plan Next Generation EU (NGEU), where my principal task was to explain what the European Union institutions had actually been doing, legally speaking, in those hectic Covid-dominated months of 2020.[2]

However, not all of us need to do this kind of work, and certainly not all the time. The fact that we have to know what the EU institutions do in order to properly teach EU law does not mean that our own research must be in this explanatory mode. Many scholars, instead, approach the work of EU institutions in a critical mode or in legal change mode, in order to advocate improvements in European law.

Such advocacy scholarship, in EU law and other fields, has recently been the object of a debate that was sparked by the publication of articles by Komarek and Khaitan.[3] I do not want to engage with that debate here, but my general view is that it is perfectly appropriate for legal scholars to advocate legal change. Jurists have always done this. This is reflected in the famous and age-old distinction between the *lex lata* and the *lex ferenda*. Traditionally, legal scholars would describe the law as it stood after some new judgment or new piece of legislation, and then, towards the end of their piece, they would either say that they were entirely happy with these developments, or they would present their own, better, legal view that should be adopted in the future: the *lex ferenda*. What has changed in recent times is that advocates of legal change are supposed not just to state their own preferred views but also to make a sustained argument

[2] Bruno De Witte, 'The European Union's COVID-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift' (2021) 58 Common Market Law Review 635.

[3] Jan Komarek, 'Freedom and Power of European Constitutional Scholarship' (2021) 17 European Constitutional Law Review 422; Tarunabh Khaitan, 'On Scholactivism in Constitutional Studies: Skeptical Thoughts' (2022) 20 International Journal of Constitutional Law 547.

why those views are sound, possibly by reference to insights from social science or political philosophy. And, of course, advocacy should never lead us to ignore or distort the legal reality. Advocating reform of the law presupposes a sharp understanding of what the current state of the law is, because otherwise the advocacy will lead to nothing.

However, many people consider that EU legal research, taken as a whole, is not sufficiently critical of the work of EU institutions. The close ties between EU legal scholars and legal practitioners, which I described before, is not something of the past but continues to exist today and is a source of concern for some observers. For example, in the article by Päivi Leino-Sandberg mentioned above, she writes that 'EU legal academia should maintain a greater distance from the institutions […] and re-define its self-identity as a reflective and critical force, rather than one mainly focusing on legitimating EU action'.[4]

At this point, I think we have to admit that most EU law scholars do feel supportive of the European integration project, not for career reasons, and not because of pressure exerted on them, but because of their personal trajectory. Many European law academics work in other countries than their own and, if not, have spent years abroad. They may have grown up in multinational families, or created such a multinational family themselves. For them, their own life is connected to the European integration process, and to the new opportunities and experiences it has created and facilitated. But even if you have spent all your working life in, say, Spain or Croatia, the choice to become a scholar of European law is not an innocent one. It typically comes with a commitment to the project, to a sense that the European Union, as an organisation, is a very useful one, in that it helps all its member states to face common challenges, and that it helps – in some way – to preserve personal freedom and the welfare state.

In my own case, I realise that this basically supportive stance towards European integration has influenced my thinking and my writing. It led me to participate in research projects launched and funded by the European institutions. It also led me to support legal choices made in Brussels or in Luxembourg which others found legally problematic. For example, last year, I published the article in the Common Market Law Review on the Covid recovery plan that I mentioned before. It was entitled 'The European Union's Covid Recovery Plan: The Legal Engineering of an Economic Policy Shift'. As the title implied, I considered that the adoption of the recovery plan had been made possible by creative legal engineering from the side of the EU institutions and their legal services, but I argued that this legal creativity was acceptable and had been done for a good cause. More generally, in my view, the European Union needs to have the capacity to act in order to face numerous challenges that affect all its member states: the Treaty framework occasionally makes this

[4] Leino-Sandberg (n 1) 256.

difficult, and some legal creativity is then not only acceptable but actually desirable. Others have criticised this position, by emphasising that our main task, as academics, is to critically control whether the Court and the EU's political institutions respect the constitutional framework which the member states established when negotiating the European treaties.[5]

I submit that one should not be apologetic about having sympathy for the European integration project and showing this in one's work. But this does not mean that we should not keep a critical distance from the work of the EU institutions and from the views expressed by legal practitioners in the academic domain. That distance comes most naturally when academics write about the kinds of things that practitioners do not write about and are nevertheless important for the construction of knowledge of EU law, such as theoretical reflections on the nature of the European legal order, or on the nature of the EU's economic constitution. But that critical distance should also be there when scholars engage in their main activity, which is to explain and comment on what is going on concretely in the field of EU law.

That critical assessment can be both internal and external. The internal one is by those who work on questions of EU legality by identifying the legal quality of the reasoning in a judgment or of a legal choice made by a European institution. The external one is by those who work on the question of EU legitimacy by examining the conditions under which rules of EU law emerge, or the impact that EU law rules have on social reality.

The *internal* critique is ubiquitous. All EU legal scholars practise it. In fact, I really wonder why it is still said that most EU legal scholars uncritically support the Court of Justice. If one looks at case comments in any of the EU legal journals, the majority of them are quite critical of the Court's reasoning. To simply reiterate what the Court decided, and to silently approve its reasoning, has become the exception and is, indeed, frowned upon in academic circles. Critical comments have become the rule, and have become a sign of scholarly distinction. This also applies to the work of the other EU institutions: when new EU legislation is proposed or adopted, scholarly analysis is, more often than not, accompanied by a critique of the legal logic or consistency of what was done.

External critique of the functioning of the EU institutions is less common, but it is a growing part of European legal scholarship. It looks at the conditions under which EU law rules or judgments emerge or at the impact that they have on social reality, both inside and outside Europe, or at their distributive consequences. That kind of work looks at European law in its broader political, economic, or cultural context, and often engages with interdisciplinary approaches. In many academic settings, this kind of work is nowadays encouraged. In some countries, it is

[5] See, also with reference to the EU's Covid recovery plan, Päivi Leino-Sandberg and Mathias Ruffert, 'Next Generation EU and Its Constitutional Ramifications: A Critical Assessment' (2022) 59 Common Market Law Review 433.

still frowned upon, because it is considered not to be the proper way of doing legal research. But this is not, I should add, because of any pressure from the side of the European institutions. Indeed, my feeling is that EU legal scholars are, these days, in almost all European countries, freer than ever in choosing the object and method of their research, of doing doctrinal work or law-in-context, in being supportive of what the EU institutions do, or not. European law today is a pluralist academic field, and that is a precious thing.

Suggested citation: B De Witte, 'Editorial Note: How Much Critical Distance in the Academic Study of European Law?' (2022) 18 CYELP VII.

THE EU REGULATION ON THE IMPORT OF CULTURAL GOODS: A PARADIGM SHIFT IN EU CULTURAL PROPERTY LEGISLATION?

Tamás Szabados*

Abstract: The EU has recently decided to regulate the import of cultural goods in the EU. While the new provisions have been widely criticised for various reasons, primarily for having a freezing effect on the European art trade, it cannot be overlooked that the regulation of the import of works of art is not unprecedented, either in international, regional and national legal instruments or at the level of EU legislation. The new legislation can be considered a paradigm shift. It completes the pre-existing EU legal sources that primarily aimed to protect cultural goods originating from the EU and provides equal and symmetric protection for cultural goods arriving from third countries. In this way, the EU regulation transcends a self-centred regional approach and embodies a global vision of the protection of cultural heritage.

Keywords: cultural goods, art trade, import, licence, policy change.

1 Introduction

The divergences of the rules on importing cultural goods are a clear incentive to illicit trafficking. The fact that a state prohibits the export of a cultural object from its territory does not mean that the unlawfully exported cultural object cannot be lawfully imported into another state and cannot be subject to transactions there.[1] Illicit trade moves such objects towards states with no or only relatively lenient import regulations. This is why an (ideally uniform) regulation of importing cultural objects is desirable.

Taking the above concerns into account as well, the import of stolen or illegally exported cultural property has been the subject of international, regional and national regulation for some decades. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Con-

* Associate Professor, ELTE Eötvös Loránd University, Budapest. I am grateful for the research assistance provided by Niklas Jahn (University of Heidelberg) in the course of preparing this study. Email: szabados@ajk.elte.hu (ORCID: 0000-0002-5195-685X). DOI: 10.3935/cyelp.18.2022.472.

[1] Claudia S Quiñones Vilá, 'On the Borderline: Using National and International Legal Frameworks to Address the Traffic of Pre-Columbian Antiquities between Mexico and the United States' (2021) 7 Santander Art and Culture Law Review 51, 54; see Paul M Bator, 'An Essay on the International Trade in Art' (1982) 34 Stanford Law Review 275, 287.

vention),[2] the Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations adopted in the framework of the Organization of American States (OAS),[3] and some domestic legislation have similarly addressed the import of cultural property. The legislature of the European Union (EU) decided to act on the regulation of the importation of cultural property from third countries only recently. The result is the adoption of Regulation 2019/880/EU on the introduction and the import of cultural goods (EU Import Regulation)[4] and the accompanying Regulation 2021/1079/EU that implements the EU Import Regulation (Implementing Regulation).[5]

The EU Import Regulation has had an ambivalent welcome so far. Urbinati considered the proposal for the regulation as a means of contributing to a 'more complete and efficient' EU legal framework for fighting against illicit art trade.[6] There are commentators who contend that the EU Import Regulation could have been more effective in certain respects.[7] For others, especially art traders and their representative organisations, it is too much; they assume that, once fully applicable, it will be too strict and will unnecessarily limit the art market due to the attendant administrative and financial burden imposed on art dealers.[8] This is why it has

[2] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 823 UNTS 231, Paris, 14 November 1970.

[3] Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations (Convention of San Salvador) 16 June 1976. See Richard Mackenzie-Gray Scott, 'The European Union's Approach to Trade Restrictions on Cultural Property: A Trendsetter for the Protection of Cultural Property in Other Regions?' (2016) 2 Santander Art and Culture Law Review 211.

[4] Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods [2019] OJ L151/1.

[5] Commission Implementing Regulation (EU) 2021/1079 of 24 June 2021 laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods [2021] OJ L234/67. See Giuditta Giardini, 'A Commentary to Commission Implementing Regulation (EU) 2021/1079 of 24 June 2021 Laying Down Detailed Rules for Implementing Certain Provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the Introduction and the Import of Cultural Goods' (2021) 7 Santander Art and Culture Law Review 183.

[6] Sabrina Urbinati, 'The European Union Legal Framework and the Fight against the Illicit Trafficking of Cultural Property Coming from Situations of Armed Conflict' (2018) 4 Santander Art and Culture Law Review 51, 66.

[7] Lewis McNaught, 'EU-wide Regulation Aims to Prevent Illegal Trafficking into European States' (*Returning Heritage*, 1 October 2019) <https://www.returningheritage.com/eu-wide-regulation-aims-to-prevent-illegal-trafficking-into-european-states> accessed 10 April 2022.

[8] See Erika Bochereau talks to Alicja Jagielska-Burduk and Andrzej Jakubowski, 'Challenges and Prospects for the Art Market Vis-à-vis the Evolving EU Regime for Counteracting Illicit Trade in Cultural Objects' (2021) 7 Santander Art and Culture Law Review 21, 25.

been labelled 'Draconian'[9] or more emphatically 'fundamentally flawed',[10] and it was also stated that 'the regulation is likely to cripple European art markets'.[11] Furthermore, the way in which the EU Import Regulation was adopted was described as 'the handing down of orders in a dictatorial manner'.[12] It was also asserted that the Regulation can weaken the position of the EU on the art trade market.[13] In this view, due to the EU Import Regulation, fewer artefacts will be imported into the EU due to the strict import regime, and the art trade may move to other art trade centres of the world. Finally, it was warned that 'without effective implementation the Regulation risks becoming no more than a paper tiger; impressive on paper but not nearly as daunting or effective in practice'.[14]

The purpose of this contribution is to examine how the provisions of the EU Import Regulation fit into the traditional paradigms of the protection of cultural property. To answer this question, the two traditional approaches of cultural property protection will first be scrutinised. Then, the article discusses the main rules of the EU Import Regulation. Although the EU Import Regulation by nature imposes restrictions on the art trade that let the representatives of traders speak of the freezing effect of the regulation, a comparative analysis demonstrates that the rules of the EU Import Regulation criticised by them are not without precedent. Nevertheless, the gradually evolving cultural property legislation in the EU points to a paradigm shift, or at least to a new policy approach, which integrates the protection of the cultural heritage of both Member States and third countries.

2 The traditional paradigms of cultural property and their critics

In cultural property protection discourse, following Merryman, two paradigms or ways of thinking about cultural property have been distinguished: cultural internationalism and cultural nationalism.[15]

Cultural internationalism treats cultural goods as part of the common cultural heritage of mankind and, as a corollary, it underscores the

[9] Kate Fitz Gibbon, 'Art Imports to EU Threatened by Draconian Regulation' (*Cultural Property News*, 29 December 2018) <https://culturalpropertynews.org/art-imports-to-eu-threatened-by-draconian-regulation/> accessed 10 April 2022.

[10] Pierre Valentin and Fionnuala Rogers, 'The Proposed EU Regulations on the Import of Cultural Goods' (*Art@Law*) <https://www.artatlaw.com/latest-articles/the-proposed-eu-regulations-on-the-import-of-cultural-goods> accessed 10 April 2022.

[11] Fitz Gibbon (n 9).

[12] Ivan Macquisten, 'No EU Problem with Terrorist Antiquities, So Let's Legislate for It' (*Cultural Property News*) <https://culturalpropertynews.org/no-eu-problem-with-terrorist-antiquities-so-lets-legislate-for-it-says-commission/> accessed 10 April 2022.

[13] Valentin and Rogers (n 10).

[14] Anna M de Jong, 'The Cultural Goods Import Regime of Regulation (EU) 2019/880: Four Potential Pitfalls' (2021) 7 Santander Art and Culture Law Review 31, 33 and 37.

[15] John Henry Merryman, 'Two Ways of Thinking About Cultural Property' (1986) 80 American Journal of International Law 831; John Henry Merryman, 'Cultural Property Internationalism' (2005) 12 International Journal of Cultural Property 11.

importance of ensuring access for all to the common cultural heritage. Its vision is the facilitation of the international flow of works of art in commerce by eliminating excessive and unnecessary trade obstacles. Excessive regulation stifles the art market and encourages illegal trade in art. This approach is shared by the so-called market countries, where there is high demand for cultural valuables originating from source countries. Merryman found that the 1954 Hague Convention embodies cultural internationalism[16] when it protects cultural property as the cultural heritage of all mankind, the preservation of which is necessary for all peoples of the world. This is completed by establishing individual responsibility for offences against cultural property and enabling the courts of the contracting states to proceed in such instances.

Cultural nationalism, on the contrary, treats cultural goods as elements of the national cultural heritage, and therefore tends to exclude or restrict international trade, and in particular the export of goods considered as components of the national cultural heritage. This approach is mostly relied on by so-called source countries rich in cultural property. The 1970 UNESCO Convention is seen as a manifestation of cultural nationalism. To prevent the de-contextualisation of cultural property, the 1970 UNESCO Convention provides for the protection of cultural goods by their country of origin. According to critics, no limit is imposed on states as to the determination of the cultural property to be protected by way of prohibiting its exportation. Whether or not to grant an export restriction depends on the discretion of state authorities. Excessive export restrictions result in a policy of retentive nationalism in source countries and limits the room for the licit art trade. The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage goes even further when it states that the underwater cultural heritage cannot be commercially exploited. Excessively limiting or excluding trade in cultural property may also hinder transactions concerning cultural goods which do not have cultural significance or a strong cultural bond to the country prohibiting the export. A corollary of the idea of the 1970 UNESCO Convention, that cultural property belongs to its country of origin, is that countries of origin are entitled to the return of cultural property illegally removed from there.

Even though scholarly works often take the two conflicting paradigms as granted,[17] some authors have called into question the dichotomy between cultural internationalism and cultural nationalism. Alternative approaches have been proposed to overcome the short-sightedness of the two ways outlined above. Criticisms have been formulated from diverse angles. It is not only the oversimplified conflict between the necessity for and rejection of regulation that has been criticised, but also the one-track state- and institution-centred thinking underlying the narratives.

[16] Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 216, The Hague, 14 May 1954.

[17] Lucas Lixinski, 'A Third Way of Thinking about Cultural Property' (2019) 44 Brooklyn Journal of International Law 563, 572.

As to the elimination of the obstacles to the free flow of works of art raised by state legislation, it cannot be ignored that Merryman himself qualified his position, acknowledging that 'no thinking person argues for free trade in cultural property'.[18] Regulation is necessary for preserving cultural property and to promote its lawful commerce. The reality is that both source and market countries adopt certain restrictions to the commerce of cultural objects, and the free movement of cultural property remains a somewhat theoretical possibility. The 1954 Hague Convention, deemed to be a manifestation of cultural internationalism, does not primarily address the trade-related aspects of cultural property protection. As such, it is difficult to consider it as a point of departure in a debate about free or regulated art trade. The question is rather where the borderline lies between necessary and excessive regulation. Other authors unequivocally advocate a controlled legal art trade. In this vein, Bauer argues that illegal art trade cannot be entirely excluded, but controlled licit trade contributes to meeting at least part of the demand for cultural goods.[19] The revenues from this licit commerce would enrich source countries and not traffickers. Cultural property appearing in the trade should be widely distributed among states and museums, and state practice should not be reluctant to issue export licences when it is not justified to keep the object in its country of origin.

Others insist on transcending the state- and institution-centred approach inherent in cultural nationalism and internationalism. Lixinski hence claims that binary thinking about cultural property excludes communities who are living in, with or around cultural heritage.[20] A third way of thinking about the international governance of cultural property should include communities. Finally, there is also a view that cultural heritage debates are characterised by indeterminacy and cannot be channelled into the duality of cultural nationalism and internationalism.[21] Addressing such debates is possible if based on a plurality of approaches and by including external factors, such as human rights, into the decision-making process.

To be able to place the EU Import Regulation on the scale of cultural property paradigms, we first have to examine the provisions of the EU Import Regulation in a comparative context. It will be argued that, with the EU Import Regulation, the EU goes beyond the simple protection of cultural goods originating from EU Member States and extends the protection to the cultural heritage of third countries as well. This represents a paradigm shift for EU cultural property legislation, moving away from an

[18] Merryman, 'Cultural Property Internationalism' (n 15) 12.

[19] Alexander A Bauer, 'New Ways of Thinking About Cultural Property: A Critical Appraisal of the Antiquities Trade Debates' (2007) 31 Fordham International Law Journal 690, 714–716.

[20] Lixinski (n 17) 563.

[21] Pauno Soirila, 'Indeterminacy in the Cultural Property Restitution Debate' (2022) 28 International Journal of Cultural Policy 1, 12–13.

inward-looking legislative approach towards the recognition of the need to protect the cultural heritage of any state.

3 The main rules of the EU Import Regulation

To understand the policy approach of the EU Import Regulation, its provisions must first be put under scrutiny. As a general prohibition clause, Article 3(1) of the EU Import Regulation states that it is prohibited to import those cultural goods listed in Part A of its Annex that were created or discovered in a third country and which were removed illegally from that country. To fall under the rules of the EU Import Regulation, the cultural object must have been created or discovered in a third country. Those works of art which originate from the EU are not covered by the Regulation, even if they are intended to be re-imported after their exportation from the EU at some point in the past.[22]

The EU Import Regulation thereafter distinguishes two categories of cultural goods enumerated in two lists in its Annex (Part B and Part C): first, cultural goods, the importation of which is subject to an import licence, and second, those subject to the less demanding requirement of an importer statement.

First, the import of the most endangered cultural goods requires an import licence. Archaeological troves and dismembered elements of artistic or historical monuments or archaeological sites older than 250 years are subject to an import licence independently of their value (Part B of Annex). An application for an import licence must be filed with the competent authority of the Member State where the cultural goods are subject to customs procedures, and the import licence issued is valid throughout the EU. The burden of proof is placed on the importer to demonstrate the lawful export of the cultural goods. The application must be accompanied by supporting documents (export certificate or export licence) proving that the cultural goods were lawfully exported from the country where they were created or discovered or that no export regulation existed in the country concerned.

Second, the importation of the other category of cultural goods, which are deemed to be less in danger, presupposes an importer statement (Part C of Annex). A diverse group of cultural goods belong to this category, provided that they are more than 200 years old and have a value of more than EUR 18,000. The importer statement consists of a declaration by the holder of the goods on the lawfulness of the export from the country where the cultural goods were created or discovered and of the description of the objects.[23] The application for an import licence and the submission of the importer's statement must be made on a standardised template and in the format determined by the Commission and through a

[22] Stella Sarapani, 'The Import of Cultural Goods under EU and Greek Law: A Critical Outlook' (2021) 7 Santander Art and Culture Law Review 203, 209–210.

[23] EU Import Regulation, Art 5(1).

centralised electronic system, to be established by the Commission under the EU Import Regulation.

Exceptionally, in the case of both the import licence and the importer statement, it suffices to prove alternatively that the cultural goods lawfully left the last country where they had been located for a period of more than five years, provided that the country where the cultural goods were created or discovered cannot be reliably determined or the cultural goods were exported from the country of creation or discovery before 24 April 1972, ie the date of the entry into force of the UNESCO Convention. This provision raises several questions. The EU Import Regulation does not expound what standard is to determine that the source country cannot be 'reliably determined'. The burden of proof is on the holder of the cultural goods. The content of the standard, and thus the conditions and the scope of the above exception, may be established by national courts if an applicant has recourse to these against a decision of the competent authority. Ultimately, the Court of Justice of the European Union may be requested to clarify the content of this exception in a preliminary ruling procedure. The choice of the date of the entry into force of the UNESCO Convention may be justified by the fact that the Convention requires states parties to introduce export certificates in order to demonstrate that the export of cultural property falling under the scope of application of the convention was authorised, and such an export certificate should accompany all items of cultural property exported.[24] Nevertheless, the five-year exception rule related to import licences and importer statements may be considered an incentive to ignore the previous unlawful export of the same artefact that took place before 1972. A further problem is when the date of the export cannot be ascertained.[25] This is because, first, it is crucial to determine whether export took place before or after 24 April 1972 and, second, because the date of export is the relevant time for establishing the rules applicable to the export of the cultural goods concerned, including whether there was any export legislation in force at all in the country of creation or discovery at the time of the export.

The EU Import Regulation recognises certain exceptions to the requirements on the import licence and the importer statement (eg, returning goods; the import of cultural goods for safekeeping; the temporary admission of cultural goods for the purposes of education, science, conservation, restoration, exhibition, and cooperation between museums). Instead of an import licence, an importer statement is sufficient if the cultural goods are brought to the EU for the purpose of exhibiting them at a commercial art fair; an import licence is required, however, if the goods are intended to be sold thereafter in the EU.

The EU Import Regulation gives Member States some leeway. The consequences of the breach of import rules is determined by the Member

[24] UNESCO Convention, Art 6(a).

[25] Fitz Gibbon (n 9); Valentin and Rogers (n 10).

States. It is for the Member States to determine what sorts of measures national authorities have to take when there is an attempt to introduce cultural goods exported illegally from other countries to the EU,[26] and the penalties.[27]

At the same time, the EU Import Regulation does not answer certain questions. It does not give guidance on what happens to an object seized by the authorities if it cannot or could not have been imported into the EU. The EU Import Regulation does not regulate the restitution or return of cultural goods.[28] This is left to diplomatic channels, as well as to international and domestic legal provisions. Here, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects may have a role for those EU Member States which ratified it.[29]

Private law effects are not addressed by the EU Import Regulation, including the question of ownership and possible restitution to an owner.[30] The EU Import Regulation limits itself to laying down public law rules on the import of cultural goods into the EU and the related administrative procedure. Therefore, the issuance of an import licence does not prove the licit provenance or the ownership of the cultural goods.[31] Addressing the private law implications of the transactions related to works of art remains a deficiency of EU law.

Although the EU Import Regulation entered into force on 27 June 2019, its most essential provisions will only be applied from a later date.[32] The prohibition on the import of illegally exported cultural goods applies from 28 December 2020, while the requirements on the import licence and the importer statement will apply from the date on which the central electronic system becomes operational, or at the latest from 28 June 2025. Regarding the central electronic system, the Commission has recently adopted more detailed provisions in the Implementing Regulation and it must be operational at the latest four years after the entry into force of the first implementing act.[33] Even though the EU Import Regu-

---

[26] EU Import Regulation, Art 3(1); Urbinati (n 6) 67-68.

[27] EU Import Regulation, Art 11(1); Urbinati (n 6) 68.

[28] European Commission, Fact Sheet, Questions and Answers on the illegal import of cultural goods used to finance terrorism. Brussels, 13 July 2017.

[29] UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995.

[30] European Commission, Commission Staff Working Document, Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods, Brussels, SWD(2017) 262 final, 21.

[31] EU Import Regulation, Art 4(3).

[32] EU Import Regulation, Art 16.

[33] EU Import Regulation, Art 9. See also the report of the Commission on the progress of the implementation of the electronic system: Report from the Commission to the European Parliament and the Council pursuant to Article 14(3) of Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods Brussels COM(2020) 342 final.

lation has not yet entered into force, its provisions and policy approach have been subject to criticism for various reasons.

4 Critical voices in relation to the EU Import Regulation

Well before its starting date of application, the EU Import Regulation has been subject to much criticism, in particular on the part of the representatives of the art trade. Counterarguments against the solutions of the EU Import Regulation are manifold. First, it is argued that the scope of application of the Regulation has not been appropriately determined. On the one hand, the scope of application is found too broad and has raised objections, primarily from representatives of antiquarian book sellers, that the EU Import Regulation compounds various types of cultural goods without due regard to their particularities.[34] On the other hand, the categorisation of the cultural goods covered and the minimum financial threshold set for the cultural goods listed in Part C is criticised for making a difference between important and less important cultural property.[35] Accordingly, the Regulation ignores that mass trade in small value goods can cause significant harm to cultural heritage and be a source of income for terrorist organisations. Second, it is stressed that it puts an unnecessary administrative and financial burden on art dealers, especially on small businesses. The import licence and importer system may cause additional costs and delay in conducting deals that may deter dealers from bringing cultural goods into the EU for sale. In particular, the 90-day deadline for deciding on an application for an import licence seems to be too long from the perspective of market players. The extent to which this can be counterbalanced by the supporting measures of the Commission, adequate technical assistance and the provision of information to small and medium-sized enterprises, as envisaged by the EU Import Regulation, is questionable.[36] In any case, the Implementing Regulation does not specifically address the situation of small and medium-sized enterprises. Third, sometimes it might be difficult to determine the country of creation or discovery, the export regulations of which should be taken into consideration, the exact date of exportation, and to prove the lawfulness of the earlier exportation(s) of an art object. As such, it is contended that the application of the EU Import Regulation may result in the otherwise lawful legal trade in and the import of cultural goods being restrained if no supporting documents can be provided

[34] Eleni Polycarpou, Diana Wierbicki and Amanda A Rottermund, 'Tick Tock: Regulations on the Import of Non-EU-cultural Goods Are Now in Effect. How Will This Affect the International Art Market?' (*Withersworldwide*, 27 June 2019) <https://www.withersworldwide.com/en-gb/insight/tick-tock-regulations-on-the-import-of-non-eu-cultural-goods-are-now-in-effect-how-will-this-affect-the-international-art-market> accessed 10 April 2022.

[35] Neil Brodie, 'Heart of Confusion? EU Regulation 2019/880 on the Import of Cultural Goods and the Fight against Terrorism' (*Market of Mass Destruction*, 17 January 2020) <https://marketmassdestruction.com/heart-of-confusion-eu-regulation-2019-880-on-the-import-of-cultural-goods-and-the-fight-against-terrorism/> accessed 10 April 2022.

[36] EU Import Regulation, Recital 28.

by the holder of the goods.[37] The EU Import Regulation introduces the presumption of illegality, and the importer has to demonstrate that the export was legal. This indeed causes the problem that if a lawful export took place after 1972 and then the cultural goods were subject to a series of commercial transactions, but there is no available documentation proving the lawfulness of the export (eg because it was not passed to a subsequent purchaser or otherwise disappeared in the meantime), the goods cannot be imported, even though their export had been lawful. Finally, it has been argued that the EU legislature failed to justify the need for the import legislation appropriately, because no evidence had been put forward to demonstrate that trade in looted art objects in the EU is significant or that it really contributes to financing terrorist organisations or money laundering.[38] Overall, these factors may have a negative impact on the role and prospects of the EU art market.

The practice related to the EU Import Regulation will demonstrate to what extent this criticism is well founded. However, we have to wait for the time being. Undoubtedly, the EU Import Regulation places an additional burden on importers. This may affect in particular non-professional importers who also have to comply with the provisions of the EU Import Regulation even if they lack expertise. However, the rules of the Regulation encourage importers and buyers to act with due diligence when acquiring a cultural object. Even though the Regulation does not unfold in detail the content of due diligence, its approach seems to be in line with the UNIDROIT Convention in this respect. Under the UNIDROIT Convention, a possessor of a stolen or illegally exported cultural object, who has to return it, is entitled to compensation only if he acted with due diligence when acquiring it.[39]

In my view, it is premature to conclude that the new rules will either deter the flow of works of art to the EU or stifle the European art market. As will be demonstrated in the next part of this article, several states, including important market countries, such as Switzerland and the US, already now apply certain import controls. No significant fallback was noticed in the art markets concerned due to the introduction of import restrictions. Therefore, it cannot be directly deduced from the existence of import restrictions that the EU art market will shrink. The significance of the rules and policy approach of the EU Import Regulation can be properly evaluated if we consider them in comparison with the legislative solutions of states regulating the import of cultural goods, as well as in the context of the extant EU cultural property protection regime.

---

[37] Valentin and Rogers (n 10).

[38] Kate Fitz Gibbon, 'Critical Comments Rain Down on Draft EU Regulations' (*Cultural Property News*, 21 April 2021) <https://culturalpropertynews.org/critical-comments-rain-down-on-draft-eu-regulations/> accessed 10 April 2022; Brodie (n 35).

[39] UNIDROIT Convention, Arts 4 and 6.

5 The place of the EU Import Regulation from a comparative perspective and in the context of the existing EU cultural property protection regime

The introduction of import restrictions by the EU does not seem unique. There are international, regional and national legal instruments addressing the import of cultural goods that lay down certain restrictions. Moreover, even in the EU, the regulation of the import of cultural property is not entirely untried and the solutions of the EU Import Regulation by and large fit in with the pre-existing regulatory technique of the EU legislature.

5.1 Rules on importation at a comparative glance

First of all, the UNESCO Convention contains some provisions related to the importation of cultural property. It declares that any import effected contrary to the provisions of the convention is illicit.[40] The UNESCO Convention requires states parties to undertake to prohibit the import of cultural property stolen from a museum or a religious or secular public monument in another state party, provided that such property appears in the inventory of the institution concerned.[41] The country of origin can request the state party where the cultural property is located to take appropriate steps to recover and return any such cultural property.[42] In the case of a claim for return, an innocent purchaser or a person who has valid title to that property is entitled to just compensation. In the event of risk of pillage of its archaeological or ethnological materials, any state party may call upon other states parties to make joint efforts to take the necessary measures, including the control of imports.[43] States parties to the UNESCO Convention must respect the cultural heritage within the territories for the international relations of which they are responsible, and must take all appropriate measures to prohibit and prevent the illicit import of cultural property in such territories.[44] Finally, states parties undertake, consistent with their laws, to prevent transfers of ownership of cultural property likely to promote the illicit import of such property by all appropriate means.[45] Although the UNESCO Convention imposes some requirements on states parties in relation to the import of cultural property, it is far from constituting a comprehensive binding import regulation.

The UNIDROIT Convention does not provide for specific import regulations. Instead, it lays down a set of rules for the return of illegally exported cultural objects. Even if this Convention orders the return of

[40] UNESCO Convention, Art 3.

[41] ibid, Art 7b(i).

[42] ibid, Art 7b(ii).

[43] ibid, Art 9.

[44] ibid, Art 12.

[45] ibid, Art 13(a).

stolen and certain illegally exported cultural objects by their possessor and thereby encourages buyers to act carefully when acquiring and in the given case importing cultural objects, it does not establish any substantive or procedural rule on the introduction of cultural objects from one state to another. The words 'import' and 'importation' do not even appear in the text of the UNIDROIT Convention.

As far as regional-level cultural property protection regulation is concerned, the EU does not stand alone. The San Salvador Convention, adopted in the framework of the OAS, prohibits the importation of cultural property protected by the convention, unless the state owning it authorises its exportation for purposes of promoting knowledge of national cultures.[46] Additionally, the convention declares that states parties may resort to any measure they consider effective to prevent and curb the unlawful importation of cultural property, as well as measures necessary for the return of such property to the state to which it belongs in the event of its removal.[47]

It must be mentioned that the more recent Nicosia Convention on Offences relating to Cultural Property adopted under the aegis of the Council of Europe, which has not yet entered into force, contains an article on illegal importation. This requires states parties to qualify the intentional importation of movable cultural property as a criminal offence if it constitutes a breach of domestic legislation on the grounds that the cultural property had been stolen, excavated or exported in violation of the law of another state and to impose criminal sanctions in such a case.[48] This article is, however, subject to reservation. Knowingly acquiring and placing illegally imported cultural property on the market must also be considered a criminal offence.[49] More generally, the Nicosia Convention also requires states parties to 'introduce import and export control procedures, in accordance with the relevant international instruments, including a system whereby the importation and exportation of movable cultural property are subject to the issuance of specific certificates'.[50]

Some EU Member States provide for restrictions on the import of cultural property from third countries and require a declaration of the import or the presentation of export documentation, while others do not specifically address the importation of cultural goods.[51]

Some legislations explicitly prohibit the import of illegally exported cultural goods, in accordance with the applicable international and EU

---

[46] San Salvador Convention, Art 3.

[47] ibid, Art 10.

[48] Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 19 May 2017, Art 5. See also Nicosia Convention, Art 6(2).

[49] Nicosia Convention, Arts 7–8.

[50] ibid, Art 20(b).

[51] See European Commission, DG Taxud/Deloitte, Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU, Final report, June 2017, 84–98.

instruments, without requiring an import licence. The German *Kulturschutzgesetz* prohibits the import of cultural goods if they are classified as national cultural goods by an EU Member State or a state party to the UNESCO Convention and if they were taken from the territory of such a state in violation of legal provisions on the protection of national cultural goods; if they were removed in breach of an EU regulation; or if they were taken contrary to the First Protocol of the 1954 Hague Convention.[52] The importer has to demonstrate that export from the country of origin was legal by presenting an export licence or other confirmation by the country of origin.[53] Similarly, Austrian legislation prohibits the importation of cultural goods illegally exported from an EU Member State or a state party to the UNESCO Convention if their removal would also be illegal at the time of importation to Austria.[54] Greece requires a declaration by the importer and that the cultural goods concerned are subject to inspection as far as their origin is concerned.[55] In Italy, upon the transport or import of cultural goods from EU Member States and third countries respectively, at the importer's request, a certificate is issued on the basis of documentation that is appropriate to identify the goods and to prove the origin of the goods from the territory of the Member State or the third country from which they were transported or imported.[56] It must be noted, however, that even in Member States regulating import, the subject matter scope of application of import restrictions, ie the objects covered, differ.

Countries outside the EU have also adopted specific import regulations related to cultural property. The US and Switzerland, two states parties to the UNESCO Convention, make the imposition of import restrictions conditional upon an international agreement with the source country. The US implemented the UNESCO Convention by means of the Convention on Cultural Property Implementation Act (CPIA), which addresses import restrictions, too.[57] By virtue of the CPIA, import restrictions may not be imposed generally on the importation of cultural property, but only regarding archaeological or ethnological material.[58] The CPIA covers only objects of archaeological interest with a minimum age limit of 250 years.[59] The CPIA authorises the US president to conclude international agreements with other states parties to the UNESCO Convention with the aim of restricting the import to the US of archaeological or eth-

[52] Kulturgutschutzgesetz vom 31. Juli 2016 (BGBl I S 1914), § 28.

[53] Kulturschutzgesetz, § 30.

[54] Bundesgesetz über die Rückgabe unrechtmäßig verbrachter Kulturgüter, BGBl I Nr 19/2016, § 4.

[55] Law No 3028/2002 on the protection of antiquities and cultural heritage in general; Sarapani (n 22) 218–222.

[56] Codice dei beni culturali e del paesaggio, Art 72.

[57] Convention on Cultural Property Implementation Act (CPIA) 19 USC §§ 2601-13. Patty Gerstenblith, 'The Legal Framework for the Prosecution of Crimes Involving Archaeological Objects' (2016) 64 United States Attorney's Bulletin 5, 9-13.

[58] Gerstenblith (n 57) 10.

[59] 19 USC § 2601(2)C(i)(II).

nological material from the other state.[60] If the US president determines that an emergency condition applies with respect to any archaeological or ethnological material of any state party, the president may apply import restrictions to such material, even in the absence of a bilateral agreement.[61] The designated archaeological or ethnological material can only be imported to the US if certificates demonstrate that export from the other state party was legal. More specifically, the 1972 Pre-Columbian Act also prohibits the importation of listed pre-Columbian monumental or architectural sculptures and murals without an export certificate from the country of origin.[62]

Under the Swiss *Kulturgütertransfergesetz*,[63] import restrictions apply to cultural goods when they are provided for by an international agreement concluded between Switzerland and another UNESCO Convention state party. Such an international agreement can be entered into provided that the object of the agreement is a cultural object of crucial significance for the cultural heritage of the contracting state concerned; the cultural object is subject to export provisions on the protection of cultural heritage of the contracting state concerned; and reciprocity is ensured.[64] In order to prevent from further damage another state's cultural heritage that is endangered due to extraordinary circumstances, importation can either be permitted, made subject to conditions, or restricted or prohibited for a determined period of time.[65] An action for the return of illegally imported cultural goods may be brought by the state from which the cultural goods were illegally exported under the *Kulturgütertransfergesetz,* provided that the claimant state demonstrates that the cultural goods have crucial significance for its cultural heritage and were illegally imported.[66] The state claim for return may be initiated within one year from the date when the authorities of the claimant state became aware of the location of the cultural goods and of the person who possesses them but at the latest within 30 years of the illegal exportation of the cultural goods.[67] However, a good faith possessor is entitled to compensation, to be paid by the claiming state, in the event of return.[68] It must be noted that although the US and Swiss laws specify rules on importation and address the consequences of illegal import, a strong freezing effect was not demonstrated on the US and Swiss art markets due to the operation of these rules.

---

[60] ibid, § 2602.

[61] ibid, § 2603.

[62] ibid, § 2091.

[63] Bundesgesetz über den internationalen Kulturgütertransfer (Kulturgütertransfergesetz, KGTG) vom 20. Juni 2003.

[64] Kulturgütertransfergesetz, Art 7.

[65] Kulturgütertransfergesetz, Art 8.

[66] ibid, Art 9(1).

[67] ibid, Art 9(4).

[68] ibid, Art 9(5)-(6).

It is to be noted that certain national laws are not limited to establishing public law rules on the import of cultural property, but also address the private law effects of illegal importation. In this sense, they go clearly beyond the EU Import Regulation. Some impose an obligation on market actors not to place illegally imported cultural goods on the market or transfer such property, and the breach of this obligation results in the nullity of the underlying contracts.[69] The Swiss *Kulturgütertransfergesetz* even imposes an obligation on persons active in the art trade and auction business to provide information to their customers regarding the import and export regulations of states parties to the 1970 UNESCO Convention.[70]

5.2 The EU Import Regulation and the existing EU cultural property protection regime

Even at the EU level, the EU Import Regulation is not without precedent and its solutions fit very well with the already existing EU legal provisions on the protection of cultural goods.

First, Articles 28-30 and 34-36 TFEU,[71] as well as Directive 2014/60/EU,[72] addressed intra-EU trade, while Regulation 116/2009/EC (EU Export Regulation) deals with the export of cultural goods from the EU.[73] The fact that the cultural goods of EU Member States were already protected by the EU Export Regulation and Directive 2014/60/EU is why the EU Import Regulation does not apply to cultural goods created or discovered in the territory of the EU.[74] Although the specific cultural property legislation of the EU did not previously address the import of cultural property from third countries in a comprehensive way, two regulations were adopted, which also introduced import restrictions, to protect cultural property originating from Iraq and Syria. Regulation 1210/2003/EC concerning certain specific restrictions on economic and financial relations with Iraq (Iraqi Sanctions Regulation)[75] and Regulation 36/2012/EU concerning restrictive measures in view of the situation in Syria (Syri-

[69] See in Germany: Kulturgutschutzgesetz, § 40, and in Switzerland: Kulturgütertransfergesetz, Art 16.

[70] Kulturgütertransfergesetz, Art 16(2)(b).

[71] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

[72] Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) [2014] OJ L159/1.

[73] Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods [2009] OJ L39/1.

[74] EU Import Regulation, Art 1(2).

[75] Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 [2003] OJ L169/6.

an Sanctions Regulation)[76] already introduced import restrictions regarding cultural property originating from Iraq and Syria. Although these regulations are not specific cultural property regulations, they contain rules on its protection. As they are part of sanctions regimes, they are applied temporarily, while the sanctions regulations concerned remain applicable. The import of or introduction to the territory of the EU, as well as dealing in Iraqi cultural property illegally removed from Iraq, is prohibited by the Iraqi Sanctions Regulation. Similarly, the import of and the provision of brokering services related to Syrian cultural property are prohibited by the Syrian Sanctions Regulation, where there are reasonable grounds to suspect that the goods have been removed from Syria without the consent of their legitimate owner or have been removed in breach of Syrian law or international law. The Iraqi and Syrian Sanctions Regulations cover objects listed in their annexes. The list of these objects corresponds to the list contained in Annex I of the EU Export Regulation. Unlike the EU Import Regulation, the Iraqi and the Syrian Sanctions Regulations do not apply a reversed burden of proof.[77] It is for the authorities of the Member States to establish that the cultural goods originate from Iraq or Syria.[78] Cultural objects have been seized under the two regulations in only a few cases.[79]

Second, the language of the EU Import Regulation is not new. The Iraqi Sanctions Regulation uses the notions of 'cultural property' and 'cultural items'; the Syrian Sanctions Regulation refers to 'cultural property goods'; Directive 2014/60/EU makes reference to 'cultural objects'; the EU Export Regulation refers to 'cultural goods' as the subject matter of the regulation and the EU Import Regulation does the same. Although the terminology of EU law is not entirely consistent, the use of the concept of 'cultural goods' in the EU Export and Import Regulations suggests that although culture is not in the competence of the EU, trade in works of art involves 'goods' that trigger the application of the provisions on free movement of goods within the EU and the rules of the common commercial policy in relation to third countries.

Third, the way of determining the material scope of application of the EU Import Regulation and, more specifically, the cultural goods covered, does not differ substantially. The previous EU regulations used a similar technique: the listing of cultural goods in an annex, taking their age and a financial threshold into account. The minimum 250 years age limit for cultural goods subject to an import licence corresponds to the criterion

[76] Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 [2012] OJ L16/1.

[77] European Commission, DG Taxud/Deloitte, Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU (n 51) 104.

[78] ibid, 104.

[79] ibid, 100–102.

applied by the US CPIA.[80] Although there are overlaps in the cultural goods falling under the scope of application of the EU Export and EU Import Regulation, their lists are not fully identical.[81] The cultural goods listed in the EU Import Regulation correspond instead to the list of the 1970 UNESCO Convention and the UNIDROIT Convention.

Fourth, the legal basis of the EU Import Regulation is Article 207(2) TFEU, ie the commercial policy competence. The same legal basis was used for the EU Export Regulation, the relatively laconic recital of which simply states that common rules on trade with third countries are necessary for the protection of cultural goods, and for the maintenance of the internal market.[82] At the same time, in Article 114 TFEU, the internal market legal basis was relied on regarding Directive 2014/60/EU. The selection of treaty articles that constitute a legal basis for regulating extra- or intra-EU commerce may indicate that the international art trade is considered a commercial issue, although it can also be explained by the fact that the EU has only supporting competence in the field of culture.[83]

Taking all the above into account, one could even draw the conclusion that the EU Import Regulation uses previously existing concepts, regulatory techniques and policy approach. However, this is not entirely the case. This is because the EU Import Regulation brings certain major changes, both at the level of the rules and in its regulatory approach.

6 The addition of rules of the EU Import Regulation

Why can it be said that that the new EU Import Regulation is more than a restatement of pre-existing international or domestic cultural property import regimes? First of all, importers could profit from the divergence of legal systems. The differences between the import regimes of the Member States can result in the avoidance of the stricter import legislation of some Member States and can direct the flow of the art trade to those Member States with no or more lenient import rules, giving rise to 'port-shopping'. Once the cultural goods are in the territory of a Member State, they can benefit from the free movement of goods within the EU internal market. A clear addition of the EU Import Regulation is that it levels off the differences between national rules on importing cultural goods, providing uniform rules and preventing 'port shopping'.

As is well known, the application of the UNESCO Convention is dependent on implementation by the states parties. Of the Member States of the EU, two, Ireland and Malta, did not even ratify the UNESCO Convention and those that are parties to the UNESCO Convention have im-

[80] European Commission, Commission Staff Working Document, Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods, Brussels, SWD(2017) 262 final, 27.

[81] Urbinati (n 6) 61.

[82] EU Export Regulation, Recital (2).

[83] Art 6(c) TFEU.

plemented it in different ways. Previously, importing cultural goods to the territory of the Member States belonged to the competence of individual Member States, which left room for divergent regulations.[84]

In comparison to the UNESCO Convention, the scope of application of the EU Import Regulation is broader. It covers not only the treatment of cultural goods exported from states parties to the UNESCO Convention, but also from any other state. The EU Import Regulation overcomes a twofold problem to a large extent. On the one hand, the export restrictions of the source countries are very often not respected outside their territories and become simply unenforceable. The EU Import Regulation recognises the export legislation of any state and sanctions its violation. Furthermore, the regime of import licences and importer statements is founded on the recognition of the export legislation of the source country. As importation presupposes the existence of an export licence or export documentation from the country where the cultural goods were created or discovered, the EU approach also involves the recognition of such documents. One of the pillars of the EU cultural property protection regime has been mutual trust between the Member States.[85] The EU Import Regulation unilaterally puts trust in third countries, more precisely in the export legislation of third countries and their authorities issuing export certificates and other documents. On the other hand, the UNESCO Convention had already been criticised for providing blanket rules for state parties to designate broadly protected cultural property and restrict its export, and forcing other states to recognise and enforce those foreign export restrictions.[86] The same has been repeated in relation to the EU Import Regulation and it also stressed that it is done without reciprocity in the relationship with third countries.[87] However, it is to be noted that, under the EU regime, only the import of cultural goods specified by the EU Import Regulation is subject to restrictions, not all goods that were perhaps arbitrarily designated by the source country for protection.

A shortcoming of the international regimes is that they rely on state consent and implementation that sometimes fails or is incomplete.[88] The EU Import Regulation is directly applicable in the Member States and as such it gives less room to manoeuvre to the Member States. Some flexibility is recognised, for instance regarding the measures to be taken by national authorities when cultural goods are intended to be introduced illegally[89] and the penalties to be imposed in the event of the breach of the

---

[84] See EU Import Regulation, Recital (4).

[85] See Directive 2014/60/EU, Recital (10); Michele Graziadei and Barbara Pasa, 'Patrimoni culturali, tesori nazionali: il protezionismo degli Stati membri dell'UE nella circolazione dei beni culturali' (2017) 22 Contratto eimpresa/Europa 121, 131.

[86] Merryman, 'Two Ways of Thinking About Cultural Property' (n 15) 844-845.

[87] Valentin and Rogers (n 10).

[88] See MacKenzie-Gray Scott (n 3) 229.

[89] EU Import Regulation, Art 3(1).

rules of the EU Import Regulation.[90] This does not alter, however, the aim of the new rules, to ensure that the 'imports of cultural goods are subject to uniform controls' in the EU.[91]

7 A paradigm shift in EU cultural property legislation?

It can be argued that the EU Import Regulation does not simply introduce various new elements in regulating the import of cultural property, but heralds a new age for EU cultural property legislation. A deeper analysis of the EU Import Regulation may allow the conclusion that a paradigm shift, or at least a significant policy change, is taking place in EU cultural property law.

The justification of the Regulation already suggests a policy change. As set out above, the commercial policy competence was selected as a legal basis by the EU legislature. The choice of the legal basis and the explanation of the need for the EU Import Regulation in the recitals are not entirely in line with each other. This discrepancy already indicates a slight policy shift. The overall objective of the EU has been to create an internal market, free from the illicit trafficking of cultural objects. However, quite interestingly, the very first recital of the EU Import Regulation does not deal much with the significance of the new regulation for the art trade or common commercial interests, but underlines its importance from the point of view of preventing the financing of terrorism and related money laundering. Instead of a commerce-centred approach, the Regulation makes clear that it 'should take into account regional and local characteristics of peoples and territories, rather than the market value of cultural goods'.[92] It is also interesting to note that Article 3(7) of the EU Import Regulation acknowledges that the restrictions introduced by the Regulation (import licence and importer statement) do not affect other measures adopted by the EU in accordance with Article 215 TFEU. Article 215 provides a legal basis for imposing economic sanctions by the EU against natural or legal persons and groups or non-state entities. The reference reveals that similar trade restricting measures could be adopted under Article 215 TFEU, a legal basis upon which counterterrorist measures may also be rested. It is no coincidence that the same legal basis was used by the Iraqi[93] and Syrian Sanctions Regulations.

It is telling that the proposal for the EU Import Regulation was put forward in the framework of the Commission Action Plan for Strengthening the Fight against Terrorist Financing. This approach can, however, be contrasted by reports – mainly relied on by art dealer representatives

[90] ibid, Art 11.

[91] ibid, Recital (4).

[92] EU Import Regulation, Recital (2).

[93] The Iraqi Sanctions Regulation refers to Articles 60 and 301 of the EC Treaty, Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community [2002] OJ C325/1.

– that no evidence may be found for significant illegal art trade generated by terrorist organisations and thereby for money-laundering and financing terrorism.[94] Indeed, a report ordered by the European Commission refers to terrorist financing as an effect of trafficking in cultural goods mentioned in the literature.[95] At the same time, the report acknowledges that 'hard evidence on the existence of these effects is currently often lacking' and the survey conducted does not demonstrate any available evidence of the financing of terrorist activities related to the illicit art trade.[96]

Nevertheless, the approach of the EU is not self-standing. The United Nations Security Council (UNSC) took, as a point of departure in its Resolution 2199(2015), 'that ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks'[97] and then it required the UN member states to take appropriate measures to prevent the trade in Iraqi and Syrian cultural property.[98] The need for taking measures by UN member states to fight against the illicit trade in Iraqi and Syrian cultural property was also confirmed by UNSC Resolution 2253(2015).[99] The UNSC adopted Resolution 2347(2017), in which it requested UN member states to take appropriate steps to prevent and counter the illicit trade and trafficking in cultural property originating from a context of armed conflict, notably from terrorist groups, including by prohibiting cross-border trade in such illicit items where States have a reasonable suspicion that the items originate from such a context, and which lack clearly documented and certified provenance, thereby allowing for their eventual safe return.[100] Additionally, it called upon UN members to cooperate in investigations, prosecutions, seizure and confiscation, as well as the return, restitution or repatriation of illicitly exported or imported cultural property.[101] Similarly, it urged UN member states, in order to prevent and counter trafficking in cultural property illegally appropriated and exported in the context of armed conflicts, notably by terrorist

---

[94] Fitz Gibbon (n 9); see also Kristin Hausler, 'The EU Approach to Cultural Heritage in Conflict and Crisis: An Elephant in the Room?' (2021) 7 Santander Art and Culture Law Review 193, 197.

[95] European Commission (n 51) 120; Macquisten (n 12).

[96] European Commission (n 51) 120.

[97] UNSC Resolution 2199 (2015) S/RES/2199 (2015), para 16.

[98] ibid, para 17.

[99] UNSC Resolution 2253 (2015) S/RES/2253 (2015).

[100] UNSC Resolution 2347 (2017), S/RES/2347 (2017), para 8. See Hans-Jakob Schindler and Frederique Gautier, 'Looting and Smuggling of Artifacts as a Strategy to Finance Terrorism Global Sanctions as a Disruptive and Preventive Tool' (2019) 26 International Journal of Cultural Property 331.

[101] UNSC Resolution 2347 (2017), S/RES/2347 (2017), para 12.

groups, to adopt adequate and effective regulations on import.[102] It may be noted that the Iraqi Sanctions Regulation explicitly refers to the relevant UNSC resolution.[103] The 2007 Taormina summit of the G7 stated that cultural 'property is a source of financing for activities of terrorist groups and organizations'.[104] The World Customs Organization adopted a resolution on the role of customs in preventing the illicit trafficking of cultural objects. The measures considered by the resolution were partly justified by the existence of 'linkages between illicit trafficking in cultural objects, money laundering, other criminal activities and possibly terrorism'.[105] Embedded in such developments, the reference to the prevention of financing terrorism and money-laundering in the EU Import Regulation demonstrates the global focus of the EU cultural property protection regime.

The UNESCO Convention and the approach of the 1970s and 1980s were considered by Merryman as the age of cultural nationalism, since countries focused only on safeguarding their cultural property located in or originating from their own territories and hindering the international art trade with a broad application of export restrictions.[106] At a regional level, however, the EU seems to follow a different path.

A clear policy change may be noticed regarding the EU cultural property legislation. For a long time, EU law focused primarily on the protection of the national treasures of the Member States in accordance with Article 36 TFEU and safeguarding Europe's cultural heritage as indicated in Article 3(3) TEU. Similarly, Article 167 TFEU mentions the common cultural heritage and cultural heritage of European significance, in addition to the need to respect national and regional differences. As to the trade with third countries, EU cultural property legislation has addressed the export of cultural goods from the EU. This approach simply gave cultural nationalism a broader regional dimension.

This approach was changed first by the Iraqi and Syrian Sanctions Regulations. The Iraqi Sanctions Regulation and the Syrian Sanctions Regulation undoubtedly brought a change in EU policy towards cultural property. First of all, they were the first EU measures introducing import restrictions related to cultural property. Second, they went beyond the protection of the cultural heritage of EU Member States and extended the protection to cultural property originating from these two countries.

These characteristics of the two regulations are shared by the EU Import Regulation. The change initiated by the Iraqi and Syrian Sanc-

---

[102] ibid, para 17(b).

[103] UNSC Resolution 1483 (2003), S/RES/1483 (2003).

[104] G7 Taormina Statement on the Fight Against Terrorism and Violent Extremism, para 12.

[105] Resolution of the Customs Co-operation Council on the role of customs in preventing illicit trafficking of cultural objects, Brussels, July 2016.

[106] Merryman, 'Two Ways of Thinking About Cultural Property' (n 15) 850; Merryman, 'Cultural Property Internationalism' (n 15) 22.

tions Regulations has thus been crowned by the EU Import Regulation. The sanction measures covered cultural goods from these two states, but not from other countries equally afflicted by war or an unstable political situation.[107] The extension of the territorial scope of the protection is crucial, because the application of the *ad hoc* sanctions regulations could be circumvented by falsifying the origin of the cultural goods.[108] The traffic in and importation of artefacts from Syria and Iraq to the EU was possible by falsely claiming that the objects originated in other countries, such as Turkey, Jordan or Lebanon.[109]

The EU Import Regulation generalises the protection of cultural goods without specifying the countries of origin concerned to the extent that the country of origin accords protection regarding the export of the cultural goods. As such, the EU Import Regulation protects the cultural heritage of all countries of the world. An introverted regional perspective opened up gradually and turned into a global point of view guarding the protection of cultural heritage. The change in the approach of legal regulation is completed by further EU actions that promote the protection of the cultural heritage in third countries. In particular, the EU lent funding in cooperation with UNESCO to projects for safeguarding the cultural heritage in third countries, such as Mali and Ethiopia.[110]

Where can the EU cultural property protection regime – now completed by the EU Import Regulation – be located in the spectrum of cultural nationalism and cultural internationalism?

As we saw earlier, the soundness of the traditional paradigms elaborated by Merryman in the 1980s has been called into question in the legal literature. The EU Import Regulation clearly goes beyond the approach of cultural nationalism, since its aspiration is not simply the protection of the cultural objects of the EU Member States. With its legislative act, the EU also wants to safeguard cultural goods originating from outside the EU. At the same time, the EU Import Regulation does not correspond to the internationalist idea of the freest possible trade in cultural objects either. Introducing import restrictions, paying heed to the export restrictions of other countries, squarely implies an assumption that limitations to their free trade are necessary to safeguard the cultural heritage.

Instead, the EU Import Regulation transcends the commonly accepted binarity of cultural nationalism and internationalism. It takes over certain elements from both. The EU legislative approach has an internationalist vision, to the extent it aims at not only the protection of the cultural goods of the EU Member States, but also those of third countries.

---

[107] European Commission (n 51) 104.

[108] Sarapani (n 22) 208.

[109] See Neil Brodie, 'Syria and Its Regional Neighbors: A Case of Cultural Property Protection Policy Failure?' (2015) 22 International Journal of Cultural Property 317, 323.

[110] European Commission, Mapping of Cultural Heritage actions in European Union policies, programmes and activities (August 2017) 38.

The goods covered by the EU Import and Export Regulation to a large extent overlap. The EU Export Regulation not only protects cultural goods of the Member States, but its protection extends equally to cultural goods from third countries in free circulation in the EU that are intended to be exported. By nature, the EU Import Regulation aims at protecting foreign cultural goods. The completed regime is protective both towards the cultural goods of the Member States as well as those of third countries treating cultural goods as part of the common cultural heritage. This gives rise to a symmetry in the protection of cultural heritage, irrespective of whether it originates from the EU or from a third country. The EU regime clearly represents a paradigm shift, from cultural nationalism towards a balanced vision that avoids the self-centredness of cultural nationalism. At the same time, it does not ignore the need for regulation to safeguard cultural heritage by imposing certain restraints on the art trade, and the import restrictions are to a large extent determined with due regard to the export legislation of the states where the cultural objects appearing in the trade were created or discovered.

8 Conclusions

The EU cultural property protection regime, which previously focused on cultural goods originating from the EU Member States and which elevated cultural nationalism to a regional level, is now completed by the EU Import Regulation. With the EU Import Regulation, the EU legislature continues to acknowledge the need for a regulated art trade and imposes certain obligations on importers, including the requirement to obtain an import licence or for an importer statement, depending on the characteristics of the cultural goods. The rules and regulatory techniques of the new regulation are, however, not entirely new. Import restrictions are not unknown in the world of the art trade. Instead, the peculiarity of the EU cultural property legislation is that, following a global vision, it provides equal and symmetric protection for cultural goods originating from the EU and for those from third countries, thanks to the introduction of the EU Import Regulation enshrining the common cultural heritage, irrespective of its origin. In this way, the EU legislature seems to pursue an approach that transcends the extremes of both cultural nationalism and cultural internationalism.

Suggested citation: T Szabados, 'The EU Regulation on the Import of Cultural Goods: A Paradigm Shift in EU Cultural Property Legislation?' (2022) 18 CYELP 1.

REGULATING DIGITAL PLATFORMS: WILL THE DSA CORRECT ITS PREDECESSOR'S DEFICIENCIES?*

Berrak Genç-Gelgeç**

Abstract: The E-Commerce Directive 2000/31 (ECD) has been the law applicable to Internet intermediaries related to their liability for third-party content on their platform, electronic contracts, and e-commerce activities for more than twenty years. Its core is the harmonised immunity regime established in Articles 12–15. These rules grant immunity to the providers of mere conduit, caching, and hosting from liability arising from infringing content made available by their users on their platform. However, the ECD has been criticised for not fully achieving its objective of uniformity, not keeping up with the pace of the Internet, and not effectively protecting the parties' fundamental rights as it gives crucial discretion to the intermediaries. The ECD is to be replaced with the Digital Services Act (DSA). The aim is to regulate new means of digital services (especially Big Tech) while benefiting from their 'technical and operational ability to act against specific items of illegal content' in preventing the availability of illegal content and protecting fundamental rights. Its framework is based on the prevailing idea of acknowledging digital platforms as responsible actors. It establishes new sets of tiered due-diligence obligations for digital platforms to comply with while reproducing the immunity regime of the ECD. Its framework appears to target those issues arising from the ECD. However, whether it can deliver this promise calls for discussion. This paper aims to address this question. To do so, it will first try to identify the deficits of the ECD. Second, and more importantly, it will seek to scrutinise the DSA to evaluate if it provides the answers to the issues that the ECD fell short of.

Keywords: digital platforms, liability, immunity regime, E-Commerce Directive, Digital Services Act.

---

* This paper considers the consolidated version of the DSA that was adopted on 5 July 2022.

** (LLM, Soton; PhD, Sussex); Lecturer in Civil and Obligations Law, Istanbul Medeniyet University Law School; email: berrakgenc@hotmail.com (ORCID: 0000-0001-5166-8965).
DOI: 10.3935/cyelp.18.2022.485.

1 Introduction

The Digital Services Act (DSA),[1] proposed by the European Commission to update the rules on information society services in December 2020, was approved by the European Parliament in July 2022 following a legislation process. It will be in force once it is approved and published by the Council of the European Union (EU). It will then be applicable from either 15 months after that date or on 1 January 2024, whichever is the later.[2] This means that the E-Commerce Directive 2000/31 (ECD)[3] is to be replaced by the DSA at that time.

The ECD has been the applicable law regulating Internet intermediaries[4] since 2000. Intermediaries are the pillars of the Internet, as they 'bring together or facilitate transactions between third parties on the Internet'.[5] The ECD's main objective was to create a legal framework to facilitate the free movement of intermediaries within the EU so that innovation and e-commerce activities can also be encouraged. Arguably, the most effective way to do the latter is to establish rules enabling intermediaries to provide services easily and foster innovation.[6] Similarly, the European legislator's approach to the ECD was not to regulate intermediaries through hard law but to establish rules to tackle illegal content online without imposing strict duties. Henceforth, the immunity regime is established by Articles 12–15 ECD. These rules exempt intermediaries from liability for the illegal content made available on their platforms by third parties.

Information society services cover 'all services normally provided against remuneration, at a distance by electronic means and on the indi-

---

[1] European Parliament legislative resolution of 5 July 2022 on the proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM(2020)0825 – C9-0418/2020 – 2020/0361(COD)) (DSA).

[2] DSA, Art 74.

[3] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/1 (ECD).

[4] This term is used interchangeably with information society services in this article.

[5] OECD, 'OECD Report on the Economic and the Social Role of Internet Intermediaries' (April 2010) <http://www.oecd.org/internet/ieconomy/44949023.pdf> accessed 10 September 2022.

[6] Indeed, in the early 2000s, this was the preferred approach to regulating intermediaries. Under US law, liability exemptions are also provided to specific service providers, although vertically. S.230(c) of the Communications Decency Act exempts access providers from liability for any content and hosting providers for information they store (excluding IP rights), while s.512 of the Digital Millennium Copyright Act grants immunity for access providers, caching services, hosting services and linking services arising from copyright infringements. Luciano Floridi, 'The End of an Era: From Self-Regulation to Hard Law for the Digital Industry' (2021) 34 Philosophy & Technology 619–622; Giancarlo Frosio, 'Regulatory Shift in State Intervention: From Intermediary Liability to Responsibility' in Edoardo Celeste, Amélie Heldt and Clara Iglesias Keller (eds), *Constitutionalising Social Media* (Hart Publishing, forthcoming) pt 3.

vidual request of a service receiver'.[7] However, immunity is only granted for certain services of intermediaries. These services are specified as the transmission of information ('mere conduit'), the provision of automatic, intermediate, and temporary storage ('caching'), and storage of information in the capacity of the host ('hosting'). Having immunity granted, however, depends on fulfilling different conditions for different types of intermediaries. For mere conduit and caching intermediaries, not being involved in the transmission of illegal content or information would be sufficient to have immunity granted, as the provision of these services does not necessarily require any intervention or involvement on their side. On the other hand, hosting intermediaries are required to take swift action once they become aware (for claims regarding damages) or have actual knowledge (for criminal law matters) of the infringing nature of the content uploaded on their platform to benefit from immunity. As hosting intermediaries store information on their platforms, which might require involvement from intermediaries in operating, the immunity is grounded on different conditions from mere conduit and caching intermediaries. In this respect, the ECD encourages hosting intermediaries to implement the notice and takedown (NTD) mechanism in their systems to tackle infringing content. But further insight on how the mechanism should work and what principles should be followed is not provided. These matters are left to Member States to deal with under national laws. That being said, Article 15 ECD prohibits Member States from imposing general monitoring obligations on intermediaries in tackling illegal content. In this way, this article confines hosting intermediaries' involvement in acting against illegal content, although the term 'scope of general monitoring' is not clearly defined, as will be demonstrated later.

The immunity rules apply horizontally so that they apply to cases when the uploaded content gives rise to an infringement of any substantive rights, with only the exception of claims relating to data and privacy protection.[8] More importantly, the immunity rules provide additional protection to intermediaries. This means that not fulfilling the conditions for immunity, ie failing to benefit from immunity, does not automatically lead an intermediary to be regarded as liable.[9] The intermediaries' liability question is dealt with by the national laws of Member States. This is compatible with the approach adopted for the ECD, as well as the fact that tort law (which often applies to civil liability cases) is not harmonised

---

7 ECD, recital 17.

8 ECD, Art 5(b).

9 Eifert and others state that the immunity rules should not be considered as rules to provide privileges to intermediaries. The regime instead specifies the general duty of care of intermediaries from illegal content. The DSA's approach of reproducing the immunity regime is thus regarded as appropriate, provided that intermediaries are granted exemption from liability when they are not involved in their users' infringing activity. Martin Eifert, Axel Metzger, Heike Schweitzer and Gerhard Wagner, 'Taming the Giants: The DMA/DSA Package' (2021) 58 Common Market Law Review 987, 1005–1006.

within the EU.[10]

Having said that, the DSA is grounded on a somewhat different approach. It reflects the prevailing idea of acknowledging digital platforms as responsible actors in tackling illegal content.[11] Although the ECD's immunity regime is maintained in the DSA with a small addition, new sets of transparency, accountability and information obligations are imposed on providers of digital services, where some of these obligations appear as ex-ante ones. Considering the evolution of the Internet since the ECD was adopted, acknowledging intermediaries as main actors and imposing duties on them seem more appropriate for establishing a properly functioning digital market. When the Internet was in its infancy, the aim was to foster innovation with the ECD, but now innovative digital services have been taken to a different level. Especially with the advent of Web 2.0,[12] users have become more actively involved in the Internet, while intermediaries' societal, economic and political impact scales up accordingly.[13] This also means that the harm caused by illegal content affects more users.[14] In dealing with this, the ECD, as mentioned, requires hosting intermediaries to act against illegal content and accordingly encourages them to implement NTD mechanisms. It, however, does not determine the scope of the actions or the measures that could be taken. In default of

[10] Helmut Koziol, 'Harmonising Tort Law in the European Union: Advantages and Difficulties' (2013) 1 ELTE Law Journal 73–88; Michael Faure, 'The Harmonisation of EU Tort Law: A Law and Economics Analysis' in Paula Giliker (ed), *Research Handbook on EU Tort Law* (Edward Elgar Publishing 2017). There is also an EU plan to establish a legal framework for AI technologies. One of the legal initiatives proposed as part of that plan is to create civil liability rules for AI. For this action plan, see 'A European Approach to Artificial Intelligence' *(European Commission,* 28 September 2022) <https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence> accessed 10 September 2022. See also Bernhard A Koch and others, 'Response of the European Law Institute to the Public Consultation on Civil Liability: Adapting Liability Rules to the Digital Age and Artificial Intelligence' (2022) 13 Journal of European Tort Law 25; European Commission, Directorate-General for Justice and Consumers, Ernst Karner, Bernhard Koch and Mark Geistfeld, *Comparative Law Study on Civil Liability for Artificial Intelligence* (Publications Office of the European Union 2021); Alberto Galasso and Hong Luo, 'Punishing Robots: Issues in the Economics of Tort Liability and Innovation in Artificial Intelligence' in Ajay Agrawal, Joshua Gans and Avi Goldfarb (eds), *The Economics of Artificial Intelligence: An Agenda* (University of Chicago Press 2019) 493–504.

[11] Frosio (n 6). Floridi asserts that regulating digital platforms through soft law or self-regulation was also the most logical approach to facilitate the dialogue between society and the digital industry, although he now strongly supports regulating the digital market through hard law. See Floridi (n 6) 619 and 622.

[12] Web 2.0 is the technology which allows user interaction online via interactive applications and platforms. For a detailed analysis, see Tim O'Reilly, 'What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software' (2007) 65 International Journal of Digital Economics 17.

[13] Ilaria Buri and Joris van Hoboken, 'The Digital Services Act (DSA) Proposal: A Critical Overview' (2021) Discussion paper, Digital Services Act (DSA) Observatory, Institute for Information Law (IViR), University of Amsterdam.

[14] Alexandre De Streel and Martin Husovec, 'The E-commerce Directive as the Cornerstone of the Internal Market', study for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies (European Parliament, Luxembourg 2020) 25.

clearly defined rules and transparency obligations,[15] the intermediaries can be said to become private powers.[16] This is perhaps one of the ECD's greatest challenges in reaching its goal of establishing uniform rules.

The DSA, on the other hand, promisingly sets outs due diligence obligations of transparency, accountability and information for digital services to qualify. More importantly, it takes the technical abilities, sizes and powers of digital services into account in establishing the rules. The obligations are set out depending on their size and roles in the online world. In this respect, the providers of digital services are classified into four categories: intermediaries, hosting intermediaries including online platforms, online platforms (providers of hosting services that also disseminate information),[17] and very large online platforms (VLOPs) and very large online search engines (VLOSEs) (online platforms that have more than 45 million recipients).[18] As will be demonstrated later, each is required to perform duties at different levels. This approach seems effective in creating a uniformly applied legal framework, as it specifies each platform's obligations. Furthermore, the DSA reproduces the immunity regime for digital services. This also appears to be fit for purpose: regulating new means of digital services, especially Big Tech,[19] while benefiting from their 'technical and operational ability to act against specific items of illegal content'[20] in preventing the availability of illegal content and pro-

[15] Indeed, back in 2015, academics from around the world wrote an open letter directed at Google, seeking more transparency from Google, especially on the reasons for denying or granting delisting requests, as the Transparency Report published by Google was considered to lack the required clarity on these points. See Ellen P Goodman 'Open Letter to Google from 80 Internet Scholars: Release RTBF Compliance Data' (*Medium*, 13 May 2015) <https://ellgood.medium.com/open-letter-to-google-from-80-internet-scholars-release-rtbf-compliance-data-cbfc6d59f1bd> accessed 10 September 2022.

[16] De Gregorio and Pollicino also state that '[…] immunizing or exempting these actors – Big Tech's predecessors – from third-party responsibility has contributed to the transformation of economic freedoms into something that resembles the exercise of powers as vested in public authorities' in Giovanni De Gregorio and Oreste Pollicino, 'The European Constitutional Road to Address Platform Power' in Heiko Richter, Marlene Straub and Erik Tuchtfeld (eds), *To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package* (2021) Max Planck Institute for Innovation and Competition Research Paper No 21-25, 16–21.

[17] DSA, Art 2(h).

[18] ibid.

[19] This is used for describing digital services, which are the major controllers of the digital market and have gained regulatory power over the market. It is associated with Google, Amazon, Facebook, Apple and Microsoft. This is why the Digital Markets Act (Commission Proposal for a Regulation on contestable and fair markets in the digital sector (Digital Markets Act) COM(2020) 842 final) is also proposed by the legislators besides the DSA (as the second legislative initiative of the Digital Services Act package) and is aimed at providing a level playing field for all sizes of platforms and at protecting competition within the digital market by bringing new sets of rules for specific platforms (which are defined as gatekeepers) to comply with.

[20] DSA, recital 26.

tecting fundamental rights.[21]

Although the approach seems promising and effective, whether the framework established by the DSA will iron out the deficits of the ECD calls for discussion. This paper aims to address this question. To do so, it will first try to identify the deficiencies of the ECD. Second, and more importantly, it will seek to scrutinise the DSA to evaluate if it provides the answers for the issues the ECD has failed to address. It should, however, be underlined that the DSA's framework will not be discussed in its entirety; instead, it is to be addressed within the scope of the article's objective.

2 The ECD: where does it fall short?

The ECD establishes a legal framework for Internet intermediaries concerning their liability for illegal content made available on their platform, electronic contracts, or commercial communications. In tackling the liability question, as it is addressed, it sets out harmonised safe harbour rules for intermediaries in Articles 12–15. More precisely, it provides the rules governing the circumstances when an intermediary can be immune from the liability that may arise for third parties' illegal content made available on its platform. If an intermediary does not qualify for immunity, its liability is to be assessed by the courts of Member States as per their corresponding tort or penal liability laws. Hence, the existing regime is more appropriately described as an immunity regime rather than a liability regime.[22] Before addressing the immunity regime, it should be noted that the ECD is adopted as a directive. This means that the ECD was not directly applied in Member States when it came into force. As a directive, the rules should be transposed into their national laws by the Member States. In doing so, the choice of forms and methods is left to the Member States. As will be seen, the choice of a directive affected the purpose of harmonisation in a negative way, especially regarding the NTD mechanism.

Reverting to immunity rules, immunity is provided for certain types of online services, namely the service that merely transmits information ('mere conduit'); that offers automatic, intermediate and temporary storage ('caching'); and that stores information in the capacity of a host ('hosting'). The regime, however, establishes different conditions according to the type of service provided since these services require a different

[21] In contrast, Buri and van Hoboken argue that the imposition of accountability obligations might entrench the dominant position of the intermediaries, although the exact opposite is aimed at. See Ilaria Buri and Joris van Hoboken, 'The DSA Proposal's Impact on Digital Dominance' in Heiko Richter, Marlene Straub and Erik Tuchtfeld (eds), *To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package* (2021) Max Planck Institute for Innovation and Competition Research Paper No 21-25 10–15.

[22] Patrick Van Eecke and Maarten Truyens, 'EU Study on the Legal Analysis of a Single Market for the Information Society' (2009) EU Study <https://op.europa.eu/en/publication-detail/-/publication/a856513e-ddd9-45e2-b3f1-6c9a0ea6c722> Ch 6.3.2 accessed 10 September 2022.

operating process. These conditions assist in separating an active intermediary from one that remains passive while operating, as the ECD's approach in tackling illegal content is to foster innovation as well as to prevent the availability of infringing content online. Thus, immunity is provided to an intermediary that is regarded as passive. However, what should be understood by an active or passive intermediary is not clearly explained by the ECD. Recital 42 only states that the activity of an intermediary should be 'of a mere technical, automatic and passive nature which implies that the information society service provider has neither knowledge of nor control over the interested parties of deciding freely whether to adhere to the information which is transmitted or stored'.[23]

In the *Google France* case,[24] the Court of Justice of the European Union (ECJ) held that a hosting intermediary should play a neutral role when providing its service in order to benefit from immunity. This case considered third-party trademark infringements committed on Google's platform. One of the questions before the ECJ was whether or not Google (a referencing service provider that also enables advertisers to purchase keywords) qualifies as an information society service under the ECD. If it does, should it benefit from immunity?[25]

In dealing with these questions, the ECJ held, in the light of recital 42, that a hosting provider should be neutral to be exempted from liability. It further established that it is considered to play a neutral role in offering its service when 'its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data it stores'.[26] However, this test appears problematic as it would not always be straightforward to assess if a hosting intermediary's conduct is passive and purely technical. Hosting intermediaries would often need to have some tools implemented in their system to enable their users to use the services properly.

For example, an online auction site, eBay, optimises the presentation and sales on its platform through its advertisements on search engines,

---

[23] In that regard, recital 42 states the following: 'The exemptions from liability established in this Directive cover only cases where the activity of the information society service provider is limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored, for the sole purpose of making the transmission more efficient; this activity is of a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of nor control over the interested parties of deciding freely whether to adhere to information which is transmitted or stored'.

[24] Joined Cases C-236/08 to C-238/08 *Google France SARL and Google Inc v Louis Vuitton Mallettier SA* and *Google France SARL v Viaticum SA and Luteçial SARL and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL and Others* ECLI:EU:C:2010:159, paras 114–116.

[25] ibid.

[26] ibid.

and assists users in enhancing their activities on its platform.[27] Such advertising-driven business models help the platforms attract more users and make them spend more time on these platforms.[28] The ECJ in *L'Oréal*[29] decided that eBay's role is passive unless the optimisation of presentation and sales through advertisements gives it knowledge of or control over the content. In this respect, it would not be wrong to conclude that hosting intermediaries would have some degree of involvement in providing their services.[30] Indeed, this was the ground on which the Advocate General (AG) in *L'Oréal*[31] based his opinion when criticising the neutrality test that the ECJ in *Google France* applied. The ECJ, however, approved neutrality as a condition for hosting intermediaries' immunity in *L'Oréal* without discussing the points raised by the AG.[32]

Later, in *YouTube v Cyando*,[33] the ECJ held, concerning the neutrality test, that the hosting provider's implementation of measures aimed at detecting illegal content on its platform should not be considered as giving an active role to the intermediary in conducting its service. This would mean that the hosting intermediary could and should (as per Article 14(1)(b)) implement necessary measures to tackle illegal content, but this ought not lead the intermediary to play an active role in conducting its service. But how should this apply to the extensive content moderation technologies of today? Where should the line be drawn for an intermediary not to be considered active? There is no further insight given on this. Hence, the intermediary will decide on that in light of the general

---

[27] The ECJ also considered this as an element in answering the question of eBay's liability from its users' sale of products that infringed the trademark rights of an owner. See Case C-324/09 *L'Oréal SA and Others v eBay International AG and Others* ECLI:EU:C:2011:474.

[28] Miriam Buiten, 'The Digital Services Act: From Intermediary Liability to Platform Regulation' (2021) <https://ssrn.com/abstract=3876328> 2–4 accessed 10 September 2022.

[29] *L'Oréal* (n 27) paras 114–116.

[30] Van Eecke astutely states that the neutral role of hosting intermediaries should not be understood and construed as them being completely passive in the provision of services. See Patrick Van Eecke, 'Online Service Providers and Liability: A Plea for a Balanced Approach' (2011) 48 Common Market Law Review 1462, 1483. Van Hoboken and others also state '[i]n our view, they are not binary terms to be understood solely with reference to their ordinary meaning. Rather, they should be understood as terms of art that encompass a range of meanings – ascribed by the CJEU (and national courts) – along a potential spectrum of activities performed by intermediaries'. See Van Hoboken and others, 'Hosting Intermediary Services and Illegal Content Online: An Analysis of the Scope of Article 14 ECD in Light of Developments in the Online Service Landscape' European Commission (2018) 31–37 available at <op.europa.eu/nl/publication-detail/-/publication/7779caca-2537-11e9-8d04-01aa75ed71a1> accessed 10 September 2022. See also Miquel Peguera, 'The Platform Neutrality Conundrum and the Digital Services Act' (2022) 53 IIC – International Review of Intellectual Property and Competition Law 681, 682; and De Streel and Husovec (n 14) 20.

[31] Case C-324/09 *L'Oréal SA and Others v eBay International AG and Others*, Opinion of AG Jääskinen ECLI:EU:C:2010:757, para 146.

[32] ibid, para 113.

[33] Joined Cases C-682/18 and C-683/18 *Frank Peterson v Google LLC, YouTube LLC, YouTube Inc, Google Germany GmbH (C-682/18) and Elsevier Inc v Cyando AG* ECLI:EU:C:2021:503, para 109.

monitoring obligation, which will be addressed later.

Furthermore, there is a diligent economic operator test applied by the ECJ, which should also be considered in distinguishing active intermediaries from passive ones. Article 14 grants hosting intermediaries immunity depending on two qualifying conditions: either a hosting provider does not obtain awareness[34] as to the infringing content made available on its platform or acts expeditiously to remove or block access to the infringing content once it obtains awareness. Hence, assessing whether a provider has become aware of the infringing content is also important. Although this assessment is left to domestic courts to address under their national laws, the ECJ established that awareness should be assessed based on a 'diligent economic operator' criterion.[35] It went on to decide that[36] the courts should ask the question if a diligent economic operator 'should have identified the illegality in question and acted in accordance with Article 14(1)(b)' concerning 'every situation in which the provider concerned becomes aware, in one way or another of such facts or circumstances'.[37] This, however, would unlikely assist in setting the standard in practice for intermediaries to follow as the intermediaries' technical capabilities and sizes differ.[38] It is evident that the powers of relatively small or medium-sized intermediaries and their already implemented measures to investigate and prevent the illegality of content could hardly match the facilities of bigger intermediaries. The same applies to distinguishing a passive intermediary from an active one. Besides being of different size, intermediaries have various architectural structures and business models. Hence, setting a standard of diligence without paying attention to such differences and infrastructural advantages hardly assists in establishing a fair framework. In this regard, the DSA's approach of distinguishing digital services according to their sizes and impact on the digital world appears appropriate. How effective this could be will be

[34] As mentioned in the introduction, immunity from criminal liability depends, under Article 14, on obtaining actual knowledge. However, as this paper focuses only on the circumstances which give rise to civil liability, the actual knowledge standard is not discussed here.

[35] *L'Oréal* (n 27) para 120.

[36] ibid, paras 120–121.

[37] This test resembles the reasonable person test stemming from tort law which basically asks what a reasonable person of ordinary prudence would have done under the same or similar circumstances. For a detailed assessment, see Berrak Genç-Gelgeç, *The Law of Contributory Liability on the Internet: A Trademark Analysis* (Cambridge Scholars Publishing 2022) ch 3.

[38] It should also be recalled that, as the matter is left to domestic courts to decide under their applicable tort law, divergent interpretations and applications of the test would not be inevitable. Similarly, Synodinou argues that not having a uniform understanding of the term diligence would most likely bring fragmented applications across the EU. See Tatiana-Eleni Synodinou, 'Intermediaries Liability for Online Copyright Infringement in the EU: Evolutions and Confusions' (2015) 31 Computer Law & Security Review 66. De Streel and Husovec argue that 'the passivity criterion became the most controversial and led to the diverging outcomes on the national level because it allowed national courts to easily sidestep the ECD'. See De Streel and Husovec (n 14) 20.

discussed later.

Reverting to Article 14, it is established that a hosting intermediary may also benefit from immunity even if it obtains awareness of the infringing content uploaded by third parties. Article 14(1)(b) requires a hosting intermediary to act *expeditiously* to remove or block access to the infringing content after obtaining awareness. As it was also clarified by the ECJ later in *L'Oréal*,[39] an intermediary can obtain awareness 'as the result of an investigation undertaken on its own initiative, an illegal activity or illegal information, as well as a situation in which the operator is notified of the existence of such an activity or such information'.

The latter is perhaps the most common way of obtaining awareness. Hence, intermediaries are encouraged to implement a mechanism that enables users to notify the provider regarding illegal content so that they take appropriate action (removal or disablement of the content). This reflects the NTD mechanism, as mentioned above. The ECD, however, does not establish a legal framework concerning the mechanism's procedures and elements, such as the requirements of notice and the timeframe for taking appropriate actions or safeguards for the parties involved.[40] This is left to Member States to regulate through self-regulation within their domestic laws.[41] By virtue of this, some regulatory actions have been undertaken by Member States in their national laws, but their effectiveness has never been tested before the ECJ.[42] Besides, these regulations generally focus on the specific type of illegality, like terrorism-related content or child abuse. More importantly, as a result of self-regulations, the rules and procedures of the NTD mechanism are heavily fragmented amongst the Member States.[43]

Considering the lack of a legal framework, it would not be wrong to say that the applicable rules and procedures have been formed through the application of intermediaries' self-implemented mechanisms. Intermediaries usually implement necessary mechanisms to tackle illegal content and not lose the immunity provided by the ECD. This is the natural outcome of the approach adopted in the ECD, ie not confining intermediaries with hard law and liability rules to incentivise innovation. But it has failed to provide uniformity and strike a balance between the parties' fundamental rights that might be at stake. Article 14 requires the intermediary to take down or block access to the content infringing the rules

[39] *L'Oréal* (n 27) paras 121–125.

[40] Only Art 21(2) explicitly mentions notice and takedown mechanisms and it states that notice and those takedown procedures and the attribution of liability following the taking down of content shall also be analysed and included in the report that is required to be prepared by the Commission every two years after the ECD came into force.

[41] ECD, recital 46.

[42] De Streel and Husovec (n 14) 30.

[43] Commission, Online Services, Including e-Commerce, in the Single Market Accompanying the document Communication on 'A coherent framework to boost confidence in the Digital Single Market of e-commerce and other online services' SEC(2011) 1641 final, 3.4.4.

after receiving a notice. Hence, crucially it is the intermediary who examines the notification and the content and subsequently decides to take it down. This, however, raises serious concern about the protection of the fundamental rights of the parties, which is one of the main objectives of the ECD. When a rightsholder notifies an intermediary about the illegality of certain content, the intermediary's first task is to assess this claim and the content in question. Then, it decides to take down the content or block access to it if it finds the content illegal, as is claimed. Here, in dealing with the claim of illegality, an intermediary, a private company, acts similarly to a judge as it examines the claim and the illegality of the content. Such discretion appears problematic and perhaps detrimental, especially in protecting the content provider's right to freedom of expression and information. Moreover, if the content is mistakenly taken down or access to it is blocked, whether or not the content provider can challenge this decision is left to each Member State's rules if it provides any, or mostly intermediaries' own operation.[44] This would harm the protection of the content provider's right to a fair trial.

Content providers' fundamental rights are not the only concern regarding the application of the NTD mechanism. The mechanism may also affect the fundamental rights of other parties, such as the intermediary's right to conduct business and freedom of expression and the rightsholder's right to protection and access to justice.[45] Protection of these rights is, however, left to intermediaries, as they are the ones who implement and apply the NTD mechanism.

Moreover, the ECD does not set transparency or due diligence obligations for intermediaries to comply with. This strengthens the intermediaries' power in the digital world as they can act almost like lawmakers. These are left to the intermediaries' discretion and control. Although most of the Big Tech companies have transparency rules in their terms and conditions (TCs) and publish transparency reports on their content moderation activities, these are mostly criticised as not including essential and vital information as to their content moderation activities.[46] Hence, the transparency obligations imposed on them appears to have

---

[44] For instance, Facebook has implemented the Oversight Board system where a user can appeal against the takedown decision. However, this is only available for a specific type of content. The fact that Facebook is not obliged to apply the decision to all similar cases is criticised as this might result in controversy, especially concerning politics and democracy. See Elettra Bietti, 'A Genealogy of Digital Platform Regulation' (2022) 7 Georgetown Law and Technology Review (forthcoming) available at <http://dx.doi.org/10.2139/ssrn.385948> accessed 10 September 2022. For detailed information on Facebook's Oversight Board, see <https://www.facebook.com/help/711867306096893>.

[45] The CJEU first pointed out the importance of the application of the balancing test in Case C-275/06 *Productores de Música de España (Promusicae) v Telefónica de España SAU* ECLI:EU:C:2008:54.

[46] Goodman (n 15); Mathew Ingram, 'Facebook "Transparency Report" Turns Out to Be Anything But' (*Columbia Journalism Review*, 26 August 2021) <www.cjr.org/the_media_today/facebook-transparency-report-turns-out-to-be-anything-but.php> accessed 10 September 2022.

been the right step towards protecting fundamental rights and balancing the intermediaries' powers.

The NTD mechanism, apart from putting intermediaries in a judge-like position, can hardly be said to assist in achieving the goal of tackling illegal content effectively. As immunity rules apply horizontally, intermediaries may receive notifications about the illegality of content or information arising from different substantive rights. Examples are defamation, trademark infringement claims, etc. An intermediary is the one who examines those claims. However, such an assessment may require legal knowledge or even expertise unless the content is manifestly illegal. For instance, in *L'Oréal*, eBay was expected to assess whether the content had infringed the trademark of a rightsholder. This assessment required eBay to examine the authenticity of the products bearing L'Oréal trademarks. In another case, an intermediary may be required to assess the legality of a digital copy of a movie in terms of copyright infringement[47] or the nature of the comments left on the platform to see whether this amounts to defamation, hate speech or incitement to violence.[48]

It is evident that intermediaries, especially the Big Tech companies, have implemented automated systems like artificial intelligence (AI) to tackle the availability of illegal or infringing content on their platforms. For instance, YouTube has a Content ID mechanism, an automated content moderation system to identify copyright infringements.[49] Although such automated mechanisms might be time-efficient and practical compared to human moderation, they might not capture all kinds of policy violations or infringements. For example, it would often be difficult for an AI without human intervention to identify and distinguish fair use of copyright-protected content from an infringement. In such cases, an intermediary might be inclined to take down the content to benefit from immunity, as the ECD does not impose any sanction or transparency obligations on intermediaries for a false or unfair takedown. This could also 'damage user experience by over-detection and the generation of

[47] In fact, in terms of copyright infringement, providers might be required to apply the test of 'communication to the public' as per Art 3(1) of the InfoSoc Directive 2001/29 to take further action. This indeed requires additional expertise. On this, see Neville Cordell and Beverley Potts, 'Communication to the Public or Accessory Liability: Is the CJEU Using Communication to the Public to Harmonise Accessory Liability Across the EU?' (2018) 40(5) European Intellectual Property Review 289.

[48] The judgments *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015); *Magyar Tartalomszolgáltatók Egyesülete (MTE) and Index.hu Zrt v Hungary* App no 22947/13 (ECtHR, 2 February 2016); and *Pihl v Sweden* App no 74742/14 (ECtHR, 7 February 2017) of the European Court of Human Rights could be illustrative of this. In those cases, the platforms were expected to assess the nature of the comments and take the appropriate action to deal with them, although they were not considered intermediaries.

[49] See <https://support.google.com/youtube/answer/2797370?hl=en> accessed 10 September 2022.

false-positives'.[50] The same concerns were raised about Facebook's own automated mechanisms by Facebook itself in 'Facebook Response to EC Public Consultation on the Digital Services Act (DSA)'.[51] As mentioned above, the intermediaries' transparency reports do not provide sufficient information and figures on these processes. It is submitted that this may pose a severe risk to fundamental rights and raise difficulties in providing uniform rules for the digital world. On the other hand, taking down the content in order to benefit from immunity without explicitly examining the content may not be a much-desired action for intermediaries, given that the contents attract users and cause interaction. Here, the DSA's transparency obligations seem to iron out the risks and difficulties attributed to the procedures of tackling illegal content, as it provides standards for different intermediaries to follow and comply with. However, the conclusion should be made after evaluating the rules.

Along with the immunity regime, injunction orders should also be addressed. The application of an injunction order by the courts against intermediaries is made possible in Articles 12(3), 13(3) and 14(3) ECD. As clearly stated in these articles, applying an injunction order is not bound to the immunity question. This means that qualifying or not qualifying for immunity does not affect the imposition of such orders. However, they are still germane to the immunity regime and have been assisting in defining the framework. Injunction orders serve to tackle infringements by imposing ex-post obligations on intermediaries. These measures are grounded on the principle of best cost avoider, meaning that the measures should be applied by 'the party that has or can develop measures to avoid the harm most cheaply'.[52] In this sense, injunction orders also seem to serve the DSA's purpose of balancing the power given to intermediaries, as they are the best cost avoiders considering their infrastructural advantages and self-implemented measures. Such orders have also proven to be popular among rightsholders, especially owners of intellectual property rights, to combat online infringements. However, the implementation of injunctions has not been straightforward in practice. It is mainly because these orders are left to each national court to apply under their national laws. Moreover, the ECD only sets out a rule on the prohibition of the general monitoring obligation in Article 15, which applies to injunction orders.

---

[50] This was the statement by one of the online providers in the EU Study on 'Online Platforms' Moderation of Illegal Content Online'. See the detailed analysis in Alexandre De Streel and others, 'Online Platforms' Moderation of Illegal Content Online', Study for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies (European Parliament, Luxembourg 2020).

[51] 'Facebook Response to EC Public Consultation on the Digital Services Act (DSA)' (*Facebook*, 2020) <https://about.fb.com/de/wp-content/uploads/sites/10/2020/09/FINAL-FB-Response-to-DSA-Consultations.pdf> accessed 10 September 2022.

[52] Martin Husovec, 'Accountable, Not Liable: Injunctions Against Intermediaries' (2016) TILEC Discussion Paper No 2016-012 (Draft) 25 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2773768/> accessed 10 September 2022.

Complementing the ECD on injunction orders, there is also the Enforcement Directive 2004/48,[53] which enables rightsholders to apply for an injunction against an intermediary for infringements of intellectual property rights specifically excluding copyright (as another directive[54] directly applies to copyright cases). It sets out the principles for an injunction measure in Article 3.[55] Under this, an injunction measure shall be effective in reaching its aim while not being costly or unfair or open for abuse.[56] These are the minimum standards that Member States' courts should consider in assessing injunction requests made against an intermediary to prevent unreasonable and disproportionate burdens on intermediaries.

In addition, the ECJ's case law provides further insight but limited to the issues brought before it. In those cases, the ECJ was challenged to address whether an injunction could be ordered for future infringements of the same kind or for an unlimited time and how to balance the fundamental rights that might be at stake in granting an injunction order.[57] In dealing with these, the ECJ first and foremost underlined the significance of protecting the fundamental rights of the parties affected by an injunction order. As for NTD mechanisms, an injunction order involves three parties: intermediaries, content providers, and rightsholders. The fundamental rights of these parties would also be affected. The rights that would be at stake were identified by the ECJ as follows: the content provider's right to freedom of expression and information; the right to the protection of personal data and privacy or the right to a fair trial; the intermediary's right to conduct business and the right to freedom of expression; and the rightsholder's right to protection and access to justice.[58] Accordingly, the Court's appraisals focused on striking a balance between the fundamental rights at stake.

---

[53] Directive (EC) 2004/48 of 29 April 2004 on the enforcement of intellectual property rights [2004] OJ L195/16.

[54] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ L130/92.

[55] Art 3(1) of Enforcement Directive 2004/48 states that an injunction measure 'shall be fair and equitable and shall not be unnecessarily complicated or costly or entail unreasonable time-limits or unwarranted delay' and Art 3(2) states that it 'shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the criterion of barrier to legitimate trade and to provide for safeguards as against their abuse'.

[56] For proportionality in injunction cases, see Tobby Headdon, 'Beyond Liability: On the Availability and the Scope of Injunctions Against Online Intermediaries After L'Oréal v eBay' (2012) 34(3) European Intellectual Property Review 137, 139–141; Pekka Savola, 'Proportionality of Website Blocking: Internet Connectivity Providers as Copyright Enforcers' (2014) 5 Journal of Intellectual Property, Information, Technology and E-Commerce Law 116.

[57] *L'Oréal* (n 27).

[58] Case C-70/10 *Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* ECLI:EU:C:2011:771; Case C-314/12 *UPC Telekabel Wien GmbH v Constantin Film Verleigh GmbH, Wega Filmproduktionsgesellschaft GmbH* ECLI:EU:C:2014:192.

The outcomes of these cases can be summarised as follows. An injunction order requiring an intermediary to implement a filtering system as applicable to all its users and for an unlimited time should not be granted, as such measures would amount to general monitoring[59] and would harm the balance between the fundamental rights of the parties. However, in another case, the imposition of a generic order was considered in compliance with EU law as long as the chosen measure strikes a balance between the parties' fundamental rights.[60] A generic order means that an injunction order is granted against an intermediary without determining the type of the injunction. Here, the intermediary chooses the appropriate mechanism to prevent the availability of illegal content and applies it. Requiring an intermediary to select a measure that respects the fundamental rights of the parties was undoubtedly in accordance with the law concerned in that case,[61] but leaving the duty to take care of the fundamental rights of the parties would give rise to the very same concern that is pointed out for the NTD mechanism. In this case, the intermediary was given judge-like discretion without specifying the borders in assessing and choosing the most appropriate measure that also protects fundamental rights. This could hardly strike a balance between the parties.

Lately, the Member States were also given the green light to extend the scope of the previously ordered injunction to be effective worldwide for content that is identical or equivalent to the content regarded as illegal before.[62] This case concerned an injunction order requiring the hosting intermediary to remove the defamatory content. The ECJ held that this intermediary might also be required to monitor and search for information – which is identical or has equivalent meaning to the content regarded as defamatory before – by such a measure. The act of monitoring is limited to 'information conveying a message the content of which remains essentially unchanged'.[63] The Court found that such a measure would not amount to a general monitoring obligation prohibited by Article 15. Unfortunately, the decision did not clarify the application of Article 15 and injunction orders. First, here an injunction order was given an extraterritorial effect 'within the framework of relevant international law'.[64] However, the application of such an injunction within other legal systems

[59] Case C-360/10 *Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM) v Netlog* ECLI:EU:C:2011:771. This case concerned an injunction requested against a social networking platform for the content infringed copyrights of the rightsholders.

[60] Case C-314/12 *UPC Telekabel Wien GmbH v Constantin Film Verleigh GmbH, Wega Filmproduktionsgesellschaft GmbH* ECLI:EU:C:2014:192. Here, the injunction order was requested against an ISP for the availability of unauthorised copies of the movies protected by copyright.

[61] It was a referral from an Austrian court, and it was possible to grant a generic order under Austrian national law. Hence, the impact of the case might remain limited.

[62] Case C-18/18 *Eva Glawischnig-Piesczek v Facebook Ireland Limited* ECLI:EU:C:2019:821.

[63] ibid, para 53.

[64] ibid.

might raise concern over the protection of fundamental rights, given that a balance between fundamental rights might be struck differently under different jurisdictions.[65] Second, the ECJ did not clearly determine the borders of the concerned injunction. Although it was held that a search could be done for information that is identical or has equivalent meaning, assessing if the information has equivalent meaning is open to interpretation. In this respect, it is hard to conclude that the injunction ordered can be classified as specific. Determining the borders of the 'specific' monitoring obligation is, however, important, as a monitoring obligation can only be imposed on the intermediaries for specific cases under Article 15. As no insight is provided by the ECD or the ECJ,[66] what should be considered a 'specific' monitoring obligation remains a challenging task for the national courts. This should be decided under their national laws.

Against this background, it can be concluded that the current regime of intermediaries' liability does not seem to achieve the goals of the ECD thoroughly. The ECD's main objective is to establish a properly functioning single market for digital services by providing uniform rules and focusing on the protection of the fundamental rights of the parties. As far as the immunity regime is concerned, it establishes the general principles, but the application of these rules hardly provides uniformity. As demonstrated, fragmentation mainly arises out of the application of the NTD mechanism. The ECD does not establish any framework for this. This is left to the Member States and their national laws. In a similar sense, the ECJ does not provide a clear understanding of what should be understood as a passive/active intermediary for courts to follow in assessing hosting intermediaries' immunity. It does not take the intermediaries' differences into account, either. More importantly, the application of the current law seems to point out that the biggest obstacle in ensuring harmonisation is the discretion given to the intermediaries regarding the matters relevant to the immunity regime and tackling illegal content. This, as shown, raises serious concerns over the protection of fundamental rights. It is submitted that this appears to be due to the approach adopted, the lack of further guidance, and the lack of transparency obligations. Indeed, the European Commission's Impact Assessment[67] on the ECD similarly emphasises these matters. The DSA accordingly and plausibly focuses on them while reproducing the immunity regime almost

---

[65] Federico Fabbrini and Edoardo Celeste, 'The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders' (2020) 21 German Law Journal 55, 64.

[66] In *Loreal*, the ECJ was asked whether an intermediary would be under a duty to apply the same measure for future infringements of a same or similar kind, but the question was left unanswered. See *L'Oréal* (n 27). The Advocate General in his opinion stated that an intermediary could apply the measure to prevent the same or similar infringements committed by the same person in the future as this would not amount to general monitoring. See Opinion of AG Jääskinen in *L'Oréal* (n 31) para 181.

[67] Commission, 'Impact Assessment Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC' (Staff Working Document) SWD (2020) 348 final, Part 1 (Impact Assessment Part 1).

verbatim. Whether it does provide the necessary answers will now be examined.

3 Regulating digital platforms: the DSA

As the two main legislative initiatives of the Commission's digital strategy, the DSA and the Digital Markets Act (DMA) aim to regulate digital services, especially those that have become dominant players on the Internet, economically and socially. The fact that the DSA applies to all digital services which provide services to users who are established or residents of the EU (regardless of the intermediaries' place of establishment) demonstrates that these companies, ie Big Tech, are the main focus as most of them are established outside the EU.[68] The DSA's main objective is to update the rules governing digital services, namely the ECD,[69] while the DMA's is to provide a competitive and fair digital market for digital services. To this end, both Acts are adopted as a regulation. This means that once the DSA comes into force, it is to be binding 'in its entirety and directly applicable'[70] in all Member States. This could be considered the right step toward uniformity, as the rules will be expected to apply uniformly.[71]

Besides the choice of instrument, the legislators' approach to regulating digital services should also be referred to before discussing the proposed rules. Like the ECD, the DSA provides the rules for information society services.[72] However, unlike the ECD, the DSA does not consider only the providers of Internet intermediaries. Along with certain intermediary services, namely mere conduit, caching, and hosting, the DSA acknowledges new digital services, such as online platforms and search engines. An online platform is a hosting service provider that stores and dissemi-

[68] DSA, Art 1(a)(1). Art 11 obliges such intermediaries to appoint a legal representative.

[69] However, it complements existing sector-specific legislation (such as Directive 2010/13/EU on Audiovisual Media Services) and existing EU laws regulating certain aspects of intermediaries (such as Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services). These are applicable as *leges speciales*. See Explanatory Memorandum to the DSA proposal, Commission Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC, 15 December 2020, COM(2020)825 final.

[70] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/47, Art 288(2).

[71] Having said that, making relevant national laws in line with the DSA and complying with the rules (especially for digital services) would take time, as was experienced with the application of the GDPR. See EU Commission press release, 'General Data Protection Regulation Shows Results, But Work Needs to Continue' (*EU Commission*, 24 July 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4449> accessed 10 September 2022.

[72] Information society services are defined as 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient' in Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services [2015] OJ L241/1.

nates information to the public.[73] So, an online platform is differentiated from a hosting service provider as the latter only stores information but does not disseminate it. Dissemination is making information available to an unlimited number of third parties at the request of the provider of that information.[74] An online search engine, on the other hand, is defined 'as a digital service that allows users to input queries to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found'.[75] As digital services are distinguished according to the services provided, the DSA establishes a legal framework that takes account of these differences. The creation of asymmetric due diligence and transparency obligations is a part of this approach.

The rules established by the DSA can be categorised under three main categories: immunity rules, due diligence obligations, and enforcement. These will be addressed now, but not as a whole. They will be addressed within the relevance of the article's aim.

3.1 Immunity rules

Starting with the immunity regime, the DSA reproduces the ECD's immunity regime in Articles 3–9, as they are still considered instrumental in creating the digital single market, despite the present fragmentation over the implementation of some principles.[76] Articles 12–14 of the ECD, are incorporated within Articles 3–5 of the DSA with a small addition. The addition is made to Article 5, which concerns hosting intermediaries. According to Article 5(3), providers of an online platform that intermediate between traders and customers cannot benefit from immunity from liability arising from customer protection law when a provider 'lead[s] an average consumer to believe that the information […] is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control'. This article applies to online marketplaces and excludes them from immunity if their liability from customer protection law arises when they act in a certain way.[77]

---

[73] DSA, Art 2(h).

[74] DSA, Art 2(ha). However, this definition is criticised as its application to providers who do not directly face customers in a contractual relationship, such as cloud services, may be challenging. See European Parliament, Committee on the Internal Market and Consumer Protection (IMCO), Background Paper for the workshop 'The Digital Services Act and the Digital Markets Act: A Forward-looking and Consumer-centred Perspective' (*European Parliament,* 26 May 2021) 5 <www.europarl.europa.eu/cmsdata/234761/21-05- 19%20Background%20note%20REV%20final.pdf> accessed 10 September 2022.

[75] DSA, Art 2(ha)(i).

[76] DSA, recital 16.

[77] The European Consumer Organisation (BEUC), the Digital Services Act – BEUC position paper (*BEUC,* 9 April 2021) 9 <www.beuc.eu/publications/beuc-x-2021-032_the_digital_services_act_proposal.pdf> accessed 10 September 2022.

In addition to this new addition to the article, some matters are dealt with within the recitals. In the light of the ECJ's case law, it is now clearly stated that only the specific service of an intermediary in which an alleged infringement is committed should be considered in assessing whether an intermediary will benefit from immunity.[78] Taking Google as an example, it should be regarded as a caching service concerning its referencing service, whilst it might qualify as a hosting service regarding its keywords service since it enables its users to purchase keywords and display them as advertisements.[79] More crucially, the ECJ's ruling on the neutrality standard in *L'Oréal*[80] is included in recital 18 for clarity. The recital accordingly prescribes that an intermediary should not be considered to be providing its service neutrally when it 'plays an active role of such a kind as to give it knowledge of, or control over, those data'.[81]

Further, it is established that if an intermediary deliberately collaborates with its users to make illegal content available, it should not be deemed as providing its service neutrally. [82] In this regard, the DSA, unfortunately, does not give any answer to the criticism raised about the implementation of the neutrality test. It seems the legislator misses an opportunity to provide clarification or even review the applicability of the test to extensive content moderation technologies. Moreover, setting a standard of deliberate collaboration indicates the prospects of more ambiguity. The assessment of 'deliberate' is open to interpretation. How this is to be applied with the already problematic neutrality test under the DSA is therefore doubted.

Along with these relatively unaltered articles, the subsequent articles bring new principles relevant to the immunity regime. Article 6 prescribes that solely carrying out their voluntary own-initiative investigations will not be considered a factor in making intermediaries ineligible

[78] DSA, recital 27(a).

[79] This was actually one of the questions referred to the CJEU in Joined Cases C-236/08 to C-238/08 *Google France* ECLI:EU:C:2010:159. Although the CJEU did not address the question, the AG's opinion was that the immunity of an intermediary should be assessed according to the specific activity of the service at stake, as Recital 27(a) DSA establishes. See Joined Cases C-236/08 to C-238/08 *Google France* ECLI:EU:C:2009:569, Opinion of Advocate General Poiares Maduro, para 140.

[80] Joined Cases C-236/08 to C-238/08 *Google France* ECLI:EU:C:2010:159, para 110; *L'Oréal* (n 27) para 113.

[81] The DSA, recital 18 further establishes 'the mere ranking or displaying in an order, or the use of a recommender system should not, however, be deemed as having control over an information'.

[82] DSA, recital 20.

for immunity.[83] The implementation of voluntary mechanisms by intermediaries is not something new. Intermediaries have already been implemented in such mechanisms, especially automated ones. It is also implicitly encouraged by the ECD since the ECD requires them to act against illegal content to benefit from immunity. Even the ECJ held in *YouTube v Cyando* that the hosting provider's implementation of measures aimed at detecting illegal content on its platform should not be considered as giving an active role to the intermediary in conducting its service.[84] Now, the DSA explicitly encourages intermediaries to implement voluntary mechanisms and carry out their investigation to tackle illegal content. But the question is, does the DSA provide the solution for the issues arising from the application of voluntary obligations that were addressed before?

Article 6 limits the scope of voluntary actions that may be taken. It states that voluntary mechanisms cannot be considered as giving an active role to the intermediary only when voluntary investigations and measures are taken in good faith and in a diligent manner. Recital 25 explains that such acting 'should include acting in an objective, non-discriminatory and proportionate manner, with due regard to the rights and legitimate interests of all parties involved and providing the necessary safeguards against unjustified removal of legal content, in accordance with the objective and requirements of this Regulation'. However, this does not assist the interpretation of good faith and diligent manner. For instance, it is difficult to answer whether an intermediary is regarded as diligent when it applies the measure, but fails to detect the illegality.[85] Crucially, intermediaries will be the judge of whether they act in good faith or diligently. This might be a challenging and undesirable task for them, as they would not want to trigger the awareness or knowledge threshold that would mean a loss of immunity. Thus, there is doubt about how these standards would be implemented effectively and uniformly in practice. Hence, the framework on voluntary mechanisms should not be considered complete. On the other hand, the DSA imposes transparency obligations on digital services, which will be examined below. These might assist in establishing more concrete standards in applying voluntary measures.

Article 7 is another threshold that applies to voluntary mechanisms. Article 7 reproduces the ECD's general monitoring obligation. It prohibits

---

[83] DSA, recital 25. This article is called the 'Good Samaritan Clause' after the US's Communications Decency Act S.230. However, Article 6 appears different from the US' Good Samaritan Clause. Moreover, Savin argues that this article has no reforming effect, although it is a new addition to the immunity regime. See Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper No 21-04, Journal of Internet Law 6 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3786792> accessed 10 September 2022. See also Eifert and others (n 9); Buiten (n 28) 2–4; Alexandra Kuczerawy, 'The Good Samaritan That Wasn't: Voluntary Monitoring Under the (draft) Digital Services Act' (*Verfassungsblog*, 12 January 2021) <https://verfassungsblog.de/good-samaritan-dsa/> accessed 10 September 2022.

[84] Peguera states that this was the ECJ's anticipation that such a 'Good Samaritan clause' was to be included in the DSA. See Peguera (n 30) 682–683.

[85] Kuczerawy (n 83).

the imposition of a general monitoring obligation and an obligation that would require intermediaries to seek facts or circumstances actively. As a general monitoring obligation is an important tool for confining the application of content moderation, it is crucial for the DSA to include this prohibition. However, it would not be realistic to expect that the existing fragmentation on the interpretation of general monitoring would fade, as the assessment of the scope of specific or general monitoring is for Member State courts in light of the ECJ's case law. Moreover, in terms of voluntary actions, intermediaries assess whether the implemented action qualifies as general or specific monitoring. This again raises questions over the protection of fundamental rights addressed above.

Following on, Article 8 sets out the framework for orders issued by national courts or administrative authorities against an intermediary which applies against a specific item of illegal content, ie injunction orders. In that regard, Member States are required to issue orders that clearly define the scope of a measure and that indicate the illegal content with information on its exact location, why it is considered illegal and its legal basis, as well as the redress mechanisms available under national or EU law. On the other hand, intermediaries must inform the issuing authority about the actions taken, such as the specific type of action and its effects. Similar conditions are also established for issuing an order requiring an intermediary to provide information on a specific user or users under Article 9. For both cases, intermediaries must also inform the recipient, whom the order concerns, about the order applied and the available redress possibilities.

Taking all these into account, it would not be wrong to conclude that Articles 8–9 are essential steps towards establishing more balanced enforcement mechanisms and a regulatory framework. As addressed, ensuring the protection of fundamental rights and a balance between the parties' powers and positions have proven challenging under the ECD. However, establishing the conditions and requirements for both the imposition and application of these orders, and giving parties the right to have an effective remedy, would undoubtedly assist in ironing out such concerns.

3.2 Due diligence obligations

The DSA establishes due diligence obligations for digital services in Articles 10–37. These obligations are perhaps the most significant aspect of the DSA. Digital services are classified into four categories: intermediaries (Articles 10–13), hosting intermediaries including online platforms (Articles 14–15), online platforms (Articles 16–24), and VLOPs and VLOSEs (Articles 25–33). As stated, the legislator's aim was to regulate new means of digital services (especially Big Tech) while benefiting from their technical and operational ability in preventing the availability of illegal content and protecting fundamental rights. Hence, considering digital

services according to their sizes and role within the online world appears to be fit for purpose. As a result of this approach, first, hosting intermediaries are distinguished from other intermediaries (namely, mere conduit, caching intermediaries), on whom more duties are imposed. Second, hosting intermediaries are differentiated depending on their service and their sizes. Hosting platforms which store and disseminate information are required to do more. Finally, online platforms and online search engines with more than 45 million recipients, VLOPs and the VLOSEs, have more formal and administrative duties.[86] This is sensible considering that these have technical and operational abilities and, perhaps more importantly, social and economic influence over the Internet. As the previous part shows, the impact exerted by these platforms should be balanced to create a fairer online environment. In this respect, the DSA imposes due diligence obligations regarding transparency, accountability and information. However, only the obligations relevant to the paper's main objective will be addressed here.

Starting with the transparency obligations, all intermediaries are required by Article 13 to publish a detailed report every year on the operation of their content moderation. The article also expressly stipulates what information should be included in the report. Briefly, information that would provide transparency regarding the intermediaries' way of tackling infringing content must be included in the report. For instance, the type of measures undertaken and the reasons, the timeframes for taking action against complaints received through the internal complaint-handling system, decisions undertaken against these complaints, etc. Article 13(1)(e) also requires the inclusion of information on 'any use made of automated means for the purpose of content moderation, including a qualitative description, a specification of the precise purposes, indicators of the accuracy and the possible rate of error of the automated means used in fulfilling those purposes, and any safeguards applied'. Importantly, this obligation is applicable for the measures undertaken as a result of injunction orders issued under Articles 8 and 9, as well as for actions undertaken as a result of intermediaries' initiatives. This is significant, especially for the concern arising from the lack of transparency in applying the voluntarily implemented measures. Such transparency reporting obligations should assist in balancing the distribution of power through the Internet since companies need to be more transparent about their content moderation technologies.

Further, these hosting intermediaries, including online platforms, are given more transparency duties concerning the application of notice and action mechanisms that they are obliged to implement within their system.[87] In addition to these, providers of online platforms are required

[86] Here, it should be underlined that fewer due diligence obligations are imposed on VLOSEs than on VLOPs. These obligations concern crisis response mechanism (Art 27a) and supervisory fees (Art 33a-b).

[87] DSA, Art 23.

to give more information since they are obliged to implement an internal complaint-handling system for their notice and action mechanisms and to make available out-of-court dispute settlement possibilities for their users.[88] Briefly, online platforms must include information on these in their reports, such as the number of disputes referred to an out-of-court dispute settlement body, which disputes are referred to the body, and the average time needed to complete the proceedings.[89] With regard to the notice and action and internal compliant-handling systems implemented, the decisions must be published and a statement of reasons given for the action taken without undue delay, and the information must be provided in a way that is user-friendly and easily accessible to the users.[90] A very similar obligation is also set for online advertisements.[91] Online platforms must display online advertisements clearly and unambiguously and inform users about the parameters to determine the target users for the advertisements. Finally, online platforms are required to publish a report demonstrating their average monthly active recipients of the service.[92] This is necessary to keep track of the number of their users as this is a standard set to distinguish an online platform from the VLOP.

VLOPs have more duties imposed on them. In terms of transparency obligations, further to the obligations stated above, they are required to create a repository for the advertisements presented on their online interfaces. This must be made available to the public and be presented until one year after the last time the advertisement was shown.[93] It is stated that this repository must consist of the relevant information concerning advertisements, such as the advertisement's content, the period of its display, and the natural or legal person on whose behalf the advertisement is displayed. Finally, additional transparency reporting obligations are imposed on VLOPs for the measures undertaken in dealing with illegal content. In addition to the duty – of every intermediary – to publish a report on the content moderation and measures applied, VLOPs are required to publish this report every six months. More importantly, they must include additional information on the human resources used in content moderation in the report.[94]

---

[88] DSA, Arts 17–18.

[89] DSA, Art 23(1).

[90] DSA, Art 23(2a).

[91] DSA, Art 24. The same transparency obligation is established for the recommender systems used by online platforms in Art 24(a).

[92] DSA, Art 23(2)-(3).

[93] DSA, Art 30.

[94] DSA, Art 33(1)(1): '(b) the human resources that the provider of very large online platforms dedicates to content moderation in respect of the service offered in the Union, for each official language of the Union as applicable, including for compliance with the obligations set out in Articles 14 and 19, as well as for compliance with the obligations set out in Article 17; (c) the qualifications and linguistic expertise of the persons carrying out the activities referred to in point (a), as well as the training and support given to such staff; (d) the indicators of accuracy and related information referred to in Article 13(1), point (e), per official languages of the Union, as applicable'.

Concerning the general framework on transparency obligations of the DSA, the first thing to say is that detailed and tiered rules on transparency should be welcomed. As shown, lack of transparency has been one of the obstacles in establishing a uniform and fair framework under the ECD. Intermediaries have had their own transparency reports on their content moderation activities, but these are mostly criticised for not containing crucial information. The DSA, however, sets out the standards for this. Information that must be included in these reports is clearly established. More significantly, the formality and stringency of these obligations are increased for online platforms and VLOPs, which are required to publish transparency reports on their content moderation technologies every six months. The obligations concerning online advertisements appear to be an effective tool in establishing a fairer digital environment. Advertisements are potent tools for big intermediaries to attract users and promote their content without their users' knowledge. This is done through the parameters used. Establishing transparency obligations on the advertisements presented in their online interface and the parameters used should provide more transparency and lead to fair use of the parameters. This could also assist in limiting the acquired impact and power of online intermediaries, especially VLOPs, over their users' choices and the way they disseminate information. Such transparency obligations might also indirectly have an impact on tackling illegal content, given that advertisement systems risk disseminating illegal content or financially incentivising harmful or illegal content. This appears to target where the ECD fell short regarding transparency. But the rules may still benefit from further insight. For instance, additional rules may be provided on the structure and content of the transparency reports to prevent platforms from publishing strategically structured reports.[95]

The notice and action mechanism established by the DSA should also be addressed with transparency obligations. The detailed reporting and transparency obligations set out for the notice and action mechanism appear assistive in determining the framework of the mechanism and providing more uniformly applied measures. However, whether the rules established by the DSA could deliver its promise as to the notice and action mechanism should be addressed.

In contrast to the ECD, the DSA explicitly requires hosting intermediaries, including online platforms, to implement notice and action mechanisms in their systems, and establishes the mechanism's elements to a certain extent. Articles 14–15 set the framework of the notice and action mechanism, then Articles 16–23 bring further obligations for online plat-

[95] BEUC position paper (n 77).

forms (excluding micro and small enterprises)[96] to ensure the protection of the fundamental rights of the parties affected by the application of the measures. The established system works in the following way: the hosting intermediary implements a mechanism that enables users to issue notifications electronically for the item claimed to be illegal. This notification, however, should include certain information on the claim to be regarded as valid and taken into account by a hosting intermediary.[97] In this regard, the issuer of the notification is first required to provide sufficient information, such as the exact URL(s) of the content, to a hosting intermediary for it to be able to identify the concerned content successfully. It is then required to substantiate its claim by providing the reasons why the concerned content is considered illegal, with evidence, if any. A statement of good faith confirming the accuracy of the claim and the completeness of information are other elements of a valid notification.

The issuance of a valid notice (ie a notice which comprises all the elements mentioned above) is vital for both the issuer and the hosting intermediary. First, the hosting intermediary can only take into account the notice and then act if it is valid. Second, being served a valid notice would give rise to actual knowledge or awareness if it allows 'a diligent provider of hosting services to identify the illegality of the relevant activity or information without a detailed legal examination'.[98] Here, again, the evaluation of diligence comes to the fore as a standard. As shown, the diligence assessment depends on the specifics of the case. The hosting intermediary should assess if the concerned notice would allow any other diligent provider to identify the illegality of the content before taking action. This assessment may result in the hosting intermediary triggering the knowledge/awareness threshold.[99] Hence, there is still a chance of the intermediary acting without properly examining the content. This might result in over-removals.

Reverting to the working principle of the mechanisms, the hosting intermediary must act against content claimed to be illegal or infringing once it has been served with a valid notification. It is also explained in recital 41(a) that identification of the illegality of content without a detailed legal examination means that the illegality of the content is clear. Against such content, a hosting intermediary may decide 'the removal of, the disabling of access to, the demotion of, the restriction of the visibility of the information or the suspension or termination of monetary payments

[96] DSA, Art 16. Micro and small enterprises are specified in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. According to Articles 2–3, 'a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million'; whereas 'a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million'.

[97] DSA, Art 14(2).

[98] DSA, Art 14(3).

[99] DSA, Art 14(3).

related to that information or [to] impose[s] other measures with regard to the information'.[100] The decision process should be carried out in a diligent, timely, objective and non-arbitrary manner.[101] The decision must be supported by a statement of reasons which includes information on the territorial scope and the duration of the decision; the legal grounds[102] proving why the specific action is taken; the facts and circumstances relied on; and whether the decision is made in light of information obtained as a result of the notification submitted or an injunction order or through its voluntary own-initiative investigations. More significantly, the issuer of the notice should be provided with clear and understandable information on the redress possibilities that might be pursued.

As far as the mechanism is concerned, it is evident that the DSA establishes a framework for the mechanism by setting out the minimum standards for hosting intermediaries to follow in tackling illegal content. More importantly, these rules set the standards for actions undertaken as a result of injunction orders as well as voluntary own-initiative investigations. As discussed above, as an enforcement mechanism, the application of the notice and action mechanisms[103] is directly related to protecting the parties' fundamental rights. However, the NTD mechanism stipulated by the ECD has failed to ensure this for all the parties concerned since crucial discretion to take down the content is left to intermediaries without providing any safeguards. Having set the minimum elements and having clarified what a valid notification should be composed of and what the hosting intermediary should do in assessing the claim, and what it should do after deciding on the action, the DSA provides significant insight and necessary attention to matters that the ECD has so far failed to consider. It is also substantial that transparency obligations support the rules on notice and action mechanisms. Besides, because the DSA is a regulation, the established framework would be expected to become more uniformly applied since the rules would be directly applicable and binding in all Member States. These can all be said to be the right steps to fulfil the regulation's main objectives: the protection of fundamental rights and harmonisation.

[100] DSA, Art 15(2)(a).

[101] DSA, Art 14 (6).

[102] DSA, Arts 15(2d)–15(2e). If the decision concerns a claim of illegality, the legal ground relied on making the decision should be provided with sufficient explanations. If, however, it concerns the content's incompatibility with TCs, the contractual ground relied on should be provided with sufficient explanations.

[103] The notice and action is an umbrella term comprising different variants of notice mechanisms categorised according to the type of action taken after receiving the notice, such as notice and takedown, notice and stay down, or notice and notice. For an examination of these different mechanisms from the fundamental rights aspect, see Christina Angelopoulos and Stijn Smet, 'Notice-and-fair-balance: How to Reach a Compromise Between Fundamental Rights in European Intermediary Liability' (2016) 8(2) Journal of Media Law 274; Alexandra Kuczerawy, 'From "Notice and Take Down" to "Notice and Stay Down": Risks and Safeguards for Freedom of Expression' (2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3305153>. For trademarks and the copyright aspect, see Genç-Gelgeç (n 37).

That said, the established system cannot be considered complete, as some significant elements require further attention. Perhaps the most important one is that the established system does not entitle users to the right to defend their case before the hosting provider takes action. This might be done by enabling the user to issue a counter-notice that consists of all the elements required by an individual who claims the illegality of the content. This notice would be contained in the information of why the user claims that the concerned content is not illegal, and it should be substantiated with legal or contractual grounds as well as evidence if there is any. Granting such a right would undeniably reinforce the protection of users' fundamental rights that might be affected, such as the right to be heard and the right to receive appropriate information about the status of proceedings.[104] However, the DSA obliges hosting intermediaries to inform users and make available the redress possibilities to them only after the decision is taken.[105] From this it follows that users are granted the right to an effective remedy under the DSA but not the right to be heard before the decision is taken.

Regarding remedial possibilities, users are given the right to lodge their complaint against the decision taken by online platforms through internal complaint-handling systems that online platforms (excluding micro and small enterprises) are obliged to put in place. As stated above, further obligations are imposed on online platforms on the ground that they not only store information – as hosting intermediaries do – but also disseminate that information to the public. The obligation to put an internal complaint-handling system in place is one of these additional obligations. Some hosting intermediaries have already implemented such procedures,[106] although not as a legal obligation. These are implemented within their TCs. Therefore, there were no general standards to follow.

The DSA establishes the minimum requirements that online platforms fulfil in the operation of the mechanism under Article 17. Under that article, users, including individuals or entities that have submitted a notice, should be provided with an internal-complaint handling mechanism to lodge their complaints electronically. The mechanism would be available for them at least for six months after the decision is referred to them.[107] The article further establishes the same general standards as set for the notice and action mechanism, ie complaints must be dealt with in a non-discriminatory, timely, and non-arbitrary manner. If the complaint is based on sufficient information and evidence proving that the decision should be reversed, then the online platform must reverse its decision

[104] Giancarlo Frosio and Christophe Geiger, 'Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime' (2022) European Law Journal (forthcoming), s III-3.

[105] Eifert and others claim that these procedural remedies hardly provide protection of the fundamental rights enshrined by the EU Charter. See Eifert and others (n 9) 1012.

[106] Such as Facebook's Oversight Board. See n 44.

[107] DSA, Art 17(1).

and inform the complainant accordingly without delay. In fact, including reversal decisions, online platforms are obliged to inform complainants about every decision taken concerning their complaint and the possibilities of redress, including out-of-court dispute resolution.

Notably, online platforms are required to ensure that qualified staff are included in the decision process so that the decision is not taken solely based on automated means. This appears reasonable since qualified human intervention in the decision process would likely eliminate wrong decisions. For example, a qualified person could differentiate a copyright infringement from fair use with the provided evidence. On the other hand, it would be challenging for online platforms to employ such qualified staff. Illegality may arise from the infringement of different substantive rights, ranging from defamation to trademarks. Online platforms should then employ suitable human resources to tackle various infringements. It is also evident from the aforementioned report provided by Facebook that full automation in content moderation technologies has not been as effective as hoped.[108] They should also benefit from human intervention in their content moderation and the mechanism related to tackling illegal content. Nevertheless, to what extent online platforms would comply with this requirement remains to be seen.

Even though users are only given the right to lodge their complaints after the decision is taken, these are still essential safeguards to protect users' fundamental rights. Moreover, users may still pursue out-of-court dispute settlement or other available redress possibilities regarding the decision taken, including complaints that could not be settled through the internal complaint-handling system of online platforms. Out-of-court dispute settlement bodies are determined and certified by the Digital Service Coordinators (DSCs),[109] whom each Member State appoints as an authority responsible for the supervision of intermediaries in each Member State. The DSA also sets out the conditions to be certified as an out-of-court dispute settlement body in Article 18. Although this is not directly within the scope of this paper, one of the conditions is worth mentioning. Article 18(2b) requires the settlement body to have 'the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platforms'. Although it remains to be seen how this is to be applied in practice by each Member State and concerning the different substantive rights at stake, this should ensure the effectiveness of the process and the remedy in principle. Besides, as out-of-court dispute settlement bodies are certified by the DSCs, having standardised bodies would have a positive impact

[108] See n 51. See also Antonio A Casilli and Julián Posada Gutiérrez, 'The Platformization of Labor and Society' in M Graham and WH Dutton (eds), *Society and the Internet. How Networks of Information and Communication are Changing Our Lives* (2nd edn, OUP 2019) 12 <https://halshs.archives-ouvertes.fr/halshs-01895137/document> accessed 10 September 2022.

[109] DSA, Art 38.

on making the process uniform. On the other hand, the decisions held by these bodies are not binding, meaning that out-of-court dispute resolution is not the final remedy for users to apply. The dispute may always be brought to the court for judicial examination.[110]

Then, Article 18 sets out a rule on the costs of the process. If the decision is given in favour of the user,[111] the online platform bears the fees and reimburses the user. Otherwise, the user is not required to reimburse the fees or related expenses paid by an online platform unless it is held that it acted manifestly in bad faith. This rule incentivises users to apply for the remedy whilst making them refrain from lodging ungrounded and false claims before the body. In addition, online platforms are obliged to take measures to ensure notices submitted by trusted flaggers[112] are given priority by Article 19 and also obliged to apply certain measures set out in Article 20 to prevent misuse of the mechanisms, such as notice and action or internal complaint-handling systems. These articles reinforce the application and the framework of the mechanism.

Finally, Article 15(2)(a) should be mentioned with regard to the deficiencies of the established mechanism. This article permits hosting intermediaries to apply other measures to the illegal content. However, interpretation of the extent of different actions may give rise to fragmented applications. Hence, further guidance or safeguards should be provided on this.[113] Similarly, the precise scope of some of the standards set in the DSA, such as diligence, should be determined as far as possible so as not to result in ambiguous implementation. Article 14 also requires intermediaries to conduct their decision process in a timely manner, but

[110] DSA, Art 17(1)(1a).

[111] This includes the individual or entity that has submitted a notice.

[112] Trusted flaggers are private entities with special expertise in certain illegal content or activities; accordingly, they can issue notices regarding infringing activities relating to their expertise once their trusted flaggers status is confirmed. For a detailed assessment, see Savin (n 83) 9; Frosio and Geiger (n 104) s VI-1.

[113] In fact, Member States implement different variants of notice mechanisms within their domestic laws in order to tackle illegal content online, although the ECD stipulates NTD mechanisms. For instance, one of the variants of a notice and action mechanism, the so-called notice and disconnection or the graduated response scheme, was implemented in France by the (repealed) HADOPI law for copyright infringements. This mechanism requires intermediaries or authorised administrative agencies to apply sanctions gradually – and the last one usually being the suspension of Internet access – after receiving a certain number of notifications. For a detailed examination, see Maria Frabboni, 'File Sharing and the Role of Intermediaries in the Marketplace: National, European Union and International Developments' in Irini A Stamatoudi (ed), *Copyright Enforcement and the Internet* (Kluwer Law International 2010) 119, 136–137; Andres Guadamuz, 'Developments in Intermediary Liability' in Andrej Savin and Jan Trzaskowski (eds), *Research Handbook on EU Internet Law* (Edward Elgar 2014) 312, 333–336.

there is nothing to assist intermediaries in determining what should be considered timely.[114]

3.3 Enforcement

Last but not least, the enforcement rules of the DSA should be considered. As will be shown, the DSA sets out a framework for enforcing the rules. This is important and needed, given that the DSA imposes obligations on digital platforms. So far, the paper has demonstrated that the above rules are promising in providing answers to the issues raised by the ECD. However, their desired effect can only be ensured with effective enforcement. The ECD does not provide enforcement rules, as this is left to the cooperation of the Member States and the codes of conduct at the EU level.[115] Although this is compatible with the ECD's approach, it is difficult to conclude that it has impacted uniformity positively and hugely. The EU-level enforcement authority that would work with the Member States in implementing or enforcing the rules would have been assistive for effective enforcement.[116]

Fortunately, the DSA sets out enforcement rules and sanctions to urge providers to comply with the rules and obligations. The enforcement powers are distributed among different actors, mainly the DSCs and the European Commission. There is also the European Board of Digital Services (the Board), composed of the DSCs. However, the Board works as an advisory to the main enforcement actors: the DSCs and the Commission. The DSCs are appointed[117] by each Member States as a competent authority. Their primary duty is to ensure coordination at the national level. Hence, they are responsible for supervision, intermediaries' compliance with the rules, and the consistency and effectiveness of the application of the rules.[118] As the DSCs are considered responsible authorities of the Member States for matters related to the DSA and are required to carry out several tasks, Member States are required to appoint a DSC with sufficient technical, financial and human resources. To carry out their tasks, the DSCs are entitled to have both investigation and enforcement powers such as requiring information from providers, even making on-

[114] There are two studies pointing out the existence of such fragmentation in the application of these standards. For example, one study concluded that the time frame for intermediaries to take action after receiving a notice ranges from three hours to ten days. See Sjoera Nas, 'The Multatuli Project ISP Notice & Take Down' (*SANE*, 1 October 2004) <https://www-old.bof.nl/docs/researchpaperSANE.pdf>. See also Christian Ahlert, Chris Marsden and Chester Yung, 'How 'Liberty' Disappeared from Cyberspace: The Mystery Shopper Tests Internet Content Self-Regulation' (2004) <https://www.academia.edu/686683/How_Liberty_Disappeared_from_Cyberspace_The_Mystery_Shopper_Tests_Internet_Content_Self_Regulation/>. For a detailed examination, see Genç-Gelgeç (n 37) 170–174.

[115] ECD, Arts 16–20.

[116] De Streel and Husovec (n 14) 18; De Streel and others (n 50) 81–82.

[117] 'Within two months from the date of entry into force of this Regulation' according to the DSA Art 38(3).

[118] DSA, Art 41.

site inspections of the premises in assessing their compliance with the rules or dealing with specific infringement and perhaps, more importantly, imposing fines when an intermediary fails to comply with the rules.[119] The DSA puts a cap on the amount of penalties[120] to be imposed on intermediaries and leaves the Member States to set the standards for the fines and penalties.

On the other hand, regarding VLOPs and VLOSEs, the Commission is responsible for supervising and enforcing the rules concerning them. Hence, the Commission is vested with both investigation and enforcement powers.[121] Some of the Commission's powers in this respect are as follows: conducting an assessment on the compliance of the due diligence obligations, including transparency obligations that are imposed on VLOPs and VLOSEs; taking necessary actions against the non-compliance[122] and other matters found in the independent audits;[123] investigating suspected infringements[124] or requesting relevant information as to such infringements[125] or non-compliance and imposing fines and penalties.[126] However, VLOPs and VLOSEs must be given the right to be heard and to access the file before the Commission decides on non-compliance, fines and penalties.[127] It is also made clear that the Court of Justice has unlimited jurisdiction to review the Commission's decision on penalties and fines.[128]

As briefly shown, the DSA establishes an enforcement regime that the ECD lacks. This is aimed to operate at the EU level. This should be welcomed as the enforcement rules appear to support the obligations. The distribution of powers and the encouragement of cooperation amongst them appear an important tool to avoid potential setbacks of centralised enforcement, such as long-delayed enforcement.[129] On the

[119] DSA, Art 41.

[120] DSA, Art 42(3) establishes 'the maximum amount of penalties imposed for a failure to comply with the obligations laid down in this Regulation shall not exceed 6% of the annual worldwide turnover of the provider of intermediary services concerned. Penalties for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and to submit to an on-site inspection shall not exceed 1% of the annual worldwide turnover of the provider concerned'. Then, Art 42(4) states 'the maximum amount of a periodic penalty payment shall be 5% of the average daily worldwide turnover or income of the provider of intermediary services concerned in the preceding financial year per day, calculated from the date specified in the decision concerned'.

[121] DSA, Art 50.

[122] DSA, Art 58.

[123] DSA, Art 28.

[124] DSA, Art 51.

[125] DSA, Arts 52–54.

[126] DSA, Art 59.

[127] DSA, Art 63.

[128] DSA, Art 64(a).

[129] With regard to the GDPR, see European Commission, 'Data protection as a pilar of citizens' empowerment and the EU's approach to the digital transition – two years of application of the General Data Protection Regulation' (Communication) COM(2020) 264 final.

other hand, the established system should be criticised for its potential ineffectiveness. The DSA prescribes that the DSCs must be technically and financially sufficient. Given that the DSCs' powers include carrying out investigations, identification of infringements and imposition of fines, they indeed should be capable of performing these tasks. However, this is easier said than done. This would require Member States to allocate human and financial resources. Concerning the GDPR, one report shows that the Member States hardly provided such resources and the Data Protection Authorities (DPAs)[130] are barely equipped with sufficient technical staff.[131] One of them is the Irish DPA, responsible as lead authority for the compliance of some Big Tech companies (such as Google and Facebook) with the GDPR, although it receives more complaints than any other DPA. Unsurprisingly, it receives criticism for the lack of effective enforcement of the GDPR and data protection in general.[132] This indicates the importance of providing resources for effective enforcement.

Given that this report was published two years after the GDPR came into effect, it offers illustrative facts for the DSA. The DSA requires Member States to establish their DSCs within fifteen months from its entry into force.[133] However, this would not necessarily mean that the supervision and enforcement of the rules will effectively take place accordingly. This would not happen unless the DSCs were provided with sufficient resources to perform their tasks. It is also possible that uneven resourcing might result in different levels of enforcement among the Member States. Moreover, the DSA requires the DSCs to cooperate and the Member States to make their technical staff available to the Commission for matters related to VLOPs and VLOSEs. This makes resourcing even more critical for fulfilling the objective of effective enforcement. It is hence vital to ensure effectiveness in the designation of the DSCs and to take lessons from the GDPR.

The power vested in the Commission concerning VLOPs and VLOSEs may also be criticised. Given that the non-compliance of VLOPs and VLOSEs might have a potential cross-border effect in the EU, this cen-

---

[130] Which are the responsible authorities of the compliance and supervision of the GDPR at national level.

[131] Johnny Ryan and Alan Toner, 'Europe's Governments Are Failing the GDPR Brave's 2020 Report on the Enforcement Capacity of Data Protection Authorities' (*Brave,* April 2020) <https://brave.com/static-assets/files/Brave-2020-DPA-Report.pdf> accessed 10 September 2022. For example, the report reveals that 'only 6 national DPAs have more than 10 specialist tech investigation staff'; 'data protection authorities have 2 tech specialists or less'; 'half of all national DPAs receive small (€5 million or less) annual budgets from their governments'.

[132] Madhumita Murgia and Javier Espinoza, 'Ireland Fails to Enforce EU Law against Big Tech' *Financial Times* (London, 13 September 2021) <www.ft.com/content/5b986586-0f85-47d5-8edb-3b49398e2b08> accessed 10 September 2022; Samuel Stolton, 'MEPs Rue Lack of GDPR Sanctions Issued by Irish Data Authority' (*Euractiv*, 26 March 2021) <www.euractiv.com/section/data-protection/news/meps-rue-lack-of-gdpr-sanctions- issued-by-irish-data-authority> accessed 10 September 2022.

[133] DSA, Art 38(3).

tralised-like approach might assist in more effective enforcement. That being said, the exclusive powers given to the Commission may put this body in a position different from the one it was originally assigned. As an executive arm of the EU, its principal role is to propose new laws and monitor their implementation. However, the DSA gives a central role to the Commission in enforcing the rules. This might create a conflict of interests as the Commission is the body that proposes the law and then imposes fines for non-compliance, which might indicate the deficiencies of the DSA that it itself proposed. This might also negatively impact the separation of EU powers.[134]

Finally, it ought to be mentioned that the Commission's exclusive powers should be without prejudice to certain administrative tasks assigned to the DCSs.[135] Cooperation between the Commission, the Board, the DSCs and the Member States' competent authorities is encouraged by the DSA. These are assistive in ironing out the potential setbacks of enforcement and in ensuring effectiveness and unity in enforcement. That being said, how smoothly this could be applied in practice remains to be seen.

4 Conclusion

The task of this paper was to scrutinise the DSA to address whether it could iron out the deficits of the ECD. To do so, first the ECD's deficiencies were identified. Second, the rules established by the DSA were examined to answer the paper's question.

The ECD has been the law applicable to Internet intermediaries related to their liability for third-party content on their platform, electronic contracts and e-commerce activities for over twenty years. It was based on the objectives of facilitating the free movement of digital services within the EU and fostering innovation and e-commerce activities. To fulfil these objectives, a harmonised immunity regime was established for certain services of intermediaries, ie mere conduit, caching, and hosting. This means that the providers of these services might be granted immunity from liability arising from the infringing content made available by their users on their platform, provided that the conditions set out by the ECD in Articles 12–14 are met. These conditions are set out to assess the intermediaries' involvement in the availability of illegal content uploaded by their users. This is because the immunity is granted to an intermediary whose operation remains technical and passive as to the infringing content made available on its platform. This being the general framework of the ECD's immunity regime, most of the matters associated with this regime, such as procedures and conditions of the NTD mechanism, are

[134] Suzanne Vergnolle, 'Enforcement of the DSA and the DMA: What Did We Learn from the GDPR?' in Heiko Richter, Marlene Straub and Erik Tuchtfeld (eds), *To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package* (2021) Max Planck Institute for Innovation and Competition Research Paper No 21-25, 103, 107.

[135] DSA, Art 84(b).

left for the Member States to deal with under their national law. The Member States are provided with further insight into applying the rules either when the matters were referred to the ECJ or when the EU Commission publishes the codes of conduct or additional communications.

The above appraisal indicates that the most challenging issues of the ECD are the lack of harmonisation and the discretion given to the intermediaries. Concerning the lack of harmonisation, the fragmentation primarily arises from the interpretation of the rules concerning hosting intermediaries, the implementation and the application of the NTD mechanism, and the prohibition of the general monitoring obligation. Regarding the conditions established for hosting intermediaries, the ECJ sets out a neutrality test for courts to apply in distinguishing active intermediaries from passive ones. However, the application of this test has not been straightforward in practice. Hence, it has led to divergent applications.[136] Moreover, the test was not assessed by the ECJ concerning today's extensive content moderation technologies, so the application of the test to these remains open to divergent applications. Besides, the application of the NTD mechanism has proven to be challenging in providing harmonisation, as each Member State establishes the standards and elements of the NTD systems within their corresponding national law. The rules on this have been heavily fragmented.[137] In the same vein, the interpretation of the prohibition of the general monitoring obligation has been divergent among the EU Member States.

Another setback of the ECD's framework is the discretion given to hosting intermediaries. As demonstrated, hosting intermediaries are provided with powers similar to a judge in dealing with illegal content. As the ECD requires the hosting intermediary to act against illegal content made available on its platform, it puts the hosting intermediary in the position of a judge. When the notice is received as to the illegality of content, the intermediary assesses the notice and claim and then decides whether or not to take down the content. The ECD does not establish rules, standards or safeguards for intermediaries to follow in this respect. Hence, the rules and procedures have been formed by intermediaries' TCs and through the application of their self-implemented mechanisms. In default of any transparency rules, matters related to the moderation procedures, such as how they act against the illegal content and how they apply their mechanisms, are left under their control and discretion. This strengthens the intermediaries' position within the digital world as they may act almost like a lawmaker. More crucially, the protection of fundamental rights is also left to intermediaries. As shown, the application of NTD directly impacts on the parties' fundamental rights. The ECD leaves the task of protecting and balancing the rights at stake to intermediaries

[136] De Streel and Husovec (n 14) 42.

[137] Commission, Online Services, Including e-Commerce, in the Single Market Accompanying the document Communication on 'A coherent framework to boost confidence in the Digital Single Market of e-commerce and other online services' SEC(2011) 1641 final 3.4.4.

– which are private parties – without providing any safeguards.

After identifying these as the deficiencies of the ECD's framework, this paper examined the DSA. In light of this, the very first thing to conclude is that the DSA appears to target matters related to which the ECD fell short. Therefore, it should be welcomed.

First, the DSA's adopted approach to regulating intermediaries appears appropriate to fulfil its objectives. Its main aim is to ensure the adequate functioning of digital services within the EU by striking a balance between the powers and responsibilities of intermediaries of different sizes and by protecting the fundamental rights of all parties. To fulfil these tasks, attention is placed on digital services, especially on Big Tech companies and their infrastructural advantages. Therefore, new sets of due diligence obligations are imposed on them. These rules are established depending on the size and roles of the intermediaries within the online world. Accordingly, the providers of digital services are classified into four categories: intermediaries, hosting intermediaries including online platforms, online platforms, and VLOPs and VLOSEs. This is an important change in the legal framework, and it is promising one to strike a balance between the different sizes of digital services.

Second, the DSA establishes much-needed rules for notice and action mechanisms. Hosting intermediaries must implement notice and action mechanisms in their systems by the DSA. In line with this, they are provided with minimum standards for the mechanism, such as the system's specifications or what constitutes a valid notice. They are obliged to support their decision regarding the claim with a statement of reasons, including the legal grounds, of why the specific decision is taken, the duration and territorial scope of the decision, etc. The notice issuer should also be provided with information on the possibilities of redress. Furthermore, online platforms are required to implement internal-complaint handling systems and make available out-of-court dispute resolution mechanisms. The standards related to these are also established to some extent. Furthermore, hosting intermediaries, online platforms and VLOPs are required to comply with different levels of transparency and information obligations concerning the notice and action mechanism. These obligations play a significant role in setting the standards in the application of the rules, eliminating intermediaries' discretion in applying enforcement mechanisms, and striking a balance between the parties' fundamental rights.

Third, the DSA establishes detailed and tiered reporting and transparency obligations. This is significant as the lack of transparency is identified as one of the deficiencies of the ECD that leads to fragmentation and unfair applications. The DSA requires all digital platforms to have transparency reports and sets the standards for them. The level of obligations is increased for online platforms and VLOPs. They are also obliged to ensure transparency in their advertisements. These moves ap-

pear promising in establishing a more uniform and fairer framework and limiting intermediaries' discretion on the application of content moderation.

Last but not least, the DSA creates an enforcement regime that the ECD lacks. This means that the obligations are supported by enforcement rules, although their effectiveness can be criticised. The decentralised approach of the enforcement mechanism distributes enforcement and investigation powers through the DSCs and the European Commission. There is also the Board which works as an advisory to them. The DSCs are appointed by the Member States and are made responsible for coordination at the national level, while the Commission is vested with enforcement powers as to the VLOPs and VLOSEs. As shown, both are empowered to impose fines and penalties in the case of non-compliance.

As a concluding remark, it should be underlined that the DSA cannot be considered complete, although its framework appears full of promise. As indicated, some issues require further attention. Although these are not discussed in detail here, they should be recalled. Starting with the established notice and action mechanism, the DSA misses an opportunity to entitle the user to issue a counter-notice which would ensure the protection of and balance between the fundamental rights of the parties. As addressed, users are given the right to lodge their claim only after an intermediary takes the decision. As far as the immunity rules are concerned, the DSA also appears to fail to clarify the application of the neutrality standard. The DSA, like its predecessor, does not take account of new technologies and the content moderation activities of intermediaries in relation to the immunity regime. Despite the evident interrelation between the application of the immunity rules and the obligations imposed, the opportunity to come up with a more complete and straightforward immunity regime appears not to have been seized. Clarification on the interpretation of standards, such as general monitoring and diligence, may also be needed for uniformity. As for the due diligence obligations, it is doubted how many of them will be embraced by digital platforms. The enforcement regime is established, but questions about its effectiveness are also raised. How effectively this will work and if the DSA can deliver the promise of a new regime may only be seen after the rules come into force and are applied in practice.

Suggested citation: B Genç-Gelgeç, 'Regulating Digital Platforms: Will the DSA Correct Its Predecessor's Deficiencies?' (2022) 18 CYELP 25.

IS THE ESSENTIAL FACILITIES DOCTRINE FIT FOR ACCESS TO DATA CASES? THE DATA PROTECTION ASPECT

Rok Dacar*

Abstract: Personal data can be of great economic value for companies as it is an essential input for the offering of a wide array of services. One way for a company to obtain access to essential personal data controlled by another company is by demanding mandatory access on the grounds of the essential facilities doctrine. Such access, however, can violate the right to the protection of personal data of the data subjects if it is not based on one of the legitimate grounds for the processing of personal data set by the GDPR. Two of these grounds are especially likely to be applicable to the access to personal data mandated using the essential facilities doctrine: the interpretation of the Commission decision or the judgment of the Court of Justice ordering the granting of access as a legal obligation and the legitimate interest of the company requesting access, for such access. The anonymisation of personal data is not a viable option for the circumvention of the rules of the GDPR as anonymised personal data loses most of its economic relevance for companies.

Keywords: essential facilities doctrine, right to protection of personal data, grounds for processing personal data, anonymisation of personal data, General Data Protection Regulation.

1 Introduction

Access to competitively relevant data is crucial for companies to compete successfully on today's markets. The importance of such data goes far beyond the ICT sector as data is becoming one of the most important inputs even in traditional, so-called bricks and mortar, sectors (eg mobility, construction, banking, etc). However, one must not overlook that a company's access to personal data controlled by another company might not only increase its competitive potential but also cause widespread violations of fundamental rights of the individuals that the data refers to (data subjects). One of the means for a company to obtain competitively relevant data is by use of one of the most controversial instruments of competition law, the essential facilities doctrine. This paper will explore the possible clash between the obligation of a company to grant access

* Teaching assistant and doctoral student at the Faculty of Law, University of Maribor; mag. iur. (Ljubljana), MA (Bruges). Email: rok.dacar@um.si (ORCID: 0000-0001-8936-9311). DOI: 10.3935/cyelp.18.2022.483.

to the essential personal data it controls and its obligation not to violate the right to the protection of personal data of the data subjects. All this with the aim of answering the research question *whether the current data protection regime in the EU allows for personal data to be shared as essential facilities under the essential facilities doctrine and, if so, under what conditions*.

The paper is divided into four main parts. The first clarifies the basic concepts and institutes necessary for understanding data protection concerns related to the (mandatory) sharing of personal data. It analyses (i) the genesis, nature, and current status of the (fundamental) right to protection of personal data while taking special note of its double-faceted nature; (ii) the genesis of the essential facilities doctrine and the possibility of data being an essential facility; (iii) the difference between personal and non-personal data and some of the difficulties connected with the distinction of the two categories of data; and lastly (iv) the relationship between competition law and data protection. In the second part, the paper analyses under what grounds for the processing of personal data as stated by the General Data Protection Regulation (hereinafter: GDPR)[1] could personal data be shared under the essential facilities doctrine without such sharing constituting a violation of the data protection regime. It is concluded that it could be possible for personal data to be shared under the essential facilities doctrine on two grounds: (i) either a Commission decision or Court[2] judgment ordering the mandatory sharing of personal data which could be interpreted as a legal obligation; or (ii) the company requesting access to personal data could prove it has a legitimate interest to access that data which outweighs the interest of the data subjects for the protection of their personal data. The third part of the paper explores the possibility of personal data being transformed into non-personal data and shared as such. As the rules of the GDPR only apply to personal data, its effective transformation into non-personal data means that the data protection rules no longer apply. There are, however, two limits to such circumvention of the GDPR. Firstly, there is always the possibility of non-personal data being transformed back into personal data through the use of advanced analytics. Secondly, the anonymisation of personal data voids them of most of their commercial value. The fourth and last part of the paper summarises the findings of this study and attempts to present a holistic answer to the research question above.

---

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ L119/1 (hereinafter: GDPR).

[2] The term Court is used to describe both the Court of Justice of the European Union as well as the General Court of the European Union.

2 Setting the scene

2.1 The right to protection of personal data

'The right to protection of personal data is a young fundamental right that in a very short time became one of the core values of EU law'.[3] It is enshrined in Article 8 of the Charter of Fundamental Rights of the EU (hereinafter: the Charter)[4] as well as in Article 16(1) of the Treaty on the Functioning of the EU.[5] The right to protection of personal data is operationalised by the GDPR,[6] a successor of Directive 95/46,[7] introducing detailed provisions on the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.[8] The right to protection of personal data was created through the case law of the European Court of Human Rights (hereinafter: ECtHR), where it was first considered only as an informational dimension of the right to respect of personal and family life but later gained the nature of an independent fundamental right, protected through the provisions of Article 8 of the European Convention on Human Rights (right to respect for private and family life),[9] while still being tightly connected with the right to respect of personal and family life. From the ECtHR's case law, it was transplanted into EU law, being recognised as a fundamental right in the Court's *Promusicae*[10] judgment in 2008 and given the nature of an independent fundamental right in the Charter. The close connection between the right to protection of personal data and the right to private and family life is clearly visible from the Court's judgments regarding the right to protection of personal data as they take into

---

[3] Maja Brkan, 'The Unstoppable Expansion of the EU Fundamental Right to Data Protection' (2016) 23(5) Maastricht Journal of European and Comparative Law 812, 813.

[4] Art 8 of the Charter states that:

'1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority'.

[5] Stating that everyone has the right to the protection of personal data concerning them.

[6] The GDPR confirms that the right to protection of personal data is a fundamental right. Recital 1 states that: 'The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her'.

[7] Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281.

[8] The GDPR, Art 1.

[9] Gloria González Fuster, *The Emergence of Personal Data as a Fundamental Right of the EU* (Springer 2014) 214.

[10] Case C-275/06 *Productores de Música España (Promusicae)* ECLI:EU:C:2008:54.

consideration the provisions of both Article 7 (respect for private and family life) and Article 8 (right to protection of personal data) of the Charter, which is clearly visible in the *Scheke and Eifert*,[11] *Schwarz*,[12] and *Digital Rights Ireland*[13] cases. The specificity of the right to protection of personal data is that it has a double-faceted character: it is a fundamental right while it also pursues goals of an economic nature.[14]

2.2 The essential facilities doctrine

According to the essential facilities doctrine, the owner of a facility which is not replicable by the ordinary process of innovation and investment, and without access to which competition on a market is impossible or seriously impeded, has to share it with a rival.[15,16] Essential facility

[11] Joined Cases C-92/08 and C-93/09 *Volker und Markus Schecke and Eifert* ECLI:EU:C:2010:662 state in para 64 that: 'the publication of data by name relating to the beneficiaries concerned and the precise amounts received by them from the EAGF and the EAFRD constitutes an interference, as regards those beneficiaries, *with the rights recognised by Articles 7 and 8 of the Charter*' (emphasis added).

[12] Case C-291/12 *Schwarz v Stadt Bochum* ECLI:EU:C:2013:670, paras 33, 39, 46, etc.

[13] Case C-293/12 *Digital Rights Ireland and Seitlinger and others* ECLI:EU:C:2014:238, paras 38–72.

[14] Case C-518/07 *Commission v Federal Republic of Germany* ECLI:EU:C:2010:125 states in para 30 that 'the supervisory authorities responsible for supervising the processing of personal data outside the public sector must enjoy an independence allowing them to perform their duties free from external influence. That independence precludes not only any influence exercised by the supervised bodies, but also any directions or any other external influence, whether direct or indirect, which could call into question the performance by those authorities of their task consisting of establishing a *fair balance between the protection of the right to private life and the free movement of personal data*' (emphasis added); while Case C-582/14 *Patrick Breyer v Federal Republic of Germany* ECLI:EU:C:2016:779 states in para 58 that: 'Article 5 of Directive 95/46 authorises Member States to specify, within the limits of Chapter II of that directive and, accordingly, Article 7 thereof, the conditions under which the processing of personal data is lawful, the margin of discretion which Member States have pursuant to Article 5 can therefore be used only in accordance with the objective pursued by that directive of maintaining a *balance between the free movement of personal data and the protection of private life*' (emphasis added); furthermore, recital 2 of the GDPR inter alia states that: 'This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an *economic union, to economic and social progress*, to the strengthening and the *convergence of the economies within the internal market*, and to the well-being of natural persons' (emphasis added); the GDPR also states in Art 1(3) that: 'The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data'.

[15] Grainne de Burca and Paul Craig, *EU Law* (6th edn, OUP 2015) 1074.

[16] For a more in-depth analysis of the essential facilities doctrine, see Sebastien J Evrard, 'Essential Facilities, Bronner and Beyond' (2004) 10(3) Columbia Journal of European Law 491; Marina Lao, 'Networks, Access and "Essential Facilities": From Terminal Railroad to Microsoft' (2009) 62(2) SMU Law Review 557; Marina Lao, 'Search, Essential Facilities, and the Antitrust Duty to Deal' (2013) 11(5) Northwestern Journal of Technology and Intellectual Property 275; Devdatta Malshe, 'Essential Facilities: de facto; de jure' (2019) 40(3) European Competition Law Review 124; Axel Beckmerhagen, *Die essential facilities doctrine im US-amerikanischen und europäischen Kartellrecht* (Nomos 2002); Ulf Muller and Anselm Rodenhausen, 'The Rise and Fall of the Essential Facility Doctrine' (2008) 29(5) European Competition Law Review 310.

cases are special types of refusal to sell/refusal to deal cases in which two relevant markets have to be defined: the upstream market and the downstream market. For the essential facilities doctrine to be used, a company with a dominant position on the upstream market must refuse to grant access to a product or service from this market that is necessary to compete on the downstream market (it is an essential facility or essential input) to a company requesting it. The essential facilities doctrine was first conceived by the United States Supreme Court in the famous *Terminal Railroad Combination* case of 1912. The doctrine was developed further by both the Supreme Court and lower, especially federal, courts. In the 1960s and 1970s, it came under heavy fire from anti-interventionist schools of economic and legal thought, one of the most famous critiques being Philip Areeda's article 'Essential Facilities: An Epithet in Need of Limiting Principles'. The Supreme Court's judgment in the *Trinko*[17] case in 2004, with justice Scalia stating that the Supreme Court has never recognised such a doctrine, and thus finds no need either to recognise it or to repudiate it, was the final nail in the coffin for the doctrine in the United States legal system, limiting its use to such an extent as to make it obsolete.

In the EU, however, due to the strong presence of German ordoliberal economic though, the essential facilities doctrine received far less criticism and was widely used by the European Commission and the Court, especially from the 1980s to the early 2000s. The Commission and the Court applied the essential facilities doctrine in a large number of cases concerning, inter alia, chemicals needed to produce other chemicals (*Commercial Solvents*),[18] port infrastructure (*B&I/Sealink*,[19] *Port of Rødby*),[20] services needed for the functioning of airports (*Flughafen Frankfurt/Main AG*,[21] *Alpha Flight Services/Aéroports de Paris*),[22] railroads, trains and train staff (*Night Services*),[23] as well as intellectual property rights (*Volvo v*

[17] Verizon Commc'ns, Inc v Law Offices of Curtis V Trinko, LLP, 540 US 398, 410-411 (2004).

[18] Case C-6/73 *Istituto Chemioterapico Italiano and Commercial Solvents v Commission* ECLI:EU:C:1974:18.

[19] *B&I/Sealink* (Case IV/34.689) Commission Decision 94/19/EC [1994] OJ L15/8.

[20] *Port of Rødby* Commission Decision 94/119/EC [1993] OJ L55/52.

[21] *Flughafen Frankfurt/Main AG* (Case IV/34.801) Commission Decision 98/190/EC [1998] OJ L72/30.

[22] *Alpha Flight Services/Aéroports de Paris* (Case IV/35.613) Commission Decision 98/513/EC [1998] OJ L230/10.

[23] Case T-374/94 *European Night Services Ltd v Commission* ECLI:EU:T:1998:198.

Veng,[24] *Renault v Maxicar*,[25] *Magill*,[26] *IMS Health*,[27] *Microsoft*).[28]

After the heavily criticised[29] *Microsoft* judgment that caused considerable uncertainty about the conditions in which the essential facilities doctrine can be used, both the Commission and the Court showed great reticence towards its application. It is not surprising, then, that the Commission avoided voicing its opinion about the possibility of data being an essential facility despite having several chances to do so, namely in the *Facebook/WhatsApp*,[30] *Google/DoubleClick*,[31] *Telefónica UK/Vodafone UK/Everything Everywhere/JV*[32] cases. Rather than taking a clear stance on the matter, the Commission pointed out that even if one company controls a certain dataset, there is still a large pool of data available for other companies to use and that the use of a certain dataset by one company does not restrain other companies from using this same dataset, as the nature of data is non-rivalrous.[33] While this is true, there can also be cases in which data that another company needs access to, to compete on the downstream market, is in the exclusive control of another company and consequently constitutes an essential facility. Notable examples of such cases are the (i) *GDF Suez*[34] case from France and the (ii) *hiQ Labs*[35] and (iii) *PeopleBrowsr*[36] cases from the USA.

(i) GDF Suez (now Engie) is a French vertically integrated energy company that had a legal monopoly on the distribution of electricity and gas before liberalisation of the sector. The monopoly enabled GDF Suez to create a database containing personal data of its customers. Direct Energie, a competitor of GDF Suez, demanded access to some of the personal data (names, addresses, information about the consumption of gas and phone numbers) included in the database. The French Competition Protection Authority (Authorité de la concurrence) ordered GDF Suez to share the requested data with Direct Energie and to send a letter to the

[24] Case C-238/87 *AB Volvo v Erik Veng* (UK) ECLI:EU:C:1988:477.

[25] Case C-38/98 *Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento* ECLI:EU:C:2000:225.

[26] Case C-241/91 P, C-242/91 P *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission* ECLI:EU:C:1995:98.

[27] Case C-418/01 *IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG* ECLI:EU:C:2004:257.

[28] Case T-201/04 *Microsoft v Commission* ECLI:EU:T:2007:289.

[29] One of the most pertinent critiques being Renata B Hesse, 'Counselling Clients on Refusal to Supply Issues in the Wake of the EC Microsoft Case' (2008) 22(2) Antitrust 32.

[30] *Facebook/WhatsApp* (Case COMP/M.7217) (2014).

[31] *Google/DoubleClick* (Case COMP/M.4731) [2008] OJ C184/9.

[32] *Telefónica UK/Vodafone UK/ Everything Everywhere/ JV* (Case COMP/M.6314) (2012).

[33] Bruno Lasserre and Andreas Mundt 'Competition Law and Big Data: The Enforcers' View' (2017) 1(4) Rivista Italiana di Antitrust 87, 97.

[34] Decision of the Authorité de la concurrence GDF Suez 14-MC-02, Judgment of the Appellate Court no 2014/19335 and of the Cassation Court no 31 F-D.

[35] *hiQ Labs, Inc v LinkedIn Corp*, 938 F.3d 985 (9th Cir 2019).

[36] *PeopleBrowsr, Inc v Twitter, Inc*, Case No. 3:12-cv-06120-EMC.

customers whose personal data was about to be shared, informing them that they can deny the consent for their data to be shared by filling out a special form and sending it to GDF Suez. Should they not send such a letter, consent would be presumed. It is important to note that the decision was passed before the coming into force of the GDPR, according to which 'silence, pre-ticked boxes or inactivity should not constitute consent'.

(ii) HiQ Labs was using publicly available LinkedIn data to prepare a statistical analysis of different workforce trends. LinkedIn prohibited hiQ Labs from further using its data, thereby refusing them access to an essential input. After an appeal to the Supreme Court, the case was referred back to the Ninth Circuit Court.

(iii) PeopleBrowsr was using publicly available Twitter data to analyse the attitude of users towards different products and influencers. Similar to the *hiQ Labs* case, Twitter barred PeopleBrowsr from using the essential data. The case was resolved with a settlement granting PeopleBrowsr access to Twitter data for an additional limited amount of time.

Furthermore, the tenth amendment to the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen)[37] introduced the provision of Article 19(4) explicitly stating that data can be an essential facility.[38] We can therefore conclude that despite the fact that neither the Commission nor the Court has considered data as an essential facility up to this point, data can still be an essential facility. The exact conditions that must be fulfilled for data to be an essential facility will not be further analysed as this is not the aim of this paper. Its aim is rather to clarify under what conditions obligatory sharing of personal information does not infringe the right to the protection of personal information.

Data, and especially big data, has several characteristics that distinguish it from traditional materialised and immaterialised (essential) facilities: its decreasing marginal value,[39] decreasing value over time,[40] in some cases its non-rivalrous nature,[41] and the extreme network effects

[37] Gesetz gegen Wettbewerbsbeschränkungen in der Fassung der Bekanntmachung vom 26. Juni 2013 (BGBl. I S.1750, 3245), das zuletzt durch Artikel 4 des Gesetzes vom 20. Mai 2022 (BGBl. I S. 730) geändert worden ist (2013 Act against Restraints of Competition (FRG)).

[38] The provision states that: 'An abuse exists in particular if a dominant undertaking as a supplier or purchaser of a certain type of goods or commercial services refuses to supply another undertaking with such a good or commercial service for adequate consideration, in particular to grant it access to data, networks or other infrastructure facilities, and if the supply or the granting of access is objectively necessary in order to operate on an upstream or downstream market'.

[39] The more data a company controls the smaller is the economic value of any additional quantity of data.

[40] Data is especially relevant when 'fresh'. The more time that passes from the collection of data, the smaller is its economic value due to market changes.

[41] In general, the use of a certain dataset by one company does not exclude other companies from using the same dataset as well.

present in data-related industries.[42] Taking account of these specificities, two distinct schools regarding the possible nature of data as an essential facility have developed. The first argues that data can never be an essential facility[43] while the second defends the position that data can and even should be an essential facility if certain conditions are met, as a refusal to grand access to data can have the same effects for competition on a downstream market as refusal to grand access to a traditional facility.[44] One could argue that the uncertainties in academia regarding the possible nature of data as an essential facility ended with the tenth amendment of the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen)[45] that recognises the possible nature of data as an essential facility.[46]

Access to relevant data can be of vital importance for companies, as it is impossible to offer some services without relevant data (data is an essential input). Given that the vast majority of economically relevant data is controlled by a handful of large companies, the so-called FAANG (Facebook (now META), Amazon, Apple, Netflix and Google (now Alphabet)) companies and some other international corporations, it can be difficult for smaller companies to obtain relevant data, especially due to the prohibitively large investments needed for setting up an efficient data collection and analysis operation. Currently, access to only very limited categories of data, for example auto-diagnostics[47] and some electricity consumption data,[48] is subject to ex ante regulation in the EU. Conse-

---

[42] See *Google Search (Shopping)* (Case AT.40099) Commission Decision AT.39740 [2018] OJ C9, para 287, 319.

[43] Erika Douglas, 'Monopolization Remedies and Data Privacy' (2020) 24(1) Virginia Journal of Law and Technology 1; Zachary Abrahamson, 'Essential Data' (2014) 124(3) Yale Law Journal 867.

[44] Édouard Bruc, 'Data as an Essential Facility in European Law: How to Define the "Target" Market and Divert the Data Pipeline' (2019) 15(2/3) European Competition Journal 177.

[45] 2013 Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) (FRG).

[46] Art 18/III/3 states that '(3) In assessing the market position of an undertaking in relation to its competitors, account shall be taken in particular of the following … its access to data relevant for competition'. Art 19/II/4 states that '(2) An abuse exists in particular if a dominant undertaking as a supplier or purchaser of a certain type of goods or commercial services. … 4. refuses to supply another undertaking with such a good or commercial service for adequate consideration, in particular to grant it access to data, networks or other infrastructure facilities, and if the supply or the granting of access is objectively necessary in order to operate on an upstream or downstream market and the refusal threatens to eliminate effective competition on that market, unless there is an objective justification for the refusal'.

[47] Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles [2007] OJ L 263.

[48] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) [2019] OJ L158.

quently, the only available tool for gaining access to the vast majority of economically relevant data that the company controlling it does not want to share is the use of the doctrine. This might, however, change with the adoption of the proposed Digital Markets Act (DMA) which, inter alia, states that gatekeepers are to 'provide business users, or third parties authorised by a business user, free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, that is provided for or generated in the context of the use of the relevant core platform services …',[49] as well as the proposed Data Act.[50,51]

2.3 The relation between competition law and data protection law

The relation between competition law and data protection law is largely shaped by the Court's *Asnef-Equifax*[52] judgment in which it stated that 'any possible issues relating to the sensitivity of personal data are not, *as such*, a matter for competition law, they may be resolved on the basis of the relevant provisions governing data protection'.[53] The Commission followed this position in the *Facebook/WhatsApp* and *Google/DoubleClick* merger decisions in which it, inter alia, stated that 'any privacy-related concerns flowing from the increased concentration of data within the control of Facebook as a result of the Transaction do not fall within the scope of the EU competition law rules but within the scope of the EU data protection rules'.[54] Despite some authors arguing that the Court has taken a clear position that questions related to the protection of personal data are not relevant for competition law under any circumstances,[55] its position is in fact much more moderate than might seem on first sight. The phrase '*as such*' used by the Court in the *Asnef-Equifax* judgment means that questions related to the protection of personal information are not relevant in competition law assessments only if they apply solely to the protection of personal information. As soon as the protection of personal information has any impact on competition law or market competition, it can, consequently, be considered in competition law assessments. Such an interpretation of the *Asnef-Equifax* judgment is in line with the institution's position in some other cases where it used competition law

[49] Proposal for a regulation of the European parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM/2020/842 final, Art 6(i).

[50] Proposal for a regulation of the European parliament and of the Council on harmonised rules on fair access to and use of data (Data Act) COM/2022/68 final.

[51] For a more detailed analysis of the Data Act proposal, see Clément Perarnaud and Rosanna Fann, 'The EU Data Act: Towards a New European Data Revolution?' (*CEPS*, 4 March 2022) <https://www.ceps.eu/download/ publication/?id=35693&pdf=CEPS-PI2022-05_The-EU-Data-Act.pdf> accessed 10 September 2022.

[52] Case C-238/05 *Asnef-Equifax* ECLI:EU:C:2006:734.

[53] ibid, para 63.

[54] *Google/DoubleClick*, para 164.

[55] Charlotte Breuvart, Éthienne Chassing and Anne-Sophie Perraut, 'Big Data and Competition Law in the Digital Sector: Lessons from the European Commission's Merger Control Practice and Recent National Initiatives' (2016) no 3, Concurrences – revue des droits de la concurrence, 51.

instruments to address certain goals that were not directly connected with market efficiency or even impacted it negatively.[56] An example is the Commission's *EMI/Universal*[57] merger decision that required Universal to make strict commitments meant to prevent the endangerment of cultural diversity protected through Article 167 TFEU. Given the Court's position regarding the relation between competition law and data protection, there is no hindrance to take data protection considerations into account when using the doctrine to mandate obligatory access to personal data, all the more so as the protection of personal information is a fundamental right.

A position favouring a much closer connection between competition law and data protection law was taken by the German Competition Authority (Bundeskartellamt (BKA)) in its recent decision in the *Facebook* case.[58] According to the BKA, Facebook abused its dominant position on the market for social networks by forcing its users to accept terms of service that infringed their right to the protection of personal information and their right to informational self-determination, as they had to comply with those terms (and thus allowing Facebook to collect a large amount of data produced by them online, even when not using Facebook) if they wished to use Facebook's services, for which there were no actual or potential substitutes available. The decision was later overturned by the national judiciary and the case was referred to the Court for a preliminary ruling. In the author's opinion, the Court will not stray from the position established in its *Asnef-Equifax* judgment and will thus not follow the revolutionary reasoning of the BKA.[59]

2.4 The distinction between personal and non-personal data

As possible violations of the right to the protection of personal data can only arise from the misuse of personal data, we must distinguish between personal and non-personal data. The GDPR defines personal data as

> any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.[60]

---

[56] Maria Wasastjerna, *Competition, Data and Privacy in the Digital Economy: Towards a Privacy Dimension in Competition Policy?* (Wolters Kluwer 2020) 57.

[57] *Universal Music Group/EMI Music* (Case COMP/M.6458) (2012).

[58] Bundeskartellamt case no B6-22/16.

[59] For more on the Facebook case, see Klaus Wiedemann, 'A Matter of Choice: The German Federal Supreme Court's Interim Decision in the Abuse-of-Dominance Proceedings Bundeskartellamt v Facebook (Case KVR 69/19)' (2020) 51(9) International Intellectual Property and Competition Law 1168; Anne Witt, 'Excessive Data Collection as a Form of Anticompetitive Conduct: The German Facebook Case' (2021) 66(2) Antitrust Bulletin 276.

[60] GDPR, Art 4(1).

If such data is processed wholly or partly by automated means, the rules of the GDPR apply, with the term 'processing' also covering the disclosure by transmission of personal data from one company to another.[61] As sharing of personal data mandated by the essential facilities doctrine represents disclosure by transmission, it constitutes processing of personal data and must be in accordance with the provisions of the GDPR.

The definition of non-personal data is a negative one, meaning that all data that does not meet the requirements of the above definition is non-personal data. However, the line between personal and non-personal data is not always clear cut and the distinction between the two categories of data is therefore artificial to a certain extent. This is especially true as the constant technological advances in data analytics can lead to the combination and analysis of two different datasets containing non-personal data to produce personal data.[62] The Court has developed a wide body of case law regarding the distinction between personal and non-personal data. In the *Breyer*[63] case, the question arose about whether a log of accesses to the websites of the German government, containing the IP addresses of the computers from which the websites were visited, constituted personal data. While the log did contain the IP addresses, it was not possible to identify the individuals who visited the websites without the assistance of the Web Service Provider which was able to link the IP addresses to individuals.[64] The Court noted that 'the fact that the additional data necessary to identify the user of a website are held not by the online media services provider, but by that user's internet service provider does not appear to be such as to exclude that dynamic IP addresses registered by the online media services provider constitute personal data within the meaning of Article 2(a) of Directive 95/46,'[65] thereby confirming that the data in question indeed constituted personal data. Some time later in the *Nowak*[66] case, the Court concluded that the handwritten exam sheets by an examination candidate may constitute personal data. The *Nowak* case importantly confirmed that the use of the expression 'any information' in the definition of the concept of 'personal data', in Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a wide scope to that concept, which is not restricted to information that is sensitive or private, but potentially encompasses all kinds of information, not only objective

[61] Art 4(2) GDPR states that 'processing is any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction'.

[62] Thomas Tombal, 'Economic Dependence and Data Access' (2020) 51(1) International Review of Intellectual Property and Competition Law 70, 90.

[63] Case C-582/14 *Breyer v Federal Republic of Germany* ECLI:EU:C:2016:779.

[64] Cristopher Docksey and Hielke Hijmans, 'The Court of Justice as a Key Player in Privacy and Data Protection: An Overview of Recent Trends in Case Law at the Start of a New Era of Data Protection Law' (2019) 5(3) European Data Protection Law Review 300, 302–303.

[65] Case C-582/14 *Breyer v Federal Republic of Germany* ECLI:EU:C:2016:779, para 44.

[66] Case C-434/16 *Nowak v Data Protection Commissioner* ECLI:EU:C:2017:994.

but also subjective, in the form of opinions and assessments, provided that it 'relates' to the data subject.[67] The two cases lead us to conclude that the Court promotes a wide interpretation of personal data, as personal data does not have to be sensitive in nature, nor does it need to be directly linked to a data subject.

A dataset to which access is requested using the doctrine can contain personal data, non-personal data or a mix of both. If it contains only non-personal data, the data protection regime does not apply. However, as soon as the dataset in question contains some personal data which is wholly or partly processed by automated means, the requirements of the GDPR must be taken in account. This means that access to a dataset containing only non-personal data could be mandated through the doctrine by using the conditions applicable to non-materialised facilities,[68] without the need for compliance with the GDPR, while access to a dataset containing any amount of personal data would have to comply with the GDPR. It is foreseeable that the majority of data access claims will be centred on datasets containing at least some personal data, both because the term personal data is interpreted broadly and because personal data is usually commercially far more valuable than non-personal data, since it is an essential input for targeted advertising, whereas the commercial value of non-personal data is much lower.[69] Besides, in the future personal data will be necessary to offer services connected to innovative sectors such as smart mobility, smart living, etc, which will further increase the demand for such data.

3 Possible grounds for obligatory sharing of personal data

Obligatory sharing of essential personal data mandated through the use of the essential facilities doctrine would have to meet at least one of the criteria for the lawfulness of processing of personal data as laid down by the GDPR in Article 6.[70] In the following section, the paper analyses

[67] ibid, para 34.

[68] The Court still has to clarify if these are the *IMS Health* or the *Microsoft* criteria.

[69] In all the three above-mentioned data access cases (*GDF Suez*, *PeopleBrowsr* and *HiQ Labs*) the required data was personal data.

[70] Art 6(1) GDPR states that:
'Processing shall be lawful only if and to the extent that at least one of the following applies: (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes; (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; (c) processing is necessary for compliance with a legal obligation to which the controller is subject; (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person; (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks'.

how likely it would be for such data sharing to fulfil one of those conditions.

– The condition that the data subject has given consent to the processing of his or her personal data for one or more specific purposes can realistically not be fulfilled in connection with the essential facilities doctrine as it means that the company that would be ordered to share the personal data it controls would have to obtain the consent of each of the data subjects whose personal data the dataset it shares contains. Most competitively relevant datasets contain personal data from a great number of data subjects (from several tens of thousands upwards, even several hundred million). For the condition to be met, each of those data subjects would have to consent to the whole dataset being shared as it would most likely be impossible to separate the data from the data subjects that consented to their personal data being shared from the data of those who did not. The consent would have to have an active, affirmative form as the GDPR explicitly states that inactivity or silence does not constitute consent.[71] Furthermore, when the data is shared, the company obtaining it would have to acquire consent in the above-mentioned form from the data subjects for each individual operation of data processing. In practice, this would mean that the data would be useless as it would be impossible to process it without violating the rules of the GDPR.

– The condition that processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract is met when the data subject and the data processor enter into a contractual relationship that can only be fulfilled if the data subject's personal data is processed by the data processor. An example would be the data processor's offering of certain services that require the data subject's data to be processed (for example, remote health diagnostics). As this condition applies only to purely contractual relationships governed by the law of obligations, it is not foreseeable that it would be relevant for the sharing of personal data mandated through the essential facilities doctrine.

– The processing of personal data is legal if it is done to protect the vital interests of the data subject or of another natural person. As the essential facilities doctrine is a tool to enable the company requiring access to an essential facility to compete on the downstream market and not to protect the interests of any kind of individual persons, this condition cannot be met.

---

[71] Recital 32 of the GDPR states that: 'Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes, or inactivity should not therefore constitute consent'.

– It is highly unlikely that the obligatory sharing of personal data mandated through the essential facilities doctrine would be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. This condition can only be applied to public bodies and private bodies vested with the powers of public authorities. In the existing case law of the Commission and of the Court, there has not been a single company that has demanded access to an essential input through the essential facilities doctrine that was vested with such powers. Therefore, while it remains theoretically possible that a private body vested with the powers of public authority would need essential data to carry out tasks in the public interest on the downstream market, such a situation is highly unlikely as it is very difficult to imagine a task carried out in the public interest on a downstream market that would require access to essential personal data.

– A likely legal base for the obligatory sharing of personal data mandated through the use of the essential facilities doctrine would be the requirement that the processing is necessary for compliance with a legal obligation to which the controller is subject. A Commission decision and a Court judgment mandating access to essential data could constitute a sufficient legal base for the processing (sharing) of personal data. According to the GDPR, a legal base does not have to be a legislative act or a general and abstract legal act but can also be an individual and concrete legal act, as long as it is clear, precise and its application foreseeable to the subject it applies to.[72] The Commission is empowered to take actions in cases of abuses of dominant positions by Regulation 1/2003[73] which could also be interpreted as a legal obligation[74] as laid down in the GDPR.

– Processing of personal data is not in violation of the GDPR if it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject

[72] Recital 41 of the GDPR states that: 'Where this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant to the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the "Court of Justice") and the European Court of Human Rights'.

[73] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2002] OJ L1.

[74] Art 7(1) of Regulation 1/2003 states that: 'where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article 81 or of Article 82 of the Treaty, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past'.

which require protection of personal data, in particular where the data subject is a child. Of all the legal bases for the processing of personal data, this one is the broadest and we can well imagine that it could also cover obligatory data sharing mandated through the essential facilities doctrine. The phrase 'legitimate interest' is not defined in the GDPR (as it includes only illustrative examples) so it is possible that the commercial interests of a company to gain access to essential data necessary for competing on the downstream market might constitute a legitimate interest.[75,76] Once a legitimate interest of a company (a third party, as it is illogical for the controller to have any (legitimate) interest in the mandatory sharing of the personal data it controls since such sharing weakens its position on the market) is established, it is necessary to weigh it against the interests and reasonable expectations of the data subjects for the protection of their personal data.[77] This means that in cases where the data subjects reasonably expect their personal data not to be processed by the controller (shared by the company that controls it) or where the personal data contains highly sensitive information (eg about sexual orientation, home address, political affiliation, etc), the legitimate interest of the company requesting access to personal data would probably not override the interests of the data subjects for the protection of their personal data. However, if the data subjects were to reasonably expect that their personal data might be further processed (shared) or if the personal data contained non-sensitive personal information (eg about the consumption of electricity or gas), the commercial interests of the company requesting access to the personal data might outweigh the interests of the data subjects. Such weighing of interests is, of course, problematical, as it is difficult to establish how sensitive personal data is, especially due to the fact that it is possible to combine several datasets consisting of non-sensitive or even non-personal data to obtain highly sensitive personal data. To sum up, in the analysis of whether the interests of a company to gain access to competitively relevant personal data through the use of the essential facilities doctrine outweigh the interests of the data subjects for the protection of their personal data, a three-part test has to be made. 'Firstly, a legitimate interest of the company requesting access to the personal data must be established, secondly, the processing of personal data

[75] The UK Information Commissioner's Office <https://ico.org.uk/for-organisations/guide-to-data-protection/ guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/> accessed 30 April 2022 states that: 'The legitimate interests can be your own interests or the interests of third parties. They can include commercial interests, individual interests, or broader societal benefits'.

[76] Recital 47 of the GDPR states that: 'Legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller'.

[77] In recital 47, the GDPR further states that: 'The existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing'.

must be essential to achieve it, meaning there are no other, less intrusive possibilities, and thirdly, the interests of the company to gain access to the essential data must be weighed against the interests of the data subjects for their personal data not to be processed'.[78]

4 Anonymisation and pseudonymisation as possible circumventions of the data protection regime?

If the above analysed conditions for the lawfulness of processing personal data are not met, personal data cannot be shared without violating the rules of the GDPR. A possible solution to allow personal data to be shared even beyond the conditions set in Article 6 GDPR is its transformation into non-personal data, that is, anonymisation.[79] Firstly, anonymisation must not be confused with pseudonymisation. Pseudonymisation[80] takes place by replacing an attribute with another attribute, thereby making it more difficult to connect the data with the data subject. Pseudonymised data can still be (indirectly) linked with a data subject with the use of additional data or information, meaning that the data subject is not identified but still identifiable. Therefore, pseudonymised personal data is still personal data and the data protection rules have to be applied, as was confirmed in the *Nowak* judgment.[81] The most common definition of anonymisation[82] on the other hand is that it is the process by which personal data is irreversibly altered in such a way that a

[78] The UK Information Commissioner's Office (n 75).

[79] In recital 26, the GDPR states that: 'The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable'.

[80] Defined in Art 4(5) GDPR as: 'the means for the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person'.

[81] Furthermore, in recital 6 the GDPR states that: 'the principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors.'

[82] Article 29 Data Protection Working Party, 'Opinion 05/2014 on Anonymisation Techniques' (2014) <https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp216_en.pdf> accessed 15 April 2022, describes the two main techniques of anonymization as randomization and generalization. Randomization removes the link between the personal data and the data subject by either by changing attributes in the dataset so that they are less accurate while they retain the overall distribution or by shuffling the values of attributes and linking them to different data subjects (permutation). Generalization consists of diluting the attributes of data subjects by modifying the respective scale or order of magnitude (for example instead of the category of people who weigh between 60-65 kilos the category of people who weigh between 55–75 kilos is used).

data subject can no longer be identified directly or indirectly, either by the personal data controller alone or in collaboration with any other party.[83] The definition above is only partially correct, as the perfect anonymity (a type of anonymity where the re-identification of the data subject by the processor or third parties is even theoretically impossible) described by it does not exist, since there is always a slight chance of the identity of the data subject being revealed (a process called re-identification). In particular, the connection of several anonymised datasets and their analysis with advanced analytical methods can lead to the re-identification of the data subject(s), a phenomenon called the mosaic effect.[84] For example, 'credit card transactions, location data from a mobile phone, smartcard tap-in tap-out, and browsing (URLs) datasets have all been shown to be re-identifiable'.[85] This not only happens with the processor or a third party wanting to re-identify one or more data subjects but also by chance when datasets are connected with new datasets that were not considered when anonymising the primary dataset.[86] European data protection law did not adopt the concept of perfect anonymisation, but rather relies on the concept of effective anonymisation, whereby data is considered anonymised when the re-identification of the data subject(s) is unlikely.[87]

An important drawback of the anonymisation of personal data is that it voids personal data of all or of most of its economic relevance. Companies are interested in personal data for the precise reason that they can relate the data to identified individuals, to whom they can, according to their behaviour, their wants and needs, revealed through the analysis of personal data, offer products and services they are most likely to buy. For example, around 98% of the revenues of Meta (Facebook) are gained through the offering of services of targeted advertising. The Facebook app monitors the web pages the user is visiting and adjusts the adverts shown by the Facebook app accordingly. If a user is visiting the web page of a certain car manufacturer, the Facebook app is more likely to show adverts for cars that this particular brand is producing. Meta (Facebook) usually gets paid for each click on the advertisement (pay-per-click) and therefore has an interest to offer highly personalised adverts as users are more likely to click on them than on random adverts. When personal data is anonymised, it is no longer possible for companies to relate the data to identified individuals and therefore such data cannot be used for the

[83] ISO standard 29100, point 2,2 <https://www.iso.org/obp/ui/#iso:std:iso-iec:29100:ed-1:v1:en> accessed 19 April 2022.

[84] Timothy Asta, 'Guardians of the galaxy of personal data: assessing the threat of big data and examining potential corporate and governmental solutions' (2017) 45(1) Florida State University Law Review 261, 275.

[85] Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, 'Competition Policy for the Digital Era' (2019) 78 <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf> accessed 13 April 2022.

[86] Lilijana Selinšek, 'Veliko podatkovje v pravu in ekonomiji: veliki izzivi ali velike težave?' (2015) 7(2) LeXonomica 161, 177.

[87] Crémer, de Montjoye and Schweitzer (n 85).

same purposes as personal data, but rather only for the identification of the preferences of a certain part of the population (of all the data subjects whose personal data is anonymised), which can also be obtained by financially less burdensome means. It must be noted that anonymisation is also a form of processing of personal information and therefore must fulfil the requirements of the GDPR. Anonymisation is thereby considered to be compatible with the original purposes of the processing only if the anonymisation process is such as to reliably produce anonymised information while the anonymised data must also be retained in an identifiable format to enable the exercise of access rights by data subjects[88] as required by the Court's *Rijkeboer*[89] judgment.[90]

5 Findings

Even though data has until now not been considered an essential facility by the Commission and the Court, there is no obstacle for it to be an essential facility if the company controlling it has a dominant position on the upstream (data) market and refuses to grant a competitor on the downstream market access to the data necessary for competing on this market. A typical situation in which access to data could be demanded on grounds of the doctrine is one where a smaller company would need relevant data to conduct its business activities on the downstream market with that data being under the sole control of a large company on the upstream market, as was the case in the above-mentioned *hiQ Labs* and *PeopleBrowsr* cases. Despite the fact that data has some characteristics that distinguish it from traditional essential facilities (its non-rival nature, omnipresence, etc), a situation can arise in which only one company controls a certain dataset necessary for competing on a connected (downstream) market as was the case in the *GDF Suez* case in France and the *hiQ Labs* and *PeopleBrowsr* cases in the USA. The possibility of data constituting an essential facility was clear and present enough for the German legislator to explicitly state in the last amendment to the Act against Restraints of Competition that data can be an essential facility. As most competitively relevant data is personal data, its mandatory sharing under the essential facilities doctrine not only raises traditional ques-

---

[88] Art 29 Data Protection Working Party 7.

[89] Case C-553/07 *College van burgemeester en wethouders van Rotterdam v M E Rijkeboer* ECLI:EU:C:2009:293.

[90] The judgment stated in para 70 that: 'Article 12(a) of the [95/46] Directive requires Member States to ensure a right of access to information on the recipients or categories of recipient of personal data and on the content of the data disclosed not only in respect of the present but also in respect of the past. It is for Member States to fix a time-limit for storage of that information and to provide for access to that information which constitutes a fair balance between, on the one hand, the interest of the data subject in protecting his privacy, in particular by way of his rights to object and to bring legal proceedings and, on the other, the burden which the obligation to store that information represents for the controller'.

tions about the determination of a facility as an essential facility[91] but also questions related to the permissibility of sharing the data in regard to the data protection regime in force in the EU. Furthermore, even the mandatory sharing of non-personal data could prove problematic from the data protection perspective as it is possible to extract personal data from non-personal data through the combination of several datasets containing non-personal data and the use of advanced analytics. Personal data was interpreted broadly by the Court, meaning that the GDPR applies when processing a wide array of data, even data that is not by nature sensitive or private.

Processing of personal data is permissible if one or more of the six grounds for the legality of processing personal data laid down in Article 6 GDPR are met. The mandatory sharing of personal data through the essential facilities doctrine is likely to meet two of them: the ground that the processing of personal data is a legal obligation of the processor and the ground that either the controller or the third party has a legitimate interest to process the personal data. Firstly, a Commission decision or Court judgment ordering mandatory sharing of personal data with the essential facilities doctrine could be interpreted as a legal obligation to which the controller is subject. The term legal obligation is interpreted broadly in the GDPR, with it being not only a legislative act but also other kinds of general and abstract or individual and concrete legal acts as long as they are clear, precise and their application is foreseeable to the subject they apply to. Commission decisions and Court judgments are likely to meet these criteria as they must be clear and precise by nature. Furthermore, the application of the essential facilities doctrine to a dataset containing essential personal data is also at the very least foreseeable for the companies controlling such data as the essential facilities doctrine is well established in both the Commission's as well as the Court's case law. Secondly, mandatory sharing of personal data through use of the essential facilities doctrine could also constitute a legitimate interest of a third party, namely the company requesting access, as legitimate interests can also be interpreted as the commercial interests of companies. The legitimate interest of a company to gain access to competitively relevant personal data would have to be weighed against the interests of the data subjects for the protection of their personal data. If the data subjects could not reasonably expect their personal data to be shared with the requesting company or if their interests for the protection of their personal data outweighed the interests of the requesting company to gain access to their personal data, the sharing of such data would not be permissible. If, however, the data subjects were to reasonably expect their personal

[91] Whether it is essential in the sense that the refusal to grand access excludes (all or a considerable amount of) competition from the secondary (downstream) market, there are no actual or potential substitutes for the facility and the refusal does not have an objective justification. In the cases of intellectual property rights (non-materialised facilities), the refusal to grand access to the facility must also preclude the emergence of a new product or at least a technical development of the existing product for which there is consumer demand.

data to be shared with the requesting company or if the interest of the requesting company to gain access to that data outweighed the interests of the data subjects for the protection of their personal data, then such data could be shared through the use of the essential facilities doctrine. In the author's opinion, it would not be easy to weigh the interests of the data subjects against the interests of the requesting company, especially given the double-faceted nature of the right to the protection of personal data which is a fundamental right that also pursues goals of an economic nature. The sharing of personal data could be permissible if the personal data does not contain very intimate information but rather information of a more objective kind (consumption of electricity or gas, etc). However, such classification could prove problematic as even personal data of a non-intimate or non-sensitive character could reveal such intimate or sensitive information if it was subjected to the appropriate analytical process (for example, an analysis of the data on electricity consumption could reveal the marital status of a data subject, her or his daily routines, habits, social status, etc). The ground of legitimate interest is vague and open to (too much) interpretation and therefore the ground of legal obligation constitutes a more appropriate legal basis for mandatory sharing of personal data through the use of the essential facilities doctrine. Furthermore, if a Commission decision or a Court judgment constitutes a legal obligation as stated by the GDPR, the ground of legitimate interest becomes void, as any obligatory data sharing mandated by such a legal act would automatically constitute a sufficient basis for the sharing of personal data and it would thus not be necessary to prove that the requesting company has a legitimate interest to gain access to such data.

Another possibility that would allow for the sharing of personal data mandated through the essential facilities doctrine would be their anonymisation. The GDPR only applies to personal data, meaning that the grounds for the legality of processing of personal data do not apply to non-personal data. In fact, the sharing of non-personal data is currently not regulated by any systematic legal act in the EU, and it is up to the parties of a contract to decide on the arrangements for the sharing of such data. If personal data could be effectively anonymised, it could be shared like any other (traditional) essential facility, without having to take account of the special considerations related to the protection of the right to the protection of personal data. However, the anonymisation of personal data has two main drawbacks that severely limit its effectiveness as a means of circumventing the provisions of the GDPR and enabling the sharing of anonymised personal data. Firstly, there is no perfect anonymisation as it is always possible to re-identify the data subjects by using advanced analytics and combining the non-personal data in question with other non-personal data. This means that there is invariably a realistic possibility that the data subjects will be re-identified, either voluntarily or even non-voluntarily by chance in the process of data analysis. Secondly, personal data is valuable to companies as it enables them to identify the interests of identified or at least identifiable individuals that they

can then use for commercial purposes (eg for targeted advertisements). In other words, personal data is valuable exactly because it is personal data. Were personal data transformed into non-personal data, this would void it of all or in the best case of most of its value for companies, as such data could not be used to identify the preferences of data subjects but merely the average interests of a certain part of the population that could also be identified through financially less burdensome means. This leads us to conclude that anonymisation is not an appropriate tool to enable the sharing of personal data as an essential facility.

6 Conclusion

Having concluded the analysis, we can establish that the most appropriate basis for the sharing of personal data mandated through the essential facilities doctrine is the interpretation of the Commission decision or Court judgment ordering the mandatory sharing of such data as a legal obligation. As any Commission decision or Court judgment would be a legally binding basis for the obligatory sharing of personal data, both institutions (as well as national competition protection agencies and courts) which show great reticence in the use of the doctrine even in cases of more traditional facilities would most probably apply the doctrine in an even more conservative manner in cases where personal data were involved. In the author's opinion, this leaves open the question of whether the doctrine would, in practice, be an effective tool for obtaining competitively relevant personal data. This could prove problematic as it is not possible to systematically mandate access to personal data by using ex ante regulation, since data is not an economic sector but is rather present in all economic sectors, with its specificities varying greatly from one sector to another.

Suggested citation: R Dacar, 'Is the Essential Facilities Doctrine Fit for Access to Data Cases? The Data Protection Aspect' (2022) 18 CYELP 61.

IS THERE ROOM FOR FOOD SOVEREIGNTY CONSIDERATIONS IN EU COMPETITION POLICY? A THEORETICAL FRAMEWORK

Martin Milán Csirszki*

Abstract: So far, the notion of food sovereignty has not claimed a place at the table of competition law. Although competition law developments in the last four decades have promoted the exclusive dominance of efficiency considerations, the next few years may bring a turning point through the recognition that in the long term economic efficiency also requires social and environmental sustainability, especially in a sector like agriculture. Although family farming has always been dominant in Europe, recent trends of concentration and consolidation in the agricultural and food supply chain as well as globalisation itself have shaken European agricultural producers who face several competition-related problems. This article aims to shed light on whether the theoretical framework of EU competition law and policy are appropriate for the notion of food sovereignty to join the discourse. In order to do so, the article presents the main tenets of ordoliberalism, the prevailing school of thought in EU competition policy, in particular the findings of those ordoliberal scholars who deal with the issues of agriculture. Moreover, the article aims to theorise sovereignty in food sovereignty, in parallel with bringing it into line with ordoliberalism, in order to explore whether the concept of social market economy, one of the key concepts of ordoliberalism explicitly followed by the EU, and in particular ordoliberal competition policy to be realised within the framework of the social market economy, is suitable to take into account food sovereignty's core elements at least at a theoretical level. If it is, it may bring to the fore a viewpoint of EU competition policy which ensures appropriate protection for the agricultural sector to overcome the newly emerging anomalies faced by European agricultural producers as a consequence of globalising markets.

Keywords: food sovereignty, competition law, competition policy, ordoliberalism, agriculture, United States of America, European Union.

* PhD Candidate, Faculty of Law, University of Miskolc, martin.csirszki@uni-miskolc.hu (ORCID: 0000-0002-4339-7058). I am immensely grateful to the reviewers for their comments. I would also like to express my gratitude to the Bergen Center for Competition Law and Economics of the University of Bergen, in particular Ignacio Herrera Anchustegui, for letting me give a presentation in Bergen and for sharing insightful and fruitful remarks with me on the research underpinning this article. DOI: 10.3935/cyelp.18.2022.468.

1 Introduction

The article aims to place the notion of food sovereignty in the discourse of competition law and policy. In the literature, although the goals of competition law have been heavily debated in the last four decades, no scholarly works have dealt with these objectives from a sector-specific approach. This paper intends to fill this gap with regard to the agricultural and food supply chain, doing so through the prism of food sovereignty.

Though the conflicting paradigms of food security and food sovereignty mostly occur and are most delicate at the international level, in particular with regard to the issues of international trade in agri-food products, this does not mean that these notions cannot be interpreted within the framework of narrower territorial units. Since one of the strengths of food sovereignty lies in its multi-interpretability,[1] I aim to conceptualise and theorise it in the discourse of EU competition law and policy.

The article proceeds in seven parts. First, it provides a brief introduction to the elements of food sovereignty which present insights into its perceptions of competition and competition law. Second, I sketch the objectives of competition law from a comparative perspective. On the one hand, I deal with that of the United States of America, given that the United States has always played a pioneering role in competition law (antitrust law), and, on the other hand, I map the competition law goals of the European Union. These sections are necessary for me to choose the competition law regime that can consider the competition-related elements of food sovereignty. The dominant approach in the US in the last four decades indicates that framing food sovereignty in the US antitrust law discourse is not too 'profitable' because of the system's single-factor viewpoint of economic efficiency. In contrast, the EU has a much broader standpoint when it comes to the goals of competition law which enables me to take into account important elements of the food sovereignty paradigm. Although I choose the EU competition law regime for further analysis, as a benchmark tool the US antitrust regime is also presented in some cases, in particular in Part 4. Third, I present the findings of two ordoliberal thinkers who have turned to the problems and questions of agriculture. They were chosen because ordoliberalism has had a significant impact on EU competition policy since the very beginnings of European integration after World War II. Fourth, I aim to theorise sovereignty in food sovereignty, because this allows me to bring it into line with ordoliberalism. *Prima facie*, although all of the above, and in particular the US standpoint towards antitrust, could result in the conclusion that the US has no special antitrust laws applying to the agricultural sector and the food supply chain, the reality is different. Therefore, fifth, I list briefly those competition-related laws of both the EU and the US which

[1] Maarten A Hajer, *The Politics of Environmental Discourse: Ecological Modernisation and the Policy Process* (OUP 1995).

provide special sectoral treatment for agriculture and the food supply chain, thereby leaving room for a more humane and non-efficiency-based approach to competition law in these economic sectors. Sixth, I conclude.

2 Food sovereignty and competition

In this article, similarly to Schanbacher,[2] Martínez-Torres and Rosset,[3] McMichael[4] and Wills,[5] I perceive and construe the paradigms of food security and food sovereignty as a global conflict. In this part, I aim to explore those elements of food sovereignty which may provide us with starting points for the way competition is perceived within its framework. In some aspects, I use the paradigm of food security as a conflicting basis for comparison.

Important findings on food sovereignty's approach to competition and trade can be collected from the 2002 food sovereignty definition which declares that it does not negate trade but aims to promote trade policies and practices serving the rights of peoples to food, hand in hand with safe, healthy and ecologically sustainable production.[6] In the multi-level food supply chain, worrisome concerns not only arise from anti-competitive cartels, abuse of dominance and mergers,[7] but also from unfair trading practices against suppliers of agri-food products falling outside the scope of conventional competition law instruments. In many cases, the latter remain hidden from the eyes of competition authorities, on one hand because of the lack of normative and prohibitive regulation, and, on the other hand, if there is some kind of regulation, because of the fear factor which discourages suppliers from making a formal complaint against offenders out of fear of commercial retaliation.[8] Both these market behaviours which can be assessed with traditional competition law instruments and the unfair trading practices emerging in contractual relations are unacceptable if one uses the food sovereignty definition as a benchmark tool.

---

[2] William Schanbacher, *The Politics of Food: The Global Conflict Between Food Security and Food Sovereignty* (Praeger Security International 2010).

[3] María Elena Martínez-Torres and Peter Rosset, 'Diálogo de saberes in La Vía Campesina: Food Sovereignty and Agroecology' (2014) 41 The Journal of Peasant Studies 979.

[4] Philip McMichael, 'Historicizing Food Sovereignty' (2014) 41 The Journal of Peasant Studies 933.

[5] Joe Wills, *Contesting World Order? Socioeconomic Rights and Global Justice Movements* (CUP 2017).

[6] Michael Windfuhr and Jennie Jonsén, *Food Sovereignty: Towards Democracy in Localized Food Systems* (ITDG Publishing 2005).

[7] Organisation for Economic Co-operation and Development, *Competition Issues in the Food Chain Industry* (OECD Publishing 2013).

[8] Till Göckler, *Angstfaktor und unlautere Handelspraktiken – Eine Untersuchung anlässlich des Grünbuchs der Europäischen Kommission über unlautere Handelspraktiken in der b2b-Lieferkette* (Mohr Siebeck 2017).

Although it was mentioned that the paradigm of food sovereignty has emerged most significantly at the international level and aims to formulate suggestions with regard to international trade in agricultural and food products, it is apparent from its self-determination that it argues against completely free markets lacking the guardian role of state regulation.[9] In general, it defines the state as the protector of farmers,[10] and this need for protection is also to be interpreted regarding the agricultural markets and the role farmers should play therein. It not only refers to international markets but also to regional and national ones. Food security advocates argue for the liberalisation of markets as the one and only means to achieve their objectives. However, at the international level the proponents of food sovereignty represent the view that the World Trade Organization should get out of agriculture because free trade policies and their foundation in the form of neoclassical economics are not suitable to meet the needs of agriculture and the food sector.[11] Neoclassical economics is also the basis for those competition law regimes which consider the goal of economic efficiency as the exclusive aim of antitrust, as in the US in the last four decades with the dominance of the Chicago School. The core principle of neoclassical economics is to maximise allocative efficiency,[12] which – in antitrust terms – is understood as consumer welfare.[13] Consumer welfare is no other than the guiding principle of the Chicago School of antitrust dominating the US antitrust regime from the appearance of Robert Bork's *The Antitrust Paradox*.[14]

Neoclassical economics and its political philosophy background in the form of neoliberalism are condemned by food sovereignty which cannot accept, and argues against, the trait of neoliberalism based on which separate economic, social and political spheres are evaluated according to a single economic logic.[15] With regard to competition law, this single-mindedness lies in the approach that considers consumer welfare as the one and only legitimate objective of competition law. From the perspective of food sovereignty, with regard to agricultural and food products, this can be best described as the commodification of food products. From a neoliberal and a food security standpoint, regarding the notions of competition and of food, the only considerations to be taken into account are economic ones, which are against the immanent features of food sov-

---

9 Windfuhr and Jonsén (n 6).

10 Alana Mann, *Global Activism in Food Politics: Power Shift* (Palgrave Macmillan 2014) 54.

11 Peter M Rosset, *Food is Different: Why We Must Get the WTO Out of Agriculture* (Zed Books 2006).

12 Robert D Atkinson and David B Audretsch, 'Economic Doctrines and Approaches to Antitrust' (2011) Indiana University-Bloomington: School of Public & Environmental Affairs Research Paper Series No 2011-01-02, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1750259#> accessed 6 October 2021.

13 Dina I Waked, 'Antitrust as Public Interest Law: Redistribution, Equity, and Social Justice' (2020) 65 The Antitrust Bulletin 87, 88.

14 Robert Bork, *The Antitrust Paradox* (Free Press 1978).

15 William Davies, *The Limits of Neoliberalism* (SAGE Publications 2014) 31–32.

ereignty. By challenging the dominance of agribusiness and the unjust trade system[16] and by not negating trade,[17] food sovereignty – on the contrary – puts significant emphasis on social considerations and aims to contribute to a humane market economy which intends to surpass the neoliberal market economy strictly operating with economic terms.

In summary, the paradigm of food sovereignty builds upon a mode of competition and a way of market functioning which require the guardian role of the state in the form of legal regulation aiming to protect the interests of agricultural producers and farmers as well as those of small and medium-sized enterprises. It craves extensive and strong competition law legislation and enforcement dominated not only by efficiency-based considerations but also non-efficiency-based ones.

3 The objectives of competition law

The reason for briefly reviewing the objectives of competition law is that they have a crucial impact on the application and interpretation of competition laws,[18] and thus are also of paramount importance when speaking of sector-specific regulation. Debates on competition law/antitrust law goals are continuous, so much so that one must admit the arbitrary nature of the question of what competition law objectives should be. It would be more exact to pose the question as what we want from markets and antitrust, considering that the answer to the former question 'is typically given in terms of what the respondent – invariably an inside player who has already formed a normative view – believes the operational guiding principle should be'.[19] This means that most of the positions on the goals of competition law are prejudicial because they are preliminarily determined by the respective respondent's own perceptions of what we aim to strengthen with the help of functioning markets.

Although competition law objectives are rather dynamic and not static in nature,[20] in general and based on Akman's approach, two main groups of objectives can be identified: one group is connected to the notion of welfare, while the other to notions unrelated to efficiency.[21] While

[16] Mann (n 10).

[17] Windfuhr and Jonsén (n 6).

[18] Deborah Healey, 'The Ambit of Competition Law: Comments on Its Goals' in Deborah Healey, Michael Jacobs and Rhonda L Smith (eds), *Research Handbook on Methods and Models of Competition Law* (Edward Elgar Publishing 2020) 12.

[19] Eleanor M Fox, 'Against Goals' (2013) 81 Fordham Law Review 2157, 2159.

[20] Roger Van den Bergh, 'The Goals of Competition Law' in Roger Van den Bergh, Peter Camesasca and Andrea Giannaccari (eds) *Comparative Competition Law and Economics* (Edward Elgar Publishing 2017) 86, 88.

[21] Pinar Akman, *The Concept of Abuse in EU Competition Law: Law and Economic Approaches* (Hart Publishing 2012) 25; see also the dichotomy of competition law goals: Martin Meier, 'Pleading for a "Multiple Goal Approach" in European Competition Law: Outline of a Conciliatory Path Between the "Freedom to Compete Approach" and the "More Economic Approach"' in Klaus Mathis and Avishalom Tor (eds), *New Developments in Competition Law and Economics* (Springer 2019) 51, 51–52.

the former is dominated by economic considerations (in particular, by the considerations of welfare economics), the latter focuses also on considerations other than different types of welfare. For an even clearer clustering and simple terminology, one may group competition law objectives to efficiency-based and non-efficiency-based goals. However, non-efficiency-based goals do not necessarily mean that efficiency is not taken into account throughout the enforcement of competition laws. For example, the competition law goal of the protection of the competitive process or, in other words, the protection of competition as such does not imply that consumer welfare, understood as allocative efficiency,[22] is not and cannot be enhanced, given that '[p]rotecting the competitive process is economically efficient'.[23] Nonetheless, a complex assessment requires that not only the process but also the outcome be taken into account.[24]

In the last four decades, debates on the goals of competition law have taken a direction where voices echoing the triumph of enhancing efficiency prevail over fairness (and justice) concerns. Nowadays, however, it seems that we may be in an overlapping period. The now dominant efficiency-based approach is gradually ending, just as a new era is taking shape with more emphasis on non-efficiency-based objectives.[25] The common question which – according to Nihoul – always arises as to the notion of efficiency is how to measure it: '[s]hould we aim at maximising consumer welfare? Producer welfare? Total welfare?'[26] The adoption of any of these economic welfare standards by enforcement authorities is of particular importance regarding the outcome of decisions.[27] Nevertheless, not all scholars share the view that these standards are of paramount relevance to enforcement. The picture is nuanced by, for example, Motta: 'consumer and total welfare standards would not often imply very different decisions by anti-trust agencies and courts'.[28]

It is worth standing back here for a moment. Though scholars and practitioners speak of consumer or total welfare, and there is debate as to which should be applied in law enforcement, some confusion may emerge in terminological aspects. The so-called 'Chicago trap' refers to Bork's misleading terminology which used the expression 'consumer wel-

---

[22] Waked (n 13).

[23] Ignacio Herrera Anchustegui, *Buyer Power in EU Competition Law* (Concurrences 2017) 89.

[24] Akman (n 21) 47.

[25] Barak Orbach, 'The Present New Antitrust Era' (2018) 60 William & Mary Law Review 1439.

[26] Paul Nihoul, 'Choice vs Efficiency?' (2012) 3 Journal of European Competition Law & Practice 315.

[27] Pieter Kalbfleisch, 'Aiming for Alliance: Competition Law and Consumer Welfare' (2011) 2 Journal of European Competition Law & Practice 108. For more, see Louis Kaplow, 'On the Choice of Welfare Standards in Competition Law' in Daniel Zimmer (ed), *The Goals of Competition Law* (Edward Elgar Publishing 2012) 3.

[28] Massimo Motta, *Competition Policy: Theory and Practice* (CUP 2004) 19.

fare' but by this the 'total welfare' standard was actually meant.[29] In this sense, one must mention that the Chicago School has propagated total welfare rather than consumer welfare,[30] but the idea remains in history as the antitrust consumer welfare paradigm. Subsequently, to avoid any misunderstanding, I will use the term 'consumer welfare (paradigm)' to refer to the inherent feature of the school of thought which supports pure efficiency-based competition law. For the arguments raised by this article, it is not really relevant whether we are talking about 'true' consumer welfare as used by Salop,[31] or total welfare disguised as consumer welfare. What is pertinent is the limitation of any of these standards and objectives to efficiency-based considerations in competition law.

Since the 1978 publication of Bork's *The Antitrust Paradox*, consumer welfare in the US has become 'the only articulated goal of antitrust law' and 'the governing standard',[32] and later, commencing with the statements of the European Commission in the late 1990s and appearing in a legally binding form in the 2004 Merger Regulation,[33] it has strongly infiltrated discourse on the goals of EU competition law as the more economic approach to European competition law. Though the years have passed, the clear-cut breakthrough has fallen short of consumer welfare and the more economic approach expected in the aspect of legal certainty and clarity, and this has been voiced in both Europe[34] and the US.[35] Recently, four decades after its introduction, critics of consumer welfare have become increasingly vocal, and in the words of Mark Glick, 'the winds of change are blowing',[36] meaning that 'the relative stability of the antitrust consensus has yielded to a sharp rupture'.[37] As Crane put it: '[i]n the last two years, the self-styled neo-Brandeis movement has emerged out of virtually nowhere to claim a position at the bargaining table over antitrust reform and the future of the antitrust enterprise'.[38] The premonition is

[29] KJ Cseres, *Competition Law and Consumer Protection* (Wolters Kluwer 2005) 331.

[30] Pinar Akman, '"Consumer" versus "Costumer": The Devil in the Detail' (2010) 37 Journal of Law and Society 322.

[31] Steven C Salop, 'Question: What Is the Real and Proper Antitrust Welfare Standard? Answer: The True Consumer Welfare Standard' (2010) 22 Loyola Consumer Law Review 336.

[32] Barak Y Orbach, 'The Antitrust Consumer Welfare Paradox' (2010) 7 Journal of Competition Law & Economics 133.

[33] Christian Kirchner, 'Goals of Antitrust and Competition Law Revisited' in Dieter Schmidtchen, Max Albert and Stefan Voigt (eds), *The More Economic Approach to European Competition Law* (Mohr Siebeck 2007) 7.

[34] Victoria Daskalova, 'Consumer Welfare in EU Competition Law: What Is It (Not) About?' (2015) 11 The Competition Law Review 131.

[35] See, for example, Orbach (n 32).

[36] Mark Glick, 'American Gothic: How Chicago Economics Distorts "Consumer Welfare" in Antitrust' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3423081> accessed 16 August 2021.

[37] Lina Khan, 'The End of Antitrust History Revisited' (2020) 133 Harvard Law Review 1655.

[38] Daniel A Crane, 'How Much Brandeis Do the Neo-Brandeisians Want?' (2019) 64 The Antitrust Bulletin 531.

best exemplified in the US by the appointment of Lina Khan as the chairperson of the Federal Trade Commission. Of course, the appearance of the Neo-Brandeisians – the emerging school of thought which intensively criticises the consumer welfare paradigm – has not been without reaction, and these new 'hipster antitrust' proponents are criticised because of their provocative proposals for changes to the antitrust regime directed by the sole objective of consumer welfare, arguing that the proposals lack little to no empirical evidence.[39] At the same time, neither have consumer welfare advocates escaped strong criticism. Some have even called competition law based on consumer welfare profound nonsense by arguing that it is built upon 'false history, false concepts and false economics'.[40]

Although the more economic approach has infiltrated EU competition law, the dominant school of thought, the ordoliberal competition policy still prevails in the European Union, as the comprehensive empirical research of Stylianou and Iacovides clearly indicates the polythematic nature of EU competition law.[41] One of the main concepts of ordoliberalism, the model of social market economy, has even found its place in the text of Article 3 of the Treaty on European Union. Though the literature is not consistent on this issue, according to Behrens, the ordoliberal approach had a dominant influence on the drafting of the European notion of the abuse of dominance.[42] Anchustegui even finds generally that ordoliberalism has shaped and continues to influence EU competition policy.[43] Nedergaard also posits that the greatest correspondence among EU policies and the ordoliberal school of thought can be found between the competition policy of the EU and ordoliberalism.[44]

A recent empirical study has found that EU competition law follows a multitude of goals and all seven objectives examined have existed from the 1960s until now. The authors call it a risky but not unsubstantiated finding that the competition law goals connected to the ordoliberal school of thought are continuously present; they also conclude that the protection of competition as such, that is, the protection of the competi-

---

[39] Joshua D Wright and others, 'Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust' (2019) 51 Arizona State Law Journal 293; Christopher S Yoo, 'Hipster Antitrust: New Bottles, Same Old W(h)ine?' (2018) Faculty Scholarship at Penn Law <https://scholarship.law.upenn.edu/faculty_scholarship/2168/> accessed 16 August 2021.

[40] Sandeep Vaheesan, 'The Profound Nonsense of Consumer Welfare Antitrust' (2019) 64 The Antitrust Bulletin 479.

[41] Konstantinos Stylianou and Marios C Iacovides, 'The Goals of EU Competition Law: A Comprehensive Empirical Investigation' (2019) <https://ssrn.com/abstract=3735795> accessed 23 December 2021.

[42] Peter Behrens, 'The Ordoliberal Concept of "Abuse" of a Dominant Position and Its Impact on Article 102 TFEU' (2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2658045> accessed 23 July 2021.

[43] Ignacio Herrera Anchustegui, 'Competition Law through an Ordoliberal Lens' (2015) 2 Oslo Law Review 139.

[44] Peter Nedergaard, 'The Ordoliberalisation of the European Union?' (2019) 42 Journal of European Integration 213.

tive process, takes precedence over outcome considerations.[45] The most emphasised ordoliberal competition law goals are the protection of individual economic freedom and of the competitive process[46] which – as a consequence of the above – play a crucial role in EU competition law.

As a significant difference one can mention that the single-factor economic efficiency approach towards competition law in the form of formulating consumer welfare as the exclusive goal takes into account only short-term results resulting in consumer surplus which, simply put, means lower prices to consumers. At the same time, constructing a competition law regime with a broader variety of goals, such as the ordoliberal notions of the protection of the competitive process and of individual economic freedom, goes hand in hand with a more far-reaching standpoint which also respects middle and long-term results. The dominant US antitrust approach over the past forty years belongs to the former, while the EU's broader, multi-purpose approach belongs to the latter, at least at a theoretical level. This is why I aim to conceptualise and theorise food sovereignty within the EU competition law discourse. This choice is in line with Patel's not too favourable finding that the European Union 'is not a place characterised by food sovereignty', although it is still better off than the US despite the heavy criticism of food sovereignty advocates raining down on the Common Agricultural Policy. Patel finds this because the EU provides 'better prospects for small-scale farmers' than the US.[47] It is also true for the interface between food sovereignty and competition law.

4 Ordoliberalism and agriculture

Although it is a common mistake to consider that ordoliberalism is strictly associated with the first generation of ordoliberal thinkers who are from the Freiburg School,[48] it may nevertheless be an appropriate starting point when one aims to analyse an issue from an ordoliberal viewpoint. Obviously, ordoliberalism is constantly changing and evolving, that is, one cannot ignore looking at it using a dynamic approach, but core concepts represented by first-generation ordoliberals are useful benchmark tools. The mainstream and most famous ordoliberal thinkers did not pay particular attention to agricultural issues, but there was one economist whose writings include far-sighted considerations for agriculture. This is Wilhelm Röpke who was called 'something of an agrarian' by

[45] Konstantinos Stylianou and Marios C Iacovides, 'The Goals of EU Competition Law: A Comprehensive Empirical Investigation' (2019) <https://ssrn.com/abstract=3735795> accessed 23 December 2021.

[46] Anchustegui (n 43).

[47] Raj Patel, 'What Does Food Sovereignty Look Like?' (2009) 36 The Journal of Peasant Studies 663.

[48] Behrens (n 42).

Milton Friedman.[49] Röpke was not only an economist but also a prominent philosophical thinker who wanted to adopt a systemic approach. I do not claim that the thoughts of Röpke on agriculture can be wholly equated with those of mainstream ordoliberals or, in general, with the basic and insurmountable findings and assumptions of ordoliberalism, but these may be considered when trying to provide an image of such a peripheral issue as agriculture from an ordoliberal standpoint.

Wilhelm Röpke, in his book *International Economic Disintegration*, acknowledges the special features of agriculture. The 'singular character' of agriculture comes from its strong interrelations with nature. The processes of agricultural production are embedded in a system where natural factors are decisive. Röpke lists several distinctive characteristics of agriculture which contribute to its peculiar nature in contrast with industrial production. He emphasises and lists why agriculture is a special sector of economic life:

> the limits set to mechanization, division of labour and use of machinery; the constant need of soil preservation by a complex combination of measures; the everpresent tendency toward diminishing returns; the irregularity and precariousness of its output; the unchangeable rhythm of seasonal or longer production periods; the difficulties of storage; the usefulness of combining different lines of agricultural production horizontally or vertically; and the tendency toward a lower optimum size of the unit of production than exists generally in industry.[50]

Besides Wilhelm Röpke, one can also mention an internationally less known ordoliberal thinker who is quite a polymath: Constantin von Dietze. He was an agronomist, lawyer, economist, and theologian, and thus he represented a rich and holistic viewpoint. The translated title of one of his most relevant works is Agriculture and Competition Order.[51]

After presenting the differences between agriculture and industry, von Dietze submits that farmers are also overwhelmingly driven by profit maximisation.[52] Nevertheless, antedating the EU's approach which provides exemption from the general cartel prohibition for the agricultural sector and harmonising his thoughts with those of Röpke, he finds with regard to horizontal agreements that the completeness of the competition cannot be ruled out even by agreements between dozens or hundreds of agricultural suppliers because of the great number of competing farmers. He also considers the entire agricultural sector as a prime

---

[49] Amity Shlaes, 'The Foreigners Buchanan Calls His Own' *Wall Street Journal* (New York, 29 February 1996) cited by Samuel Gregg, *Wilhelm Röpke's Political Economy* (Edward Elgar 2010) 2.

[50] Wilhelm Röpke, *International Economic Disintegration* (William Hodge and Company 1942) 111–112.

[51] Constantin von Dietze, 'Landwirtschaft und Wettbewerbsordnung' (1942) 66 Schmollers Jahrbuch 129.

[52] ibid 132.

example of the realisation of the conditions of complete competition.[53] In von Dietze's opinion, and I must add that these are timeless anomalies related to agricultural production and that is why I mention them, after the prosperous decades from the 1820s to the 1870s, several problems arose which carried negative effects on the agricultural sector: the rural exodus causing fewer and fewer agricultural workers, urbanisation, price fluctuations, as well as monopolisation. The agricultural sector felt that the monopolisation that was taking place in other sectors of the economy through powerful mergers was disadvantageous for its profession, which remained in complete competition. Thus, towards the end of the 19th century, plans were made and efforts exerted almost all over the world to oppose the traders or industrial monopolies with equally strong associations, ie to monopolise the supply of important agricultural products as well.[54] What von Dietze established 80 years ago is still true today: market actors downstream in the supply chain, such as market operators of the processing industry and the retail chains, have a negative impact on the pricing of raw materials to the disadvantage of primary agricultural producers. Or, conversely, suppliers of agricultural products face serious challenges because of the significant imbalances in bargaining power, and, as a result, unfair trading practices against them are a common occurrence.[55] Von Dietze saw the future of family farming (and, in general, that of agriculture), as well as the preservation of its rural character, in adopting an economic policy according to the constituting and regulating principles of the ordoliberal notion of competitive order (*Wettbewerbsordnung*).[56] For my analysis, the most important of the constituting principles is freedom of contract which, nevertheless, can be limited for the sake of well-functioning competition; besides, with regard to the regulating principles, I must emphasise the containment of market power.[57] The principle of freedom of contract is of high relevance when speaking of unfair trading practices in the agricultural and food supply chain, while the containment of market power is relevant because, in most cases, a certain degree of (relative or absolute) market power is necessary to perform unfair trading practices against suppliers. At least a certain degree of relative market power is needed to conduct unfair trading practice, which – from the supplier's (the abused party's) perspective – in many cases results in the restriction of the principle of freedom of contract, more exactly in the restriction of the freedom to determine the content of the contract. That is, the respective supplier has no choice in determining

[53] ibid 133.

[54] ibid 140.

[55] Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain [2019] OJ L111/59, Recital (1).

[56] von Dietze (n 51) 147.

[57] Christian Ahlborn and Carsten Grave, 'Walter Eucken and Ordoliberalism: An Introduction from a Consumer Welfare Perspective' (2006) 2 Competition Policy International 197, 203.

the terms of the contract, of which he is one of the contracting parties. This comes from the fact that the buyer has relative market power vis-à-vis, and is in a superior bargaining position over, its supplier. This means that the realisation of a competitive order goes not only against the monopolistic and oligopolistic trends taking place downstream in the food supply chain at the level of processing and retailing but also stands up for freedom of contract which should not be used in the competitive order to create dependencies between market players because these dependencies may result in unfair trading practices against agricultural producers.

5 Conceptualising food sovereignty with ordoliberalism in the EU

This part of the paper aims to provide a possible interpretation of 'sovereignty' in 'food sovereignty'. While doing so, in parallel I bring to the fore the tenets of ordoliberalism and ordoliberal competition policy which may serve as potential interfaces between them and food sovereignty.

One of the main goals of ordoliberalism, ie ensuring autonomy for citizens against private and public monopoly powers through a constitutional economic framework, can be raised to the level of collective autonomy within the framework of the agriculture and food supply chain if one accepts Raf Geenens' interpretation of sovereignty. He uses the term 'sovereignty' as 'the name for the perspective a community adopts when it sees itself as collectively autonomous'.[58] Within the domain of the agriculture and food supply chain, food sovereignty can be perceived as the perspective of a collectively autonomous community making a stand for defining their agricultural and food policy. To mention one example, most agricultural producers share the vision that trade in agri-food products and the food chain in general should be fairer, more balanced and transparent. This demand is one of the most emphasised and important topics in agricultural policy-making processes. Agricultural producers appear as collectively autonomous in fighting for their common goal: by making a stand for certain demands, they aim to define their own agricultural and food policy.[59]

With this conceptualisation, one has to give up neither the ordoliberal approach of competition, ie the claim for setting up the rules of the game through state regulation, nor the concept of food sovereignty. Furthermore, one can seize food sovereignty as a kind of collective autonomy which can be traced back to the notion of individual autonomy as a value to be protected by ordoliberalism. If one accepts the ordoliberal viewpoint and thus the necessity of regulating competition through general rules, and if one also accepts Röpke's ordoliberal thoughts on agriculture which hold that 'in this sector […] a particularly high degree of far-sighted, protective, directive, regulating and balancing intervention is not only defen-

[58] Raf Geenens, 'Sovereignty as Autonomy' (2017) 36 Law and Philosophy 495.

[59] See, for example, the agricultural lobby groups in the EU <https://copa-cogeca.eu/food_chain#b435> accessed 1 April 2022.

sible, but even mandatory',[60] the concept of food sovereignty can be easily reconciled with the ordoliberal approach protecting individual autonomy against public and private constraints of competition. It is one step from the individual to the collective level, from the individual autonomy protected by ordoliberalism to the concept of food sovereignty perceived as a collective autonomy of a community with the emphasised aim of challenging the restrictions of competition exercised by agribusiness, ie giant food enterprises, be it a processor, wholesaler, or retail chain.

Raf Geenens pronouncedly builds his theory of sovereignty as autonomy upon the works of Jürgen Habermas. He emphasises that Habermas provides 'the most elaborate account of sovereignty as autonomy'.[61] If one scrutinises the works of Habermas, one may find a thought that can be drawn as an exact parallel to the viewpoint of ordoliberalism. In one of his books, he says that 'basic rights must now do more than just protect private citizens from encroachment by the state apparatus, [p]rivate autonomy is endangered today at least as much by positions of economic and social power'.[62] Ordoliberalism has the same approach: it cannot imagine a mode of economy other than the market economy but wants to set up the rules of the game within the framework of which market actors will perform their economic activities. It is coherent with the view of Habermas: 'it has become impossible to break out of the universe of capitalism; the only remaining option is to civilise and tame the capitalist dynamic from within'.[63] The instrument for civilising and taming the capitalist dynamic is none other than creating competition rules within an economic constitutional framework which highlights economic liberties and individual autonomy. Ironically, the aim of competition law is to save capitalism from itself.[64]

Although it seems paradoxical to support individual autonomy and collective autonomy at the same time, these two types of autonomy are understood as categories in two different spheres. Individual autonomy (individual economic freedom) as protected by ordoliberalism refers to the capacity to live one's life according to reasons and motives that are taken as one's own and not according to manipulative and/or distorting external forces, that is to say, it refers to being economically independent. In its ordoliberal sense, it is economic capacity and one of the most important principles of the economic constitutional framework. At the same time, food sovereignty perceived as a type of collective autonomy is a political

---

[60] Wilhelm Röpke, *The Social Crisis of Our Time* (University of Chicago Press 1950) 205.

[61] Geenens (n 58) 524.

[62] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press 1996) 263.

[63] Jürgen Habermas, *The Crisis of the European Union: A Response* (Polity Press 2012) 106.

[64] Richard Whish, 'Do Competition Lawyers Harm Welfare?' (Concurrentialiste – Journal of Antitrust Law, 11 May 2020) <https://leconcurrentialiste.com/richard-whish-welfare/> accessed 23 December 2021.

term.[65] Individuals can have individual autonomy, that is, they can be independent from an economic point of view, but when stepping up to the political arena, these individuals can determine themselves as collectively autonomous who all fight for their individual autonomy and for remaining independent. They become collectively autonomous through trying to achieve the same goal: maintaining their independence in and by determining their own agricultural and food policy. These notions, thus, have the same legal implications and can be connected to each other with a mutual legal objective: protecting agricultural producers, farmers, small and medium-scale enterprises by creating effective competition and trade law rules and enforcing them in the same manner.

Ordoliberalism and food sovereignty have another common feature: they both intend to re-introduce and re-emphasise social issues in pursuance of their goals. In general, ordoliberalism aims to combine economic efficiency with a just and stable social order.[66] The fact that ordoliberalism is also known as German neoliberalism should not mislead anyone:[67] '[a]s a matter of legal and political form, ordoliberalism and neoliberalism are often in tension with each other, as ordoliberalism's rule-based commitments come up against neoliberal discretionary politics'.[68] The feature that distinguishes ordoliberalism from neoliberalism is that the latter views the world as a market and tries to govern it as if it were a market, and it refuses the separation of economic, social and political spheres, 'evaluating all three according to a single economic logic'.[69] In contrast, even the name of one of the most significant notions of ordoliberalism carries its socially focused nature: social market economy.[70] The concept of social market economy brought to the fore by Müller-Armack has at least three core concepts: (a) the preservation of the market economy as a dynamic order; (b) social equilibrium, which is subject to the observance of the first sentence; and (c) securing stability and growth through monetary and competition policy.[71] The social market economy is a normative

---

[65] Windfuhr and Jonsén (n 6).

[66] Brigitte Young, 'Ordoliberalism as an 'Irritating German Idea' in Thorsten Beck and Hans-Helmut Kotz (eds), *Ordoliberalism: A German Oddity?* (CEPR Press 2017) 31, 35.

[67] The reason behind this is that ordoliberalism and neoliberalism 'happened to be very much on the same page with regard to the exact matters that now set them apart from each other – after all, both are widely and correctly considered to be subcurrents or variations of the same neoliberal tradition'. See Thomas Biebricher, 'Freiburg and Chicago: How the Two Worlds of Neoliberalism Drifted Apart Over Market Power and Monopolies' (2021) ProMarket <https://promarket.org/2021/06/27/freiburg-and-chicago-how-the-two-worlds-of-neoliberalism-drifted-apart-over-market-power-and-monopolies/> accessed 31 March 2022.

[68] Michael A Wilkinson, 'Authoritarian Liberalism in Europe: A Common Critique of Neoliberalism and Ordoliberalism' (2019) 45 Critical Sociology 1023, 1024.

[69] Davies (n 15).

[70] For more, see Viktor J Vanberg, 'The Freiburg School: Walter Eucken and Ordoliberalism' (2004) Freiburger Diskussionspapiere zur Ordnungsökonomik No 04/11 <https://www.eucken.de/wp-content/uploads/04_11bw.pdf?x34410> accessed 23 December 2021.

[71] Ralf Ptak, *Vom Ordoliberalismus zur Sozialen Marktwirtschaft – Stationen des Neoliberalismus in Deutschland* (Springer Fachmedien 2004) 227.

system based on values such as dignity, well-being, self-determination, encouragement, freedom and responsibility of all individuals; it is fully committed to a humane society in which 'economic growth and social sustainability are compatible notions'.[72]

Contrary to ordoliberalism, neoliberalism lacks the desire to achieve social equilibrium and takes into account no concerns other than economic ones. This is the ground for us to be able to reconcile food sovereignty with ordoliberalism. At the same time, this is the reason which establishes the impossibility for neoliberalism to be in line with food sovereignty. In all its aspects, food sovereignty – as it has emerged as a social movement – pursues the aim of having social considerations taken into account during policy-making processes. The trait of ordoliberalism that it does not just consider economic efficiency as the exclusive objective of competition law means that other (non-economic) considerations may be taken into account when adopting and enforcing competition laws in a broad sense. Therefore, in an ordoliberal concept of competition law, which – as mentioned – does not limit itself to achieving one and only one objective, ie consumer welfare through economic efficiency, non-economic aspects may also appear when deciding whether or not a conduct is harmful to competition. This means that food sovereignty with its social aims is not contrary to ordoliberalism. As the definition provides, food sovereignty does not negate trade but aims to create trade practices which are able to break the dominance of agribusiness. Doing so is motivated by social considerations which also appear in the ordoliberal line of thinking. The ordoliberal approach of adopting the rules of the game through legislation which direct the behaviour of market participants is in accordance with food sovereignty, since the latter also wants a level playing field. 'Food sovereignty promotes the role of the state as protector of farmers' interests',[73] which can only be realised through legislation. This does not mean that inefficient undertakings and market actors will be prioritised, but all operators on the respective market will have equal opportunities as a result of the aim to reach social equilibrium. In the broadest context, the ultimate goal is that all market participants be part of a humane economy.[74] Criticism may be made that this links competition law with redistributive objectives, and redistribution is not an aspect with which competition law should deal. Still, it is worth reconceptualising and perceiving redistribution from another approach. Adopting the thoughts of Eleanor Fox, if we refuse to accept that competition law can

[72] Doris Hildebrand, 'The Equality and Social Fairness Objectives in EU Competition Law: The European School of Thought' (2017) Concurrences <https://www.concurrences.com/en/review/issues/no-1-2017/law-economics/the-equality-and-social-fairness-objectives-in-eu-competition-law-the-european> accessed 18 December 2021.

[73] Mann (n 10).

[74] Wilhelm Röpke, *A Humane Economy: The Social Framework of the Free Market* (Intercollegiate Studies Institute 2014).

and should contribute to redistribution[75] and if we view competition law as something that should only deal with economic efficiency, we may also acknowledge that redistribution is taken over from the state by and positioned in the hands of giant undertakings.[76] Food sovereignty also emphasises the problem of decreasing state regulatory power.[77]

The strength of food sovereignty is that it may provide us with answers at different levels,[78] as well as that it has the feature of multi-interpretability.[79] This allows us to identify two trends from different directions but leading to the same result. Ordoliberalism emphasises the role of the state in setting the rules of competition in the market (at national and/or EU level), while food sovereignty seeks to restore the leading role of the state as protector of the agricultural community (at the international level). The result and the conclusion are the same in both cases: the state must take an active role in shaping competition and trade rules. This does not mean direct intervention into the relationship of market participants but signifies establishing those competition and trade rules according to which these market participants operate in the marketplace.

By adopting the approach of ordoliberalism which goes beyond a single-purpose viewpoint towards competition law and by choosing the political category of food sovereignty as a possible conceptual framework in policy-making processes, I step on the path of prosocial antitrust/competition law.[80] By prosocial competition law I mean a mode of competition law legislation and enforcement in a broad sense which is sensitive to social issues and does not limit itself to achieving economic efficiency. By looking at the primary law of the European Union, Article 9 TFEU includes the horizontal social clause[81] which requires that 'social values have to be respected in all policy fields of the EU'.[82] Of the few *expressis verbis* provisions on resolving the conflicts between competition and

---

[75] See also: Ioannis Lianos, 'Competition Law as a Form of Social Regulation' (2020) 65 The Antitrust Bulletin 3, 9.
2020)

[76] See the keynote speech: Eleanor M Fox, Antitrust and Inequality: The History of (In) equality in Competition Law and Its Guide to the Future (Online conference titled Should Wealth and Income Inequality Be a Competition Law Concern? 20 May 2021).

[77] Windfuhr and Jonsén (n 6) 29.

[78] José Bové and Francois Dufour, *The World Is Not for Sale: Farmers Against Junk Food* (Verso 2001) 168.

[79] Hajer (n 1).

[80] The term has been taken over from *Miazad*. See: Amelia Miazad, 'Prosocial Antitrust' (2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3802194> accessed 14 July 2021).

[81] Maria Eugenia Bartoloni, 'The Horizontal Social Clause in a Legal Dimension' in Francesca Ippolito, Maria Eugenia Bartoloni and Massimo Condinanzi (eds), *The EU and the Proliferation of Integration Principles under the Lisbon Treaty* (Routledge 2018) 83.

[82] Andreas Heinemann, 'Social Considerations in EU Competition Law: The Protection of Competition as a Cornerstone of the Social Market Economy' in Delia Ferri and Fulvio Cortese (eds), *The EU Social Market Economy and the Law: Theoretical Perspectives and Practical Challenges for the EU* (Routledge 2019) 123.

another policy, the subject of my article, ie agriculture, is one which establishes the specific social objectives to be considered when adopting and enforcing competition laws in the form of the provision formulated in Article 42 TFEU.[83] As described later, Article 42 TFEU paves the way for the precedence of Common Agricultural Policy objectives over general competition rules.

The ordoliberal competition law objectives such as the protection of the competitive process and of individual freedom[84] are in themselves appropriate to consider non-economic factors when deciding whether a conduct is harmful to competition. The notion of prosocial competition law does not argue against the economic efficiency to be achieved by competition laws. The market reforms advocated by food sovereignty not only aim to address the problems of small farmers, but also of food consumers, 'especially low-income consumers'.[85]

As a consequence of adopting a food sovereignty approach, one rejects that food be purely commodified,[86] and as a consequence of a socially responsive ordoliberal competition policy positioned in the framework of a social market economy, one can take into account those dimensions of competition and trade in agricultural products and food which would remain invisible from a more economic approach limited to the objective of enhancing consumer welfare. 'The commodification of food […] has resulted in the vertical integration and the concentration of power in a few very large firms with national governments increasingly tailoring food regulation to the demands of agribusiness'.[87]

The food sovereignty movement's demand to break the control and growing power of corporations over the food system[88] is fully in accordance with the thoughts of ordoliberalism's mainstream economist, Walter Eucken. As explained in one of his major works, the state's policy should be directed toward dissolving economic power groups or limiting their function.[89] It is not the only parallel which can be drawn between the key ordoliberal economist Eucken and food sovereignty: an overlap may also be found with regard to the requirement of contractual freedom. In Eucken's view, freedom of contract should not be used in the competitive

[83] ibid.

[84] Anchustegui (n 43) 139.

[85] Henry Bernstein, 'Food Sovereignty Via the "Peasant Way": A Sceptical View' (2014) 41 The Journal of Peasant Studies 1031, 1054.

[86] Using this term in the sense as adopted by Jeffrey R Oliver and Lindon J Robison, 'Rationalizing Inconsistent Definitions of Commodification: A Social Exchange Perspective' (2017) 8 Modern Economy 1314.

[87] Amy Trauger, 'Toward a Political Geography of Food Sovereignty: Transforming Territory, Exchange and Power in the Liberal Sovereign State' (2014) 41 The Journal of Peasant Studies 1131.

[88] William D Schanbacher, *Food as a Human Right: Combatting Global Hunger and Forging a Path to Food Sovereignty* (Praeger Security International 2019) 91.

[89] Walter Eucken, *Grundsätze der Wirtschaftspolitik* (JCB Mohr 1952) 334.

order to create dependencies between market players, that is, freedom of contract may not be granted for the purpose of concluding contracts that restrict or eliminate freedom of contract.[90] This tenet of Eucken may be a basis for regulating unfair trading practices in the food supply chain from an ordoliberal point of view, given that the UTPs, in most cases, constitute certain types of exploitative abuse which restrict the freedom of contract of that contracting party which is vis-à-vis the party having superior bargaining power. To be more exact, the weaker contracting party's freedom to determine the terms of the contract is restricted due to economic dependence, and so this party is put in a position which – from a food sovereignty approach – is unacceptable because of the economic exploitation.[91] As put by Akman, the ordoliberal concept of efficiency also includes 'the continuing possibility of choice for the individual',[92] of which the above-mentioned behaviours deprive the agricultural producers, who are vulnerable in cases of bargaining with buyers being in a superior bargaining position.

The characteristic of food sovereignty that it can be interpreted at all levels means that the movement's demand for ceasing unequal trading rules at the international level can be projected at the national and EU levels.[93] Ordoliberal competition policy and the social market economy constitute an appropriate framework to set up those competition and trade rules which take into account non-economic (social) factors to provide protection for the weakest actors of the food supply chain, the farmers as well as small and medium-size enterprises. The food sovereignty movement promoting social justice[94] may find a useful partner in ordoliberal competition policy to establish the set of rules necessary to provide protection for the most vulnerable of the food supply chain. On the one hand, this 'partner-in-crime' role of ordoliberalism comes from the view of ordoliberal thinkers who dealt with agriculture, and, on the other hand, even from the general constituting principles drawn up by Eucken.

6 Special competition-related laws of the agricultural and food sector

In this part I aim to take stock of, if there are any, those competition-related laws which provide for specific or exemption norms with regard to competition and trade in the agricultural and food sector. Exception norms are those provisions which deviate from the general norms because of the particular circumstances of agriculture, while specific norms are those provisions which are separately adopted for agriculture.[95]

---

90 ibid.

91 Windfuhr and Jonsén (n 6).

92 Akman (n 21).

93 Bernstein (n 85).

94 David M Kaplan (ed), *Encyclopedia of Food and Agricultural Ethics* (Springer 2019) 99.

95 Christian Grimm, *Agrarrecht* (CH Beck 2004).

The reason for enumerating these laws is of paramount importance to my study. If there are agriculture-specific competition rules, it strengthens my standpoint that it is possible for competition policy to take into account sectoral characteristics. This would mean that other public policies, such as agricultural policy, may affect competition provisions and their enforcement. Of course, the aim of agricultural policy is not to achieve the highest possible economic efficiency but primarily to ensure a fair standard of living for those who are engaged in agricultural production. That is to say, if other public policies may play a role in adopting and enforcing competition rules applying to certain sectors, these public policies may hijack competition law from its narrow efficiency-based approach.

Reasonably, the differences between EU (polythematic as a consequence of ordoliberalism) and US (monothematic concentrating on consumer welfare) competition law goals would mean that the former jurisdiction has, while the latter jurisdiction has no, special competition-related laws applying to the agricultural and food sector. Nonetheless, the reality shows otherwise.

First, let us take a look at the EU, in particular the Treaty on the Functioning of the European Union (hereinafter: TFEU).[96] In principle, the EU defines its common agricultural and fisheries policy, which – according to Whish and Bailey – has its own philosophy.[97] The internal market extends to agriculture, fisheries and trade in agricultural products. Therefore, the common agricultural and fisheries policy is part of the internal market. Save as otherwise provided in Articles 39 to 44 TFEU, the rules laid down for the establishment and functioning of the internal market also apply to agricultural products. Rules on competition, being positioned from Article 101 to 109, form a part of the internal market. However, even since the beginning of European integration, European agricultural markets have not been fully exposed to free competition. Schweizer explains that the introduction of common competition rules for agricultural markets has a negative and a positive component. The negative component relates to the application of the competition rules of Articles 101 et seq TFEU to agriculture. The positive component opens the way for the European Parliament and the Council to independently regulate competition issues in the agricultural sector.[98]

The basic system and derogation are provided by Article 42 TFEU which declares that the provisions of the Chapter relating to rules on competition apply to the production of and trade in agricultural products only to the extent determined by the European Parliament and the Council, account being taken of the objectives set out in Article 39. This

[96] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/57.

[97] Richard Whish and David Bailey, *Competition Law* (OUP 2012) 963.

[98] Dieter Schweizer, 'Art 42 AEUV' in Torsten Körber, Heike Schweitzer and Daniel Zimmer (eds), *Wettbewerbsrecht*, vol 1 (CH Beck 2000).

provision establishes the primacy of agricultural policy over general competition law. Article 39 TFEU comprises the objectives of the Common Agricultural Policy, which have to be taken into consideration when deciding on the extent of the application of competition rules to production and trade in agricultural products. The two key objectives for our topic are ensuring a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture, and the stabilisation of markets.

The possibility for derogations established by the TFEU is realised through Council Regulation (EC) No 1184/2006[99] and Regulation (EU) No 1308/2013, in particular through its Part IV on competition rules.[100] The former's scope *ratione materiae* covers those Annex-I products which are not covered by the latter. That is, these two secondary legal acts complement each other in terms of their material scope.

Let us take a look at the former. The two main derogations in relation to Article 101(1) TFEU, which provides for the general cartel prohibition, may be called upon when agreements, decisions and practices (a) form an integral part of a national market organisation; or (b) are necessary to attain the objectives set out in Article 39 TFEU.

Sentence 2 of Article 2(1) of Regulation (EC) No 1184/2006 also includes an example. The wording 'in particular' reflects the indicative/illustrative nature of the provision: in particular, Article 101(1) TFEU does not apply to agreements, decisions and practices of farmers, farmers' associations, or associations of such associations belonging to a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products. Nevertheless, there are also negative criteria determined as regards this provision. On the one hand, there is the absolute requirement that under the agreement, decision or practice of farmers, farmers' associations, or associations of such associations, there must be no obligation to charge identical prices, and, on the other hand, there are two further requirements formulated in an alternative relation to each other, and individually in a cumulative relation to the prohibition of charging identical prices. These two requirements are the following: (a) competition shall not be excluded, or (b) the objectives of the Common Agricultural Policy shall not be jeopardised. This means that for an agreement, decision or practice to be exempted from Article 101(1) TFEU, the following prohibitions shall be respected cumulatively: (a) the prohibition on charging identical prices; (b) the prohibition on the exclusion of com-

[99] Consolidated text: Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of and trade in certain agricultural products [2014] OJ L214/7.

[100] Consolidated text: Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [2020] OJ L347/671.

petition; and (c) the prohibition of jeopardising CAP objectives. From a reversed point of view, it is sufficient to return to the application of Article 101(1) if any of the three above-mentioned prohibitions is violated. The Council Regulation does not affect the prohibition of abuse of a dominant position under 102 TFEU; this therefore applies in full in the agricultural sector.[101]

First and foremost, it is worth mentioning that the provisions of Regulation No 1184/2006 and Regulation No 1308/2013 are – in most aspects – identical. Although the core meaning of the exceptions formulated in these two regulations is the same, there are two small differences between the provisions. Pursuant to Article 2(1) of Regulation No 1184/2006, the cartel prohibition does not apply to agreements, decisions and practices of farmers, farmers' associations, or associations of such associations belonging to a single Member State. Regulation No 1308/2013 complements this list with producer organisations recognised under its Article 152 or Article 161, or associations of producer organisations recognised under its Article 156, but with regard to the associations of farmers' associations it does not mention the feature 'belonging to a single Member State'. This latter difference is hard to explain; however, the expansion of the list with producer organisations can be perceived as the concretisation of farmers' associations. Every producer organisation is a farmers' association but not every farmers' association is a producer organisation. The dividing line is whether the entity in question is recognised by a Member State in accordance with EU law. If it is, it is called a producer organisation, if not, it is called a farmers' association. This shows us that 'calling up' the exemption does not require recognition in the legal sense. Regulation No 1308/2013 also consists of rules applying to interbranch organisations. Contrariwise, when speaking of interbranch organisations, in order for them to use the exemption under the general cartel prohibition, they must be recognised. Recognition not only has general rules but also special rules for the milk and milk products sector and for the olive oil and table olives and tobacco sectors. There are five conditions determined which lead to the incompatibility of the agreements of interbranch organisations with EU law. Three of them are quite similar to the previously mentioned case of exception: the respective agreement, decision or concerted practice must not create distortions of competition which are not essential to achieving the objectives of the CAP pursued by the interbranch organisation activity (similar to the jeopardisation of CAP objectives); they must not entail the fixing of prices or the fixing of quotas (similar to charging identical prices); they must not create discrimination or eliminate competition in respect of a substantial proportion of the products in question (similar to the exclusion of competition). Besides these, the agreements, decisions and concerted practices must also not lead to the partitioning of markets within the Union in any

[101] Ines Härtel, 'AEUV Art 42' in Rudolf Streinz (ed), *EUV/AEUV – Vertrag über die Europäische Union, Vertrag über die Arbeitsweise der Europäischen Union, Charta der Grundrechte der Europäischen Union* (CH Beck. 2018).

form, and must not affect the sound operation of the market organisation.

Outside the toolbox of conventional competition law, additional protection in the form of specific norms provided for the weaker market participants in the food supply chain is achieved by Directive (EU) 2019/633.[102] It prohibits certain unfair trading practices in business-to-business relationships in the agricultural and food supply chain through a minimum harmonisation obligation of the Member States. Although I mentioned that the regulation on the abuse of dominance fully applies to agriculture, this Directive can be perceived as a complementary instrument (although with a totally different assessment method) to catch those unfair unilateral conducts which do not reach the intervention threshold necessary to enforce the provision on the abuse of dominance.

Although my previous findings on the compatibility of food sovereignty and the US antitrust regime do not imply that the US would have special competition-related laws to the agricultural and food sector, the reality is somewhat different. First, I have to commence with Section 6 of the Clayton Act of 1914.[103] It declares that nothing contained in the antitrust laws should be construed to forbid the existence and operation of agricultural or horticultural organisations, instituted for the purposes of mutual help. Section 6 is extended by the Capper-Volstead Act of 1922.[104] These two statutes provide for an exemption for agricultural cooperatives under antitrust laws, as in the European Union. Second, the Packers and Stockyards Act of 1921 is also worth emphasising. It is designed to ensure effective competition and integrity in livestock, meat, and poultry markets. Third, I must also mention the Perishable Agricultural Commodities Act of 1930[105] and the Unfair Trade Practices Affecting Producers of Agricultural Products Act of 1968.[106] Though all of these laws were passed long before the consumer welfare approach became dominant from the 1980s and diverge from a horizontal and unified approach towards antitrust law, none of them have been repealed following the paradigm shift brought about by the Chicago School, despite the fact that they bring to the fore non-efficiency-based considerations. What is more, they have been enforced to the same extent as before the appearance of the consumer welfare paradigm, about which I have found that it is, to a significant extent, incompatible with the considerations of food sovereignty.

[102] Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain [2019] OJ L111/59.

[103] 15 US Code § 17.

[104] 7 US Code §§ 291–292.

[105] 7 US Code §§ 499a–499t.

[106] 7 US Code §§ 2301–2306.

7 Conclusion

The article has aimed to introduce the notion of food sovereignty into the discourse of competition law and policy, as well as to theorise and conceptualise them in parallel with ordoliberalism. The study finds that an ordoliberal competition policy followed by the EU is suitable to take into account the competition-related elements of the food sovereignty definition, while the dominant consumer welfare approach of the US in the last four decades is not. However, this does not mean that the latter does not treat the agricultural and food sector relatively separately from its general antitrust regime. Regardless of the prevailing approach towards general competition/antitrust law, the agricultural and food sectors have maintained their relative independence which is underpinned by the special competition and trade-related laws of these sectors in both the EU and the US. The agrarian antitrust[107] of the US and an *europäisches Agarwettbewerbsrecht*[108] can provide space for food sovereignty in the discourse of antitrust/competition law, which may bring with it the further protection of farmers and agricultural producers in an increasingly globalised market of agricultural and food products.

I agree with von Dietze's 80-year-old findings. The future of family farming (and, in general, that of agriculture) as well as the preservation of its rural character propagated by food sovereignty enthusiasts lies in consequently setting an economic policy according to the constituting and regulating principles of the competitive order. This order is not only against the monopolistic and oligopolistic trends taking place downstream in the food supply chain at the level of processing and retailing, but also stands up for freedom of contract which should not be used to create dependencies between market players, because these dependencies may result in unfair trading practices against agricultural producers. Although the theoretical foundations are given at the level of the European Union, the realisation of the competitive order fails in many cases. However, this can be achieved by improving the law enforcement by taking a prosocial approach towards competition laws, which does not limit itself to economic considerations but is open to the core elements of food sovereignty. At a theoretical level, the notion of the social market economy propagated by ordoliberals and being part of the EU's primary law is suitable for this, thereby leaving room for a more humane competition law sensitive to the main considerations emphasised by food sovereignty enthusiasts. This may provide a level of protection for European agricultural producers to help them overcome problems arising from increasingly globalised markets and their symptoms coming to the fore

[107] Jon Lauck, 'Toward an Agrarian Antitrust: A New Direction for Agricultural Law' (1999) 75 North Dakota Law Review, 449.

[108] See the term: Walter Frenz, 'Agrarwettbewerbsrecht' (2010) 40 Agrar- und Umweltrecht 193; Ines Härtel, '*§ 7 Agrarrecht' in Mathias Ruffert (ed), Europäisches Sektorales Wirtschaftsrecht* (Nomos Verlag 2013) 437; Härtel (n 101); Ines Härtel, 'Agrarrecht' in Matthias Ruffert (ed), *Europäisches Sektorales Wirtschaftsrecht* (Nomos Verlag 2020) 463.

in the form of increasing market concentration and consolidation. Preserving the character of European agriculture which has several precious functions beyond food production is a policy choice and value decision. At a theoretical level, the framework of a social market economy in general and that of an EU competition policy in particular is suitable and appropriate for this. Policy-makers should not even break with and disrupt the tradition of ordoliberal competition policy and European agriculture. The framework can be filled with such content which continues to be in accordance with our common past and understanding, both in terms of competition policy and of agriculture.

Suggested citation: MM Csirszki, 'Is There Room for Food Sovereignty Considerations in EU Competition Policy? A Theoretical Framework' (2022) 18 CYELP 83.

INTERNATIONAL JURISDICTION AND THE LAW APPLICABLE TO DISPUTES ARISING FROM INFRINGEMENT OF THE RIGHT TO A TRADE NAME AS AN INDUSTRIAL PROPERTY RIGHT

Helena Pullmannová[*]

Abstract: This article answers the following questions: (i) In the courts of which state may the injured trader whose right to a trade name has been infringed sue the infringers? (ii) May the injured trader sue the infringer for damages in their entirety (even in the part originating in the territory of other states)? (iii) What law is applicable to disputes arising from infringement of (or threat to) the right to a trade name in non-contractual obligations? (iv) May a choice be made of the law applicable to the disputes? (v) How may a number of applicable legal systems in the case of an infringement of the right to a trade name affecting the territory of more than one country be dealt with? In particular, the article discusses the various criteria contained in the Brussels I bis Regulation, the Rome II Regulation, Czech private international law (outside the mentioned regulations), and CJEU case law in this area, while emphasising the nature of the right to a trade name as an unregistered industrial property right. Finally, the article focuses on the issue of the qualification problem of the factual situation in international law.

Keywords: right to a trade name, non-contractual obligation, international jurisdiction, applicable law, dépeçage.

[1] [*] PhD student at the Faculty of Law, Masaryk University in Brno, the Czech Republic. Email: pullmannova@email.cz. DOI: 10.3935/cyelp.18.2022.484.

1 Introduction

Building a good trade name[1] (the name under which a trader carries out his business in a given area)[2] costs the trader effort, time, and money. Parasitism on this designation is thus unwelcome to its holders, and in a situation where the trader's rights to a trade name are being infringed, it is important to know (i) in the courts of which state the injured trader may seek protection if he operates in the territory of several Member States of the EU, (ii) whether the designated court may decide on the claim for damages in full (ie also on damages incurred in the territory of other states), and (iii) which law will be used for assessing the eligibility of claims under non-contractual[3] obligations.

These issues are discussed mainly in terms of the Brussels I bis Regulation, the Rome II Regulation, and Czech private international law[4] (outside the mentioned regulations).[5] The criteria given here relevant to proceedings for infringement of (or threat to) the right to a trade name in non-contractual obligations are interpreted in the light of CJEU case law.

In addition, this article is prefaced by a general consideration of the importance of classifying the conduct in question under the category of non-contractual obligations arising from infringement of the right to a trade name as an industrial property right. This is crucial for the correct determination of the internationally competent courts of a particular state to enforce the rights of the injured party and the law applicable to these proceedings.

---

[1] For this article, the right to a trade name means the right to the designation of a trader, regardless of whether or not he is registered in a public (official) registry. In the context of Czech law, this is the right to the designation of trader according to Sec 8 of Act no 513/1991 Coll, Commercial Code, as amended until 31 December 2000 (see below). See also the interpretation of 'trade name' in Martin Boháček, 'Trade Name' in Dušan Hendrych et al (eds) *Právnický slovník* (CH Beck 2009). However, there is no absolute agreement on the definition of the term 'trade name' and this term is thus subject to interpretation under the law of the country in which protection is sought *(lex fori)*. See Pierre Jean Pointet, 'Der internationale Schutz des berühmten Handelsnamens' (1961) 10(8-9) GRUR International 393; Yves Saint-Gal, 'Der internationale Schutz des Handelsnamens' (1964) 13(6) GRUR International 289; Georg Hendrik Christiaan Bodenhausen, *Guide to the Application of the Paris Convention of Industrial Property: As revised at Stockholm in 1967* (BIRPI 1968) 23, 133.

[2] See Case C-17/06 *Céline SARL v Céline SA* ECLI:EU:C:2007:497, para 21. In relation to trade name in the context of Czech law, see also Case *TENERGO Brno, a s v Team ENERGO, s r o* ECLI:CZ:NS:2017:31.CDO.3375.2015.1.

[3] The issues arising in cases of contractual infringement of the right to a trade name are not addressed in the article.

[4] Which will be used, for example, in the cases where the defendant is not domiciled in the EU, and in a hypothetical case where the Czech courts, as an internationally competent court for hearing and deciding the dispute, would determine the applicable law not according to the Rome II regulation. See also n 8.

[5] For the absence of regulation by legal rules with direct method of regulation.

2 Classification of an infringed right as an industrial property right

It is necessary to realise that by jurisprudence[6] the right to a trade name is seen as an (absolute) right to industrial property and not a right to a legal entity name or a right to a natural person's name (when their meaning and purpose are to designate a person not only in relation to their business), although the designations to which these rights may apply in certain cases may be identical. Distinguishing this is very important with respect to the issues we examine (see below).

First, if any right is infringed, it is necessary to legally classify[7] this unlawful factual situation according to the method of qualification preferred by the legal system in the context of which we address this issue.

However, in most cases[8] we will not use the rules of private international law of the majority of Member States for the purposes of determining the internationally competent court and the law applicable to the set of disputes we are considering. The aforementioned area of law is governed by EU regulations that have normative effect (Article 288 of the Treaty on the Functioning of the European Union (TFEU))[9] and whose basic feature is priority of application[10] over national legislation. At the same time, the terms mentioned in these regulations must be interpreted autonomously,[11] ie without 'encumbrance' by the manner of interpretation of the terms according to the law of a specific Member State.[12]

---

[6] See Tereza Kyselovská and Pavel Koukal, *Mezinárodní právo soukromé a právo duševního vlastnictví – kolizní otázky* (Masaryk University 2019) 222; Johann Neethling, 'Personality Rights: A Comparative Overview' (2005) 38(2) The Comparative and International Law Journal of Southern Africa 241; Paul Lange (ed), *International Trade Mark and Signs Protection: A Handbook* (CH Beck 2010); Carlos Maria Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (OUP 2007) 33–34, 487; Case C-17/06 *Céline SARL v Céline SA* ECLI:EU:C:2007:497, para 21; Art 2, point viii) of the Convention Establishing the World Intellectual Property Organization; United International Bureaux for the Protection of Intellectual Property, *Model Law for Developing Countries on Marks, Trade Names, and Acts of Unfair Competition* (BIRPI 1967) Section 1, 47–48.

[7] Naděžda Rozehnalová et al, *Úvod do mezinárodního práva soukromého* (Wolters Kluwer 2017) 86–88.

[8] For the question of determining the internationally competent court, this will mainly concern situations where the defendant is not domiciled in the EU, and for the question of determining the law applicable to a dispute, it will mainly concern situations where the qualified unlawful act took place before the entry into force of the Rome II Regulation for the EU state dealing with this question. For exceptions to the application of EU regulations, see also below.

[9] See also Michal Tomášek et al, *Právo evropské unie* (Leges 2017) 94–95, 107–108.

[10] See Case C-6/64 *Flaminio Costa v ENEL* ECLI:EU:C:1964:66.

[11] For an interpretation of the EU regulations, see Ulrich Magnus and Peter Mankowski (eds), *Rome II Regulation (European Commentaries on Private International Law)* (Sellier 2019) 22–30.

[12] See Case C-327/82 *Ekro BV Vee- en Vleeshandel v Produktschap voor Vee en Vlees* ECLI:EU:C:1984:11, para 11; Case C-287/98 *Grand Duchy of Luxemburg v Berthe Linster, Aloyse Linster and Yvonne Linster* ECLI:EU:C:2000:468, para 43.

The autonomous qualification of infringement within the framework of the rules of EU law thus takes precedence over the qualification according to the rules of the substantive law of a Member State. This means that even in those cases where a certain illegal act would be qualified according to the substantive law of a Member State as an act not infringing the 'right to a trade name' of a trader, because such a right is not recognised by the legal order of that Member State, we will still use for the question of determining the internationally competent court and of the law applicable to a dispute arising from a violation of 'this right' the rules of EU law dealing with cases of infringement of intellectual property rights.[13] According to the autonomous interpretation of the term 'right to a trade name', we will come to the conclusion that the right to a trade name is perceived by the EU legislator as the right to industrial property.[14] However, the specific content of this right is determined by the national legal systems of Member States with regard to the territoriality principle of intellectual property rights.

In order to illustrate the consequences of the incorrect classification of an infringement in individual national legal systems, let us leave aside for the moment the existence of EU regulation in this area and treat the legal systems of Member States in the model case below as the legal systems of non-Member States.

To be able to classify the factual situation, we must determine the probable courts of the state for resolving this dispute according to the subsumption of the factual situation under the relevant rules of private international law of the state within whose territory an action for the protection of the infringed right should be brought. *De facto*, it is necessary to carry out an initial (working) qualification of the factual situation (eg from the perspective of the law of the injured party's statutory seat) and to determine which courts have jurisdiction for such qualified (illegal) conduct. The conclusion reached in this way (about the jurisdiction of the courts of a certain state) is then verified in the context of the legal order of the state whose courts we have determined to be internationally competent, whether our initial qualification was correct (ie whether the state's *lex fori* law views the infringer's conduct as conduct infringing the right to a trade name as well).[15] In other words, whether the courts of that state have jurisdiction under *lex fori* rules.

[13] In other words, even in situations where Czech law does not grant the 'right to a trade name' to an unregistered trader as the right to industrial property to his subject designation, we will use the rules of EU law to determine the internationally competent court and the law applicable to a dispute over the violation of 'this right' that deals with cases of infringement of intellectual property rights.

[14] See Case C-245/02 *Anheuser-Busch Inc v Budějovický Budvar, národní podnik* ECLI:EU:C:2004:717, para 91; Case C-112/21 *X BV v Classic Coach Company vof and Others* ECLI:EU:C:2022:428, paras 37, 41; and n 62.

[15] Catherine Kessedjian, 'Current International Developments in Choice of Law: An Analysis of the ALI Draft' in Jürgen Basedow et al (eds), *Intellectual Property in the Conflict of Law* (Mohr Siebeck 2005) 24; Michal Malacka and Lukáš Ryšavý, *Mezinárodní právo soukromé: zásady obecné a zvláštní části* (Leges 2019) 43–44.

There may be several problems in the outlined (reasoning) procedure. Let us take a model case:

> In the territory of Poland, the right to the trade name of a Slovak trader is affected by the unauthorised use of the designation 'Peter Čiko - Čičí koffí' by a Czech trader (from the perspective of Slovak law). The Slovak trader wants to seek protection of his right and brings a negative and restitutive action against the Czech trader in the Czech Republic (in the courts of the country in which the infringer is domiciled). However, when bringing the action, the Slovak trader is unpleasantly surprised, because according to Czech law (the law applicable to the final qualification, although the law applicable to assessing the validity of the claims would be Polish law according to the *lex loci protectionis* rule) he has no trade-name right to the designation 'Peter Čiko - Čičí koffí' as an unregistered designation in the Czech Commercial Register, as such a right is not recognised by Czech law.[16] His claim will therefore be qualified by the Czech court as a claim for infringement of unfair competition rules. It is irrelevant whether or not the trade name of a foreign trader enjoys protection in the country of origin.[17] This fact could lead to a different conclusion on the jurisdiction of the courts of the state if, according to Czech private international law, the courts of the state in whose territory the competition was affected were competent to decide disputes arising from unfair competition rules. However, this is not the case, and the Czech court is entitled to hear and decide the dispute.

This case is intended to demonstrate a situation where, in terms of initial qualification, we can conclude that it is a non-contractual infringement of an industrial property right, but from the perspective of the subsequent qualification according to *lex fori* rules (or according to the qualification method of the determined court) it is possible that that jurisdiction does not prove that the state and the plaintiff will be referred to the courts of another state. Similarly, a situation may arise where, from the point of view of initial qualification, we conclude that there has (only) been a violation of unfair competition rules, but in terms of the qualification according to *lex fori* rules, we finally conclude that this is an infringement of an unregistered industrial property right and the court will state that it has no jurisdiction to decide on the matter.

[16] The term 'trade name' was used in Czech law until 1 January 2001 when it was replaced by 'corporate name' in Sec 8 of the Commercial Code. Currently, the protection of the right to a trade name is narrowed in the territory of the Czech Republic because this right (as with the right to a corporate name) was newly granted only to traders registered in the Commercial Register and not to all traders (for the current legislation, see Sec 423 et seq of Act no 89/2012 Coll, Civil Code, as amended). It follows that the term 'right to a trade name' is a broader term in Czech law than the term 'right to a corporate name', as it includes the right to the designation of traders both registered and unregistered in the Commercial Register. See Helena Pullmannová, 'Právo k obchodnímu jménu zahraničního podnikatele na území České republiky v mezinárodních souvislostech' (2020) 28(6) Právní rozhledy 216.

[17] Karl-Heinz Fezer, 'PVÜ Art 8 Handelsname' in Karl-Heinz Fezer, *Markenrecht. Kommentar zum Markengesetz, zur Pariser Verbandsübereinkunft und zum Madrider Markenabkommen* (CH Beck 2009).

It follows from the above that it is important to be aware of the non-binding nature of the working qualification and the decisive influence of the (final) qualification according to *lex fori* rules in resolving the question in the courts of which state the injured trader is to seek protection. Moreover, in classifying a specific infringement to bring it within the scope of the rules of EU law, we must also take into account the need for an autonomous interpretation of the terms contained in those rules.[18]

Similarly, the qualification of the factual situation also plays a key role in determining the law applicable to disputes arising from non-contractual infringements of the right to a trade name. To determine the applicable law, according to which the foreign trader can claim the protection of the right to a trade name (and thus also to determine what claims the foreign trader has at his disposal),[19] it is decisive whether, in classifying the law in question, we conclude that it is a 'trade name right' within the meaning of the (absolute) industrial right under *lex fori* rules (the law under which we qualify),[20] or whether only unfair competition rules were violated, as according to this legal order the designation of a trader is provided with protection only through the legal regulation of unfair competition.[21] This is because the conclusion on the classification of the infringed right is crucial for the correct determination of the conflict rule referring to the law applicable to the dispute, and the connecting factors of these conflict rules do not have to be the same, nor do they have to lead to the same applicable law.

With regard to trade name rights, it is important to mention Article 8 of the Paris Convention for the Protection of Industrial Property (Paris Convention), which obliges the Contracting States[22] (ie most countries[23]) of this multilateral international treaty to provide protection in their territory to the trade names of foreign traders[24] in a manner at least iden-

[18] Rozehnalová et al (n 7) 93–95.

[19] Kyselovská and Koukal (n 6) 166–169, 236–237.

[20] For the conclusion on majority choice of the mentioned method of qualification as the primary method in (especially continental) legal systems, see Malacka and Ryšavý (n 15) 43–44; Kessedjian (n 15) 24.

[21] See Malacka and Ryšavý (n 15) 47–48.

[22] The basis of the members of the Paris Convention represents only a part of the states to which its (substantive) Articles 1–12 and 19 are binding, because these articles are also the content of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is Annex 1C to the Agreement Establishing the World Trade Organization. At the same time, every state that is a member of the World Trade Organization is obliged to comply with the above articles of the Paris Convention. The European Union has also been a member of the World Trade Organization since 1 January 1995.

[23] For the list of contracting states to the Paris Convention itself, see 'WIPO-Administered Treaties. Contracting Parties – Paris Convention' <https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=2> accessed 15 May 2022.

[24] Those who are nationals of Contracting States to the Paris Convention (or the TRIPS) or have their domicile or establishment (based on personnel) in the territory of those countries (Art 3 of the Paris Convention). See KarlHeinz Fezer, 'PVÜ Art 3 Erweiterung sed Chutzbereichs' in Karl-Heinz Fezer, *Markenrecht. Kommentar zum Markengesetz, zur Pariser Verbandsübereinkunft und zum Madrider Markenabkommen* (CH Beck 2009).

tical[25] to that which provides protection for the rights to trade names of (similar)[26] domestic traders (Article 2(1)). It is irrelevant whether or not the trade name of a foreign trader in the country of origin enjoys protection.[27] Conclusions by jurisprudence (and others)[28] vary on the question as to whether this protection should be based on the granting of the absolute (industrial) right to the trade name (of the foreign trader), or whether it is sufficient only to protect these assets (designations used in business relations by traders) through unfair competition rules.[29]

However, based on a systematic and historical-teleological interpretation of the Paris Convention, it can be concluded that the intention of the parties to the Paris Convention was to protect the right to a trade name of (foreign) traders with industrial property rights and not only by prohibiting unfair competition.[30] Article 8 has been part of the Paris Convention since its inception and has not changed throughout its existence. The Paris Convention itself contains an obligation elsewhere to (also) protect industrial property rights in the territory of its Contracting States with unfair competition rules (Articles 1(2), 9, and 10bis). If we conclude that the right to a trade name is sufficiently protected even if it is granted protection under unfair competition rules, we could say straightaway that Article 8 of the Paris Convention is superfluous; in other words, there would be no real reason for its existence. Moreover, in the case of Article 5quinquies and Article 6sexies of the Paris Convention, which are similar in wording to Article 8, it is beyond doubt that the intangible assets referred to here are to be protected by industrial property rights.

[25] On the national (assimilation) principle of treatment, see Kyselovská and Koukal (n 6) 127–128.

[26] On the question of the qualification of a foreign person as a 'trader' from the point of view of the substantive rules of *lex fori* law, see *mutatis mutandis* Franz Jürgen Säcker et al, *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Band 13. Teil 10. Internationales Handels- und Gesellschaftsrecht [Kaufleute, Juristische Personen und Gesellschaften]* (CH Beck 2021) 159–164.

[27] Fezer (n 24).

[28] To illustrate the significance of this issue, it can be stated that in Slovakia (Sections 8 and 12 of Act no 513/1991 Coll, Commercial Code, as amended; Decision of the Supreme Court of Slovakia of 13 December 2019, 1 Ndob 12/2019) and Germany (Art 5 and 15 Gesetzes über den Schutz von Marken und sonstigen Kennzeichen (Markengesetz); BGBI. I S 3082) protection is provided for the rights to trade names of foreign traders as industrial property rights, which, however, does not preclude simultaneously seeking protection through unfair competition rules, or through the protection of personal rights. *Vice versa* in Switzerland (Art 157 Abs 2 Bundesgesetzes über das Internationale Privatrecht (IPRG); AS 1988 1776) and Austria (Art 34 Abs 1 Bundesgesetzes über das internationale Privatrecht (IPR-Gesetz); BGBI Nr 304/1978 and Art 9 Bundesgesetzes gegen den unlauteren Wettbewerb 1984 – UWG; BGBI Nr 448/1984) these rights are protected only through unfair competition rules or through the protection of personal rights if they are not registered in the Commercial Register.

[29] In favour of protection as an industrial property right, see José Oliveira Ascensao 'Die Anwendung von Art 8 der Pariser Verbandsübereinkunft auf Länder, in denen der Handelsname eintragungspflichtig ist' (1996) 45(4) GRUR International 413. In contrast, see Decision of the Federal Supreme Court of Switzerland of 1 January 1953, 79 II 305; A Troller, 'Der Schutz des ausländischen Handelsnames nach schweirezerischem Recht' (1957) 6(8–9) GRUR International 336.

[30] Similarly, Ascensao (n 29).

Based on this, the author makes a presumption at this point that the right to a trade name is protected in the territory of the place of *forum* by an industrial property right.[31] For this reason, in the following text, significantly less attention is paid to the conflict-of-law rules determining the internationally competent courts and the applicable law for disputes arising from the violation of unfair competition rules.

However, it is true that in disputes concerning the infringement of the injured party, the trader often asserts both claims arising from the infringement of his industrial property rights (if any) and from the infringement of unfair competition rules. Thus, for the sake of completeness, in some places this article also briefly refers to the conflict-of-law legislation dealing with issues of violating unfair competition rules, but does not discuss it in detail. It should be borne in mind that the conflict-of-law rules under which we classify the potential infringements of the plaintiff's rights may lead us to conclude that, for part of the action (to the extent to which the plaintiff claims infringement of his right to the trade name), the courts of State A may be internationally competent and the law of State X can be applicable; however, for another part of the action (to the extent that the plaintiff claims infringement of unfair competition rules), the courts of State B may be internationally competent and the law of State Y can be applicable. It is necessary to assess those parts of the action (claims) separately.

3 Decisive criteria for determining forum

In the case of using EU rules for the determination of courts in disputes arising from the infringement of industrial property rights, or in the case of the application of the Brussels I bis Regulation, the above-mentioned *qualification problem* does not arise as, in the case of disputes arising from non-contractual obligations, the Brussels I bis Regulation does not contain any special rule in this respect which should take precedence over general rules determining courts in non-contractual disputes with an international element (see below).

So, what must the trader know, or find out, in order to correctly identify the courts of the state in which he can seek protection against the infringer of his right to a trade name (such as industrial property rights)?

The territory in which a foreign trader, whose right to a trade name has been infringed (or threatened), develops his business activity is most likely not the decisive factor for determining internationally competent courts from the perspective of the law of a Member State. Instead, the de-

[31] Ascensao (n 29); Pointet (n 1). However, see Bodenhausen (n 1) 134; Fritz Schönherr 'Obersten Gerichtshofs 02.12.1975 4 Ob 349/75 "Transakta"' (1976) 27(11) GRUR International 500; Decision of the Supreme Court of Austria of 8 May 1984, 4 Ob 326/84.

termining factor would be where the infringer of the said right resides.[32] It is a manifestation of the classic *actor sequitur forum rei* principle, ie that the plaintiff follows the defendant to his court.[33]

It is most likely that we will use the Brussels I bis Regulation to determine the courts with jurisdiction if the conditions for its application[34] are met (ie personal, material, temporal, and territorial jurisdiction; see Articles 1, 4, 25, 26, and 81).[35]

However, in the territory of Member States, the rules of international origin could take precedence over the Brussels I bis Regulation, which would regulate the issue we examine in a *lex specialis* position *vis-à-vis* the Brussels I bis Regulation, even if these rules were concluded exclusively between the Member States (Article 71(1)). The existence of such international agreements must always be verified on a case-by-case basis.

Other international agreements concluded between Member States and non-Member States may only be used in preference to the Brussels I bis Regulation in relations between a Member State and a non-Member State, not between two or more Member States (Article 351(1) TFEU).[36] Nor does the Brussels I bis Regulation affect the applicability of bilateral conventions and agreements concluded between a Member State and a non-Member State before 1 March 2002 in matters covered by the Brussels I bis Regulation (Article 73(3)).

In cases of the application of the *lex fori* rules of private international law which would not lead to the application of the Brussels I bis Regulation (for example in a situation where the infringer is not domiciled in the EU or in applying the law of a non-Member State), the premise made above can also be debated as to whether the location of the infringer is a decisive factor in determining the jurisdiction of a state. In specific cases, the relevant legal norms may also use other factors as determining criteria.

In the following parts of this paper, however, the author only deals with the Brussels I bis Regulation as a set of rules of private internation-

---

[32] See Case C-412/98 *Group Josi Reinsurance Company SA v Universal General Insurance Company (UGIC)* ECLI:EU:C:2000:399, paras 52, 55, 57, 62.

[33] Ulrich Magnus and Peter Mankowski (eds), *Brussels I Regulation (European Commentaries on Private International Law)* (Sellier 2007) 71, 94, 193; Toshiyuki Kono (ed), *Intellectual Property and Private International Law. Comparative Perspectives* (Hart Publishing 2012) 24–26; Naděžda Rozehnalová et al, *Mezinárodní právo soukromé Evropské unie* (2nd edn, Wolters Kluwer 2018) 181.

[34] In relation to Denmark, we apply the Brussels I bis Regulation according to the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters from 2013.

[35] In disputes arising from non-contractual infringement of the right to a trade name as an unregistered right to industrial property, we do not assume the application of Arts 18(1), 21(2) and 24 of the Brussels I bis Regulation.

[36] See also Arts 64–68 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters from Lugano of 30 October 2007.

al law which we apply in most disputes arising from the violation of the right to a trade name occurring in the EU or, more precisely, before the courts of Member States.

The residence (domicile) criterion is set out in Article 4(1) of the Brussels I bis Regulation. The following conclusions must be considered while interpreting it.

To determine the residence of a *natural person* as the infringer, the designated court will apply the law of the state in which the natural person is domiciled (Article 62).

To determine the residence of a *legal person* as the infringer, it is necessary to proceed from an autonomous interpretation of Article 63 of the Brussels I bis Regulation, which calculates the possibilities for the legal person to be domiciled in a particular state. These are situations where the person has in the country his: (i) statutory seat (in the sense of an office stated in the registry); (ii) central administration, ie the company's key management or main governing bodies; or (iii) principal place of business, ie the centre of its economic, industrial, and commercial interests, or the place from which most of the company's business relations are managed, or the place where most of the company's employees perform their work and where its assets are located.[37]

It follows, *inter alia*, that the determination of the infringer's domicile falls *de facto* at the same time as the conclusion on the application of the Brussels I bis Regulation in the scope of his personal competence (ie that the defendant is domiciled in the EU) if we do not proceed on the assumption of the application of the Brussels I bis Regulation on the basis of Article 25, which regulates the possible prorogation of the parties to the dispute, and Article 26, which deals with tacit prorogation (see below).

Therefore, if we have determined the basic criterion (the residence of the infringer) for determining the state whose courts have jurisdiction to resolve the dispute, we can apply specific legal rules of the Brussels I bis Regulation determining jurisdiction to the resolution of our set of disputes.

The basic rule for determining the internationally competent courts of the Brussels I bis Regulation is Article 4(1) thereof, which reflects the basic principle of *actor sequitur forum rei*. As an alternative to this rule, the injured trader may use the rule set out in Article 7(2). However, it is up to the plaintiff to decide which of these rules he prefers when bringing an action.[38] He can choose between the courts of the states in which (i) the defendant is domiciled (see above), or (ii) in which a harmful event has occurred or is likely to occur – which covers the *commissi delicti* place

[37] Peter Stone, *Private International Law in the European Union* (Edward Elgar 2018) 101–103.

[38] It is a legitimate discretionary area for the plaintiff to decide which *lex fori* rules of the potential applicable jurisdictions would be more favourable to him in the event of an action being brought *(forum shopping)*. See Malacka and Ryšavý (n 15) 48–49.

as well as *damni infecti* places.[39] But the place of subsequent pecuniary damage caused by the original damage is not included in the criterion set out in the second place.[40]

The plaintiff may even proceed to apply the rule laid down in Article 7(2) even if the designated court has not established that the infringer – a national of a Member State – (i) would be domiciled outside the territory of the EU, and (i) would be resident in a Member State; in these cases, the infringer is treated as if he were a resident in the EU, but it is not possible to identify him precisely (and thus use the rules in Article 4(1) of the Brussels I bis Regulation).[41]

The concept of a harmful event, which is the (further) determining criterion of Article 7(2) in addition to the place of residence of the infringer in the EU, must be interpreted autonomously and considering the evolving CJEU case law on this issue.

A harmful event can occur due to a breach of a protected interest (in our case, the right to a trade name) on the Internet in many countries at the same time.[42] Here, according to CJEU case law, the courts designated as having jurisdiction in a dispute over infringement of the right to a trade name by a *delicti commissi* place could rule on the trader's claim for damages in several countries (ie the damage in its entirety), but the courts designated as competent according to the *damni infecti* place could (only) decide on the trader's claim for damages incurred in the territory of that particular state, since there is not a sufficiently close relationship in terms of the damage which has arisen elsewhere to justify a departure from the *actor sequitur forum rei* principle.[43]

However, since the CJEU case law in the field of intellectual property rights does not require the infringement in question to be in any way 'targeted at the territory of the state' in which the damage occurred through an infringement of the trader's right (where the *damni infecti* place is located),[44] there can be many such places, or, to be precise, as many as there are countries where (i) the right to a trade name belongs to the injured party, (ii) the infringement in question is available via the

[39] See Case C-21/76 *Handelskwekerij GJ Bier BV v Mines de potasse d'Alsace SA* ECLI:EU:C:1976:166.

[40] See Case C-364/93 *Antonio Marinari v Lloyds Bank plc and Zubaidi Trading Company* ECLI:EU:C:1995:289, paras 14–21; Case C-27/17 *AB 'flyLAL-Lithunian Airlines' v Starptautiskā lidosta 'Rīga' VAS and 'Air Baltic Corporation' AS* ECLI:EU:C:2018:533, para 32.

[41] See Case C-292/10 *G v Cornelius de Visser* ECLI:EU:C:2012:142, paras 37–42.

[42] What criteria may be decisive for concluding whether a particular designation has been used in the territory of a particular state, if the designation in question is used on the Internet, is analysed in Arts 2 and 3 of the 'Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet (with Explanatory Notes)' <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_845.pdf> accessed 15 May 2022.

[43] See Case C-68/93 *Fiona Shevill, Ixora Trading Inc, Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA* ECLI:EU:C:1995:61.

[44] See Case C-170/12 *Peter Pinckney v KDG Mediatech AG* ECLI:EU:C:2013:635, para 43.

Internet, and (iii) damage as a result of the availability of the infringement in question has occurred.[45]

Claiming protection of the right to a trade name can be disproportionately time-consuming and economically demanding for the traders in these cases if they decide to go with (several) *damni infecti* places, and therefore it can be expected that if the injured trader uses the opportunity to sue the infringers pursuant to Article 7(2) of the Brussels I bis Regulation, he will prefer the designation of the court according to the *delicti commissi* place.[46]

Later, due to case law, the plaintiff's procedural possibilities were supplemented by other possible courts, namely the courts of the state in whose territory the injured party has a 'centre of interests', and these courts can (also) decide on the entire claim for damages – including damages caused in the territory of other states.[47] However, this criterion is highly unpredictable and deviates from the hitherto held view (emphasising legal certainty and restrictive interpretation of exceptions to the *actor sequitur forum rei* principle) by both the doctrine and the CJEU itself, and thus has been subject to considerable jurisprudential criticism.[48]

Dissent of the jurisprudence was considered by the CJEU in the *Wintersteiger* decision, stating that the 'victim's centre of interest' as the criterion would be inappropriate in disputes over infringements of registered intellectual property rights when it was created in the context of the protection of personality rights in all Member States without the need for a formal act.[49] However, since the right to a trade name is a right with an informal moment of origin, the author is inclined to believe that this criterion can be used in cases of the infringement of the right to a trade name as an unregistered intellectual property right.[50] In accordance with CJEU case law, the centre of interests of the injured party would then be understood to be the place of the plaintiff's 'main economic activity' as the injured trader.[51]

---

[45] See Case C-441/13 *Pez Hejduk v EnergieAgentur.NRW GmbH* ECLI:EU:C:2015:28.

[46] See Tobias Lutzi, 'Internet Cases in EU Private International Law: Developing a Coherent Approach' (2017) 66(3) International and Comparative Law Quarterly 691–693.

[47] See Case C-509/09 *eDate Advertising GmbH and Others v X and Société MGN LIMITED* ECLI:EU:C:2011:685.

[48] See Jaroslav Králíček, 'Prosazování práv k duševnímu vlastnictví a pravomoc dle nařízení Brusel I' (Masaryk University 2013) 157–160, 180–182 <https://theses.cz/id/z9cad6/?zoomy_is=0> accessed 15 May 2022; Tereza Kyselovská, 'Mezinárodní příslušnost soudů ve sporech z porušení práv právnické osoby zveřejněním údajně nesprávných informací na internetu' (2017) 16(8) Revue pro právo a technologie 116 (incl literature).

[49] See Case C-523/10 *Wintersteiger AG v Products 4U Sondermaschinenbau GmbH* ECLI:EU:C:2012:220, paras 23–25; Case C-194/16 *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB* ECLI:EU:C:2017:766; Case C-800/19 *Mittelbayerischer Verlag KG v SM* ECLI:EU:C:2021:489.

[50] Králíček (n 48) 167–168, 182; see Case C-194/16 *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB* ECLI:EU:C:2017:766.

[51] See Case C-194/16 *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB* ECLI:EU:C:2017:766, para 41.

With regard to the delimitation of the application of Article 7(1) and (2) of the Brussels I bis Regulation, it may be stated that in cases where the infringer expressly undertakes an obligation, for example in a licence agreement, he does not infringe the right to a trade name in countries other than those in which he acquired the right to use the designation (thus licensed) from the other party, and the breach of this obligation may be subsumed under Article 7(1); in other cases, it will be a non-contractual obligation and we apply Article 7(2).[52] A third option is not given.[53]

As indicated above, the condition of the defendant's domicile in a Member State, for the application of the Brussels I bis Regulation, need not be met if there is a substantive (prorogation) agreement between the parties to the dispute as to which courts of a Member State will have jurisdiction to discuss and decide the dispute (Article 25 of the Brussels I bis Regulation). The substantive validity of such an agreement is assessed in accordance with the law of the state in which the dispute is to be settled (Recital 20 of the Brussels I bis Regulation). In this case, the Brussels I bis Regulation applies regardless of the place of residence of the infringer (defendant).

Article 26 of the Brussels I bis Regulation, which refers to 'tacit prorogation', leads to a similar result, meaning that the defendant voluntarily participates in proceedings before a court which, under other rules of the Brussels I bis Regulation, has no jurisdiction to hear and determine the case and does not object to its lack of jurisdiction.

In order to mention all the relevant rules determining the internationally competent courts in the disputes in question with an international element, it should be noted that the application of Article 24(4) of the Brussels I bis Regulation is inappropriate[54] as the right to a trade name arises informally[55] through the first public use of a designation in business relations in accordance with the law by its holder, ie without the need to grant a right to the designation by an authority of that country or to register the designation to the public list in that country. The manner of creation of the right to a trade name thus constitutes an exception to the rule of the formal origin of industrial rights to intangible

---

[52] See Case C-189/87 *Athanasios Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co and others* ECLI:EU:C:1988:459; Case C-548/12 *Marc Brogsitter v Fabrication de Montres Normandes EURL and Karsten Fräßdorf* ECLI:EU:C:2014:148.

[53] Magnus and Mankowski (n 33) 184–186; see also Jiří Valdhans, *Právní úprava mimosmluvních závazků s mezinárodním prvkem* (CH Beck 2012) 18–41.

[54] Notwithstanding the fact that this exclusive jurisdiction applies only to disputes concerning the existence (validity) of intellectual property rights. See Kono (n 33) 38–39.

[55] Petr Hajn and Ivo Telec, 'Czech Republic' in Paul Lange (ed), *International Trade Mark and Signs Protection, A Handbook* (CH Beck 2010) 281. See also Anton Škreko, 'Priemyselné práva v informačnej a poznatkovo orientovanej spoločnosti' in Ján Švidroň (ed), *Právo duševného vlastníctva v informačnej spoločnosti a v systéme práva* (VEDA 2009) 581; Martin Boháček, 'Obchodní jméno (firemní označení)' in Martin Boháček et al, *Právo průmyslového a jiného duševního vlastnictví* (VŠE 1994) 66, 70.

assets.[56] Thus, in disputes of infringement of the right to a trade name, the plaintiff is not exposed to the potential 'torpedoing' of his efforts by (i) the objection of the non-existence (invalidity) of the plaintiff's right to a trade name, which would have to be heard in the courts of (always one) state in which the trade name is protected; or (ii) an action being brought for the non-existence of the plaintiff's right to a trade name in the (always one) state in which the trade name is protected.[57]

However, there may be situations where the infringer resides outside the territory of the Member States and there is no valid prorogation agreement in favour of the Member State. In these cases, the court[58] before which the trader brings an action to answer the question whether it has jurisdiction to settle the dispute applies (other) rules of its private international law – not the Brussels I bis Regulation (Article 6(1)).

In the case of the Czech Republic, this would be Section 6(1) of Act no 91/2012 Coll, Governing Private International Law (GPIL), in connection with Section 6 of Act no 221/2006 Coll, on the Enforcement of Industrial Property Rights and the Protection of Trade Secrets (EIPR) if there is no other rule enjoying priority of application over these national rules, eg in a bilateral or multilateral international agreement (Article 1(2) and Article 10 of the Constitution of the Czech Republic and Section 2 GPIL).

However, if the Czech court qualified the infringement specified in the action as a violation of unfair competition rules and not as an interference with an industrial property right (eg in the case of infringing 'the right to a trade name' of an unregistered trader in the Commercial Register), we would deduce the jurisdiction of the Czech courts pursuant to Section 6(1) GPIL in conjunction with Section 9(2)(h) and Section 84 et seq of Act no 99/1963 Coll, Code of Civil Procedure.

4 The main criterion for determining the applicable law

If we address the issue of determining the law applicable to disputes arising from infringement of the right to a trade name (as an industrial right) from non-contractual obligations in a court of a Member State, we apply the unified EU law settled in the Rome II Regulation.[59]

---

[56] One of the other exceptions that applies to the right to a trade name is the specific duration of this right, as the right to a trade name expires when its holder ceases to carry on business under that designation. In terms of time, the right to a trade name is not otherwise limited or conditional (eg by paying maintenance fees). See also Kyselovská and Koukal (n 6) 109–110.

[57] For more information, see Králíček (n 48) 211–262; Kono (n 33) 39–42, 100–103.

[58] In the case of an action brought in Switzerland, Norway, or Iceland, we would use rules basically similar to those which can be found in the Brussels I bis Regulation, due to the Lugano Treaty, because this Treaty corresponds in content to the previous 'version' of the Brussels I bis Regulation.

[59] On the application test of the Rome II Regulation, see Malacka and Ryšavý (n 15) 149–150; Kyselovská and Koukal (n 6) 204–205; Rozehnalová et al (n 33) 132–133.

According to Article 8(1) thereof, the law applicable to non-contractual[60] obligations arising from an infringement of or threat to (Article 2(2) of the Rome II Regulation) an intellectual property right[61] is the law of the country to which the protection of those rights applies, regardless of whether this is a law of a Member State or of a non-Member State (Article 3). Preserving the generally accepted *lex loci protectionis* principle in relation to an infringement of intellectual property rights is also emphasised in Recital 26 of the Rome II Regulation. That is, in a model case (for the purpose of understanding the *lex loci protectionis* principle), where an action for the infringement of a German trader's right to his trade name in Germany is brought in an internationally competent[62] court in Poland, as the infringer established under California law has a registered branch in Poland (as well as executable assets), will be decided under German law.[63]

The same rule for determining the applicable law also applies in a situation where the injured party does not bring an action for damages against the infringer, but an action for unjust enrichment, or an action for a breach of pre-contractual liability or agency without mandate, as Article 8 of the Rome II Regulation takes precedence over Articles 10 to 12 of the Rome II Regulation (Article 13). In the event of a dispute over unjust enrichment, the plaintiff may, *inter alia*, use the harmonised EU rules and sue for the issuing of up to twice the licence fee that the infringer would otherwise have to pay to the trade name holder (Article 13(1)(a) and (b) and 13(2) of Directive no 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, the content of which has been implemented in Czech law in Section 5(2) and (3) EIPR).

The applicable law thus determined cannot be avoided even by recourse to the escape clauses contained in Article 4(2) and (3) of the Rome II Regulation, since Article 8 of the Rome II Regulation is a *lex specialis* in the first place.[64] Similarly, Article 8 takes precedence over the application of Article 6 of the Rome II Regulation, which governs disputes arising

[60] On the autonomous definition of a non-contractual obligation, see Case C-189/87 *Athanasios Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co and others* ECLI:EU:C:1988:459; Rozehnalová et al (n 33) 134.

[61] On the autonomous interpretation of the concept of intellectual property in the context of the Rome II Regulation, see Recital 26 of the Rome II Regulation; Art 2 point viii) of the Convention Establishing the World Intellectual Property Organization; Art 1(2) of the Paris Convention; Art 1(2) and Art 2(2) of the TRIPS. For more information, see Kyselovská and Koukal (n 6) 218–226; Kono (n 33) 150. On the binding nature of those international agreements for the EU, see Case C-300/98 *Parfums Christian Dior SA v TUK Consultancy BV and Assco Gerüste GmbH and Rob van Dijk v Wilhelm Layher GmbH & Co KG and Layher BV* ECLI:EU:C:2000:688.

[62] See above.

[63] The author reiterates that it is irrelevant if Polish law treats the right to a trade name as an (absolute) right to industrial property because an autonomous qualification within the framework of the EU law will be applied preferentially (see above).

[64] Luboš Tichý, *Nařízení č. 864/2007 o právu rozhodném pro mimosmluvní závazkové vztahy (Řím II). Komentář* (CH Beck 2018) 117–119; Stone (n 37) 566.

from infringements of unfair competition rules.[65]

It may also be added that if a plaintiff in a court seeks protection of the right to a trade name with effects in the territory of several states, such claims must be divided according to the territory of the infringing states (considering the territoriality principle which also applies to the right to a trade name), and always to apply another applicable law in relation to such distributed claims. This is a mosaic-like method of protection (also known as the *dépeçage* principle).[66]

The determined law decisive for the claim for damages or unjust enrichment is also decisive for (partial) questions related to this issue, in particular the question of the tortious capacity of the infringer, his possible exculpation, the origin of the damage, the possible claims for compensation, the possible interim measures, the transferability of the right to compensation, limitation, and prescription of the damages, the duration of time limits (Article 15 of the Rome II Regulation) and even for the question of the application of legal presumptions and the determination of the burden of proof between the parties to the dispute (Article 22(1) of the Rome II Regulation). Generally, unless a partial question[67] is governed separately by a conflict-of-laws rule, the law applicable to the basic question applies to it, since they together form a single factual situation and should therefore be subject to the same applicable law.[68] The question of the existence or validity of the intellectual property right which has been infringed could thus be subordinated (as a preliminary issue in infringement proceedings) to *lex causae* rules, ie also to the *lex loci protectionis* principle.[69]

However, the Rome II Regulation does not take precedence over international agreements dealing with the law applicable to non-contractual obligations arising from infringements of intellectual property rights concluded before its adoption (ie before 11 July 2007) and if at least one non-Member State is a party to those agreements (Article 28(1) of the Rome II Regulation).[70] On the other hand, when such an international agreement is concluded exclusively between the Member States, irrespective of the time of the conclusion of that agreement, the rules of the Rome II Regulation apply (Article 28(2) of the Rome II Regulation; Article 351(2) TFEU).

---

[65] Tichý (n 64) 100; Claudia Hahn and Olivier Tell, 'The European Commission's Agenda: The Future "Rome I and II" Regulations' in Jürgen Basedow et al (eds), *Intellectual Property in the Conflict of Law* (Mohr Siebeck 2005) 16; Kono (n 33) 152.

[66] Kyselovská and Koukal (n 6) 234–235. On the view that the *dépeçage* principle is mainly the result of the inability to agree on a uniform law or a conflict-of-law rule at the political level, see Kessedjian (n 15) 23–25.

[67] On distinguishing a partial question from a preliminary question in relation to the basic question, see Malacka and Ryšavý (n 15) 49–51.

[68] Rozehnalová et al (n 33) 130–131.

[69] Identically, Kyselovská and Koukal (n 6) 259.

[70] Tichý (n 64) 244.

In the event of the non-application of the Rome II Regulation or other international treaties, in the conditions of Czech private international law (when the Czech court would have jurisdiction) we would determine the law applicable to the non-contractual obligation arising from the infringement of intellectual property rights pursuant to Section 80 GPIL, which refers us (identically) to the *lex loci protectionis* principle.[71] However, as this Act does not contain a rule similar to Article 22 of the Rome II Regulation (see above), it must be emphasised that the applicable law determined in this way is relevant only to substantive law issues (from the point of view of Czech systematics, ie whether there has been interference with a right, what claims the injured party can assert from this interference, whether these rights can be transferred, when these rights can be limited, etc). Procedural law issues here are fully subject to *lex fori* rules (eg rules of litigation, including the apportionment of the burden of assertion and the burden of proof).[72] But the situation where we would use Section 80 GPIL to determine the applicable law is quite hypothetical because the Rome II Regulation has been binding on the Czech courts since its entry into force (11 January 2009).

Furthermore, if we are dealing with the issue of applicable law in a court located in a non-Member State, we will apply the local rules of private international law.

When applying the rules of private international law of (any) state, it is also necessary to resolve the issue of remissions and transmissions. In the case of the Rome II Regulation, the remissions and transmissions contained in the rules of private international law are excluded by Article 24. If the law applicable were Czech law and the Rome II Regulation did not apply, Section 21 GPIL would address this situation, which stipulates that neither remission nor transmission is to be taken into account.

Finally, in matters related to the law applicable to the trader's infringement of his right to a trade name, mandatory rules of the legal order of the place of the court may be in play (Article 16 of the Rome II Regulation) as well as public policy rules according to the place of that court (forum). They may, for example, reverse the conclusion reached under the law applicable to the determination of the holder of that right, based on an assessment of the preliminary question: who is the holder of the right to the trade name and what is the transferability of this right (if, for

[71] The scope of application of Sec 80 GPIL is wider than the scope of Art 8 of the Rome II Regulation, since Sec 80 applies not only to non-contractual obligations, but also to contractual obligations related to intellectual property rights. See Malacka and Ryšavý (n 15) 143–144.

[72] The Supreme Court considers the rules determining burden of proof to be the rules of procedural law. See *ABC Trepka, s r o, v SPS engineering, s r o* ECLI:CZ:NS:2020:32.CDO.1287.2018.1, regardless of whether they interfere with the substantive or procedural law problematics. On this question, see Kristýna Horková, 'Smluvní fikce doručení' (Masaryk University 2020) 44–46 <https://is.muni.cz/th/s1u68/> accessed 15 May 2022.

example, the licensee seeks the protection of that right)?[73]

5 Is the choice of applicable law possible?

Along with the question of determining the applicable law, it is appropriate to ask whether it is possible to change (or replace) the law determined in this way by an agreement of the parties in the dispute (choice of law). In the context of the Rome II Regulation, the answer is provided by Article 8(3), which precludes the application of Article 14 providing a choice of law where the law applicable under Article 8 and Articles 10 to 12 of the Rome II Regulation is determined.

However, if we determine the law applicable under the rules of private international law of a particular state or international treaties governing the determination of the law applicable to non-contractual obligations with an international element, the above rule on the exclusion of choice of law may be absent and this path could be in play. However, the answer to this question must be sought in the context of a legally binding act (in the *lex fori* law) determining the law applicable to a particular non-contractual obligation and subsequently also in the context of the applicable law itself.

However, the ban on the choice of law for intellectual property infringement disputes, which applies to all sub-questions of this issue, is criticised in the literature for its insufficient justification (eg in the Commission's proposal for the Rome II Regulation) or with reference to a simple repetition of the phrase that it is necessary to insist on the generally accepted[74] *lex loci protectionis* principle, sometimes even erroneously identified with the territoriality principle.[75,76]

6 The *dépeçage* principle and 'use in commerce/in the course of trade'

The mosaic-like method of determining the applicable law in cases of resolving disputes arising from the infringement of a trader's right to a trade name in several countries seems to be inflexible and, in extreme cases, completely dysfunctional. Unfortunately, this is not just a theoretical situation. Many relevant legal systems can be obvious, for example, at times when the exclusive right of a well-known trader to his designation

[73] Kessedjian (n 15) 27–28; Axel Metzger, 'Transfer of Rights, License Agreements, and Conflict of Law: Remarks on the Rome Conventions of 1980 and the Current ALI Draft' in Jürgen Basedow et al (eds), *Intellectual Property in the Conflict of Law* (Mohr Siebeck 2005) 66–69, 71–72; See Kyselovská and Koukal (n 6) 260–262.

[74] See European Max Planck Group on Conflict of Laws in Intellectual Property (CLIP), *Conflict of Laws in Intellectual Property: The CLIP Principles and Commentary* (OUP 2013) 304–307.

[75] On the need to distinguish the territoriality principle from the *lex loci protectionis* principle, see Kyselovská and Koukal (n 6) 127, 131, 143–145, 212–216.

[76] Kyselovská and Koukal (n 6) 211-212, 247-250; Kono (n 33) 152–153.

(eg an international holding company) is infringed via the Internet.[77]

However, it is important to ask whether or not it is necessary to consider an infringement of the right to a trade name in so many countries (apart from the possible narrowing of the disputed matter by the plaintiff himself by defining his claim in the application). When is the right of a trader to his trade name infringed? When the damage occurs in the legal sphere of the trader concerned.

It follows from the above that it is necessary (among other things) to conclude that the infringement took place 'on the territory of a particular state'.

In 2001, the WIPO published a Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet[78] – a set of rules of a soft law nature, which states in Article 2 that the use of designations on the Internet represents the use of the designation in the territory of a particular WIPO Contracting State if it has a commercial effect there.

This rule is not revolutionary; it is fully applied, for example, to trademark rights. Trademark law gives its owner the exclusive right to use a particular designation in relation to the goods and services for which it has been registered (if we are not speaking about a well-known trademark or trademark with a reputation in a given state) only to the extent to which this applies to business relations (Section 8(2) to (4) of Act no 441/2003 Coll, on Trademarks; Article 9(2) to (4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark); the commercial effect of unlawful use is thus already implicitly assumed here from the substance of the case (the content of the right to a trademark).[79]

The right to a trade name has a similar purpose to the right to a trademark – its aim is to distinguish traders (legal entities) from others in a given (relevant) market – and therefore the scope of trade name protection should be similarly limited as in the case of the right to a trademark, ie only for use in business relations.[80] Therefore, if a trade name were used in a way that has no commercial effect in the territory of a particular state, we should not consider it interfering with this right at all, and there would be no need to address the related issues (place of jurisdiction and applicable law).

---

[77] See Tichý (n 64) 124–125.

[78] See above (n 42).

[79] In the long term, the CJEU also stays with this conclusion. See Joined Cases *Google France SARL and Google Inc v Louis Vuitton Malletier SA (C-236/08), Google France SARL v Viaticum SA and Luteciel SARL (C-237/08) and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL and Others (C238/08)* ECLI:EU:C:2010:159, paras 50–58.

[80] See Annette Kur, 'Trademark Conflicts on the Internet: Territoriality Redefined?' in Jürgen Basedow et al (eds), *Intellectual Property in the Conflict of Law* (Mohr Siebeck 2005) 185–187.

However, the transposition of this principle into applicable law rests on the shoulders of individual states (not only the EU). They must accept this approach as their own and, if necessary, change their existing legislation or its interpretation, if its wording allows for it.

Prima facie, complicated modification of the mosaic-like method of determining the law applicable in cases of infringement of the right to a trade name on the Internet is functionally narrowed in the light of the aforementioned rule, apart from the subsequent problem that arose with this change (namely the differences in the interpretation of the term *use in commerce* or *in the course of trade*[81] in the context of the substantive rules of national legal systems).[82]

7 Conclusions

In the case of an internationally competent court being designated for a non-contractual infringement of the right to a trade name as an industrial property right according to the criteria contained in the Brussels I bis Regulation and CJEU case law, it can be concluded that an injured trader can sue the infringer of his right to a trade name (apart from the establishment of international jurisdiction on the basis of prorogation and tacit prorogation) in the state:

[1] where the *infringer resides*. To determine the domicile of the infringer as a natural person, the court uses the law of the state in which the person is domiciled, and in the case of the infringer as a legal person, he can be sued in the state in which he has his statutory seat, central administration, or principal place of business.

[2] where the harmful event occurred or may occur, which covers both the *delicti commissi* place and *damni infecti* places. The court which would have jurisdiction based on the *delicti commissi* place could then rule on the trader's claim for damages incurred in the territory of several countries (the damage in its entirety), while the court which would be determined as internationally competent according to the *damni infecti* place could decide (only) on the claim for damages incurred in the territory of this state.

[3] where the plaintiff (injured party) has a *centre of interests* (main economic activity). The court thus determined may then decide on the damage in its entirety.

It follows that it is advantageous for the injured trader to choose the internationally competent court ideally in the country according to the *delicti commissi* place or the *centre of interest*.

The law applicable to non-contractual infringements of the right to a trade name being an industrial property right (and related matters) is

[81] See Case C-245/02 *Anheuser-Busch Inc. v Budějovický Budvar, národní podnik* ECLI:EU:C:2004:717, para 73.

[82] For more information, see Kur (n 80) 177–179, 182.

then, under the Rome II Regulation, the law of the country for which the protection is sought (the *lex loci protectionis* principle). The applicable law thus determined cannot be avoided either by using the escape clauses or by applying rules to disputes arising from the infringement of unfair competition rules. The choice of applicable law cannot be used in these disputes either, which is often criticised by jurisprudence.

Infringing the right to a trade name by acting with consequences within the territory of several countries is also associated with the mosaic-like method of determining the applicable law (the *dépeçage* principle), which means that several laws of the countries involved are decisive for claims, depending on the territories in which the injured party seeks protection of his right. But if we take into account only the laws of the states in which the illegal act (the infringement) has commercial effect, the problem of pluralism of many state orders will be functionally restricted.

Suggested citation: H Pullmannová, 'International Jurisdiction and the Law Applicable to Disputes Arising From Infringement of the Right to a Trade Name as an Industrial Property Right' (2022) 18 CYELP 107.

THE RISKS TO JUDICIAL INDEPENDENCE IN LATVIA: A VIEW EIGHTEEN YEARS SINCE EU ACCESSION

Beatrice Monciunskaite*

Abstract: The European Union (EU) is in the midst of what could be deemed the biggest threat to its current order since its inception: Member States backsliding on EU founding values. Indeed, the EU is showing no sign of having the rule of law backsliding crisis under control in states such as Hungary and Poland, a decade since the first signs of populist takeovers emerged. Since the foundational values of liberal constitutional democracy were first challenged in these two Central Eastern European (CEE) countries, similar issues in other Member States have also come to light, such as in the Czech Republic and Malta, amongst others. However, little information is available about the democratic stability of other States that also acceded to the EU in 2004. This paper is a stocktaking exercise which aims to address this gap in relation to the fidelity of Latvia to the founding EU value of the rule of law 18 years since it became an EU member. It will examine the state of judicial independence in Latvia during the past few years. Attacks on judicial independence are the main battleground on which the EU is fighting Hungary and Poland, and a value that is considered central to the EU's understanding of the rule of law. It is important to understand Latvia's current state of judicial independence in order to build a broader picture of the status of the rule of law in all Member States. This knowledge will help to fight the EU's rule of law crisis and the rise of populism. This is something that needs to be achieved sooner rather than later so that the EU can stand united against an ever more aggressive Russia to the East.

Keywords: Latvia, European Union, democracy, rule of law, backsliding, judicial independence.

1 Introduction

This paper will evaluate the state of judicial independence in Latvia, nearly two decades after it acceded to the EU and fulfilled the Copenhagen criteria of stable democratic institutions, the rule of law, human rights, and respect for minorities.[1] Understanding how the rule of law in

* Beatrice Monciunskaite is a PhD Candidate at the School of Law and Government, Dublin City University and an Irish Research Council Scholar. The author is grateful to Professor Federico Fabbrini for his feedback on an earlier draft of this paper. Email: beatrice.monciunskaite2@mail.dcu.ie (ORCID: 0000-0002-0617-4218). DOI: 10.3935/cyelp.18.2022.482.

[1] Presidency Conclusions, Copenhagen European Council (21–22 June 1993) 7 A iii.

Latvia has been developing since accession is important at a time of great crisis in the EU. Rule of law backsliding has been a major issue within the EU since the early 2010s – most notably regarding Poland and Hungary, although other Member States have been regressing and facing their own battles too. With the foundational values of the EU being challenged from within, and the war in Ukraine threatening to spread to the Union, understanding every Member State's loyalty to the founding values is imperative. To this end, this paper examines the status of judicial independence in Latvia through the lens of recent developments around structural and institutional issues that threaten the independence of courts, namely, personal attacks on the Chairman of the Judicial Council by the Minister of Justice, the recent dialogue amongst some parliamentarians about the abolition of the Constitutional Court and the resulting delays in the replacement of a Constitutional Court judge. This paper argues that interference from the Latvian legislature and government in judicial matters is weakening judicial independence. These systematic attacks on judicial independence corelate with a rise in populist rhetoric in the Saeima (Latvian parliament) after the continuing success of populist parties in elections during the past decade. Although Latvia has had coalition governments which are not ideologically united, anti-establishment politics have played a significant role and have permeated Latvian governance, damaging judicial independence in recent years. The latest parliamentary elections of October 2022 have resulted in another victory for the incumbent New Unity (Jaunā Vienotība, JV) party, with Prime Minister Krišjānis Kariņas receiving the go-ahead from President Levits to form a government coalition.[2] This coalition is likely to include once again the far-right National Alliance (NA) party.[3] The 2022 parliamentary election also produced major losses for the dominant Russophone-representing party, Harmony Social Democracy (Saskaņa, SSD), which led to the rise of a new and more radical party being supported by sections of the Russian speaking minority in Latvia, Stability (Stabilitāte, S).[4] Stability has taken a radical stance against Latvia's support for Ukraine during its invasion, as well as criticising Latvia's mandatory Covid-19 vaccination campaign.[5] It is evident that populist politics still remain central in Latvia, as per previous elections.

This paper is organised as follows: section two will explain the relevant parts of the Latvian court structure, highlighting some adminis-

[2] Jānis Kincis, 'Levits Officially Invites Kariņa to Form the Government' (*LSM.LV*, 22 November 2022) <https://www-lsm-lv.translate.goog/raksts/zinas/latvija/levits-oficiali-aicina-karinu-veidot-valdibu.a483584/?utm_source=lsm&utm_medium=theme&utm_campaign=theme&_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc> accessed 29 November 2022.

[3] Daunis Auers, 'Continuity and Change after Latvia's 2022 Parliamentary Election' (*London School of Economics*, 25 October 2022) <https://blogs.lse.ac.uk/europpblog/2022/10/25/continuity-and-change-after-latvias-2022-parliamentary-election/> accessed 29 November 2022.

[4] ibid.

[5] ibid.

trative issues which constrains the financial freedom of Latvian courts. Third, this paper will describe the personal attacks on the Chairman of the Judicial Council by the Minister of Justice which occurred in early 2021. In section four, the legislature's backlash against the same sex partnership judgment issued by the Constitutional Court in late 2020 will be evaluated. Section five will highlight the dispute which broke out between the Constitutional Court and the legislature regarding the merger of the Varakļāni and Rēzekne self-governing regions. Section six explains how the government's and the legislature's disapproval of the Constitutional Court's reasoning led to the unacceptable politicisation of Constitutional Court appointments, which disrupted the work of that court. Section seven will analyse the EU Commission's response to the judicial independence issues highlighted in this paper, noting the lack of efficacy of the Annual Rule of Law Reports on Latvia. The article will conclude by reiterating that anti-establishment populist parties are a danger to judicial independence and the rule of law as made evident by the fact that populist politics have been behind much of the worrying developments around judicial independence in Latvia that are highlighted in this paper. Such developments should be closely monitored and researched as political movements like those in Latvia are similar to what has happened in Poland and Hungary which means that there is also the very real danger of a populist power grab in Latvia.

2 Latvia's judicial and court administration structure

Latvia's court system and judiciary have come under pressure from the executive in recent years. The excessive supervisory capacity of the Court Administration over judicial budgets and the excessive influence of the Minister of Justice in the day-to-day functioning of courts are causes for concern. Latvian judges have themselves admitted they believe their work is under excessive political pressure at the hands of the Minister of Justice.[6] The Latvian court system is divided into three tiers. The courts of first instance are nine district courts which hear civil and criminal cases, and one district administrative court.[7] As of 31 March 2021, there is a new specialised district court, the Court of Economic Cases, which was set up to manage the large amount of financial crimes in Latvia.[8] New judges of this court are specially trained in matters of money laundering, commercial law, competition law, financial law, and insurance matters.[9] There was disagreement about the need to establish this specialised court as the Judicial Council feared the new court's scope and jurisdic-

[6] Linda Spundiņa, 'Latvian Judges Feel Political Pressure from Justice Ministry, Study Shows' (*LSM.LV*, 5 November 2021) <https://eng.lsm.lv/article/politics/diplomacy/latvian-judges-feel-political-pressure-from-justice-ministry-study-shows.a403936/> accessed 29 November 2022.

[7] Commission, 'Commission staff working document – 2021 Rule of Law Report Country Chapter on the rule of law situation in Latvia' SWD (2021) 719 final 2.

[8] ibid 5.

[9] ibid.

tion would be too wide and its implementation superfluous. It was argued that a similar objective could be reached through the existing court structure.[10] At the second tier there are five regional courts which hear civil and commercial cases and one regional administrative court.[11] The Supreme Court, at third instance, hears criminal, civil and administrative cases.[12] The Constitutional Court is separate from the court hierarchy and carries out constitutional review.[13] The Judicial Council is a collegial authority which is charged with the development and improvement of policies and strategies for the judicial system.[14] The Judicial Council is also responsible for nominating candidate judges, selecting and dismissing court presidents, overseeing the judicial map and approving the content of judicial training.[15] The Judicial Council nominates prospective judges through an open competition. Candidate judges are ranked and placed on a list, from which the Minister of Justice suggests a suitable candidate to the Saeima for consideration.[16] Article 83 of the Constitution of the Republic of Latvia states that 'Judges shall be independent and subject only to the law'.[17] The Constitutional Court has reaffirmed that judges should have financial independence and that judicial power is free from the influence of the political branches of State.[18] Article 85 of the Constitution further strengthens the independence of the Constitutional Court as it is separate from the ordinary court structure.[19] As Constitutional Court justices are appointed for ten-year terms and by a qualified vote of the Saeima, their democratic legitimacy is further reinforced. Therefore, the principle of judicial independence is well elaborated in Latvian constitutional jurisprudence.

---

[10] Supreme Court of the Republic of Latvia, 'The Judicial Council Does Not Support the Draft Resolution of the Minister of Justice' (26 April 2021) <https://at.gov.lv/en/jaunumi/par-tieslietu-padomi/the-judicial-council-does-not-support-the-draft-resolution-of-the-minister-of-justice-10590?year=2021&month=04> accessed 29 November 2022.

[11] 2021 Rule of Law Report on Latvia (n 7) 2.

[12] ibid.

[13] Marko Aavik and others, 'Evaluation of the Latvian Judicial System' (European Commission for the Efficiency of Justice 2018) CEPEJ-COOP(2018)1 33.

[14] Law on Judicial Power (Article 89(1) of 1993). 01/01/1993 Reporter of the Supreme Council and Government of the Republic of Latvia <https://likumi.lv/ta/en/en/id/62847-on-judicial-power> accessed 29 November 2022.

[15] 2021 Rule of Law Report on Latvia (n 7) 2.

[16] ibid.

[17] Constitution of the Republic of Latvia, Article 83.

[18] Judgment of the Constitutional Court of the Republic of Latvia 18 January 2010 in case no 2009-11-01 2009 Latvia Journal, para 8.2, Press release <https://www.satv.tiesa.gov.lv/en/press-release/judgment-in-the-case-on-the-cut-of-judges-remuneration-and-the-minimum-amount-of-their-wage-has-been-announced/> accessed 29 November 2022.

[19] Constitution of the Republic of Latvia, Article 85; Ineta Ziemele, Alla Spale and Laila Jurcēna, 'The Constitutional Court of The Republic of Latvia' in Armin von Bogdandy, Alla Peter Huber and Christoph Grabenwarter (eds), *The Max Planck Handbooks in European Public Law* (OUP 2020) 525.

The Court Administration is an institution established in the Law on Judicial Power and is tasked with handling all administrative duties related to the district courts, regional courts, and the land registries office.[20] The Supreme Court is in charge of its own administrative duties.[21] The Court Administration was established in 2004 with the aim of centralising the administrative duties of Latvian courts.[22] Originally, this institution was intended to be run under the authority of the Judicial Council, but this was not accepted by policy makers.[23] Therefore, a 2018 report of Latvian judicial independence issued by the European Commission for the Efficiency of Justice noted that although the Court Administration was created as an independent body, its true independence is difficult to ascertain for various reasons.[24] Notably, the Court Administration is directly subordinate to the Minister of Justice and is controlled by a director who is appointed by the Minister of Justice for a term of five years and can be reappointed without limitation.[25] Furthermore, the Court Administration has vast scope in court budgetary matters. The Court Administration prepares the budget for both district and regional courts and the land registry office. This draft is sent to the Minister of Justice who asks the Judicial Council for an opinion before the Minister of Finance presents the courts' budget to the Saeima for implementation.[26] Importantly, if the Judicial Council disagrees with the draft budget, the Minister of Justice can ignore this and proceed with presenting the budget to the Minister of Finance.[27]

It is not unusual for court administration to be professionalised and centralised in a single body.[28] It might also be efficient to have administrative tasks centralised as the presidents of individual courts could then spend most of their time on judicial duties.[29] However, there are concerns within the current Latvian system that are impossible to ignore. As the Court Administration has vast control over the day-to-day running of courts, it is always a concern that judicial behaviours might be directly or indirectly impacted by the knowledge that the Minister of Justice ultimately oversees the essential functions of courts such as budget

[20] Law on Judicial Power, 1 January 1993, Reporter of the Supreme Council and Government of the Republic of Latvia <https://likumi.lv/ta/en/en/id/62847-on-judicial-power> accessed 29 November 2022; Aavik and others (n 13) 11.

[21] Aavik and others (n 13) 11.

[22] ibid.

[23] ibid 11–12.

[24] ibid 11.

[25] Law on State Civil Service Law (Article 11 of 2000) 22/09/2000, Latvian Journal No 331/333 <https://likumi.lv/ta/en/en/id/10944> accessed 29 November 2022; Aavik and others (n 13) 12.

[26] Law on Judicial Power (Article 50.2(3) of 1993).

[27] ibid.

[28] Aavik and others (n 13) 14.

[29] ibid.

allocation.[30] The Judicial Council would be a more appropriate authority to run the Court Administration as this is the only body that largely includes legal professionals and lawyers whose goal is to implement the best practice of the profession.[31] Nevertheless, the control of the Court Administration by the Minister of Justice constantly runs the risk of the government exerting influence over the judiciary for political gain or entrenchment of power.

The 2018 report of Latvian judicial independence issued by the European Commission for the Efficiency of Justice also draws attention to the concerns surrounding the appointment of the director of the Court Administration.[32] If the government wishes to entrench its power and influence over the judiciary, the appointment of a favourable director of the Court Administration would be particularly beneficial to their agenda. Furthermore, the fact that the director is appointed for a term of five years and the term can be renewed indefinitely indicates that a director sympathetic to the government's or the Minister of Justice's agenda is likely to be re-elected and continue to exert significant control over the judiciary's essential services.[33] Therefore, the directors' actions can be heavily influenced by the knowledge that their reappointment depends on the Minister of Justice approving their work and policies so far.

There are also solid grounds for concerns for Latvia's judicial independence. A 2021 survey of judicial independence carried out by the University of Latvia on behalf of the Judicial Council unveiled that 70.7 per cent of the surveyed judges feel they are under political pressure from the Minister of Justice.[34] Furthermore, 25.4 per cent of the judges believe that judicial independence is negatively impacted by the government, while 23.3 per cent said judicial independence is also negatively affected by the Saeima.[35] Judges expressed concern over the pressure exerted by the Minister of Justice, political parties, and also the quality of other work of law enforcement bodies which affects judicial work as well.[36] The Chairman of the Judicial Council, Aigars Strupišs, called for a reform of the judicial system to improve judicial independence and reduce the systemic dependence of courts on the executive.[37] In particular, he said that political pressure from the Minister of Justice is felt in budgetary and training matters, which corroborates the concerns of the 2018 report of Latvian

[30] ibid.

[31] ibid.

[32] ibid.

[33] ibid.

[34] Spundiņa (n 6).

[35] ibid.

[36] 'Study: Majority of Judges in Latvia Unhappy with Ministry of Justice Interference' (*Baltic News Network*, 5 October 2021) <https://bnn-news.com/study-majority-of-judges-in-latvia-unhappy-with-ministry-of-justice-interference-224672> accessed 29 November 2022.

[37] ibid.

judicial independence issued by the European Commission for the Efficiency of Justice.[38] The Chairman stated that the judicial system needs to be distanced from the executive, for example where courts' budgetary issues should be handled directly with the Minister of Finance instead of needing to go through the Minister of Justice first.[39] The Chairman also attributes the judiciary's negative opinion of the Minister of Justice to his numerous baseless and public criticisms of judicial decisions.[40]

3 Latvia's judicial council under pressure from the Minister of Justice

In early 2021, a public dispute broke out between the Minister of Justice, Jānis Bordāns, and the Chief Justice of the Supreme Court of Latvia and Chair of the Judicial Council, Aigars Strupišs.[41] Minister Bordāns issued a resolution on the Ministry of Justice website accusing Chairman Strupišs of violating judicial ethics by criticising the judgment of the Riga Regional Court on the high profile case of Aivars Lembergs.[42] The resolution has since been removed from the Ministry's website after Minister Bordāns' attacks were deemed by the Judicial Ethics Committee to be baseless.[43] Minister Bordāns attempted to turn the Judicial Council against their Chairman in a vote as he claimed that Chairman Strupišs was damaging the reputation of the judiciary and preventing foreign investments by commenting on a court's decision to the media.[44] However, the Judicial Ethics Committee disagreed with the Minister's evaluations and found that Chairman Strupišs was acting within his competence when he spoke to the media about his belief that the Lembergs trial was too lengthy and that many lessons should be drawn from this trial for the Latvian justice system.[45] Former Minister of Justice, Guntars Grīnvalds, condemned the attacks of Minister Bordāns on the Chairman of the Judicial Council as the worst possible attack on judicial independence.[46] It is now clear that the Minister of Justice was attempting to censor the polit-

---

[38] ibid.

[39] Spundiņa (n 6).

[40] 'Study: Majority of Judges in Latvia Unhappy with Ministry of Justice Interference' (n 36).

[41] Supreme Court of the Republic of Latvia (n 10).

[42] ibid.

[43] ibid.

[44] Uldis Dreiblats and Ritums Rozenbergs, 'Former Minister of Justice Guntars Grīnvalds: Bordāns Is Trying to Influence Court Decisions' *Neatkarīgā Rīta Avīze* (12 March 2021) <https://neatkariga-nra-lv.translate.goog/izpete/341724-bijusais-tieslietu-ministrs-guntars-grinvalds-bordans-megina-ietekmet-tiesu-lemumus?_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 2 December 2022.

[45] 'Strupišs: The Length of the Lembergs Case Is an Example for Judges of How Not to Do It' (*LSM.LV*, 26 February 2021) <https://www-lsm-lv.translate.goog/raksts/zinas/latvija/strupiss-lemberga-lietas-ilgums--piemers-tiesnesiem-ka-nevajag-darit.a394493/?_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=nui,sc> accessed 29 November 2022.

[46] Dreiblats and Rozenbergs (n 44).

ically inconvenient opinions of Chairman Strupišs which threatened the Minister's reputation and competence. It has also been reported that the Minister's public criticism of Chairman Strupišs indicated that Minister Bordāns had attempted to gain control of, and politicise, a new judicial training institution which is currently being developed.[47]

4 The legislature's backlash against the same-sex partnership judgement

The Latvian Constitutional Court has faced attacks from members of the executive and legislature in recent years. On 12 November 2020, the Latvian Constitutional Court delivered a landmark judgment which affirmed the rights of same-sex parents and demanded legal protection for same-sex couples.[48] The Court ruled that Section 155, paragraph 1 of the Labour Law which allows for 10 days paternity leave for a father (man) after the birth of his child was incompatible with Article 110 of the Latvian Constitution which provides that the state is required to protect the family.[49] The applicant, a woman in a same-sex relationship with the child's mother, claimed that the Labour Law's specification that only fathers are entitled to ten days leave was discriminatory towards her same-sex relationship and incompatible with the state's requirement to protect her family as required by Article 110 of the Constitution.[50]

The Constitutional Court ruled that the State has a positive obligation to protect all families, not just those established by traditional means such as marriage, a biological relationship, or a legally recognised child-parent relationship. A family is a social institution based on social reality and identifiable close personal ties based on understanding and respect.[51] Therefore, the Court acknowledges that in social reality close personal ties can also emerge as a result of actual cohabitation.[52] The first sentence of Article 110 of the Constitution sets out the State's positive obligation to protect and support every family, including also a de facto family which the Constitutional Court had previously established in its judgment of 5 December 2019.[53] The Court also reasoned that Latvia is an independent, democratic state that respects the rule of law and

---

47 ibid.

48 Judgment of the Constitutional Court of the Republic of Latvia 12 November 2020 in case no 2019-33-01 2020 Latvia Journal <https://www.satv.tiesa.gov.lv/en/cases/?search[number]=2019-33-01> accessed 29 November 2022.

49 ibid 36.

50 ibid 2.

51 ibid 12.1.

52 ibid.

53 Judgment of the Constitutional Court of the Republic of Latvia 5 December 2019 in case no 2019-01-01 2019 Latvia Journal <https://www.satv.tiesa.gov.lv/en/cases/?search[number]=2019-01-01> accessed 29 November 2022, para 12.2.2.

which strongly values human dignity.[54] The principle of human dignity does not allow the State to waive the fundamental rights of a particular person, or group of persons.[55] Stereotypes existing in society cannot serve as justification to diminish the fundamental rights of a specific person or group of persons in a democratic State governed by the rule of law.[56]

While the LGBTQ+ community and their supporters celebrated this judgment and the Constitutional Court's initiative in protecting the rights of same-sex couples, the judgment was seen by many in society and parliament as an attack on traditional family and Catholic values.[57] The judgment sent shockwaves through Latvian politics with many members of government and parliament not only criticising the judgment on its merits but also the Constitutional Court's authority and independence.[58]

Many members of the Saeima from a diverse group of parties and backgrounds voiced problematic opinions about the Constitutional Court and even called for its abolition.[59] Juris Rancāns from the New Conservative party (*Jaunā konservatīvā partija*, JKP), proclaiming that 'unfortunately, there is currently a myth in the public sphere about the Constitutional Court as an institution endowed with divine legitimacy, which stands above the political will of the people or the political will of the legislator, but in reality this is not the case'.[60] Aleksandrs Kiršteins (NA) called the Constitutional Court a 'decorative and expensive' institution which does not need to exist and its competence could be transferred to the Supreme Court.[61] In sum, the general consensus was that the Constitutional Court had become overly politicised and had overstepped its competence. Some members of parliament declared that the Court has no legitimate standing as it was not included in the original 1922 Sat-

[54] Judgment of the Constitutional Court of the Republic of Latvia in case no 2019-33-01 (n 48) para 12.2.

[55] ibid.

[56] ibid.

[57] Kalvis Engīzers and Madara Meļņika, 'Defining the Modern Family: The Latvian Constitutional Court, the Definition of "Family", and Parliamentary Bitterness' (*Verfassungsblog*, 2 February 2021) <https://verfassungsblog.de/defining-the-modern-family/> accessed 29 November 2022; 'Supporters of 'traditional' Families Gather by Latvian Constitutional Court' (*LSM.LV*, 9 December 2020) <https://eng.lsm.lv/article/society/society/supporters-of-traditional-families-gather-by-latvian-constitutional-court.a384696/> accessed 29 November 2022.

[58] Jānis Lasmanis, 'Deputies Question the Competence of the Constitutional Court. A New Judge Shall Not Be Elected' (*Neatkarīgā Rīta Avīze*, 22 December 2020) <https://neatkariga-nra-lv.translate.goog/politika/334033-deputati-apsauba-satversmes-tiesas-kompetenci-jaunu-tiesnesi-neievele?_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 29 November 2022.

[59] ibid; Sanita Upleja, 'The Saeima Confirms Anita Rodiņš as a Judge of the Constitutional Court' (*Defli*, 3 November 2021) <https://www-delfi-lv.translate.goog/news/national/politics/saeima-apstiprina-anitu-rodinu-satversmes-tiesas-tiesnesa-amata.d?id=53012637&_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 29 November 2022.

[60] Lasmanis (n 58).

[61] ibid.

versme.[62] This alludes to the fact that the Latvian Constitutional Court was established in 1996, five years after the reestablishment of Latvian independence.[63] Therefore, the parliamentarians reasoned that the Court lacks legitimacy and is dispensable, as many neighbouring countries like Estonia, Sweden and Finland do not have a Constitutional Court.[64] Of course, this ignores the fact that the Supreme Court in those countries is also permitted to perform judicial review.

All of this culminated in a party of the governing coalition, NA, submitting a proposal to amend Article 110 of the Latvian Constitution on 7 November 2021.[65] The new text would have stated that a family can only be formed by marriage, blood kinship and adoption and must be based on a union between a man and a woman.[66] Although Prime Minister Krišjānis Kariņš stated that this was not the appropriate time to amend the Satversme (alluding to the emergency caused by the Covid-19 pandemic), on 14 January 2021, 47 members of parliament voted in favour of the amendment being put to Saeima committees for further deliberation.[67] However, this proposed amendment was abandoned in due course. Later, a referendum was proposed by conservative members of parliament to introduce a new definition of family which would strengthen the position of traditional family values. However, again, the initiative did not gather enough votes from the public for the question to be put to the people in a referendum.[68] In early 2022, the Minister of Justice initiated a draft civil partnership bill which would allow for the legal recognition of same-sex couples so that the requirements set out by the Constitutional Court in the same-sex partnership judgment would be satisfied. However, despite the bill passing through to the third reading in the Saeima, it failed due to conservative members of parliament such as NA, Farmers and Greens

---

62 ibid.

63 Kristīne Krūma and Sandijs Statkus, 'The Constitution of Latvia: A Bridge Between Traditions and Modernity' in Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law* (TMC Asser Press 2019) 951–952.

64 Lasmanis (n 58).

65 Draft Amendment to the Constitution of the Republic of Latvia, Saeima of the Republic of Latvia, 7 January 2021, no 3396.

66 ibid.

67 'Kariņš: This Is Not the Time for Discussions on Amendments to the Satversme' (*Apollo.lv*, 11 January 2021) <https://www-apollo-lv.translate.goog/7153128/karins-sis-navistais-laiks-diskusijam-par-grozijumiem-satversme?_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 29 November 2022; Jānis Kincis, 'Saeima Debates Definition of "Family" in the Constitution' (*LSM.LV*, 14 January 2021) <https://eng.lsm.lv/article/politics/saeima/saeima-debates-definition-of-family-in-the-constitution.a388754/> accessed 29 November 2022.

68 'Another Initiative Launched to Define "Family" in the Constitution of Latvia' (*LSM.LV*, 3 August 2022) <https://eng.lsm.lv/article/society/society/another-initiative-launched-to-define-family-in-constitution-of-latvia.a467810/> accessed 29 November 2022.

(Zaļo un Zemnieku savienība, ZZS), and Harmony boycotting the vote.[69] Thus, the Saeima has now passed the deadline set by the Constitutional Court by which it should have given legal recognition to same-sex couples. This presents a major concern for the standing of the Constitutional Court as it diminishes the perceived authority of the judiciary's decisions in the public eye. Furthermore, a constitutional court unable to carry out constitutional review is stripped of its purpose and is incompatible with the requirement of judicial independence demanded by liberal constitutional democracy.

5 Backlash against the Constitutional Court regarding the merger of the Varakļāni and Rēzekne self-governing regions

Another face-off between the legislature and the Constitutional Court came just a few months later in May 2021 after the Constitutional Court delivered its judgment on the merger of the Varakļāni and Rēzekne self-governing regions, threatening to start a constitutional crisis.[70] The merger of the two regions came about as a result of the adoption of a new law on 'Administrative Territories and Settlements' in June 2020 by the Saeima.[71] This law initiated the reform of Latvia's local government regions to tackle ongoing national concerns over declining demographics in rural Latvia and the related issue of these smaller rural regions being unable to cope financially with necessary public administration.[72] The reforms would redraw regional boundaries and merge some smaller self-governing regions with bigger ones to improve the overall delivery of public administration and, in turn, save the Latvian economy millions of euro by making the system more efficient.[73] However, this reform proved to be one of the most contentious political issues in recent years. Many wealthier self-governing regions were opposed to the reforms as their merger with poorer regions sparked concerns over the dilution of the quality of public services.[74] Another major concern was the planned creation of fewer but larger administrative units which would absorb the administrative tasks previously performed by public sector workers in smaller self-governing regions.[75] This would create job losses and mean that larger towns would attract more resources, devastating already faltering rural communi-

[69] 'Latvian Saeima Dodges Civil Union Law Adoption Again' (*LSM.LV*, 2 June 2022) <https://eng.lsm.lv/article/society/society/latvian-saeima-dodges-civil-union-law-adoption-again.a459661/> accessed 29 November 2022.

[70] Judgment of the Constitutional Court of the Republic of Latvia, 28 May 2021 in case no 2020-43-0106, 2021, Latvia Journal <https://www.satv.tiesa.gov.lv/en/cases/?search[number]=2019-33-01> accessed 29 November 2022.

[71] Law on Administrative Territories and Settlements (2020). 10/06/2020 Latvian Journal. No 119C.1 1.

[72] Daunis Auers, 'Continuity in Change? Latvia's Local Governments after Regional Reform and Local Government Elections' (Friedrich-Ebert-Stiftung 2021) 4.

[73] ibid.

[74] ibid.

[75] ibid 4–5.

ties.[76] Of course, individual politicians were also concerned about losing political influence over certain self-governing regions during the reshuffle which further aggravated the discourse around the reform.[77] Auers notes that a 'window of opportunity' emerged when the current governing coalition formed in January 2019, led by Prime Minister Krišjānis Kariņš (JV).[78] The coalition consists of five parties, all with differing ideologies, but crucially the ZZS, which held the prime minister position before the 2018 general election, was left in opposition.[79] This regional reform would have been very difficult if the ZZS were in power as they have been fierce advocates of small rural towns and villages.[80] Nevertheless, even in opposition, Viktors Valainis, a ZZS politician and member of the Saeima, submitted hundreds of amendments to the proposed law during parliamentary debates.[81] Scrutiny also came from the Latvian Association of Local and Regional Authorities as they lodged a complaint with the Congress of Local and Regional Authorities of the Council of Europe which resulted in a critical report being issued by the Congress.[82] The report published in late 2020 reasoned that the new reforms were evidence of 'deterioration in the overall situation of local democracy' and lacked proper consultation with local authorities and greatly reduced the financial autonomy of local authorities in Latvia.[83] A follow-up report by the Congress published after the adoption of the reforms by the Saeima lamented that the reform process was a 'missed opportunity for Latvia to adopt a territorial reform in full compliance with the European Charter of Local Self-Government which it has ratified'.[84]

On 28 May, Latvia's Constitutional Court ruled against the merger of Varakļāni with Rēzekne less than ten days before planned municipal elections.[85] The Court reasoned that the Saeima, which had merged the two self-governing regions on the third and final reading of the law, had ignored some crucial objectives of the reform.[86] Mergers should be based on efficiency rather than cultural history, and it further stated that the opinion of the counties' residents should be considered, which was relevant because 84% of Varakļāni residents preferred to be merged with

---

[76] ibid.

[77] ibid 4.

[78] ibid 3–4.

[79] ibid.

[80] ibid.

[81] ibid 4.

[82] 'Recommendation 447 (2020) Fact-Finding Report on Territorial Reform in Latvia, Congress of Local and Regional Authorities of the Council of Europe' 2.

[83] ibid.

[84] Congress of Local and Regional Authorities, *Communication by the Secretary General of the Congress at the 1397th Meeting of the Ministers' Deputies* (CG(2021)40-14, Council of Europe, 2021) 24.

[85] Judgment of the Constitutional Court of the Republic of Latvia in case no 2020-43-0106.

[86] ibid 3.1.

Madona according to a poll.[87] Furthermore, Rēzekne County did not have the status or capacity to merge with Varakļāni County.[88] The last minute cancellation of the merger prompted the Central Election Committee to cancel the planned municipal elections in both Rēzekne and Madona counties as the Constitutional Court had suggested that Madona was a better choice than Rēzekne.[89]

The Constitutional Court's judgement sparked opposition from some Saeima factions, including the governing NA and JKP.[90] The Saeima threatened to ignore the judgment and to push on with a vote to merge Varakļāni with Rēzekne through another parliamentary vote, once again bringing the Constitutional Court's reputation and authority into question.[91] As Latvia sat on the verge of spiralling into a constitutional crisis, President Levits was forced to mediate and urged the Saeima to respect the decision of the Court and called upon representatives of the parties in coalition to meet and resolve the issue.[92] A temporary solution was decided which saw the Saeima vote to keep Varakļāni as a separate county.[93] However, as this county has a small population of 3,000 and does not have the capacity to support itself, the decision will need to be revisited at a later stage.[94]

President Levits was forced to remind the Saeima that 'Latvia is a country which adheres to the rule of law and that means that the Saeima must respect the decisions of the Constitutional Court. If the Saeima ignores the Court's rulings, it creates the risk of a constitutional crisis'.[95] Indeed, the legislature disrespecting the authority and decision of the Constitutional Court is a blatant attack on the rule of law.[96] Although a pause has been placed on the dispute over the merger of self-governing regions which avoided an outright coup against the Constitutional Court, this was the second major attack on the Constitutional Court's authority

---

87 ibid; Auers (n 72) 5.

88 Judgment of the Constitutional Court of the Republic of Latvia in case no 2020-43-0106 para 3.1.

89 ibid; Auers (n 72) 5.

90 ibid.

91 Office of the President, 'President of Latvia Expects Varakļāni Region Status Issue to Be Resolved According to Satversme' (*President of the Republic of Latvia*, 6 January 2021) <https://www.president.lv/en/article/president-latvia-expects-varaklani-region-status-issue-be-resolved-according-satversme> accessed 29 November 2022.

92 Office of the President (n 91).

93 'Transcript of the Saeima, 1 June 2021. No 190/LP13, 14 June 2021, Latvian Journal No 113'.

94 Auers (n 72) 5.

95 Office of the President (n 91).

96 Guntars Laganovskis, 'Ignoring the Judgment of the Constitutional Court Would Actually Change the Meaning of the State' (*LV Portal*, 2 June 2021) <https://lvportals-lv.translate.goog/norises/328922-satversmes-tiesas-sprieduma-ignoresana-faktiski-mainitu-valsts-jegu-2021?_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=nui,sc,elem> accessed 29 November 2022.

and legitimacy waged by the legislature and executive within months. These attacks have severe consequences on the Constitutional Court's reputation which is particularly pertinent given that Latvia's citizens are already weary and untrusting of their justice system.

6 Politicisation of the Constitutional Court appointments procedure

Late 2020 and early 2021 saw another crisis between the Constitutional Court and the Saeima. The President of the Constitutional Court, Ineta Ziemele, left her position on 2 October 2020 as she was appointed as a judge of the Court of Justice of the European Union.[97] This created a vacancy in the Constitutional Court that the Saeima struggled to fill due to their fears that the Constitutional Court had become too politically active. According to Article 4 and 12 of the Constitutional Court Law, Constitutional Court judges are confirmed by the Saeima.[98] Three Constitutional Court judges are confirmed following a proposal by not fewer than ten members of the Saeima, two following a proposal by the Cabinet of Ministers, and two more following a proposal by the Supreme Court plenary session.[99] The Supreme Court plenary session selects candidates for the position of a Constitutional Court judge from among the judges of the Republic of Latvia.[100] However, the appointment of a new judge proved to be particularly difficult for the Saeima as the political backlash against the Constitutional Court's judgment on same-sex couples in early November was still a contentious issue.[101] Five candidates were nominated by different Saeima factions before the end of 2020 but none of the five nominees managed to acquire the necessary 51 votes in a parliamentary sitting on 21 December 2020.[102] The main reason for the indecision revolved around the ongoing narrative of the Saeima that questioned the very necessity of the Constitutional Court as an institution.[103] This was especially the case after the same-sex couples' decision which many viewed as evidence that the Constitutional Court had over-

[97] Constitutional Court of the Republic of Latvia, 'President of the Constitutional Court Ineta Ziemele Will Commence Performing the Duties of the Judge of CJEU on 6 October' <https://www.satv.tiesa.gov.lv/en/press-release/president-of-the-constitutional-court-ineta-ziemele-will-commence-performing-the-duties-of-the-judge-of-cjeu-on-6-october/> accessed 29 November 2022.

[98] Law of the Constitutional Court (1996, Section 4(1)), 14 June 1996, Latvian Journal, no 103.

[99] ibid.

[100] ibid.

[101] Upleja (n 59).

[102] Kārlis Arājs, 'The Saeima Will Not Elect a New Judge of the Constitutional Court: Another Election Will Have to Be Held' (*Delfi*, 21 December 2020) <https://www-delfi-lv.translate.goog/news/national/politics/saeima-jaunu-satversmes-tiesas-tiesnesi-neizvel-bus-jariko-vel-vienas-velesanas.d?id=52777081&_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 29 November 2022.

[103] Upleja (n 59).

stepped its competence.[104] Aldis Gobzems, an independent member of the Saeima, urged his fellow parliamentarians not to support Rodiņa because she approved of the Constitutional Court's judgment on same-sex couples.[105] He believed this was a violation of traditional family values found in the Latvian Constitution.[106] Aleksandrs Kiršteins (NA) called on the Saeima to postpone the appointment of any judge to the Constitutional Court as he believed the Court had violated its powers and created chaos by appropriating the role of the legislature.[107]

Finally, on 11 March 2021, more than five months after the Constitutional Court vacancy arose, Anita Rodiņa gathered 56 votes in the Saeima and was appointed to the Constitutional Court.[108] Rodiņa was nominated for this position at the beginning of February by coalition members Development/For! (Attīstībai/Par!, AP!), JV and was endorsed by the Judicial Council for the position.[109] However, despite this, there had been no consensus on her candidacy amongst coalition members the day before the vote.[110] Rodiņa was appointed only with the additional support of opposition members such as Harmony and ZZS.[111] The debate about Rodiņa's appointment lasted more than an hour, with the conversation dominated by the work of the Constitutional Court so far, the interference of the Court in politics, as well as the need for the Court overall.[112] Inese Voika (AP!) called out certain members of the Saeima for stalling the appointment of a new judge due to ideological differences, which she argued was inappropriate.[113]

There was also another important incident recently surrounding a judicial appointment to the Constitutional Court. On 9 December 2021, Irēna Kucina received adequate votes from the Saeima to become a Constitutional Court judge.[114] However, her candidacy was plagued by con-

[104] Arājs (n 102).

[105] Upleja (n 59).

[106] ibid.

[107] ibid.

[108] 'Latvian Parliament Approves New Judge for the Constitutional Court' (*Baltic News Network*, 11 March 2021) <https://bnn-news.com/latvian-parliament-approves-new-judge-for-the-constitutional-court-222896> accessed 29 November 2022.

[109] Upleja (n 59); Laura Selina Flower, 'ST as an Independent Arbitrator in the Legal System: The Judicial Council Supports Rodiņš as a Judge' (*Delfi*, 26 February 2021) <https://www-delfi-lv.translate.goog/news/national/politics/st-ka-neatkarigs-arbitrs-tiesiskaja-sistema-tieslietu-padome-atbalsta-rodinu-tiesnesa-amata.d?id=52973979&_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 29 November 2022.

[110] Upleja (n 59).

[111] 'Again, There Is No Consensus in the Coalition on the New ST Judge: Rodin's Election Will Need the Support of the Opposition' (*Delfi*, 3 October 2021) <https://www-delfi-lv.translate.goog/news/national/politics/koalicija-atkal-nav-vienpratibas-par-jauno-st-tiesnesi-rodinas-ievelesanai-vajadzes-opozicijas-atbalstu.d?id=53009891&_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui,elem> accessed 29 November 2022.

[112] Upleja (n 59).

[113] ibid.

[114] 'Latvian Parliament Approves New Judge for the Constitutional Court' (n 108).

troversy in the months prior to her selection for the post. Judge Kucina's previous role was to act as President Levits' legal advisor and there were several concerning reports before her nomination that President Levits had held phone calls with parliamentarians from AP! where he threatened to criticise the party if they failed to vote for Kucina, his preferred candidate, for the judicial post.[115] If these allegations were true, then this would constitute court packing which is a violation of judicial independence and the rule of law.

A further constitutional crisis materialised in Latvia in early 2021 when Sanita Osipova's candidacy to the Supreme Court failed to be approved in the Saeima with 40 MPs voting in her favour, 29 MPs against, and 16 MPs abstaining.[116] This was considered a shocking result as Sanita Osipova had previously served as President of the Constitutional Court and was considered a highly qualified and suitable candidate for the position of judge of the Supreme Court. What was troubling about the rejection of her candidacy by certain members of the Saeima was their reasoning. Many parliamentarians from the conservative wing of the Saeima, including ZZS and NA, cited the former Constitutional Court President's support of same-sex couples' rights and the corresponding jurisprudence of the Constitutional Court.[117] Emphasis was placed on the landmark decision of the Court of November 2020, which is addressed in section 4 of this paper, as a reason to reject Osipova's candidacy. It was feared she would lead the Supreme Court in deciding cases pertaining to recognition of same-sex partnerships that were coming up on the Supreme Court's list in a similar fashion.[118] The Saeima's controversial decision led the Supreme Court to issue a decision after a sitting of its plenary session where the court condemned the inappropriate politicisation of the appointment of a Supreme Court judge.[119] In this decision, the Supreme Court drew particular attention to the Saeima's violation of Article 83 of the Latvian Constitution which guarantees the independence of judges from political influence:

> From this norm follows an absolute prohibition to punish a judge or otherwise create adverse consequences for him due to his judgments, unless one of the circumstances specified in the Law on

[115] Māris Klūga, 'Lavian President Denies Exerting Inappropriate Pressure on Politicians' (*LSM.LV*, 24 September 2021) <https://eng.lsm.lv/article/politics/president/lavian-president-denies-exerting-inappropriate-pressure-on-politicians.a422742/> accessed 29 November 2022.

[116] 'The Saeima Rejects the Candidates for the Post of Supreme Court Judge' (*Jurista Vārds*, 22 February 2022) <https://juristavards-lv.translate.goog/doc/280708-saeima-noraida-augstakas-tiesas-tiesnesa-amata-kandidati/?_x_tr_sl=lv&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc> accessed 29 November 2022.

[117] ibid.

[118] ibid.

[119] Decision No 2 of 18 February 2022 of the plenary of the Supreme Court 'On the Relationship between the Legislature and the Judiciary and the Independence of the Judge' <https://www.at.gov.lv/files/uploads/files/2_Par_Augstako_tiesu/Plenums/plenuma%20lemums2%2018022022_EN.docx> accessed 22 November 2022.

> Disciplinary Responsibility of Judges, which may be the basis for the judge's liability, is proven. The decision of the Saeima, based on displeasure with the outcome of a specific case, to deny a Constitutional Court judge the possibility of a further career violates the said Constitutional norm.[120]

This controversy has put the judiciary in a very dangerous position, as now it has become clear that the careers of judges can be hindered due to their political stance on important issues. The placing of ideology considerations above a candidate judge's qualifications is likely to have direct and indirect effects on how judges adjudicate on sensitive political cases.[121] This disagreement between the legislature and the judiciary in such a public manner has major ramifications for the public's perception of the authority of the judiciary as well as the obvious violation of the well-established principle of judicial independence in Latvia.

7 The cost of political attacks on judicial independence and the EU's (lack of) response

The past few years have seen an increasingly tense and adversarial relationship between the judiciary and the other powers of State. These challenges can be summarised as a strategic attack by some members of the Saeima and the government designed to put pressure on the judiciary for political gain. The attacks on the Constitutional Court due to the Saeima's disagreement with the Constitutional Court's reasoning in recent judgments is based on their political and ideological disagreements but it is unacceptable for parliamentarians to attack the legitimacy and standing of an independent court for these reasons.[122] A leading cause for such a political backlash can be attributed to the central role of populist politics in Latvia.[123] Populism, in this context, is understood as a disregard for the essential institutions of checks and balances, such as courts, by the legislature or executive.[124] This type of political discourse has been a major issue in both Poland and Hungary and so, identifying and understanding such issues are key to preventing the undermining of judicial independence and the rule of law.

This raises the important question of how to prevent attacks on the judiciary in Member States post-accession? This is particularly pertinent given the experience of the EU so far in attempting to halt the tide of populist assaults on judicial independence in countries like Poland and

[120] ibid.

[121] 'The Saeima Rejects the Candidates for the Post of Supreme Court Judge' (n 116).

[122] Council of Europe, 'Judges: Independence, Efficiency and Responsibilities' (2010) Recommendation CM/Rec(2010)12 paras 17–18.

[123] Daunis Auers, 'Populism and Political Party Institutionalisation in the Three Baltic States of Estonia, Latvia and Lithuania' (2018) 11(3) Fudan Journal of the Humanities and Social Sciences 341, 349–350.

[124] Bojan Bugaric, 'Populism, Liberal Democracy, and the Rule of Law in Central and Eastern Europe' (2008) 41(2) Communist and Post-Communist Studies 191.

Hungary. One of the ways the EU Commission has attempted to prevent similar fates in other Member States is by introducing an annual rule of law monitoring system called the Annual Rule of Law Reports in 2020.[125] Additionally, the Rule of Law Conditionality Mechanism under Regulation 2020/2092 was introduced in 2021 and has the power to withhold EU monetary support from Member States.[126] The Conditionality Mechanism has already been used against Hungary and is expected to have significant persuasive effects in combating rule of law abuses.[127] I have argued elsewhere that the Rule of Law Reports could be linked to the Conditionality Mechanism as they would help keep track of evolving rule of law concerns within Member States and could later be used for sanctioning purposes.[128] However, it is important to consider the lack of efficacy of the Rule of Law Reports as they stand now. So far, the reports on Latvia have failed to identify effectively many of the concerns highlighted in this paper which diminishes the purpose of the reporting system and turns a blind eye to problematic developments within Latvia.

Latvia received a reasonably favourable rule of law evaluations in the 2020, 2021 and 2022 reports. In particular, the sections on judicial independence were concise, identifying corruption within the judiciary and controversies surrounding the politicisation of judicial appointments as a cause for concern.[129] However, the reports failed to appreciate the scale of damage to judicial independence after the multiple instances of politicising courts, attempts at court packing, and the general tarnishing of the reputation of the judiciary. The reports on Latvia's rule of law status offer only a shallow account of the true situation on the ground. The 2021 report on Latvia failed to highlight the extent of the attacks on judicial independence during the past few years. As noted above, the Constitutional Court suffered severe backlash from legislators over its November 2020 decision which affirmed the right to parental leave for same-sex couples as well as for the decision against the merger of Varakļāni with Rēzekne less than ten days before the planned municipal elections. These decisions were followed by a constitutional crisis in which members of the Saeima attempted to ignore Constitutional Court decisions and even called for the abolition of the Court altogether.[130] What is further concerning is that despite the 2022 report raising the issue of the politici-

[125] Beatrice Monciunskaite, 'To Live and to Learn: The EU Commission's Failure to Recognise Rule of Law Deficiencies in Lithuania' (2022) 14(1) Hague Journal on the Rule of Law 49, 56–63.

[126] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, Article 2 (a).

[127] Kati Cseres and Michael Borgers, 'Competition and Conditionality: The Missing Piece of the Puzzle in the Case of Hungary?' (*Verfassungsblog*, 2 June 2022) <https://verfassungsblog.de/competition-and-conditionality/> accessed 29 November 2022.

[128] Monciunskaite (n 125) 49.

[129] Commission, 'Commission staff working document – 2020 Rule of Law Report Country Chapter on the Rule of Law Situation in Latvia' SWD (2020) 313 final.

[130] Office of the President (n 91).

sation of the appointment of a Supreme Court president in early 2022, the two prior reports failed to mention a similar situation that arose regarding the appointment of a Constitutional Court judge in late 2020 and early 2021.[131] Once again, the rule of law reports failed to acknowledge how deeply rooted such issues are and instead painted them as isolated incidents. These are serious oversights on the EU Commission's part if the purpose of these annual reports are considered.

Given the significant issues described in this paper, the Rule of Law Reports evidently fail to live up to their purpose by ignoring threats to judicial independence in Latvia. Unfortunately, this silence on the threats to judicial independence in a Member State is not surprising given the Commission's track record on this issue. In many ways, we can see the Commission repeating the same mistakes, only this time by ignoring systemic threats to the rule of law in the very reports designed to flag them. Although the reports mention an array of issues affecting judicial independence, they fail to connect the dots and put these events into context. That is, the described events can be attributed to deliberate attacks by other branches of the State towards the judiciary which are severe and should be noted as such. If the subsequent rule of law reports are not strengthened by the introduction of suitable and achievable recommendations, and, above all, thorough consideration of all threats to the rule of law, then there is a risk that small rule of law concerns may develop into significant breaches.

8 Conclusion

This paper has examined the most concerning threats to judicial independence in Latvia. The Latvian political party system shows significant evidence of volatility and instability. The political party landscape in Latvia was poorly regulated in the early years of the country's re-independence which created optimal conditions for the development of a volatile political party system.[132] The general election in 2018 was declared a victory of populist parties, marking the prominence of anti-establishment and illiberal forces in Latvia.[133] While the most recent general election in October 2022 also produced significant wins for new and old populist forces and established centrist parties, it still remains to be seen what type of government coalition will materialise from this election. Nevertheless, it is clear from the issues highlighted in this paper that judicial independence is under threat in Latvia and further research and diligent

[131] Arājs (n 102).

[132] Auers (n 123) 345–349.

[133] Andrew Higgins, 'Populist Wave Hits Latvia, Lifting Pro-Russia Party in Election' *New York Times* (New York, 7 October 2018) <https://www.nytimes.com/2018/10/07/world/europe/latvia-election-russia.html> accessed accessed 29 November 2022; Daunis Auers and Andres Kasekamp, 'Comparing Radical-Right Populism in Estonia and Latvia' in Ruth Wodak, Majid KhosraviNik and Brigitte Mral (eds), *Right-Wing Populism in Europe: Politics and Discourse* (1st edn, Bloomsbury Publishing 2013).

observation of the institutional dialogue of the branches of the State are imperative. The Latvian judiciary is currently suffering a crisis of independence; structural issues which effect Latvian judicial independence stem from the executive's excessive powers over court budgets.[134] Besides this, the Minister of Justice has been attempting to attack the Chairman of the Judicial Council in retaliation for the Chairman's politically inconvenient opinions of the current judicial system in Latvia.[135] There is also a resounding lack of trust and respect for the authority of courts by many prominent political factions. The Constitutional Court has been criticised and attacked by parliamentarians over decisions in the recent parental leave case[136] and the Varakļāni and Rēzekne self-governing regions case.[137] These attacks were not comments disagreeing with the Court's reasoning or legal approach, but rather a fundamental attack on the legitimacy of the Constitutional Court's standing. Parliamentarians refused to perform their duties and nominate a replacement judge to the Constitutional Court for this very reason.[138] Although pro-EU and pro-rule of law parties have played a major role in Latvian governance with New Unity and AP! supporting the Constitutional Court during its crisis, and condemning the attacks on judicial freedom by other parliamentarians, the fact remains that anti-establishment forces carry significant weight in Latvian politics. The evidence in this paper indicates that the foundations of Latvia's democratic institutions are being put into question by populist parliamentarians. The apparent backlash against the authority of the judiciary combined with the prominent role of populism leaves the country vulnerable to populist power-grabs. Although Latvia's rule of law is not suffering to the extent seen in Poland and Hungary, this does not mean scholars and civil society should become complacent. After all, Hungary was once classified as a consolidated democracy and was only recently downgraded. This shows that no democracy is ever fully 'complete' and the threat of regression is always on the horizon if we are not vigilant.[139]

---

[134] Law on Judicial Power (Article 50.2(3) of 1993), 1 January 1993, Reporter of the Supreme Council and Government of the Republic of Latvia <https://likumi.lv/ta/en/en/id/62847-on-judicial-power> accessed 29 November 2022.

[135] Dreiblats and Rozenbergs (n 44).

[136] Judgment of the Constitutional Court of the Republic of Latvia 12 November 2020 in case no 2019-33-01, 2020, Latvia Journal <https://www.satv.tiesa.gov.lv/en/cases/?search[number]=2019-33-01> accessed 29 November 2022.

[137] Judgment of the Constitutional Court of the Republic of Latvia in case no 2020-43-0106.

[138] Upleja (n 59).

[139] Jacques Rupnik and Jan Zielonka, 'Introduction: The State of Democracy 20 Years On: Domestic and External Factors' (2013) 27 East European Politics and Societies: and Cultures 3, 21; Bojan Bugarič, 'A Crisis of Constitutional Democracy in Post-Communist Europe: "Lands in-between" Democracy and Authoritarianism' (2015) 13(1) International Journal of Constitutional Law 219, 221 <https://doi.org/10.1093/icon/mov010> accessed 29 November 2022.

Suggested citation: B Monciunskaite, 'The Risks to Judicial Independence in Latvia: A View Eighteen Years Since EU Accession' (2022) 18 CYELP 129.

PROPORTIONALITY OF INTERNAL BORDER CONTROLS: FROM THE COVID-19 PANDEMIC TO THE 2021 PROPOSAL

Léa Schumacker*

Abstract: Most Schengen Member States reintroduced internal border controls in response to the COVID-19 pandemic. These controls, which in some instances lasted for several months, jeopardised the principle of an area without borders and had to comply with the principle of proportionality. This article examines four aspects of these controls related to proportionality: the type of threat invoked, the adequacy of the measures, the duration of the controls, and the scrutiny over proportionality. First, it demonstrates that the current Schengen Borders Code contains appropriate safeguards for each aspect. However, some Schengen Member States disregarded them during the COVID-19 pandemic, and the Commission did not use its scrutiny powers. In December 2021, the Commission proposed to amend the Schengen Borders Code. This 2021 proposal adapts the rules to the Schengen Member States' practices during the COVID-19 pandemic. Then, this article argues that this proposal improves the aspects of legal certainty and scrutiny but does not satisfactorily address the aspects of adequacy and duration of internal border controls. In addition, the article presents some recommendations to increase the proportionality of the controls that the Schengen Member States would reintroduce following the 2021 proposal.

Keywords: Schengen Borders Code, proportionality, internal border controls, Covid-19, 2021 proposal, health emergency, NORDIC INFO, *scrutiny.*

1 Introduction

'A crisis without borders cannot be resolved by putting barriers between us. And yet, this is exactly the first reflex that many European countries had. This simply makes no sense'.[1] With these words, President von der Leyen of the European Commission (Commission) condemned, among other things, the reintroduction of internal border controls within

* LLM (Maastricht University), email: schumackerlea@gmail.com (ORCID: 0000-0002-6831-3746). I wish to thank Professor Iris Goldner Lang and Professor Ellen Vos for their comments on an earlier version of this article. DOI: 10.3935/cyelp.18.2022.490.

[1] Commission, 'Speech by President von der Leyen at the European Parliament Plenary on the European coordinated response to the COVID-19 outbreak' (26 March 2020) SPEECH/20/532.

the Schengen area[2] during the COVID-19 pandemic. This recent crisis[3] is not the only one that has put this border-free area under severe strain. The past seven years have been particularly challenging. Indeed, besides the pandemic, numerous Member States[4] reintroduced internal border controls for months during the migration crisis of the mid-2010s[5] and after the terrorist attacks in the European Union (EU) in 2015-2016.[6] These crises[7] have shown that the benefits of European integration should not be taken for granted.[8]

Freedom of movement and the possibility of border-free travel are two intertwined mechanisms.[9] They are essential to establish an area where persons may move freely, without internal borders,[10] which is one of the

---

2 As of September 2022, as during the COVID-19 pandemic, the Schengen area encompasses twenty-six European countries: these are also Member States of the European Union, except for Iceland, Norway, Switzerland, and Liechtenstein.

3 Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (2021 Proposal)' COM (2021) 891 final 1. The COVID-19 pandemic is the global outbreak of the SARS-CoV-2 virus. This virus quickly spread from China, where it was first detected in December 2019, to the rest of the world. On 30 January 2020, the World Health Organization declared a Public Health Emergency of Internal Concern and on 11 March 2020 it characterised the outbreak as a pandemic. World Health Organization, 'Coronavirus disease (COVID-19) pandemic' <https://www.who.int/europe/emergencies/situations/covid-19> accessed 1 September 2022.

4 When this article refers to 'Member States', the expression should be understood as to include the twenty-six European States that are part of the Schengen area.

5 COM (2021) 891 final 1. For further information about the reintroduction of internal border controls during the migration crisis in 2015-2016, see Elspeth Guild, 'Schengen Borders and Multiple National States of Emergency: From Refugees to Terrorism to COVID-19' (2021) 23 European Journal of Migration and Law 385, 390–393.

6 COM (2021) 891 final 1. For further information on the reintroduction of internal border controls following the terrorist threat, see Guild (n 5) 393–397.

7 Guild distinguishes the first two crises from the one resulting from the COVID-19 pandemic. The first two were framed as issues with external border controls, while the most recent crisis concerned internal borders and the internal market. Guild (n 5) 386–387.

8 Hanneke van Eijken and Jorrit Rijpma, 'Stopping a Virus from Moving Freely: Border Controls and Travel Restrictions in Times of Corona' (2021) 17 Utrecht Law Review 34, 34. Between 2006 and 2014, Member States reintroduced internal border controls only 35 times. However, from the start of the mentioned crises in 2015, there was a significant increase in the number of internal border controls. Between 1 January 2015 and 1 September 2022, the Member States reintroduced internal border controls 299 times. Commission, 'List of Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq of the Schengen Borders Code' (1 September 2022). PDF available at <https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/schengen-area/temporary-reintroduction-border-control_en> accessed 1 September 2022.

9 Daniel Schade, *Crisis-proof Schengen and Freedom of Movement: Lessons from the COVID-19 Pandemic* (Hertie School – Jacques Delors Centre 2021) 2; Elspeth Guild, 'Covid-19 Using Border Controls to Fight a Pandemic? Reflections From the European Union' (2020) 2 Frontiers in Human Dynamics 1, 2.

10 This objective of the EU of offering 'an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured […]' is set in Article 3(2) of the Treaty on European Union (TEU).

main achievements of the EU.[11] Freedom of movement of persons is one of the four freedoms guaranteed in the EU. It is enshrined in the Treaty on the Functioning of the European Union (TFEU),[12] the Charter of Fundamental Rights of the European Union (Charter),[13] and Directive 2004/38/EC (Free Movement Directive).[14] The abolition of border controls is limited to the Schengen area and *de facto* facilitates the movement of persons.[15] The TFEU[16] and Regulation (EU) 2016/399 (Schengen Borders Code or

[11] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)' [2016] OJ L77/1, Recital 22; Joined Cases C-368/20 and C-369/20 *NW v Landespolizeidirektion Steiermark* ECLI:EU:C:2022:298, para 65. In a 2018 survey, 68% of EU respondents perceived the Schengen area as one of the EU's main achievements. Kantar Public, Special Eurobarometer 474: European perceptions of the Schengen Area: Summary (Survey requested by the European Commission, Directorate-General for Migration and Home Affairs and co-ordinated by the Directorate-General for Communication, 2018) 10.

[12] Article 20(2)(a) TFEU reads as follows: '2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:
(a) *the right to move and reside freely within the territory of the Member States*' (emphasis added).
Article 21(1) TFEU reads as follows:
'1. *Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States*, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect' (emphasis added).

[13] Article 45(1) of the Charter reads as follows: 'Freedom of movement and of residence
1. *Every citizen of the Union has the right to move and reside freely within the territory of the Member States*' (emphasis added).

[14] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) [2004] OJ L158/77 (Free Movement Directive). This Directive is frequently mentioned in discussions about freedom of movement during the COVID-19 pandemic since it contains a chapter on the right of exit and entry. This article focuses on the reintroduction of internal border controls and the Schengen Borders Code. Therefore, it does not discuss further Directive 2004/38/EC.

[15] European Court of Auditors, *Free Movement in the EU During the COVID-19 Pandemic: Limited Scrutiny of Internal Border Controls, and Uncoordinated Actions by Member States* (Special Report, 2022) para 4.

[16] Article 67(2) TFEU reads as follows:
'2. [The Union] *shall ensure the absence of internal border controls for persons* and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals' (emphasis added).
Article 77(1)(a) TFEU reads as follows:
'1. The Union shall develop a policy with a view to:
(a) *ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders*' (emphasis added).

SBC)[17] guarantee the absence of internal border controls.

During the COVID-19 pandemic, one of the precautionary measures adopted to limit the spread of the novel virus was the reintroduction of internal border controls.[18] Member States also adopted other measures to contain the pandemic, such as lockdowns, curfews, and travel restrictions.[19] The reintroduction of border controls was often a prerequisite to enforcing other restrictive measures, such as entry bans,[20] and was financially costly for the Member States[21] and the internal market.[22] As a general caveat, this article focuses solely on the temporary reintroduction of internal border controls in the Schengen area; it does not cover additional requirements to cross borders, such as the presentation of a negative antigen test, or the reintroduction of external border controls.[23]

---

[17] Paragraph 1 of Article 1 SBC reads as follows: 'This Regulation provides for the *absence of border control of persons crossing the internal borders between the Member States of the Union*' (emphasis added).
Article 22 SBC reads as follows: 'Crossing internal borders
Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out' (emphasis added).

[18] COM (2021) 891 final 19.

[19] Marco Stefan and Ngo Chun Luk, *Limitations on Human Mobility in Response to COVID-19: A Preliminary Mapping and Assessment of National and EU Policy Measures, Their Sanctioning Frameworks, Implementation Tools and Enforcement Practices* (CEPS Paper in Liberty and Security in Europe, 2021) 10.

[20] Aude Bouveresse, 'La libre circulation des personnes à l'épreuve de la Covid-19: *extremis malis extrema remedia*?' (2020) 3 Revue trimestrielle de droit européen 509, 513; Commission, 'Impact Assessment Report Accompanying the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders' SWD (2021) 462 final 13; Daniel Thym and Jonas Bornemann, 'Schengen and Free Movement Law During the First Phase of the COVID-19 Pandemic: Of Symbolism, Law and Politics' (2020) 5 European Papers 1143, 1146.

[21] In 2016, the administrative costs due to the increase in staff for border controls were estimated between EUR 0.6 and EUR 5.8 billion, while the costs of physically establishing internal border controls were approximately EUR 7.1 billion for the entire Schengen area. Given inflation, the costs would be even higher during the COVID-19 pandemic. Andrew Lilico, Summayah Leghari and Marika Hegg, *The Cost of Non-Schengen: Impact of Border Controls within Schengen on the Single Market* (Study requested by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value) 2016, 9. Moreover, it is likely that staff temporarily assigned to border controls come from other services, resulting in shortages in those services. 'Impact Assessment Report Accompanying the 2021 Proposal' (n 20) 26.

[22] A 2016 study estimated the economic costs for a two-year reintroduction of internal border controls by seven participating states at up to €5 billion and by the entire Schengen area at up to €50 billion. Lilico, Leghari and Hegg (n 21) 9. Given inflation, the costs would be even higher during the COVID-19 pandemic. However, as of September 2022, there exists no study yet about the economic impact of border controls reintroduced during the COVID-19 pandemic. Salomon and Rijpma argue that the reintroduction of internal border controls also has negative effects on European citizenship. Stefan Salomon and Jorrit Rijpma, 'A Europe Without Internal Frontiers: Challenging the Reintroduction of Border Controls in the Schengen Area in the Light of Union Citizenship' 2021 German Law Journal ('Online First') 1, 23–25.

[23] According to Article 2(10) SBC, border controls consist of border checks and border surveillance. They can take various forms, but usually consist of identity checks. For further information on border controls and what they entail, see Subsection 3.2.2.1 below.

The Schengen Borders Code lays down conditions and procedures for the reintroduction of internal border controls 'to ensure that they are exceptional and that the principle of proportionality is respected'.[24] Proportionality is a general principle of EU law[25] applicable to conflicts between two interests or rights claims.[26] It requires that measures are appropriate to pursue a legitimate objective and are the least restrictive.[27] Proportionality binds the EU institutions and Member States,[28] including in the application of the Schengen Borders Code.[29] This article uses proportionality as a standard to analyse the internal border controls reintroduced during the COVID-19 pandemic and the corresponding rules of the Schengen Borders Code, as it stands and as it might soon be amended.

Internal border controls reintroduced during the COVID-19 pandemic raised a number of (legal) questions giving rise to heated debates. These interrogations are particularly relevant nowadays for two reasons. Firstly, in December 2021, the European Commission published a proposal to amend the Schengen Borders Code (2021 proposal).[30] This proposal aims, among other things, to clarify and expand the procedural safeguards in the case of the unilateral reintroductions of internal border controls and to encourage the use of alternative measures.[31] On 1 September 2022, the European Parliament was in the reporting phase,[32]

[24] SBC, Recital 22. The European Court of Justice made a reference to this recital in paragraphs 59 and 74 of *NW* (n 11).

[25] Juliane Kokott and Christoph Sobotta, 'The Evolution of the Principle of Proportionality in EU Law: Towards an Anticipative Understanding?' in Stefan Vogenauer and Stephen Weatherill (eds), *General Principles of Law: European and Comparative Perspectives* (OUP 2017) 168; Wolf Sauter, 'Proportionality in EU Law: A Balancing Act?' (2017) 15 Cambridge Yearbook of European Legal Studies 439, 442; Tor-Inge Harbo, 'The Function of the Proportionality Principle' (2010) 16 European Law Journal 158, 159.

[26] Harbo (n 25) 158.

[27] ibid 165; Kokott and Sobotta (n 25) 168; Sauter (n 25) 448.

[28] Sauter (n 25) 440. The ECJ applies the proportionality test differently to acts of the EU institutions and acts of the Member States. The EU institutions are subject to a manifestly disproportionate test, while the Member States are bound by modified versions of a least restrictive means test. Sauter (n 25) 439–440, 445, and 465; Harbo (n 25) 172.

[29] For further information, see Part 2 below. In its Communication of 16 March 2020, the Commission encouraged the Member States to apply internal border controls in a 'proportionate manner'. Commission, 'COVID-19 – Guidelines for border management measures to protect health and ensure the availability of goods and essential services' (Information) COM (2020) 1753 final, para 19. The European Court of Auditors would have appreciated if the Commission had given detailed advice on how the border controls reintroduced in the specific context of the pandemic could comply with the general principle of proportionality. European Court of Auditors (n 15) para 56.

[30] COM (2021) 891 final. Part 4 of this article covers the 2021 proposal in more detail.

[31] ibid 7–8.

[32] Costica Dumbrava, 'Revision of the Schengen Borders Code' (*Legislative Train Schedule*, 20 August 2022) <https://www.europarl.europa.eu/legislative-train/theme-promoting-our-european-way-of-life/file-revision-of-the-schengen-borders-code?sid=6101> accessed 1 September 2022. On 31 March 2022, MEP Sylvie Guillaume was designated to draw up a report on the 2021 proposal. European Parliament, 'Procedure file 2021/0428(COD)' (2022) <https://oeil.secure.europarl.europa.eu/oeil/popups/printficheplayers.pdf?id=733495&lang=en> accessed 1 September 2022). On 1 September 2022, this report was not yet ready.

whereas the Council of the European Union (Council) adopted a general approach to the proposal during the Schengen Council of 10 June 2022.[33] Secondly, in February 2022, the Dutch-speaking Court of First Instance of Brussels sent a preliminary reference to the European Court of Justice (ECJ) to interpret the Schengen Borders Code.[34] In essence,[35] the Belgian court asked, among other things, 'whether, in times of crisis, an infectious disease can be equated with a threat to public policy or internal security within the meaning of Articles 23(a) and 25 [SBC]'[36] and explicitly referred to the 2021 proposal.[37] Thus, the ECJ will soon have to decide, in the *NORDIC INFO* case, on some issues related to internal border controls reintroduced during the COVID-19 pandemic.

Building upon those considerations, this article answers the following research question: to what extent do the Schengen Borders Code and the 2021 proposal to amend it ensure that proportionality is respected when it comes to the reintroduction of border controls at the internal borders of the Schengen area in situations of health emergencies?

To answer this research question, this article first determines in Part 2 which aspects of proportionality the Member States must respect when they reintroduce internal border controls based on the Schengen Borders Code. Then, it is organised symmetrically and comprises two main parts: Part 3 concerns the internal border controls reintroduced during the COVID-19 pandemic, and Part 4 covers the 2021 proposal. Each consists of two main sections: one presents the topic, and the other contains an assessment of proportionality. Part 3 starts with the legal framework applicable to the reintroduction of internal border controls during the COVID-19 pandemic. Section 3.2 investigates how the Schengen Borders Code ensures that proportionality is respected when reintroducing these controls. It focuses on four aspects of proportionality: the type of threat, the adequacy of the measures, the duration of the controls, and the scrutiny over proportionality. Section 3.3 summarises the findings of the pro-

[33] Council of the European Union, 'Schengen Borders Code: Council adopts its general approach' (Press release 534/22, 10 June 2022).

[34] Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Belgium) lodged on 23 February 2022 — *NORDIC INFO v Belgische Staat* (Case C-128/22) [2022] OJ C213/26). In this pending case, a travel organisation had to cancel all its trips from Belgium to Sweden following the prohibition of non-essential travel from and to Belgium issued by the Belgian federal government. Three days after the issue of the prohibition, the Belgian government again authorised, while advising against, non-essential trips to Sweden. The travel organisation claims compensation for the damage it suffered following the change in travel advice of the Belgian government. Case C-128/22: Summary of the request for a preliminary ruling (Working document, 23 February 2022) paras 1–4.

[35] This question about the scope of public policy and internal security is not one of the questions explicitly referred to the ECJ. It appears in the argumentation of the parties and the observations of the referring court.

[36] Case C-128/22, para 18. This notion of 'threat to public policy or internal security' is subject to debate as to whether it encompasses 'public health emergencies'. Subsection 3.2.1 below discusses this matter further.

[37] ibid, para 20.

portionality assessment. Then, Part 4 begins with a presentation of the 2021 proposal and its main amendments to the rules on the reintroduction of internal border controls. Section 4.2 investigates whether the proposal would provide additional safeguards concerning proportionality when Member States reintroduce internal border controls during health emergencies. It focuses on the same four aspects of proportionality. Section 4.3 recapitulates and offers some recommendations for improving the 2021 proposal on each aspect. Finally, Part 5 summarises the findings of Parts 3 and 4 and provides an answer to the research question.

This article primarily uses a legal doctrinal methodology. It also resorts to an evaluative methodology when determining how the Schengen Borders Code and the 2021 proposal ensure respect for the principle of proportionality. The sources perused to write this article are primary sources from the EU institutions, such as regulations, judgments, and proposals, and secondary sources, including academic journal articles, book chapters, blog posts, and reports. However, the recent publication of the 2021 proposal limits the number of sources on the topic.

2 Proportionality and Schengen Borders Code

In this article, proportionality is the standard to examine the internal border controls reintroduced during the COVID-19 pandemic and their legal basis in the Schengen Borders Code. When assessing the proportionality of a measure under EU law, the EU relies on a four-step test. The measure must:

1) be appropriate – also called the suitability test –
2) to pursue a legitimate objective – also called the legality test,
3) constitute the least restrictive measure – also called the necessity test, and
4) not be manifestly disproportionate – also called proportionality *stricto sensu*.[38]

If a measure fails to meet any requirement, it will be disproportionate.[39] The ECJ does not always apply all four steps consistently.[40] The exact content of the test depends on the area of EU law and the degree of harmonisation.[41]

[38] Kokott and Sobotta (n 25) 168; Sauter (n 25) 448. The order of the steps varies between the two sources, but the steps remain the same.

[39] Kokott and Sobotta (n 25) 168.

[40] Sauter (n 25) 448. Usually, the least restrictive measure test and the final balancing are alternatives rather than complements (ibid).

[41] ibid 454–455; Harbo (n 25) 180. For instance, the test applicable to freedom of establishment includes a requirement that the measure is non-discriminatory, which is not explicit in the general proportionality test. Sauter (n 25) 455. Additionally, the greater the impact of the measure on the EU interest, the stricter the proportionality test is likely to be. Sauter (n 25) 453.

This article argues that Article 26 SBC defines the steps of the proportionality test relevant for the reintroduction of internal border controls and constitutes a *lex specialis* to the general four-step test. When Member States reintroduce or prolong internal border controls based on Article 25 or 28(1) SBC, ie when the serious threat to public policy or internal security is foreseeable or unforeseeable, Article 26 requires them to assess '*the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and [...] the proportionality of the measure in relation to that threat*'. Three aspects of proportionality can be extracted from the wording of Article 26 SBC:

1) The type of threat, ie a serious threat to public policy or internal security – related to the legitimate objective of the general proportionality test, but not identical;
2) The extent to which the reintroduction of internal border controls is likely to adequately remedy the threat – comparable to the suitability test; and
3) The proportionality of the measure in relation to the threat – similar to the *stricto sensu* balancing.

Additionally, when conducting the assessment required in Article 26 SBC, Member States must consider the likely impact of the threat on their public policy or internal security and of such a measure on the free movement of persons.[42] Furthermore, they bear the burden of proof to justify the necessity and proportionality of the reintroduction of internal border controls.[43] This burden of proof is incremental with the prolongation of controls.[44] This proportionality requirement is reinforced by the Member States' duty to conduct an ex-post assessment of proportionality after the lifting of internal border controls[45] and the Commission's obligation to issue an opinion if it 'has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders'.[46] This scrutiny aspect is not a step of the general proportionality test. Yet, a discussion on proportionality is not complete without mentioning the measures to control the respect for proportionality. Hence, this article also discusses the scrutiny over proportionality as a fourth aspect. Parts 3 and 4 below base their analysis of the proportionality of the internal border controls reintroduced during the COVID-19 pandemic and the Schengen Borders Code, as it is and as it could be amended, on the three aspects extracted from Article 26 SBC and this fourth aspect of scrutiny. In order to narrow down the balancing exercise of the third aspect, ie proportionality *stricto sensu*, this article focuses on the duration of internal border controls.

---

[42] SBC, Article 26(a) and (b).

[43] Sergio Carrera and Ngo Chun Luk, *In the Name of COVID-19: An Assessment of the Schengen Internal Border Controls and Travel Restrictions in the EU* (Study requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2020) 49.

[44] ibid.

[45] SBC, Article 33, 1st paragraph.

[46] ibid Article 27(4), 2nd paragraph.

3 Proportionality of internal border controls reintroduced during the Covid-19 pandemic

3.1 Articles 25 and 28 SBC during the COVID-19 pandemic

As a general rule, Article 22 SBC states that '[i]nternal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out'.[47] Chapter II of Title III of the Code provides for three exceptions for the temporary reintroduction of internal border controls: when there is a serious foreseeable threat to public policy or internal security, when the same kind of threat is unforeseeable, and where exceptional circumstances put the overall functioning of the Schengen area at risk.[48] Resort to these exceptions is not new, but the recurrence and scale of internal border controls over the last two and a half years are unprecedented.[49] The Member States did not coordinate their controls.[50] The duration, intensity and territorial coverage of the controls varied greatly from Member State to Member State and from the first wave of contagion to the other waves.[51]

Between 1 February 2020 and 30 April 2022,[52] Member States notified the Commission 182 times of the reintroduction of internal border controls under Articles 25 and 28 SBC for reasons of 'Coronavirus

[47] 'Internal borders' are defined in Article 2(1) SBC as:
'(a) the common land borders, including river and lake borders, of the Member States;
(b) the airports of the Member States for internal flights;
(c) sea, river and lake ports of the Member States for regular internal ferry connections'.

[48] SBC, Articles 25–35.

[49] Sandra Mantu, 'Schengen, Free Movement and Crises: Links, Effects and Challenges' (2021) 23 European Journal of Migration and Law 377, 377; Saila Heinikoski, *COVID-19 Bends the Rules on Border Controls: Yet Another Crisis Undermining the Schengen Acquis?* (FIIA Briefing Paper 2020) 3. Until 2014 and the start of the migration crisis, the provisions on the reintroduction of internal border controls were used for specific events, such as high-level political meetings, mass events, demonstrations, and sports events, and only for a few days. It was a short-term solution completely different from the massive reintroduction of border controls during the COVID-19 pandemic that lasted for months. Fabian Gülzau, 'A "New Normal" for the Schengen Area. When, Where and Why Member States Reintroduce Temporary Border Controls?' (2021) Journal of Borderlands Studies 1, 2–3 and 13.

[50] Philippe De Bruycker, 'The COVID Virus Crisis Resurrects the Public Health Exception in EU Migration Law' (2021) 2 Frontiers in Political Science 1, 6; Guild (n 9) 2.

[51] Stefano Montaldo, 'Internal Border Control in the Schengen Area and Health Threats: Any Lessons from the COVID-19 Pandemic?' (2021) 23 European Journal of Migration and Law 405, 408; Sergio Carrera and Ngo Chun Luk, *Love Thy Neighbour? Coronavirus Politics and Their Impact on EU Freedoms and Rule of Law in the Schengen Area* (CEPS Paper in Liberty and Security in Europe 2020) 2–3. The exact dates of the waves of contamination differ among the Member States. It is commonly accepted that the first wave took place in spring 2020, the second in autumn 2020, and the third in spring 2021. Stefan and Luk (n 19) 23.

[52] The epidemiological data improved in spring 2022: there were fewer infections and admissions to hospitals. Since 30 April 2022, there has not been any new notification of the reintroduction of internal border controls for reasons of 'Coronavirus COVID-19'. Therefore, the number of notifications related to the COVID-19 pandemic did not change between May 2022 and August 2022.

COVID-19'.[53] Articles 25 and 28 SBC are complementary and provide for different procedures for the reintroduction of border controls.[54] The following paragraphs analyse these two provisions, their requirements, and recourse to them by the Member States during the pandemic. The third procedure for the reintroduction of internal border controls, provided for in Article 29, is not discussed further because it requires a Council recommendation which the institution did not issue during the COVID-19 pandemic.[55]

At the outset of the pandemic, most Member States relied on Article 28 SBC.[56] This article contains the specific procedure for situations requiring immediate action due to a serious threat to public policy or internal security.[57] Member States must notify the Commission and the other Member States at the same time as they reintroduce border controls.[58] The controls may be maintained for a limited period of up to ten

[53] Commission, 'List of Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq of the Schengen Borders Code' (30 April 2022). PDF available at <https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/schengen-area/temporary-reintroduction-border-control_en> accessed 30 April 2022. The notifications also include border controls that start after 30 April since border controls reintroduced under Article 25 of the Schengen Borders Code require prior notifications (SBC, Article 27(1)). At the outbreak of the pandemic, France, Austria, Denmark, Norway, and Germany already had some internal border controls in place for reasons of migration or terrorism. They added a health reason on top of this and did not start a new six-month period at that time. Moreover, Luxembourg and Greece did not reintroduce internal border controls at the beginning of the pandemic. Sarah Wolff, Ariadna Ripoll Servent and Agathe Piquet, 'Framing Immobility: Schengen Governance in Times of Pandemics' (2020) 42 Journal of European Integration 1127, 1130.

[54] Jörg Gerkrath, 'The Reintroduction of Internal EU Border Controls: A Disproportionate, Ineffective and Illegal Instrument of Combating the Pandemic' (2021) 47 EU Law Live – Weekend Edition 2, 3; Stefano Montaldo, 'The COVID-19 Emergency and the Reintroduction of Internal Border Controls in the Schengen Area: Never Let a Serious Crisis Go to Waste' (2020) 5 European Papers 523, 525.

[55] Since 2013, the Article 29 procedure has been available when the overall functioning of the Schengen area is at risk. Based on a Commission proposal, the Council may recommend that certain Member States reintroduce internal border controls for a maximum of six months, renewable three times (SBC, Article 29(1)-(2)). On 12 May 2016, the Council resorted to this mechanism and recommended that Austria, Germany, Denmark, Sweden, and Norway reintroduce internal border controls for six months due to the migration crisis and security threats. Council of the European Union, 'Council Implementing Decision (EU) 2016/894 of 12 May 2016 setting out a recommendation for a temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk' [2016] OJ L151/8. The Council made this recommendation three more times, in November 2016, February 2017, and May 2017 (European Court of Auditors (n 15) para 28) but not during the COVID-19 pandemic.

[56] Carrera and Luk (n 43) 54. For further information on the internal border controls reintroduced by the Member States between March 2020 and August 2020 inclusive, see Carrera and Luk (n 43); for the reintroduction of internal border controls between 1999 and 2020, see Gülzau (n 49).

[57] SBC, Article 28(1).

[58] ibid, Article 28(2).

days[59] and be prolonged for renewable periods of up to twenty days.[60] In any event, the period of reintroduction of internal border controls under Article 28 may not exceed two months.[61]

Subsequently, when the maximum period of two months had elapsed, the Member States could no longer rely on Article 28 SBC. They then used Article 25 in conjunction with Article 27 SBC.[62] Article 25 SBC provides the general framework for the temporary reintroduction of internal border control in foreseeable cases where there is a serious threat to public policy or internal security and when 'immediate or urgent actions are not required'.[63] Member States must notify the Commission, the other Member States, the European Parliament, and the Council at the latest four weeks before the planned reintroduction or within a shorter period if the circumstances become known later.[64] Border controls may be reintroduced 'for a limited period of up to 30 days or for the foreseeable duration of the serious threat if its duration exceeds 30 days'.[65] Thereafter, they may be prolonged for renewable periods of up to 30 days.[66] The total duration may not exceed six months under Article 25. However, if exceptional circumstances resulting from 'persistent serious deficiencies relating to external border control', putting the overall functioning of the Schengen area without internal border control at risk materialise, Member States may prolong their controls for up to two years.[67] During the COVID-19 pandemic, such exceptional circumstances mentioned in Article 29 SBC did not occur and hence the Council did not issue a recommendation,[68] so the Member States could not legally extend their internal border controls for two years. They could only rely on Articles 25 and 28 SBC to reintroduce internal border controls. The following section assesses the proportionality of the measures taken pursuant to these two articles during the COVID-19 pandemic.

3.2 Four aspects of proportionality during the COVID-19 pandemic

3.2.1 First aspect: type of threat

The first aspect of proportionality concerns the type of threat invoked by Member States to reintroduce internal border controls during

[59] ibid, Article 28(1).

[60] ibid, Article 28(3).

[61] ibid, Article 28(4).

[62] Only Iceland remained within the maximum period set in Article 28 SBC and did not subsequently rely on Article 25 SBC. Carrera and Luk (n 43) 54.

[63] SBC, Article 25(1).

[64] ibid, Article 27(1)-(2).

[65] ibid, Article 25(1).

[66] ibid, Article 25(3).

[67] ibid, Article 25(4).

[68] ibid, Article 29(1); Montaldo (n 54) 525.

the COVID-19 pandemic. It relates to the legality test of the general proportionality test, but is not identical. Protecting public health is a legitimate objective to pursue. However, the question is whether this is one of the grounds in the Schengen Borders Code for the reintroduction of internal border controls. Articles 25 and 28 SBC provide that Member States may only reintroduce internal border controls when there is a 'serious threat to public policy or internal security'. However, during the COVID-19 pandemic, Member States took some precautionary measures primarily to protect public health.[69] Subsection 3.2.1.1 presents the two main arguments raised in this debate: on one hand, public health falls under public policy or internal security, and, on the other hand, public health is not a ground provided for in the Schengen Borders Code. Then, Subsection 3.2.1.2 focuses on a case pending before the ECJ concerning this ground of 'public health', *NORDIC INFO*,[70] and suggests a line of reasoning that the ECJ might follow in this future judgment.

3.2.1.1 Debate about public health as a type of threat

On one hand, academics accepting public health as part of public policy or internal security rely on the Communication of the Commission of 16 March 2020[71] and the broad interpretation of these concepts. First, Montaldo, Brosset, and Ramji-Nogales and Goldner Lang argue that the Commission reckons that, in principle, border controls are an appropriate response to a pandemic, which is then a matter of public policy or internal security.[72] They rely on this statement from the Commission: 'Member States may reintroduce temporary border controls at internal borders if justified for reasons of public policy or internal security. In an extremely critical situation, a Member State can identify a need to rein-

[69] Wolff, Ripoll Servent and Piquet (n 53) 1135. Internal border controls were primarily reintroduced to slow down the spread of the coronavirus. At the same time, they prevented people from stockpiling or seeking medical assistance in the neighbouring Member States, or temporarily relocating to regions with better epidemiological data. Heinikoski (n 49) 6. On the other hand, Carrera and Chunk Luk argue that Member States invoked the protection of public health even though health checks did not seem to be the primary objective of the reintroduction of border controls. Carrera and Luk (n 51) 27.

[70] Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Belgium) lodged on 23 February 2022 — *NORDIC INFO v Belgische Staat* (Case C-128/22) [2022] OJ C213/26).

[71] COM (2020) 1753 final.

[72] Montaldo (n 54) 528; Estelle Brosset, 'Le droit de l'Union européenne des pandémies à l'épreuve de la crise de la Covid-19: entre confinement et déconfinement' (2020) 3 Revue trimestrielle de droit européen 493, 495; Jaya Ramji-Nogales and Iris Goldner Lang, 'Freedom of Movement, Migration, and Borders' (2020) 19 Journal of Human Rights 593, 596–597. Carrera and Chun Luk consider that the communication set an alarming precedent for current and future derogations. Carrera and Luk (n 43) 57-58. On the other hand, Gerkrath believes that not too much weight should be accorded to the communication of the Commission since it is not legally binding and only reflects the view of one EU institution. Moreover, he adds that there is no evidence that the Commission conducted a thorough examination of the legality of the national decisions before adopting its position. Gerkrath (n 54) 8.

troduce border controls as a reaction to the risk posed by a contagious disease'.[73]

Second, Montaldo, De Bruycker, Brosset, Thym, Bornemann, Commissioner Johansson, and van Eijken and Rijpma argue that the concept of public policy or internal security comprises public health concerns arising from the COVID-19 pandemic, sometimes with some limitations. The scope of public policy and internal security is unclear and varies between Member States.[74] Montaldo considers that the health emergency spilt over and affected the community's social and economic life and the regular functioning of key public services.[75] De Bruycker bases his opinion mainly on the absence of treatment (especially at the beginning of the pandemic) and the threat of the virus to the entire population.[76] Brosset emphasises the broad scope of public policy and internal security,[77] while Thym highlights the numerous fundamental society interests affected by the outbreak.[78] Thym and Bornemann deem that the severe social, economic and health effects of the pandemic meet the threshold of public policy.[79] Commissioner Johansson stated that '[i]n an extremely critical situation, public policy could include reasons of public health'.[80]

---

[73] COM (2020) 1753 final, para 18 (emphasis added). Ritleng considers that the Commission legitimised *a posteriori* the controls reintroduced by the Member States. Dominique Ritleng, 'L'Union européenne et la pandémie de Covid-19: de la vertu des crises' (2020) 3 Revue trimestrielle de droit européen 483, 485. Commissioner Johansson repeated the exact words of the communication in her answer to an MEP's question on 24 July 2020. Ylva Johansson, 'Answer given by Ms Johansson on behalf of the European Commission to question for written answer E-001971/2020' (*European Parliament*, 24 July 2020) <https://www.europarl.europa.eu/doceo/document/E-9-2020-001971-ASW_EN.html> accessed 1 September 2022. Additionally, in her statement of 12 August 2020, Commissioner Johansson stated that the decision to reintroduce internal border controls 'may be taken, in extremely critical situations, based on a threat to public health'. Ylva Johansson, 'Answer given by Ms Johansson on behalf of the European Commission to question for written answer E-001827/2020' (*European Parliament*, 12 August 2020) <https://www.europarl.europa.eu/doceo/document/E-9-2020-001827-ASW_EN.html> accessed 1 September 2022).

[74] Montaldo (n 51) 419. Usually, the notion of public policy refers to threats to fundamental interests of the States and internal security can be invoked, for example, in situations of disrupted provision of essential services. Montaldo (n 54) 527.

[75] Montaldo (n 51) 416-417. Montaldo broadens his reasoning to any public health emergency reaching a certain threshold of seriousness and magnitude (ibid 419).

[76] De Bruycker (n 50) 4.

[77] Brosset (n 72) 495.

[78] Daniel Thym, 'Travel Bans in Europe: A Legal Appraisal' (*Verfassungsblog*, 19 March 2020) <https://verfassungsblog.de/travel-bans-in-europe-a-legal-appraisal/> accessed 1 September 2022.

[79] Thym and Bornemann (n 20) 1148. In addition, Thym and Bornemann contend that the Schengen Borders Code includes public health concerns arising from a pandemic when interpreted in the light of Article 35 of the Charter. That article guarantees that '[a] high level of human health protection shall be ensured in the […] implementation of all the Union's policies and activities'. ibid 1149.

[80] Ylva Johansson, 'Answer given by Ms Johansson on behalf of the European Commission to priority question for written answer P-001115/2020' (*European Parliament*, 15 June 2020) <https://www.europarl.europa.eu/doceo/document/P-9-2020-001115-ASW_EN.html> accessed 1 September 2022.

Van Eijken and Rijpma consider that the COVID-19 pandemic constituted a serious threat to public policy given the exceptional and generalised threat to public health, but only at the outset of the pandemic and with a highly purposive interpretation.[81]

On the other hand, three arguments and the European Parliament's view[82] comfort the opinion of academics refusing to consider public health as a ground under the Schengen Borders Code, such as Carrera and Luk. First, Title III of the Code on internal borders does not include public health as a reason for reintroducing internal border controls, nor do Recitals 24 and 25 of the preamble.[83] Carrera and Luk contend that Member States should not misuse the notions of public policy and internal security to derogate from the Schengen Borders Code.[84] Second, Article 8(2)(b) SBC includes public health in the justifications to reintroduce *external* border controls. The absence of explicit mention of public health in the provisions concerning internal border controls shows that the EU legislature did not intend public health to be a ground for the reintroduction of internal border controls contrarily to external border controls.[85] Third, the legislative history of the Code confirms this.[86] In a proposal for a predecessor regulation, the Commission included 'a threat to public health' among the grounds justifying the reintroduction of internal border controls.[87] However, the European Parliament deliberately deleted this ground, arguing that the reintroduction of internal border controls would not be the most appropriate and proportionate response in the event of a health crisis. Instead, the Member States should adopt

[81] Van Eijken and Rijpma (n 8) 40–41. They argue that this way of interpreting the Schengen Borders Code shows its inadequateness. At first, they considered that the collapse of the public health system could have led to a breakdown of public order and hence threatened essential state functions. However, in the latter stage of the COVID-19 pandemic, they contend that the threat to public policy could no longer justify the internal border controls. ibid.

[82] European Parliament, 'Resolution of 19 June 2020 on the situation in the Schengen area following the COVID-19 outbreak' (2020/2640(RSP)) para 7.

[83] Van Eijken and Rijpma argue that the absence of public health as a justifying ground in the Schengen Borders Code may explain why France did not solely rely on the spread of the virus in its first notification of the reintroduction of internal border controls. France also added 'the continuing threat of terrorism and the risk that terrorists would use the health situation to carry out attacks'. van Eijken and Rijpma (n 8) 40.

[84] Carrera and Luk (n 43) 57.

[85] ibid; Montaldo (n 51) 414.

[86] Carrera and Luk (n 43) 57.

[87] Commission, 'Proposal for a Council Regulation establishing a Community Code on the rules governing the movement of persons across borders' COM (2004) 391 final, Article 20. This Article 20 is now Article 25 SBC.

health-related measures, such as quarantines.[88] The ECJ will presumably close the debate soon when it renders its judgment in the *NORDIC INFO* case.

3.2.1.2 *NORDIC INFO* will close the debate

As mentioned in the introduction, in February 2022, a Belgian court sent a preliminary reference to the ECJ, asking, among other things, 'whether, in times of crisis, an infectious disease can be equated with a threat to public policy or internal security within the meaning of Articles 23(a) and 25 SBC, thus making the reintroduction of internal border controls […] possible on that basis'.[89] Then, the Belgian court refers to the Commission's Communication of 16 March 2020, which, in its opinion, does not expressly confirm that the Commission considers the pandemic to be a public policy reason justifying the reintroduction of internal border controls.[90] In its written submission, the applicant argues that the Schengen Borders Code does not include public health as a justification for the temporary reintroduction of border controls.[91] On the contrary, the defendant considers that public health is an underlying objective of the Schengen Borders Code, and that the precautionary principle and the safeguarding of public policy and internal security can justify the measures taken.[92] The arguments in this pending case mirror those in the current academic debate presented above.

Building upon the arguments mentioned above and following the traditional interpretation method of an EU law provision of the ECJ, ie the 'text-context-objectives' method,[93] these paragraphs present a likely outcome for the *NORDIC INFO* case. Regarding the wording, Article 25 SBC clearly establishes in which situations Member States may reintroduce internal border controls, namely where 'there is a serious threat to public policy or internal security'. It does not include a 'threat to public health' among the circumstances allowing the temporary reintroduction

[88] MEP Sylvia-Yvonne Kaufmann declared that '[i]t is difficult to imagine that in such a case internal border controls should be reintroduced to undertake health checks of travellers (if "threat to public health" is the justification to reintroduce controls then that makes only sense if the controls focus on detecting such a threat)'. European Parliament, Amendment by Sylvia-Yvonne Kaufmann (MEP), Amendment 171. This point is mentioned by Carrera and Luk (n 43) 57, fn 258. However, it is nearly impossible to identify the exact document of the European Parliament.

[89] Case C-128/22: Summary of the request for a preliminary ruling (Working document, 23 February 2022) para 18.

[90] ibid, para 19.

[91] ibid, para 7.

[92] ibid, para 9.

[93] When asked to interpret EU law, the ECJ considers the wording, the context, and the objectives of the provision and the legislation of which it forms part. *NW* (n 11) para 56.

of internal border controls.[94] Then, as it concerns the context, there is no ambiguity either considering that the Code has never included a 'threat to public health' in its wording.[95] As regards the objectives, the procedure in Article 25 SBC constitutes an exception to the general principle ensuring the absence of control of persons when they cross internal borders and hence must be strictly interpreted.[96] The reintroduction of internal border controls on the basis of Article 25 SBC must thus be stringently limited to the situations mentioned explicitly in the article so as not to jeopardise the area without internal frontiers set in Article 3(2) TEU. Therefore, the ECJ is unlikely to agree with the defendant that public health as such is an underlying objective of the Schengen Borders Code. It will rather conclude that the scope of Article 25 SBC is limited to situations of serious threat to public policy and internal security. The three elements of the traditional interpretation method tally with the applicant's position.

However, the absence of mention of public health in the Code does not mean that the consequences of a public health emergency may not fall within the scope of public policy or internal security under exceptional circumstances and trigger the conditions set in Article 25. With this judgment, the ECJ should take the opportunity to clarify when a threat posed by a virus constitutes 'a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society',[97] meeting the threshold of a threat to public policy. The Court could note that, for example, at the outset of the COVID-19 pandemic, the new virus constituted a threat to public policy due to the exceptional characteristics of the pandemic.[98] However, the ECJ has to determine whether the COVID-19 pandemic in July 2020, when the Belgian government took the disputed measure,[99] can be equated with a threat to public policy or internal security.[100] In July 2020, most Member States lifted their internal border controls reintroduced on the ground of 'coronavirus COVID-19'.[101] The public policy and internal security of the Member States were not under threat due to the pandemic. Moreover, the epidemiological situation had

[94] The case before the ECJ only concerns the specific procedure under Article 25 SBC. Hence, this paragraph does not mention Article 28 SBC, which comprises the same circumstances to reintroduce internal border controls.

[95] Carrera and Luk (n 43) 57.

[96] SBC, Recital 27.

[97] ibid.

[98] This reasoning would be similar to the one mentioned in Van Eijken and Rijpma (n 10) 40–41 and Montaldo, (n 51) 415.

[99] Case C-128/22: Summary of the request for a preliminary ruling (Working document, 23 February 2022) paras 2–3.

[100] ibid, para 18.

[101] Only Denmark (to the extent necessary), Norway, Hungary, Finland, and Lithuania had border controls in place in July 2020 for reasons of 'coronavirus COVID-19'. Commission, 'List of Member States' notifications' (1 September 2022) (n 8) notifications 163, 172,198, 215–216, and 221–223). Other Member States, such as Austria, Germany and Sweden, also had border controls in place in July 2020 but for other reasons, including terrorist threats and secondary movement. ibid, notifications 164, 175, and 181.

improved in Europe, including in Belgium, compared to March and April 2020.[102] In the light of these considerations, the Court could hardly conclude that, when the Belgian government took the disputed measure, the COVID-19 pandemic still constituted a threat to public policy or internal security. However, this matter is ultimately for the referring court to determine.[103]

In conclusion, the Court could answer that Article 25 SBC precludes the Member States from reintroducing internal border controls in situations of a serious threat to public health alone. However, Article 25 SBC does not preclude the Member States from reintroducing internal border controls when the threat caused by an infectious disease or a pandemic seriously affects one of the fundamental interests of society or the internal security of a Member State. If the Court follows this approach, it will uphold the legislature's will by firmly restricting recourse to Article 25 SBC to situations of serious threats to public policy and internal security and increase legal certainty as to the circumstances that may trigger the reintroduction of internal border controls.

3.2.2 Second aspect: adequacy

In second place, it is controversial whether the reintroduction of internal border controls adequately remedies the threat created by the COVID-19 pandemic. Except for the words 'adequately remedy' in Article 26, the Schengen Borders Code is silent about adequacy. This second aspect of proportionality is similar to the test of suitability of the general principle of proportionality. Subsection 3.2.2.2 assesses whether internal border controls were appropriate to limit the spread of the virus and distinguishes the first wave of contamination from subsequent waves. Before conducting this assessment, Subsection 3.2.2.1 explains the differences between border controls in the Schengen Borders Code and health screenings at the borders during the COVID-19 pandemic.

3.2.2.1 Border controls vs health checks

Article 2(10) SBC defines border controls as 'the activity carried out at a border, […] in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration […]'. This definition is quite broad and may encompass different activities depending on the type of threat requiring the reintroduction of internal border

[102] For example, in the week of 8 to 14 July 2020, when the disputed measure was taken, there were on average 127.4 new cases every day in Belgium, while three months before, between 7 and 13 April 2020, there were on average 3,452 new cases per day. Sciensano, 'Belgium COVID-19 Epidemiological Situation' <https://datastudio.google.com/embed/reporting/c14a5cfc-cab7-4812-848c-0369173148ab/page/ZwmOB> accessed 2 December 2022.

[103] Usually, the ECJ clearly states that the application of the principle that it has established to the facts of the case is a matter to be determined by the referring court. See, for example, *NW* (n 11) para 82.

controls. The minimum verification consists of quickly checking the validity of the document authorising border crossing.[104]

During the COVID-19 pandemic, internal border controls included identity checks, but also health checks, usually in the form of a temperature record.[105] Carrera and Luk consider that health checks conducted at the borders during the pandemic pursued a different objective than border controls.[106] The former aimed at ensuring that people crossing the border did not present symptoms of COVID-19,[107] while the latter intended to check that people crossing the border had the necessary documents to enter the country legally.[108] This change in the nature of controls put the border guards in the incongruous position of 'doctors'.[109] The Commission claimed that the organisation of these health checks does not require the formal introduction of border controls.[110] Montaldo argues that it is more effective to perform these checks within the Member States' territory.[111] Yet, most Member States formally reintroduced internal border controls to conduct health checks and, at the same time, enforce entry bans or other restrictions on freedom of movement.

3.2.2.2 Different waves: from uncertain effectiveness to political message

Scientific uncertainty prevailed during the first wave of the pandemic.[112] Between late April and June 2020, at the peak of the reintroduction of internal border controls, eighteen Member States had reintroduced such measures mainly to enforce border closures,[113] despite the European Centre for Disease Prevention and Control and the World Health

---

[104] Bouveresse (n 20) 512.

[105] Ségolène Barbou des Places, 'Covid-19: le renforcement des contrôles aux frontières Schengen' *(Le Club des Juristes – Blog Coronavirus*, 12 May 2020) <https://blog.leclubdesjuristes.com/covid-19-le-renforcement-des-controles-aux-frontieres-schengen/> accessed 1 September 2022.

[106] Carrera and Luk (n 51) 26.

[107] In its Guidelines of 16 March 2020, the Commission made clear that those infected by the coronavirus should not be refused entry, but rather have access to health care. COM (2020) 1753 final, para 19.

[108] Carrera and Luk (n 51) 26.

[109] ibid.

[110] COM (2020) 1753 final, para 20. The Commission did not clearly explain the difference between border controls and health checks at the borders in the context of the COVID-19 pandemic. The European Court of Auditors is worried that the Member States implement health checks which are de facto border controls without notifying the Commission. European Court of Auditors (n 15) para 56. Besides the absence of the notification obligation, health checks have no maximum duration. Heinikoski (n 49) 6.

[111] Montaldo (n 51) 415.

[112] Iris Goldner Lang, '"Laws of Fear" in the EU: The Precautionary Principle and Public Health Restrictions to Free Movement of Persons in the Time of COVID-19' (2021) European Journal of Risk Regulation 1, 6.

[113] Schade (n 9) 1.

Organization not supporting them.[114] At this stage of the pandemic, the Member States enjoyed a high level of discretion considering the lack of reliable scientific knowledge.[115] It was unknown whether the reintroduction of internal border controls was adequate to remedy the threat, but at least it showed citizens that their government was acting.[116]

In subsequent waves, fewer Member States reintroduced or prolonged internal border controls since it became more difficult for them to justify these measures.[117] Indeed, scientific research has not demonstrated that the reintroduction of border controls effectively contributes to containing the spread of the virus.[118] The Commission considers that these measures were unsuccessful and not the most efficient to address the threat resulting from the pandemic.[119] Montaldo believes that border controls are not fit for purpose.[120] When border controls solely consist of verifying identity documents and checking some documents, they do not prevent a virus from crossing borders.[121] Additionally, the virus was present in every Member State at that stage of the pandemic.[122] Yet, some Member States still reintroduced border controls known to be ineffective and inadequate.[123] Guild notes a convergence between these Member States and those that had reintroduced internal border controls for migration and anti-terrorism reasons.[124] She concludes that these Member

[114] Goldner Lang (n 112) 14. In February and May 2020, the European Centre for Disease Prevention and Control stated that '[a]vailable evidence […] does not support recommending border closures which will cause significant secondary effects and societal and economic disruption in the EU'. European Centre for Disease Prevention and Control, *Guidelines for the use of non-pharmaceutical measures to delay and mitigate the impact of 2019-nCoV*, ECDC Technical Report, 2020) 8; European Centre for Disease Prevention and Control, *Considerations for travel-related measures to reduce spread of COVID-19 in the EU/EEA* (ECDC Technical Report, 2020) 3.

[115] Montaldo (n 51) 415.

[116] The Member States actually reintroduced internal border controls well after the first infections in the EU. Stefan and Luk (n 19) 3.

[117] Montaldo (n 51) 409; Thym and Bornemann (n 20) 1170. Gerkrath argues that the fact that some Member States, such as Germany, did not reintroduce internal border controls in the subsequent waves proves that that measure was ineffective and unnecessary. Gerkrath (n 54) 10. Nevertheless, one month after the publication of Gerkrath's article, Germany reintroduced internal border controls despite the earlier promise of not doing so. Schade (n 9).

[118] Carrera and Luk (n 43) 48.

[119] 'Impact Assessment Report Accompanying the 2021 Proposal' (n 20) 11 and 37.

[120] Montaldo (n 51) 418.

[121] Gerkrath (n 54) 9.

[122] For instance, during the second wave, which took place partly in November 2020 in Europe, every Member State reported new cases of infection with the new coronavirus. European Centre for Disease Prevention and Control, 'Download Historical Data (to 14 December 2020) on the Daily Number of New Reported COVID-19 Cases and Deaths Worldwide' (*ECDC*, 14 December 2020) <https://www.ecdc.europa.eu/en/publications-data/download-todays-data-geographic-distribution-covid-19-cases-worldwide> accessed 1 September 2022.

[123] Montaldo (n 51) 415.

[124] Guild (n 5) 403.

States consider border controls as a significant political solution to various crises.[125]

Gerkrath and Heinikoski argue that the reintroduction of internal border controls was not intended to prevent the circulation of the virus. Rather, it was a way of showing the public that the authorities were acting.[126] The reintroduction of internal border controls was thus a political symbol rather than an effective epidemiological measure.[127] In addition to being ineffective, these controls are an aberration from a public health perspective. Indeed, border guards had contact with potentially infected people, and the controls led to the emergence of large gatherings, such as queues, at border crossing points. Both increased the risk of spreading the virus.[128] The reintroduction of internal border controls was thus a mere political measure not adequate to remedy the threat resulting from the COVID-19 pandemic.

3.2.3 Third aspect: duration of internal border controls

In third place, the proportionality of the measures in relation to the threat resulting from the pandemic is debatable. The duration of the reintroduced internal border controls must be considered when assessing proportionality. This question of duration is included in the necessity test, which requires that the measure taken is the least restrictive. Keeping controls for long periods is certainly not the least restrictive measure. The following subsection gives more details about Member States' practices of prolonging their controls by switching legal bases. Then, Subsection 3.2.3.2 presents a judgment in which the Grand Chamber of the ECJ decided on the maximum duration of internal border controls reintroduced under Article 25 SBC.

Before turning to the Member States' practices and the ECJ case law, this paragraph shows that the Schengen Borders Code offers clear safeguards regarding necessity. Article 25(1) requires that '[t]he scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat'. Moreover, Articles 25 and 28 limit the reintroduction of internal border controls to six months when the threat is foreseeable[129] and two months when it is unforeseeable.[130] These articles demonstrate that the reintroduction of border controls is supposed to be a temporary

[125] ibid.

[126] Gerkrath (n 54) 10; Heinikoski (n 49) 7.

[127] Montaldo (n 51) 417.

[128] Guild (n 5) 399; COM (2020) 1753 final, para 22. In its Guidelines, the Commission warned the Member States to prevent large gatherings when reintroducing internal border controls. However, in practice, long queues at border crossing points were frequent and were accentuated by border closures.

[129] SBC, Article 25(4).

[130] ibid, Article 28(4).

measure of last resort,[131] since it is a derogation to the general rule contained in Article 22 SBC.[132]

3.2.3.1 Switching legal bases

It appears that, during the COVID-19 pandemic, similarly to during the migration and terrorism crises,[133] some Member States jumped from one legal basis to another to prolong the duration of their internal border controls beyond the legal limit.[134] For instance, France notified three times the Commission of the reintroduction of internal border controls for reasons of 'Coronavirus COVID-19' (in combination with the continuous terrorist threat and secondary movements) for the continuous period between 1 May 2021 and 31 October 2022,[135] and Norway nine times for the continuous period between 14 August 2020 and 7 October 2021.[136] These Member States' controls lasted well beyond the six months allowed, resulting in a 'partial de facto suspension of Schengen'.[137]

---

[131] ibid, Articles 25(2) and 26.

[132] 'Resolution of 19 June 2020' (n 82) para 5.

[133] These practices of switching legal basis to extend the duration of controls are not typical of the COVID-19 pandemic. They had already taken place during the two previous crises affecting the Schengen area. France, Austria, Denmark, Germany, Sweden, and Norway kept their internal border controls for seven years, between 2015 and 2022, to deal with migration, terrorism, and the COVID-19 pandemic. Mariana Martins Pereira, 'Op-Ed: "The Court of Justice's ruling in the case of temporary reintroduction of internal border controls: to codify or not to codify? (Joined Cases C-368/20 and C-369/20)"' (*EU Law Live*, 24 May 2022) <https://eulawlive.com/op-ed-the-court-of-justices-ruling-in-the-case-of-temporary-reintroduction-of-internal-border-controls-to-codify-or-not-to-codify-joined-cases-c-368-20-and-c-369-20-by/> accessed 1 September 2022; Barbou des Places (n 105); Salomon and Rijpma (n 22) 6. For instance, Joined Cases C-368/20 and C-369/20 *NW v Landespolizeidirektion Steiermark* ECLI:EU:C:2022:298 concern the switch of legal bases during the migration crisis.

[134] Carrera and Luk (n 43) 48; Barbou des Places (n 105). However, most Member States reintroduced their border controls without switching legal bases to extend their duration. On 24 August 2020 (about six months after the first reintroduction of controls), only five Member States had their border controls still in place for reason of COVID-19: Denmark, Finland, France, Lithuania, and Norway. Carrera and Luk (n 43) 18).

[135] 'List of Member States' notifications' (n 8) notifications 288, 314 and 325. France is not the only Member State which switched legal bases to extend the duration of its controls as mentioned in n 133. However, it is the only Member State that kept its border controls for reasons of 'Coronavirus COVID-19' in spring 2022. Martins Pereira (n 133). Since the establishment of the Schengen area, France has been reluctant to remove border controls. Between 1999 and 2022, it was for only four years that France did not reintroduce temporary border controls. Gülzau (n 49) 13.

[136] 'List of Member States' notifications' (n 8) notifications 226, 231, 238, 243, 259, 274, 291, 302, and 313. Based on the duration of the controls notified, usually one month, it is likely that Norway relied on Article 28 SBC for seven of them, while France rather used Article 25 SBC and chose periods of six months. These examples show the diversity of Member States' responses to the COVID-19 pandemic.

[137] Salomon and Rijpma (n 22) 2.

The Schengen Borders Code does not allow these practices, even though it does not explicitly prohibit them.[138] Switching legal bases to continuously prolong border controls goes against the wording and the spirit of the Code.[139] The European Parliament is concerned about these practices of 'artificially changing the legal basis for reintroduction to extend it beyond the maximum possible period in the same factual circumstances' and made a call to stop them even during the previous crisis in 2018.[140] However, this injunction had little effect on the Member States' practices, as observed during the COVID-19 pandemic.[141]

3.2.3.2 Strict limits set in *NW*

In its recent judgment of 26 April 2022,[142] the ECJ had the opportunity to rule for the first time on these practices of switching legal bases for artificially extending the duration of internal border controls.[143] The Grand Chamber of the ECJ agreed with the European Parliament and confirmed that the Member States may not reintroduce internal border controls based on Articles 25 and 27 SBC for a duration exceeding 'the maximum total duration of six months,[144] set in Article 25(4) [when] no

[138] Carrera and Luk (n 43) 50.

[139] Salomon and Rijpma (n 22) 2; Martins Pereira (n 133).

[140] European Parliament, 'Resolution of 30 May 2018 on the annual report on the functioning of the Schengen area' (2017/2256(INI)) para 10.

[141] On 1 September 2022, only France was maintaining its controls for reasons of COVID-19, but the five other Member States familiar with the legal bases switch were maintaining their controls for other reasons. The legal basis switch no longer occurs for reasons of COVID-19, but these Member States continue to prolong their border controls beyond the time limits set in the Schengen Borders Code. 'List of Member States' notifications' (n 8).

[142] *NW* (n 11). This judgment concerns the reintroduction of internal border controls by Austria at its borders with Hungary and Slovenia during the migration crisis (para 26). The Austrian border controls reintroduced on the basis of Article 25 started on 11 November 2017 and were continuously prolonged at least until 13 November 2019 (paras 26–27).

[143] Martins Pereira (n 133). It is the first time that the ECJ rules on the long-standing internal border controls, although the practice is not new. In France, non-governmental organisations had unsuccessfully challenged the reintroduction of continuous border controls even in 2017 and 2019, before the *NW* judgment. However, in both instances, the French Council of State considered that Article 25 SBC does not prevent the reintroduction of border controls for a further period of up to six months in the event of a new or renewed threat to public order or internal security. It did not define these notions of 'new or renewed threat'. In contrast to the Austrian court, the French Council of State did not refer to the ECJ. French Council of State, Decision No 415291 (28 December 2017) para 7; French Council of State, Decision No 425936 (16 October 2019) paras 6–7.

[144] The ECJ considers that the EU legislature regards a period of six months as sufficient for the Member States to adopt measures able to meet the serious threat to public policy or internal security, while maintaining freedom of movement after that six-month period. *NW* (n 11) para 77. A parallel can be drawn between this possibility to reintroduce internal border controls for up to six months and the institution of Roman dictatorship that lasted for a maximum of six months as well. During the Roman republic, men realised that additional powers in order to meet a threat should be limited in time. The EU legislature adopted a similar approach when deciding to limit the reintroduction of internal border controls under Article 25 SBC for up to six months. For further information on the institution of Roman dictatorship, see Oren Gross and Fionnuala Ni Aolain, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (CUP 2006) 17–26.

new threat exists that would justify applying afresh the periods provided for in Article 25'.[145] The strict and clear wording of the maximum duration in the Code was decisive, as were the context and objectives of the provision.[146]

The ECJ added that allowing the reintroduction of internal border controls on account of the same threat beyond six months would jeopardise the principle behind the creation of the Schengen area, namely the absence of internal border control.[147] The Court emphasised that the Member States must prove the existence of a new threat, but remained vague about what constitutes a new threat.[148] Thym fears that Member States would abuse this concept of a 'new threat' by invoking any new risk or discontinuing their controls for a few weeks before reintroducing them based on the same threat.[149] This fear materialised with the decision of the French Council of State of 27 July 2022.[150] The French Council of State considered a threat to be new 'either when it is of a different nature from previously identified threats, or when new circumstances and events change its characteristics in such a way as to alter its topicality, scope or consistency. Such circumstances and events may relate, in particular, to the subject of the threat, its scale or intensity, its location and its origin'.[151] This definition is broad, and the French Council of State interpreted it accordingly. In the context of the COVID-19 pandemic, it considered that the arrival of new dominant variants of COVID-19, which have a particularly high level of transmissibility and for which vaccines

[145] *NW* (n 11) para 94.

[146] ibid, paras 57–62.

[147] ibid, para 66. In his opinion in the *NW* case, AG Saugmandsgaard Øe held a different point of view. For him, 'where, on the expiry of the six-month period laid down in Article 25(4), a Member State is still faced with a serious threat to public policy or internal security, those provisions do not preclude, irrespective of the degree of similarity of the serious threat to the preceding serious threat, a fresh successive application of Article 25(1) of that code provided that all the criteria laid down by that code are satisfied, in particular that of proportionality'. Joined Cases C-368/20 and C-369/20 *NW v Landespolizeidirektion Steiermark* ECLI:EU:C:2021:821, Opinion of AG Saugmandsgaard Øe, para 75.

[148] *NW* (n 11) paras 79–81; Pola Cebulak and Marta Morvillo, 'Schengen Restored: The CJEU Sets Clear Limits to the Reintroduction of Internal Border Controls' (*Verfassungsblog*, 5 May 2022) <https://verfassungsblog.de/schengen-restored/> accessed 1 September 2022.

[149] Daniel Thym, 'Op-Ed: "Illegality of Internal Border Controls: The Court of Justice feeds the Appetite for Legislative Reform: Landespolizeidirektion Steiermark (C-368/20 & C-369/20)"' (*EU Law Live*, 4 May 2022) <https://eulawlive.com/op-ed-illegality-of-internal-border-controls-the-court-of-justice-feeds-the-appetite-for-legislative-reform-landespolizeidirektion-steiermark-c-368-20-c-369-20-by-daniel-thym/> accessed 1 September 2022.

[150] French Council of State, Decision No 463850 (27 July 2022). In this decision, the French Council of State rejected the application of human rights associations to annul the French decision to extend border controls from 1 May 2022 to 31 October 2022 (introductory part and para 7).

[151] Author's translation of French Council of State, Decision No 463850 (27 July 2022) para 5.

are less effective, constituted a new threat.[152] The more a virus circulates, the more likely it is to have variants,[153] so it would be easy to meet the threshold of a 'new threat' in any pandemic situation, when by definition a virus circulates widely.[154] This national interpretation of a 'new threat' opens the door to abuses, as Thym feared, particularly in situations of large scale health emergencies.

Additionally, the ECJ clarified that the Member States could not rely on Article 72 TFEU to circumvent the strict time limit of six months.[155] The Court has been intransigent and thereby has protected the work of the EU legislature.[156] Due to the *erga omnes* effect of preliminary rulings, Austria is not the only Member State affected.[157] The judgment calls into question the practices of several Member States and would lead to the conclusion that the long-lasting internal border controls in the last decade have been illegal on numerous occasions.[158] It remains to be seen whether the Member States will comply with this recent judgment and refrain from using more than one legal basis to reintroduce internal border controls when a single threat persists. Subsection 4.2.3.2 below discusses the possible impact this judgment could have on the content of the 2021 proposal. Cebulak believes that the ECJ will probably develop a line of case law on the legality of the reintroduction of internal border controls.[159]

---

[152] French Council of State, Decision No 463850 (27 July 2022) para 6.

[153] World Health Organization, 'COVID-19: Variants' <https://www.who.int/westernpacific/emergencies/covid-19/information/covid-19-variants> accessed 2 December 2022.

[154] Merriam-Webster, 'Pandemic' <https://www.merriam-webster.com/dictionary/pandemic> accessed 2 December 2022. A pandemic is 'an outbreak of a disease that occurs over a wide geographic area (such as multiple countries or continents) and typically affects a significant proportion of the population'. ibid.

[155] *NW* (n 11) para 90.

[156] Martins Pereira (n 133).

[157] Cebulak and Morvillo (n 148).

[158] Thym (n 149); Cebulak and Morvillo (n 148). In paragraph 82 of the *NW* judgment, the ECJ declared that it seems that Austria did not prove the existence of a new threat and thus prolonged its border controls beyond the maximum duration of six months. Then it adds that it will be for the referring court to decide. *NW* (n 11) para 82.

[159] Cebulak and Morvillo (n 148). On 1 September 2022, there were two pending cases on the interpretation of the Schengen Borders Code. None of them explicitly requires that the ECJ rules on long-lasting controls reintroduced during the COVID-19 pandemic. The first case, *NORDIC INFO*, mentioned above, concerns Belgian measures. Based on the list of notifications received by the Commission, Belgium did not extend its border controls beyond the maximum duration during the COVID-19 pandemic. In the second case, *ADDE and Others*, the French Council of State lodged a request for a preliminary ruling on 1 March 2022. Some human rights associations requested that the judiciary annul Decree No 2020-1734 of 16 December 2020, which establishes a regime for the refusal of entry of third-country nationals coming from another Schengen Member State to France in the event of the reintroduction of internal border control. Case C-143/22: Request for a preliminary ruling of 24 February 2022 (Working document, 1 March 2022). France is one of the six Member States which have continuously been keeping internal borders since 2015, as mentioned in n 133. When deciding on the *ADDE and Others* case, the ECJ might take the opportunity to rule on the legality of continuous border controls.

3.2.4 Fourth aspect: scrutiny over proportionality

In the Schengen Borders Code, two mechanisms ensure that the reintroduced internal border controls are proportionate. On the one hand, the Member States have three main obligations linked to proportionality.[160] First, they must assess the proportionality of the reintroduction of internal border controls and their prolongation under Article 26 SBC. Second, they must notify the Commission and the other Member States of certain information, such as the reasons and the scope of the reintroduction of internal border controls.[161] When the threat is foreseeable, they must simultaneously submit the same information to the European Parliament and the Council.[162] This notification duty must be read in combination with Article 31 SBC, which requires Member States to inform the European Parliament and the Council as soon as possible of any reasons triggering internal border controls. Third, under Article 33 SBC, they must present an ex-post report to the European Parliament, the Council, and the Commission with certain information including an ex-post assessment of the proportionality of the reintroduced internal border controls.

On the other hand, the Commission has a supervisory role. It must request additional information if necessary[163] and issue an opinion if it has 'concerns as regards the necessity or proportionality' of internal border controls.[164] Moreover, the Commission has a reporting role: it must inform the European Parliament and the Council as soon as possible of any reasons triggering internal border controls[165] and present a report, at least annually, on the functioning of the Schengen area to the European Parliament and the Council.[166] Thus, the Schengen Borders Code provides clear rules on the proportionality assessment, notification and report duties of the Member States and the scrutiny and reporting roles of the Commission.[167]

---

[160] Carrera and Luk (n 43) 50.

[161] SBC, Article 27(1) when the threat is foreseeable and Article 28(2) when the threat is unforeseeable.

[162] ibid, Article 27(2). When the threat is unforeseeable, Member States do not have such a duty. Instead, according to Article 28(5) SBC, the Commission must inform without delay the European Parliament of the notifications made under Article 28.

[163] ibid, Article 27(1).

[164] ibid, Articles 27(4), 28(3), and the second paragraph of Article 33. Article 27(4) SBC allows the Member States to issue an opinion when another Member State decides to reintroduce internal border controls.

[165] ibid, Article 31.

[166] ibid, third paragraph of Article 33.

[167] Moreover, Article 27(5) and (6) SBC provides the possibility to hold consultations, including joint meetings between the Member State planning to reintroduce controls, the Member States affected by the reintroduction of controls, and the Commission. These consultations, taking place at the latest ten days before the planned reintroduction, aim at arranging mutual cooperation between the Member States and examining the proportionality of the controls. This article does not focus on this mechanism.

Yet, during the COVID-19 pandemic, several Member States failed to comply with their duties related to proportionality, and the Commission did not address these failures. Indeed, the Member States' notifications did not provide sufficient information that the internal border controls had been reintroduced as last resort measures, as proportionate, and of limited duration.[168] The European Parliament has been worried about the lack of justification concerning respect for the principle of proportionality and the strictly limited period in the notifications.[169] Moreover, some ex-post reports did not contain sufficient information, while some Member States did not even send their ex-post reports.[170] Despite these Member States' failures, the Commission remained inactive: it did not request additional information or issue an opinion.[171] The Commission's inaction has been criticised in the literature and by the European Parliament.[172] The following subsection discusses further the Commission's passivity regarding its scrutiny role. It investigates why the Commission did not act under the Code. Then, the last subsection focuses on the infringement procedure, another tool available to the Commission to ensure that the Member States respect EU law, inter alia, when they reintroduce internal

[168] 'Resolution of 19 June 2020' (n 82) para 5. Only a limited number of notifications of the Member States included some considerations about the proportionality of the reintroduction of internal border controls. Carrera and Luk (n 43) 68. Some Member States have not, or only to a limited extent, assessed the necessity of temporarily reintroducing internal border controls. They did not show either that they were last resort measures. European Court of Auditors (n 15) para 37. For example, in its notification, the Czech Republic merely stated that '[i]n connection with the spread of COVID-19 caused by the new coronavirus SARS-CoV-2, a serious threat to public order and internal security of the Czech Republic has been identified'. Carrera and Luk (n 43) 69.

[169] 'Resolution of 19 June 2020' (n 82) para 5.

[170] European Court of Auditors (n 15) para 40; 'Impact Assessment Report Accompanying the 2021 Proposal' (n 20) 141. The European Court of Auditors reviewed twelve ex-post reports of controls reintroduced during the COVID-19 pandemic. Ten of them did not contain a sufficiently detailed proportionality assessment and only three mentioned, very briefly, possible alternative measures. European Court of Auditors (n 15) para 41.

[171] European Court of Auditors (n 15) para 38; Salomon and Rijpma (n 22) 6. By 1 September 2022, the Commission had not taken any step to enforce the rules of the Schengen Borders Code.

[172] European Parliament, 'Resolution of 8 July 2021 on the Annual Report on the Functioning of the Schengen Area' (2019/2196(INI)) para 4; Gerkrath (n 54) 8.

border controls.[173]

3.2.4.1 Soft law and opinions under the code

The Commission remained inactive regarding respect of proportionality during the COVID-19 pandemic and did not issue any opinion[174] despite its duty enshrined in the second paragraph of Article 27(4) SBC and the Joint Roadmap of 2020 stating that '[t]he Commission [would] continue to analyse the proportionality of measures taken by Member States […] and [would] intervene to request the lifting of measures considered disproportionate […]'.[175] Already in 2020, the European Parliament called on the Commission to make use of its prerogatives by requesting additional information from the Member States and adopting opinions when necessary.[176] In 2022, the European Court of Auditors also deplored that the Commission did not use its scrutiny powers and recommended that the EU institution ask for supplementary information when the notification or report lacks sufficient information and issue opinions when it has concerns as regards proportionality.[177] The Commission argued that requesting additional information in writing to Member States was not the most efficient measure considering the rapidly evolving context of the pandemic.[178] It preferred regular meetings with the 'COVID-19 Informa-

[173] The Schengen Evaluation and Monitoring Mechanism is another tool that the Commission could use. Subsection 3.2.4.2 focuses on the infringement procedure rather than the Schengen Evaluation and Monitoring Mechanism. Heinikoski argues that the Schengen Evaluation and Monitoring Mechanism de facto replaces the infringement procedure as regards the monitoring of the Schengen Borders Code. The Regulation on the Schengen Evaluation Mechanism would be a *lex specialis*. Council of the European Union, 'Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen' [2013] OJ L295/27; Heinikoski (n 49) 5. This intergovernmental enforcement mechanism evaluates annually the implementation of the Schengen acquis of some Member States, and it is not specific to the reintroduction of internal border controls. Moreover, the Commission itself acknowledges that it has shortcomings. Jonas Bornemann, 'The Commission's Proposed Reform of the Schengen Area: Stronger Enforcement or Conflict Aversion?' (*EU Law Enforcement*, 31 January 2022) <https://eulawenforcement.com/?p=8157> accessed 1 September 2022). In June 2021, the Commission proposed to revise this mechanism. COM (2021) 891 final 9.

[174] Carrera and Luk (n 43) 51; Gerkrath (n 54) 8; Montaldo (n 51) 423. Just as during the migration crisis, the legal framework provided a possibility to challenge the continuous border controls, but the Commission lacked political will to do so. Marie De Somer, 'Schengen: Quo Vadis?' (2020) 22 European Journal of Migration and Law 178, 185.

[175] European Commission and European Council, 'Joint European Roadmap towards lifting COVID-19 containment measures' [2020] OJ C126/1, 14.

[176] 'Resolution of 19 June 2020' (n 82) para 13.

[177] European Court of Auditors (n 15) 38-39. The Commission accepted these recommendations. Commission, 'Replies of the European Commission to the European Court of Auditors' special report: Free movement in the EU during the COVID-19 pandemic: Limited scrutiny of internal border controls, and uncoordinated Member States' actions' (2022) 7.

[178] 'Replies of the European Commission' (n 177) 4.

tion group – Home affairs'.[179]

Academics interpret the lack of a strong response by the Commission differently. Schade argues that the Commission was unlikely to adopt some strong measures during the COVID-19 pandemic since it did not react to the reintroduction of border controls following the migration crisis and merely holds an advisory role in the EU approach to the restrictions on freedom of movement.[180] Indeed, during the migration crisis, the Commission opted for soft law measures, such as dialogue with Member States and coordination. However, this approach was inconclusive since six Member States have been keeping internal border controls for more than six years.[181] Wolff, Ripoll Servent and Piquet agree that the alignment of the reintroduction of internal border controls during the pandemic with previous initiatives explain the absence of contestation or debate.[182] On the other hand, Bouveresse considers that the Commission did not issue any negative opinion as regards proportionality because it wished to react quickly rather than sanction Member States.[183] According to her, the adoption of soft law instruments by the Commission, such as communications and guidelines,[184] shows its pragmatism and search for efficiency.[185]

The ECJ and AG Saugmandsgaard Øe seem to disagree with the Commission's approach to mainly issue guidelines and communications. In its *NW* judgment, the ECJ reminds the Commission of its duty to issue an opinion if it has concerns as regards proportionality or necessity under Article 27(4) SBC.[186] The ECJ criticises that the Commission did not issue any opinion about the Austrian long-lasting controls even though it considered that the controls were incompatible with the Schengen Borders Code and thus EU law.[187] It is likely that the ECJ will follow similar reasoning if it rules on long-lasting controls reintroduced during the COVID-19 pandemic.[188] In his opinion in the *NW* case, AG Saugmands-

[179] ibid.

[180] Schade (n 9) 8–9.

[181] European Court of Auditors (n 15) paras 34 and 80. As mentioned in n 133, Austria, Denmark, France, Germany, Norway, and Sweden have been keeping continuous border controls since 2015.

[182] Wolff, Ripoll Servent and Piquet (n 53) 1129.

[183] Bouveresse (n 20) 519.

[184] See, for example, Commission, 'Communication from the Commission: Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls – COVID-19' COM (2020) 3250 final.

[185] Bouveresse (n 20) 519.

[186] *NW* (n 11) para 91.

[187] ibid; Cebulak and Morvillo (n 148). The ECJ added that the lack of opinion by the Commission does not have any bearing on the interpretation of the Schengen Borders Code by the Court. *NW* (n 11) para 93).

[188] As mentioned in n 159, there was no pending case at the time of 1 September 2022 directly questioning long-lasting internal border controls reintroduced during the COVID-19 pandemic.

gaard Øe found it regrettable that the Commission did 'not play the role entrusted to it by th[e Schengen Borders Code]'.[189]

3.2.4.2 Infringement procedure

As the guardian of the Treaties, the Commission is responsible for monitoring compliance with EU law.[190] The Commission may launch an infringement procedure against a Member State.[191] Under Article 258 TFEU, the Commission must deliver a reasoned opinion to a Member State that fails to fulfil an obligation under the Treaties.[192] If a Member State does not comply, the Commission may refer the matter to the ECJ.[193] The Commission has not yet launched an infringement procedure related to internal border controls reintroduced during the COVID-19 pandemic despite its concerns that they fail to comply with EU law.[194] Gerkrath believes that the Commission should have started infringement proceedings.[195] The European Court of Auditors also recommends that the Commission launch enforcement action in situations of long-term non-compliance with the Code.[196] Yet, the Commission did not accept this recommendation, arguing that it interferes with its discretion as regards its enforcement policy and whether or not to start an infringement procedure.[197] Moreover, the Commission considers that launching infringement procedures is not the most appropriate response considering the number of Member States concerned, the complex implications involved, and the negative effect it would have on trust between itself and the Member States.[198]

---

[189] Opinion of AG Saugmandsgaard Øe (n 147) para 73.

[190] TEU, Article 17(1).

[191] In practice, the Commission first sends a letter of formal notice to the Member State concerned requesting additional information. The Member State usually has two months to send a detailed reply. If the Commission is not satisfied with the reply, it may officially start the infringement procedure by sending a reasoned opinion.

[192] TFEU, first paragraph of Article 258.

[193] ibid, second paragraph of Article 258.

[194] European Court of Auditors (n 15) para 33. In 2020, the Commission announced that it would 'more systematically consider the launching of infringement procedures' where the Member States keep their internal border controls beyond what is necessary. Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum' COM (2020) 609 final 15. However, as of September 2022, it has not yet put its words into action.

[195] Gerkrath (n 54) 12.

[196] European Court of Auditors (n 15) 39.

[197] 'Replies of the European Commission to the European Court of Auditors' (n 177) 7.

[198] 'Impact Assessment Report Accompanying the 2021 Proposal' (n 20) 37. With regard to the long-lasting border controls reintroduced during the migration crisis, the Commission did not initiate an infringement procedure either, as this would have been counterproductive and increased the politicisation and emotionalisation of the situation, according to De Somer (De Somer (n 174) 185.

3.3 Conclusion: proportionate internal border controls during the COVID-19 pandemic?

As mentioned above in Section 3.1, when reintroducing internal border controls during the COVID-19 pandemic, most Member States first relied on Article 28 SBC, and then, after the first two months, used Article 25 SBC.[199] Section 3.2 showed that the articles in Chapter II of Title III of the Schengen Borders Code provide the following safeguards to ensure that proportionality is respected when Member States reintroduce internal border controls in situations of health emergencies.

First, the Schengen Borders Code provides two clear 'legitimate objectives' to pursue when reintroducing internal border controls, namely public policy and internal security. However, it remains silent regarding a threat to public health, which gave rise to a preliminary reference on the question in the *NORDIC INFO* case. Second, the Code requires that Member States assess the extent to which the reintroduction of internal border controls adequately remedies the identified threat. Yet, it does not provide many details about this requirement of suitability, which makes it the weakest of the examined safeguards. Third, the Code provides maximum durations for internal border controls, which can restart solely if a new threat arises, according to the ECJ in its *NW* judgment. It also requires that their duration does not exceed what is strictly necessary. Fourth, the Code contains some clear safeguards to ensure scrutiny over proportionality. On one hand, Member States must notify the Commission when they reintroduce and prolong internal border controls and send an ex-post report after lifting them. The notifications and reports must both contain an assessment of the proportionality of the measures. On the other hand, the Commission has the power to require additional information when it cannot evaluate the proportionality of the assessments and issue opinions when it has concerns regarding proportionality and necessity.

Section 3.2 above also demonstrated that the Member States disregarded these safeguards when they reintroduced internal border controls during the COVID-19 pandemic. They invoked a threat to public health, which is not included in the Code. They reintroduced internal border controls that are not adequate to remedy the threat arising from the pandemic. Some of their border controls lasted longer than the time limits provided in the Code and some switched legal bases. Moreover, the Member States sent incomplete notifications and reports with assessments lacking important information. The Commission did not use any of its prerogatives under the Schengen Borders Code: it did not request additional information or issue any opinion when this would have been necessary.

In conclusion, there are safeguards on paper for the four aspects of proportionality discussed. However, in practice, they are insufficiently

[199] Wolff, Ripoll Servent and Piquet (n 53) 1130.

respected or used. As a result, the internal border controls reintroduced during the COVID-19 pandemic were disproportionate. The problem thus comes from the lack of political will of the Member States and the Commission to enforce the safeguards rather than from the content of the Schengen Borders Code.[200]

4 Proportionality and the 2021 Proposal to amend the Schengen Borders Code

4.1 2021 Proposal

Part 3 above has shown that, despite clear safeguards, four aspects of proportionality were problematic when the Member States reintroduced internal border controls during the COVID-19 pandemic. A discrepancy between law and practice is not desirable. The European Parliament shares this opinion and declared that the Schengen Borders Code is 'no longer fit for purpose and requires urgent and meaningful reform'.[201] To remedy the situation, on 14 December 2021, the Commission released a proposal to amend the Schengen Borders Code.[202] It is part of a broader framework intended to strengthen and increase the resilience of the Schengen area[203] and could be the first major amendment to the Code.[204] The proposal includes some provisions to amend the articles concerning the reintroduction of border controls at internal borders[205] and external borders.[206]

The 2021 proposal is not the Commission's first attempt to amend the rules about the reintroduction of internal border controls. In 2017, following two years of significant increase in internal border controls for reasons of migration and terrorism, the Commission issued a proposal to amend solely the provisions dealing with the reintroduction of internal border controls, the '2017 proposal'.[207] It provided for a significant extension of the maximum period for the reintroduction of internal border con-

[200] Thym and Bornemann (n 20) 1169–1170.

[201] 'Resolution of 8 July 2021' (n 172) para 40.

[202] COM (2021) 891 final.

[203] Council of the European Union, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders – General approach' 2021/0428(COD) paras 1–2.

[204] EU Law Live, 'New Regulation to Deal with Schengen Challenges Proposed by Commission' (*EU Law Live*, 15 December 2021) <https://eulawlive-com.mu.idm.oclc.org/new-regulation-to-deal-with-schengen-challenges-proposed-by-commission/> accessed 1 September 2022.

[205] COM (2021) 891 final 5.

[206] ibid 2–3. This article focuses on internal border controls, so it does not discuss amendments to rules on external borders.

[207] Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders (2017 Proposal)' COM (2017) 571 final 2.

trols: for instance, the time limit for persistent foreseeable threats would have been extended from six months to three years.[208] The inclusion of better procedural safeguards, such as stricter reporting requirements and a mandatory Commission opinion after one year of controls, would have balanced these longer time limits.[209] The EU co-legislature failed to agree on the 2017 proposal, so the Commission withdrew it in 2021.[210]

The scope of the 2021 proposal is broader. It is based on discussions in connection with the previous 2017 proposal and the lessons drawn from the COVID-19 pandemic.[211] Similarly, it has to go through the ordinary legislative procedure before amending the Schengen Borders Code.[212] In that procedure, the Commission has the power of initiative, whereas the Council and the European Parliament decide jointly on its wording and adoption.[213] The position of the EU legislature thus constitutes a good indication of the future wording of the Schengen Borders Code. The Council has released its general approach about the 2021 proposal,[214] while the European Parliament is still in the reporting phase.[215] The relevant amendments of the 2021 proposal to Chapter II of Title III of the Schengen Borders Code can be classified into four categories.

First, as with the 2017 proposal, the Commission wishes to strengthen the procedural safeguards required when reintroducing unilateral internal border controls.[216] It clarifies and broadens the list of elements the Member States must assess when reintroducing internal border controls[217] and adds an obligation to conduct a risk assessment in the case of prolonged internal border controls in situations of foreseeable threats.[218]

---

[208] ibid 3–4, 7, and 15–17.

[209] ibid 4, 7, and 15–17.

[210] COM (2021) 891 final 11. For further information about the legislative process of the 2017 proposal, see Anja Radjenovic, Temporary Reintroduction of Border Control at Internal Borders' (*Legislative Train Schedule*, 20 August 2022) <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-temporary-reintroduction-of-border-control-at-internal-borders?sid=6101> accessed 1 September 2022.

[211] Commission, 'Communication from the Commission to the European Parliament and the Council: A strategy towards a fully functioning and resilient Schengen Area' COM (2021) 277 final 18. Montaldo argues that the way the Member States used the provisions of the Schengen Borders Code during the COVID-19 pandemic could influence the heated debates concerning the 2021 proposal. Montaldo (n 54) 525.

[212] COM (2021) 891 final 23; 'Procedure file 2021/0428(COD)' (n 35).

[213] TFEU, Article 294.

[214] '2021 Proposal – General approach' (n 203).

[215] On 31 March 2022, the European Parliament designated its rapporteur and shadow rapporteurs among the members of the LIBE committee. By 1 September 2022, no report about the 2021 proposal had been issued. 'Procedure file 2021/0428(COD)' (n 212). For further information about the legislative process concerning the 2021 proposal, see Dumbrava (n 32).

[216] COM (2021) 891 final 8.

[217] ibid 7.

[218] ibid, Article 27(2). This mandatory risk assessment was already included in the 2017 proposal and had found the general backing of the EU legislature (ibid 11).

Further, the proposal clarifies when the Commission could or should issue an opinion on the necessity and proportionality of internal border controls.[219] Second, it encourages the limitation of the impact of the measures on internal border regions.[220] The Member States should take greater account of border regions when conducting their risk assessment.[221] Subsection 4.2.4 below analyses these changes when assessing whether the 2021 proposal would ensure that the Commission makes greater use of its scrutiny powers regarding proportionality and the Member States conduct stricter risk assessments.

Third, the Commission would like to encourage the use of alternative and proportionate measures.[222] The proposal clarifies when and how the Member States may introduce checks other than border controls in border areas.[223] Fourth, the EU institution supports the creation of a new mechanism where the serious threat to public policy or internal security simultaneously affects a majority of Member States, putting the overall functioning of the area without internal border controls at risk.[224] Subsection 4.2.2 below presents this contingency plan in detail and investigates whether police checks would remedy more adequately the threats caused by public health emergencies.

4.2 Four aspects of proportionality in the 2021 proposal

4.2.1 First aspect: type of threat

4.2.1.1 The new Article 25(1)(b)

In the proposal, the new Article 25 provides a general framework applicable to any kind of reintroduction of internal border controls.[225] Paragraph 1(b) of this Article specifies that, among other things, 'large scale public health emergencies' can give rise to a serious threat to public

[219] ibid 7, 22 and Article 27a.

[220] ibid 8.

[221] ibid 8 and 22.

[222] ibid 8.

[223] ibid.

[224] ibid 7 and Article 28.

[225] ibid 21.

policy or internal security.[226] This new provision would bring more legal certainty by making clear that the Member States have a legal basis to reintroduce internal border controls in situations similar to the COVID-19 pandemic.

If the proposed article is adopted as it stands with this explicit mention, it would close the debate mentioned above on whether public health is included in the concepts of public policy and internal security or is an acceptable ground under the Schengen Borders Code.[227] The 2021 proposal is in line with the first position. The general approach of the Council also leans in that direction.[228] The European Parliament had earlier called for 'clearer rules on public health emergencies',[229] so it probably welcomes the inclusion of 'large scale public health emergencies' in Article 25(1)(b) of the proposal. De Bruycker considers that it is the 'minimum for the sake of clarity'.[230] The Meijers Committee embraces this explicit introduction since it enhances legal certainty.[231] However, it wanted a 'clear and narrowly circumscribed definition' of 'large scale public health emergencies' to accompany this introduction.[232] In conclusion, as the 2021 proposal stands, it explicitly broadens the scope of situations where the Member States may reintroduce internal border controls and fails to provide a threshold that the threat must meet.

4.2.1.2 Public health not as a separate ground and *NORDIC INFO*

Bornemann and the Meijers Committee question the Commission's approach: why is public health included under public policy and internal security, and not a ground on its own?[233] This interrogation is legitimate

---

[226] Article 25(1) of the 2021 proposal mentions three other circumstances: '(a) activities relating to terrorism or organised crime; […] (c) a situation characterised by large scale unauthorised movements of third-country nationals between the Member States, putting at risk the overall functioning of the area without internal border control; (d) large scale or high-profile international events, such as sporting, trade, or political events'. These four new situations encompass all the circumstances which have led to the reintroduction of internal border controls since the creation of the Schengen area. At the outset of the establishment of the Schengen area, the provisions about the reintroduction of internal border controls were used in the circumstances listed under d). Then, during the migration crisis in the mid-2010s, Member States invoked the activities under c). With the rise of terrorism in the EU, Member States relied on situations mentioned under a). Finally, during the COVID-19 pandemic, the circumstances under b) arose. For further information about the circumstances leading to the reintroduction of internal border controls in the Schengen area between 1999 and 2020, see Gülzau (n 49).

[227] For further information about the debate, see Subsection 3.2.1.1 above.

[228] The Council did not suggest any modification to Article 25(1)(b) of the 2021 Proposal. '2021 Proposal – General approach' (n 203) 33).

[229] 'Resolution of 8 July 2021' (n 172) para 40.

[230] De Bruycker (n 50) 6.

[231] Meijers Committee, *Commentary on the Commission Proposal Amending the Schengen Borders Code (COM(2021) 891)* (Meijers Committee, 2022) 4.

[232] ibid.

[233] Bornemann (n 173); idem.

because the 2021 proposal, contrarily to other texts of EU law, such as the Free Movement Directive,[234] does not include the triptych of public order, public safety, and public health.[235] Instead, public health falls under public order and internal security. The referring court in *NORDIC INFO* is also puzzled by the fact that one situation of public health would fall under public policy following the 2021 proposal, while it would constitute a separate ground of public health under the Free Movement Directive.[236] Bornemann explains that the new Article 25(1)(b) replicates the interpretation that underpinned the Member States' practices during the early stages of the pandemic.[237] The Meijers Committee believes that it is a way to provide a legal basis for the current and past reinstatements of internal border controls.[238]

Moreover, the ECJ judgment in the *NORDIC INFO* case could influence the wording of the new Article 25(1) depending on the date that it is rendered. If the ECJ first renders its judgment, the 2021 proposal would *de facto* have to consider it and perhaps change its wording. However, if the EU legislature adopts the 2021 proposal before and the ECJ decides to exclude public health from the grounds under the Code, it would be more problematic since the wording of the (newly) amended Schengen Borders Code would already not be in accordance with the case law. To avoid any discrepancy between the Schengen rules in the Code and case law, it would thus be preferable for the EU legislature to adopt the 2021 proposal after the Court has rendered its judgment in the *NORDIC INFO* case. Yet, this might delay the adoption of the 2021 proposal since the ECJ would only rule on the matter in 2023 or even 2024.[239]

4.2.2 Second aspect: adequacy

4.2.2.1 The new Article 28 mechanism

Article 28 of the proposal establishes a new mechanism that would safeguard the Schengen area where 'the same serious threat to public policy or internal security affects a majority of Member States, putting at risk the overall functioning of the area without internal border con-

[234] For example, Article 1(c) of the Free Movement Directive (n 14) mentions the grounds of public policy, public security, and public health on an equal footing.

[235] Gerkrath uses this concept of 'triptych' in Gerkrath (n 54) 10.

[236] Case C-128/22: Summary of the request for a preliminary ruling (Working document, 23 February 2022) para 20.

[237] Bornemann (n 173).

[238] Meijers Committee (n 231) 4.

[239] In 2021, the average duration of proceedings for references for preliminary rulings was 16.7 months. Court of Justice of the European Union, *Annual Report 2021: Judicial Activity* (Annual Report, 2022) 243. Following these statistics, the Court would decide on the *NORDIC INFO* case in around June/July 2023 since the Belgian court sent a reference for a preliminary ruling in February 2022.

trols'.[240] Based on a proposal from the Commission, the Council would adopt an implementing decision authorising the reintroduction of internal border controls by the Member States.[241] This new mechanism could be applied in situations similar to the COVID-19 pandemic and is a clear response to that crisis. With its amendments to the 2021 proposal, the Council intends to lower the threshold set by the Commission to rely on that mechanism and give more powers to the Member States. For instance, according to the Council, the threat would have to affect only several Member States and not the majority of them, and the Member States would be competent to request the Commission to make a proposal to the Council.[242] Moreover, the Council does not want the Commission to suggest mitigating measures in its proposal or issue a recommendation about other measures to adopt.[243]

This mechanism would ensure that the reintroduction of internal border controls is more coordinated since it would replace any national measure in place.[244] Nonetheless, this 'more Europeanised procedure'[245] does not address the issue of the lack of adequacy of internal border controls to remedy the public health threat identified above. It is paradoxical that the Commission proposed a new mechanism applicable notably in situations similar to the COVID-19 pandemic when scientific evidence has shown that border controls did not help meet the threat arising from the pandemic. Indeed, the involvement of the Commission and the Council does not make border controls more adequate from an epidemiological point of view.

It is also questionable whether there was a need for a fourth mechanism considering that the Member States have been abusing the existing mechanisms and prolonged their controls for months, as shown in Subsection 3.2.3.1 above. It is even more controversial when one knows that controls reintroduced under the new Article 28 could last indefinitely. Indeed, the decision to reintroduce internal border controls would cover a period of up to six months and could be renewed for periods of the same duration as long as the threat persists.[246] Therefore, this new Article 28 undermines the border-free area principle with such lax rules.

---

[240] COM (2021) 891 final, Article 28(1).

[241] ibid, Article 28(1). This mechanism is similar to the one established in Article 29 for situations where exceptional circumstances put the overall functioning of the area without internal border control at risk. In both instances, the Council acts upon a proposal from the Commission. Bornemann (n 173).

[242] '2021 Proposal – General approach' (n 203) Article 28(1).

[243] ibid, Articles 28(4) and (7). The power of the Commission to refer to any appropriate mitigating measures was an important element of this new mechanism. COM (2021) 891 final 7.

[244] COM (2021) 891 final 22.

[245] Bornemann (n 173).

[246] COM (2021) 891 final, Article 28(2). The Council did not make any amendment to that paragraph, so it *de facto* agrees with the absence of a time limit. '2021 Proposal – General approach' (n 203) 40.

4.2.2.2 More adequate alternatives?

With its 2021 proposal, the Commission wishes to increase the use of alternative measures, in particular police checks, instead of internal border controls.[247] This objective is not new: the Commission had already called on the Member States to give precedence to police checks in situations of a serious threat to internal security or public policy.[248] Article 23 SBC explains that these checks cannot have border controls as their objective, must aim in particular to combat cross-border crime, cannot be equivalent to systematic checks at external borders, and must consist in spot checks.[249] The 2021 proposal clarifies the type of checks authorised in border areas[250] and requires that the Member States consider whether the use of alternative measures, such as checks, could be more appropriate when prolonging border controls.[251] Moreover, it states that the exercise of powers based on general information and experience of the authorities to contain the spread of an infectious disease with epidemic potential is not equivalent to the exercise of border checks.[252] Checking identity documents in border areas alone will not contribute to meeting a public health threat. Thus, establishing police checks does not help with the problem of lack of suitability in the event of a public health emergency. Moreover, it is unlikely that the Member States possess enough police officers to effectively check all concerned border areas[253] and these checks are outside the scope of the Commission's supervision.[254]

Police checks are not the only alternatives to border controls. One option consists in taking measures related to health, such as mass screenings and testing, contact tracing, and quarantines. Health-related measures are more suitable in situations of public health emergencies. However, according to the Commission, health checks do not require

[247] COM (2021) 891 final, 5 and 8.

[248] Commission, 'Commission Recommendation (EU) 2017/820 of 12 May 2017 on proportionate police checks and police cooperation in the Schengen area' COM (2017) 3349 final, para 2; Ylva Johansson, '11. Situation in the Schengen area following the Covid-19 outbreak (debate)' (*European Parliament*, 18 June 2020) <https://www.europarl.europa.eu/doceo/document/CRE-9-2020-06-18-ITM-011_EN.html> accessed 1 September 2022. The Commission's encouragements to use police checks in border areas constitute a significant change from its original approach of strictly limiting their use. De Somer (n 174) 188. Montaldo explains this shift by the lack of effectiveness of the formal toolkit designed to preserve the internal dimension of Schengen. Montaldo (n 51) 428.

[249] Article 23 is under Chapter I of Title III of the Schengen Borders Code, called 'Absence of border control at internal borders'. This position in the Code emphasises that police checks within the territory are not equivalent to border controls. The Treaty basis of police checks is Article 72 TFEU. Montaldo (n 51) 428. The ECJ further clarifies the concept of police checks in its case law (eg C-188/10 (Melki), C-278/12 (Adil), and C-444/17 (Arib)). Carrera and Luk (n 43) 51.

[250] COM (2021) 891 final 21.

[251] ibid, Article 26(2).

[252] ibid, third indent of Article 23(a)(ii).

[253] Carrera and Luk (n 43) 69.

[254] Montaldo (n 51) 428.

the reintroduction of formal border controls,[255] similarly to the other health-related measures mentioned and none of them are specifically border related. The Schengen Borders Code is thus not the appropriate instrument to include such alternatives.

Another option would be to consider epidemiological data when reintroducing border controls. Similarly to the traffic light system introduced for intra-EU mobility during the COVID-19 pandemic,[256] controls could be allowed only between Member States or regions with different colours, meaning that their infection and positivity rates differ significantly. Involving the European Centre for Disease Prevention and Control (ECDC) would give some legitimacy to the controls, especially since the ECDC would be involved at the external borders to determine whether there is a disease with epidemic potential in third countries in the 2021 proposal.[257] Yet, reintroducing border controls based on epidemiological data in the Member States or advice by the ECDC does not make internal border controls more suitable if they are limited to checking identity and travel documents. In conclusion, this difficulty in finding appropriate measures related to border controls to meet the threats arising from public health emergencies might show that border controls are not suitable in such circumstances and that the Code should not be amended to include 'large scale public health emergencies'. In future pandemics, the Member States should rely on instruments other than the Schengen Borders Code to meet the threat.

4.2.3 Third aspect: duration of internal border controls

4.2.3.1 The new Articles 25a and 27a

Article 25a of the proposal contains the procedure applicable to unilateral reintroductions of internal border controls when the threats are foreseeable and unforeseeable and merges the procedures of the current Articles 25 and 28 SBC.[258] This new article also changes the maximum duration of controls from two months to three months for unforeseeable threats and from six months to two years for unforeseeable threats.[259] Thus, the 2021 proposal significantly extends the maximum duration of

[255] COM (2020) 1753 final, para 20.

[256] With its non-binding Recommendation (EU) 2020/1475, the Council established a colour-based 'traffic light' system to coordinate the restriction to cross-border mobility. The ECDC attributes a colour to the EU regions based on the epidemiological data of the regions (14-day cumulative COVID-19 case notification, test positivity, and testing rates). For example, the Council recommends that Member States should not restrict travel to regions classified as 'green'. Council of the European Union, 'Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic' [2020] OJ L337/3, 6 ff.

[257] COM (2021) 891 final, Article 21a(1).

[258] ibid 21.

[259] ibid, Article 25a(3) and (5); SBC, Articles 25(4) and 28(4).

internal border controls. The Council validated these new time limits in its general approach.[260]

Paragraph 5 of Article 27a goes even further and would allow controls to persist beyond these time limits in exceptional scenarios.[261] The Council is more moderate than the Commission. In its general approach, it tightened the conditions to rely on Article 27a(5): there must be a 'major exceptional situation in respect to a persisting threat', the notification must include a thorough risk assessment, and the Commission must issue a recommendation on the proportionality and necessity of the controls.[262] These extensions of the maximum durations suggest that the Commission yielded to some Member States' practices of keeping their border controls for months.[263]

Yet, the text is not likely to be adopted with these extended time limits for two reasons. First, the European Parliament will most probably refuse. During the negotiations on the 2017 proposal, the European Parliament refused to extend the maximum durations: it wanted to limit the period of the first reintroduction of border controls to six months instead of twelve, and the subsequent prolongation to an additional year instead of two.[264] Additionally, it called for more stringent rules on the maximum duration of controls.[265]

Second, in its *NW* judgment, the ECJ held that the EU legislature considered that a period of six months was long enough when the Member States faced a foreseeable threat.[266] If asked, the ECJ is unlikely to agree with the extension of maximum durations in the 2021 proposal and the possibility to prolong internal border controls beyond the maximum duration. It would certainly have preferred the proposal to include

[260] '2021 Proposal – General approach' (n 203) 34 and 35.

[261] Article 27a(5) of the 2021 proposal reads as follows: '*Where a Member State considers that there are exceptional situations justifying the continued need for internal border controls in excess of the maximum period referred to in Article 25(5)*, it shall notify the Commission in accordance with Article 27(2). The new notification from the Member State shall substantiate the continued threat to public policy or internal security, taking into account the opinion of the Commission given pursuant to paragraph 3. The Commission shall issue a follow up opinion' (emphasis added).

[262] '2021 Proposal – General approach' (n 203) 4-5 and Article 27a(5).

[263] Bornemann (n 173).

[264] European Parliament, 'Amendments adopted by the European Parliament on 29 November 2018 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders (COM (2017)0571 — C8-0326/2017 — 2017/0245(COD))' [2020] OJ C363/385, Amendments 12 and 40.

[265] Montaldo (n 54) 530. Among other things, the European Parliament wanted any prolongation of the controls beyond the initial six months to require a Council recommendation. 'Amendments adopted by the European Parliament on 29 November 2018' (n 264) Amendments 15 and 17.

[266] *NW* (n 11) para 77. Martins Pereira argues that, in that paragraph, the ECJ implicitly held that internal border controls constitute inappropriate means in situations of persistent threats. Martins Pereira (n 133).

a 'sunset clause' that would prevent Member States from extending controls indefinitely.[267]

4.2.3.2 End of legal basis switch and more respect for necessity?

As mentioned above, some Member States used to switch legal bases to disproportionately extend the duration of their internal border controls beyond the limit set in the Schengen Borders Code.[268] It is legitimate to wonder whether the 2021 proposal will put an end to these practices. Considering that the Commission has remained silent on the disproportionate controls in place since 2015,[269] it is not surprising that the 2021 proposal does not include any clause prohibiting the switch between legal bases when the same threat persists. The Commission released its proposal before the ECJ rendered its *NW* judgment, which condemned these practices. In theory, the judgment would suffice, and there would be no need for an additional clause. In practice, this will depend on the level of compliance of the Member States. Furthermore, one can argue that the 2021 proposal would *de facto* end these practices. Indeed, it would extend the maximum time limits and even allow the prolongation of controls beyond them. In these circumstances, it would no longer be necessary to switch legal bases to keep border controls in place for months or even years.

During the COVID-19 pandemic (and the previous crises), Member States, six in particular, maintained internal border controls for months by switching legal bases.[270] The approach of the Commission and the Council gives more flexibility to the Member States and the necessary resources to legally prolong their internal border controls for months and even years. Extending the maximum duration of internal border controls and allowing controls to persist beyond in exceptional scenarios do not improve the necessity of the controls. On the contrary, the requirement that the controls constitute the least restrictive measures would be more difficult to fulfil, leading more easily to disproportionate internal border controls. Nonetheless, the European Parliament is likely to suggest amendments to diminish the maximum duration and perhaps prohibit it from being exceeded.

---

[267] Carrera and Chun Luk mention this notion of 'sunset clause' for the duration of internal border controls in *Love Thy Neighbour?* (n 51) 40.

[268] For further information, see Subsection 3.2.3.1 above.

[269] Meijers Committee (n 231) 2.

[270] See n 133.

4.2.4 Fourth aspect: scrutiny over proportionality

4.2.4.1 Stricter and more frequent assessments

One way to improve scrutiny over proportionality is to require Member States to conduct stricter and more frequent assessments of proportionality. The 2021 proposal contains such rules. The new Article 26 would specify the content of the assessment depending on whether the Member States reintroduce for the first time or prolong, in situations of foreseeable threats, their internal border controls.[271] The list of elements to consider would differ between the two situations due to the Member States' incremental burden of proof.[272] It would include new elements, such as the impact on cross-border regions[273] and mitigating measures.[274] The new Article 27(1) would require the Member States to use a template for their notifications, which would improve the quality. In addition, according to the new Article 27(2), the Member States would have to submit a risk assessment when their controls have been in place for six months and when they wish to prolong them. Lastly, the Member States would also have to conduct a risk assessment when they want to extend their controls beyond the maximum period, ie three months or two years.[275] The Meijers Committee welcomes these stricter reporting obligations on the Member States.[276]

The 2021 proposal also addresses the poor quality and lack of ex-post reports with the new Articles 33 and 27. The new Article 33(2) would require the Member States to submit an ex-post report every twelve months even if they have not lifted their controls for foreseeable threats and extend them beyond the maximum duration. Moreover, similarly to the notifications under the new Article 27, the Commission would have to adopt a uniform format for ex-post reports.[277]

In conclusion, the 2021 proposal would increase the scrutiny on the Member States' side by requiring more elements to be assessed in the risk assessments and more frequent risk assessments, using templates to

[271] COM (2021) 891 final, Article 26(1) concerns the first-time reintroduction, while Article 26(2) contains the rules for the prolongation of internal border controls when the threat is foreseeable.

[272] ibid 22. In 2021, the European Parliament recommended that additional safeguards and oversight measures should accompany each prolongation of border controls. 'Resolution of 8 July 2021' (n 172) para 40. The 2021 proposal requires that the Member States assess more elements when they decide to prolong their border controls. It thus meets this recommendation since it requires an assessment of additional elements in the event of prolongation. However, it does not make any distinction between further prolongations.

[273] COM (2021) 891 final, Article 26(1)(b). The Meijers Committee welcomes the inclusion of the free movement of persons in cross-border regions. Meijers Committee (n 231) 4.

[274] COM (2021) 891 final, Article 26(3).

[275] ibid, Article 27a(5).

[276] Meijers Committee (n 231) 4.

[277] COM (2021) 891 final, Article 33(4).

harmonise notifications and ex-post reports sent to the Commission, and requesting more frequent ex-post reports. It seems that it would be more difficult for the Member States to ignore their scrutiny duties with these new rules that are more demanding. Hopefully, the Member States will comply more assiduously with these scrutiny requirements than they did during the COVID-19 pandemic.

4.2.4.2 More powers and obligations for the Commission

The second way to improve scrutiny over proportionality is to grant more powers to the Commission or impose additional monitoring obligations.[278] Article 27a of the proposal clarifies when the Commission could or should issue an opinion on the necessity and proportionality of internal border controls and when consultations between the Commission and Member States should occur.[279] Issuing an opinion would be optional,[280] except for one situation: when border controls have been in place for a total of eighteen months – or twelve months, according to the Council.[281] Member States wishing to prolong border controls beyond the maximum period would have to consider this opinion, and the Commission would have to issue a follow-up opinion.[282]

In essence, the 2021 proposal adopts a different and more objective approach as regards the opinions. Under the Schengen Borders Code, the Commission must issue an opinion when it has doubts about the proportionality and necessity of the controls. The proposal rather mentions some situations where the Commission would have to issue an opinion, regardless of whether or not it has doubts. This change is desirable considering that the Commission did not use its prerogatives during the COVID-19 pandemic. If the Commission has the duty to issue an opinion in certain circumstances, it could not argue that it did not issue an opinion because it had no doubts as regards proportionality. The Meijers

[278] The new Article 33(6) clarifies the elements that the Commission should include in its State of Schengen Report. The third paragraph of Article 33 SBC already requires the Commission to present, at least annually, a report on the functioning of the Schengen area without internal border control. However, the Commission has not issued such a report since 2015. In 2021, it announced that it would relaunch the adoption of the report. 'Replies of the European Commission to the European Court of Auditors' special report' (n 177) 5. This report concerns the reintroduction of internal border controls in general and is not specific to the proportionality of border controls, hence it is not mentioned in the body of the article.

[279] COM (2021) 891 final 22.

[280] For instance, opinions related to the ex-post assessments remain optional. ibid, Article 33(5).

[281] ibid, Article 27a(3). The Council wishes to reduce the time before which the Commission would have a duty to issue an opinion. '2021 Proposal – General approach' (n 203) 4 and 38.

[282] COM (2021) 891 final, Article 27a(5). As mentioned in n 272, the European Parliament recommended that additional safeguards and oversight measures should accompany each prolongation of border controls. 'Resolution of 8 July 2021' (n 172) para 40. The 2021 proposal requires the Commission to issue an opinion not for each prolongation but only after eighteen months. Therefore, it only meets partially the recommendation of the European Parliament. The institution would have certainly preferred that the Commission should issue an opinion for any prolongation of border controls.

Committee would prefer the Commission to issue opinions for every reinstatement of border controls and when relying on the new Article 28 mechanism.[283] In conclusion, requiring the Commission to issue an opinion on the necessity and proportionality under certain determined circumstances would already be a good step towards more proportionality. However, as the Meijers Committee noted, the 2021 proposal could have gone further and extended the duty to issue opinions to other situations.

4.3 Conclusion and recommendations

The previous sections have shown that the 2021 proposal improves the aspects of legal certainty and scrutiny by including 'large scale public health emergencies' in the circumstances leading to a serious threat to public policy or internal security, requiring stricter and more frequent assessments from the Member States, and compelling the Commission to issue opinions as regards proportionality and necessity in certain circumstances. So far, the proposal does not satisfactorily address the aspects of adequacy and duration of the controls. It creates a new mechanism to reintroduce border controls and encourage the use of police checks, which are both not more adequate to meet the threat, and largely extends the maximum duration of controls, even allowing them to be exceeded. In conclusion, the 2021 proposal ensures that two of the four aspects of proportionality are respected when Member States would reintroduce internal border controls in situations of health emergencies. Consequently, in the event of a new pandemic, the Member States might reintroduce disproportionate internal border controls regarding their duration and adequacy.

The following paragraphs recommend some amendments to the 2021 proposal to increase the proportionality of controls in the event of a future pandemic. First, concerning the type of threat, if the new Article 25(1)(b) remains as it is, it would be necessary to add a definition, preferably in Article 2 SBC, of 'large scale public health emergencies' to avoid abuse, as the Meijers Committee suggested.[284] This definition could be similar to the definition of 'threat to public health' in Article 2(21) SBC, which mentions disease with epidemic potential. This would bring greater legal certainty as to what constitutes such emergencies.

[283] Meijers Committee (n 231) 4. The Council deleted the second situation mentioned in the new Article 28(7) when the Commission may issue a recommendation about less restrictive measures. It is thus unlikely that there will be an obligation to issue an opinion in that situation. '2021 Proposal – General approach' (n 203) 41. This recommendation from the Meijers Committee approaches a little the third option presented in the impact assessment accompanying the 2021 proposal, but not retained. The third option consisted in requiring the prior approval of one EU institution for the reintroduction of internal border controls (or removing the possibility to reintroduce internal border controls). The Meijers Committee's recommendation is not as strict since it would only require a Commission's opinion and not an EU institution's approval for each reintroduction of internal border controls (and does not call for the prohibition of border controls altogether). 'Impact Assessment Report Accompanying the 2021 Proposal' (n 20) 44–46.

[284] Meijers Committee (n 231) 4.

Regarding adequacy, it seems complicated to render internal border controls adequate to meet a threat arising from a public health emergency. Police checks are not more adequate. Health-related measures, such as screenings and testing, are more appropriate, but they do not require the formal reintroduction of internal border controls and should thus not be regulated in the Schengen Borders Code. Consideration should therefore be given to removing 'large scale public health emergencies' from the grounds allowing the reintroduction of internal border controls in the new Article 25(1) since scientific evidence has shown that internal border controls are not adequate to remedy the serious threats arising from pandemics. However, if the legislature is determined to include these circumstances in the new Schengen Borders Code, it is crucial to define large scale public health emergencies, as mentioned above.

As regards duration, it is advisable to lower the maximum duration of controls, following the European Parliament's approach in the discussion about the 2017 proposal.[285] Otherwise, longer time limits could encourage Member States to maintain their internal border controls for longer periods, even if they are no longer necessary. When balancing the interests at stake, the longer the controls last, the more they impact other interests, such as border-free travel and freedom of movement. Two months for unforeseeable threats in the new Article 25a(3) and twelve months for foreseeable threats in the new Article 25a(5) seem to strike a fair balance. Then, in order to avoid controls being reintroduced on the grounds of a single continued threat to last for months or even years, it is crucial to delete the new Article 27a(5), which allows the maximum periods to be exceeded. Furthermore, if the EU legislature reduces the maximum durations as recommended, it is necessary to add a clause forbidding Member States from switching legal bases as long as the same threat persists. This clause would enshrine in a legal text one of the findings of the *NW* judgment[286] and could be phrased as 'Member States may not maintain internal border controls once the maximum total duration set in [the new] Article 25a(5) has elapsed and there is no new threat justifying an application afresh of the periods provided for in [the new] Article 25'.

In terms of scrutiny, dissociating the issue of opinions from the Commission's doubts is a good start. It would be even better to require the Commission to issue an opinion on necessity and proportionality for each reintroduction of internal border controls, as recommended by the Meijers Committee.[287] It is important to include this duty in situations of foreseeable and unforeseeable threats. This would increase scrutiny over each reintroduction of internal border controls. Moreover, this would involve the Commission at the beginning of the reintroduction of internal border controls, which is not the case under the new Article 25a contrari-

[285] 'Amendments adopted by the European Parliament' (n 264) Amendments 12 and 40.

[286] *NW* (n 11) para 94.

[287] Meijers Committee (n 231) 4.

ly to the mechanisms in the new Article 28 and Article 29, which start with its proposals. The Commission would not have to wait for the controls to be prolonged to issue an opinion as regards their proportionality and necessity as is currently the case under the 2021 proposal.

Lastly, the Schengen Borders Code should give more binding power to the opinions of the Commission to ensure that the Member States respect their duties related to proportionality and stop lacking political will to conduct proper assessments and lift their border controls as observed during the COVID-19 pandemic. Instead of requiring the Member States to 'take into account' these opinions, the prolongation, or even reintroduction, of internal border controls could be dependent on a positive opinion of the Commission on necessity and proportionality. This approval requirement would only concern the proportionality aspect of the border controls. The Member States would have to conduct proper assessment of proportionality to receive a positive opinion. The new Article 25a could include a seventh paragraph which would read as follows: 'The reintroduction of internal border controls under paragraphs 1 and 4 is conditional upon a positive opinion of the Commission on their proportionality and necessity'. This alternative would provide a clear legal basis for the Commission to sanction Member States if they reintroduce or prolong internal border controls without a positive opinion on proportionality and necessity. Under the current Code, it is more difficult for the Commission to check whether Member States comply with their obligation since the latter only have to take account of its opinion, without necessarily having to follow it.

5 Conclusion

This article has investigated the extent to which the Schengen Borders Code and the 2021 proposal ensure that the Member States reintroduce proportionate internal border controls in situations of health emergencies. It has analysed four aspects related to proportionality to offer a broad analysis of the proportionality of internal border controls reintroduced in these circumstances: the kind of threat arising out of a pandemic, the adequacy of the reintroduction of internal border controls to remedy the situation, the duration of border controls, and the scrutiny over proportionality. As mentioned in Part 2, the first three aspects have been extracted from the wording of Article 26 SBC, which requires that Member States assess 'the extent to which [the reintroduction of internal border controls] is likely to adequately remedy the threat to public policy or internal security, and [...] the proportionality of the measure in relation to that threat'. The adequacy and duration of the controls are similar to the tests of the suitability and necessity of the general principle of proportionality. The fourth aspect about scrutiny is found in Articles 27, 28, and 33 SBC and is not a step of the general proportionality test.

Part 3 has shown that Chapter II of Title III of the Schengen Borders Code contains clear rules with strict safeguards on proportionality as regards the four aspects examined. The circumstances triggering the reintroduction of internal border controls, ie a serious threat to public policy or internal security, are clear, aside from the debate on whether these concepts include a serious threat to public health, and the Code explicitly mentions in Article 25(1) that the scope and duration of the controls should not go beyond what is strictly necessary. Moreover, the Code sets clear maximum durations for the controls, imposes notification, assessment, and ex-post report obligations on Member States and gives the Commission the power to request additional information and issue opinions as regards proportionality if necessary. However, despite these clear safeguards on proportionality, when Member States relied on Articles 25 and 28 SBC during the COVID-19 pandemic, some did not respect them, nor did the Commission enforce them. In practice, some Member States invoked a threat to public health without a legal basis, reintroduced border controls knowing that they were inadequate and for longer than the legal time limits, and sent incomplete notifications and reports to the Commission, which did not request additional information and issue opinions. The lack of political will to comply with the Schengen Borders Code during the COVID-19 pandemic was problematic.

Part 4 has focused on the 2021 proposal, which adapts the Schengen Border Code to the Member States' practices during the COVID-19 pandemic: it broadens the scope and lengthens the maximum duration of the exceptions to the general prohibition of internal border controls. The 2021 proposal improves two aspects of proportionality. First, it enhances legal certainty by including 'large scale public health emergencies' in the grounds for reintroducing internal border controls even though the forthcoming ECJ judgment in the *NORDIC INFO* case could bring some changes. Then, the 2021 proposal improves scrutiny over proportionality by requiring stricter and more frequent assessments of the Member States and mandatory opinions of the Commission in certain circumstances. This strengthening of scrutiny duties is a welcome move towards more respect for proportionality and less inaction by the Member States and the Commission. However, the 2021 proposal could have provided more safeguards as regards the aspects of adequacy and duration. The new Article 28 mechanism and police checks do not seem to be more adequate than existing border controls to meet health threats. The extension of the maximum durations of controls and the possibility to exceed them are not in line with the search for the least restrictive measures. Nevertheless, the legislative process of the 2021 proposal is still ongoing. The European Parliament has the opportunity to suggest amendments and improve the two remaining aspects.

Section 4.3 presented some recommendations to increase the proportionality of the controls that would be reintroduced following the 2021 proposal. First, adding a definition of 'large scale public health emergen-

cies' mentioned in the new Article 25(1)(b), inspired by the definition of 'threat to public health' in Article 2(21) SBC, would increase legal certainty. However, second, since it seems that the measures available in the Schengen Borders Code, ie border controls and police checks, are inadequate to remedy the threat arising from a public health emergency, 'large scale public health emergencies' should not be included in the grounds for reintroducing internal border controls. Third, reducing the time limits set in the 2021 proposal to two months for unforeseeable threats and twelve months for foreseeable threats and adding a clause prohibiting a legal basis switch if the same threat persists would contribute to limiting internal border controls to what is necessary. Fourth, the Commission should be required to issue an opinion for each reintroduction of internal border controls to enhance scrutiny also when Member States reintroduce controls and not only when they prolong them. Finally, the reintroduction of internal border controls should be conditional upon a positive opinion of the Commission on their proportionality and necessity to improve the quality of the proportionality assessment and ensure that the Member States respect the Commission's opinions.

In conclusion, if the current Schengen Borders Code had been correctly applied during the COVID-19 pandemic, it would have ensured that Member States reintroduce proportionate internal border controls as regards four aspects: the reason for reintroducing internal border controls, their duration, their adequacy, and their monitoring. However, this was not always the case during the pandemic. It seems that the Commission issued the 2021 proposal to give a legal basis to these internal border controls reintroduced during the COVID-19 pandemic. This proposal, as currently formulated, would ensure that Member States reintroduce proportionate internal border controls in health emergencies, in particular with regard to the aspects of legality and scrutiny. Looking at the evolution of the reintroduction of internal border controls from the COVID-19 pandemic to the 2021 proposal, it can be seen that the content of the Schengen Borders Code will change considerably if the proposal is adopted in its current form, but Member States' practices will remain largely the same if they comply with the new rules.

Suggested citation: L Schumacker, 'Proportionality of Internal Border Controls: From the Covid-19 Pandemic to the 2021 Proposal' (2022) 18 CYELP 151.

Book Review: *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, Maciej Bernatt (Cambridge University Press 2022, ISBN: 9781108482837) 300 pp, £85,00.

Antitrust scholars have always wondered what makes competition law systems succeed and what makes them fail, or falter. Particularly interesting, and somewhat rare, are studies where insights are gained empirically, usually from interviews with key stakeholders. Maciej Bernatt's book, *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, is one of the most recent contributions to the field of institutional antitrust, building on such empirical insights. One of the most prominent scholars of competition law in Central and Eastern Europe (CEE), Bernatt is Associate Professor at the University of Warsaw, and Director of the Centre for Antitrust and Regulatory Studies (CARS). He is also Editor-in-Chief of the Yearbook of Antitrust and Regulatory Studies (YARS), the leading CEE academic journal focused on competition law issues.

In the book, Bernatt uses empirical findings from Poland and Hungary to propose a new theoretical framework aimed at better measuring and understanding the illiberal influence of populism on competition law systems, addressing both challenges at the competition authority level and at the level of the judiciary. The book was published in 2022 by Cambridge University Press in their series on global competition law and economics policy, edited by Ioannis Lianos (University College London), Thomas Cheng (The University of Hong Kong), Simon Roberts (University of Johannesburg), Maarten Pieter Schinkel (Universiteit van Amsterdam), and Maurice Stucke (University of Tennessee).

The book, totalling some 270 pages, is structured in four parts. In the first, titled 'Background: populism, democracy, economy', Bernatt sets the scene by discussing the broader context and showing the implications populism has on democracy and the economy. The heart of the book is the second part, titled 'Populist influence on competition law systems', where he examines the influence of populism on competition law systems both by systematically discussing his empirical findings and by laying out his original theoretical framework. The third part, 'A regional system', is crucial for Bernatt's analysis of the actual (and potential) EU response to populist-related challenges to competition law development in Hungary and Poland. The fourth part gives the final diagnosis and prospects.

In the following paragraphs, I summarise and discuss the main insights and contributions, following closely the structure mentioned above.

In Part I, Bernatt is honest about acknowledging 'disagreement' over what constitutes populism. Establishing a link between populism and competition enforcement, he utilises this somewhat elusive notion to recognise it as a driver of illiberal change in the economy. However, unlike Rodrik for example,[1] Bernatt disagrees that economic and political populism should be considered as separate phenomena.

Developing his contextual narrative around the notion of economic patriotism, Bernatt describes the process of leaving behind the free market paradigm of the 1990s and 2000s for Poland and Hungary, the so-called 'privatisation reversal', and the advent of a more prominent role of the State in the economy. His discussion on economic patriotism and the idea of strengthening national champions is richly illustrated by instances of foreign firms being targeted by state policies leading to departures from Hungarian and Polish markets.

Equally, showing the detrimental effects of populism on democracy, Bernatt discusses the dismantling of checks and balances and the weakening of the rule of law. In particular, as regards Hungary, he unveils the critical repercussions of economic policies aimed at protecting national economic interests, such as limitations of procedural safeguards for private firms, the erosion of constitutionality review, and the rapid law-making process.

Bernatt's point of departure is the experience of Poland and Hungary in enforcing competition law in the 1990s and 2000s. The discussion does not address the pre-1990s influences or any enduring legacy of the planned economy and socialism on the economy and democracy.

In Part II, Bernatt examines the influence of populist governments on competition law systems at the national level. Relying on interviews with Hungarian and Polish stakeholders, he systematically describes the backsliding process and its repercussions. Bernatt argues that the 're-evaluation of economic principles' brought forward by economic patriotism, ie departure from the free market economic model, resulted in the weakening of the competition law system and in the capture of competition authority. He tells the story of populist governments' push to weaken the institutional resilience of competition authorities and bend competition rules to suit their economic agenda.

Against the backdrop of his empirical, country-specific insights, Bernatt proposes an original theoretical model to identify the 'manifestations' of populist competition law systems, postulating four hypothetical scenarios: deconstruction (competition system severely weakened), marginalisation (competition authority adopting an attitude of self-restraint), atrophy (gradual weakening), and limited impact. In his model, he uses two variables: first, the extent of the dismantling of checks and balances and the rule of law, and second, the extent of re-evaluation of the free

[1] Dani Rodrik, 'Populism and the Economics of Globalization' (2018) 1 Journal of International Business Policy 12.

market economic model. Bernatt's insights work finely to refine the line of research started by Kovacic and Lopez Galdos on competition system trajectories,[2] and Büthe and Aydin's research on the main factors influencing the development of those systems.[3]

Thereafter, in a most interesting and lively manner, Bernatt contextualises the abovementioned scenarios in light of actual developments in Hungary and Poland, discussing topics such as the independence of competition authorities, their operating capabilities, judicial review, and competition law enforcement. Among a host of insightful observations, I note here that Bernatt is wary of blurring the authority's mandate by expanding its competences, arguing that it runs the risk that its leaders may lack the incentives to prioritise the protection of competition. He also argues that legal reforms during populist rule weakened the independence of the courts adjudicating in competition law cases, resulting in a decrease in expertise. As regards the enforcement track record, Bernatt describes the enforcement slump in Hungary and Poland after the advent of populist governments. However, he stops short of claiming that enforcement in those two countries can be described as politically motivated, despite identifying cases that suggest either political motives behind enforcement or the competition authority's willingness to act in line with the ruling populists' political agenda.

His discussion of enforcement against state-owned enterprises (SOEs) in the context of populist governments, as well as of statutory exemptions and limitations of enforcement powers illustrated by the Hungarian Watermelon case, is captivating. Bernatt claims that the authority's ability to enforce competition rules against SOEs can be considered a litmus test for establishing whether it is able to perform its role as an independent watchdog. Alarming is his reminiscing regarding Hungary, on the return to the pre-second world war approach of using cartelisation as a 'platform to regulate industries in line with national needs'.

In Part III, Bernatt brings a broader EU law context into play to analyse the reaction of the regional supranational economic system when faced with challenges brought about by populist governments in EU Member States. He is clearly concerned about the impact of the rule of populist governments on the system of competition law enforcement in the EU which is based on mutual trust, and advocates a direct reaction by the EU institutions rather than adopting new legislation. In particular, Bernatt is sceptical about the potential of the ECN+ Directive of bringing about real change in practice, as it, as he inter alia notes, fails to address the issue of the political character of the selection and appointment pro-

[2] William E Kovacic and Marianela Lopez-Galdos, 'Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes' (2016) 79 Law and Contemporary Problems 85.

[3] Umut Aydin and Tim Büthe, 'Competition Law & Policy in Developing Countries: Explaining Variations in Outcomes; Exploring Possibilities and Limits' (2016) 79 Law and Contemporary Problems 1.

cess of the members of the authority's decision-making body, while also omitting to set precise guidelines related to the authority's resources and staff numbers. Interestingly, Bernatt warns that the directive's insistence on allowing competition authorities to reject complaints if they do not consider such complaints to be an enforcement priority may backfire in a country ruled by a populist government as it may serve as a convenient excuse for not opening politically sensitive cases, promoting, in fact, an authority's attitude of self-restraint.

Using the Hungarian Watermelons case to illustrate the (potential) role of EU law and EU institutions in addressing concerns related to the weakening of competition enforcement in 'illiberal democracies', as well as the limits of top-down intervention, he does not stop at criticising the Commission's narrow reaction only as regards this particular case.[4] More generally, Bernatt warns that the lack of intervention by the Commission to defend the independence of the judiciary responsible for competition law may have unwanted consequences, with the national courts being less eager to refer preliminary questions concerning the interpretation of competition law, both national and EU.

Last but not least, I found the section providing a systematic analysis of the consequences of the rule of populist governments on the decentralised enforcement of EU competition law very insightful. The discussion found there, I think, is not only crucial from the point of view of illiberal democracies, but also as a point of reference for other CEE countries and the challenges they encounter when enforcing competition rules. It is also vital from the point of view of a possible reform of Regulation 1/2003. For example, Bernatt discusses the controversial (lack of) use of the effect on trade criterion by the CEE competition authorities. He warns that this potentially enables the use of national law to put forward populist policies which would not fit under EU competition law. Moreover, he cautions about the weaknesses in the notification system prescribed in Article 11(4) of Regulation 1/2003, ie the fact that competition authorities in Member States are not obliged to notify closure decisions. Arguing that this limits oversight by the Commission in cases where proceedings have been opened under Articles 101 and/or 102 TFEU, Bernatt rightly calls for reform of the notification system.[5]

In the final part of the book, in his diagnosis, Bernatt reverts to the issue of the interrelationship between populism, democracy, markets, and competition law as crucial for understanding the challenges he systematically examined in the previous pages. The logical loop he

[4] For recent criticism over the Commission's stance in relation to limited rule of law in Hungary, see Kati Cseres, 'The Commission's Missed Opportunity to Reclaim Competition Law for the Rechtsstaat' (*Verfassungsblog*, 2022) <https://verfassungsblog.de/the-commissions-missed-opportunity-to-reclaim-competition-law-for-the-rechtsstaat/> accessed 19 December 2022.

[5] For a detailed discussion, see Alexandr Svetlicinii, Maciej Bernatt and Marco Botta, 'The Dark Matter in EU Competition Law: Non-Infringement Decisions in the New EU Member States Before and After Tele2 Polska' (2018) 43 European Law Review 424.

hypothesises is the backbone of the book and a direct outcome of the foundational experiential study that helped inform his insights.

In short, Bernatt explains that populism affects democracy by bringing challenges related to the separation of powers, checks and balances, the rule of law, minority rights, media pluralism, etc. By weakening the rule of law and dismantling the system of checks and balances, populism weakens the competition law system. Furthermore, populism affects free markets by increasing the role of the state in the economy and by spurring economic patriotism, which signals that the perceived role of competition law may be changing. This affects the competition law system, eg competition authority may self-restrain its enforcement, offer only a lenient review of mergers, not play a significant advocacy role, etc. Markets may become excessively concentrated, the rent-seeking of private powerful groups becomes possible, markets can be monopolised as a result of anticompetitive regulations, and potentially anticompetitive actions of SOEs are not subject to competition authority scrutiny. As a result, markets may become less competitive and consumers may be harmed. This may further reinforce the rule of populist governments at the expense of individual economic freedoms.

In terms of solutions, Bernatt does not shy away from offering a number of suggestions. In terms of enhancing resilience, he argues that independence is critical for competition authorities' proper functioning. In this regard, he recommends a transparent merit-based appointment of authority leaders, requiring significant experience; clear rules against undue dismissals of authority heads to be laid down in the law; internal walls within the authority ensuring the protection of experienced and expert staff from the political context; and safeguarding budgetary autonomy. Not without controversy, Bernatt also proposes that the duration of the term of the authority's head and the members of the decision-making body should be limited in time and not subject to automatic renewal and that no more than two terms in office should be allowed. Moreover, to counter populism-inducing sentiments, he advances a proposal to implement a 'democratization of competition proceedings', including giving the right to comment to NGOs, research institutes, academia, and relevant state institutions, as well as to those believed to be directly affected by the alleged anticompetitive practice or notified concentration, or 'by the free market economy'. In addition, Bernatt notes the need for transparent and publicly available information on the cases 'not opened' by the competition authority. Overall, he argues, a culture needs to be built within which independent expert institutions, including market-regulatory ones, are respected.

Enforcement-wise, Bernatt suggests prioritising cases that involve harm to broader segments of society, in particular those in relative poverty and the lower middle class. He is keen on seeing competition law enforcement addressing inequality and economic insecurity that fuels populism but is, on the other hand, wary of expanding the goals of com-

petition law as this, he opines, can be used by populist governments to force the authority to sacrifice competition as a value worthy of protection and to clear transactions that raise significant competition concerns.

As regards the role of the EU and the EU competition law system, Bernatt argues for a more active reaction by the Commission, even if the developments only (nominally) concern national competition laws. He suggests that while cooperation between the competition authorities in the Member States and the Commission is relatively well developed in the field of practices restricting competition, building adequate channels of information exchange and monitoring vis-à-vis the control of concentrations at the national level is a must. In order to counter the attitude of self-restraint by competition authorities, the Commission should, he argues, open its own investigations in relation to anti-competitive practices materialising principally on the whole territory of the Member State.

This is a well-researched, thoughtful, and impassioned monograph analysing the interrelationship between populism and competition law in the broader political and economic context. While enriching the general literature on the evolution of competition law systems, it is a most welcome contribution to discussion on the role of competition institutions and competition policy in CEE. Anyone interested in learning about 'illiberal' influences impacting the performance of a competition law system, be it at the level of the competition authority or at the level of the judiciary, should be familiar with its main findings. May it inspire further (empirical) cross-country or country-specific studies so we can deepen our understanding of the ever-changing world.

Jasminka Pecotić Kaufman[6]
University of Zagreb

Suggested citation: J Pecotić Kaufman, 'Book Review: *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, Maciej Bernatt (Cambridge University Press 2022)' (2022) 18 CYELP 199.

[6] Professor of Law at the University of Zagreb, Faculty of Economics and Business, Department of Law, Vice-President of the Croatian Competition Law and Policy Association (HDPPTN), and Member of the Editorial Board of the Yearbook of the Antitrust and Regulatory Studies (YARS). Email: jpecotic@net.efzg.hr (ORCID: 0000-0002-3598-7090). DOI: 10.3935/cyelp.18.2022.489.

Book Review:
The Politics of European Legal Research: Behind the Method, Marija Bartl and Jessica C. Lawrence (eds) (Edward Elgar Publishing 2022, ISBN: 9781802201185) 288 pp, £100,00.

The first thing that strikes the reader of *The Politics of European Legal Research: Behind the Method* is the narrative of the structure. A mere glance at the contents page promises the reader that the discussion will be viewed through four perspectives: the politics of questions, the politics of answers, the politics of audiences, and the politics of the concept of law. Although the reader might be enticed by this grouping and expect an overarching chapter for each perspective, this expectation falls short. Nevertheless, the grouping of the discussion in the aforementioned four focal points and then delivering different perspectives under these focal points is a most welcome contribution to the recent method debates.

In the *Politics of Question*, Jessica C. Lawrence's chapter on 'Governmentality as reflexive method: excavating the politics of legal research' invites readers to find the politics behind their own methodological choices by exploring different ways in which legal research is impacted by preconceived framed narratives. Lyn K. L. Tjon Soei Len's chapter titled 'On politics and feminist legal method in legal academia' furthers the debate by engaging with struggles in using feminist methods in European legal research. Ruth Dukes' chapter on 'The politics of method in the field of labour law' highlights the political and normative impact of a shift in modern scholarship in conceptualising labour law from 'law of work' to 'labour market regulation'. Alessandra Arcuri's chapter on 'Boundary-work and dynamics of exclusion by law: international investment law as a case study' rounds up the *Politics of Questions* by exploring the exclusionary force of ideational boundary-setting.

In the *Politics of Answers*, Tommaso Pavone and Juan Mayoral's chapter on 'Statistics as if legality mattered: the two-front politics of empirical legal studies' provides a political history background of the rise of empirical studies. Julien Bois and Mark Dawson's chapter on 'Sociological institutionalism as a lens to study judicialization: a bridge between legal scholarship and political science' furthers the discussion by arguing that both traditional legal doctrinal and political science approaches to the study of European courts exclude important aspects of judicial practice in their analysis. Or Brook's chapter on 'Politics of coding: on systematic content analysis of legal text' argues that the dominance of the case-study method in legal practice and scholarship has created a tunnel vision of the legal world which does not adequately account for the messier day-to-day reality. Gareth Davies's chapter on 'Taming law: the risks of making doctrinal analysis the servant of empirical research' rounds

up the *Politics of Answers* by arguing that doctrinal scholars should not fall under the influence of empirical legal scholarship but remain true in their effort to theorise law in society.

In the *Politics of Audiences*, Irina Domurath's chapter on 'The politics of interdisciplinarity in law' introduces us to this perspective by asking which disciplines of law and lawyers have discussed interdisciplinarity in recent decades and how this choice of scientific debate has shaped the law itself. Marija Bartl and Candida Leone's chapter on 'The politics of legal education' explores the role of audiences in legal education. Joana Mendes's chapter on 'Comparative administrative law in the EU: the integration function and its limits' concludes the *Politics of Audiences* by exploring the role of comparative scholarship in the development of EU administrative law.

In the *Politics of the Concept of Law*, Christina Eckes's chapter on 'A timid defence of legal formalism' explores how questions of legal theory can also be arenas of political struggle, since they re-position law, legal scholarship or legal experts in relation to other groups, social problems or concerns. Poul F. Kjaer's chapter on 'How to study worlds: or why one should (not) care about methodology' furthers the debate by arguing that social sciences' method appeal as a tool for the study of social worlds has been undermined by its enhancement with positivist methodologies. Hans-W. Micklitz' s chapter on 'The measuring of the law through EU politics' asks the question whether EU law today can qualify as law as we know it. Siniša Rodin's chapter on 'Telos of a method' rounds up the *Politics of the Concept of Law* by arguing from a relativist perspective that the neutrality of legal research can only be assessed from within the boundaries of a disciplinary tradition.

As the editors candidly disclose, this book is a product of the discussions and debates that occurred in 2018 and 2019. Therefore, it does not include the perspective on *politics of change* – a standpoint that could include recent shocks to the EU system, such as Brexit, the Covid-19 pandemic, and the war in Ukraine. However, and more importantly, this book does provide a critical and complex analysis – cushioned between four perspectives – that creates space for controversy and passionate debate among EU scholars. Moreover, this book offers students, lecturers and practitioners an insight into the colourful and complex world of politics behind how we understand and (ab)use law.

Branka Marušić[1]
Stockholm University

[1] Email: branka.marusic@juridicum.su.se (ORCID: 0000-0002-8332-6692). DOI: 10.3935/cyelp.18.2022.474.

Suggested citation: B Marušić, 'Book Review: *The Politics of European Legal Research: Behind the Method*, Marija Bartl and Jessica C Lawrence (eds) (Edward Elgar Publishing 2022)' (2022) 18 CYELP 205.

EU Bibliography

Compiled by:

Aleksandra Čar, *European Documentation Centre, Library of the Faculty of Law, University of Zagreb*[1]

Below you will find a list of bibliographic references to selected articles in the field of European law and policy.

This issue covers items from a wide range of academic and specialised periodicals published from November 2021 to November 2022. References are presented in 19 subject headings covering all activities of the European Union.

01 | Croatia in the EU **211**

02 | EU: General and institutional developments **212**

(Process and theory of European integration / Current issues and challenges / Policy-making process / Openness and transparency / European Council / Council of the EU / European Commission / European Parliament / Other EU organisations and agencies)

03 | People and Politics **220**

(Justice and Home Affairs / Asylum, refugees, external frontiers and immigration / Citizen's Europe / Politics in Europe / Human rights and fundamental freedoms / Racism / Terrorism / Religion / Public administration / Lobbying / Regional and local government)

04 | The Budget – Financing the European Union **244**

(Fraud / Mismanagement / OLAF)

05 | Economic and monetary policy **244**

(Growth, competitiveness and employment / Economic and Monetary Union / Euro / Budgetary discipline / Fiscal surveillance / European Central Bank)

06 | Single market – Competition **248**

(Antitrust policy / State aids / Merger policy / Free movement of goods / Free movement of services / Freedom of establishment / Free movement of capital / Intellectual property / Company law / Tax issues / Free movement of people)

07 | Business – Industry – Trade **272**

(Industrial policy / Competitiveness / Enterprise policy / Small and medium-sized enterprises / Corporate social responsibility / Service industries / Financial services / Banks)

08 | Employment – Labour market **279**

(Social dialogue / Working conditions / Local employment initiatives / Health and safety at work / Trade unions)

[1] I wish to thank Simona Karmen Krznar, student at the Faculty of Law in Zagreb, for her valuable assistance in the compilation of this bibliography.

09 | Social policy – Social issues 285

(Social security / Social protection / Gender equality / Disability issues / Health / Drugs / Tobacco / Communicable diseases / The young / The family / The elderly)

10 | Economic and Social Cohesion – Structural policies – Regional policies 291

(Structural funds / European Regional Development Fund / European Social Fund / Community initiatives / Innovative actions / Cohesion Fund / Spatial planning)

11 | Environment 293

(Sustainable development / Industry and environment / Transport and environment / Atmospheric pollution / Aquatic environment / Economic instruments / Chemicals / Precautionary principle / Waste / Noise)

12 | Consumer affairs 298

(Safety of products and services / Product safety / Advertising / Labelling / Consumer rights / Financial protection / Food issues)

13 | Agriculture – Fisheries – Forestry 301

(Common Agricultural Policy / Animal health / Plant health / Farming methods / Agricultural markets)

14 | Transport 302

(Urban/Rural transport / Railways / Roads / Inland waterways / Sea transport / Ports / Air transport / Multimodal transport / Tourism)

15 | Energy 304

(Energy liberalisation / Trans-European Energy Networks / Solid fuels / Oil – Gas / Nuclear energy / Alternative energy sources / Electricity

16 | Research – Science and technology 306

17 | Education – Training – Culture 306

(Higher education / Lifelong learning / Qualifications / Youth programmes / Culture / Language / Books, reading and libraries / Audiovisual policy / Sport)

18 | External Relations 307

(International organisations and groupings / Human rights / External service – External assistance / Common Foreign and Security Policy / Security and defence / NATO / OSCE / Terrorism: international dimension / External trade / WTO / Eastern and Central Europe / Wider Europe – Neighbourhood policy / Northern dimension / Balkan region / Enlargement)

19 | Law 315

(Nature, effect and principles of EC law / European Court of Justice – legal issues / European Conventions / European Treaties / European Court of Human Rights / Legal systems and traditions)

01 Croatia in the EU

1. Amižić Jelovčić P and Bolanča D, 'Application of Regulation 1177/2010 in Croatia – What More Can Be Done for Passengers with Disabilities and Passengers with Reduced Mobility?' (2021) 175(60) Comparative Maritime Law 111

2. Bodul D, 'Will the Implementation of the Directive on Restructuring and Insolvency Help the Recovery of the Croatian Markets and Strength the Ability of the Debtors to Respond to New Challenges?' [2022] 6 EU and Comparative Law Issues and Challenges Series 14

3. Bovan K and others, 'Trust Us, We Know What We Are Doing: Institutional Trust in Croatia During the COVID-19 Crisis' (2022) 22(3) Southeast European and Black Sea Studies 381

4. Božina Beroš M and Grdović Gnip A, 'Differentiated Integration in the EU: What Does Croatia Want?' (2021) Politics <https://doi.org/10.1177/0263395721103> accessed 2 December 2022

5. Carević M, 'Caught on the Radar of the European Commission: Croatian Experiences with the Infringement Procedure' [2021] 17 Croatian Yearbook of European Law & Policy 279

6. Dolenec D, Širinić D and Balković A, 'Resisting the Great Recession: Social Movement Unionism in Croatia and Serbia' (2022) 28(1) European Journal of Industrial Relations 105

7. Doolan K and Tonković Ž, 'Convergences and Divergences of a Bourdieusian and Occupation-Based Approach to Social Class: Evidence from Croatia' (2021) 23(5) European Societies 590

8. Glavina M, 'The Reality of National Judges as EU Law Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Slovenia and Croatia' [2021] 17 Croatian Yearbook of European Law & Policy 1

9. Held M and Perkov K, 'Spatial Planning in the EU and Croatia Under the Influence of COVID-19 Pandemic' [2022] 6 EU and Comparative Law Issues and Challenges Series 591

10. Jerković E, 'Legal Aspects of the Introduction of the Euro as the Official Currency in the Republic of Croatia' [2022] 6 EU and Comparative Law Issues and Challenges Series 158

11. Liszt M, 'Croatia [News from the Member States]' (2021) 20(4) European State Aid Law Quarterly 586

12. – – and Knotić P, 'Croatia: The Horrors of 2020 – Overview of Croatia's COVID-19 Response News from the Member States' (2021) 20(1) European State Aid Law Quarterly 160

13. Nieto M J, 'Incentive-Compatible Relationship Between ERM II and Close Co-Operation in the Banking Union: The Cases of Bulgaria and Croatia' (2022) 47(2) European Law Review 200

14. Paksi Herceg B and Habrat D, 'Comparative Views on a Permanent Challenge: Hate Speech Sanctioning in Poland and Croatia' [2022] 6 EU and Comparative Law Issues and Challenges Series 289

15. Petrašević T and Poretti P, 'The 'Polluter Pays' Principle: The Croatian Experience' [2022] 6 EU and Comparative Law Issues and Challenges Series 3

16. Šimunović L and Konjević T, 'Implementation of the Directive 2019/1023 in the Croatian Legal System: A New Trend of Restructuring in the Croatian Insolvency Law or Another Missed Opportunity?' [2022] 6 EU and Comparative Law Issues and Challenges Series 190

17. Štefanek S, 'Regulatory Sandboxes and Experimentation Clauses: An Attempt to Make the (Croatian) Legal System More Entrepreneurial' [2022] 6 EU and Comparative Law Issues and Challenges Series 213

18. Švarc J, Dabić M and Lažnjak J, 'Assessment of the European Monitoring Frameworks for Circular Economy: The Case of Croatia' (2022) 33(2) Management of Environmental Quality 371

02 EU: General and institutional developments

(Process and theory of European integration / Current issues and challenges / Policy-making process / Openness and transparency / European Council / Council of the EU / European Commission / European Parliament / Other EU organisations and agencies)

19. – – 'Shaping European Democratic Integration for the 21st Century: An Interdisciplinary Contribution to the Conference on the Future of Europe' (2020) 26(5-6) European Law Journal 295

20. Alemanno A, 'Unboxing the Conference on the Future of Europe and Its Democratic raison d'être' (2020) 26(5-6) European Law Journal 484

21. Alexander D A, 'Expertise, Turnover and Refreshment Within the Committees of the European Parliament: As Much Like Sisyphus Pushing the Boulder up the Mountain as We May Think?' (2022) 44(7) Journal of European Integration 899

22. Angino S, Ferrara F M and Secola S, 'The Cultural Origins of Institutional Trust: The Case of the European Central Bank' (2022) 23(2) European Union Politics 212

23. Arregui J and Perarnaud C, 'A New Dataset on Legislative Decision-Making in the European Union: The DEU III Dataset' (2022) 29(1) Journal of European Public Policy 12

24. Bach T, 'Bureaucratic Politics' (2021) (8) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2021/wp-08-21.html> accessed 21 October 2022

25. Baerg N and Hallerberg M, 'Council Checks of the Commission under the European Semester: Does Member State Power and Euroscepticism Still Matter?' (2022) 60(1) Journal of Common Market Studies 58

26. Barile D, 'Memory and the Integration. The European Parliament's 2019 Resolution on European Remembrance as a Case Study' (2021) 43(8) Journal of European Integration 989

27. Bátora J and J E Fossum, 'Differentiation and Segmentation' (2021) (11) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2021/wp-11-21.html> accessed 21 October 2022

28. Becker M and Gehring T, 'Explaining EU Integration Dynamics in the Wake of COVID-19: A Domain of Application Approach' (2022) Journal of European Public Policy 1

29. Binderkrantz A S and others, 'Stakeholder Consultations in the EU Commission: Instruments of Involvement or Legitimacy?' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2058066> accessed 30 November 2022

30. Birkeland T and Trondal J, 'The Rift Between Executive Contraction and Executive Detraction: The Case of European Commission Battery Policy-Making' (2022) Journal of European Public Policy 1

31. Bortun V, 'Plan B for Europe: The Birth of 'Disobedient Euroscepticism'?' (2022) 60(5) Journal of Common Market Studies 1416

32. Bunea A and Nørbech I, 'Preserving the Old or Building the New? Reputation-Building Through Strategic Talk and Engagement With Stakeholder Inputs by the European Commission' (2022) Journal of European Public Policy 1

33. Busuioc M and Jevnaker T, 'EU agencies' Stakeholder Bodies: Vehicles of Enhanced Control, Legitimacy or Bias?' (2022) 29(2) Journal of European Public Policy 155

34. Calliess C, 'The Future of Europe After Brexit: Towards a Reform of the European Union and its Euro Area' [2021] 40(1) Yearbook of European Law 3

35. Canihac H, 'The Making of an Imagined "Community of Law": Law, Market and Democracy in the Early Constitutional Imaginaries of European Integration' (2022) 18(1) European Constitutional Law Review 2

36. Carstensen M B and Röper N, 'The Other Side of Agency: Bricolage and Institutional Continuity' (2022) 29(8) Journal of European Public Policy 1288

37. Cavaghan R and Elomaki A, 'Dead Ends and Blind Spots in the European Semester: The Epistemological Foundation of the Crisis in Social Reproduction' (2022) 60(4) Journal of Common Market Studies 885

38. Chamon M and de Arriba-Sellier N, 'FBF: On the Justiciability of Soft Law and Broadening the Discretion of EU Agencies: ECJ (Grand Chamber) 15 July 2021, Case C-911/19, Fédération Bancaire Française (FBF) v Autorité de Contrôle Prudentiel et de Résolution' (2022) 18(2) European Constitutional Law Review 286

39. Cheneval F, 'The Impact of Populism on European Institutions and Civil Society: Discourses, Practices, and Policies' (2022) 60(4) Journal of Common Market Studies 1214

40. Cherednychenko O O, 'Regulatory Agencies and Private Damages in the EU: Bridging the Gap between Theory and Practice' [2021] 40 Yearbook of European Law 146

41. Cheruvu S, 'When Does the European Commission Pursue Noncompliance?' (2022) 23(3) European Union Politics 375

42. Chiara Mattesini M, 'The Thought of Catholic Women in Europe. The struggles of Maria Paola Colombo Svevo' (2021) 27(2) Journal of European Integration History 243

43. Chiru M, 'Electoral Incentives for Territorial Representation in the European Parliament' (2022) 44(2) Journal of European Integration 277

44. Citi M and Jensen D M, 'The Effects of Supranational Delegation on Policy Development' (2022) 60(2) Journal of Common Market Studies 337

45. Coen D and Katsaitis A, 'Governance, Accountability, and Political Legitimacy: Who Participates in the European Parliament's Committee Hearings (ECON 2004–2014)' (2022) 44(4) Journal of European Integration 475

46. Conti Nicolo B M and Memoli V, 'Business Elites and European Integration: Really a Honeymoon Story?' (2022) 60(6) Journal of Common Market Studies 1400

47. Costa O, 'Can the Conference on the Future of Europe Unlock the EU Elections Reform? Reflections on Transnational Lists and the Lead-Candidate System' (2020) 26(5-6) European Law Journal 460

48. Costello R, 'How Does the Composition of the European Parliament Shape Its Role in EU Decision-Making?' (2022) 29(1) Journal of European Public Policy 117

49. Cotter J, 'To Everything There Is a Season: Instrumentalising Article 10 TEU to Exclude Undemocratic Member State Representatives from the European Council and the Council' (2022) 47(1) European Law Review 69

50. Cremona M, 'Managing EU Cooperation Agreements, Council Discretion and Legal Basis: European Commission v Council of the European Union (C-180/20)' (2022) 47(2) European Law Review 273

51. Crum B, 'Why the European Parliament Lost the Spitzenkandidaten-Process' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2032285> accessed 1 December 2022

52. Daniel W T and Thierse S, 'Individual Amending Activity in the European Parliament Committee System' (2022) 44(4) Journal of European Integration 531

53. De Leon S A, 'The Politics of Legal Expertise in EU Policy-Making' (2022) 13(3) European Journal of Risk Regulation 538

54. Delledonne G, 'The Institutional Architecture of the European Union: Emerging and Unresolved Questions' (2021) 43(8) Journal of European Integration 1045

55. Demkova S, 'The Decisional Value of Information in European Semi-Automated Decision-Making' (2021) 14(2) Review of European Administrative Law 29

56. Deters H and Zardo F, 'The European Commission in Covid-19 Vaccine Cooperation: Leadership vs Coronationalism?' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2064900> accessed 30 November 2022

57. Devine D and Ibenskas R, 'From Convergence to Congruence: European Integration and Citizen–Elite Congruence' (2021) 22(4) European Union Politics 676

58. Duina F, 'Is Academic Research Useful to EU Officials? The Logic of Institutional Openness in the Commission' (2022) 29(9) Journal of European Public Policy 1493

59. Eckert S, 'European Administrative Networks, Private Networks and Agencies: Coexisting, Cooperating or Competing?' (2022) Journal of European Public Policy 1

60. Egeberg M, 'Supranationalization of Government and Governance' (2021) (9) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2021/wp-09-21.html> accessed 21 October 2022

61. Evola M, 'Comparing the Practice of Accession to and Withdrawal from the European Union: Commonalities in Principles and Procedures?' (2022) 7(1) European Papers – A Journal on Law and Integration 439

62. Fabbrini F, 'The Conference on the Future of Europe: Process and prospects' (2020) 26(5-6) European Law Journal 401

63. Fahey E, 'The European Parliament as a Defender of EU Values in EU-Japan Agreements: What Role for Soft Law and Hard Law Powers?' (2022) 47(3) European Law Review 331

64. Ferrara F M and Kriesi H, 'Crisis Pressures and European Integration' (2022) 29(9) Journal of European Public Policy 1351

65. Finke D and Hansen J B, 'Contested Comitology? The Overlooked Importance of the EU Commission' (2022) 29(6) Journal of European Public Policy 891

66. Foret F and Trino N, 'Towards an Ever Stronger Politicization? How Members of the European Parliament Deal With Values in Social Networks' (2022) 44(7) Journal of European Integration 961

67. Franchino F and Kayser M A and Wratil C, 'Electoral Competitiveness and Responsiveness: Rational Anticipation in the EU Council' (2022) 29(1) Journal of European Public Policy 42

68. Fromage D, 'How to Ensure that National Parliaments (Truly) 'Contribute Actively to the Good Functioning of (Tomorrow's) EU'?' (2020) 26(5-6) European Law Journal 472

69. Fyhr K, 'The Reform of the EU Transparency Register' [2021] 17 Croatian Yearbook of European Law & Policy 177

70. Garben S, 'From Sneaking to Striding: Combatting Competence Creep and Consolidating the EU Legislative Process' (2020) 26(5-6) European Law Journal 429

71. Gastinger M and Dür A, 'Joint Bodies in the European Union's International Agreements: Delegating Powers to the European Commission in EU External Relations' (2021) 22(4) European Union Politics 611

72. Gastinger M and Heldt E C, 'Measuring Actual Discretion of the European Commission: Using the Discretion Index to Guide Empirical Research' (2022) 23(3) European Union Politics 541

73. Geurts E, 'Between Brussels, Strasbourg, and London: The European Strategy of Amnesty International's Dutch Section, 1976-1983' (2021) 27(2) Journal of European Integration History 285

74. Giurcanu M and Kostadinova P, 'A Responsive Relationship? Setting the Political Agenda in the European Union' (2022) 29(9) Journal of European Public Policy 1474

75. Goldberg A C, 'TV Debates in EP Election Campaigns – the Influence of the 2019 Eurovision Debate on Voting Behaviour' (2022) Journal of European Public Policy 1

76. – – van Elsas E J and de Vreese C H, 'One Union, Different Futures? Public Preferences for the EU's Future and Their Explanations in 10 EU Countries' (2021) 22(4) European Union Politics 721

77. Golub J, 'Power in the European Union: An Evolutionary Computing Approach' (2022) 44(2) Journal of European Integration 225

78. Gora A and de Wilde P, 'The Essence of Democratic Backsliding in the European Union: Deliberation and Rule of Law' (2022) 29(3) Journal of European Public Policy 342

79. Guinaudeau I and Costa O, 'Issue Politicization in the European Parliament. An Analysis of Parliamentary Questions for Oral Answer (2004-19)' (2022) 60(3) Journal of Common Market Studies 507

80. Guirao F, 'From Subjects to Citizens of Europe: An Introduction' (2021) 27(2) Journal of European Integration History 193

81. Haag M, 'Bargaining Power in Informal Trilogues: Intra-Institutional Preference Cohesion and Inter-Institutional Bargaining Success' (2022) 23(2) European Union Politics 330

82. Hamrik L and Kaniok P, 'Who's in the Spotlight? The Personalization of Politics in the European Parliament' (2022) 60(3) Journal of Common Market Studies 673

83. Han J and Finke D, 'Voting Green in European Parliament Elections: Issue Voting in an Electoral Context' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2116082> accessed 3 December 2022

84. Huhe N, 'Intergovernmental Cooperation Networks, National Policy Positions and Partisan Ideologies: Longitudinal Evidence from the Council of the European Union' (2022) 29(1) Journal of European Public Policy 78

85. Hurka S, Haag M and Kaplaner C, 'Policy Complexity in the European Union, 1993-Today: Introducing the EUPLEX Dataset' (2022) 29(9) Journal of European Public Policy 1512

86. Huwyler O and Martin S, 'Interest Group Tactics and Legislative Behaviour: How the Mode of Communication Matters' (2022) 29(8) Journal of European Public Policy 1268

87. Ionescu D P, 'Habemus Legitimacy? The European Commission Opens Public Consultation for a Guidance Document' (2021) 12 European Journal of Risk Regulation 861

88. Johansson H and Arvidson M, 'Capital and Closure in the EU Field. Advancement in the European Economic and Social Committee' (2022) 60(4) Journal of Common Market Studies 1069

89. Joosen R, Haverland M and de Bruijn E, 'Shaping EU Agencies' Rulemaking' (2022) 20(4) Comparative European Politics 411

90. – – and Zhelyazkova A, 'How Do Supranational Regulators Keep Companies in Line? An Analysis of the Enforcement Styles of EU Agencies' (2022) 60(4) Journal of Common Market Studies 983

91. Junk W M and others, 'Changes in Interest Group Access in Times of Crisis: No Pain, No (Lobby) Gain' (2022) 29(9) Journal of European Public Policy 1374

92. Jusufi I, 'The Death of the European Agency for Reconstruction: A Peculiar Case of Termination of the Agencies of the European Union' (2021) 21(4) Hrvatska i komparativna javna uprava 675

93. Kaelble H, 'Citizens and the European Union Since 1950' (2021) 27(2) Journal of European Integration History 213

94. Kleine M, Arregui J and Thomson R, 'The impact of national democratic representation on Decision-Making in the European Union' (2022) 29(1) Journal of European Public Policy 1

95. Kool M and Palm T, 'Crafting Emotions: The Valence of Time in Narratives about the Future of Europe in the Council of Europe (1949)' (2021) 17(4) Journal of Contemporary European Research 463

96. Korosteleva E A, 'The European Union in a Changing World Order: Interdisciplinary European Studies' (2022) 60(1) Journal of Common Market Studies 225

97. Kostadinova P and Kreppel A, 'Loyal Agent or Shirking Partner: Understanding the Policy Goals of National Ministers in the Council of the European Union' (2022) 29(1) Journal of European Public Policy 23

98. Kroger S and Loughran T, 'The Risks and Benefits of Differentiated Integration in the European Union as Perceived by Academic Experts' (2022) 60(3) Journal of Common Market Studies 702

99. Larsen S R, 'The Constitutional Theory of the Federation and the European Union' (2022) 47(5) European Law Review 720

100. Łazowski A, 'Court of Justice of the European Union and the United Kingdom after Brexit: Game Over?' (2022) 47(5) European Law Review 666

101. Leidorf-Tidå B, 'Reputational Drivers and Deterrents of Accountability: Why Are Some EU Agencies Subject to More Intense Account-Holding Than Others?' (2022) Journal of European Public Policy 1

102. Leino-Sandberg P, 'The Politics of Legal Expertise in EU Policy-Making' (2022) 47(2) European Law Review 286

103. Lord C, 'Democracy at the EU Level: Folly or Necessity? More Work for a Directly Elected European Parliament' (2020) 26(5-6) European Law Journal 448

104. – – 'The European Parliament and Brexit' (2021) (10) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2021/wp-10-21.html > accessed 21 October 2022

105. Mariano N and Schneider C J, 'Euroscepticism and Bargaining Success in the European Union' (2022) 29(1) Journal of European Public Policy 61

106. Martire J, 'The Missing Piece of the European Crisis: Europe's Autoimmunitary Disease' (2021) (2) Jean Monnet Papers <https://jeanmonnetprogram.org/paper/the-missing-piece-of-the-european-crisis-europes-autoimmunitary-disease/ > accessed 22 November 2022

107. Marx A and Westerwinter O, 'An Ever More Entangled Union? The European Union's Interactions With Global Governance Institutions' (2022) 44(5) Journal of European Integration 597

108. Mechi L, 'From Recurring Reference to Identity Trait: the Emergence of Social Justice in the Political Discourse of the European Communities (1950-1986)' (2021) 27(2) Journal of European Integration History 263

109. Meyer T M and Gattermann K, 'Party Contestation and News Visibility Abroad: The 2019 European Parliament Election from a pan-European Perspective' (2022) 23(3) European Union Politics 398

110. Michailidou A, Trenz H-J and Umit R, 'A Cross-Country Analysis of News Reports on Differentiation in the European Union' (2022) (2) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2022/wp-2-22.html> accessed 4 December 2022

111. Moland M and Michailidou A, 'News, Misinformation and Support for the EU' (2021) (12) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2021/wp-12-21.html> accessed 21 October 2022

112. Molinari C, 'The EU Readmission Policy to the Test of Subsidiarity and Institutional Balance: Framing the Exercise of a Peculiar Shared Competence' (2022) 7(1) European Papers – A Journal on Law and Integration 151

113. Müller M, Braun C and Fraussen B, 'Cautious Communicators: Strategic Communication of European Union Commissioners in Regulatory Decision-Making' (2022) 23(3) European Union Politics 509

114. Norman L and Wolfs W, 'Is the Governance of Europe's Transitional Party System Contributing to EU Democracy?' (2022) 60(2) Journal of Common Market Studies 463

115. Norrevik S, 'Foreign Economic Policy in the European Parliament and Economic Interdependence With Foreign Powers' (2021) 22(4) European Union Politics 700

116. Ovadek M, 'Procedural Politics Revisited: Institutional Incentives and Jurisdictional Ambiguity in EU Competence Disputes' (2022) 60(6) Journal of Common Market Studies 1381

117. Oztas Buket and Kreppel A, 'Power or Luck? The Limitations of the European Commission's Agenda Setting Power and Autonomous Policy Influence' (2022) 60(2) Journal of Common Market Studies 408

118. Paasch J, 'Revisiting Policy Preferences and Capacities in the EU: Multi-Level Policy Implementation in the Subnational Authorities' (2022) 60(3) Journal of Common Market Studies 783

119. Pansardi P and Tortola P D, 'A "More Political" Commission? Reassessing EC Politicization Through Language' (2022) 60(4) Journal of Common Market Studies 1047

120. Pasarin AMF and Font N, 'Unveiling Inconsistency: Consensus and Contestation along the Council-Comitology Cycle of EU Policy-Making' (2022) 60(2) Journal of Common Market Studies 427

121. Pavone T, 'The Ghostwriters: Lawyers and the Politics behind the Judicial Construction of Europe' (2022) 47(5) European Law Review 723

122. Pegan A, 'A Temporal Perspective on Staff Support in the European Parliament' (2022) 44(5) Journal of European Integration 511

123. Perarnaud C and Arregui J, 'Do Member States' Permanent Representations Matter for Their Bargaining Success? Evidence from the EU Council of Ministers' (2022) 29(1) Journal of European Public Policy 97

124. Richter S and Stier S, 'Learning About the Unknown Spitzenkandidaten: The Role of Media Exposure During the 2019 European Parliament Elections' (2022) 23(2) European Union Politics 309

125. Rosén G and Stie A E, 'Balancing Seclusion and Inclusion: EU Trilogues and Democratic Accountability' (2022) 29(3) Journal of European Public Policy 383

126. Ruffert M, 'Law of Administrative Organization of the EU: A Comparative Approach' (2022) 47(1) European Law Review 147

127. Ruffing E, 'European (Networked) Agencies Between Independence and Influence' (2022) 29(10) Journal of European Public Policy 1546

128. Ruiter E, 'The European Parliament's Mandate for Trilogues: Explaining the Discretion of Political Group Advisors' (2022) 29(3) Journal of European Public Policy 363

129. Salvati E, 'Patterns of Opposition in the European Parliament: Opposing Europe from the Inside?' (2022) 60(2) Journal of Common Market Studies 501

130. Schepel H, 'The 'European Perspective'' (2022) 1(3) European Law Open 463

131. Schramm L, 'The Covid-19 Pandemic and European Integration: Challenges and Prospects for Citizens, Institutions, and the EU Polity' (2022) 44(2) Journal of European Integration 299

132. Simoncini M, 'The Delegation of Powers to EU Agencies After the Financial Crisis' (2021) 6(3) European Papers – A Journal on Law and Integration 1485

133. Simonellia F and Iacob N 'Can We Better the European Union Better Regulation Agenda?' (2021) 12 European Journal of Risk Regulation 849

134. Smeets S and Beach D, ''It Takes Three to Tango': New Inter-Institutional Dynamics in Managing Major Crisis Reform' (2022) 29(9) Journal of European Public Policy 1414

135. Steuer M, 'Flexible Europe: Differentiated Integration, Fairness, and Democracy' (2022) 60(5) Journal of Common Market Studies 1531

136. Telle S, 'Negotiating Unity and Diversity in the European Union' (2022) 60(2) Journal of Common Market Studies 499

137. Tesche T, 'Pandemic Politics: The European Union in Times of the Coronavirus Emergency' (2022) 60(2) Journal of Common Market Studies 480

138. Thomson R and Dumont P, 'A Comparison of Two Views on the European Commission: Engine of Integration and Conduit of National Interests' (2022) 29(1) Journal of European Public Policy 136

139. Tsourdi E L, Ott A and Vankova Z, 'The EU's Shifting Borders Reconsidered: Externalisation, Constitutionalisation, and Administrative Integration' (2022) 7(1) European Papers – A Journal on Law and Integration 87

140. Türk A H, 'Legislative, Delegated Acts, Comitology and Interinstitutional Conundrum in EU Law – Configuring EU Normative Spaces' (2020) 26(5-6) European Law Journal 415

141. Vale G, 'L'Union européenne entre crise de légitimité et crise d'identité. Le rôle du mythe et de l'identité culturelle dans le processus d'intégration européenne' (2021) 27(2) Journal of European Integration History 223

142. Van Gruisen P and Crombez C, 'The Commission and the Council Presidency in the European Union: Strategic Interactions and Legislative Powers' (2021) 70 European Journal of Political Economy 102040

143. Van Kreij L, 'Enforcing EU Policies: Why Do EU Legislators Prefer New Networks of National Authorities and Not Existing EU Agencies?' (2022) 29(10) Journal of European Public Policy 1568

144. Van Zeben J, 'The European Green Deal: The Future of a Polycentric Europe?' (2020) 26(5-6) European Law Journal 300

145. Vanackère F and Kaspiarovich Y, 'European Institutions Acting Outside the EU Legal Order: The Impact of the Euro Crisis on the EU's "Single Institutional Framework"' (2022) 7(1) European Papers – A Journal on Law and Integration 481

146. Vantaggiato F P, 'From Learning to Influence: The Evolution of Collaboration in European Administrative Networks' (2022) 29(10) Journal of European Public Policy 1631

147. Vlcek V and Parizek M, 'Participation of Ministers in Council of the EU Meetings: Variation Across Members and Decline Over Time' (2022) 44(4) Journal of European Integration 493

148. Vogiatzis N, 'The Past and Future of the Right to Petition the European Parliament' [2021] 40(1) Yearbook of European Law 82

149. Waele H D, 'Re-Appraising Success and Failure in the Life of the European Court of Justice' [2021] 23 Cambridge Yearbook of European Legal Studies 54

150. Wendler F and Hurrelmann A, 'Discursive Postfunctionalism: Theorizing the Interface Between EU Politicization and Policy-Making' (2022) 44(7) Journal of European Integration 941

151. Wessels W, 'The European Council in the Era of Crises' (2022) 60(4) Journal of Common Market Studies 1213

152. Wille A and Bovens M, 'Watching EU Watchdogs Assessing the Accountability Powers of the European Court of Auditors and the European Ombudsman' (2022) 44(2) Journal of European Integration 183

153. Willumsen D M, 'Policy Preferences, Unity, and Floor Dissent in the European Parliament' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2107047> accessed 3 December 2022

154. Winzen T, 'The Institutional Position of National Parliaments in the European Union: Developments, Explanations, Effects' (2022) 29(6) Journal of European Public Policy 994

155. Wunsch N and Olszewska N, 'From Projection to Introspection: Enlargement Discourses Since the 'Big Bang' Accession' (2022) 44(7) Journal of European Integration 919

156. Yepremyan T, 'Imagining the Grotian Europe: Hugo Grotius's Vision of Europe and Ideas of European Integration' (2021) 27(2) Journal of European Integration History 195

157. Yesilkagit K and Jordana J, 'Entangled Agencies and Embedded Preferences: National Regulatory Agencies in Multi-Level European Governance' (2022) 29(10) Journal of European Public Policy 1677

158. Young M and Ravinet P, 'Knowledge Power Europe' (2022) 44(7) Journal of European Integration 979

03 People and Politics

(Justice and Home Affairs / Asylum, refugees, external frontiers and immigration / Citizen's Europe / Politics in Europe / Human rights and fundamental freedoms / Racism / Terrorism / Religion / Public administration / Lobbying / Regional and local government)

159. Ahlfeldt G M, Maennig W and Mueller S Q, 'The Generation Gap in Direct Democracy: Age vs. Cohort Effects' (2022) 72 European Journal of Political Economy 102120

160. Ahrens L, 'The (A)Symmetric Effects of Income and Unemployment on Popular Demand for Redistribution' (2022) 45(7) West European Politics 1407

161. – – and Bandau F, 'The Electoral Consequences of Welfare State Changes: A Sober Look at Theory and Evidence' (2022) Journal of European Public Policy 1

162. Ahrens P, Gaweda B and Kantola J, 'Reframing the Language of Human Rights? Political Group Contestations on Women's and LGBTQI Rights in European Parliament Debates' (2022) 44(6) Journal of European Integration 803

163. Akaeda N and Schöneck N M, 'Socio-Economic Insecurity Perceptions and Their Societal Determinants: Europe in the Aftermath of the Great Recession' (2022) 24(3) European Societies 310

164. Akaliyski P, Welzel C and Hien J, 'A Community of Shared Values? Dimensions and Dynamics of Cultural Integration in the European Union' (2022) 44(4) Journal of European Integration 569

165. Alexandre-Collier A, 'David Cameron, Boris Johnson and the 'Populist Hypothesis' in the British Conservative Party' (2022) 20(5) Comparative European Politics 527

166. Alexiadou D and O'Malley E, 'The Leadership Dilemma: Examining the Impact of Strong Leaders on Parties' (2022) 61(3) European Journal of Political Research 783

167. Alkiviadou N, 'Online Political Hate Speech in Europe: The Rise of New Extremisms' (2022) 60(2) Journal of Common Market Studies 497

168. Anderson C, McGregor R M and Stephenson L B, 'Us Versus Them: Do the Rules of the Game Encourage Negative Partisanship?' (2022) 61(4) European Journal of Political Research 1060

169. Andrade P G, 'The External Dimension of the EU Immigration and Asylum Policies Before the Court of Justice' (2022) 7(1) European Papers – A Journal on Law and Integration 109

170. Angeli D and Anagnostou D, 'A Shortfall of Rights and Justice: Judicial Review of Immigration Detention in Greece?' (2021) 14(Special Issue) European Journal of Legal Studies 97

171. Angelos C, 'The Dog That Barked But Did Not Bite: Greek Foreign Policy Under the Populist Coalition of SYRIZA-Independent Greeks, 2015–2019' (2021) 19(6) Comparative European Politics, Comparative European Politics 722

172. Angelucci D and Vittori D, 'Look Where You're Going: The Cultural and Economic Explanations of Class Voting Decline' (2023) 46(1) West European Politics 122

173. Aranguiz A, 'Bringing the EU up to Speed in the Protection of Living Standards Through Fundamental Social Rights: Drawing Positive Lessons from the Experience of the Council of Europe' (2021) 28(5) Maastricht Journal of European and Comparative Law 601

174. Ares M, 'Issue Politicization and Social Class: How the Electoral Supply Activates Class Divides in Political Preferences' (2022) 61(2) European Journal of Political Research 503

175. Armingeon K and others, 'Voices from the Past: Economic and Political Vulnerabilities in the Making of Next Generation EU' (2022) 20(2) Comparative European Politics 144

176. Arnemann L, Konrad K A and Potrafke N, 'Collective Memories on the 2010 European Debt Crisis' (2021) 22(4) European Union Politics 42

177. Attewell D, 'Redistribution Attitudes and Vote Choice Across the Educational Divide' (2022) 61(4) European Journal of Political Research 1080

178. Avagianou A and others, 'Quite Promising Yet Marginal? A Comparative Study of Social Economy in the EU South' (2022) 20(4) Comparative European Politics 484

179. Baccaro L and Neimanns E, 'Who Wants Wage Moderation? Trade Exposure, Export-Led Growth, and the Irrelevance of Bargaining Structure' (2022) 45(6) West European Politics 1257

180. Bagashka T, Bodea C and Han S M, 'Populism›s Rise in Post-Communist Countries: Breaking Electoral Promises and Incumbent Left Parties' Vote Losses' (2022) 61(1) European Journal of Political Research 134

181. Bagchi A, 'The Challenge of Radical Reform in Pluralist Democracies' (2022) 1(2) European Law Open 374

182. Baker-Beall C and Mott G, 'Understanding the European Union's Perception of the Threat of Cyberterrorism: A Discursive Analysis' (2022) 60(4) Journal of Common Market Studies 1086

183. Baraldi A L, Immordino G S and Stimolo M, 'Self-Selecting Candidates or Compelling Voters: How Organized Crime Affects Political Selection' (2022) 71 European Journal of Political Economy 102133

184. Barnier M, 'My Secret Brexit Diary: A Glorious Illusion' (2022) 47(3) European Law Review 424

185. Basile L and Borri R, 'Sovereignty of What and for Whom? The Political Mobilisation of Sovereignty Claims by the Italian Lega and Fratelli d'Italia' (2022) 20(3) Comparative European Politics 365

186. Batzella F, 'Engaged But Constrained. Assessing EU Actorness in the Case of Nord Stream 2' (2022) 44(6) Journal of European Integration 821

187. Bauhr M and Charron N, '"All Hands on Deck" or Separate Lifeboats? Public Support for European Economic Solidarity During the Covid-19 Pandemic' (2022) Journal of European Public Policy

188. Becker P, 'Germany as the European Union's Status Quo Power? Continuity and Change in the Shadow of the Covid-19 Pandemic' (2022) Journal of European Public Policy 1

189. Belanger M-E and Wunsch N, 'From Cohesion to Contagion? Populist Radical Right Contestation of EU Enlargement' (2022) 60(3) Journal of Common Market Studies 653

190. Bencze M, ''Everyday Judicial Populism' in Hungary' (2022) 47(1) Review of Central and East European Law 37

191. Benoît C and Hay C, 'The Antinomies of Sovereigntism, Statism and Liberalism in European Democratic Responses to the COVID-19 Crisis: A Comparison of Britain and France' (2022) 20(3) Comparative European Politics 390

192. Bergman M E, 'Labour Market Policies and Support for Populist Radical Right Parties: The Role of Nostalgic Producerism, Occupational Risk, and Feedback Effects' (2022) 14(4) European Political Science Review 520

193. Bergmann H, Bäck H and Saalfeld T, 'Party-System Polarisation, Legislative Institutions and Cabinet Survival in 28 Parliamentary Democracies, 1945–2019' (2022) 45(3) West European Politics 612

194. Bertsou E, 'Bring in the Experts? Citizen Preferences for Independent Experts in Political Decision-Making Processes' (2022) 61(1) European Journal of Political Research 255

195. Bhambra G K, 'A Decolonial Project for Europe' (2022) 60(2) Journal of Common Market Studies 229

196. Bhatia U and Wolkenstein F, 'Freedom of Speech Within Political Parties' (2021) 13(4) European Political Science Review 431

197. Bickerton C and Brack N, 'Implementing the Will of the People: Sovereignty and Policy Conflicts in the Aftermath of the UK's Referendum on EU Membership' (2022) 20(3) Comparative European Politics 295

198. Bickerton C and others, 'Conflicts of Sovereignty in Contemporary Europe: A Framework of Analysis' (2022) 20(3) Comparative European Politics 257

199. Biermann F and Jagdhuber S, 'Take It and Leave It! A Postfunctionalist Bargaining Approach to the Brexit Negotiations' (2022) 45(4) West European Politics 793

200. Bishay J I and others, 'Google Spain from the Perspective of the ECtHR: Balancing Human Rights in the Digital Age [Case Note]' (2022) 30(2) European Review of Private Law 347

201. Biten M, Kuhn T and van der Brug W, 'How Does Fiscal Austerity Affect Trust in the European Union? Analyzing the Role of Responsibility Attribution' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2060282> accessed 30 November 2022

202. Blekesaune M, 'Does the Nuclear Family Affect Social Trust? Longitudinal Evidence from Germany' (2022) 24(2) European Societies 111

203. Bochsler D and Juon A, 'Power-Sharing and the Quality of Democracy' (2021) 13(4) European Political Science Review 411

204. Boda Z and others, 'Two Decades of Penal Populism – The Case of Hungary' (2022) 47(1) Review of Central and East European Law 115

205. Böhmelt T, Ezrow L and Lehrer R, 'Populism and Intra-Party Democracy' (2022) 61(4) European Journal of Political Research 1143

206. Bolin N, Dahlberg S and Blombäck S, 'The Stigmatisation Effect of the Radical Right on Voters' Assessment of Political Proposals' (2023) 46(1) West European Politics 100

207. Bor A and Laustsen L, 'Candidate Evaluations Across the Aisle: Cross-Cultural Evidence That Out-Partisans Value Candidate Warmth More Than In-Partisans' (2022) 61(4) European Journal of Political Research 878

208. Born A and Janssen A, 'Does a District Mandate Matter for the Behavior of Politicians? An Analysis of Roll-Call Votes and Parliamentary Speeches' (2022) 71 European Journal of Political Economy 102070

209. Bortun V, 'Plan B for Europe: The Birth of 'Disobedient Euroscepticism'?' (2022) 60(5) Journal of Common Market Studies 1416

210. Borz G, Brandenburg H and Mendez C, 'The Impact of EU Cohesion Policy on European Identity: A Comparative Analysis of EU Regions' (2022) 23(2) European Union Politics 259

211. Bowler S, McElroy G and Müller S, 'Voter Expectations of Government Formation in Coalition Systems: The Importance of the Information Context' (2022) 61(1) European Journal of Political Research 111

212. Brandao A P and Camisao I, 'Playing the Market Card: The Commission's Strategy to Shape EU Cybersecurity Policy' (2022) 60(5) Journal of Common Market Studies 1335

213. Bratt C, 'Is It Racism? The Belief in Cultural Superiority Across Europe' (2022) 24(2) European Societies 207

214. Braun D and Schäfer C, 'Issues That Mobilize Europe. The Role of Key Policy Issues for Voter Turnout in the 2019 European Parliament Election' (2022) 23(1) European Union Politics 120

215. Brodersen K H, Glerum V and Klip A, 'The European Arrest Warrant and in Absentia Judgments: The Cause of Much Trouble' (2022) 13(1) New Journal of European Criminal Law 7

216. Brouwer E, 'Schengen and the Administration of Exclusion: Legal Remedies Caught in Between Entry Bans, Risk Assessment and Artificial Intelligence' (2021) 23(4) European Journal of Migration and Law 485

217. Brummer E C and others, 'European Identity Among Ethnic Majority and Ethnic Minority Students: Understanding the Role of the School Curriculum' (2022) 24(2) European Societies 178

218. Bulmer S, 'Germany, the Eurozone Crisis and the Covid-19 Pandemic: Failing Forward or Moving on?' (2022) 20(2) Comparative European Politics 166

219. Bunea A, Ibenskas R and Weiler F, 'Interest Group Networks in the European Union' (2022) 61(3) European Journal of Political Research 718

220. Burgoon B and others, 'Understanding Unequal Representation' (2022) 61(2) European Journal of Political Research 297

221. Bussolo M and others, 'Politically Connected Firms and Privileged Access to Credit: Evidence from Central and Eastern Europe' (2022) 71 European Journal of Political Economy 102073

222. Cadier D, 2021, 'Populist Politics of Representation and Foreign Policy: Evidence from Poland' (2021) 19(6) Comparative European Politics 703

223. Canihac H and Laruffa F, 'From an Ordoliberal Idea to a Social-Democratic Ideal? The European Parliament and the Institutionalization of 'Social Market Economy' in the European Union (1957-2007)' (2022) 60(4) Journal of Common Market Studies 867

224. Caponio T, 'Governing Migration Through Multi-Level Governance? City Networks in Europe and the United States' (2022) 60(6) Journal of Common Market Studies 1590

225. Carrieri L and Vittori D, 'Defying Europe? The Euroscepticism of radical right and radical left Voters in Western Europe' (2021) 43(8) Journal of European Integration 955

226. Casiraghi M C M and Bordignon M, 'The Rhetorical Contestation of Populism in Four European Parliaments (2010–2020)' (2023) 46(1) West European Politics 173

227. Cassarino J-P and Marin L, 'The Pact on Migration and Asylum: Turning the European Territory into a Non-Territory?' (2022) 24(1) European Journal of Migration and Law 1

228. Castelli Gattinara P, Froio C and Pirro A L P, 'Far-Right Protest Mobilisation in Europe: Grievances, Opportunities and Resources' (2022) 61(4) European Journal of Political Research 1019

229. Cauffman C, 'Discrimination in Online Advertising [Editorial]' (2021) 28(3) Maastricht Journal of European and Comparative Law 283

230. Cavaliere P and Romeo G, 'From Poisons to Antidotes: Algorithms as Democracy Boosters' (2022) 13(3) European Journal of Risk Regulation 421

231. Ceron A and Volpi E, 'How do Parties react to Defections? Electoral Strategies After a Valence Loss' (2022) 61(4) European Journal of Political Research 1042

232. Chalmers D, 'The European Union and the Re-Establishment of Democratic Authority' (2022) European Law Journal <https://doi.org/10.1111/eulj.12448> accessed 4 December 2022

233. Chan K M, 'The Bottom-Up Spillover Effect for Radical Right Parties' (2022) 14(3) European Political Science Review 351

234. Cheibub J A and Rasch B E, 'Constitutional Parliamentarism in Europe, 1800–2019' (2022) 45(3) West European Politics 470

235. Cheneval F, 'The Impact of Populism on European Institutions and Civil Society: Discourses, Practices, and Policies' (2022) 60(4) Journal of Common Market Studies 1214

236. Chinkin C, 'CEDAW and the Decriminalisation of Same-Sex Relationships' (2022) (3) European Human Rights Law Review 288

237. Chiru M, 'Electoral Incentives for Territorial Representation in the European Parliament' (2022) 44(2) Journal of European Integration 277

238. Chryssogelos A, 'Exploring the Cave of the Unknown: Transnational Party Politics in the EU' (2022) 44(3) Journal of European Integration 451

239. Ciornei I, Euchner E-M and Yesil I, 'Political Parties and Muslims in Europe: The Regulation of Islam in Public Education' (2022) 45(5) West European Politics 1003

240. Cipullo D and Le Moglie M, 'To Vote, or Not to Vote? Electoral Campaigns and the Spread of COVID-19' (2022) 72 European Journal of Political Economy 102118

241. Cladi L, 'Grand Strategy in 10 Words: A Guide to Great Power Politics in the 21st Century' (2022) 60(1) Journal of Common Market Studies 224

242. Clegg D, 'A More Liberal France, a More Social Europe? Macron, Two-Level Reformism and the COVID-19 Crisis' (2022) 20(2) Comparative European Politics 184

243. Closa C, 'A Conflict of Sovereignty? Democracy Versus Rule of Law in the Case of Catalonian Succession' (2022) 20(3) Comparative European Politics 336

244. Colfer B and Diamond P, 'Borders and Identities in NI after Brexit: Remaking Irish–UK Relations', (2022) 20(5) Comparative European Politics 544

245. Collinson J, 'Deporting EU National Offenders from the UK After Brexit: Moving from a System that Recognises Individuals, to One That Sees Only Offenders' (2021) 12(4) New Journal of European Criminal Law 575

246. Coman R, 'Antagonistic Understandings of Sovereignty in the 2015 Polish Constitutional Crisis' (2022) 20(3) Comparative European Politics 275

247. Corcione E, 'Disconnecting Agricultural Workers' Exploitation from Migration Policies: A Trend Towards a Business and Human Rights Approach in the European Union' (2022) 1(3) European Law Open 699

248. Cornelisse G and Moraru M, 'Judicial Interactions on the European Return Directive: Shifting Borders and the Constitutionalisation of Irregular Migration Governance' (2022) 7(1) European Papers – A Journal on Law and Integration 127

249. Corrado A and Caruso F S, 'Essential but Exploitable: Migrant Agri-Food Workers in Italy and Spain' (2022) 24(2) European Journal of Migration and Law 193

250. Coticchia F, 'A Sovereignist Revolution? Italy's Foreign Policy Under the "Yellow–Green" Government' (2021) 19(6) Comparative European Politics 739

251. Crepaz M and Hanegraaff M, '(Don't) Bite the Hand That Feeds You: Do Critical Interest Organizations Gain Less Funding in the EU?' (2022) 14(3) European Political Science Review 315

252. Crespy A and Rone J, 'Conflicts of sovereignty over EU trade policy: a new constitutional settlement?' (2022) 20(3) Comparative European Politics 314

253. Crosson J M and Tsebelis G, 'Multiple Vote Electoral Systems: A Remedy for Political Polarization' (2022) 29(6) Journal of European Public Policy 932

254. Csehi R, 'The Challenge Populist Governments Pose for the Process and Theory of European Integration' (2023) 46(1) West European Politics 219

255. Cunniffe E, 'Non-Economic Migrants as Workers: Securing the Right to Work for Asylum Applicants in the EU' (2022) 24(1) European Journal of Migration and Law 112

256. Däubler T, Chiru M and Hermansen S S L, 'Introducing COMEPELDA: Comprehensive European Parliament Electoral Data Covering Rules, Parties and Candidates' (2022) 23(2) European Union Politics 351

257. Davio V, 'Detention in the Hungarian Transit Zones: A Case of Higher Fundamental Rights Protection by EU Law Vis-a-Vis the ECHR' (2022) 47(3) European Law Review 393

258. De la Porte C and Heins E, 'EU Constraints and Opportunities in the COVID-19 Pandemic – The Politics of NGEU [Introduction]' (2022) 20(2) Comparative European Politics 135

259. De Vries C E, 'Analysing How Crises Shape Mass and Elite Preferences and Behaviour in the European Union' (2022) 23(1) European Union Politics 161

260. Delhey J and others, 'Who Values Status Seeking? A cross-European Comparison of Social Gradients and Societal Conditions' (2022) 24(1) European Societies 29

261. Destardi S, Cadier D and Plagemann J, 'Populism and Foreign Policy: A Research Agenda [Introduction]' (2021) 19(6) Comparative European Politics 663

262. Devine D and Ibenskas R, 'From Convergence to Congruence: European Integration and Citizen–Elite Congruence' (2021) 22(4) European Union Politics 676

263. Di Giulio M and Gianfreda S, 'Detecting Anticipatory Design Strategies: The Case of Asylum Policy in Italy' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2107049> accessed 3 December 2022

264. Dias-Abey M, 'Path Dependent Policymaking in the Post-Brexit United Kingdom: What's New About the 'Points-Based' Labour Migration System?' (2022) 1(3) European Law Open 720

265. Dobbins M, Horvath B and Rafael P L, 'Exploring the Domestic and International Drivers of Professionalization of Central and Eastern European Interest Groups' (2022) 14(2) European Political Science Review 263

266. Donovan T, 'Measuring and Predicting the Radical-Right Gender Gap' (2023) 46(1) West European Politics 255

267. Doolan K and Tonković Ž, 'Convergences and Divergences of a Bourdieusian and Occupation-Based Approach to Social Class: Evidence from Croatia' (2021) 23(5) European Societies 590

268. Dooley N, 'Frustrating Brexit? Ireland and the UK's Conflicting Approaches to Brexit Negotiations' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2050780> accessed 30 November 2022

269. Downes C, 'EU or UK Child-Sponsored Family Reunification Policy: Who's Right? Whose Rights?' (2021) 23(3) European Journal of Migration and Law 245

270. Drake H and Schnapper P, "We Thought We Were Friends!": Franco-British Bilateral Diplomacy and the Shock of Brexit' (2021) 17(4) Journal of Contemporary European Research 482

271. Dzehtsiarou K, 'Can Human Rights Law Live up to Its Promises?' (2022) (1) European Human Rights Law Review 1

272. Edlund J and Stehlik V, 'Is the Assessment under Article 8 ECHR for Migrants Justifiable?' (2022) 29(1) Maastricht Journal of European and Comparative Law 100

273. Eggers A C and Harding R, 'Rallying in Fear? Estimating the Effect of the UK COVID-19 Lockdown With a Natural Experiment' (2022) 61(2) European Journal of Political Research 586

274. Eisele O, Tolochko P and Boomgaarden H G, 'How Do Executives Communicate About Crises? A Framework for Comparative Analysis' (2022) 61(4) European Journal of Political Research 952

275. Elif N K and Nadler A, 'Non-Citizen Voting Rights and Political Participation of Citizens: Evidence from Switzerland' (2022) 14(2) European Political Science Review 206

276. Elsässer L and Haffert L, 'Does Fiscal Pressure Constrain Policy Responsiveness? Evidence from Germany' (2022) 61(2) European Journal of Political Research 374

277. – – and Schäfer A, '(N)one of Us? The Case for Descriptive Representation of the Contemporary Working Class' (2022) 45(6) West European Politics 1361

278. El-Wakil A, 'Participatory Processes and Their Outcomes: Comparing Assembly and Popular Vote Decisions' (2022) 14(3) European Political Science Review 441

279. Emaus J, 'Introduction to the Case Note on the Right to Be Forgotten [Case Note]' (2022) 30(2) European Review of Private Law 235

280. Engler S and others, 'Democracy Challenged: How Parties Politicize Different Democratic Principles' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2099956> accessed 3 December 2022

281. Erdos D, 'Special, Personal and Broad Expression: Exploring Freedom of Expression Norms under the General Data Protection Regulation' [2021] 40 Yearbook of European Law 398

282. – – 'Comparing Constitutional Privacy and Data Protection Rights Within the EU' (2022) 47(4) European Law Review 482

283. Ertugal E, 'Hidden Phases of De-Europeanization: Insights From Historical Institutionalism' (2021) 43(7) Journal of European Integration 841

284. Evans G, Stubager R and Langsæther P E, 'The Conditional Politics of Class Identity: Class Origins, Identity and Political Attitudes in Comparative Perspective' (2022) 45(6) West European Politics 1178

285. Faas T and Klingelhöfer T, 'German Politics at the Traffic Light: New Beginnings in the Election of 2021' (2022) 45(7) West European Politics 1506

286. Fabbrini S, 'Who Holds the Elephant to Account? Executive Power Political Accountability in the EU' (2021) 43(8) Journal of European Integration 923

287. Fathaigh R O and others, 'Microtargeted Propaganda by Foreign Actors: An Interdisciplinary Exploration' (2021) 28(6) Maastricht Journal of European and Comparative Law 856

288. Federico V, Moraru M and Pannia P, 'The Growing but Uneven Role of European Courts in (Im)migration Governance: A Comparative Perspective [Editorial]' (2021) 14(Special Issue) European Journal of Legal Studies 1

289. Fenech D, 'The 2022 Maltese General Election: An Outcome Foretold' (2023) 46(1) West European Politics 265

290. Fernández-i-Marín X and others, 'Discrimination Against Mobile European Union Citizens Before and During the first COVID-19 Lockdown: Evidence from a Conjoint Experiment in Germany' (2021) 22(4) European Union Politics 741

291. Fernandez-Navia T, Polo-Muro E and Tercero-Lucas D, 'Too Afraid to Vote? The Effects of COVID-19 on Voting Behaviour' (2021) 69 European Journal of Political Economy 102012

292. Fernández-Vázquez P, Lavezzolo S and Ramiro L, 'The Technocratic side of Populist Attitudes: Evidence from the Spanish Case' (2023) 46(1) West European Politics 73

293. Ferraresi M and Gucciardi G, 'Political Alignment, Centralisation, and the Sense of Government Unpreparedness during the COVID-19 Pandemic' (2022) 73 European Journal of Political Economy 102144

294. Filsinger M and Freitag M, 'Pandemic Threat and Authoritarian Attitudes in Europe: An Empirical Analysis of the Exposure to COVID-19' (2022) 23(3) European Union Politics 417

295. Finseraas H and Strøm M, 'Voter Responses to Refugee Arrivals: Effects of Settlement Policy' (2022) 61(2) European Journal of Political Research 524

296. Fraile M and de Miguel Moyer C, 'Risk and the Gender Gap in Internal Political Efficacy in Europe' (2022) 45(7) West European Politics 1462

297. Frasca E and Gatta F L, 'Ebbs and Flows of EU Migration Law and Governance: A Critical Assessment of the Evolution of Migration Legislation and Policy in Europe' (2022) 24(1) European Journal of Migration and Law 56

298. Frederiksen K V S, 'When Democratic Experience Distorts Democracy: Citizen Reactions to Undemocratic Incumbent Behaviour' (2022) 61(1) European Journal of Political Research 281

299. Freudlsperger C and Weinrich M, 'Decentralized EU Policy Coordination in Crisis? The Case of Germany' (2022) 60(5) Journal of Common Market Studies 1356

300. Frumarová K and Grygar T, 'Reimbursement of Value of Expropriated Property Under Czech Law in Light of European Legal Standards' (2022) 9(1) InterEULawEast 121

301. Galpin C, 'Contesting Brexit Masculinities: Pro-European Activists and Feminist EU Citizenship' (2022) 60(2) Journal of Common Market Studies 301

302. Ganty S, 'Integration Duties in the European Union: Four Models' (2021) 28(6) Maastricht Journal of European and Comparative Law 784

303. Gattermann K and de Vreese C H, 'Understanding Leader Evaluations in European Parliament Elections' (2022) 23(1) European Union Politics 141

304. – – Meyer T M and Wurzer K, 'Who Won the Election? Explaining News Coverage of Election Results in Multi-Party Systems' (2022) 61(4) European Journal of Political Research 857

305. Gellwitzki CNL and Houde A-M, 'Feeling the Heat: Emotions, Politicization, and the European Union' (2022) 60(5) Journal of Common Market Studies 1470

306. Germann M, 'Pax Populi? An Analysis of the Conflict Resolution Potential of Referendums on Self-Determination' (2022) 14(3) European Political Science Review 403

307. Gerónimo Fernández E, 'Freedom of Expression of Judges Participating in Public Debates of Great Public Interest' (2022) (5) European Human Rights Law Review 528

308. Gidengil E, Stolle D and Bergeron-Boutin O, 'The Partisan Nature of Support for Democratic Backsliding: A Comparative Perspective' (2022) 61(4) European Journal of Political Research 901

309. Giuliani G A, 'The Family Policy Positions of Conservative Parties: A Farewell to the Male-Breadwinner Family Model?' (2022) 61(3) European Journal of Political Research 678

310. Gkliati M, 'The Next Phase of the European Border and Coast Guard: Responsibility for Returns and Push-Backs in Hungary and Greece' (2022) 7(1) European Papers – A Journal on Law and Integration 171

311. Glencross A, (2022) 'The Origins of "Cakeism": The British Think Tank Debate Over Repatriating Sovereignty and Its Impact on the UK's Brexit Strategy' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2072371> accessed 30 November 2022

312. Goenaga A, 'Who Cares About the Public Sphere?' (2022) 61(1) European Journal of Political Research 230

313. Goldberg A C, Brosius A and de Vreese C H, 'Policy Responsibility in the Multilevel EU Structure – The (Non-)Effect of Media Reporting on Citizens' Responsibility Attribution Across Four Policy Areas' (2022) 44(3) Journal of European Integration 381

314. – – van Elsas E J and de Vreese C H, 'One Union, Different Futures? Public Preferences for the EU's Future and Their Explanations in 10 EU Countries' (2021) 22(4) European Union Politics 721

315. Goldner Lang I, 'The New Pact on Migration and Asylum: A Strong External and a Weak Internal Dimension? [Editorial]' (2022) 27(1) European Foreign Affairs Review 1

316. Goldoni M, 'From Trauma to Apathy: On the Hegemonic Force of European Authoritarian Liberalism' (2022) 1(1) European Law Open 158

317. Golub J, 'Power in the European Union: An Evolutionary Computing Approach' (2022) 44(2) Journal of European Integration 225

318. Gomez R, 'When the Chickens Come Home to Roost: The Long-Term Impact of Party Positions on Religious Voting' (2022) 61(2) European Journal of Political Research 566

319. Górecki M A and Pierzgalski M, 'Legislated Candidate Quotas and Women's Descriptive Representation in Preferential Voting Systems' (2022) 61(1) European Journal of Political Research 154

320. Grant B, 'Different Religious Beliefs of Parents and Children's Best Interests' (2022) (5) European Human Rights Law Review 525

321. Gross M and Chiru M, 'Time Is on My Side? The Temporal Proximity Between Elections and Parties' Salience Strategies' (2022) 14(4) European Political Science Review 482

322. Grzeszczak R and Mazur J, 'Regulating Without Regulation? Regulating Without the Sovereign? The Good Governance Concept Versus Automated Decision-Making in Poland in the Light of European Union Law' (2022) 47(3-4) Review of Central and East European Law 321

323. Guild E, 'Promoting the European Way of Life: Migration and Asylum in the EU' (2020) 26(5-6) European Law Journal 355

324. – – 'Schengen Borders and Multiple National States of Emergency: From Refugees to Terrorism to COVID-19' (2021) 23(4) European Journal of Migration and Law 385

325. Guillén A, León M and Pavolini E, 'Are "Carrots" Better Than "Sticks"? New EU Conditionality and Social Investment Policies in the Aftermath of the COVID-19 Pandemic in Italy and Spain' (2022) 20(2) Comparative European Politics 220

326. Guirao Soro G, 'Institutional Policies and Individual Decision-Making in Artistic Migrations: The Case of Spanish Artists and Art Mediators in the European Union' (2022) 24(4) European Societies 1

327. Gumzej N, '"The Right to Be Forgotten' and the Sui Generis Controller in the Context of CJEU Jurisprudence and the GDPR' [2021] 17 Croatian Yearbook of European Law & Policy 127

328. Győrffy D, 'The Middle-Income Trap in Central and Eastern Europe in the 2010s: Institutions and Divergent Growth Models' (2022) 20(1) Comparative European Politics 90

329. Haastrup T and others, 'Editing 'Europe': Reflections from Inside, Outside and Beyond [Editorial]' (2022) 60(4) Journal of Common Market Studies 853

330. Hackenesch C and others, 'Populist Radical Right Parties' Impact on European Foreign Aid Spending' (2022) 60(5) Journal of Common Market Studies 1391

331. Hadj Abdou L and Pettrachin A, 'Exploring the EU's Status Quo Tendency in the Migration Policy Field: A Network-Centred Perspective' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2072937> accessed 30 November 2022

332. Hadziabdic S and Kohl S, 'Is the Left Right? The Creeping Embourgeoisement of Social Democracy Through Homeownership' (2022) 61(4) European Journal of Political Research 930

333. Hagemeister F, 'Populism and Propagation of Far-Right Extremism' (2022) 72 European Journal of Political Economy 102116

334. Hahonou E K and Olsen G R, 'Niger – Europe's border guard? Limits to the externalization of the European Union's migration policy' (2021) 43(7) Journal of European Integration 875

335. Hajdini B and Skara G, 'The Right to Freedom of Assembly during the COVID-19 Pandemic in the Light of ECHR Standards' [2022] 6 EU and Comparative Law Issues and Challenges Series 267

336. Hamenstadt K, 'Mutual (Dis-)Trust in the Area of Freedom, Security and Justice?' (2021) 14(2) Review of European Administrative Law 5

337. Harka E and Rocco L, 'Studying More to Vote Less. Education and Voter Turnout in Italy' (2022) 72 European Journal of Political Economy 102115

338. Harkin T, 'The Case Law of the Court of Justice of the European Union on 'Judicial Authority' and Issuing European Arrest Warrants' (2021) 12(4) New Journal of European Criminal Law 508

339. Harteveld E and others, 'Multiple Roots of the Populist Radical Right: Support for the Dutch PVV in Cities and the Countryside' (2022) 61(2) European Journal of Political Research 440

340. Haugsgjerd A and others, 'Policy Positions, Power and Interest Group-Party Lobby Routines' (2022) 29(7) Journal of European Public Policy 1029

341. Häusermann S and others, 'Class and Social Policy in the Knowledge Economy' (2022) 61(2) European Journal of Political Research 462

342. Hazan R Y and Rasch B E, 'Parliaments and Government Termination: Understanding the Confidence Relationship' (2022) 45(3) West European Politics 455

343. Heimrich C and Scharpf M, 'Ne Bis in Idem in the Context of an Interpol Red Notice: Effective Law Enforcement versus Fundamental Right [Case Note on C-505/19 WS]' (2022) 13(1) New Journal of European Criminal Law 91

344. Heinze A, 'Dealing With the Populist Radical Right in Parliament: Mainstream Party Responses Toward the Alternative for Germany' (2022) 14(3) European Political Science Review 333

345. Heri C, 'Responsive Human Rights: Vulnerability, Ill-Treatment and the ECtHR' (2022) (4) European Human Rights Law Review 435

346. Hernández E and Galais C, 'The Long-Lasting Effects of Citizenship Education' (2022) 45(5) West European Politics 1130

347. Hien J and Wolkenstein F, 'Where Does Europe End? Christian Democracy and the Expansion of Europe' (2022) 60(6) Journal of Common Market Studies 1623

348. Hobolt S B and others, 'The Brexit Deterrent? How Member State Exit Shapes Public Support for the European Union' (2022) 23(1) European Union Politics 100

349. Hodson D and Maher I, 'Single Issue EU Referendums: Tying Hands, Domestic Effects and the Challenge of Consentification' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2032286> accessed 1 December 2022

350. Hoffmann T, 'Illegal Legality and the Facade of Good Faith – Migration and Law in Populist Hungary' (2022) 47(1) Review of Central and East European Law 139

351. – – and Gardos-Orosz F, 'Populism and Law in Hungary – Introduction to the Special Issue' (2022) 47(1) Review of Central and East European Law 1

352. Höhmann D and Nugent M, 'Male MPs, Electoral Vulnerability and the Substantive Representation of Women's Interests' (2022) 61(3) European Journal of Political Research 762

353. Howard E, 'Headscarves and the CJEU: Protecting Fundamental Rights or Pandering to Prejudice' (2021) 28(5) Maastricht Journal of European and Comparative Law 648

354. – – 'Headscarves and the CJEU: Protecting Fundamental Rights and Pandering to Prejudice, the CJEU Does Both' (2022) 29(2) Maastricht Journal of European and Comparative Law 245

355. Huijsmans T and Krouwel A, 'Party Competition over EU Integration: Asymmetrical Impacts of External Shocks Across Regions?' (2021) 13(4) European Political Science Review 547

356. Hungler S, 'Labor Law Reforms After the Populist Turn in Hungary' (2022) 47(1) Review of Central and East European Law 84

357. Iglesias Sánchez S, 'Fundamental Rights in the EU Area of Freedom, Security and Justice' (2022) 47(3) European Law Review 425

358. Imbert L, 'Endorsing Migration Policies in Constitutional Terms: The Case of the French Constitutional Council' (2021) 14(Special Issue) European Journal of Legal Studies 63

359. Ineli-Ciger M, 'Is Resettlement Still a Durable Solution? An Analysis in Light of the Proposal for a Regulation Establishing a Union Resettlement Framework' (2022) 24(1) European Journal of Migration and Law 27

360. Jabko N and Schmidt S, 'Making Sense of Gold and Governance: The Importance of Practices and Repertoires' (2022) 45(4) West European Politics 863

361. Jancic, D. 2022, 'Regulatory Strings That Bind and the UK Parliament After Brexit' (2022) 20(5) Comparative European Politics 566

362. Jang W and Newman A L, 'Enforcing European Privacy Regulations from Below: Transnational Fire Alarms and the General Data Protection Regulation' (2022) 60(2) Journal of Common Market Studies 283

363. Jarak N, 'Fundamental Rights of EU Citizens in Purely Internal Situations: From Reverse Discrimination to Incorporation?' [2021] 17 Croatian Yearbook of European Law & Policy 41

364. Jeandesboz J, 'Ceci n'est pas un controle: PNR Data Processing and the Reshaping of Borderless Travel in the Schengen Area' (2021) 23(4) European Journal of Migration and Law 431

365. Jeannet A-M, 'America's Rusted Families: Working-Class Political Participation Through Three Biological Generations' (1965–1997) (2022) 45(6) West European Politics 1231

366. Jeroense T and Spierings N, 'Political Participation Profiles' (2023) 46(1) West European Politics 1

367. Johnson M, 'Systematic Police Failures to Protect Victims of Domestic Violence' (2022) (2) European Human Rights Law Review 194

368. Johnston S A T, 'Choose Your Target Wisely: How the EU Shapes Nationalism in Contemporary Europe' (2023) 46(1) West European Politics 196

369. Juverdeanu C, 'The EU Market Citizenship Paradigm: Embraced or Abandoned?' (2022) 44(7) Journal of European Integration 1011

370. Kaiser W and Revesz N, 'Strategic Leadership in the EU Multilevel Parliamentary Field: The EPP Group's Erasmus Programme' (2022) 20(4) Comparative European Politics 463

371. Kajta J, 'Calling for an Alternative Emancipation? Female Discourses in the Polish Radical-Nationalist Movement' (2022) 24(1) European Societies 61

372. Kaltenegger M and Ennser-Jedenastik L, 'Who's Fit for the Job? Allocating Ministerial Portfolios to Outsiders and Experts' (2022) 14(4) European Political Science Review 618

373. Kamenova V, 'Internal Democracy in Populist Right Parties: The Process of Party Policy Development in the Alternative for Germany' (2021) 13(4) European Political Science Review 488

374. Kamkhaji J C and Radaelli C M, 'Don't Think It's a Good Idea! Four Building Sites of the 'Ideas School'' (2022) 45(4) West European Politics 841

375. Kappe R and Schuster C, 'Agents of Past Principals: The Lasting Effects of Incumbents on the Political Ideology of bureaucrats' (2022) 61(3) European Journal of Political Research 807

376. Karapatakis A, 'A Peaceful Revolution: The Development of Police and Judicial Cooperation in the European Union' (2021) 12(4) New Journal of European Criminal Law 622

377. Katsanidou A and Reinl A-K, 'Public Support for the European Solidarity Deal in EU Debtor States: The Case of Greece' (2022) 44(3) Journal of European Integration 327

378. – – Reinl A-K and Eder C, 'Together We Stand? Transnational Solidarity in the EU in Times of Crises' (2022) 23(1) European Union Politics 66

379. Kawczynska M 'Politics of Stigmatization: Poland as a 'Latecomer' in the European Union' (2022) 60(2) Journal of Common Market Studies 500

380. Keating M, 'Taking Back Control? Brexit and the Territorial Constitution of the United Kingdom' (2022) 29(4) Journal of European Public Policy 491

381. Kelbel C, 'Continuity and Change of Party Democracies in Europe' (2022) 60(2) Journal of Common Market Studies 502

382. Kenny M, 'Descending the Circles of "Brexit": Toxicity of Future EU-UK Relations and the Road to EU Re-Accession?' (2022) 28(1) Columbia Journal of European Law 36

383. Kent-Morris S, 'Degrading treatment of Vulnerable Detainees' (2022) (5) European Human Rights Law Review 519

384. Kern A and Kölln A-K, 'The Consequences of Repeatedly Losing on Legitimacy Beliefs' (2022) 61(4) European Journal of Political Research 997

385. Kestilä-Kekkonen E, Koivula A and Tiihonen A, 'When Trust Is Not Enough. A Longitudinal Analysis of Political Trust and Political Competence During the First Wave of the COVID-19 Pandemic in Finland' (2022) 14(3) European Political Science Review 424

386. Kim N K, 'When Does Women's Political Power Matter? Women' Representation and Legal Gender Equality of Economic Opportunity Across Contexts' (2022) 14(4) European Political Science Review 583

387. Knabe T and Caniard H Y, 'Public Security Revisited: Janus, Triton and Frontex: Operational Requirements and Freedom of Information in the European Union, Case Note under Case T-31/18 Luisa Izuzquiza and Arne Semsrott v European Border and Coast Guard Agency (Frontex) [Case Report]' (2021) 23(3) European Journal of Migration and Law 332

388. Kochenov D V, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in JY' (2022) 47(5) European Law Review 699

389. Kocijan B and Kukec M, 'Correction to: Immigration Attitudes Among Western and Eastern European MPs: Social Identity, Economic Aspects and Political Ideology' (2022) 20(4) Comparative European Politics 510

390. – – and Kukec M, 'Immigration Attitudes Among Western and Eastern European MPs: Social Identity, Economic Aspects and Political Ideology' (2022) 20(1) Comparative European Politics 33

391. Koedam J, 'A Change of Heart? Analysing Stability and Change in European Party Positions' (2022) 45(4) West European Politics 693

392. – – 'Avoidance, Ambiguity, Alternation: Position Blurring Strategies in Multidimensional Party Competition' (2021) 22(4) European Union Politics 655

393. Kokkonen A and Linde J, 'Nativist Attitudes and Opportunistic Support for Democracy' (2023) 46(1) West European Politics 49

394. König P D, 'Citizens' Preferences for Liberal Democracy and Its Deformations: Evidence from Germany' (2022) 14(3) European Political Science Review 367

395. Koop C, Reh C and Bressanelli E, 'Agenda-Setting Under Pressure: Does Domestic Politics Influence the European Commission?' (2022) 61(1) European Journal of Political Research 46

396. Korkea-aho E, 'A Right to Lobby? Comparing Constitutional Discourses in the US and the EU' (2022) 28(1) Columbia Journal of European Law 1

397. Koutrakos P, 'Confronting the Complexities of Mixed Agreements – Opinion 1/19 on the Istanbul Convention' (2022) 47(2) European Law Review 247

398. Kraus L-M and Daenekindt S, 'Moving into Multiculturalism. Multicultural Attitudes of Socially Mobile Individuals Without a Migration Background' (2022) 24(1) European Societies 7

399. Krauss S and Thürk M, 'Stability of Minority Governments and the Role of Support Agreements' (2022) 45(4) West European Politics 767

400. Kreuder-Sonnen C and White J, 'Europe and the Transnational Politics of Emergency' (2022) 29(6) Journal of European Public Policy 953

401. Kriegmair L and others, 'Dolce far niente? Non-Compliance and Blame Avoidance in the EU' (2022) 45(5) West European Politics 1153

402. Kroeber C, 'How Parties Led by a Woman Redefine Their Positions: Empirical Evidence for Women's Green, alternative and Libertarian Agenda' (2022) 61(1) European Journal of Political Research 175

403. Krotz U and Schramm L, 'Embedded Bilateralism, Integration Theory, and European Crisis Politics: France, Germany, and the Birth of the EU Corona Recovery Fund' (2022) 60(3) Journal of Common Market Studies 526

404. Kruschinski S and Bene M, 'In Varietate Concordia?! Political Parties' Digital Political Marketing in the 2019 European Parliament Election Campaign' (2022) 23(1) European Union Politics 43

405. Lahmann H, 'Infecting the Mind: Establishing Responsibility for Transboundary Disinformation' (2022) 33 European Journal of International Law 411

406. Lalić Novak G and Giljević T, 'Migration and Asylum Governance in CEE Countries: Between Historical Legacies and the Europeanisation Process' (2022) 22(1) Hrvatska i komparativna javna uprava 97

407. Lancaster C M, 'Immigration and the Sociocultural Divide in Central and Eastern Europe: Stasis or Evolution?' (2022) 61(2) European Journal of Political Research 544

408. Lantschner E, 'Reflexive Governance in EU Equality Law' (2022) 47(2) European Law Review 285

409. Latner J P, 'Temporary Employment in Europe: Stagnating rates and Rising Risks' (2022) 24(4) European Societies 383

410. Lauwers N, 'The Global Compact for Migration: A Case of De-Politicization?' (2022) 27(1) European Foreign Affairs Review 5

411. Lavezzolo S, Ramiro L and Fernández-Vázquez P, 'Technocratic Attitudes in COVID-19 Times: Change and Preference Over Types of Experts' (2022) 61(4) European Journal of Political Research 1123

412. Le Gall C and Devine D, 'Do Perceived Economic Constraints Affect Performance Voting?' (2022) 45(5) West European Politics 1107

413. Leifeld P and others, 'Belief System Alignment and Cross-Sectoral Advocacy Efforts in Policy Debates' (2022) 29(8) Journal of European Public Policy 1225

414. Lento T and Hazan R Y, 'The Vote of No Confidence: Towards a Framework for Analysis' (2022) 45(3) West European Politics 502

415. Lequesne C, 'Populist Governments and Career Diplomats in the EU: The Challenge of Political Capture' (2021) 19(6) Comparative European Politics 779

416. Leuffen D, Schuessler J and Gómez Díaz J, 'Public Support for Differentiated Integration: Individual Liberal Values and Concerns About Member State Discrimination' (2022) 29(2) Journal of European Public Policy 218

417. Lindroos-Hovinheimo S, 'Jurisdiction and Personality Rights – In Which Member State Should Harmful Online Content Be Assessed?' (2022) 29(2) Maastricht Journal of European and Comparative Law 201

418. Lindvall J and Björn R, 'Challenges for Public-Service Delivery: The Case of Covid-19 Vaccine Hesitancy' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2123024> accessed 3 December 2022

419. Linhartova V, 'The Role of E-Government in the Evaluation of the Quality of Governance in the Countries of the European Union' (2022) 22(2) Hrvatska i komparativna javna uprava 267

420. Lock D, 'Form Over Substance: Human Rights Law's Search for Effective Protections Against the Abuse of Surveillance Powers' (2022) (3) European Human Rights Law Review 299

421. Loschi C and Slominski P, 'Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?' (2022) 7(1) European Papers – A Journal on Law and Integration 195

422. – – and Slominski P, 'The EU Hotspot Approach in Italy: Strengthening Agency Governance in the Wake of the Migration Crisis?' (2022) 44(6) Journal of European Integration 769

423. Lovato M, 'Getting Your House in Order for EU Negotiations: When Domestic Constraints Condition Italy's Performance at the EU Level' (2022) 60(4) Journal of Common Market Studies 963

424. Loxbo K, 'The Varying Logics for Supporting Populist Right-Wing Welfare Politics in West European Welfare Regimes' (2022) 14(2) European Political Science Review 171

425. Lupu N and Warner Z, 'Why Are the Affluent Better Represented Around the World?' (2022) 61(1) European Journal of Political Research 67

426. Ma Y, 'Improved Soft Law Implementation with National Ownership: Evidence from the European Semester' (2022) 20(1) Comparative European Politics 1

427. MacMaolain C, 'Early Lessons from the EU/UK Brexit Negotiations: Implications for Ireland Rapport' (2021) 27(4) European Public Law 629

428. Maher R, 'The Future of British Foreign Policy: Security and Diplomacy in a World after Brexit' (2022) 60(3) Journal of Common Market Studies 848

429. Mancano L, 'Trust Thy Neighbour? Compliance and Proximity to the EU through the Lens of Extradition' [2021] 40 Yearbook of European Law 475

430. Mantu S, 'Schengen, Free Movement and Crises: Links, Effects and Challenges [Editorial]' (2021) 23(4) European Journal of Migration and Law 377

431. Maricut-Akbik A, 'Speaking on Europe's Behalf: EU Discourses of Representation During the Refugee Crisis' (2021) 43(7) Journal of European Integration 781

432. Martill B, 'Deal or No Deal: Theresa May's Withdrawal Agreement and the Politics of (Non-) Ratification' (2022) 60(6) Journal of Common Market Studies 1607

433. – – 'Unity Over Diversity? The Politics of Differentiated Integration after Brexit' (2021) 43(8) Journal of European Integration 973

434. Martin N, de Lange S L and van der Brug W, 'Staying Connected: Explaining Parties' Enduring Connections to Civil Society' (2022) 45(7) West European Politics 1385

435. Mastari L and others, 'Ambivalent Sexism Among Christian and Muslim Youth. The Gendered Pathway of Perceived Pressure for Religious Conformity' (2022) 24(2) European Societies 154

436. Mastenbroek E, Schrama R and Martinsen D S, 'The Political Drivers of Information Exchange: Explaining Interactions in the European Migration Network' (2022) Journal of European Public Policy 1

437. McManus I and Falkenbach M, 'A Hollow Victory: Understanding the Anti-Immigration Shift of Denmark's Social Democrats' (2022) 18(1) Journal of Contemporary European Research 4

438. Mehaffy J, 'Assisted Suicide and Freedom of Expression' (2022) (4) European Human Rights Law Review 427

439. Mello P A, 'Incentives and Constraints: A Configurational Account of European Involvement in the Anti-Daesh Coalition' (2022) 14(2) European Political Science Review 226

440. Miadzvetskaya Y and Wessel R A, 'The Externalisation of the EU's Cybersecurity Regime: The Cyber Diplomacy Toolbox' (2022) 7(1) European Papers – A Journal on Law and Integration 413

441. Miró J, 'Debating Fiscal Solidarity in the EU: Interests, Values and Identities in the Legitimation of the Next Generation EU Plan' (2022) 44(3) Journal of European Integration 307

442. Mitsilegas V and others, 'Data Retention and the Future of Large-Scale Surveillance: The Evolution and Contestation of Judicial Benchmarks' (2022) European Law Journal <https://doi.org/10.1111/eulj.12417>

443. Mockler P, 'Measuring the Inclusiveness of Deliberation: Structural Inequality and the Discourse Quality Index' (2022) 20(1) Comparative European Politics53

444. Molinari C, 'Sincere Cooperation Between EU and Member States in the Field of Readmission: The More the Merrier?' [2021] 23 Cambridge Yearbook of European Legal Studies 269

445. Montaldo S, 'Internal Border Control in the Schengen Area and Health Threats: Any Lessons from the COVID-19 Pandemic?' (2021) 23(4) European Journal of Migration and Law 405

446. Moraru M, 'The European Court of Justice Shaping the Right to Be Heard for Asylum Seekers, Returnees, and Visa Applicants: An Exercise in Judicial Diplomacy?' (2021) 14(Special Issue) European Journal of Legal Studies 21

447. – – and Janku L, 'Czech Litigation on Systematic Detention of Asylum Seekers: Ripple Effects Across Europe' (2021) 23(3) European Journal of Migration and Law 284

448. Mosimann N and Pontusson J, 'Varieties of Trade Unions and Support for Redistribution' (2022) 45(6) West European Politics 1310

449. Müller P and Charlott G, 'Austria and the Global Compact on Migration: The 'Populist Securitization' of Foreign Policy' (2021) 19(6) Comparative European Politics 760

450. Muradova L and Arceneaux K, 'Reflective Political Reasoning: Political Disagreement and Empathy' (2022) 61(3) European Journal of Political Research 740

451. Nai A and others, 'Euroscepticism and the Use of Negative, Uncivil and Emotional Campaigns in the 2019 European Parliament Election: A Winning Combination' (2022) 23(1) European Union Politics 21

452. Nakanishi Y, 'Case C-336/19 Centraal Israelitisch Consistorie van Belgie: Animal Welfare and Freedom of Religion' (2021) 28(5) Maastricht Journal of European and Comparative Law 687

453. Nicoli F and others, 'Not So Far East? The Impact of Central-Eastern European Imports on the Brexit Referendum' (2022) 29(9) Journal of European Public Policy 1454

454. Nicolosi S F, 'Evidence-Based Policymaking in European Union Asylum Law: Potential and Pitfalls' (2022) 24(1) European Journal of Law Reform 68

455. Nikolenyi C, 'Government Termination and Anti-Defection Laws in Parliamentary Democracies' (2022) 45(3) West European Politics 638

456. Nolan B and Weisstanner D, 'Rising Income Inequality and the Relative Decline in Subjective Social Status of the Working Class' (2022) 45(6) West European Politics 1206

457. Nonnemacher J, 'Representational Deprivation: Niche Parties, Niche Voters and Political Protest' (2023) 46(1) West European Politics 24

458. Nordø Å D and Ivarsflaten E, 'The Scope of Exclusionary Public Response to the European Refugee Crisis' (2022) 61(2) European Journal of Political Research 420

459. O'Connell R and others, 'School Meals as a Resource for Low-Income Families in Three European Countries: A Comparative Case Approach' (2022) 24(3) European Societies 251

460. Orenstein M A and Bugarič B, 'Work, Family, Fatherland: The Political Economy of Populism in Central and Eastern Europe' (2022) 29(2) Journal of European Public Policy 176

461. Otteni C and Weisskircher M, 'Global Warming and Polarization. Wind Turbines and the Electoral Success of the Greens and the Populist Radical Right' (2022) 61(4) European Journal of Political Research 1102

462. Ovadek M, 'Procedural Politics Revisited: Institutional Incentives and Jurisdictional Ambiguity in EU Competence Disputes' (2022) 60(6) Journal of Common Market Studies 1381

463. Page D and others, 'Reassessing the Relationship Between Homophobia and Political Participation' (2022) 61(4) European Journal of Political Research 1165

464. Pagliarello M C, 'Unpacking Ambiguity in Ideational Change: The Polysemy of the 'Europe of Knowledge'' (2022) 45(4) West European Politics 884

465. Paksi Herceg B and Habrat D, 'Comparative Views on a Permanent Challenge: Hate Speech Sanctioning in Poland and Croatia' [2022] 6 EU and Comparative Law Issues and Challenges Series 289

466. Palumbo L, 'Exploitation in the Agri-Food Sector in Europe: A Comparative Analysis of the Impact of Migration and Labour Regimes in Producing Migrants' Vulnerabilities' (2022) 24(2) European Journal of Migration and Law 287

467. – – Corrado A and Triandafyllidou A, 'Migrant Labour in the Agri-Food System in Europe: Unpacking the Social and Legal Factors of Exploitation [Editorial]' (2022) 24(2) European Journal of Migration and Law 179

468. Pander Maat E, 'Google v. CNIL: A Commentary on the Territorial Scope of the Right to Be Forgotten [Case Note]' (2022) 30(2) European Review of Private Law 241

469. – – and others, 'The Right to Be Forgotten in the UK: A Case Note on the English and Welsh High Court Reasoning in NT1 & NT2 v. Google and the Post-Brexit Prospects in the GDPR Era [Case Note]' (2022) 30(2) European Review of Private Law 263

470. Pannia P, 'Questioning the Frontiers of Rights: The Case Law of the Italian Constitutional Court on Non-European Union Citizens' Social Rights' (2021) 14(Special Issue) European Journal of Legal Studies 133

471. Partheymuller J, Kritzinger S and Plescia C, 'Misinformedness About the European Union and the Preference to Vote to Leave or Remain' (2022) 60(5) Journal of Common Market Studies 1449

472. Pellegata A and Visconti F, 'Voting for a Social Europe? European Solidarity and Voting Behaviour in the 2019 European Elections' (2022) 23(1) European Union Politics 79

473. Picchio M and Santolini R, 'The COVID-19 Pandemic's Effects on Voter Turnout' (2022) 73 European Journal of Political Economy 102161

474. Pilati K and Perra S, 'The Insider-Outsider Divide and Contentious Politics: The Tripartite Field of the Italian Labour Movement' (2022) 45(6) West European Politics 1283

475. Plescia C and Zucchini F, 'Government Alternation and Proximity Voting: How Policy Change Opportunities Shape Electoral Behaviour' (2023) 46(1) West European Politics 148

476. – – Ecker A and Meyer T M, 'Do Party Supporters Accept Policy Compromises in Coalition Governments?' (2022) 61(1) European Journal of Political Research 214

477. – – Kritzinger S and Spoon J-J, 'Who›s to Blame? How Performance Evaluation and Partisanship Influence Responsibility Attribution in Grand Coalition Governments' (2022) 61(3) European Journal of Political Research 660

478. Polacko M, 'The Rightward Shift and Electoral Decline of Social Democratic Parties Under Increasing Inequality' (2022) 45(4) West European Politics 665

479. Pollicino O, 'Judicial Protection of Fundamental Rights on the Internet: A Road Towards Digital Constitutionalism?' (2022) 47(1) European Law Review 143

480. Polman D, Van Eerd M and Zwaan P, 'Connecting the Dots: A Closer Look at the Linkage Between EU Implementation Experiences and EU Policy Change' (2022) 44(2) Journal of European Integration 207

481. Poses C and Revilla M, 'Measuring Satisfaction With Democracy: How Good Are Different Scales Across Countries and Languages?' (2022) 14(1) European Political Science Review 18

482. Rambla X and Scandurra R, 'Is the Distribution of NEETs and Early Leavers from Education and Training Converging Across the Regions of the European Union?' (2021) 23(5) European Societies 563

483. Rangone N, 'Improving Consultation to Ensure the European Union's Democratic Legitimacy: From Traditional Procedural Requirements to Behavioural Insights' (2022) European Law Journal <https://doi.org/10.1111/eulj.12439> accessed 4 December 2022

484. Rapp C H, 'The Bond That Binds or Drives Us Apart? An Empirical Test of the National Identity Argument in Three Countries' (2022) 14(3) European Political Science Review 296

485. Raskin Y and Sadeh T, 'Responsive Voters – How European Integration Empowers Eurosceptic Parties' (2022) 29(8) Journal of European Public Policy 1309

486. Rathgeb P and Wolkenstein F, 'When Do Social Democratic Parties Unite Over Tough Immigration Policy?' (2022) 45(5) West European Politics 979

487. Rauh C, 'Supranational Emergency Politics? What Executives' Public Crisis Communication May Tell Us' (2022) 29(6) Journal of European Public Policy 966

488. Rennwald L and Pontusson J, 'Class Gaps in Perceptions of Political Voice: Liberal Democracies 1974–2016' (2022) 45(6) West European Politics 1334

489. Riera P and Cantú F, 'Electoral Systems and Ideological Voting' (2022) 14(4) European Political Science Review 463

490. Rigotti C, 'A Long Way to End Rape in European Union: Assessing the Commission's Proposal to Harmonise Rape Law, Through a Feminist Lens' (2022) 13(2) New Journal of European Criminal Law 153

491. Ringlerova Z, 'The Impact of Immigration on Attitudes toward the EU: Evidence from a Three-Country Survey Experiment' (2022) 60(2) Journal of Common Market Studies 391

492. Riotte A, 'The post-Brexit Narrative of the British Council, Re-Engagement Through Culture' (2022) 20(5) Comparative European Politics 585

493. Røed M, 'Party Goals and Interest Group Influence on Parties' (2022) 45(5) West European Politics 953

494. Rohde-Liebenau J, 'EU Identity Visions and Narratives of 'Us' and 'Them' in European Schools' (2022) 24(4) European Societies 409

495. Römer F, Röth L and Zobel M, 'Policymaking on Immigrant Welfare Rights: The Populist and the Mainstream Right' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2093950> accessed 3 December 2022

496. Röth L, Spies D and Schmidt-Catran A, 'From Immigration Over Redistributive Attitudes to Welfare Spending. The Moderating Role of Social Program Design' (2022) 14(4) European Political Science Review 498

497. Rovny J and others, 'Contesting Covid: The Ideological Bases of Partisan Responses to the Covid-19 Pandemic' (2022) 61(4) European Journal of Political Research 1155

498. Rozenfeldova Bachnakova L and Dobrovicova G, 'The Analysis of the Application of Personal Data Protection Norms by Collaborative Platforms' (2022) 6 EU and Comparative Law Issues and Challenges Series 645

499. Rubabshi-Shitrit A and Hasson S, 'The Effect of the Constructive Vote of No-Confidence on Government Termination and Government Durability' (2022) 45(3) West European Politics 576

500. Rudolph L and Wagner M, 'Europe›s Migration Crisis: Local Contact and Out-Group Hostility' (2022) 61(1) European Journal of Political Research 268

501. Runderkamp Z and others, 'Space Invaders and Norm-Politicians: How the Media Represent the Intersectional Identities of Members of Parliament' (2022) 14(4) European Political Science Review 566

502. Sadeh T, Raskin Y and Rubinson E, 'Big Politics, Small Money: Euroscepticism's Diminishing Return in EU Budget Allocations' (2022) 23(3) European Union Politics 437

503. Sardo A, 'Border Walls, Pushbacks, and the Prohibition of Collective Expulsions: The Case of N.D. and N.T. v. Spain [Case Report]' (2021) 23(3) European Journal of Migration and Law 308

504. Sauermann J, Schwaninger M and Kittel B, 'Making and Breaking Coalitions: Strategic Sophistication and Prosociality in Majority Decisions' (2022) 71 European Journal of Political Economy 102064

505. Saz-Carranza A and others, 'The EU's Interactions With Formal Intergovernmental Organizations: A Big Data Analysis of News Media' (2022) 44(5) Journal of European Integration 635

506. Schakel A H and Smith R, 'Unravelling the 'Devolution Paradox': Citizen Preferences for Self-Rule and for Shared Rule' (2022) 61(3) European Journal of Political Research 642

507. Schakel W and Burgoon B, 'The Party Road to Representation: Unequal Responsiveness in Party Platforms' (2022) 61(2) European Journal of Political Research 304

508. Schleiter P and Evans G, 'Prime Ministers, the Vote of Confidence and the Management of Coalition Terminations Between Elections' (2022) 45(3) West European Politics 528

509. Schlipphak B and others, 'When Are Governmental Blaming Strategies Effective? How Blame, Source and Trust Effects Shape Citizens' Acceptance of EU Sanctions Against Democratic Backsliding' (2022) Journal of European Public Policy 1

510. Schmidt V A, 'European Emergency Politics and the Question Of Legitimacy' (2022) 29(6) Journal of European Public Policy 979

511. – – 'The Discursive Construction of Discontent: Varieties of Populist Anti-System Ideas and Discursive Interactions in Europe' (2022) 44(2) Journal of European Integration 165

512. Schneider J and Gotte M, 'Meat Plants and Strawberry Fields Forever? Precarious Migrant Labour in the German Agri-Food Sector Before and After' (2022) 24(2) European Journal of Migration and Law 265

513. Schobess R and de Vet B, 'The Good, the Loyal or the Active? MPs' Parliamentary Performance and the Achievement of Static and Progressive Career Ambitions in Parliament' (2022) 14(4) European Political Science Review 600

514. Schoeller, M.G. 2022, 'Centrifugal Forces in a Hegemonic Environment: The Rise of Small-State Coalitions in the Economic and Monetary Union' (2022) 14(1) European Political Science Review 1

515. Schraff D and Sczepanski R, 'United or Divided in Diversity? The Heterogeneous Effects of Ethnic Diversity on European and National Identities' (2022) 23(2) European Union Politics 236

516. Schreurs S, van der Kammen N and Oosterhuis S, 'A Dutch Perspective on the 'Right to Be Forgotten': An Analysis of Dutch Lower Court Judgments in Light of the Hoge Raad Judgment of 24 February 2017 and the Costeja Judgment [Case Note]' (2022) 30(2) European Review of Private Law 315

517. Schütze R, 'Demoicracy in Europe: Some Preliminary Thoughts' (2022) 47(1) European Law Review 24

518. Scissa C, 'The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy New Voices' (2022) 14(1) European Journal of Legal Studies 5

519. Scotto di Vettimo M, 'Measuring Public Support for European Integration Using a Bayesian Item Response Theory Model' (2022) 23(2) European Union Politics 171

520. Sevenans J, Soontjens K and Walgrave S, 'Inequality in the Public Priority Perceptions of Elected Representatives' (2022) 45(5) West European Politics 1057

521. Seyd B and Bu F, 'Perceived Risk Crowds Out Trust? Trust and Public Compliance With Coronavirus Restrictions Over the Course of the Pandemic' (2022) 14(2) European Political Science Review 155

522. Shady S N, 'Territory and the Divine: The Intersection of Religion and National Identity' (2022) 45(4) West European Politics 744

523. Shomer Y, Rasch B E and Akirav O, 'Termination of Parliamentary Governments: Revised Definitions and Implications' (2022) 45(3) West European Politics 550

524. Shyrokykh K, 'Human Rights Sanctions and the Role of Black Knights: Evidence from the EU's Post-Soviet Neighbours' (2022) 44(3) Journal of European Integration 429

525. Siegmann K A, Quaedvlieg J and Williams T, 'Migrant Labour in Dutch Agriculture: Regulated Precarity' (2022) 24(2) European Journal of Migration and Law 217

526. Silva T, Kartalis Y and Costa Lobo M, 'Highlighting Supranational Institutions? An Automated Analysis of EU Politicisation (2002–2017)' (2022) 45(4) West European Politics 816

527. Smith J C, 'Representation in Times of Crisis: Women's Executive Presence and Gender-Sensitive Policy Responses to Crises' (2022) Journal of European Public Policy 1

528. Snegovaya M, 'How Ex-Communist Left Parties Reformed and Lost' (2022) 45(4) West European Politics 716

529. Son J W, 'Who Represents Outsiders? A Comparative Study of The Netherlands, Ireland, and Sweden' (2022) 20(4) Comparative European Politics 443

530. Sonnicksen J, 'Can the EU Be a Federal Democracy? Assessing the Horizontal and Vertical Dimension of the EU Government From Comparative Perspective' (2022) 20(1) Comparative European Politics 114

531. Soontjens K, 'Do Politicians Anticipate Voter Control? A Comparative Study of Representatives' Accountability Beliefs' (2022) 61(3) European Journal of Political Research 699

532. Sotiria T, 'Recovery, Resilience and Growth Regimes Under Overlapping EU Conditionalities: The Case of Greece' (2022) 20(2) Comparative European Politics 201

533. Sternberg S, Brouard S and Hönnige C, 'The Legitimacy-Conferring Capacity of Constitutional Courts: Evidence From a Comparative Survey Experiment' (2022) 61(4) European Journal of Political Research 973

534. Steuer M, 'Flexible Europe: Differentiated Integration, Fairness, and Democracy' (2022) 60(5) Journal of Common Market Studies 1531

535. Strebel M A, 'Who Supports Metropolitan Integration? Citizens' Perceptions of City-Regional Governance in Western Europe' (2022) 45(5) West European Politics 1081

536. Strik T, 'Fundamental Rights as the Cornerstone of Schengen' (2021) 23(4) European Journal of Migration and Law 508

537. Sundberg Diez O, Trauner F and De Somer M, 'Return Sponsorships in the EU's New Pact on Migration and Asylum: High Stakes, Low Gains' (2021) 23(3) European Journal of Migration and Law 219

538. Szabo I G, Golden D and Erne R, 'Why Do Some Labour Alliances Succeed in Politicizing Europe across Borders? A Comparison of the Right2Water and Fair Transport European Citizens' Initiatives' (2022) 60(3) Journal of Common Market Studies 634

539. Szelewa D and Polakowski M, 'European Solidarity and "Free Movement of Labour" During the Pandemic: Exposing the Contradictions Amid East–West Migration' (2022) 20(2) Comparative European Politics 238

540. Szente Z, 'Constitutional Changes in Populist Times Special Issue: The Effects of Populist Governance on the Hungarian Legal System' (2022) 47(1) Review of Central and East European Law 12

541. Szulecka M, 'The Undermined Role of (Domestic) Case Law in Shaping the Practice of Admitting Asylum Seekers in Poland' (2021) 14(Special Issue) European Journal of Legal Studies 171

542. Szymanowski R, 'Handbook on Austerity, Populism and the Welfare State' (2022) 60(3) Journal of Common Market Studies 847

543. Tacea A, 'From Legal to Political Reasoning: National Parliaments' Use of Reasoned in the Area of Freedom, Security and Justice' (2022) 60(6) Journal of Common Market Studies 1573

544. Tas S, 'Fundamental Rights Violations in the Hotspots: Who Is Watching over Them?' (2022) 7(1) European Papers – A Journal on Law and Integration 215

545. Teney C, Pietrantuono G and Möhring K, 'Who Supports Whom? Citizens' Support for Affirmative Action Policies in Recruitment Processes Towards Four Underrepresented Groups' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2131885> accessed 3 December 2022

546. Thommen Y, 'Reforms of Collective Bargaining Institutions in European Union Countries: Bad Timing, Bad Outcomes?' (2022) 71 European Journal of Political Economy 102066

547. Torcal M and Magalhães P C, 'Ideological Extremism, Perceived Party System Polarization, and Support for Democracy' (2022) 14(2) European Political Science Review 188

548. Toshkov D and Krouwel A, 'Beyond the U-curve: Citizen Preferences on European Integration in Multidimensional Political Space' (2022) 23(3) European Union Politics 462

549. – – Carroll B and Yesilkagit K, 'Government Capacity, Societal Trust or Party Preferences: What Accounts for the Variety of National Policy Responses to the COVID-19 Pandemic in Europe?' (2022) 29(7) Journal of European Public Policy 1009

550. Traber D and others, 'Social Status, Political Priorities and Unequal Representation' (2022) 61(2) European Journal of Political Research 351

551. Trein P and Vagionaki T, 'Learning Heuristics, Issue Salience and Polarization in the Policy Process' (2022) 45(4) West European Politics 906

552. Trüdinger E-M and Bächtiger A, 'Attitudes vs. Actions? Direct-Democratic Preferences and Participation of Populist Citizens' (2023) 46(1) West European Politics 241

553. Trumm S, 'Online Versus Offline: Exploring the Link Between How Candidates Campaign and How Voters Cast Their Ballot' (2022) 61(2) European Journal of Political Research 485

554. Tryfonidou A, 'The ECJ Recognises the Right of Rainbow Families to Move Freely Between EU Member States: The VMA Ruling' (2022) 47(4) European Law Review 534

555. Tsourapas G and Zartaloudis S, 'Leveraging the European Refugee Crisis: Forced Displacement and Bargaining in Greece's Bailout Negotiations' (2022) 60(2) Journal of Common Market Studies 245

556. Turnbull-Dugarte S J, 'A New Hope for Europhiles? The 2017 German Federal Elections and the Revenge of the pro-European Mainstream' (2021) 43(7) Journal of European Integration 815

557. – – and Devine D, 'Can EU Judicial Intervention Increase Polity Scepticism? Quasi-Experimental Evidence from Spain' (2022) 29(6) Journal of European Public Policy 865

558. Unfried M and others, 'Cross-Border Impact Assessment for EU's Border Regions' (2022) 24(1) European Journal of Law Reform 47

559. Vaalavuo M and Sirniö O, 'Jobs Against Poverty: A Fixed-Effects Analysis on the Link Between Gaining Employment and Exiting Poverty in Europe' (2022) 24(4) European Societies 431

560. Van de Wardt M and Otjes S, 'Mind the Gap: How Party–Voter Incongruence Fuels the Entry and Support of New Parties' (2022) 61(1) European Journal of Political Research 194

561. Van den Brink M, 'When Can Religious Employers Discriminate? The Scope of the Religious Ethos Exemption in EU Law' (2022) 1(1) European Law Open 89

562. Van den Hoogen E and others, 'Support for European Union Membership Comes in Various Guises: Evidence from a Correlational Class Analysis of Novel Dutch Survey Data' (2022) 23(3) European Union Politics 489

563. – – de Koster W and van der Waal J, 'What Does the EU Actually Mean to Citizens? An in-depth Study of Dutch Citizens' Understanding and Evaluations of the European Union' (2022) 60(5) Journal of Common Market Studies 1432

564. Van der Brug W, Gattermann K and de Vreese C H, 'Electoral Responses to the Increased Contestation over European Integration. The European Elections of 2019 and Beyond' (2022) 23(1) European Union Politics 3

565. Van der Pas D J, 'Do European Media Ignore Female Politicians? A Comparative Analysis of MP Visibility' (2022) 45(7) West European Politics 1481

566. Van Erkel P F A and Turkenburg E, 'Delving Into the Divide: How Ideological Differences Fuel Out-Party Hostility in A Multi-Party Context' (2022) 14(3) European Political Science Review 386

567. Van Haute E and Ribeiro P F, 'Country or Party? Variations in Party Membership Around the Globe' (2022) 14(3) European Political Science Review 281

568. Van Hauwaert S M, 'Immigration as a Thermostat? Public Opinion and Immigration Policy Across Western Europe' (1980–2017)' (2022) Journal of European Public Policy 1

569. Van Holsteyn J J M and Irwin G A, 'The Dutch Parliamentary Elections of March 2021' (2022) 45(7) West European Politics 1493

570. Van Oyen J S, Lange M and Kreinsen S, 'The Right to Be Forgotten in Germany Case Note' (2022) 30(2) European Review of Private Law 291

571. Van Vugt L and Pop I A, 'Status Mismatch and Self-Reported Intimate Partner Violence in the European Union: Does the Country's Context Matter?' (2022) 24(3) European Societies 283

572. Vanberg V, 'Conservative Liberalism, Ordo-Liberalism, and the State – Disciplining Democracy and the Market' (2022) 60(3) Journal of Common Market Studies 846

573. Vankova Z, 'Work-Based Pathways to Refugee Protection under EU Law: Pie in the Sky?' (2022) 24(1) European Journal of Migration and Law 86

574. Varju M and Papp M, 'Sectoral Special Taxes in Hungary as Instruments of a Populist Fiscal Policy: A Legal Analysis' (2022) 47(1) Review of Central and East European Law 60

575. Varone F and Helfer L, 'Understanding MPs' Perceptions of Party Voters' Opinion in Western Democracies' (2022) 45(5) West European Politics 1033

576. Vavoula N, 'Artificial Intelligence (AI) at Schengen Borders: Automated Processing, Algorithmic Profiling and Facial Recognition in the Era of Techno-Solutionism' (2021) 23(4) European Journal of Migration and Law 457

577. Vese D, 'Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency' (2022) 13 European Journal of Risk Regulation 477

578. Visnovitz P and Jenne E K, 'Populist Argumentation in Foreign Policy: The Case of Hungary Under Viktor Orbán, 2010–2020' (2021) 19(6) Comparative European Politics 683

579. Vogiatzis N, 'The Past and Future of the Right to Petition the European Parliament' [2021] 40 Yearbook of European Law 82

580. Von Luckner J G, 'A Brexit Last Call: The Strange Practice of Pre-Brexit Opt-ins Legal Development' (2021) 28(4) Maastricht Journal of European and Comparative Law 556

581. Vrakopoulos C, 'Political and Ideological Normalization: Quality of Government, Mainstream-Right Ideological Positions and Extreme-Right Support' (2022) 14(1) European Political Science Review 56

582. Vrânceanu A, 'How Do Cross-Pressures Affect Immigration Attitudes? Party and Educational Influences' (2022) 45(7) West European Politics 1433

583. Vranes E, 'Enforcing WTO/GATS Law and Fundamental Rights in EU Infringement Proceedings: An Analysis of the ECJ's Ruling in Case C-66/18 Central European University' (2021) 28(5) Maastricht Journal of European and Comparative Law 699

584. Vüllers J and Hellmeier S, 'Does Counter-Mobilization Contain Right-Wing Populist Movements? Evidence from Germany' (2022) 61(1) European Journal of Political Research 21

585. Wagner L-J, 'Member States Nationality under EU Law – To Be or Not to Be a Union Citizen?' (2021) 28(3) Maastricht Journal of European and Comparative Law 304

586. Walther D and Hellström J, 'Government Termination in Europe: A Sensitivity Analysis' (2022) 45(3) West European Politics 591

587. Weber F, 'The Pluralism of Values in an Identity-Framed Verbund: Federal Belonging in the European Union After the Rule of Law Conditionality Judgments' (2022) 47(4) European Law Review 514

588. Weingerla P and Tratnik M, 'Climbing the Wall Around EU Citizenship: Has the Time Come to Align Third-Country Nationals With Intra-EU Migrants?' (2022) 33 European Journal of International Law 15

589. Weiss A H, 'Effective Protection of Rights as a Precondition to Mutual Recognition: Some Thoughts on the CJEU's Gavanozov II Decision' (2022) 13(2) New Journal of European Criminal Law 180

590. Wendler F and Hurrelmann A, 'Discursive Postfunctionalism: Theorizing the Interface Between EU Politicization and Policy-Making' (2022) 44(7) Journal of European Integration 941

591. Western S D, 'Do Indicators Influence Treaty Ratification? The Relationship Between Mid-Range Performance and Policy Change' (2022) 61(3) European Journal of Political Research 623

592. Wilk A, 'The 'Scope of Entrusted Duties' as a Problem of the Church's Vicarious Liability for Damages Done by Sexual Crimes of the Priests: A Comparative Study' (2021) 23(3) European Journal of Law Reform 287

593. Wilkinson M A, 'Authoritarian Liberalism and the Transformation of Modern Europe: Rejoinder' (2022) 1(1) European Law Open 191

594. Williams C J and Hunger S, 'How Challenger Party Issue Entrepreneurship and Mainstream Party Strategies Drive Public Issue Salience: Evidence from Radical-Right Parties and the Issue of Immigration' (2022) 14(4) European Political Science Review 544

595. Winzen T, 'The Institutional Position of National Parliaments in the European Union: Developments, Explanations, Effects' (2022) 29(6) Journal of European Public Policy 994

596. Wolff S and Piquet A, 'Post-Brexit Europeanization: Re-Thinking the Continuum of British Policies, Polity, and Politics Trajectories' (2022) 20(5) Comparative European Politics 513

597. – – Piquet A and Carrapico H, 'UK's Withdrawal from Justice and Home Affairs: A Historical Institutionalist Analysis of Policy Trajectories' (2022) 20(5) Comparative European Politics 604

598. Wolfs W, Put G-J and Van Hecke S, 'Explaining the Reform of the Europarties' Selection Procedures for Spitzenkandidaten' (2021) 43(7) Journal of European Integration 891

599. Wollenschlager F, 'An EU Fundamental Right to Social Assistance in the Host Member State? The CJEU's Ambivalent Approach to the Free Movement of Economically Inactive Union Citizens Post Dano: Reflections on Case C-709/20, Judgment of 15 July 2021, CG v the Department for Communities in Northern Ireland, EU:C:2021:602 [Case Report]' (2022) 24(1) European Journal of Migration and Law 151

600. Wüest R and Pontusson J, 'Voter Preferences as a Source of Descriptive (Mis)Representation by Social Class' (2022) 61(2) European Journal of Political Research 398

601. Yeung E S F, 'Does Immigration Boost Public Euroscepticism in European Union Member States?' (2021) 22(4) European Union Politics 631

602. Zaun N, 'Fence-Sitters No More: Southern and Central Eastern European Member States' Role in the Deadlock of the CEAS reform' (2022) 29(2) Journal of European Public Policy 196

603. Zimmermann S and Stutzer A, 'The Consequences of Hosting Asylum Seekers for Citizens' Policy Preferences' (2022) 73 European Journal of Political Economy 102130

04 The Budget – Financing the European Union

(Fraud / Mismanagement / OLAF)

604. Nicolaides P, 'Can the Borrowing for the "Next Generation EU" Lead to Infringement of Article 125 TFEU?' (2022) 47(5) European Law Review 710

605. Perticari F, 'Who Watches the Lender? An Assessment of the Accountability Framework of the Reformed European Stability Mechanism' (2022) 47(1) European Law Review 115

606. Schlarb D D, 'Rethinking Anti-Money Laundering Supervision: The Single Supervisory Mechanism – A Model for a European Anti-Money Laundering Supervisor?' (2022) 13(1) New Journal of European Criminal Law 69

607. Siena F A, 'The European Anti-Money Laundering Framework – At a Turning Point? The Role of Financial Intelligence Units' (2022) 13(2) New Journal of European Criminal Law 216

05 Economic and monetary policy

(Growth, competitiveness and employment / Economic and Monetary Union / Euro / Budgetary discipline / Fiscal surveillance / European Central Bank)

608. Angino S, Ferrara F M and Secola S, 'The Cultural Origins of Institutional Trust: The Case of the European Central Bank' (2022) 23(2) European Union Politics 212

609. Baerg N and Hallerberg M, 'Council Checks of the Commission Under the European Semester: Does Member State Power and Euroscepticism Still Matter?' (2022) 60(1) Journal of Common Market Studies 58

610. Bongardt A and Torres F, 'The European Green Deal: More Than an Exit Strategy to the Pandemic Crisis, a Building Block of a Sustainable European Economic Model' (2022) 60(1) Journal of Common Market Studies 170

611. Brouwer N and de Haan J, 'Trust in the ECB: Drivers and Consequences' (2022) 74 European Journal of Political Economy 102262

612. Butler G, 'Immunities of National Central Banks in Member States under EU Law: Commission v. Slovenia (ECB Archives) Case Law: Section A: Court of Justice' (2021) 58(6) Common Market Law Review 1895

613. Calliess C, 'The Future of Europe after Brexit: Towards a Reform of the European Union and its Euro Area' [2021] 40 Yearbook of European Law 3

614. Cavaghan R and Elomaki A, 'Dead Ends and Blind Spots in the European Semester: The Epistemological Foundation of the Crisis in Social Reproduction' (2022) 60(4) Journal of Common Market Studies 885

615. Chadwick A, 'Rethinking the EU'S 'Monetary Constitution': Legal Theories of Money, the Euro, and Transnational Law' (2022) 1(3) European Law Open 468

616. Chamon M, 'The Sui Generis Framework for Implementing the Law of EMU: A Constitutional Assessment' (2021) 6(3) European Papers – A Journal on Law and Integration 1463

617. Chiu Y-L A, 'The Euro @20: Lessons for the next Generation of Virtual Currencies' (2022) 33(1) European Business Law Review 57

618. Cour-Thimann P and Jung A, 'Interest-Rate Setting and Communication at the ECB in Its First Twenty Years' (2021) 70 European Journal of Political Economy 102039

619. D'Erman V and others, 'The European Semester in the North and in the South: Domestic Politics and the Salience of EU-Induced Wage Reform in Different Growth Models' (2022) 60(1) Journal of Common Market Studies 21

620. – – and Verdun A, 'An Introduction: Macroeconomic Policy Coordination and Domestic Politics: Policy Coordination in the EU from the European Semester to the Covid-19 Crisis' (2022) 60(1) Journal of Common Market Studies 3

621. Da Costa Cabral N, 'Borrowing in the European Union: From a Pure National Model to the Antechamber of a European Fiscal Federal Solution' (2021) 43(8) Journal of European Integration 939

622. Fabbrini F, 'The Legal Architecture of the Economic Responses to COVID-19: EMU Beyond the Pandemic' (2022) 60(1) Journal of Common Market Studies 186

623. Ferrara F M and Angino S, 'Does Clarity Make Central Banks More Engaging? Lessons from ECB Communications' (2022) 74 European Journal of Political Economy 102146

624. – – and others, 'Political Voice on Monetary Policy: Evidence from the Parliamentary Hearings of the European Central Bank' (2022) 74 European Journal of Political Economy 102143

625. Fjelstul J C, 'Explaining Public Opinion on the Enforcement of the Stability and Growth Pact During the European Sovereign Debt Crisis' (2022) 23(2) European Union Politics 192

626. Foresti P and Napolitano O, 'Risk Sharing in the EMU: A Time-Varying Perspective' (2022) 60(2) Journal of Common Market Studies 319

627. Fraccaroli N and others, 'Ideology and Monetary Policy. The Role of Political Parties' Stances in the European Central Bank's Parliamentary Hearings' (2022) 74 European Journal of Political Economy 102207

628. Franchino F and Mariotto C, 'Noncompliance Risk, Asymmetric Power and the Design of Enforcement of the European Economic Governance' (2021) 22(4) European Union Politics 591

629. Fromage D, 'The Parliamentary Accountability of EMU Decisions: Between Informality and Fragmentation' (2021) 6(3) European Papers – A Journal on Law and Integration 1415

630. Hayden H, 'Enforcement of Fines and Other Pecuniary Obligations Imposed by the ECB (Part I): European Level' (2021) 18(6) European Company and Financial Law Review 1011

631. Heldt E C and Müller T, 'Bringing Independence and Accountability Together: Mission Impossible for the European Central Bank?' (2022) 44(6) Journal of European Integration 837

632. Helene H, 'Enforcement of Fines and Other Pecuniary Obligations Imposed by the ECB: (Part II): National Level' (2022) 19(1) European Company and Financial Law Review 76

633. Herzog B, 'Judgment of the German Federal Constitutional Court (2 BvR 859/15) on the Public Sector Purchase Programme of the ECB: An Interdisciplinary Analysis Scrutiny' (2021) 27(4) European Public Law 653

634. Huysmans M and van Gruisen P, 'Substance and Subsidiarity: The Economic Dimension of Conflict in the Early Warning System' (2022) 44(3) Journal of European Integration 411

635. Jerković E, 'Legal Aspects of the Introduction of the Euro as the Official Currency in the Republic of Croatia' [2022] 6 EU and Comparative Law Issues and Challenges Series 158

636. Juutilainen T, 'The EMU Rationale for Capital Markets Union' (2021) 6(3) European Papers – A Journal on Law and Integration 1505

637. Karremans J, 'This Time Wasn't Different: Responsiveness and Responsibility in the Eurozone between 2007 and 2019' (2022) 60(6) Journal of Common Market Studies 1536

638. Katsanidou A and Reinl A-K, 'Public Support for the European Solidarity Deal in EU Debtor States: The Case of Greece' (2022) 44(3) Journal of European Integration 327

639. Losada F and Tuori K, 'Integrating Macroeconomics into the EU Single Legal Order: The Role of Financial Stability in Post-Crisis Europe' (2021) 6(3) European Papers – A Journal on Law and Integration 1367

640. Mariotto C, 'The Implementation of Economic Rules: From the Stability and Growth Pact to the European Semester' (2022) 60(1) Journal of Common Market Studies 40

641. Mérand F, 'Political Work in the Stability and Growth Pact' (2022) 29(6) Journal of European Public Policy 846

642. Miró J, 'Debating Fiscal Solidarity in the EU: Interests, Values and Identities in the Legitimation of the Next Generation EU Plan' (2022) 44(3) Journal of European Integration 307

643. Nicolaides P, 'The Euro Group and Judicial Protection: Has the Court of Justice Created a Loophole?' 28(6) Maastricht Journal of European and Comparative Law 919

644. O'Dwyer M, 'Gender and Crises in European Economic Governance: Is This Time Different?' (2022) 60(1) Journal of Common Market Studies 152

645. Parle C, 'The Financial Market Impact of ECB Monetary Policy Press Conferences – A Text Based Approach' (2022) 74 European Journal of Political Economy 102230

646. Perticari F, 'Who Watches the Lender? An Assessment of the Accountability Framework of the Reformed European Stability Mechanism' (2022) 47(1) European Law Review 115

647. Rieder K, 'Monetary Policy Decision-Making by Committee: Why, When and How It Can Work' (2022) 72 European Journal of Political Economy 102091

648. Rosas A, 'EMU in the Case Law of the Union Courts: A General Overview and Some Observations' (2021) 6(3) European Papers – A Journal on Law and Integration 1397

649. Sadeh T, Rubinson E and Raskin Y, 'Do Euro Area Institutions Benefit the Small Member States' (2022) 44(6) Journal of European Integration 871

650. Scholz-Alvarado C, 'The Politics of Labour That Underlies European Monetary Integration (2022) 60(5) Journal of Common Market Studies' 1374

651. Schweiger C, 'Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone' (2022) 60(4) Journal of Common Market Studies 1212

652. Smoleńska A, 'Multilevel Cooperation in the EU Resolution of Cross-Border Bank Groups: Lessons from the Non-Euro Area Member States Joining the Single Resolution Mechanism (SRM)' (2022) 23(1) Journal of Banking Regulation 42

653. Soric P, Lolic I and Logarusic M, 'Economic Sentiment and Aggregate Activity: A Tale of Two European Cycles' (2022) 60(2) Journal of Common Market Studies 445

654. Spielberger L, 'The Politicisation of the European Central Bank and Its Emergency Credit Lines Outside the Euro Area' (2022) Journal of European Public Policy 1

655. Steinbach A, 'The Greening of the Economic and Monetary Union' (2022) 59(2) Common Market Law Review 329

656. Stoupos N and Kiohos A, 'Euro Area: Towards a European Common Bond? – Empirical Evidence from the Sovereign Debt Markets' (2022) 60(4) Journal of Common Market Studies 1019

657. Swinkels M, 'Europe Beyond the Euro: Building Protection for Europe's Economies in the Time of Risks' (2022) 60(3) Journal of Common Market Studies 845

658. Tuliakov V, Alekseievska H and Yakubovsky S, 'Legal and Economic Aspects of Monetary Regulation of the European System of Central Banks' (2021) 8(2) InterEULawEast 79

659. Van Cleynenbreugel P, 'ECB Decision-Making Within the Banking and Monetary Union: The Principle of Confidentiality on Its Way Out?' (2021) 6(3) European Papers – A Journal on Law and Integration 1437

660. Van Rijsbergen M and Rogge E, 'Changes to the European Financial Supervisory Agencies' Soft Law Powers: Legitimacy Problems Solved or New Puzzles Created?' (2022) 14(1) European Journal of Legal Studies 219

661. Vanhercke B and Verdun A, 'The European Semester as Goldilocks: Macroeconomic Policy Coordination and the Recovery and Resilience Facility' (2022) 60(1) Journal of Common Market Studies 204

662. Weismann P, 'Public International Law as a Refuge of (Euro-)Member States During the Financial and Economic Crisis: The Case of the Intergovernmental Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund (IGA)' [2021] 40 Yearbook of European Law 335

06 Single market – Competition

(Antitrust policy / State aids / Merger policy / Free movement of goods / Free movement of services / Freedom of establishment / Free movement of capital / Intellectual property / Company law / Tax issues / Free movement of people)

663. – – 'A Jurisprudence of Distribution for the EU [Editorial Comments]' (2022) 59(4) Common Market Law Review 957

664. – – 'Clear and Present Danger: Poland, the Rule of Law & Primacy [Editorial Comments]' (2021) 58(6) Common Market Law Review 1635

665. – – 'Keeping Europeanism at Bay? Strategic Autonomy as a Constitutional Problem [Editorial Comments]' (2022) 59(2) Common Market Law Review 313

666. – – 'The Response to the War in Europe: A More Power Based EU and the Challenge of Ensuring That It Remains Rule and Value Based (Editorial Comments)' (2022) 59(3) Common Market Law Review 623

667. Aalto-Setala I and Piekkala H, 'Finland: State Aid Arguments for and Against the Necessary Health and Social Services Reform News From the Member States' (2021) 20(2) European State Aid Law Quarterly 304

668. Adam A, 'Changing Digital Advertising Landscape – Overview of EU and UK Competition Cases and Regulatory Initiatives' (2022) 43(5) European Competition Law Review 209

669. Aditya I, 'Competition in a Global "FRANDship": The Argument for an International FRAND Tribunal in Light of the Unwired Planet v Huawei Judgment' (2022) 43(3) European Competition Law Review 134

670. Agnolucci I, 'Will COVID-19 Make or Break EU State Aid Control? An Analysis of Commission Decisions Authorising Pandemic State Aid Measures' (2022) 13(1) Journal of European Competition Law and Practice 3

671. Ahlborn C, Van Gerven G and Leslie W, 'Bronner Revisited: Google Shopping and the Resurrection of Discrimination Under Article 102 TFEU' (2022) 13(2) Journal of European Competition Law and Practice 87

672. Akman P, 'Regulating Competition in Digital Platform Markets: A Critical Assessment of the Framework and Approach of the EU Digital Markets Act' (2022) 47(1) European Law Review 85

673. Albert S, 'CAT›s Sabre judgment' (2022) 43(1) European Competition Law Review 45

674. Alejandre G M, 'Ownership of Databases: Personal Data Protection and Intellectual Property Rights on Databases' (2021) 29(5) European Review of Private Law 733

675. Alexander G, 'Blocking the Gap: The Potential for Blockchain Technology to Secure VAT Compliance' 31(3) EC Tax Review 140

676. Allen D W E and others, 'On Coase and COVID-19' (2022) 54(1) European Journal of Law and Economics 107

677. Allevato G and Pastor-Merchante F, 'The Google Ireland Case and the Legal Battle over Digital Taxes in the European Union' (2021) 14(1) Review of European Administrative Law 209

678. Anderwald A-M and Niemann R, 'Is the Inheritance and Gift Tax a Reasonable Alternative for the Net Wealth Tax? A Legal and Economic Analysis Across OECD Countries [Policy Note]' (2022) 50(6-7) Intertax 512

679. Angeli C and Williams R, 'Parental Liability, the Expansion of the Presumption of Decisive Influence to Full Ownership of Voting Rights: Case C-595/18 P Goldman Sachs Group' (2021) 12(9) Journal of European Competition Law and Practice 691

680. Antoniou A, 'Let›s Take a New Sip: Can the Sound of a Fizzy Drink be Trade Marked?' (2022) 44(2) European Intellectual Property Review 120

681. Arginelli P, 'The Implementation of the ATAD in Italy Critical Review of the ATAD Implementation' (2022) 50(6-7) Intertax 531

682. Arnold R, 'Performers' Rights' (2022) 44(2) European Intellectual Property Review 125

683. Attard R, 'Disproportionate Taxation and the Right to Property; Some Recent Judgments of the ECtHR Forum' 31(3) EC Tax Review 156

684. Bacharis G, 'Is 'More' Better? Broadening the Right to Sue in Competition Damages Claims in Both Sides of the Atlantic' (2022) 13(3) Journal of European Competition Law and Practice 217

685. Badell D and Rosell J, 'Are EU Institutions Still Green Actors? An Empirical Study of Green Public Procurement' (2022) 60(6) Journal of Common Market Studies 1555

686. Bahceci B and Celik D B, 'The Question of Interaction Between the Tax and Criminal Proceedings in the ECtHR Case-Law Case Law Trend' (2022) 50(8-9) Intertax 649

687. Baker P, 'Human Rights and the Two-Pillar Solution [Editorial]' (2022) 50(8-9) Intertax 574

688. Barbier de La Serre E and Lagathu E, 'The Law on Fines Imposed in EU Competition Proceedings: A Post-Pandemic Boost of Case Law' (2022) 13(6) Journal of European Competition Law and Practice 448

689. – – and Lagathu E, 'The Law on Fines Imposed in EU Competition Proceedings: A Judicial Paradox' (2021) 12(9) Journal of European Competition Law and Practice 710

690. Bar-Isaac R and Bozhikov V, 'Shedding Light on Partial Immunity – Court of Justice Delivers a Masterclass on Interpreting the 2006 Leniency Notice: Case C-563/19 P Recylex and Others v Commission' (2022) 13(5) Journal of European Competition Law and Practice 349

691. Barnes L, 'Taxing the Rich: Public Preferences and Public Understanding' (2022) 29(5) Journal of European Public Policy 787

692. Bartosch A, 'Economic vs Non-Economic: A Long and Winding Road' (2021) 20(4) European State Aid Law Quarterly 507

693. – – 'The EU Green Deal and Lessons Drawn from the Christmas Story of the Grinch [Editorial]' (2021) 20(4) European State Aid Law Quarterly 459

694. Baş K, 'The Turkish Competition Authority's Decision in AdWords: A Questionable Slap in Google's Face' (2022) 13(5) Journal of European Competition Law and Practice 355

695. Basaran B, 'A Closer Look on the Effectiveness of the EU Legal Framework for Excessive Pricing during the COVID-19 Crisis' (2022) 18(1) European Competition Journal 82

696. Becher S I and A-L Sibony, 'Confronting Product Obsolescence' (2021) 27(2) Columbia Journal of European Law 97

697. Bekkedal T, 'On an Equal Footing. The EFTA Court's Ruling in the Norwegian Social Security Scandal: Criminal Proceedings Against N (Case Law: Section C: EFTA Court)' (2022) 59(1) Common Market Law Review 223

698. Bergqvist C, 'Syndicated Loans and Competition Law' (2022) 13(5) Journal of European Competition Law and Practice 323

699. Beriain I, Duardo Sanchez A and Castillo Parrilla J, 'What Can We Do with the Data of Deceased People? A Normative Proposal' (2021) 29(5) European Review of Private Law 785

700. Bernatt M, 'The Double Helix of Rule of Law and EU Competition Law: An Appraisal' (2021) 27(1-3) European Law Journal 148

701. – – and Grzejdziak L, 'Selectivity of State Aid and Progressive Turnover Taxes – Leaving the Door (Too) Wide Open? Commission v. Poland [Case Law: Section A: Court of Justice]' (2022) 59(1) Common Market Law Review 187

702. Bernhardt L, 'Withdrawn and Prohibited Merger Cases in the EU' (2022) 13(4) Journal of European Competition Law and Practice 296

703. Besselink E, 'The Netherlands: Local Authorities Relying on State Aid Arguments National Procedures News from the Member States' (2021) 20(2) European State Aid Law Quarterly 310

704. Biondi A, 'United Kingdom: The New Chapter on Subsidies Regulation in the EU-UK TCA: Some First Impressions News from the Member States' (2021) 20(1) European State Aid Law Quarterly 173

705. Bjornskov C and Voight S, 'This Time Is Different? – On the Use of Emergency Measures During the Corona Pandemic' (2022) 54(1) European Journal of Law and Economics 63

706. Blaschke-Broad M, 'International Abuses, EU Solutions: Using EU Structures to Address the Challenges of International Antitrust' (2022) 49(1) Legal Issues of Economic Integration 71

707. Blok D N and van der Wal G, 'Valencia Club de Futbol: Every Advantage Has Its Disadvantage (and Vice Versa): Annotation on the Judgment of the EU General Court (Fourth Chamber) of 12 March 2020 in Case T-732/16 Valencia Club de Futbol [Case Law Annotations]' (2021) 20(2) European State Aid Law Quarterly 284

708. Bocket C, 'Restriction by Object: The French Banking Fee Saga' (2021) 12(10) Journal of European Competition Law and Practice 753

709. Bode M, Zippel F and Weber M, 'Audit Authorities' Role as Assurance Providers in Cohesion Policy: From 2007-2013 to 2021-2027' (2021) 20(4) European State Aid Law Quarterly 492

710. Bogetoft R A and Bogetoft P, 'Market Entrance, Patents, and Preliminary Injunctions: A Model of Pharmaceutical Patent Litigation' (2022) 53(3) European Journal of Law and Economics 379

711. Bohme B, 'The Future of the Energy Charter Treaty after Moldova v. Komstroy [Case Law: Section A: Court of Justice]' (2022) 59(3) Common Market Law Review 853

712. Bokhorst D, 'The Influence of the European Semester: Case Study Analysis and Lessons for Its Post-Pandemic Transformation' (2022) 60(1) Journal of Common Market Studies 101

713. Bostoen F, 'The General Court's Google Shopping Judgment Finetuning the Legal Qualifications and Tests for Platform Abuse' (2022) 13(2) Journal of European Competition Law and Practice 75

714. Bougette P, Gautier A and Marty F, 'Business Models and Incentives: For an Effects-Based Approach of Self-Preferencing?' (2022) 13(2) Journal of European Competition Law and Practice 136

715. Boute A, 'Phasing out Coal through Electricity Market Regulation' (2022) 59(4) Common Market Law Review 1007

716. Bouzoraa Y L and Lindeboom J, 'Progressive Turnover-Based Tax Systems and EU State Aid Law: Case C-562/19 P Commission v. Poland and Case C-596/19 P Commission v. Hungary [Case Notes]' (2022) 29(1) Maastricht Journal of European and Comparative Law 118

717. Bouzoraa Y, 'Between Substance and Autonomy: Finding Legal Certainty in Google Shopping' (2022) 13(2) Journal of European Competition Law and Practice 144

718. Brauner Y, 'The Return of the Phoenix? The G-7 Countries' Agreement on a 15% Minimum Tax [Editorial]' (2021) 49(10) Intertax 750

719. Broberg M and Fenger N, 'If You Love Somebody Set Them Free: On the Court of Justice's Revision of the Acte Clair Doctrine' (2022) 59(3) Common Market Law Review 711

720. Bruc É, 'Establishing Jurisdiction for Damages Claims: The Bone, the Spacecraft and the Apes' (2021) 12(10) Journal of European Competition Law and Practice 721

721. Buts C and Staviczky P, 'Eesti Pagar: A Formalistic Approach to Incentive Effect and Recovery Procedures' (2021) 20(4) European State Aid Law Quarterly 546

722. Buytaert T, 'Obligation for EU Institutions to Pay Default Interest on Repaid Fines: Case C-301/19 P Printeos' (2022) 13(5) Journal of European Competition Law and Practice 352

723. Callais J and Young A T, 'Does Rigidity Matter? Constitutional Entrenchment and Growth' (2022) 53(1) European Journal of Law and Economics 27

724. Canapa D, 'Non-Binding 'Recommended Price' as Concerted Practices – The Federal Supreme Court of Switzerland Rules on Recommended Prices That Are Communicated Electronically to Retailers' (2022) 13(6) Journal of European Competition Law and Practice 435

725. Canihac H and Laruffa F, 'From an Ordoliberal Idea to a Social-Democratic Ideal? The European Parliament and the Institutionalization of 'Social Market Economy' in the European Union (1957-2007)' (2022) 60(4) Journal of Common Market Studies 867

726. Carrau J G, 'How Much Protection for Geographical Indications (GIs)? A Jigsaw of Case Law Is Falling Into Place in the EU' (2022) 44(9) European Intellectual Property Review 556

727. Caso R, 'Academic Copyright, Open Access and the "Moral" Second Publication Right' (2022) 44(6) European Intellectual Property Review 332

728. Castillo Parrilla J A, 'The Legal Regulation of Digital Wealth: Commerce, Ownership and Inheritance of Data' (2021) 29(5) European Review of Private Law 807

729. Caussanel S, 'France: Failure to Abide by Standstill Obligation Does Not Constitute Particularly Serious Defect Likely to Jeopardise Contract with Public Authority News from the Member States' (2021) 20(1) European State Aid Law Quarterly 164

730. Caziero M and Lazarov I, 'The Substantive Scope of the Anti-Tax-Avoidance Directive: The Remaining Leeway for National Tax Sovereignty' (2021) 58(6) Common Market Law Review 1789

731. Cerdà Belda F, 'Are European Amended Patents Stuck in Spanish Purgatory? The Barcelona Court of Appeal Rules on the Effects of a Patent Limitation at the EPO in Parallel National Proceedings' (2022) 44(1) European Intellectual Property Review 51

732. Cernadas-Lázare M, 'EU Dilution Protection: From the Fanciful Trade Marks to a Change in the Economic Behaviour of the Average Consumer' (2022) 44(3) European Intellectual Property Review 139

733. Cerqua A and Pellegrini G, 'How Much Does State Aid Mitigate Employment Losses? Local Policy Effects at a Time of Economic Crisis' (2022) 56(10) Regional Studies 1698

734. Chaisse J and Ji X, 'Stress Test for EU's Investment Court System: How Will Investments Be Protected in the Comprehensive Agreement on Investment' (2022) 49(1) Legal Issues of Economic Integration 101

735. Chammas M C, 'Competition Compliance Therapy' (2021) 12(9) Journal of European Competition Law and Practice 667

736. Chapuis-Doppler A and Delhomme V, 'Regulating Composite Platform Economy Services: Examining the Applicable Legal Framework in Light of Recent Judicial Developments' (2022) 49(1) Legal Issues of Economic Integration 43

737. Chiti E, 'Managing the Ecological Transition of the EU: The European Green Deal as a Regulatory Process' (2022) 59(1) Common Market Law Review 19

738. Cini M and Czulno P, 'Digital Single Market and the EU Competition Regime: An Explanation of Policy Change' (2022) 44(1) Journal of European Integration 41

739. Clayton M and Segura M, 'EEA and EFTA States: Decisions Adopted by the EFTA Surveillance Authority [News from the Member States]' (2021) 20(2) European State Aid Law Quarterly 301

740. Cnossen S and Dictus G, 'Big on Big, Small on Small: A Never Ending Promise? A Critical Assessment of the Commission Decision Practice with Regard to the Effect on Trade Criterion' (2021) 20(1) European State Aid Law Quarterly 30

741. Colangelo G, 'The European Digital Markets Act and Antitrust Enforcement: A Liaison Dangereuse' (2022) 47(5) European Law Review 597

742. Colomo P I, 'Will Article 106 TFEU Case Law Transform EU Competition Law?' (2022) 13(6) Journal of European Competition Law and Practice 385

743. Comande G and Schneider G, 'It›s Time. Leveraging the GDPR to Shift the Balance Towards Research-Friendly EU Data Spaces' (2022) 59(3) Common Market Law Review 739

744. Cook C, Frisch S and Novak V, 'Recent Developments in EU Merger Remedies (2020)' (2021) 12(10) Journal of European Competition Law and Practice 772

745. Cooper E, 'Copyright History as a Critical Lens' (2022) 44(3) European Intellectual Property Review 128

746. Cordewener A, 'EU Budgetary Reform and Tax Harmonization: Becoming Brothers in Arms [Editorial]' (2022) 31(2) EC Tax Review 64

747. Cornielje S, 'The Costly Stalemate of EU VAT Harmonization' (2022) 31(2) EC Tax Review 85

748. Crespy A, 'Can Scharpf Be Proved Wrong? Modelling the EU into a Competitive Social Market Economy for the Next Generation' (2020) 26(5-6) European Law Journal 319

749. Csehi R and Schulz D F, 'The EU's New Economic Governance Framework and Budgetary Decision-Making in the Member States: Boon or Bane for Throughput Legitimacy?' (2022) 60(1) Journal of Common Market Studies 118

750. Czapracka K, 'The Essential Facilities Doctrine and the Bronner Judgment Clarified: Case C-165/19 P Slovak Telekom v Commission' (2022) 13(4) Journal of European Competition Law and Practice 278

751. Čičin-Šain N and Englisch J, 'DAC 7: An Entire New Framework for Joint Audits in the EU: How Do the Taxpayers Fare?' (2022) 50(1) Intertax 7

752. D'Arcy M and Nistotskaya M, 'A Taxing Issue: The Constraining Effects of Historical State Capacity on European Property Taxes Today' (2022) 29(5) Journal of European Public Policy 689

753. D'Erman V and others, 'The European Semester in the North and in the South: Domestic Politics and the Salience of EU-Induced Wage Reform in Different Growth Models' (2022) 60(1) Journal of Common Market Studies 21

754. Danbury R, 'The EU's Press Publisher's Right Is Too Broad: What Can Be Done About It?' (2022) 44(1) European Intellectual Property Review 20

755. Dani M, 'Proportionality in Patent Litigation on Medical Devices' (2022) 44(9) European Intellectual Property Review 570

756. Dany J, 'The Recent Reform of the German Patent Act: Improvements and Practical Considerations for Patent Disputes' (2022) 44(6) European Intellectual Property Review 377

757. Davidson J, 'Whose Picture Did You Use in that NFT? A Chinese Viewpoint' (2022) 44(12) European Intellectual Property Review 743

758. Davilla M, 'Unravelling the Complexity of Blockchain and EU Competition Law' (2022) 13(6) Journal of European Competition Law and Practice 387

759. De Broe L and Massant M, 'The General Court's Judgment in Engie: The Non-Application of a National GAAR Confers State Aid' (2022) 31(1) EC Tax Review 6

760. De Cock W, 'Belgium: Ghent Court of Appeal Seeks Assistance from the European Commission News from the Member States' (2021) 20(2) European State Aid Law Quarterly 298

761. – – 'Report on the EStALI Online Conference on State Aid Law, Organised on 24 November 2020' (2021) 20(1) European State Aid Law Quarterly 180

762. – – and Bonne T, 'Belgium: Belgian Ports Subject to Corporate Tax: The Implementation of Commission Decision 2017/2115 in Belgium News from the Member States' (2021) 20(1) European State Aid Law Quarterly 158

763. De Gregorio G and Dunn P, 'The European Risk-Based Approaches: Connecting Constitutional Dots in the Digital Age' (2022) 59(2) Common Market Law Review 473

764. De la Feria R, 'On the Evolving VAT Concept of Fixed Establishment [Editorial]' 30(5-6) EC Tax Review 201

765. De Pietro C, 'The GloBE Income Inclusion Rule and Its Global Character: Complexities Underlying Its Fully Effective Application' 30(5-6) EC Tax Review 220

766. De Silva V T, 'Are National Football Federation Bodies Governed by Public Law? Setting the Boundaries of EU Public Procurement Directives [Case Notes]' (2022) 29(1) Maastricht Journal of European and Comparative Law 156

767. De Witte B, 'EU Emergency Law and Its Impact on the EU Legal Order' [Guest Editorial]' (2022) 59(1) Common Market Law Review 3

768. De Witte F, 'You Are What You Ate: Food Heritage and the EU's Internal Market' (2022) 47(5) European Law Review 647

769. Den Heijer M, 'The Pitfalls of Border Procedures' (2022) 59(3) Common Market Law Review 641

770. Desmet P T M and Weber F, 'Infringers' Willingness to Pay Compensation Versus Fines' (2022) 53(1) European Journal of Law and Economics 63

771. Di Giovanni Bezzi R, 'Anticompetitive Effects and Allocation of the Burden of Proof in Article 102 Cases: Lessons from the Google Shopping Case' (2022) 13(2) Journal of European Competition Law and Practice 112

772. Diaz A M and Salas L M, 'Pretrial Detention and Conviction' (2022) 53(1) European Journal of Law and Economics 1

773. Dietz S, 'Green Monetary Policy Between Market Neutrality and Market Efficiency' (2022) 59(2) Common Market Law Review 395

774. Dinev A, 'Absolute Limitation Periods and Decentralised Enforcement of Articles 101 and 102 TFEU: What About Regulation 1/2003's Effectiveness Requirement?' (2022) 43(1) European Competition Law Review 13

775. Dinis A and Martins A, 'Assessing the Corporate Use of Tax Relief Measures in Portugal in the Wake of the Pandemic: A Survey Country Note' (2022) 50(3) Intertax 257

776. Dnes A W and Garoupa N, 'Efficient Breach and Ex-Post Disgorgement of the Defendant's Gain: A Comparative Contract Law and Economics Perspective' (2022) 18(1) European Review of Contract Law 32

777. Dourado A P, 'Is There a Need for a Directive on Pillar Two? [Debate]' (2022) 50(6-7) Intertax 521

778. – – 'The Pillar Two Top-up Taxes: Interplay, Characterization, and Tax Treaties [Editorial]' (2022) 50(5) Intertax 388

779. – – 'The World Split in Two and the Future of the International Tax System [Editorial Note]' (2022) 50(6-7) Intertax 482

780. – – 'The EC Proposal of Directive on a Minimum Level of Taxation in Light of Pillar Two: Some Preliminary Comments [Editorial]' (2022) 50(3) Intertax 200

781. – – Pirlot A and Traversa E, 'Environmental Tax: International Tax Coordination and Global Environmental Challenges [Editorial]' (2021) 49(10) Intertax 866

782. Drywa A, 'Taxpayer›s Right to Privacy?' (2022) 50(1) Intertax 40

783. Eckert S, 'Supranational Authorities and Private Actors as Drivers of Single Market Integration? The State of the Union in Electricity and Banking' (2022) 44(1) Journal of European Integration 19

784. Ellingsen H, 'Reconciling Fundamental Social Rights and Economic Freedoms: The ECtHR's Ruling in LO and NTF v. Norway (the Holship Case) [Case Law: Section B: European Court of Human Rights]' (2022) 59(2) Common Market Law Review 583

785. Emmenegger P and Lierse H, 'The Politics of Taxing the Rich: Declining Tax Rates in Times of Rising Inequality' (2022) 29(5) Journal of European Public Policy 647

786. Englisch J, 'Non-Harmonized Implementation of a GloBE Minimum Tax: How EU Member States Could Proceed' 30(5-6) EC Tax Review 207

787. Ernest K, 'Intra-Brand Competition in the Pharmaceutical Sector: Comments to the CJEU Advocate General's Opinion in Cases C-147/20, C-204/20 and C-224/20' (2022) 43(5) European Competition Law Review 256

788. Estella A, 'The 'Muting' of the Stability and Growth Pact' [2021] 23 Cambridge Yearbook of European Legal Studies 73

789. Falcao T, 'Highlights of the United Nations Handbook on Carbon Taxation [Policy Note]' (2021) 49(10) Intertax 897

790. Fastenrath F and others, 'Why Is It So Difficult to Tax the Rich? Evidence from German Policy-Makers' (2022) 29(5) Journal of European Public Policy 767

791. Federico R, 'Lucchini Revisited: When Judgments Harm Copmetition: Annotation on the Judgments of the Court (Ninth Chamber) of 4 March 2020 in Case C-586/18 P Buonotourist and Case C-587/18 P CSTP Azienda della Mobilita [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 144

792. Fernandez J E, 'The European Union's Four Freedoms of Movement and the Covid-19 Pandemic: Lessons Learned and a Critical Analysis' (2022) 28(2) Columbia Journal of European Law 239

793. Ferretti F, 'A Single European Data Space and Data Act for the Digital Single Market: on Datafication and the Viability of a PSD2-like Access Regime for the Platform Economy' (2022) 14(1) European Journal of Legal Studies 173

794. Ferri D, 'The implementation of the Marrakesh Directive: a comparative analysis across six EU Member States' (2022) 44(5) European Intellectual Property Review 257

795. Fichera F, 'Digital Service Taxes Under State Aid Scrutiny' (2021) 20(4) European State Aid Law Quarterly 479

796. Finke D, 'A Guardian in Need of Support: The Enforcement Of EU State Aid Rules' (2022) 29(4) Journal of European Public Policy 629

797. Fischer L and others, 'Tax Policies in a Transition to a Knowledge-Based Economy: The Effective Tax Burden of Companies and Highly Skilled Labour' (2022) 50(4) Intertax 286

798. Foss-Solbrekk K, 'The EU Orphan Drug Regulation 20 Years on: A Quantitative and Legal Analysis' (2022) 44(7) European Intellectual Property Review 395

799. Fossum J E, 'The Political Future of the European Economic Area' (2022) (1) ARENA Working Paper <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2022/wp-11-21.html> accessed 21 October 2022

800. Fox A, 'Intellectual Property Enterprise Court: Practice and Procedure' (2022) 44(7) European Intellectual Property Review 443

801. Frackowiak-Adamska A, 'Trust Until It Is Too Late! Mutual Recognition of Judgments and Limitations of Judicial Independence in a Member State: L and P [Case Law: Section A: Court of Justice]' (2022) 59(1) Common Market Law Review 113

802. Francesco L, 'The Altice Judgment – Merger Control Obligations, Early Implementation and Gun-Jumping' (2022) 43(5) European Competition Law Review 250

803. Franck J-U and M Peitz, 'Market Definition in the Platform Economy' [2021] 23 Cambridge Yearbook of European Legal Studies 91

804. Franczak A, 'Recent Trends in the Jurisprudence of the CJEU Regarding the Right to Deduct Input Tax [Case Law Note]' (2021) 49(12) Intertax 1036

805. Fratini A, 'Performance of SGEI Tasks Cannot, of Itself, Justify an Exemption from the Notification and Standstill Obligations: Annotation on the Judgment of the Court (Grand Chamber) of 24 November 2020 in Case C-445/19 Viasat Broadcasting UK Ltd. v TV2 Denmark A/S and Kingdom of Denmark [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 150

806. Fung S S and Roberts S, 'Covid-19 and The Role of a Competition Authority: The CMA's Response to Price Gouging Complaints' (2021) 12(10) Journal of European Competition Law and Practice 734

807. Gajewski D J and Jonski K, '"VAT Gap" Estimation: Distinguishing Between Informality and Fraud' 31(3) EC Tax Review 124

808. Galle R, 'Clean Teams for Dirty Business: A Practitioner's View on the Use of Clean Teams Under Competition Law Rules' (2022) 43(7) European Competition Law Review 314

809. Garzarelli G, Keeton L and Sitoe A A, 'Rights Redistribution and COVID-19 Lockdown Policy' (2022) 54(1) European Journal of Law and Economics 5

810. Gaudin G and Mantzari D, 'Google Shopping and the As-Efficient-Competitor Test: Taking Stock and Looking Ahead' (2022) 13(2) Journal of European Competition Law and Practice 125

811. Gelepithis M and Hearson M, 'The Politics of Taxing Multinational Firms in a Digital Age' (2022) 29(5) Journal of European Public Policy 708

812. Geloso V, Hyde K and Murtazashvili I, 'Pandemics, Economic Freedom, and Institutional Trade-offs' (2022) 54(1) European Journal of Law and Economics 37

813. Georgiades E, 'The Limits of Protection: Why Confidentiality Doesn't Apply to Personal Images Uploaded Online' (2022) 44(7) European Intellectual Property Review 387

814. Geradin D and Katsifis D, 'Strengthening Effective Antitrust Enforcement in Digital Platform Markets' (2022) 18(2) European Competition Journal 356

815. – – Katsifis D and Karanikioti T, 'Google as a De Facto Privacy Regulator: Analysing the Privacy Sandbox from an Antitrust Perspective' (2022) 18(3) European Competition Journal 617

816. Gerardy M, 'The Use of Copyrighted Technical Standards in the Operationalisation of European Union Law: The Status Quo Position of the General Court in Public.Resources.Org (T-185/19)' (2022) 13(3) European Journal of Risk Regulation 532

817. Geringer S, 'The EU's Uncoordinated Approach to Tax Avoidance and Tax Abuse in Relation to 'Uncooperative' Tax Jurisdictions' (2022) 50(3) Intertax 205

818. Ghavanini Wallerman A, 'Remedies for Non-Material Damages: Striking out in a New Direction? Braathens [Case Law: Section A: Court of Justice]' (2022) 59(1) Common Market Law Review 151

819. Gobbato S, 'Italy: The Sostegni-bis Decree: Italy Reopens According to a 'Calculated Risk' News from the Member States' (2021) 20(2) European State Aid Law Quarterly 308

820. Goldar M G, 'The Inadequate Approach of Directive (EU) 2019/771 Towards the Circular Economy' (2022) 29(1) Maastricht Journal of European and Comparative Law 9

821. Gonza T and others, 'Marcora for Europe: How Worker-Buyouts Might Help Save Jobs and Build Resilient Businesses' (2021) 20(1) European State Aid Law Quarterly 61

822. Gonzalez S M, 'Cross-Border Exchange of Tax Information upon Request and Fundamental Rights – Can the Right Balance Be Struck? Joined Cases C-245/19 and C-246/2019 Etat Luxembourgeois contre B' (2021) 28(5) Maastricht Journal of European and Comparative Law 714

823. – – 'Implementation of the EU ATAD in Spain: Outstanding Issues of a Partial Transposion Critical Review of the ATAD Implementation' (2021) 49(12) Intertax 995

824. Grisse K, 'On the significance of (Un)Recognisability for the Reproduction Right in European Copyright Law' (2022) 44(2) European Intellectual Property Review 78

825. Groussot X and Petursson G T, 'Je t'aime... moi non plus: Ten Years of Application of the EU Charter of Fundamental Rights [Review Essay]' (2022) 59(1) Common Market Law Review 239

826. Gruber J P, 'Parallel Application of European and National Competition Law' (2022) 43(1) European Competition Law Review 40

827. Gruyters J and Michaux L, '›Wait a Minute, Mr Postman': On Universal Service, the Postal Services Directive and the SGEI Framework: Annotation on the Judgment of the Court of Justice of the European Union (Tenth Chamber) of 17 December 2020 in Joined Cases C-341/19 P and C-432/19 P Inpost Paczkomaty sp. z o.o and Inpost S.A. v European Commission [Case Law Annotations]' (2021) 20(2) European State Aid Law Quarterly 292

828. Guerra G, 'Evolving Artificial Intelligence and Robotics in Medicine, Evolving European Law. Comparative Remarks Based on the Surgery Litigation' (2021) 28(6) Maastricht Journal of European and Comparative Law 805

829. Gürkaynak G, Burak Öztürk E K and Baytaş A, 'Single Sanction for Effects of Single Strategy in Multiple Markets – 'Ne Bis in Idem' Recognised by the Highest Administrative Court in Turkey' (2022) 13(1) Journal of European Competition Law and Practice 42

830. Haag M, 'The Coup de Grace to the Union Citizen's Right to Equal Treatment: CG v. the Department for Communities in Northern Ireland [Case Law: Section A: Court of Justice]' (2022) 59(4) Common Market Law Review 1081

831. Hacker P, 'Manipulation by Algorithms. Exploring the Triangle of Unfair Commercial Practice, Data Protection, and Privacy Law' (2022) European Law Journal <https://doi.org/10.1111/eulj.12389> accessed 4 December 2022

832. Hadwick D, 'Behind the One-Way Mirror: Reviewing the Legality of EU Tax Algorithmic Governance' 31(4) EC Tax Review 184

833. Halonen K-M, 'Is Public Procurement Fit for Reaching Sustainability Goals? A Law and Economics Approach to Green Public Procurement' (2021) 28(4) Maastricht Journal of European and Comparative Law 535

834. Hancher L, 'Pre-Notifications, Preliminary Investigations, and the Rights of Third Parties in State Aid Procedures – Beware of the Black Hole! [Editorial]' (2021) 20(3) European State Aid Law Quarterly 319

835. – – and Bouchagiar A, 'Hinkley Point C: Trimming the SAM, While Extending the Reach of Wider EU Law Infringements?' (2021) 20(4) European State Aid Law Quarterly 529

836. Haslehner W, 'Is There a Need for a Directive on Pillar Two? A Few Normative Comments Debate' (2022) 50(6-7) Intertax 527

837. Haslinger B and Schiestl J, 'Austria: An Update on Austrian COVID-19 Measures and Two State Aid Cases before the Austrian Courts in 2020 [News from the Member States]' (2021) 20(1) European State Aid Law Quarterly 154

838. Hatherall L, 'Procedural Issues in Public Interest Patent Challenges' (2022) 44(4) European Intellectual Property Review 198

839. Hatzitaskos K and Howells B, 'Aviv Nevo A Tale of Two Sides: Sabre/Farelogix in the United States and the UK' (2021) 12(9) Journal of European Competition Law and Practice 698

840. Hauser P, 'Legal Nature of Cartel Damages Claims in the EU' (2022) 43(1) European Competition Law Review 2

841. Heber C, 'Enhanced Cooperation and European Tax Law' (2022) 47(3) European Law Review 429

842. Heber C, 'The Interest Limitation Rule in the Light of European Constitutional Law' (2022) 31(2) EC Tax Review 72

843. Heeley R, 'A Cushty Decision – Scope for Copyright in a Character as a Literary Work' (2022) 44(12) European Intellectual Property Review 745

844. Hernández González L, 'Protecting Product Shapes as Trade Marks in the EU – Or Why We Should Not Claim Victory Yet' (2022) 44(2) European Intellectual Property Review 113

845. Hickey E and Weimer M, 'The Transparency of EU Agency Science – Towards a New Proactive Approach' (2022) 59(3) Common Market Law Review 673

846. Hilder E, 'What›s in a Name? The General Data Protection Regulation's Approach to Company Names Comprised of a Natural Person's Name' (2022) 44(12) European Intellectual Property Review 701

847. Hinz L, 'Private Sector Involvement in Sovereign Debt Governance in the Post-Pandemic World: The Role of the 'Comparability of Treatment' Principle' (2022) 14(1) European Journal of Legal Studies 25

848. Hirasawa F, 'Approaches to Realizing Legal Interoperability Between the Data Privacy Regimes of the European Union and the United States' (2022) 28(2) Columbia Journal of European Law 282

849. Hope D and Limberg J, 'The Knowledge Economy and Taxes on the Rich' (2022) 29(5) Journal of European Public Policy 728

850. Hornkohl L, 'Article 102 TFEU, Equal Treatment and Discrimination after Google Shopping' (2022) 13(2) Journal of European Competition Law and Practice 99

851. Hull D W and Clancy M J, 'The Application of Competition Law to the Pharmaceutical Sector in the European Union and United Kingdom' (2022) 13(5) Journal of European Competition Law and Practice 372

852. Hutchinson C S and Trescakova D, 'The Challenges of Personalized Pricing to Competition and Personal Data Protection Law' (2022) 18(1) European Competition Journal 105

853. Iaia R, 'Article 6 ATAD and 'Non-Genuineness' of Arrangements' 30(5-6) EC Tax Review 242

854. Ibáñez Colomo P, 'Google Shopping: A Major Landmark in EU Competition Law and Policy' (2022) 13(2) Journal of European Competition Law and Practice 61

855. – – 'When Did the Rule of Law Come to Be Seen as an Inconvenience?' (2021) 12(10) Journal of European Competition Law and Practice 719

856. – – 'Will Article 106 TFEU Case Law Transform EU Competition Law?' (2022) 13(6) Journal of European Competition Law and Practice 385

857. Iliopoulou-Penot A, 'The Construction of a European Digital Citizenship in the Case Law of the Court of Justice of the EU' (2022) 59(4) Common Market Law Review 969

858. Inderst R and Kuhlmann R, 'Damage Calculation and Mitigation in Retailing in the Presence of Store Brands (with an Application to the German Coffee Cartel)' (2022) 13(6) Journal of European Competition Law and Practice 441

859. – – and Thomas S, 'Integrating Benefits from Sustainability into the Competitive Assessment – How Can We Measure Them?' (2021) 12(9) Journal of European Competition Law and Practice 705

860. Ismer R, 'A Zebra or a Donkey? The European Commission's Proposal for a Debt-Equity Bias Reduction Allowance (DEBRA) [Editorial]' 31(4) EC Tax Review 164

861. Izadpanah B and Bagheri M, 'Extraterritorial Application of National Trademark Laws: Conflict of Laws and the Changing Nature of Sovereignty and Territoriality' (2021) 23(4) European Journal of Law Reform 450

862. Jansen P, Beeston S J and Van Acker L, 'The Sustainability Guidelines of the Netherlands Authority for Consumers and Markets: An Impetus for a Modern EU Approach to Sustainability and Competition Policy Reflecting the Principle That the Polluter Pays?' (2022) 18(2) European Competition Journal 287

863. Jarlebring J, ''Regime vetting': A Technique to Exercise EU Market Power' (2022) 29(4) Journal of European Public Policy 530

864. Jephcott M, 'Climate Change, Sustainability and Competition Law: Where Are We Now?' (2022) 43(8) European Competition Law Review 366

865. Jourdan J and Gafsen H, 'Competition Law and Fundamental Rights: Survey of Recent Developments Concerning the Right to Good Administration, Dawn Raids, Legal Professional Privilege, and Other Procedural Rights' (2022) 13(4) Journal of European Competition Law and Practice 304

866. Jozipović Š, Perkusic M and Gadžo S, 'Tax Compliance in the Era of Cryptocurrencies and CBDCs: The End of the Right to Privacy or No Reason for Concern?' (2022) 31(1) EC Tax Review 16

867. Jütte B J, 'CJEU Rejects Poland's Challenge to Preventive Upload Filtering to Combat Copyright Infringement on Online Platforms (Case C-401/19)' (2022) 44(10) European Intellectual Property Review 631

868. Kalintiri A, 'Balancing Procedural Efficiency and Fairness in Hybrid Cartel Settlements: Pometon [Case Law: Section A: Court of Justice]' (2022) 59(2) Common Market Law Review 561

869. Karapapa S, 'Defences to Copyright Infringement: Creativity, Innovation and Freedom on the Internet' (2022) 44(4) European Intellectual Property Review 250

870. Karatzia A and Markakis M, 'Financial Assistance Conditionality and Effective Judicial Protection: Chrysostomides [Case Law: Section A: Court of Justice]' (2022) 59(2) Common Market Law Review 501

871. Karayigit M T, 'Prevalence of an Economic Right/Freedom Over a Social Right in a Horizontal Litigation Once Again' (2021) 27(4) European Public Law 733

872. Käseberg T, 'The DMA – Taking Stock and Looking Ahead' (2022) 13(1) Journal of European Competition Law and Practice 1

873. Kasoko E N, 'International Taxation of Offshore Indirect Transfers of Mineral Assets: Legal Analysis Considering the Principle of Fairness and Sustainable Development' (2022) 50(2) Intertax 126

874. Këllezi P, 'Free Markets and the Rule of Law' (2022) 13(5) Journal of European Competition Law and Practice 321

875. Kende T and Puskas G, 'No Presumption of Guilt: Limits for Suspension Injunctions: Annotation on the Judgment of the Court of Justice of the European Union (First Chamber) of 4 June 2020 in Case C-456/18 P Hungary v Commission [Case Law Annotations]' (2021) 20(2) European State Aid Law Quarterly 270

876. Kennedy A L, 'The Effect of Article 6 MLI on Covered Tax Agreements: Fata Morgana or New Reality?' (2022) 50(4) Intertax 322

877. Klopschinski S, 'The Protection of Intellectual Property Rights Under International Investment Law' (2022) 44(1) European Intellectual Property Review 59

878. Koenig C and Cesarano C D, 'State Aid Assessment of Complex Settlement Agreements: The European Commission's Opening Decision in the German Lignite Phase-Out [Case Opinion]' (2021) 20(4) European State Aid Law Quarterly 560

879. Kofler G, 'Should We Cut 'Final' Losses? [Editorial]' (2022) 31(3) EC Tax Review 108

880. Kogels H, 'Good Intentions and a Call for Higher Speed on the Bumpy Road to Carbon Neutrality [Editorial]' (2022) 31(1) EC Tax Review 2

881. Kontak M, 'The Application of Public Policy and Public Security Reasons for Justifying Restrictions on Free Movement of Capital in the EU' (2021) 10(2) Zagrebačka pravna revija 150

882. – – 'Evaluation of the EU Screening Mechanism and the Question of Reciprocity with China' [2021] 17 Croatian Yearbook of European Law & Policy 203

883. Kornbeck J, 'Spanish Professional Football Clubs: How Salient Is the Exact Nature of the Aid? Annotation on the Judgments of the General Court and the Court of Justice of the European Union in Case T-865/16 FC Barcelona v Commission (GC, 26 February 2019), C-362/19 P Commission v Barcelona (CJEU, 4 March 2021), T-791/16 Real Madrid CF v Commission (GC, 22 May 2019), T-766/16 Hercules CF v Commission (GC, 20 March 2019), T-732/16 Valencia CF v Commission (GC, 20 March 2019), T-732/16 Valencia CF v Commission (GC, 22 May 2020), T-732/16 Valencia CF v Commission (GC, 12 March 2020), T-901/16 Elche CF v Commission (GC, 12 March 2020) [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 120

884. Korom V E, 'Let Down by the Facts: The General Court Annuls the European Commission Decision on Irish Tax Arrangement for Apple: Annotation on the Judgment of the General Court (Seventh Chamber, Extended Composition) of 15 July 2020 in Joined Cases T-778/16 and T-892/16 Ireland and Others v European Commission [Case Law Annotations]' (2021) 20(2) European State Aid Law Quarterly 277

885. Korsgaard R, 'Renewed Relevance of the Alicante Torpedo in EU Trade Mark Disputes' (2022) 44(9) European Intellectual Property Review 534

886. Korving J J A M and van der Have J C, 'Brexit: The Direct and Indirect Effect of the EU-UK Trade and Cooperation Agreement' (2022) 50(1) Intertax 28

887. Kosta V and Piqani D, 'Where Trade and Academic Freedom Meet: Commission v. Hungary (LEX CEU) [Case Law: Section A: Court of Justice]' (2022) 59(3) Common Market Law Review 813

888. Kostić S V, 'A Plea for a Workforce Presence PE Concept in a Post-Covid Digitized World' (2021) 49(10) Intertax 758

889. Kotsonis T, 'The Squaring of the Circle: Subsidy Control under the UK-EU Trade and Cooperation Agreement' (2021) 20(1) European State Aid Law Quarterly 15

890. Kupcik J, 'Firm's Own Price Elasticity of Demand in Dominant Position [Analysis]' (2022) 13(3) Journal of European Competition Law and Practice 187

891. Lambert P, '»Talk to the Hand" Meets Brand Clearance: The Increasing Need for Brand Gesture Vetting' (2022) 44(3) European Intellectual Property Review 162

892. Landman L B, 'Nascent Competition and Transnational Jurisdiction: The Future Markets Model Explains the Authorities' Actions' (2022) 43(6) European Competition Law Review 294

893. Lapenta G and Giangaspero M, 'Greening Antitrust: Lessons from the ACCC's Authorisation of a Recycling Co-Operation Agreement' (2021) 12(10) Journal of European Competition Law and Practice 758

894. Lehmann M, 'Jurisdiction in Suits for Cartel Damages: The CJEU Draws a New Distinction' (2022) 43(3) European Competition Law Review 150

895. Leino-Sandberg P and Ruffert M, 'Next Generation EU and Its Constitutional Ramifications: A Critical Assessment' (2022) 59(2) Common Market Law Review 433

896. Leonelli G C, 'Balancing Public Health and Environmental Protection and Economic Stakes? Bayer CropScience and the Court's Defence of the EU Socially Acceptable Risk Approach [Case Law: Section A: Court of Justice]' (2021) 58(6) Common Market Law Review 1845

897. Lesch M and Millar H, 'Crisis, Uncertainty and Urgency: Processes of Learning and Emulation in Tax Policy Making' (2022) 45(4) West European Politics 930

898. Li S and Newman A L, 'Over the Shoulder Enforcement in European Regulatory Networks: The Role of Arbitrage Mitigation Mechanisms in the General Data Protection Regulation' (2022) 29(10) Journal of European Public Policy 1698

899. Lianos I and Wagner-von Papp F, 'Tackling Invitations to Collude and Unilateral Disclosure: The Moving Frontiers of Competition Law?' (2022) 13(4) Journal of European Competition Law and Practice 249

900. Lierse H, 'Globalization and the Societal Consensus of Wealth Tax Cuts' (2022) 29(5) Journal of European Public Policy 748

901. Limberg J and Seelkopf L, 'The Historical Origins of Wealth Taxation' (2022) 29(5) Journal of European Public Policy 670

902. Linaritis I E, 'Asset Protection – State Guarantee Schemes in Systemic European Non-Performing Loans Securitizations Contractual Structure, State Aid and Bank Corporate Law Issues' (2022) 28(2) Columbia Journal of European Law 134

903. Lind Y, 'Attracting Multinational Tech-Companies through Environmental Tax Incentives' (2021) 49(10) Intertax 885

904. Lindeboom J, 'Rules, Discretion, and Reasoning According to Law: A Dynamic-Positivist Perspective on Google Shopping' (2022) 13(2) Journal of European Competition Law and Practice 63

905. Linke B, 'Fund Transfers to Authorities Owning a Company as State Aid? – Equal Fund-Distribution in the Case of 'Double Roles': Annotation on the Judgment of the General Court (Fifth Chamber) of 5 October 2020 in Case T-583/18 GVN [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 114

906. Liotti B F, 'Taxpayers' Data Protection: Do International, Regional, and Domestic Instruments Guarantee Adequate Rights in Tax (A)EoI?' (2022) 50(2) Intertax 138

907. Lisciandra M, Milani R and Millemaci E, 'A Corruption Risk Indicator for Public Procurement' (2022) 73 European Journal of Political Economy 102141

908. Liszt M, 'Croatia [News from the Member States]' (2021) 20(4) European State Aid Law Quarterly 586

909. – – and Knotić P, 'Croatia: The Horrors of 2020 – Overview of Croatia's COVID-19 Response [News from the Member States]' (2021) 20(1) European State Aid Law Quarterly 160

910. Lopez J J P, 'Spain: New European Commission Guidelines on Regional State Aid: Very Good News for Spanish Depopulated Areas [News from the Member States]' (2021) 20(2) European State Aid Law Quarterly 313

911. – – 'The COVID-19 State Aid Judgments of the General Court… Every Man for Himself? Annotation on the Judgments of the General Court (Tenth Chamber, Extended Composition) of 17 February 2021 in Cases T-238/20 Ryanair v Commission and T-259/20 Ryanair v Commission [Case Law Annotations]' (2021) 20(2) European State Aid Law Quarterly 258

912. Loureiro M C, 'The Shortcomings of the EU Public Country-by-Country Reporting Directive' (2022) 31(3) EC Tax Review 115

913. Luja R, 'Andres: The Unfinished Business of a Seemingly Selective Non-Advantage: Annotation on the Judgment of the Court (Second Chamber) of 28 June 2018 in Case C-203/16 P Dirk Andres v European Commission [Case Law Annotations]' (2021) 20(4) European State Aid Law Quarterly 578

914. – – 'The Foreign Subsidies Regulation: Countering State Aid Beyond the European Union' (2021) 20(2) European State Aid Law Quarterly 187

915. Lund M K, 'New Methodology to No Avail? A Review of the European Commission's Case Practice regarding the Net Avoided Cost Methodology Following the 2012 SGEI Package' (2021) 20(2) European State Aid Law Quarterly 229

916. Macharis L, 'The Exemption of Sustainability Agreements Under European Competition Law – Balancing Societal Benefits with Consumer Harm: A New Way Forward' (2022) 43(4) European Competition Law Review 170

917. Maggetti M and Vagionaki T, 'How to Tame the Beast: The Diverse Development of European Networks Regulating Finance and Competition' (2022) 29(10) Journal of European Public Policy 1590

918. Mahapatra P, 'The Piracy Paradox: Protecting Creativity Without IP Protection' (2022) 44(11) European Intellectual Property Review 678

919. Majcher K, 'Protecting Personal Data and the Environment: Doctrinal Challenges for EU Competition Law in Our Day and Age' (2022) 47(5) European Law Review 622

920. Makris S, 'EU Competition Law as Responsive Law' [2021] 23 Cambridge Yearbook of European Legal Studies 228

921. Malinauskaite J, 'Competition Law and Sustainability: EU and National Perspectives' (2022) 13(5) Journal of European Competition Law and Practice 336

922. Manko R and Tacik P, 'Sententia Non Existens: A New Remedy under EU Law? Waldemar Zurek (W.Z.) [Case Law: Section A: Court of Justice]' (2022) 59(4) Common Market Law Review 1169

923. Manteghi M, 'The Insufficiency of the EU's Text and Data Mining Exceptions for Using Artificial Intelligence' (2022) 44(11) European Intellectual Property Review 651

924. Marchisio E, 'Contracting Authorities Asking Firms to Enhance Transparency Through Infringements of Article 101(1) TFEU' (2022) 43(7) European Competition Law Review 343

925. Marino S, 'The EU Commission Plan to Support the Economy: The Compatibility of State Aids in Emergency Situations' [2022] 6 EU and Comparative Law Issues and Challenges Series 102

926. Mariotto C, 'The Implementation of Economic Rules: From the Stability and Growth Pact to the European Semester' (2022) 60(1) Journal of Common Market Studies 40

927. Martín A , Merino C and García-Verdugo J, 'Determinants of the Deterrence of Competition Fines in Spain (2015–2019)' (2022) 13(6) Journal of European Competition Law and Practice 401

928. Martin C, Chand V and Burkhalter N, 'Arm›s Length Principle from a Swiss Perspective: Profit Allocation to Inbound and Outbound Permanent Establishments [Country Note]' (2022) 50(1) Intertax 66

929. Martin S, 'Moonboots: This Is Luxembourg Calling!' (2022) 44(7) European Intellectual Property Review 440

930. – – 'No Free Lunch for "Champanillo": The Court of Justice Confirms That the Protection of the PDO "Champagne" Extends to Bar and Restaurant Services' (2022) 44(1) European Intellectual Property Review 48

931. Martinez L and Delia L, 'A Digital Cross-Border Interest in the Framework of Public Procurement Legislation: The Game Changer' (2021) 14(2) Review of European Administrative Law 51

932. Martínez López Á H, 'Opinion G3/19: The Enlarged Board of Appeal of the European Patent Office Finds That Products Obtained From Essentially Biological Processes Are Not Patentable Subject Matter' (2022) 44(5) European Intellectual Property Review 283

933. – – 'Prescription of Claims Against Infringements of EU Plant Variety Rights: The Interpretation of the Court of Justice of the European Union in Jose Canovas Pardo (C-186/18)' (2022) 44(12) European Intellectual Property Review 719

934. Martins A and Taborda D, 'BEFIT and Formulary Apportionment: Should Intangibles Be Included in the Formula?' 31(3) EC Tax Review 131

935. Mathew S N, 'Establishing Copyright in Esport Streams Under UK Law' (2022) 44(12) European Intellectual Property Review 731

936. Matthews D, 'The Covid-19 Pandemic: Lessons for the European Patent System' (2022) 44(4) European Intellectual Property Review 221

937. Matulionyte R, 'Reconciling Trade Secrets and Explainable AI: Face Recognition Technology as a Case Study' (2022) 44(1) European Intellectual Property Review 36

938. Matyunina A and Ongena S, 'Bank Capital Buffer Releases, Public Guarantee Programs, and Dividend Bans in COVID-19 Europe: An Appraisal' (2022) 54(1) European Journal of Law and Economics 127

939. Maziarz A, 'Social Security Schemes and the Application of EU State Aid Law' (2021) 20(2) European State Aid Law Quarterly 240

940. McMahon C, 'Endorsement for Commission's Approach to Tax Rulings from Court of Justice: The Decision in Commission v Belgium and Magnetrol (C-337/19 P) EU:C:2021:741' (2022) 43(4) European Competition Law Review 196

941. – – 'State Aid Junkies, Viruses and the Aviation Industry: Ryanair's Litigation against Approved Aid Measures for Airlines During the Pandemic' (2021) 20(2) European State Aid Law Quarterly 249

942. – – 'The Relationship Between Economic Advantage and the Compatibility Assessment in Decisions Not to Raise Objections [Case Law Annotations]' (2021) 20(3) European State Aid Law Quarterly 427

943. Meershoek N, 'Why the EU Internal Market Is Not the Correct Legal Basis for Regulating Military-Strategic Procurement – on Functional Division of Competences' (2022) 47(3) European Law Review 353

944. Merkx M, 'Just a Formality!: Substance over Form in EU VAT and the Right to Deduct Input VAT [Case Law Trends]' (2022) 50(6-7) Intertax 556

945. – – Janssen A and Leenders M, 'Platforms, a Convenient Source of Information Under DAC7 and the VAT Directive: A Proposal for More Alignment and Efficiency' 31(4) EC Tax Review 202

946. Mertens D and Thiemann M, 'Investing in the Single Market? Core-Periphery Dynamics and the Hybrid Governance of Supranational Investment Policies' (2022) 44(1) Journal of European Integration 81

947. Metelska-Szaniawska K and Lewczuk A, 'Constitutional Overperformance: An Empirical Study of de Facto Protection of Rights with No de Jure Equivalents' (2022) 53(2) European Journal of Law and Economics 289

948. Micheau C, 'Commission's Work at the Crossroads of the COVID-19 Crisis, Policy Initiatives and Legislative Reviews [Editorial]' (2021) 20(2) European State Aid Law Quarterly 185

949. Monti G and Rangoni B, 'Competition Policy in Action: Regulating Tech Markets with Hierarchy and Experimentalism' (2022) 60(4) Journal of Common Market Studies 1106

950. – – 'Collective Labour Agreements and EU Competition Law: Five Reconfigurations' (2022) 18(3) European Competition Journal 714

951. Moreno A B, 'How Do "the Old" and "the New" Live Together? The Principal Purpose Test and Other Anti-Avoidance Instruments in Tax Treaties' (2021) 49(10) Intertax 771

952. Morijn J, 'Separate Charter Invocation as a New Enforcement Method: The Lex NGO Case [Case Law: Section A: Court of Justice]' (2022) 59(4) Common Market Law Review 1137

953. Mosquera V and Irma J, 'The Implementation of the ATAD in the EU: The Same but Not the Same Critical Review of the ATAD Implementation [Foreword]' (2021) 49(10) Intertax 915

954. Mouton J and Reed L, 'Following the Google Shopping Judgment, Should We Expect a Private Enforcement Action?' (2022) 13(2) Journal of European Competition Law and Practice 154

955. Munchmeyer M, 'The Principle of Energy Solidarity: Germany v. Poland [Case Law: Section A: Court of Justice]' (2022) 59(3) Common Market Law Review 915

956. Musardo V, 'Green Deal and Incentive Effect: What Is Truly Environmental Aid?' (2021) 20(2) European State Aid Law Quarterly 217

957. Nagy C I, 'EU Competition Law Devours Its Children: The Proliferation of Anti-Competitive Object and the Problem of False Positives' [2021] 23 Cambridge Yearbook of European Legal Studies 290

958. Nanayakkara T, 'The "Test of Substantiality" and Right of Reproduction in Streaming and Broadcasting: A Comparative Analysis' (2022) 44(7) European Intellectual Property Review 405

959. Navarro A, 'Access to Tax Treaty Dispute Resolution Mechanisms in Cases of Abuse' (2022) 50(4) Intertax 341

960. – – 'The Multilateral Instrument (MLI) and Transfer Pricing' (2021) 49(10) Intertax 803

961. Nemeth J, 'Blockchain, Behavioural Remedies, and Merger Control: How Can Access Remedies Do Better?' (2022) 13(3) Journal of European Competition Law and Practice 167

962. Netjes W and Freyer D, 'Tax Transparency Is Here to Stay: An Analysis of the Public CbCR Directive Policy Note' (2022) 50(8-9) Intertax 612

963. Nicolaides P, 'Shedding Light into the "Black Box" of State Aid: The Impact of Hinkley Point C on the Assessment of the Compatibility of State Aid' (2021) 20(1) European State Aid Law Quarterly 4

964. – – 'State Aid to Combat Covid-19: It Supports National Economies but What Is Its Impact on the Internal Market?' (2022) 43(8) European Competition Law Review 355

965. – – 'The Appropriateness of State Aid and the Principle of Non-Discrimination' (2022) 43(6) European Competition Law Review 264

966. – – 'The Design of Enforcement Institutions: Lessons from the UK's New State Aid Control Regime' (2021) 20(3) European State Aid Law Quarterly 370

967. – – 'The Limits of "Proportionate" Discrimination' (2021) 20(3) European State Aid Law Quarterly 384

968. Nikolaou P, 'Mandatory Binding Arbitration: Avoiding Stalemates Over the Tax Chessboard' (2021) 49(12) Intertax 974

969. Noel V and Thomas S, 'Locus Standi in State Aid Litigation after Montessori' (2021) 20(4) European State Aid Law Quarterly 512

970. Normann H-T and Sternberg M, 'Do Machines Collude Better Than Humans?' (2021) 12(10) Journal of European Competition Law and Practice 765

971. O'Dwyer M, 'Gender and Crises in European Economic Governance: Is This Time Different?' (2022) 60(1) Journal of Common Market Studies 152

972. O'Sullivan K T, 'Online Copyright and the GDPR: Assessing the European Regulatory Landscape for Enforcing Copyright at the User Level' (2022) 44(11) European Intellectual Property Review 688

973. Ogembo D, 'Trust or Power: Improving Tax Compliance by Self-Employed Professionals' (2022) 50(2) Intertax 113

974. Olesen K N and Heide-Jorgensen C, 'Regulating State Aid in the Member States' (2021) 20(1) European State Aid Law Quarterly 51

975. Olsen G and Schwarz D 'The CMA's Revised Merger Assessment Guidelines – Interesting Times and Creative Energy' (2022) 13(1) Journal of European Competition Law and Practice 35

976. Olwan R, 'Is the Federal Copyright Law No. 38 of 2021 Sufficient to Promote a Knowledge-Based Economy in the UAE?' (2022) 44(11) European Intellectual Property Review 664

977. Owade V, 'Trade Mark Parodies: Serious Business or Jokes Allowed?' (2022) 44(6) European Intellectual Property Review 343

978. Padilla J and Sääskilahti P, 'Revisiting the Bizarre SEP Level of Licensing Antitrust Controversy' (2021) 12(9) Journal of European Competition Law and Practice 680

979. Paju J, 'A Bridge Too Far – On the Misunderstandings of the Nature of Social Security Benefits: A v. Latvijas Republikas Veselibas Ministrija [Case Law: Section A: Court of Justice]' (2022) 59(4) Common Market Law Review 1219

980. Panayi C H J I, 'Brexit and Corporate Taxation: New Perspectives' (2022) 31(1) EC Tax Review 50

981. Pantazatou K, 'The Implementation of the ATAD in Luxembourg Critical Review of the ATAD Implementation' (2022) 50(1) Intertax 56

982. Pantazi T, 'State Aid to Airlines in the Context of Covid-19: Damages, Disturbances, and Equal Treatment' (2022) 13(4) Journal of European Competition Law and Practice 268

983. Parada L, 'Hybrid Entity Mismatches and the MLI: A Tax Policy Assessment' (2021) 49(10) Intertax 786

984. Peers S, 'So Close, Yet So Far: The EU/UK Trade and Cooperation Agreement' (2022) 59(1) Common Market Law Review 49

985. Peeters B, 'The Design of Covid-19 Recovery Contributions: Taxes or Social Security Contributions?' 30(5-6) EC Tax Review236

986. Pelekis D, 'The Burden and Standard of Proof in the Tax Ruling Cases: A Practical Limit to the EU's Arm's Length Principle?' (2021) 12(9) Journal of European Competition Law and Practice 669

987. Pelkmans J and Simoncini M, 'Beyond Meroni. What Does It Take to Achieve a Single Market for Network Industries?' (2022) 44(1) Journal of European Integration 117

988. Pera A, 'Fairness, Competition on the Merits and Article 102' (2022) 18(2) European Competition Journal 229

989. Peretz G, 'United Kingdom: The UK Subsidy Control Regime: Where Is It and Where Is It Going? [News from the Member States]' (2021) 20(1) European State Aid Law Quarterly 167

990. Perrou K, 'The Application of the EU Charter of Fundamental Rights to Tax Procedures: Trends in the Case Law of the Court of Justice [Case Law Note]' (2021) 49(10) Intertax 853

991. Perry T, 'Setting the Boundaries: The Significance of the ECJ Defining the Boundaries of the Communication to the Public Right' (2022) 44(10) European Intellectual Property Review 635

992. Persch J, 'Is Taking Away User Traffic Anti-Competitive? Munich Court Stops Cooperation Between Google and the German Federal Ministry of Health' (2021) 12(9) Journal of European Competition Law and Practice 694

993. – – 'The Role of Fundamental Rights in Antitrust Law – A Special Responsibility for Undertakings with Regulatory Power Under Art. 102 TFEU?' (2022) 18(3) European Competition Journal 542

994. Peters C, 'Critical Analysis of the General Court's "EU Arm's Length Tool": Beware of the Reflexivity of Transfer Pricing Law!' (2022) 31(1) EC Tax Review 30

995. Petit S, 'Environmental Protection: Contributions Channeled by Eco-Body Should not Involve the Transfer of State Resources: Annotation on the Judgment of the Court of Justice of the European Union (First Chamber) of 21 October 2020 in Case C-556/19 ECO TLC contre Ministre d'Etat, Ministre de la Transition Ecologique et Solidaire, Ministre de l'Economie et des Finances [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 139

996. Petrov P, 'State Aid and COVID-19: With a Particular Focus on the Air Transport Sector' (2021) 20(4) European State Aid Law Quarterly 461

997. Piotr P, 'Impact of the COVID-19 Pandemic on Company Law. Shareholders' Meetings and Resolutions' (2022) 19(1) European Company and Financial Law Review 100

998. Platon S, 'Is Silence Always Golden? The Abstention of MEPs and the Activation of the Article 7 Procedure against Hungary: Hungary v. European Parliament [Case Law: Section A: Court of Justice]' (2022) 59(2) Common Market Law Review 543

999. Podszun R, 'Private Enforcement and Gatekeeper Regulation: Strengthening the Rights of Private Parties in the Digital Markets Act' (2022) 13(4) Journal of European Competition Law and Practice 254

1000. Popović D and Kostić S V, 'Rome Double Tax Convention: The First Multilateral Treaty for the Purpose of Avoiding Double Taxation Tax in History' (2022) 50(8-9) Intertax 635

1001. Porangaba L H, 'Copyright (in Design) Post-Brexit: Should Section 52 of CDPA 1988 be Reinstated?' (2022) 44(7) European Intellectual Property Review 1

1002. Purpura A, 'Protection of Taxpayers' Personal Data and National Tax Interest: A Misstep by the European Court of Human Rights? [Case Law Note]' (2021) 49(12) Intertax 1044

1003. Quintais J P and Schwemer S F, 'The Interplay Between the Digital Services Act and Sector Regulation: How Special Is Copyright?' (2022) 13 European Journal of Risk Regulation 191

1004. Raj-Reichert G, Staritz C and Plank L, 'Conceptualizing the Regulator-Buyer State in the European Union for the Exercise of Socially Responsible Public Procurement in Global Production Networks' (2022) 60(3) Journal of Common Market Studies 759

1005. Raudla R and Spendzharova A, 'Challenges to the European Single Market at Thirty: Renationalisation, Resilience, or Renewed Integration?' (2022) 44(1) Journal of European Integration 1

1006. Renda A, 'Making the Digital Economy "Fit for Europe"' (2020) 26(5-6) European Law Journal 345

1007. Ribera Martínez A, 'Trading Off the Orchard for an Apple: The iOS 14.5 Privacy Update' (2022) 13(3) Journal of European Competition Law and Practice 200

1008. Richardson M, 'Unlawfully Obtained Evidence: Follow the Court of Justice of the European Union If You Please' 30(5-6) EC Tax Review 262

1009. Ristuccia F, '"Cause Tramps Like Us, Baby We Were Born to Run": Untangling the Effects of the Expulsion of "Undesired" Union Citizens: FS [Case Law: Section A: Court of Justice]' (2022) 59(3) Common Market Law Review 889

1010. Robertson A, 'Sumal SL v Mercedes Benz Trucks Espana: Another Landmark Court of Justice Judgment for Cartel Damages Litigation' (2022) 43(4) European Competition Law Review 186

1011. Robertson V H S E, 'Sustainability: A World-First Green Exemption in Austrian Competition Law' (2022) 13(6) Journal of European Competition Law and Practice 426

1012. Robins N and Puglisi L, 'The Application of the Market Economy Operator Principle in the Aviation Sector' (2021) 20(1) European State Aid Law Quarterly 74

1013. Robinson J, 'Fulfilling the Conditions Within Merger Commitments: Case T-430/18, American Airlines v Commission' (2021) 12(9) Journal of European Competition Law and Practice 688

1014. Rodger B, 'Brexit and Competition Law' (2022) 43(1) European Competition Law Review 49

1015. Roland A and Romgens I, 'Policy Change in Times of Politicization: The Case of Corporate Taxation in the European Union' (2022) 60(2) Journal of Common Market Studies 355

1016. Rosati E, 'Linking and Copyright in the Shade of VG Bild-Kunst [Case Law: Section A: Court of Justice]' (2021) 58(6) Common Market Law Review 1875

1017. – – 'The Louboutin/Amazon Cases (C-148/21 and C-184/21) and Primary Liability Under EU Trade Mark Law' (2022) 44(7) European Intellectual Property Review 434

1018. Rozas J-A and Pownall J, 'A European Internet Access Tax' (2022) 50(8-9) Intertax 604

1019. Ruijsenaars H, 'The EU (Netcab) Directive on Online Broadcasting Services: Missed Opportunities' (2022) 44(12) European Intellectual Property Review 710

1020. Ruiz M A G, 'Smooth Implementation of Carbon Taxation: An Overview of the Main Proposals in the UN Handbook [Policy Note]' (2022) 50(3) Intertax 247

1021. Rutgers J and Sauter W, 'Promoting Fair Private Governance in the Platform Economy: EU Competition and Contract Law Applied to Standard Terms' [2021] 23 Cambridge Yearbook of European Legal Studies 343

1022. Sabatino E, 'The European Defence Fund: A Step Towards a Single Market for Defence?' (2022) 44(1) Journal of European Integration 133

1023. Sadl U, 'Old Is New: The Transformative Effect of References to Settled Case Law in the Decisions of the European Court of Justice' (2021) 58(6) Common Market Law Review 1761

1024. Sandberg L and Perez-D'Ocon P, 'The Fehmarn Fixed Link Opinion' (2021) 20(1) European State Aid Law Quarterly 101

1025. Schafer H-B and Wulf A J, 'Premature Repayment of Fixed Interest Mortgage Loans Without Compensation, a Case of Misguided Consumer Protection in the EU' (2022) 53(2) European Journal of Law and Economics 175

1026. Schammo P, 'Institutional Change in the Banking Union: The Case of the Single Supervisory Mechanism' [2021] 40(1) Yearbook of European Law 265

1027. Scheppele K L, 'The Law Requires Translation: The Hungarian Preliminary Reference on Preliminary References: IS [Case Law: Section A: Court of Justice]' (2022) 59(4) Common Market Law Review 1107

1028. Scherleitner M, 'The Fundamental Freedoms and the Taxation of Dividends Received by Non-Resident Investment Funds: Some Thoughts on Non-Discrimination with a Special Focus on Recent ECJ Case Law' (2022) 50(6-7) Intertax 484

1029. – – 'Veronsaajien Oikeudenvalvontayksikko C-480/19: A Remarkable Case [Case Law Trends]' (2022) 50(4) Intertax 367

1030. Schito M, 'East Wind, West Wind: An Analysis of the Differences in State Aid Allocations Between Old and New Member States' (2021) 20(2) European State Aid Law Quarterly 200

1031. Schmidt C and Krimmer R, 'How to Implement the European Digital Single Market: Identifying the Catalyst for Digital Transformation' (2022) 44(1) Journal of European Integration 59

1032. Schneider G, 'Data Sharing for Collaborative Research Under Art. 101 TFEU: Lessons from the Proposed Regulations for Data Markets' (2022) 18(3) European Competition Journal 567

1033. Schoueri L E and Tomazela R, 'The Influence of the BEPS Multilateral Instrument on Tax Treaties Concluded by Non-Signatory Countries' (2021) 49(10) Intertax 818

1034. Schünemann W J and Windwehr J, 'Towards a 'Gold Standard for the World'? The European General Data Protection Regulation Between Supranational and National Norm Entrepreneurship' (2021) 43(7) Journal of European Integration 859

1035. Schwarz M, 'Can the Switch-over Rule and the Role of Permanent Establishments Be Considered the Neglected Stepchildren of the GloBE Proposal?' (2021) 49(12) Intertax 986

1036. Schweizer U, 'Damages for Infringements of Competition Law' (2022) 53(3) European Journal of Law and Economics 353

1037. Segura M and Mengin A, 'A Differentiated Assessment of the Criterion of State Resources: Instances Where "Public Control" Is Decisive [Case Law Annotations]' (2021) 20(4) European State Aid Law Quarterly 572

1038. Selanec Bačić N, 'A (More) Complete System of Remedies: Effective Judicial Protection of EU Member States in Czech Republic v. Commission [Case Law: Section A: Court of Justice]' (2022) 59(1) Common Market Law Review 171

1039. Shukla V, 'Data Localisation and Utilisation: Emerging Antitrust Concerns' (2022) 43(7) European Competition Law Review 348

1040. Sierra J L B, 'Making the (Hinkley) Point About Compatibility Control [Editorial]' (2021) 20(1) European State Aid Law Quarterly 1

1041. Simoncini M, 'Challenges of Justice in the European Banking Union: Administrative Integration and Mismatches in Jurisdiction' [2021] 40 Yearbook of European Law 310

1042. Sluijs J P, 'Evidence-Based Legislation in EU Competition Law: Reform of the Vertical Block Exemption Regulation as a Case Study' (2022) 24(1) European Journal of Law Reform 85

1043. Smith T and Geradin D, 'Maintaining a Level Playing Field When Big Tech Disrupts the Financial Services Sector' (2022) 18(1) European Competition Journal 129

1044. Spaventa E, 'Constitutional Creativity or Constitutional Deception? Acts of the Member States Acting Collectively and Jurisdiction of the Court of Justice' (2021) 58(6) Common Market Law Review 1697

1045. Spieker Dimitrios L, 'The Conflict over the Polish Disciplinary Regime for Judges – An Acid Test for Judicial Independence, Union Values and the Primacy of EU Law: Commission v. Poland [Case Law: Section A: Court of Justice]' (2022) 59(3) Common Market Law Review 777

1046. Stakheyeva H, 'Competition Law in Attempt to Understand (Luxury) Trademarks' (2022) 18(1) European Competition Journal 1

1047. Steinbach A, 'The Greening of the Economic and Monetary Union' (2022) 59(2) Common Market Law Review 329

1048. Stellinga B, 'The Rise and Stall of EU Macro-Prudential Policy. An Empirical Analysis of Policy Conflicts over Financial Stability, Market Integration, and National Discretion' (2022) 60(6) Journal of Common Market Studies 1438

1049. Stephenson P J, 'The Physical Completion of the EU's Single Market: Trans-European Networks as Experimentalist Governance?' (2022) 44(1) Journal of European Integration 99

1050. Stępkowski Ł, 'Unlawful Aid and Public Undertakings: Vertical Direct Effect of Article 108(3), Third Sentence TFEU' [2021] 17 Croatian Yearbook of European Law & Policy 159

1051. Stiers D and others, 'Support for Progressive Taxation: Self-Interest (Rightly Understood), Ideology, and Political Sophistication' (2022) 29(4) Journal of European Public Policy 550

1052. Storme M E, 'A World of Payment Problems [Editorial]' (2022) 30(1) European Review of Private Law 1

1053. – – 'Better Regulation for a Data Economy? [Editorial]' (2021) 29(5) European Review of Private Law 699

1054. Strumia F, 'Speaking Too Little, Yet Saying Too Much. The Wrong Signals About EU Values: X. v. Belgian State [Case Law: Section A: Court of Justice]'(2022) 59(4) Common Market Law Review 1195

1055. Subiotto Q C R, Lepetska R and Nobbs K, 'The Application of Article 102 TFEU by the European Commission and the European Courts' (2022) 13(1) Journal of European Competition Law and Practice 51

1056. Svetlicinii A, 'Consolidation of the State-Owned Enterprises in China: A Missed Opportunity for the EU Merger Control?' (2022) 13(1) Journal of European Competition Law and Practice 17

1057. – – 'Chinese State Owned Enterprises and EU Merger Control' (2022) 47(4) European Law Review 588

1058. Szudoczky R and Karolyi B, 'The CJEU's Approach to the Objectives of Progressive Turnover-Based Taxes: Respect for the Member States' Fiscal Sovereignty or Authorization for Circumventing EU Law? [Case Law Trends]' (2022) 50(1) Intertax 82

1059. Švarc J, Dabić M and Lažnjak J, 'Assessment of the European Monitoring Frameworks for Circular Economy: The Case of Croatia' (2022) 33(2) Management of Environmental Quality 371

1060. Tang P, 'Time to Tax – The EU Road to a Sustainable Tax System Guest [Editorial]' (2021) 49(12) Intertax 969

1061. Tayar D and El Khanchoufi J, 'The Neighbouring Rights Saga (France): Google Fined €500 million for Breaching Interim Order to Negotiate in Good Faith With News Agencies and Publishers' (2022) 13(5) Journal of European Competition Law and Practice 355

1062. – – and Ortoli S, 'The Long-Awaited Outcome of the 'Pay-for-Delay' Saga: Case C-591/16 P Lundbeck v Commission' (2022) 13(1) Journal of European Competition Law and Practice 32

1063. Telles P, 'Extremely Urgent Public Procurement under Directive 2014/24/EU and the COVID-19 Pandemic' (2022) 29(2) Maastricht Journal of European and Comparative Law 215

1064. Tessensohn J A, 'Louboutin's Unfair Competition Claim Red-Carded by Tokyo District Court' (2022) 44(9) European Intellectual Property Review 567

1065. Thomas M, 'To Waive or Not to Waive: International Patent Protection and the Covid-19 Pandemic' (2022) 49(1) Legal Issues of Economic Integration 7

1066. Thomes T P, 'The Google Android Case and the DMA – Lessons Learned?' (2022) 43(2) European Competition Law Review 52

1067. Torenbosch J, 'The Idea Behind the Unfathomable: Shapes and Other Characteristics Which Give Substantial Value to the Goods' (2022) 44(3) European Intellectual Property Review 150

1068. Traversa E and Timmermans B, 'Value-Added Tax (VAT) and Sustainability in the European Union: A Radical Proposal Design Issues, Legal Aspects, and Policy Alternatives' (2021) 49(10) Intertax 871

1069. Tsoukalas V, 'Should the New Competition Tool be Put Back on the Table to Remedy Algorithmic Tacit Collusion? A Comparative Analysis of the Possibilities Under the Current Framework and Under the NCT, Drawing on the UK Experience' (2022) 13(3) Journal of European Competition Law and Practice 234

1070. Tsourdi E, 'Relocation Blues – Refugee Protection Backsliding, Division of Competences, and the Purpose of Infringement Proceedings: Commission v. Poland, Hungary and the Czech Republic [Case Law: Section A: Court of Justice]' (2021) 58(6) Common Market Law Review 1819

1071. Tuinenga S, 'The Road Ahead for Liability in Damages Actions: Case C-882/19 Sumal' (2022) 13(6) Journal of European Competition Law and Practice 416

1072. Turmo A, 'National Security as an Exception to EU Data Protection Standards: The Judgment of the Conseil d'Etat in French Data Network and Others [Case Law: Section B: National Courts]' (2022) 59(1) Common Market Law Review 203

1073. Tzifa G, 'No Automatic Moving Up in the Leniency Queue: Case C-694/19 P Italmobiliare' (2022) 13(4) Journal of European Competition Law and Practice 281

1074. Uddin M M and Caselton P S, 'Tax Treaty Exemption Benefits for Students, Trainees, Scholars, and Teachers: An Analysis [Case Law Note]' (2021) 49(10) Intertax 848

1075. Vaglio J-A, 'IFPEN: This Is the End… of the French "EPIC" State Aid Litigation Saga(s): Annotation on the Judgment of the General Court (Eight Chamber) of 5 October 2020 in Joint Cases T-479/11 RENV and T-157/12 RENV French Republic and IFP Energies Nouvelles v European Commission [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 108

1076. Van den Boom J and Samranchit P, 'Digital Ecosystem Mergers in Big Tech – A Theory of Long-Run Harm with Applications' (2022) 13(5) Journal of European Competition Law and Practice 365

1077. Van der Sloot B, 'The Quality of Life: Protecting Non-Personal Interests and Non-Personal Data in the Age of Big Data' (2021) 29(5) European Review of Private Law 757

1078. Van der Veer A R, 'Walking the Tightrope: Politicization and the Commission's Enforcement of the SGP' (2022) 60(1) Journal of Common Market Studies 81

1079. Van Druenen R and Zwaan P, 'Distorted Promotion of Undistorted Competition? Commission Decisions After Formal Investigations in the EU State Aid Regime' (2022) 29(6) Journal of European Public Policy 826

1080. – – Zwaan P and Mastenbroek E, 'Getting State Aid Approved by the European Commission: Explaining the Duration of Preliminary Investigations in the State Aid Notification Procedure' (2022) 60(3) Journal of Common Market Studies 545

1081. Van Elsuwege P, 'Judicial Review and the Common Foreign and Security Policy: Limits to the Gap-Filling Role of the Court of Justice' (2021) 58(6) Common Market Law Review 1731

1082. Van Kolfschooten H, 'EU Regulation of Artificial Intelligence: Challenges for Patients' Rights' (2022) 59(1) Common Market Law Review 81

1083. Van Rompuy B, 'Independence as a Prerequisite for Mutual Trust Between EU Competition Enforcers: Case T-791/19, Sped-Pro v Commission' (2022) 13(6) Journal of European Competition Law and Practice 413

1084. Vanasaun I, 'Transition from Soviet Union's Tax Regime to Estonia's Own Tax System Tax in History' (2021) 49(10) Intertax 844

1085. Veenbrink M, 'The Freedom from Self-Incrimination – A Strasbourg-Proof Approach? Cases C-466/19 P Qualcomm and C-481/19 P DB v Consob' (2021) 12(10) Journal of European Competition Law and Practice 750

1086. Velluti S, 'The European Social Dialogue as a Source of EU Legal Acts following EPSU: Collective Bargaining and Industrial Relations Get Lost in Translation [Case Law: Section A: Court of Justice]' (2022) 59(3) Common Market Law Review 871

1087. Verschuur S and Sbrolli C, 'The European Green Deal and State Aid: Regions, State Aid and the Just Transition' (2021) 20(1) European State Aid Law Quarterly 41

1088. Vetulani-Cęgiel A and Meyer T, 'Power to the People? Evaluating the European Commission's Engagement Efforts in EU Copyright Policy' (2021) 43(8) Journal of European Integration 1025

1089. Volokh M, 'Keeping Up with the Enforcement Trends Against Digital Platforms: Amazon Takes Yet Another Hit from the Commission' (2022) 43(6) European Competition Law Review 283

1090. Vrabec H U, 'Data Subject Rights Under the GDPR: With a Commentary Through the Lens of the Data-Driven Economy' (2022) 47(1) European Law Review 149

1091. Vuletić D, 'Extension of the State Aid Acquis Under the Energy Community of South-East Europe in Case ECS-10/18' (2021) 20(1) European State Aid Law Quarterly 87

1092. Walsh K, 'Special Issue: Patents in a Changing Europe' (2022) 44(4) European Intellectual Property Review 192

1093. Weatherill S, 'Comparative Internal Market Law: The UK and the EU' [2021] 40 Yearbook of European Law 431

1094. Weber D and Steenbergen J, 'The (Absence of) Member State Autonomy in the Interpretation of DAC6: A Call for EU Guidance' 30(5-6) EC Tax Review 254

1095. – – and Steenbergen J, 'The Potential Relevance of the CJEU Case Law on Group Taxation under the EU/UK Trade and Cooperation Agreement' (2022) 31(2) EC Tax Review 97

1096. Werden G J, 'Exploitative Abuse of a Dominant Position: A Bad Idea That Now Should Be Abandoned' (2022) 18(3) European Competition Journal 682

1097. Whelan P, 'Applying Ne Bis in Idem to Commission Proceedings Implicating Article 11(6) of Regulation 1/2003: Case C-857/19 Slovak Telekom' (2021) 12(10) Journal of European Competition Law and Practice 746

1098. Wiener A, 'Crises Pass But Mergers Remain: EU Merger Control During the COVID-19 Pandemic' (2022) 43(5) European Competition Law Review 238

1099. Xenidis R, 'The Polysemy of Anti-Discrimination Law: The Interpretation Architecture of the Framework Employment Directive at the Court of Justice' (2021) 58(6) Common Market Law Review 1649

1100. Yeung T Y-C, Ovadek M and Lampach N, 'Time Efficiency as a Measure of Court Performance: Evidence from the Court of Justice of the European Union' (2022) 53(2) European Journal of Law and Economics 209

1101. Zechner L, 'Understanding VAT in Three-Party, Platform-Based Business Models: Which Party Is Supplying Which Service?' (2022) 31(4) EC Tax Review 171

1102. Zilioli C and Ioannidis M, 'Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies' (2022) 59(2) Common Market Law Review 363

07 Business – Industry – Trade

(Industrial policy / Competitiveness / Enterprise policy / Small and medium-sized enterprises / Corporate social responsibility / Service industries / Financial services / Banks)

1103. Agostini F and Corgatelli M, 'Article 25 of the Proposal for a Directive on Corporate Sustainability Due Diligence: Enlightened Shareholder Value or Pluralist Approach?' (2022) 19(4) European Company Law 92

1104. Akman P, 'Regulating Competition in Digital Platform Markets: A Critical Assessment of the Framework and Approach of the EU Digital Markets Act' (2022) 47(1) European Law Review 85

1105. Alejandre G M, 'Ownership of Databases: Personal Data Protection and Intellectual Property Rights on Databases' (2021) 29(5) European Review of Private Law 733

1106. Alexander K, 'Reconciling Lopsided Mandates, Secondary Objectives and the Importance of Sustainability: The Role of the European Central Bank in the Single Supervisory Mechanism' (2022) 33(3) European Business Law Review 331

1107. Andriychuk O, 'The Digital Markets Act Proposal: Key Elements and Smart Features' (2022) 43(3) European Competition Law Review 112

1108. Argelich Comelles C, 'Smart Property and Smart Contracts Under Spanish Law in the European Context' (2022) 30(2) European Review of Private Law 215

1109. Armitage M, 'Trust, Confidence, and Automation: The ISDA Master Agreement as a Smart Contract' (2022) 43(2) Business Law Review 56

1110. Arora Y, 'What Went Wrong with Wrongful Trading?' (2022) 43(4) Business Law Review 164

1111. Asimakopoulos I and Howarth D, 'Stillborn Banking Union: Explaining Ineffective European Union Bank Resolution Rules' (2022) 60(2) Journal of Common Market Studies 264

1112. Atak E, 'Pat on the Shoulder or Real Empowerment? New ESMA Jurisdiction in No-Action Letters Compared with the SEC Experience' (2022) 33(5) European Business Law Review 755

1113. Athanassiou P L, 'A European Resolution Regime for Central Securities Depositories? Some Reflections' (2022) 33(5) European Business Law Review 727

1114. Bagheri M and Zhou J, 'Beneficial Ownership Transparency: The Viability of Global Implementation of G20 High-Level Principles' (2021) 32(6) European Business Law Review 1021

1115. Bergqvist C, 'Google Shopping and Self-Favouring as a Separate Abuse' (2022) 43(4) European Competition Law Review 191

1116. Beriain I, Duardo Sanchez A and Castillo Parrilla J, 'What Can We Do with the Data of Deceased People? A Normative Proposal' (2021) 29(5) European Review of Private Law 785

1117. Biermeyer T, '20 Years of the SE Regulation – The Rise of A Specific Purpose Vehicle?' (2021) 28(5) Maastricht Journal of European and Comparative Law 597

1118. Bismuth R, 'Informational Obsession, Opinion Control and Freedom of Expression in Financial Regulation – Some Critical Perspectives' (2022) 33(3) European Business Law Review 375

1119. Boersma B, 'Death Sentence for EU Investment Treaties [Editorial]' (2022) 19(2) European Company Law 30

1120. Brutti N, 'The Languages of Contract: A Comparative Law Perspective with a Focus on the CISG' (2022) 33(2) European Business Law Review 243

1121. Buonanno L, 'A New Legal Design for the Credit Reporting Industry' (2021) 17(4) European Review of Contract Law 347

1122. Castillo Parrilla J A, 'The Legal Regulation of Digital Wealth: Commerce, Ownership and Inheritance of Data' (2021) 29(5) European Review of Private Law 807

1123. Cauffman C, 'Discrimination in Online Advertising [Editorial]' (2021) 28(3) Maastricht Journal of European and Comparative Law 283

1124. Chouliara E and Martino E D, 'Risk Retention in Securitisation and Empty Creditors: When Financial Regulation (Positively) Spills over Corporate Governance' (2022) 33(5) European Business Law Review 635

1125. Cliffe A, 'To What Extent Does European Law Ensure a Level Playing Field for Fintechs in the Payment Services Sector? An Analysis of Past and Future Developments from a Competition Law Perspective' (2022) 18(1) European Competition Journal 168

1126. Conti Nicolo B M and Memoli V, 'Business Elites and European Integration: Really a Honeymoon Story?' (2022) 60(6) Journal of Common Market Studies 1400

1127. D'Alvia D, 'Legal Constants and the 'Constant' Outside of the Law: Mobile Payments in Comparative Perspective Under European Union Law' (2021) 28(3) Maastricht Journal of European and Comparative Law 332

1128. Davies P, 'Related Party Transactions on the London Stock Exchange: What Works and What Does Not?' (2022) 43(1) Business Law Review 2

1129. De Pascalis F, 'The Journey to Open Finance: Learning from the Open Banking Movement' (2022) 33(3) European Business Law Review 397

1130. Deipenbrock G, 'Digital Finance and Beyond in the Third Decade of the 21st Century – Observations with a Focus on the EU Policy and Legal' (2022) 33(3) European Business Law Review 309

1131. Devine P, 'The Limits of Privilege: Joint Interest and Indirect Shareholders' (2022) 43(1) Business Law Review 38

1132. Di Cataldo M, Monastiriotis V and Rodriguez-Pose R, 'How 'Smart' Are Smart Specialization Strategies?' (2022) 60(5) Journal of Common Market Studies 1272

1133. Domina M, 'Brexit and Systemic Risks: Should We Worry?' (2022) 19(3) European Company Law 82

1134. – – 'Regulatory Discretion in Financial Markets Law: An Effective Remedy Against Financial Crises?' (2021) 18(6) European Company Law 184

1135. – – 'The Broadening 'Soft Law' Powers of the European Banking Authority' (2022) 19(1) European Company Law 22

1136. Donnelly S, 'Post-Brexit Financial Services in the EU' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2061579> accessed 30 November 2022

1137. Ernest K, 'Intra-Brand Competition in the Pharmaceutical Sector: Comments to the CJEU Advocate General's Opinion in Cases C-147/20, C-204/20 and C-224/20' (2022) 43(5) European Competition Law Review 256

1138. Ferretti F, 'Consumers in the Digital Single Market [Editorial Introduction]' (2022) 33(4) European Business Law Review 477

1139. – – 'Open Banking: Gordian Legal Knots in the Uncomfortable Cohabitation Between the PSD2 and the GDPR' (2022) 30(1) European Review of Private Law 73

1140. Filippo A, 'Credit Funds Regulation in the EU and the Debate on NPLS and AMCS: The Need for Further Harmonization' (2022) 19(1) European Company and Financial Law Review 40

1141. Flint D, 'A Good(s) Decision for Agents? [Current Comment]' (2022) 43(1) Business Law Review 48

1142. – – 'Taking an Analytic Approach to GDPR Compliance [Current Comment]' (2022) 43(3) Business Law Review 133

1143. Fuentes M G, 'Distressed Mergers and Acquisitions: Price Adjustment Mechanisms in the Context of Distress' (2022) 43(4) Business Law Review 155

1144. Galli F, Lagioia F and Sartor G, 'Consent to Targeted Advertising' (2022) 33(4) European Business Law Review 485

1145. Gelepithis M and Hearson M, 'The Politics of Taxing Multinational Firms in a Digital Age' (2022) 29(5) Journal of European Public Policy 708

1146. Gelter M, 'Preliminary Procedures in Shareholder Derivative Litigation: A Beneficial Legal Transplant?' (2022) 19(1) European Company and Financial Law Review 3

1147. Gill-Pedro E, 'Whose Freedom Is It Anyway? The Fundamental Rights of Companies in EU Law' (2022) 18(2) European Constitutional Law Review 183

1148. Gortsos C V, 'Challenges Ahead for the EU Banking System' (2022) 33(3) European Business Law Review 353

1149. Gozlugol A A, 'Controlling Tunnelling Through Lending Arrangements: The Disciplining Effect of Lending Arrangements on Value-Diversion, Its Limits and Implications' (2022) 33(1) European Business Law Review 125

1150. Graef I and van der Sloot B, 'Collective Data Harms at the Crossroads of Data Protection and Competition Law: Moving beyond Individual Empowerment' (2022) 33(4) European Business Law Review 513

1151. Grozdanovski Lj and De Cooman J, 'Of Hypothesis and Facts: The Curious Origins of the EU's Regulation of High-Risk AI' (2022) 24(1) European Journal of Law Reform 123

1152. Hardman J, 'The Plight of the UK Private Company Minority Shareholder' (2022) 33(1) European Business Law Review 87

1153. Hardy S, 'Rise of the 'Gig Worker' Economy or Just Mending the Legislative Leak?' (2022) 43(1) Business Law Review 18

1154. Hindelang S and Pohl J H, 'Privatizing Investment Control: A Renaissance for Restricted Shares? [Editorial]' (2021) 18(6) European Company Law 182

1155. Horsch A and Kleinow J, 'The Challenge of Regulatory Complexity' (2022) 33(3) European Business Law Review 421

1156. Jentsch V, 'Government Responses on Corona and Contracts in Europe: A Compilation of Extraordinary Measures in Times of Crisis' (2021) 32(6) European Business Law Review 1067

1157. Keller A, 'Vulnerability in Financial Regulation: The Case of SMEs' (2022) 33(5) European Business Law Review 695

1158. Lasak J, 'Towards More Flexible Czech Corporate Law: Revised Corporations Act' (2022) 19(4) European Company Law 105

1159. Lee J and Schu L, 'Regulation of Algorithmic Trading: Frameworks for Human Supervision and Direct Market Interventions' (2022) 33(2) European Business Law Review 193

1160. Leone C, 'Coding for the 99 Per Cent? Principles and the Preconditions of Capital Minting' (2022) 1(2) European Law Open 351

1161. Liddy-Murphy R, 'Nominee Directors: Caught Between the Devil and the Deep Blue Sea' (2022) 43(1) Business Law Review 45

1162. Liptrap J S, 'A Social Enterprise Company in EU Organisational Law?' [2021] 23 Cambridge Yearbook of European Legal Studies 193

1163. Lodder A R and Carvalho J M, 'Online Platforms: Towards an Information Tsunami with New Requirements on Moderation, Ranking, and Traceability ' (2022) 33(4) European Business Law Review 537

1164. Ludvigsen K, Nagaraj S and Daly A, 'When Is Software a Medical Device? Understanding and Determining the "Intention" and Requirements for Software as a Medical Device in European Union Law' (2022) 13 European Journal of Risk Regulation 78

1165. Macchiavello E and Siri M, 'Sustainable Finance and Fintech: Can Technology Contribute to Achieving Environmental Goals? A Preliminary Assessment of 'Green Fintech' and 'Sustainable Digital Finance'' (2022) 19(1) European Company and Financial Law Review 128

1166. Machnikowski P, 'Product Liability for Information Products? The CJEU Judgment in VI/KRONE – Verlag Gesellschaft mbH & Co KG, 10 June 2021 [C-65/20] [Case Note]' (2022) 30(1) European Review of Private Law 191

1167. MacNeil I and Esser I-M, 'The Emergence of 'Comply or Explain' as a Global Model for Corporate Governance Codes' (2022) 33(1) European Business Law Review 1

1168. Maggetti M and Vagionaki T, 'How to Tame the Beast: The Diverse Development of European Networks Regulating Finance and Competition' (2022) 29(10) Journal of European Public Policy 1590

1169. Mak C, 'Corporate Sustainability Due Diligence: More Than Ticking the Boxes?' (2022) 29(3) Maastricht Journal of European and Comparative Law 301

1170. Massoc E C, 'Having Banks 'Play Along' State-Bank Coordination and State-Guaranteed Credit Programs During the COVID-19 Crisis in France and Germany' (2022) 29(7) Journal of European Public Policy 1135

1171. McGinley O and E Rogge, 'The Competing EU and UK Influence on Corporate Governance in Ireland Following Brexit' (2022) 43(3) Business Law Review 104

1172. Meershoek N, 'Why the EU Internal Market Is Not the Correct Legal Basis for Regulating Military-Strategic Procurement – on Functional Division of Competences' (2022) 47(3) European Law Review 353

1173. Megliani M, 'The ESM Pandemic Crisis Support Facility: A Changing Conditionality?' (2022) 33(2) European Business Law Review 227

1174. Montagnani M L and Paulesu C, 'Towards an Ecosystem for Consumer Protection in the Context of AI-Based Credit Scoring' (2022) 33(4) European Business Law Review 557

1175. Moravec T and Valenta P, 'Opt-in to Coordination Proceeding According to the Czech Insolvency Law Legislation [Comment]' (2021) 32(6) European Business Law Review 1125

1176. Mosna A, 'Give Art Market Regulation a Chance' (2022) 29(3) Maastricht Journal of European and Comparative Law 304

1177. Moussa M, 'On Sovereign Bonds and Marijuana: Comparing Supremacy Limits in the US and the EU' (2021) 28(6) Maastricht Journal of European and Comparative Law 834

1178. Mukhamedkarim Z, 'Do the Minority Shareholders of Russian Corporations Need More Protection?' (2022) 19(1) European Company Law 11

1179. Munu M L, 'Assessing the Adequacy of Existing Multilateral Rules Regulating E-Commerce: Lessons from EU Law' (2022) 24(1) European Journal of Law Reform 135

1180. Myklebust T, 'Climate-Related Financial Risks: Considering an Emerging Framework for Assessment and Disclosure in a Regulatory Perspective' (2022) 33(3) European Business Law Review 443

1181. Nastegard E, 'Equivalence Decisions in the EU and UK Financial Services Sectors Post-Brexit' (2022) 33(3) European Business Law Review 463

1182. Nieto M J, 'Incentive-Compatible Relationship Between ERM II and Close Co-Operation in the Banking Union: The Cases of Bulgaria and Croatia' (2022) 47(2) European Law Review 200

1183. Omlor S and Dilek D, 'German Electronic Securities Act' (2022) 19(3) European Company Law 67

1184. Onal M M and Ashton J K, 'Is the Journey More Important than the Destination? EU Accession and Corporate Governance and Performance of Banks' (2022) 60(6) Journal of Common Market Studies 1516

1185. Paglietti M C and Rabitti M, 'A Matter of Time. Digital-Financial Consumers' Vulnerability in the Retail Payments Market' (2022) 33(4) European Business Law Review 581

1186. – – 'Restitution and Liability in the Multilevel Regulatory Framework of Unauthorized Digital Payment Transactions' (2022) 30(1) European Review of Private Law 155

1187. Papadopoulos T, 'Protection of Shareholders in Cross-border Mergers: The New Harmonized Rules' (2021) 18(6) European Company and Financial Law Review 980

1188. Papdima R, 'Codes and Model Laws: A EU-US Comparison of Their Role in Shaping Company Law' (2022) 19(2) European Company Law 40

1189. Pedamon C, 'Judicial Interpretation of Commercial Contracts in English and French Law: A Comparative Perspective' (2021) 32(6) European Business Law Review 1093

1190. Petrucci C, 'The Commission's Evaluation of the Financial Executives' Remuneration Policy and the Amendments of Directive No 2019/878' (2021) 32(6) European Business Law Review 1039

1191. Psaroudakis G, 'Corporate Restructuring versus Financial Resolution: Benchmarks for the Lawful Treatment of Creditors and Shareholders' (2021) 32(6) European Business Law Review 991

1192. Pyroha S S and I S Pyroha, 'Self-Regulation of the Tax Burden on Labour and Capital' (2022) 43(3) Business Law Review 126

1193. Quaglia L, 'It Takes Two to Tango: The European Union and the International Governance of Securitization in Finance' (2022) 60(6) Journal of Common Market Studies 1346

1194. Raj-Reichert G, Staritz C and Plank L, 'Conceptualizing the Regulator-Buyer State in the European Union for the Exercise of Socially Responsible Public Procurement in Global Production Networks' (2022) 60(3) Journal of Common Market Studies 759

1195. Riefa C, 'Protecting Vulnerable Consumers in the Digital Single Market' (2022) 33(4) European Business Law Review 607

1196. Rolo A G, 'Steering Companies Towards Policy Objectives Through Mandatory Disclosure Rules in EU Law' (2022) 19(2) European Company Law 33

1197. Romashchenko I, 'How the War Changed It All: A Story of One Ukrainian Corporate Law Researcher [Editorial]' (2022) 19(4) European Company Law 90

1198. Rudohradska S, Huckova R and Dobrovicova G, 'Present and Future – A Preview Study of Facebook in the Context of the Submitted Proposal for Digital Markets Act' (2022) 6 EU and Comparative Law Issues and Challenges Series 489

1199. Sabatino G, 'The 'Golden Power' on Foreign Investments in EU Law in the Light of Covid Crisis' (2021) 18(6) European Company Law 189

1200. Sahu R, 'A Look into 'Market Manipulation' with a Focus on Pump and Dump Schemes and Initial Considerations for Responding to a Regulatory Query' (2022) 43(3) Business Law Review 114

1201. Schammo P, 'Institutional Change in the Banking Union: The Case of the Single Supervisory Mechanism' [2021] 40 Yearbook of European Law 265

1202. Schünemann W J and Windwehr J, 'Towards a "Gold Standard for the World"? The European General Data Protection Regulation Between Supranational and National Norm Entrepreneurship' (2021) 43(7) Journal of European Integration 859

1203. Schwenzer I and Munoz E, 'Sustainability in Global Supply Chains Under the CISG' (2021) 23(3) European Journal of Law Reform 300

1204. Scolnicov A, 'Lifelike and Lifeless in Law: Do Corporations Have Human Rights?' (2022) (4) European Human Rights Law Review 353

1205. Seretakis A L, 'Report from Greece: The New Corporate Governance Framework' (2021) 18(6) European Company Law 196

1206. Sibbett B and H Kim, 'Cross-Border M&A: A Checklist of US Issues for Non-US Acquirers' (2022) 43(1) Business Law Review 24

1207. Smith R L and Duke A, 'Pharmaceuticals and Market Definition: A Cautionary Tale' (2022) 18(3) European Competition Journal 593

1208. Smith T and Geradin D, 'Maintaining a Level Playing Field When Big Tech Disrupts the Financial Services Sector' (2022) 18(1) European Competition Journal 129

1209. Smoljaninov A and Shachmurove Y, 'Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies' (2022) 19(4) European Company Law 112

1210. Soares W D C J, 'Off-Label Use of Medicines: A Comparative Study on the Regulation of Medicinal Products in Selected European Union Member States' (2022) 13(2) European Journal of Risk Regulation 311

1211. Stilinovic Vargek A, 'The Rise of Climate Change Litigation: Is There a (Real) Legal Risk for EU Banking Sector?' (2022) 6 EU and Comparative Law Issues and Challenges Series 236

1212. Storr V H and others, 'Entrepreneurship During a Pandemic' (2022) 54(1) European Journal of Law and Economics 83

1213. Stoupos N and Kiohos A, 'Euro Area: Towards a European Common Bond? – Empirical Evidence from the Sovereign Debt Markets' (2022) 60(4) Journal of Common Market Studies 1019

1214. Thomes T P, 'The Google Android Case and the DMA – Lessons Learned?' (2022) 43(2) European Competition Law Review 52

1215. Van Cleynebreugel P, 'The Commission's Digital Services and Markets Act Proposals: First Step Towards Tougher and More Directly Enforced EU Rules?' (2021) 28(5) Maastricht Journal of European and Comparative Law 667

1216. Van der Sloot B, 'The Quality of Life: Protecting Non-Personal Interests and Non-Personal Data in the Age of Big Data' (2021) 29(5) European Review of Private Law 757

1217. Van Wijck P and Weber F, 'The Abstract Presumption of Harm in the Damages Directive: Overconcern of Overcompensation' (2022) 18(1) European Competition Journal 204

1218. Varo E S, 'The Bumpy Reform of EU Interest Rates and the Rule of Law' (2022) 33(2) European Business Law Review 267

1219. Verdoes T and others, 'Could the USA's SOX in-Control Regime Serve as an Example for EU Member States?' (2022) 19(3) European Company Law 73

1220. Vesan P and Corti F, 'The Return of the Commission Social Entrepreneurship Before and After the Covid-19 Pandemic' (2022) 44(6) Journal of European Integration 787

1221. Volokh M, 'Keeping up With the Enforcement Trends Against Digital Platforms: Amazon Takes Yet Another Hit From the Commission' (2022) 43(6) European Competition Law Review 283

1222. Winkler M M and R Kohli, 'The Two Faces of Severability: A Study in International Contracting' (2022) 43(4) Business Law Review 138

1223. Wrzecionek R, 'The Law of Succession for Sole Proprietors in Austria, Poland and Switzerland [Comment]' (2022) 33(2) European Business Law Review 297

1224. Yeoh P, 'Sustainable Banking: Challenges and the Way Forward' (2022) 43(4) Business Law Review 149

1225. Zhang Y, 'Limits of Law in the Multilevel System: Explaining the European Com-

mission's Toleration of Noncompliance Concerning Pharmaceutical Parallel Trade' (2022) 60(4) Journal of Common Market Studies 1001

1226. Zouridakis G and Papadopoulos T, 'A Comparative Analysis of Derivative Action in Cypriot Company Law: Comparison with English Company Law and the Prospect of Statutory Reform' (2022) 29(1) Maastricht Journal of European and Comparative Law 62

08 Employment – Labour market

(Social dialogue / Working conditions / Local employment initiatives / Health and safety at work / Trade unions)

1227. Adams-Prassl J, 'Regulating Algorithms at Work: Lessons for a "European Approach to Artificial Intelligence"' (2022) 13(1) European Labour Law Journal 30

1228. Aloisi A, 'Platform Work in Europe: Lessons Learned, Legal Developments and Challenges Ahead' (2022) 13(1) European Labour Law Journal 4

1229. Antón J-I and others, 'The Labour Market Impact of Robotisation in Europe' (2022) 28(3) European Journal of Industrial Relations 317

1230. Atkinson J, 'Zero-Hours Contracts and English Employment Law: Developments and Possibilities' (2022) 13(3) European Labour Law Journal 347

1231. Babayev R, 'Setting out the Boundaries of Jobseekers' Residence Status and Beyond: Case C-710/19 G.M.A. v Etat Belge [Case Note]' (2022) 29(2) Maastricht Journal of European and Comparative Law 286

1232. Bagari S and Sagmeister M, 'Economic Dependence and Parental Protection: A Comparative Analysis of Austrian and Slovenian Labour and Social Security Rights of Economically Dependent Self-Employed Parents' (2022) 13(1) European Labour Law Journal 86

1233. Bartkiw T J, 'Charting a New Course in a Fissured Economy? Employer Concepts and Collective Bargaining in the US and Canada' (2021) 37(4) International Journal of Comparative Labour Law and Industrial Relations 385

1234. Baute S, Nicoli F and Vandenbroucke F, 'Conditional Generosity and Deservingness in Public Support for European Unemployment Risk Sharing' (2022) 60(3) Journal of Common Market Studies 721

1235. Been W and de Beer P, 'Combatting Exploitation of Migrant Temporary Agency Workers Through Sectoral Self-Regulation in the UK and the Netherlands' (2022) 28(2) European Journal of Industrial Relations 175

1236. Bij de Vaate V, 'Collective Redress and Workers' Rights in the Netherlands' (2022) 13(4) European Labour Law Journal 455

1237. Bogg A, 'Can We Trust the Courts in Labour Law? Stranded Between Frivolity and Despair' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 103

1238. Bogoeski V and Costamagna F, 'Law and the Production of Precarious Work in Europe [Introduction]' (2022) 1(3) European Law Open 660

1239. Boot G, 'Platform Work in Europe: The Need for a Multilevel Solution to Protect the So-Called Self-Employed' (2022) 13(1) European Labour Law Journal 81

1240. Borghi P and others, 'Mind the Gap Between Discourses and Practices: Platform Workers' (2021) 27(4) European Journal of Industrial Relations 425

1241. Brameshuber E and Kager I, 'Collective Access to National Courts for Labour Law and Social Policy Disputes: Austria' (2022) 13(4) European Labour Law Journal 436

1242. Broniatowska P and Strawiński P, 'Foreign and Domestic Firm Ownership and Its Impact on Wages. Evidence from Poland' (2021) 27(4) European Journal of Industrial Relations 445

1243. Burgoon B and others, 'Unemployment Risk-Sharing in the EU: How Policy Design Influences Citizen Support for European Unemployment Policy' (2022) 23(2) European Union Politics 282

1244. Busemeyer M R, Carstensen M B and Emmenegger P, 'Orchestrators of Coordination: Towards a New Role of the State in Coordinated Capitalism?' (2022) 28(2) European Journal of Industrial Relations 231

1245. Carver L and Doellgast V, 'Dualism or Solidarity? Conditions for Union Success in Regulating Precarious Work' (2021) 27(4) European Journal of Industrial Relations 367

1246. Cauffman C, 'Towards Better Working Conditions for Persons Performing Services Through Digital Labour Platforms [Editorial]' (2022) 29(1) Maastricht Journal of European and Comparative Law 3

1247. Cerqua A and Pellegrini G, 'How Much Does State Aid Mitigate Employment Losses? Local Policy Effects at a Time of Economic Crisis' (2022) 56(10) Regional Studies 1698

1248. Chatzilaou K, 'EU Economic Governance and French Social Legislation' (2022) 13(2) European Labour Law Journal 170

1249. Cigna L M, 'Looking for a North Star? Ideological Justifications and Trade Unions' Preferences for a Universal Basic Income' (2022) 28(2) European Journal of Industrial Relations 129

1250. Cini L, Maccarrone V and Tassinari A, 'With or Without U(nions)? Understanding the Diversity of Gig Workers' Organizing Practices in Italy and the UK' (2022) 28(3) European Journal of Industrial Relations 341

1251. Corby S, 'Adjudicatory Institutions for Individual Employment Disputes: Formation, Development and Effectiveness' (2022) 38(1) International Journal of Comparative Labour Law and Industrial Relations 1

1252. Corcione E, 'Disconnecting Agricultural Workers' Exploitation From Migration Policies: A Trend Towards a Business and Human Rights Approach in the European Union' (2022) 1(3) European Law Open 699

1253. Daly P and Whelan D, 'Disability in Employment Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in Its Implementation' (2021) 28(6) Maastricht Journal of European and Comparative Law 744

1254. De la Corte-Rodriguez M, 'The Conditions of Access to Parental Leave in the EU: An Adequate Delimitation of Qualifying Periods by the Court of Justice?' (2022) 13(4) European Labour Law Journal 564

1255. De Oliveira Carvalho C and Ribeiro A T, 'The Impact of the EU Economic Governance in Portugal' (2022) 13(2) European Labour Law Journal 193

1256. Deakin S, 'Failing to Succeed? The Cambridge School and the Economic Case for the Minimum Wage' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 211

1257. Defossez D, 'The Employment Status of Food Delivery Riders in Europe and the UK: Self-Employed or Worker?' (2022) 29(1) Maastricht Journal of European and Comparative Law 25

1258. Dermine E and Mechelynck A, 'Regulating Zero-Hour Contracts in Belgium: From a Defensive to a (Too?) Supportive Approach' (2022) 13(3) European Labour Law Journal 400

1259. – – and Mechelynck A, 'Zero-Hour Contracts and Labour Law: An Antithetical Association?' (2022) 13(3) European Labour Law Journal 339

1260. Di Carlo D, 'Beyond Neo-Corporatism: State Employers and the Special-Interest Politics of Public Sector Wage-Setting' (2022) Journal of European Public Policy 1

1261. Dias-Abey M, 'Mobilizing for Recognition: Indie Unions, Migrant Workers, and Strategic Equality Act Litigation' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 137

1262. Digennaro P, 'The Effects of Neoliberalism in European Labour Law: The Meaning of Labour and the Need for a Different Constitutional Compromise' (2022) 13(2) European Labour Law Journal 249

1263. Dolenec D, Širinić D and Balković A, 'Resisting the Great Recession: Social Movement Unionism in Croatia and Serbia' (2022) 28(1) European Journal of Industrial Relations 105

1264. Dorssemont F, 'Wage Setting and Wage Moderation in Belgium: A Never-Ending and Already-Old Story in the Wake of the 'New European Economic Governance'' (2022) 13(2) European Labour Law Journal 156

1265. Dukes R, 'Authoritarian Liberalism: A Labour Law Perspective' (2022) 1(1) European Law Open 150

1266. Eleveld A, 'Flexi-Insecurity and the Regulation of Zero-Hours Work in the Netherlands' (2022) 13(3) European Labour Law Journal 375

1267. Georgiou D, 'The New EU Directive on Transparent and Predictable Working Conditions in the Context of New Forms of Employment' (2022) 28(2) European Journal of Industrial Relations 193

1268. Ghavanini A W, 'United We Stand, Divided We Sue: Collective Access to Court for Labour and Social Security Claims in Sweden' (2022) 13(4) European Labour Law Journal 492

1269. Goyer M, Glatzer M and Valdivielso del Real R, 'The Management of the Eurozone in Crisis Times: Actors, Institutions and the Case of Bailout Packages' (2022) 28(1) European Journal of Industrial Relations 7

1270. Guardiancich I and Molina O, 'From Gradual Erosion to Revitalization: National Social Dialogue Institutions and Policy Effectiveness' (2022) 28(1) European Journal of Industrial Relations 85

1271. Gyulavari T and Menegatti E, 'Who Regulates Employment? Trends in the Hierarchy of Labour Law Sources' (2022) 38(1) International Journal of Comparative Labour Law and Industrial Relations 31

1272. Hadziabdic S and Frangi L, 'Rationalizing the Irrational: Making Sense of (In)Consistency Among Union Members and Non-Members' (2022) 28(2) European Journal of Industrial Relations 147

1273. Hardy S, 'Rise of the 'Gig Worker' Economy or Just Mending the Legislative Leak?' (2022) 43(1) Business Law Review 18

1274. Hassel A and Sieker F, 'The Platform Effect: How Amazon Changed Work in Logistics in Germany, the United States and the United Kingdom' (2022) 28(3) European Journal of Industrial Relations 363

1275. Hendy J, 'Reflections on the Role of the Trade Union Lawyer' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 91

1276. Hernes V and others, 'Rapid or Long-Term Employment? A Scandinavian Comparative Study of Refugee Integration Policies and Employment Outcomes' (2022) 29(2) Journal of European Public Policy 238

1277. Hrdlicka M, 'Right to Parental Leave Must Not Require Employment at the Time of Birth (C-129/20)' (2022) 13(1) European Labour Law Journal 135

1278. Iossa A, '"This Is Not a Posted Worker' – Short-Term Cross-Border Mobility of Logistics Workers and Spatio-Temporal Dimensions of Exploitation in the EU: Evidence from the Case Law of the Court of Justice' (2022) 1(3) European Law Open 669

1279. Jolly S, 'Buttet v United Kingdom: A Missed Opportunity for the Court to Clarify the Relationship Between State Immunity and Article 6 ECHR in the Context of Employment' (2022) (5) European Human Rights Law Review 469

1280. Karjalainen K and Ylhainen M, 'On the Obligation to Make Reasonable Accommodation for an Employee with a Disability' (2022) 13(4) European Labour Law Journal 547

1281. Kirk E, 'The Worker and the Law Revisited: Conceptualizing Legal Participation, Mobilization and Consciousness at Work' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 157

1282. Kloostra J, 'Algorithmic Pricing: A Concern for Platform Workers?' (2022) 13(1) European Labour Law Journal 108

1283. Kornelakis A, Kirov V and Thill P, 'The Digitalisation of Service Work: A Comparative Study of Restructuring of the Banking Sector in the United Kingdom and Luxembourg' (2022) 28(3) European Journal of Industrial Relations 253

1284. Kresal B, 'Collective Redress and Workers' Rights in the Slovenia' (2022) 13(4) European Labour Law Journal 475

1285. Kullmann M, 'Broadening the Comparator Group in the Context of Discrimination Based on Disability' (2022) 13(3) European Labour Law Journal 466

1286. – – '"Platformisation" of Work: An EU Perspective on Introducing a Legal Presumption' (2022) 13(1) European Labour Law Journal 66

1287. Latner J P, 'Temporary Employment in Europe: Stagnating Rates and Rising Risks' (2022) 24(4) European Societies 383

1288. Lemeire V and Zanoni P, 'Beyond Methodological Nationalism in Explanations of Gender Equality: The Impact of EU Policies on Gender Provisions in National Collective Agreements in Belgium (1957–2020)' (2022) 28(1) European Journal of Industrial Relations 47

1289. Lens D, Mussche N and Marx I, 'The Different Faces of International Posting: Why Do Companies Use Posting of Workers?' (2022) 28(1) European Journal of Industrial Relations 27

1290. Lerouge L and Pons F T, 'Contribution to the Study on the 'Right to Disconnect' from Work. Are France and Spain Examples for Other Countries and EU Law?' (2022) 13(3) European Labour Law Journal 450

1291. Mantouvalou V, 'The UK Seasonal Worker Visa' (2022) 1(3) European Law Open 711

1292. Mantouvalou V, 'Welfare-to-Work, Zero-Hours Contracts and Human Rights' (2022) 13(3) European Labour Law Journal 431

1293. Marques P and Fonseca D, 'Understanding the Positions Taken by Moderate Union Confederations and Centre-Left Parties During Labour Market Reforms in Portugal and Spain: Why the Configuration of Left Parties and Trade Union Confederations Matters?' (2022) 28(2) European Journal of Industrial Relations 65

1294. McCormack-George D, 'Philip Pettit's Republicanism and Labour Law: A Defence' (2021) 37(4) International Journal of Comparative Labour Law and Industrial Relations 417

1295. McCrystal S and Hardy T, 'Filling the Void? A Critical Analysis of Competition Regulation of Collective Bargaining amongst Non-Employees' (2021) 37(4) International Journal of Comparative Labour Law and Industrial Relations 355

1296. Meakin J, 'Labour Movements and the Effectiveness of Legal Strategy: Three Tenets' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 185

1297. – – 'Labour, Strategy, and the Constitutional Protection of Work: On the Effectiveness of Legal Strategy' (2022) 38(2) International Journal of Comparative Labour Law and Industrial Relations 87

1298. Mihály Z, 'Transnational Transfer of Lean Production to a Dependent Market Economy: The Case of a French-Owned Subsidiary in Romania' (2021) 27(4) European Journal of Industrial Relations 405

1299. Mishiba T, 'Workplace Mental Health Law: Perspectives Based on Comparative Analysis of Legislation in Seven Countries' (2022) 38(1) International Journal of Comparative Labour Law and Industrial Relations 53

1300. Monti G, 'Collective Labour Agreements and EU Competition Law: Five Reconfigurations' (2022) 18(3) European Competition Journal 714

1301. Muszyński K, Pulignano V and Marà C, 'Product Markets and Working Conditions on International and Regional Food Delivery Platforms: A Study in Poland and Italy' (2022) 28(3) European Journal of Industrial Relations 295

1302. Oliveira P, 'Discrimination Within a Group of Workers with Disabilities. Comment to Court of Justice of the European Union, Case C-16/19' (2022) 13(1) European Labour Law Journal 127

1303. Parviainen H, 'Can Algorithmic Recruitment Systems Lawfully Utilise Automated Decision-Making in the EU?' (2022) 13(2) European Labour Law Journal 225

1304. Passalacqua V, 'Has the Seasonal Workers Directive Missed Its Target? Evidence from Italy During the Pandemic' (2022) 1(3) European Law Open 690

1305. Pérez de Guzmán S, Martínez E and Ulloa E, 'Down But Not Out: Union Strategies and Power Resources in Response to Liberalization and Changes in National Postal Services – The Cases of Spain and Belgium' (2021) 27(4) European Journal of Industrial Relations 387

1306. Perulli A, 'A Critique of Self-Employment [Critical Notes]' (2022) 13(2) European Labour Law Journal 305

1307. Pucheta M, 'The Mercosur Socio-Labour Declaration: The Development of a Common Regional Framework in the Global South' (2021) 37(4) International Journal of Comparative Labour Law and Industrial Relations 325

1308. Pulignano V, Thompson P and Doerflinger N, 'When Accumulation Pressures Meet Regulatory Institutions: A Comparison in Logistics' (2022) 28(3) European Journal of Industrial Relations 273

1309. Rasnaca Z, 'Collective Redress in Labour and Social Law Disputes: An (Attractive) Option for the EU?' (2022) 13(4) European Labour Law Journal 415

1310. Rasnaca Z, 'Special Issue Introduction: Collective Redress for Enforcement of Labour Law' (2022) 13(4) European Labour Law Journal 405

1311. Ratti L and Garcia-Muñoz A, 'EU Law, In-Work Poverty, and Vulnerable Workers' (2022) 1(3) European Law Open 733

1312. Rennuy N, 'Posted Workers, Judges and Smokescreens: Narrowing the Gap in Judicial Control' (2022) 47(4) European Law Review 463

1313. Robin-Olivier S, 'Posting of Workers in the European Union: An Exploitative Labour System' (2022) 1(3) European Law Open 679

1314. Rocca M, 'The EU New Economic Governance, Labour Law and Labour Lawyers [Introduction]' (2022) 13(2) European Labour Law Journal 141

1315. Schmitt M and Rocca M, 'A New Source for (EU) Labour Law?' (2022) 13(2) European Labour Law Journal 214

1316. Schneider J and Gotte M, 'Meat Plants and Strawberry Fields Forever? Precarious Migrant Labour in the German Agri-Food Sector Before and After' (2022) 24(2) European Journal of Migration and Law 265

1317. Scholz-Alvarado C, 'The Politics of Labour That Underlies European Monetary Integration' (2022) 60(5) Journal of Common Market Studies 1374

1318. Sjodin E, 'Criminalisation as a Response to Low Wages and Labour Market Exploitation in Sweden' (2022) 13(4) European Labour Law Journal 529

1319. Sjodin E, 'European Minimum Wage: A Swedish Perspective on EU's Competence in Social Policy in the Wake of the Proposed Directive on Adequate Minimum Wages in the EU' (2022) 13(2) European Labour Law Journal 273

1320. Sobyra R, Sigler T and Charles-Edwards E, 'Unbalanced Growth in the Labourscape: Explaining Regional Employment Divergence' (2022) 56(7) Regional Studies 1059

1321. Steunenberg B, 'How Implementation Affects Revision: EU Decision-Making on Changing the Posting of Workers Directive' (2022) 60(3) Journal of Common Market Studies 562

1322. Szymczak S, Parteka A and Wolszczak-Derlacz J, 'Position in Global Value Chains and Wages in Central and Eastern European Countries' (2022) 28(2) European Journal of Industrial Relations 211

1323. Ulander-Wanman C, 'The Social Partners as Actors in New Labour Law Legislation in Sweden' (2022) 13(2) European Labour Law Journal 292

1324. Van den Brink M, 'When Can Religious Employers Discriminate? The Scope of the Religious Ethos Exemption in EU Law' (2022) 1(1) European Law Open 89

1325. Verheyen W and Pecinovsky P, 'Strike as an Extraordinary Circumstance' (2022) 13(2) European Labour Law Journal 323

1326. Waddington L and Bell M, 'The Right to Request Flexible Working Arrangements Under the Work-Life Balance Directive – A Comparative Perspective' (2022) 13(4) European Labour Law Journal 508

09 Social policy – Social issues

(Social security / Social protection / Gender equality / Disability issues / Health / Drugs / Tobacco / Communicable diseases / The young / The family / The elderly)

1327. Afscharian D and others, 'Into the Unknown: Empirical UBI Trials as Social Europe's Risk Insurance' (2022) 24(3) European Journal of Social Security 257

1328. Alexandris Polomarkakis K, 'Social Policy and the Judicial Making of Europe: Capital, Social Mobilisation and Minority Social Influence' (2022) 1(2) European Law Open 257

1329. Allan S, 'Care Home Closure and the Influence of Domiciliary Care Supply: Evidence from England' (2022) 32(4) Journal of European Social Policy 333

1330. Allsopp J, 'English "Iron Rod" Welfare Versus Italian "Colander" Welfare: Understanding the Intra-European Mobility Strategies of Unaccompanied Young Migrants and Refugees' (2022) 32(4) Journal of European Social Policy 436

1331. Ansell B and Cansunar A, 'The Political Consequences of Housing (Un)Affordability' (2021) 31(5) Journal of European Social Policy 597

1332. Aranguiz A, 'Bringing the EU up to Speed in the Protection of Living Standards Through Fundamental Social Rights: Drawing Positive Lessons from the Experience of the Council of Europe' (2021) 28(5) Maastricht Journal of European and Comparative Law 601

1333. Autenne A, Degoli M-C and Hartmann-Cortés K, 'Introduction to the Special Issue on Sustainable Pensions: Do Sustainable Pensions Require Sustainable Investments?' (2021) 23(3) European Journal of Social Security 191

1334. Baute S and de Ruijter A, 'EU Health Solidarity in Times of Crisis: Explaining Public Preferences Towards EU Risk Pooling for Medicines' (2022) 29(8) Journal of European Public Policy 1183

1335. Beilfuss C G, 'Agreements in European Family Law – The Findings, Theoretical Assessments and Proposals of the Commission on European Family Law (CEFL)' (2022) 18(2) European Review of Contract Law 159

1336. Blaskó Z, da Costa P and Schnepf S V, 'Learning Losses and Educational Inequalities in Europe: Mapping the Potential Consequences of the COVID-19 Crisis' (2022) 32(4) Journal of European Social Policy 361

1337. Bonoli G and others, 'Sometimes Needs Change Minds: Interests and Values as Determinants of Attitudes Towards State Support for the Self-Employed During the COVID-19 Crisis' (2022) 32(4) Journal of European Social Policy 407

1338. Bracken L, 'Recognition of LGBTQI+ Parent Families Across European Borders [Case Note]' (2022) 29(3) Maastricht Journal of European and Comparative Law 399

1339. Brooks E, 'European Union Health Policy After the Pandemic: An Opportunity to Tackle Health Inequalities?' (2022) 18(1) Journal of Contemporary European Research 67

1340. Bünning M and Hipp L, 'How Can We Become More Equal? Public Policies and Parents' Work–Family Preferences in Germany' (2022) 32(2) Journal of European Social Policy 182

1341. Busemeyer M R, 'The Welfare State in Really Hard Times: Political Trust and Satisfaction With the German Healthcare System During the COVID-19 Pandemic' (2022) 32(4) Journal of European Social Policy 393

1342. Cantillon S and O'Toole F, 'Citizens' Basic Income in Scotland: On the Road to Somewhere' (2022) 24(3) European Journal of Social Security 230

1343. Careja R and Harris E, 'Thirty Years of Welfare Chauvinism Research: Findings and Challenges' (2022) 32(2) Journal of European Social Policy 212

1344. Carella B and Graziano P, 'Back to the Future in EU Social Policy? Endogenous Critical Junctures and the Case of the European Pillar of Social Rights' (2022) 60(2) Journal of Common Market Studies 374

1345. Carre P and Steiert M, 'Social Europe Without Social Dialogue: Decision of the Court of Justice of the European Union in C-928/19 P European Federation of Public Service Unions' (2022) 18(2) European Constitutional Law Review 315

1346. Chrisp J and De Wispelaere J, 'Parading Utopia on the Road to Nowhere? An introduction to the Special Issue on the Policy Impact of the European Basic Income Experiments' (2022) 24(3) European Journal of Social Security 167

1347. Clasen J and Mascaro C, 'Activation: A Thematic and Conceptual Review' (2022) 32(4) Journal of European Social Policy 484

1348. Czarnecki K, 'Political Party Families and Student Social Rights' (2022) 32(3) Journal of European Social Policy 317

1349. Dallinger U, 'On the Ambivalence of Preferences for Income Redistribution [A Research Note]' (2022) 32(2) Journal of European Social Policy 225

1350. Daly M and others, 'COVID-19 and Policies for Care Homes in the First Wave of the Pandemic in European Welfare States: Too Little, Too Late?' (2022) 32(1) Journal of European Social Policy 48

1351. Daly P and Whelan D, 'Disability in Employment Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in Its Implementation' (2021) 28(6) Maastricht Journal of European and Comparative Law 744

1352. Daniels L, Stevens Y and Pratt D, 'Environmentally Friendly and Socially Responsible Investment in and by Occupational Pension Funds in the USA and in the EU' (2021) 23(3) European Journal of Social Security 247

1353. De Becker E, 'Overview of Recent Cases Before the European Court of Human Rights (October 2021 – February 2022)' (2022) 24(2) European Journal of Social Security 148

1354. Delcea S, 'A Nation of Bureaucrats or a Nation of Workers? Welfare Benefits as Nation-Building Modernization Tools in Interwar Romania' (2022) 32(1) Journal of European Social Policy 75

1355. Dewilde C and Flynn L B, 'Post-Crisis Developments in Young Adults' Housing Wealth' (2021) 31(5) Journal of European Social Policy 580

1356. Dimitrakopoulos D G and Lalis G, 'The EU's Initial Response to the COVID-19 Pandemic: Disintegration or "Failing Forward"?' (2022) 29(9) Journal of European Public Policy 1395

1357. Dobrotić I, 'The (In)Equality Dynamic of Childcare-Related Policy Development in Post-Yugoslav Countries' (2022) 32(3) Journal of European Social Policy 270

1358. Downes C, 'EU or UK Child-Sponsored Family Reunification Policy: Who's Right? Whose Rights?' (2021) 23(3) European Journal of Migration and Law 245

1359. Durazzi N and Geyer L, 'Social Inclusion and Collective Skill Formation Systems: Policy and Politics' (2022) 32(1) Journal of European Social Policy 105

1360. Edquist K, 'Actor-Networking European Union Mental Health Governance, 1999-2019' (2022) 18(1) Journal of Contemporary European Research 32

1361. Eick G M and Larsen C A, 'Welfare Chauvinism Across Benefits and Services' (2022) 32(1) Journal of European Social Policy 19

1362. Enggist M, Häusermann S and Pinggera M, 'The COVID-Crisis as an Opportunity for Welfare Recalibration? Panel-Data Evidence on the Effect of the COVID-Crisis on Welfare Preferences in Spain, Germany, and Sweden (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2116081> accessed 4 December 2022

1363. Ferragina E and Filetti F D, 'Labour Market Protection Across Space and Time: A Revised Typology and a Taxonomy of Countries' Trajectories of Change' (2022) 32(2) Journal of European Social Policy 148

1364. Fervers L and Kurowska A, 'Local Cultural Context as a Moderator of the Impact of Childcare on Maternal Employment: Evidence from a Natural Experiment' (2022) 32(3) Journal of European Social Policy 239

1365. Foubert P and Hendricks A, 'Additional (Maternity) Leave for Women Only? The Court of Justice Refines Its Hofmann Test in Syndicat CFTC (C-463/19) Yet Forgets About the Children' (2021) 28(6) Maastricht Journal of European and Comparative Law 908

1366. Gago A and Maiani F, '"Pushing the Boundaries": A Dialogical Account of the Evolution of European Case-Law on Access to Welfare' (2022) 44(2) Journal of European Integration 261

1367. Gajić A V, 'Facing Reality: A Need to Change the Legal Framework of the EU Public Health Policy and the Influence of the Pandemic of COVID-19 on the Perception of Identity and the Role of the EU' [2022] 6 EU and Comparative Law Issues and Challenges Series 353

1368. Gan O, 'Spousal Agreements and Patriarchal Bargains: A Wife's Guarantee of Her Husband's Business Debts' (2022) 18(2) European Review of Contract Law 175

1369. García L R, 'The Policy and Political Consequences of the B-Mincome Pilot Project' (2022) 24(3) European Journal of Social Security 213

1370. Giuliani G A, 'The Family Policy Positions of Conservative Parties: A Farewell to the Male-Breadwinner Family Model?' (2022) 61(3) European Journal of Political Research 678

1371. Goedemé T, Decerf B and Van den Bosch K, 'A New Poverty Indicator for Europe: The Extended Headcount Ratio' (2022) 32(3) Journal of European Social Policy 287

1372. Goldacker K and others, 'Shared Leave, Happier Parent Couples? Parental Leave and Relationship Satisfaction in Germany' (2022) 32(2) Journal of European Social Policy 197

1373. Gornick J C and Sierminska E, 'Wealth Accumulation and Retirement Preparedness in Cross-National Perspective: A Gendered Analysis of Outcomes Among Single Adults' (2021) 31(5) Journal of European Social Policy 549

1374. Grossio L, 'Who Is Entitled to Family Benefits? Lights and Shadows of the ECJ Rulings in WS and VR' (2021) 28(4) Maastricht Journal of European and Comparative Law 582

1375. Gruyters J, 'The Internal Market for Supplementary Pensions: A Long and Winding Road' (2022) 29(3) Maastricht Journal of European and Comparative Law 375

1376. Guardiancich I, 'The Politicisation of Social Europe: Conflict Dynamics and Welfare Integration' (2022) 56(10) Regional Studies 1798

1377. Guerra G, 'Evolving Artificial Intelligence and Robotics in Medicine, Evolving European Law. Comparative Remarks Based on the Surgery Litigation' (2021) 28(6) Maastricht Journal of European and Comparative Law 805

1378. Hadziabdic S and Kohl S, 'Is the Left Right? The Creeping Embourgeoisement of Social Democracy Through Homeownership' (2022) 61(4) European Journal of Political Research 930

1379. Hennis M, 'Par le Haut ou par les Pays-Bas? French and Dutch Approaches to European Social Policy Coordination Compared' (2022) 60(1) Journal of Common Market Studies 136

1380. Herbst-Debby A, '(De)Legitimization of Single Mothers' Welfare Rights: United States, Britain and Israel' (2022) 32(3) Journal of European Social Policy 302

1381. Hernández A, Picos F and Riscado S, 'Moving Towards Fairer Regional Minimum Income Schemes in Spain' (2022) 32(4) Journal of European Social Policy 452

1382. Hiilamo H, 'A Truly Missed Opportunity: The Political Context and Impact of the Basic Income Experiment in Finland' (2022) 24(3) European Journal of Social Security 177

1383. Jacqueson C, 'A Resisting Enclave of Social Rights – Protecting the Children of Former Workers' (2021) 28(5) Maastricht Journal of European and Comparative Law 731

1384. Janssens J and Van Mechelen N, 'To Take or Not to Take? An Overview of the Factors Contributing to the Non-Take-Up of Public Provisions' (2022) 24(2) European Journal of Social Security 95

1385. Johnson M, 'Systematic Police Failures to Protect Victims of Domestic Violence' (2022) (2) European Human Rights Law Review 194

1386. Johnston H, 'Basic Income in Ireland: The Development of Two Pilots' (2022) 24(3) European Journal of Social Security 243

1387. Knoops S, 'Equality Without Improvement? A Case Study of the Impact of the Belgian Unified Status Among Blue-Collar and White-Collar Workers on Their Occupational Pensions' (2021) 23(3) European Journal of Social Security 211

1388. Kovács B, 'Flat-Rate Personal Income Tax in Lithuania, Romania and Hungary: A Revolutionary Policy Idea Without Revolutionary Outcomes' (2022) 32(1) Journal of European Social Policy 60

1389. Kuypers S and Marx I, 'Poverty in the EU Using Augmented Measures of Financial Resources: The Role of Assets and Debt' (2021) 31(5) Journal of European Social Policy 496

1390. Leonelli G C, 'Access to the EU Courts in Environmental and Public Health Cases and the Reform of the Aarhus Regulation: Systemic Vision, Pragmatism, and a Happy Ending' [2021] 40 Yearbook of European Law 230

1391. Lersch P M and others, 'Wealth of Children from Single-Parent Families: Low Levels and High Inequality in Germany' (2021) 31(5) Journal of European Social Policy 565

1392. Liptrap J S, 'A Social Enterprise Company in EU Organisational Law?' [2021] 23 Cambridge Yearbook of European Legal Studies 193

1393. Ludvigsen K, Nagaraj S and Daly A, 'When Is Software a Medical Device? Understanding and Determining the "Intention" and Requirements for Software as a Medical Device in European Union Law' (2022) 13(1) European Journal of Risk Regulation 78

1394. Mäkinen L, 'Different Methods, Different Standards? A Comparison of Two Finnish Reference Budgets' (2021) 23(4) European Journal of Social Security 360

1395. Marx I and Nolan B, 'How Wealth Matters for Social Policy' (2021) 31(5) Journal of European Social Policy 489

1396. McGaughey E, 'Sustainable Pensions, Democratic Governance, and EU Law' (2021) 23(3) European Journal of Social Security 279

1397. Melin P and Sivonen S, 'Overview of Recent Cases Before the Court of Justice of the European Union (March 2021-September 2021)' (2021) 23(4) European Journal of Social Security 379

1398. – – and Sivonennn S, 'Overview of Recent Cases Before the Court of Justice of the European Union (January-March 2022)' (2022) 24(2) European Journal of Social Security 136

1399. Morelli S and others, 'Inheritance, Gifts and the Accumulation of Wealth for Low-Income Households' (2021) 31(5) Journal of European Social Policy 533

1400. Müller N, Pforr K and Hochman O, 'Double Burden? Implications of Indebtedness to General Life Satisfaction Following Negative Life Events in International Comparison' (2021) 31(5) Journal of European Social Policy 614

1401. Oude Nijhuis D, 'Middle-Class Interests, Redistribution and the Postwar Success and Failure of the Solidaristic Welfare State' (2022) 32(1) Journal of European Social Policy 33

1402. Pantazi T, 'Regulating Short-Term Rentals: Joined Cases C-724/18 and C-727/18 Cali Apartments' (2021) 28(4) Maastricht Journal of European and Comparative Law 573

1403. Peeters B, 'The Design of Covid-19 Recovery Contributions: Taxes or Social Security Contributions?' 30(5-6) EC Tax Review236

1404. Pennings F, 'Does the EU Charter of Fundamental Rights Have Added Value for Social Security?' (2022) 24(2) European Journal of Social Security 117

1405. Pezer M, 'Public Policies Supporting Families With Children Across Welfare Regimes: An Empirical Assessment of Six European Countries' (2022) 32(3) Journal of European Social Policy 254

1406. Plümper T and Neumayer E, 'Lockdown Policies and the Dynamics of the First Wave of the Sars-CoV-2 Pandemic in Europe' (2022) 29(3) Journal of European Public Policy 321

1407. Rincón L, Vlandas T and Hiilamo H, 'What's Not to Like? Benefit Design, Funding Structure and Support for Universal Basic Income' (2022) 32(4) Journal of European Social Policy 467

1408. Rodems R and Pfeffer F T, 'Avoiding Material Hardship: The Buffer Function of Wealth' (2021) 31(5) Journal of European Social Policy 517

1409. Rogozik M, 'Failure to Prevent Gender-Based Violence' (2022) (3) European Human Rights Law Review 328

1410. – – 'Parental Rights in a Case of Surrogacy' (2022) (4) European Human Rights Law Review 430

1411. Roosma F, 'A Struggle for Framing and Interpretation: The Impact of the "Basic Income Experiments" on Social Policy Reform in the Netherlands' (2022) 24(3) European Journal of Social Security 192

1412. Rutecka-Góra J, 'Inadequacies of Regulations on Supplementary Pension Plans in Central and Eastern European Countries' (2021) 23(3) European Journal of Social Security 232

1413. Schrama R and others, 'Networked Health Cooperation in the European Union: Horizontal or Hierarchical?' (2022) 60(5) Journal of Common Market Studies 1488

1414. Skivenes M and Benbenishty R, 'Populations Trust in the Child Protection System: A Cross-Country Comparison of Nine High-Income Jurisdictions' (2022) 32(4) Journal of European Social Policy 422

1415. Smith J C, 'Representation in Times of Crisis: Women's Executive Presence and Gender-Sensitive Policy Responses to Crises' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2110142> accessed 4 December 2022

1416. Soares W d C (Júnior), 'Off-Label Use of Medicines: A Comparative Study on the Regulation of Medicinal Products in Selected European Union Member States' (2022) 13 European Journal of Risk Regulation 311

1417. Sorsa V-P and van der Zwan N, 'Sustaining the Unsustainable? The Political Sustainability of Pensions in Finland and the Netherlands' (2022) 32(1) Journal of European Social Policy 91

1418. Stiemke P and Hess M, 'Determinants of (In-)Voluntary Retirement: A Systematic Literature Review' (2022) 32(3) Journal of European Social Policy 348

1419. Strakodonskaya L, 'How Fiduciary Duty Law Incentivises Investors to Manage Sustainability Risks' (2021) 23(3) European Journal of Social Security 264

1420. Subic N, 'Challenging the Use of EU Funds: Locus Standi as a Roadblock for Disability Organisations' (2022) 18(1) European Constitutional Law Review 59

1421. Szymanowski R, 'Handbook on Austerity, Populism and the Welfare State' (2022) 60(3) Journal of Common Market Studies 847

1422. Tober T and Busemeyer M R, 'Breaking the Link? How European Integration Shapes Social Policy Demand and Supply' (2022) 29(2) Journal of European Public Policy 259

1423. Toshkov D, Carroll B and Yesilkagit K, 'Government Capacity, Societal Trust or Party Preferences: What Accounts for the Variety of National Policy Responses to the COVID-19 Pandemic in Europe?' (2022) 29(7) Journal of European Public Policy 1009

1424. Tresa E and others, 'Europeanization of Health Policy in Post-Communist European Societies: Comparison of Six Western Balkan Countries' (2022) 126(8) Health policy (Amsterdam) 816

1425. Un M B and Arikan H, 'Europeanization and De-Europeanization of Turkey's Gender Equality Policy: The Case of the Istanbul Convention' (2022) 60(4) Journal of Common Market Studies 945

1426. Väänänen N, 'Two Different Paths to Sustainability? A Comparison of a Finnish and a Swedish Public Pension Reserve Fund' (2021) 23(3) European Journal of Social Security 298

1427. Van Bekkum M, 'Digital Welfare Fraud Detection and the Dutch SyRI Judgment' (2021) 23(4) European Journal of Social Security 323

1428. Van der Mei A P and van Ooij E, 'The Judicial Finetuning of the EU Rules Determining the Applicable Social Security Legislation [Case Notes]' (2022) 29(1) Maastricht Journal of European and Comparative Law 132

1429. Van Meerten H and van Zanden J, 'Shaping the Future of Retirement: Aspects of Sustainability' (2021) 23(3) European Journal of Social Security 200

1430. Verschueren H, 'The Application of the Conflict Rules of the European Social Security Coordination to Telework During and After the COVID-19 Pandemic' (2022) 24(2) European Journal of Social Security 79

1431. Vesan P and Corti F, 'The Return of the Commission Social Entrepreneurship Before and After the Covid-19 Pandemic' (2022) 44(6) Journal of European Integration 787

1432. Weisstanner D and Armingeon K, 'Redistributive Preferences: Why Actual Income is Ultimately More Important Than Perceived Income' (2022) 32(2) Journal of European Social Policy 135

1433. Yerkes M A, 'Unequal But Balanced: Highly Educated Mothers' Perceptions of Work–Life Balance During the COVID-19 Lockdown in Finland and the Netherlands' (2022) 32(4) Journal of European Social Policy 376

1434. Yörük E, Öker İ and Tafoya G R, 'The Four Global Worlds of Welfare Capitalism: Institutional, Neoliberal, Populist and Residual Welfare State Regimes' (2022) 32(2) Journal of European Social Policy 119

1435. Zagel H and Van Lancker W, 'Family Policies' Long-Term Effects on Poverty: A Comparative Analysis of Single and Partnered Mothers' (2022) 32(2) Journal of European Social Policy 166

1436. Zamboni M, 'Basic Income in the Swedish Legislative Debate: The Forbidden Topic' (2021) 23(4) European Journal of Social Security 341

1437. Zhen Jie I and Young-Kyu S, 'Who Gets Labour Market Training? Access Biases of Social Investment in Finland' (2022) 32(1) Journal of European Social Policy 3

10 Economic and Social Cohesion – Structural policies – Regional policies

(Structural funds / European Regional Development Fund / European Social Fund / Community initiatives / Innovative actions / Cohesion Fund / Spatial planning)

1438. Archibugi D, Evangelista R and Vezzani A, 'Regional Technological Capabilities and the Access to H2020 Funds' (2022) 60(4) Journal of Common Market Studies 926

1439. Artelaris P, 'The Economic Geography of European Union's Discontent: Lessons from Greece' (2022) 29(4) European Urban and Regional Studies 479

1440. Banaszewska M, 'Preferential Tax Treatment – a Political or Economic Tool?' (2022) 56(8) Regional Studies 1377

1441. Borz G, Brandenburg H and Mendez C, 'The Impact of EU Cohesion Policy on European identity: A Comparative Analysis of EU Regions' (2022) 23(2) European Union Politics 259

1442. Burger M. J and others, 'Do Innovation and Human Capital Actually Narrow the Technology Gap? Champions and Laggards of European Regional Productive Performance' (2022) 56(10) Regional Studies 1655

1443. Carrascal Incera A, Kitsos A and Gutierrez Posada D, 'Universities, Students and Regional Economies: A Symbiotic Relationship?' (2022) 56(6) Regional Studies 892

1444. Cerqua A and Pellegrini g, 'How Much Does State Aid Mitigate Employment Losses? Local Policy Effects at a Time of Economic Crisis' (2022) 56(10) Regional Studies 1698

1445. Charles D, 'Regional Innovation Impact of Universities' (2022) 56(10) Regional Studies 1796

1446. Diego D, Iacobucci D and Perugini F, 'Smart Specialisation Strategy in Practice: Have Regions Changed the Allocation of Structural Funds?' (2022) 56(1) Regional Studies 155

1447. Dotti N F, Spithoven A and Ysebaert W, 'The Benefits of Being a Multi-Capital: The Economic Impact of the International and European Institutions and Interest Groups' (2022) 29(2) European Urban and Regional Studies 255

1448. Dubois A and Sielker F, 'Digitalization in Sparsely Populated Areas: Between Place-Based Practices and the Smart Region Agenda' (2022) 56(10) Regional Studies 1771

1449. Essletzbichler J, 'Engaging with Precarious Urban Futures: From Entrepreneurial to Grounded Cities' (2022) 29(4) European Urban and Regional Studies 419

1450. Fini R, Meoli A and Sobrero M, 'University Graduates' Early Career Decisions and Interregional Mobility: Self-Employment Versus Salaried Job' (2022) 56(6) Regional Studies 972

1451. FitzGibbon A and Tsioulakis I, 'Making It Up: Adaptive Approaches to Bringing Freelance Cultural Work to a Cultural Ecologies Discourse' (2022) 29(4) European Urban and Regional Studies 461

1452. Guardiancich I, 'The Politicisation of Social Europe: Conflict dynamics and Welfare Integration' (2022) 56(10) Regional Studies 1798

1453. Hafner L, 'Springboard, Not Roadblock: Discourse Analysis of Facebook Groups Suggests That Ethnic Neighbourhoods in European Cities Might Jump-Start Immigrants' Integration' (2022) 29(3) European Urban and Regional Studies 383

1454. Irawan N and others, 'The Economic Geography of Cross-Border Migration' (2022) 56(7) Regional Studies 1234

1455. Kitagawa F and others, 'Anchoring Talent to Regions: The Role of Universities in Graduate Retention Through Employment and Entrepreneurship' (2022) 56(6) Regional Studies 1001

1456. Lopez-Bazo E, 'The Impact of Cohesion Policy on Regional Differences in Support for the European Union' (2022) 60(5) Journal of Common Market Studies 1219

1457. Mason C, Botelho T and Duggett J, 'Promoting Cross-Border Investing by Business Angels in the European Union' (2022) 56(8) Regional Studies 1391

1458. Mazur-Kumrić N, 'Post-Covid-19 Recovery and Resilience-Building in the Outermost Regions of the European Union: Towards a New European Strategy' (2022) 6 EU and Comparative Law Issues and Challenges Series 547

1459. McCann P, Ortega-Argilés R and Pei-Yu Y, 'The Covid-19 Shock in European Regions' (2022) 56(7) Regional Studies 1142

1460. Michelangeli A, 'The City and Quality of Life' (2022) 56(4) Regional Studies 683

1461. Mogila Z and others, 'Does Cohesion Policy Help to Combat Intra-Country Regional Disparities? A Perspective on Central European Countries' (2022) 56(10) Regional Studies 1783

1462. Moodie J R, Salenius V and Meijer M W, 'Why Territory Matters for Implementing Active Subsidiarity in EU Regional Policy' (2022) 56(5) Regional Studies 866

1463. Ouwehand W M, van Oort F G and Cortinovis N, 'Spatial Structure and Productivity in European Regions' (2022) 56(1) Regional Studies 48

1464. Reuschke D and Zhang M, 'Precarious Self-Employment in Urban Europe' (2022) 29(4) European Urban and Regional Studies 440

1465. Ribeiro A S, Baptista R and Lima F, 'Wage Inequality, Entrepreneurship and Creative People in Regional Labour Markets' (2022) 56(7) Regional Studies 1190

1466. Rosano A, 'Perspectives of Strengthened Cooperation Between Cross-Border Regions: The European Commission's Proposal of a Regulation on the Mechanism to Resolve Legal and Administrative Obstacles in the Cross-Border Context' (2021) 28(4) Maastricht Journal of European and Comparative Law 437

1467. Roy A L and Ottaviani F, 'The Sustainable Well-Being of Urban and Rural Areas' (2022) 56(4) Regional Studies 668

1468. Sissons P, Jarvis D and Ferreira J, 'Urban Europe, Precarious Futures? Introduction to the Special Issue' (2022) 29(4) European Urban and Regional Studies 415

1469. Sobyra R, Sigler T and Charles-Edwards E, 'Unbalanced Growth in the Labourscape: Explaining Regional Employment Divergence' (2022) 56(7) Regional Studies 1059

1470. Stonawski M and others, 'Ethnic Segregation and Native Out-Migration in Copenhagen' (2022) 29(2) European Urban and Regional Studies 168

1471. Strebel M A, 'Who Supports Metropolitan Integration? Citizens' Perceptions of City-Regional Governance in Western Europe' (2022) 45(5) West European Politics 1081

1472. Tang R W and Beer A, 'Regional Innovation and the Retention of Foreign Direct Investment: A Place-Based Approach' (2022) 56(10) Regional Studies 1757

1473. Valente R and others, 'Tourism Pressure as a Driver of Social Inequalities: a BSEM Estimation of Housing Instability in European Urban Areas' (2022) 29(3) European Urban and Regional Studies 332

1474. Vampa D, 'Comparative Health Systems: A New Framework' (2022) 56(8) Regional Studies 1418

1475. Wu S, Wang P and Sun B, 'Can the Internet Narrow Regional Economic Disparities?' (2022) 56(2) Regional Studies 324

11 Environment

(Sustainable development / Industry and environment / Transport and environment / Atmospheric pollution / Aquatic environment / Economic instruments / Chemicals / Precautionary principle / Waste / Noise)

1476. Angstadt J M, 'Environmental Norm Diffusion and Domestic Legal Innovation: The Case of Specialized Environmental Courts and Tribunals' (2022) 31(2) Review of European Comparative and International Environmental Law 222

1477. Badell D and Rosell J, 'Are EU Institutions Still Green Actors? An Empirical Study of Green Public Procurement' (2022) 60(6) Journal of Common Market Studies 1555

1478. Besselink L F M, 'The National and EU Targets for Reduction of Greenhouse Gas Emissions Infringe the ECHR: The Judicial Review of General Policy Objectives' (2022) 18(1) European Constitutional Law Review 155

1479. Boasson E L, Burns C and Pulver S, 'The Politics of Domestic Climate Governance: Making Sense of Complex Participation Patterns' (2022) Journal of European Public Policy 1

1480. Bongardt A and Torres F, 'The European Green Deal: More Than an Exit Strategy to the Pandemic Crisis, a Building Block of a Sustainable European Economic Model' (2022) 60(1) Journal of Common Market Studies 170

1481. Bosch H J and Gupta J, 'Water Property Rights in Investor-State Contracts on Extractive Activities, Affects Water Governance: An Empirical Assessment of 80 Contracts in Africa and Asia' (2022) 31(2) Review of European Comparative and International Environmental Law 295

1482. Boshoff E, 'Rethinking the Premises Underlying the Right to Development in African Human Rights Jurisprudence' (2022) 31(1) Review of European Comparative and International Environmental Law 27

1483. Chiti E, 'Managing the Ecological Transition of the EU: The European Green Deal as a Regulatory Process' (2022) 59(1) Common Market Law Review 19

1484. Choi J, 'The Legal Status of Particularly Sensitive Sea Areas (PSSAs): Challenges and Improvements for PSSA Resolutions' (2022) 31(1) Review of European Comparative and International Environmental Law 103

1485. Cima E, 'The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change' (2022) 31(1) Review of European Comparative and International Environmental Law 38

1486. Coghlan C and others, 'A Justice-Driven Approach to EU Power Sector Decarbonization' (2022) 31(2) European Energy and Environmental Law Review 70

1487. Cullet P, 'Confronting Inequality Beyond Sustainable Development: The Case for Eco-Human Rights and Differentiation' (2022) 31(1) Review of European Comparative and International Environmental Law 7

1488. Davies G, 'Can Climate Policy Give Europe Its Mojo Back? [Editorial Note]' [2021] 17 Croatian Yearbook of European Law & Policy VII

1489. De Mevius J, 'Impact of the European Union's Seed Legislation and Intellectual Property Rights on Crop Diversity' (2022) 31(3) European Energy and Environmental Law Review 149

1490. De Waal I M, 'Coherence in Law: A Way to Stimulate the Transition Towards a Circular Economy? A Critical Analysis of the European Commission's Aspiration to Achieve Full Coherence between Chemicals Legislation and Waste Legislation – And Product Legislation' (2021) 28(6) Maastricht Journal of European and Comparative Law 760

1491. Di Marco A, 'Water Law in Circular Economy: Ultra Vires Actions in Environmental Sector, or When Union Ambition Far Exceed Its Abilities' (2022) 29(2) Maastricht Journal of European and Comparative Law 182

1492. Dominioni G, 'Motivated Reasoning and Implicit Carbon Prices: Overcoming Public Opposition to Carbon Taxes and Emissions Trading Schemes' (2022) 13(1) European Journal of Risk Regulation 158

1493. Domorenok E and Prontera A, 'Governing by Enabling in Multilevel Systems: Capacity Building and Local Climate Action in the European Union' (2022) 60(6) Journal of Common Market Studies 1475

1494. Duvic-Paoli L-A and Lueger P, 'A Democratic Nuclear Energy Transition? Public Participation in Nuclear Activities' (2022) 31(2) Review of European Comparative and International Environmental Law 199

1495. Giannopoulos N, 'The Interplay Between EU Law and Regional Sea Conventions: Shaping Environmental Protection in Relation to Offshore Energy Production Across Europe?' (2022) 31(1) European Energy and Environmental Law Review 2

1496. Glinski C, 'The Public–Private Governance Regime on Sustainable Ship Recycling: An In-Depth Analysis' (2022) 31(2) Review of European Comparative and International Environmental Law 268

1497. Gomez-Urquijo L, 'The Implementation of EU Legal Framework to Reduce Food Waste: The Case of Spain' (2022) 31(4) European Energy and Environmental Law Review 202

1498. Handrlica J, 'The Mirage of Universalism in International Nuclear Liability Law: A Critical Assessment 10 Years After Fukushima' (2021) 30(3) Review of European Comparative and International Environmental Law 375

1499. Hansen O and Ritchie H G, 'Private Governance of Electricity Supply to End Users: The Range and Limitations of Unilateral Variation Clauses and Contractual Discretion in Commercial Electricity Supply Contracts' (2021) 30(6) European Energy and Environmental Law Review 242

1500. Hedemann-Robinson M, 'Access to Environmental Justice and European Union Institutional Compliance with the Aarhus Convention: A Rather Longer and More Winding Road Than Anticipated' (2022) 31(3) European Energy and Environmental Law Review 175

1501. Held M and Perkov K, 'Spatial Planning in the EU and Croatia Under the Influence of COVID-19 Pandemic' (2022) 6 EU and Comparative Law Issues and Challenges Series 591

1502. Henn E V, 'Protecting Forests or Saving Trees? The EU's Regulatory Approach to Global Deforestation' (2021) 30(3) Review of European Comparative and International Environmental Law 336

1503. Hoek N, 'The Habitats Directive and Heath: The Strain of Climate Change and N Deposition' (2022) 31(1) European Energy and Environmental Law Review 41

1504. Honegger M, Burns W and Morrow D R, 'Is Carbon Dioxide Removal 'Mitigation of Climate Change'?' (2021) 30(3) Review of European Comparative and International Environmental Law 327

1505. Hosli A and Weber R H, 'Climate Change Reporting and Due Diligence Frontiers of Corporate Climate Responsibility' (2021) 18(6) European Company and Financial Law Review 948

1506. Jennings R, 'The Use of Scientific Evidence in Precautionary Decision-Making in EU Environmental Law' (2022) 24(1) European Journal of Law Reform 10

1507. Jephcott M, 'Climate Change, Sustainability and Competition Law: Where Are We Now?' (2022) 43(8) European Competition Law Review 366

1508. Johansson A and Derelius A, 'Legitimacy and Consistency of Free Allocation in the EU ETS: The Role of Substitutes in Product Benchmarks' (2022) 31(3) European Energy and Environmental Law Review 163

1509. Jordan A J. and Moore B, 'The Durability–Flexibility Dialectic: The Evolution of Decarbonisation Policies in the European Union' (2022) Journal of European Public Policy 1

1510. Keller H and Hefti A, 'Bringing the Right to Water into the Spotlight: A Civil Right Before the European Court of Human Rights?' (2022) 31(1) Review of European Comparative and International Environmental Law 50

1511. Kelly G, 'Linking Emissions Trading Schemes: Assessing the Potential for EU-South Korea Linkage' (2022) 31(3) European Energy and Environmental Law Review 135

1512. Khadim A and van Eijken H, 'A Citizen-Centric Approach to Evidence-Based Decision-Making under the European Green Deal' (2022) 24(1) European Journal of Law Reform 28

1513. Kreienkamp J, Pegram T and Coen D, 'Explaining Transformative Change in EU Climate Policy: Multilevel Problems, Policies, and Politics' (2022) 44(5) Journal of European Integration 731

1514. Krommendijk J, 'Beyond Urgenda: The Role of the ECHR and Judgments of the ECtHR in Dutch Environmental and Climate Litigation' (2022) 31(1) Review of European Comparative and International Environmental Law 60

1515. Leal-Arcas R and others, 'Green Bills for Green Earth: How the International Trade and Climate Regimes Work Together to Save the Planet' (2022) 31(1) European Energy and Environmental Law Review 19

1516. – – Faktaufon M and Kyprianou A, 'A Legal Exploration of the European Union's Carbon Border Adjustment Mechanism' (2022) 31(4) European Energy and Environmental Law Review 223

1517. Leonelli G C, 'Access to the EU Courts in Environmental and Public Health Cases and the Reform of the Aarhus Regulation: Systemic Vision, Pragmatism, and a Happy Ending' [2021] 40 Yearbook of European Law 230

1518. Li R and Lyu S, 'Applying the Precautionary Principle to Fukushima Nuclear Wastewater Disposal at Sea' (2022) 31(2) Review of European Comparative and International Environmental Law 282

1519. Limon M, 'United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account' (2022) 31(2) Review of European Comparative and International Environmental Law 155

1520. Lu M and Faure M, 'Does the Tiger Have Teeth? A Critical Examination of the Toolbox Approach of Environmental Law Enforcement in China' (2022) 31(1) Review of European Comparative and International Environmental Law 89

1521. Macias Gimenez R, 'Making Space for Indigenous Law in State-Led Decisions About Hydropower Dams: Lessons from Environmental Assessments in Canada and Brazil' (2022) 31(2) Review of European Comparative and International Environmental Law 233

1522. Mackie C, 'Due Diligence in Global Value Chains: Conceptualizing 'Adverse Environmental Impact'' (2021) 30(3) Review of European Comparative and International Environmental Law 297

1523. Majcher K, 'Protecting Personal Data and the Environment: Doctrinal Challenges for EU Competition Law in Our Day and Age' (2022) 47(5) European Law Review 622

1524. Martin P and others, 'Governance and Metagovernance Systems for the Amazon' (2022) 31(1) Review of European Comparative and International Environmental Law 126

1525. Mejía-Lemos D, 'The Right to a Healthy Environment and Its Justiciability Before the Inter-American Court of Human Rights: A Critical Appraisal of the Lhaka Honhat v Argentina Judgement (2022) 31(2) Review of European Comparative and International Environmental Law 317

1526. Miettinen M and Khan S A, 'Pharmaceutical Pollution: A Weakly Regulated Global Environmental Risk' (2022) 31(1) Review of European Comparative and International Environmental Law 75

1527. Mollers T M J, 'European Green Deal: Greenwashing and the Forgotten Good Corporate Citizen as an Investor' (2022) 28(2) Columbia Journal of European Law 203

1528. Moon G, 'Arrested Ambition? Foreign Investor Protections, Stabilization Clauses and Fossil-Fuelled Power Generation in Developing Countries' (2021) 30(3) Review of European Comparative and International Environmental Law 313

1529. Mortensen B O G, 'The Danish Income-Cap Regulation in the Power Supply Sector' (2022) 31(2) European Energy and Environmental Law Review 105

1530. Nicotina A, 'A Procedural Idea of Environmental Democracy: The "Debat Public" Paradigm within the EU Framework' (2021) 14(2) Review of European Administrative Law 85

1531. Oberthür S and von Homeyer I, 'From Emissions Trading to the European Green Deal: The Evolution of the Climate Policy Mix and Climate Policy Integration in the EU' (2022) Journal of European Public Policy 1

1532. Petit S, 'Environmental Protection: Contributions Channeled by Eco-Body Should not Involve the Transfer of State Resources: Annotation on the Judgment of the Court of Justice of the European Union (First Chamber) of 21 October 2020 in Case C-556/19 ECO TLC contre Ministre d'Etat, Ministre de la Transition Ecologique et Solidaire, Ministre de l'Economie et des Finances [Case Law Annotations]' (2021) 20(1) European State Aid Law Quarterly 139

1533. Petrašević T and Poretti P, 'The "Polluter Pays" Principle: The Croatian Experience' (2022) 6 EU and Comparative Law Issues and Challenges Series 3

1534. Pollex J, 'Simultaneous Policy Expansion and Reduction? Tracing Dismantling in the Context of Experimentalist Governance in European Union Environmental Policy' (2022) 60(3) Journal of Common Market Studies 604

1535. Quintavalla A and Yalnazov O, 'The Death of Law: Mandatory Requirements and Environmental Protection' (2021) 14(2) European Journal of Legal Studies

1536. Ruge R, 'The Reality Gap: Simplification of Environmental Law as Key for the Acceleration of Permit Procedures for Europe's Green Deal' (2022) 31(4) European Energy and Environmental Law Review 258

1537. Schaffer L M and Umit R, 'Public Support for National vs. International Climate Change Obligations' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2099957> accessed 4 December 2022

1538. Schaller R and others, 'Atmospheric CO2 as a Resource for Renewable Energy Production: A European Energy Law Appraisal of Direct Air Capture Fuels' (2022) 31(2) Review of European Comparative and International Environmental Law 258

1539. Sellheim N and Ojanperä O, 'Indigenous Youth and International Conservation Law: Five Case Studies' (2022) 31(1) Review of European Comparative and International Environmental Law 115

1540. Siderius K, 'An Unexpected Climate Activist: Central Banks and the Politics of the Climate-Neutral Economy' (2022) Journal of European Public Policy 1

1541. Solorio I, 'The EU and Global Climate Justice: Normative Power Caught in Normative Battles' (2022) 60(6) Journal of Common Market Studies 1640

1542. Steinebach Y and Limberg J, 'Implementing Market Mechanisms in the Paris Era: The Importance of Bureaucratic Capacity Building for International Climate Policy' (2022) 29(7) Journal of European Public Policy 1153

1543. Stilinović Vargek A, 'The Rise of Climate Change Litigation: Is There a (Real) Legal Risk for EU Banking Sector?' [2022] 6 EU and Comparative Law Issues and Challenges Series 236

1544. Tignino M and Mbengue M M, 'Climate Change at the Crossroads of Human Rights: The Right to a Healthy Environment, the Right to Water and the Right to Development' (2022) 31(1) Review of European Comparative and International Environmental Law 3

1545. Tvarno C D, 'The New Era of Climate Law in Denmark and in the EU' (2022) 28(1) European Public Law 101

1546. Verschuuren J, 'Achieving Agricultural Greenhouse Gas Emission Reductions in the EU post-2030: What Options Do We Have?' (2022) 31(2) Review of European Comparative and International Environmental Law 246

1547. Weber V, 'Are We Ready for the Ship Transport of CO2 for CCS? Crude Solutions from International and European Law' (2021) 30(3) Review of European Comparative and International Environmental Law 387

1548. Weko S, 'Communitarians, Cosmopolitans, and Climate Change: Why Identity Matters for EU Climate and Energy Policy' (2022) 29(7) Journal of European Public Policy 1072

1549. Wewerinke-Singh M, 'A Human Rights Approach to Energy: Realizing the Rights of Billions Within Ecological Limits' (2022) 31(1) Review of European Comparative and International Environmental Law 16

1550. Yessenamanova M and others, 'Environmental Auditing: The EU Practice in the Context of Pursuing Sustainable Development Policy' (2022) 31(4) European Energy and Environmental Law Review 211

1551. Zhao Y and Butcher B, 'Coming to Terms with Public Participation in Decision Making: Balancing Clarity and Impact in the Aarhus Convention' (2022) 31(2) Review of European Comparative and International Environmental Law 210

1552. Zilioli C and Ioannidis M, 'Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies' (2022) 59(2) Common Market Law Review 363

1553. Zimmermann R, 'The World Health Organization as Actor in International Environmental Law? An Analysis by Example of the Global Waste Challenge' (2021) 30(3) Review of European Comparative and International Environmental Law 363

12 Consumer affairs

(Safety of products and services / Product safety / Advertising / Labelling / Consumer rights / Financial protection / Food issues)

1554. Amiranashvili G, 'Measures for Consumer Protection Implemented by the Government of Georgia During COVID-19' (2022) 11(3) Journal of European Consumer and Market Law 101

1555. Arroyo Amayuelas E, 'The Implementation of the EU Directives 2019/770 and 2019/771 in Spain' (2022) 11(1) Journal of European Consumer and Market Law 35

1556. Aubert de Vincelles C, 'Helvet Immo Litigation: The CJEU Comes to the Rescue of Borrowers' (2022) 11(1) Journal of European Consumer and Market Law 27

1557. Barceló Compte R and Rubio Gimeno G, 'Supply of Goods with Digital Elements: a New Challenge for European Contract Law ' (2022) 11(3) Journal of European Consumer and Market Law 81

1558. Bevilacqua D, 'Food Safety, Coronavirus and Risk Prevention: Future Perspectives in Four Proposals' (2022) 13(1) European Journal of Risk Regulation 56

1559. Bomhard D and Merkle M, 'Regulation of Artificial Intelligence' (2021) 10(6) Journal of European Consumer and Market Law 257

1560. Busch C, 'Updating EU Consumer Law for the Digital Subscription Economy [Editorial]' (2022) 11(2) Journal of European Consumer and Market Law 41

1561. Cauffman C and Goanta C, 'A New Order: The Digital Services Act and Consumer Protection' (2021) 12 European Journal of Risk Regulation 758

1562. Chen Z, 'Jurisdiction and Choice of Law Rules over Electronic Consumer Contracts: The Nexus Between the Concluded Contract and the Targeting Activity' (2022) 29(3) Maastricht Journal of European and Comparative Law 328

1563. De Angelisa F and Carreño I, 'Achieving Sustainability of the EU Food Chain with Feed Additives as a Key Tool: The European Commission Intends to Modernise the Legal Framework to Foster Innovation' (2021) 12 European Journal of Risk Regulation 866

1564. De Franceschi A, 'Italian Consumer Law after the Transposition of Directives (EU) 2019/770 and 2019/771' (2022) 11(2) Journal of European Consumer and Market Law 72

1565. De Witte F, 'You Are What You Ate: Food Heritage and the EU's Internal Market' (2022) 47(5) European Law Review 647

1566. Delhomme V, 'Front-of-Pack Nutrition Labelling in the European Union: A Behavioural, Legal and Political Analysis' (2021) 12 European Journal of Risk Regulation 825

1567. Derave C, Genicot N and Hetmanska N, 'The Risks of Trustworthy Artificial Intelligence: The Case of the European Travel Information and Authorisation System' (2022) 13(3) European Journal of Risk Regulation 389

1568. Duivenvoorde B, 'The Liability of Online Marketplaces Under the Unfair Commercial Practices Directive, the E-commerce Directive and the Digital Services Act' (2022) 11(2) Journal of European Consumer and Market Law 43

1569. Durovic M and Lech F, 'A Consumer Law Perspective on the Commercialization of Data' (2021) 29(5) European Review of Private Law 701

1570. Ekingen E, 'Most-Favoured-Nation Clauses in Online Multi-Sided Platform Markets and Their Impacts on Consumer Welfare Standard' (2022) 43(6) European Competition Law Review 270

1571. El Gemayel M, 'Food Quality in the European Union: Does the Consumer Have Free Choice?' (2022) 13(2) European Journal of Risk Regulation 236

1572. Esposito F and Grochowski M, 'The Consumer Benchmark, Vulnerability, and the Contract Terms Transparency: A Plea for Reconsideration' (2022) 18(1) European Review of Contract Law 1

1573. Ferretti F, 'Consumers in the Digital Single Market [Editorial Introduction]' (2022) 33(4) European Business Law Review 477

1574. Fombuena M G and Compte R B, 'The Definitive Impetus for Access to Justice: Mandatory Consumer Arbitration in Spain' (2022) 29(2) Maastricht Journal of European and Comparative Law 229

1575. Freeman J, 'What is a Transactional Decision: Case Note on Care UK Health and Social Holdings' (2022) 11(3) Journal of European Consumer and Market Law 107

1576. Gokani N, 'Front-of-Pack Nutrition Labelling: A Tussle Between EU Food Law and National Measures' (2022) 47(2) European Law Review 153

1577. Heiss S, 'Artificial Intelligence Meets European Union Law' (2021) 10(6) Journal of European Consumer and Market Law 252

1578. Herbosch M, 'The Diligent Use of AI Systems: A Risk Worth Taking?' (2022) 11(1) Journal of European Consumer and Market Law 14

1579. Hughes S M, 'CRISPR-Cas9 and Food in the European Union: An Organic Solution to an Undetectable Problem for Food Business Operators' (2022) 13(2) European Journal of Risk Regulation 254

1580. Jabłonowska A, 'Consumer Protection in the Age of Data-Driven Behaviour Modification' (2022) 11(2) Journal of European Consumer and Market Law 67

1581. Leiser M.R. and Caruana M M, 'Dark Patterns: Light to be Found in Europe's Consumer Protection Regime' (2021) 10(6) Journal of European Consumer and Market Law 237

1582. Loos M B.M., 'No Plan B for Traders Using Unfair Terms' (2022) 11(1) Journal of European Consumer and Market Law 23

1583. Macharis L, 'The Exemption of Sustainability Agreements Under European Competition Law – Balancing Societal Benefits with Consumer Harm: A New Way Forward' (2022) 43(4) European Competition Law Review 170

1584. Mak V, 'A Primavera for European Consumer Law: Re-Birth of the Consumer Image in the Light of Digitalisation and Sustainability [Editorial]' (2022) 11(3) Journal of European Consumer and Market Law 77

1585. Mesly O, 'Consumer Financial Spinning and Shared Responsibility' (2022) 11(3) Journal of European Consumer and Market Law 91

1586. Mischau L, 'The Concept of Digital Content and Digital Services in European Contract Law' (2022) 11(1) Journal of European Consumer and Market Law 6

1587. Montagnani M L and Paulesu C, 'Towards an Ecosystem for Consumer Protection in the Context of AI-Based Credit Scoring' (2022) 33(4) European Business Law Review 557

1588. Morais Carvalho J, 'The Implementation of the EU Directives 2019/770 and 2019/771 in Portugal' (2022) 11(1) Journal of European Consumer and Market Law 31

1589. Op Heij D, 'The Digital Content Contract in a B2C Legal Relationship from a European Consumer Protection Perspective' (2022) 11(2) Journal of European Consumer and Market Law 53

1590. Paglietti M C and Rabitti M, 'A Matter of Time. Digital-Financial Consumers' Vulnerability in the Retail Payments Market' (2022) 33(4) European Business Law Review 581

1591. Perriello L E., 'Air Passenger Rights in Times of Pandemic' (2022) 11(2) Journal of European Consumer and Market Law 61

1592. Pflücke F, 'The Implementation of the EU Directives 2019/770 and 2019/771 in Luxembourg' (2022) 11(3) Journal of European Consumer and Market Law 114

1593. Podszun R, 'The Digital Markets Act: What's in It for Consumers?' (2022) 11(1) Journal of European Consumer and Market Law 1

1594. Purnhagen K P and Molitorisova A, 'Public and Private Enforcement in European Union Food Law' (2022) 13(3) European Journal of Risk Regulation 464

1595. Ranchordás S, 'Vulnerable Consumers and Vulnerable Citizens' (2021) 10(6) Journal of European Consumer and Market Law 225

1596. Riefa C, 'Protecting Vulnerable Consumers in the Digital Single Market' (2022) 33(4) European Business Law Review 607

1597. Rott P, 'In-Box Advertising in an Online E-Mail Account Is No Better Than Spam Mail' (2022) 11(3) Journal of European Consumer and Market Law 104

1598. Schafer H-B and Wulf A J, 'Premature Repayment of Fixed Interest Mortgage Loans Without Compensation, a Case of Misguided Consumer Protection in the EU' (2022) 53(2) European Journal of Law and Economics 175

1599. Sénéchal J, 'The Implementation of the EU Directives 2019/770 and 2019/771 in France' (2021) 10(6) Journal of European Consumer and Market Law 266

1600. Steennot R, 'Sale of Goods Made to the Consumer's Specifications at a Trade Fair: Ab Initio No Right of Withdrawal: Case C-529/19 Mobel Kraft, EU:C:2020:846 [Case Note]' (2021) 28(3) Maastricht Journal of European and Comparative Law 406

1601. Szilágyi F, 'The Implementation of Directives 2019/770 and 2019/771 in Hungary' (2021) 10(6) Journal of European Consumer and Market Law 267

1602. Tjon Akon M, 'The Calculus of Data Disclosure and Price Acceptance' (2021) 10(6) Journal of European Consumer and Market Law 228

1603. Twigg-Flesner C, 'The Tale of the Grating Horseradish – Case Note on KRONE-Verlag (C-65-20)' (2021) 10(6) Journal of European Consumer and Market Law 262

1604. Van Schagen E, Baaij J and Rueda I, 'Designing Information Obligations in EU Consumer and Energy Law: Behavioural Research and Legal Design as 'Best Available Evidence'' (2022) 24(1) European Journal of Law Reform 104

1605. Ziemblicki B and Lewandowski M, 'The Legal Consequences of Unfair Contract Terms in Consumer Loan Agreements Valorized with Foreign Currency: Considerations with Respect in the Judgment of the CJEU in the Dziubak Case (C-260/18)' (2022) 47(3-4) Review of Central and East European Law 346

13 Agriculture – Fisheries – Forestry

(Common Agricultural Policy / Animal health / Plant health / Farming methods / Agricultural markets)

1606. Eliantonio M and Cacciatore F, 'When the EU Takes the Field. Innovative Forms of Regulatory Enforcement in the Fisheries Sector' (2022) 44(4) Journal of European Integration 551

1607. Iossa A and Selberg N, 'Socio-Legal Aspects of Labour Market Segmentation in the Agri-Food Sector in Sweden: Spatio-Temporal Dimensions' (2022) 24(2) European Journal of Migration and Law 241

1608. Marusic B, 'Wine Wars: They Might Start When You Are Outside the EU Club, but They End Once You Are in the Club' (2021) 15(12) Journal of intellectual property law & practice 949

1609. Nakanishi Y, 'Case C-336/19 Centraal Israelitisch Consistorie van Belgie: Animal Welfare and Freedom of Religion' (2021) 28(5) Maastricht Journal of European and Comparative Law 687

1610. Robin D C and Marchand P A, 'Expansion of the Low-Risk Substances in the Framework of the European Pesticide Regulation (EC) No 1107/2009' (2022) 13(3) European Journal of Risk Regulation 514

1611. Schneider J and Gotte M, 'Meat Plants and Strawberry Fields Forever? Precarious Migrant Labour in the German Agri-Food Sector Before and After' (2022) 24(2) European Journal of Migration and Law 265

1612. Verniers E, 'Bringing Animal Welfare Under the Umbrella of Sustainable Development: A Legal Analysis' (2021) 30(3) Review of European Comparative and International Environmental Law 349

1613. Wattier S, 'Ritual Slaughter Case: the Court of Justice and the Belgian Constitutional Court Put Animal Welfare First' (2022) 18(2) European Constitutional Law Review 264

1614. Zwaan P, Alons G and van Voorst Stijn S, 'Monitoring and Evaluating the CAP: A (Post-) Exceptionalist Policy Arrangement?' (2022) Journal of European Public Policy 1

14 Transport

(Urban/Rural transport / Railways / Roads / Inland waterways / Sea transport / Ports / Air transport / Multimodal transport / Tourism)

1615. Abeyratne R, 'Can ICAO Reconnect the World? A Fundamental Fallacy in Air Law' (2022) 21(2) Issues in Aviation Law and Policy 147

1616. – – 'No Country Left behind and ICAO's Leadership Role in Air Transport'(2022) 47(3) Air & Space Law 315

1617. – – 'The High-Level ICAO COVID-19 Conference [A Critical Commentary]' (2022) 47(1) Air & Space Law 45

1618. Adediran A O, 'Addressing the Effects of Pandemics on Civil Aviation: The Case of Covid-19' (2021) 20(2) Issues in Aviation Law and Policy 219

1619. Amižić Jelovčić P and Bolanča D, 'Application of Regulation 1177/2010 in Croatia – What More Can Be Done for Passengers with Disabilities and Passengers with Reduced Mobility?' (2021) 175(60) Comparative maritime law 111

1620. Beale N and B Graham-Evans, 'Cut-Through Clauses in Aviation Insurance and Reinsurance Policies' (2022) 47(1) Air & Space Law 61

1621. Chen Z, 'The Tango Between Art. 17(3) Brussels Ibis and Art.6(4)(b) Rome I Under the Beat of Package Travel Directive' (2021) 28(6) Maastricht Journal of European and Comparative Law 878

1622. Correia V, 'The General Court's Decisions on State Aid Law in Times of COVID-19 Pandemic' (2022) 47(1) Air & Space Law 1

1623. Crawford H, 'NASA›s Time to Shine: Approaching Procurement in the New Space Age' (2021) 46(6) Air & Space Law 649

1624. Cresswell J L J, 'The Touhy Doctrine and Its Adverse Impact on Aviation Litigation' (2022) 21(2) Issues in Aviation Law and Policy 223

1625. Činčurak Erceg B, Vasilj A and Perković A, 'Fit for 55 – Does It Fit All? Air and Rail Transport After Covid-19 Pandemic' [2022] 6 EU and Comparative Law Issues and Challenges Series 66

1626. Deasy G, 'European Union and United Kingdom Competition Law Developments in the Aviation Sector: January to June 2021' (2021) 46(4-5) Air & Space Law 481

1627. Defossez D, 'The Uberisation of Aircrew Through the Use of Bogus Self-Employment Contracts' (2021) 46(6) Air & Space Law 665

1628. Dyrhauge H, 'Transforming a Steam Train: A Historical Institutionalist Analysis of EU Railway Policy' (2022) 44(6) Journal of European Integration 855

1629. Erceg B C, Vasilj A and Perković A, 'Fit for 55 – Does It Fit All? Air and Rail Transport After COVID-19 Pandemic' [2022] 6 EU and Comparative Law Issues and Challenges Series 66

1630. Fenelon R Jr and I Vilhena, 'Liberalization of Foreign Ownership and Control Rules of Brazilian Airlines: An Analysis' (2021) 46(4-5) Air & Space Law 569

1631. Feng Y, 'Rethinking the China-U.S. Bilateral Air Services Agreement from China's Perspective: Approaches to Fair Competition' (2022) 47(2) Air & Space Law 233

1632. Fleming J Z, 'The Airline, Space, and Other Industries Can Use the Constitutional Prohibition against State Law Impairing the Obligation of Contracts' (2022) 21(2) Issues in Aviation Law and Policy 205

1633. Hofmann M, 'Entered into Force: The 2020 Space Law of Luxembourg' (2021) 46(4-5) Air & Space Law 587

1634. Kiss K O, 'Reopening the Upper Airspace over Kosovo for Civil Air Traffic: The Road Thereto' (2021) 46(4-5) Air & Space Law 603

1635. Kociubiński J, '»Cut off one Hydra Head, Two More Would Grow Back in Its Place": Challenges in Combating Concealed State Aid to Airlines and Regional Airports' (2022) 43(7) European Competition Law Review 321

1636. Konert A and M Sakowska Baryla, 'The Impact of the GDPR on the Unmanned Aircraft Sector' (2021) 46(4-5) Air & Space Law 517

1637. Martin A-S and S Freeland, 'A Round Trip to the Stars? Considerations for the Regulation of Space Tourism' (2022) 47(2) Air & Space Law 261

1638. McMahon C, 'State Aid Junkies, Viruses and the Aviation Industry: Ryanair's Litigation Against Approved Aid Measures for Airlines During the Pandemic' (2021) 20(2) European State Aid Law Quarterly 249

1639. Melograna C A, 'Space for Challenges: NASA's Protest Process Makes Procurement Fairer and More Transparent' (2022) 47(3) Air & Space Law 331

1640. Oliveto A M, 'Revisiting the Liability System of the Montreal Convention of 1999' (2022) 21(2) Issues in Aviation Law and Policy 177

1641. Orešković L and Grgić S, 'The New EU Space Regulation: One Small Step or One Giant Leap for the EU?' [2021] 17 Croatian Yearbook of European Law & Policy 77

1642. Pantazi T, 'State Aid to Airlines in the Context of Covid-19: Damages, Disturbances, and Equal Treatment' (2022) 13(4) Journal of European Competition Law and Practice 268

1643. Pazos R, 'The Extraordinary Circumstances Defence in Regulation (EC) 261/2004' (2021) 46(6) Air & Space Law 739

1644. Perriello L E., 'Air Passenger Rights in Times of Pandemic' (2022) 11(2) Journal of European Consumer and Market Law 61

1645. Petrov P, 'State Aid and COVID-19: With a Particular Focus on the Air Transport Sector' (2021) 20(4) European State Aid Law Quarterly 461

1646. Puetz A, 'Extraterritoriality in European Law: Airfreight and Beyond' (2021) 46(6) Air & Space Law 763

1647. Qin H, 'Beyond Litigation: The Use of ADR in Resolving Disputes Between Air Carriers and Passengers: China's Perspective' (2022) 47(3) Air & Space Law 347

1648. Rappaport J W, 'Air Transport and the Pandemic: Missteps and Lessons Learned' (2021) 20(2) Issues in Aviation Law and Policy 253

1649. Robins N and Puglisi L, 'The Application of the Market Economy Operator Principle in the Aviation Sector' (2021) 20(1) European State Aid Law Quarterly 74

1650. Rotola G and A Williams, 'Regulatory Context of Conflicting Uses of Outer Space: Astronomy and Satellite Constellations' (2021) 46(4-5) Air & Space Law 545

1651. Saetervadet T, 'Can 'Traffic Rights' for Non-Commercial Air Operators Be Derived from EU Law?' (2022) 47(3) Air & Space Law 289

1652. Savic I, 'Is the Court of Justice of the EU Rewriting the Montreal Convention?' (2021) 21(1) Issues in Aviation Law and Policy 17

1653. Schubert F, 'The Interception of Civil Aircraft' (2021) 46(6) Air & Space Law 687

1654. Siaud P-F, 'The Liability Regime for the Transportation of Goods by Drones: Is There a Need for a European Union Initiative?' (2022) 47(3) Air & Space Law 375

1655. Sims M S and Rapoport D E, 'The Potential Impact of the Supreme Court's Ford Motor Company Ruling on Aviation Product Liability and Montreal Convention Cases' (2021) 21(1) Issues in Aviation Law and Policy 35

1656. Stirling G, 'COVID-19 Related State Aid for the Airline Sector: EU Courts Not Hesitant to Remove the Commission's Stamp of Approval' (2022) 47(2) Air & Space Law 145

1657. Strom M, 'European Union Competition Law Developments in the Aviation Sector: July to December 2021' (2022) 47(2) Air & Space Law 167

1658. Truxal S and S Drew, 'Consumers, Air Carriers and Workers in the European Union: Two Sides of the Triangle' (2022) 47(1) Air & Space Law 111

1659. Van Eijk C, 'Unstealing the Sky: Third World Equity in the Orbital Commons' (2022) 47(1) Air & Space Law 25

1660. Wheeler J, A Monk and N Stevens, 'Financial and Insurance Considerations in Relation to the Grant of a UK Spaceflight Licence, Particularly for Non-Geostationary Satellites' (2021) 46(6) Air & Space Law 785

15 Energy

(Energy liberalisation / Trans-European Energy Networks / Solid fuels / Oil – Gas / Nuclear energy / Alternative energy sources / Electricity

1661. Batzella F, 'Engaged But Constrained. Assessing EU Actorness in the Case of Nord Stream 2' (2022) 44(6) Journal of European Integration 821

1662. Cassotta S and Sokolowski M, 'Regulatory Models of Community Energy (CE) in a Multi-Regulatory Approach: Juxtaposing the Global, the EU, the Japanese and Swedish Cases' (2022) 31(3) European Energy and Environmental Law Review 189

1663. Coghlan C and others, 'A Justice-Driven Approach to EU Power Sector Decarbonization' (2022) 31(2) European Energy and Environmental Law Review 70

1664. De Mevius J, 'Impact of the European Union's Seed Legislation and Intellectual Property Rights on Crop Diversity' (2022) 31(3) European Energy and Environmental Law Review 149

1665. Giannopoulos N, 'The Interplay Between EU Law and Regional Sea Conventions: Shaping Environmental Protection in Relation to Offshore Energy Production Across Europe?' (2022) 31(1) European Energy and Environmental Law Review 2

1666. Gomez-Urquijo L, 'The Implementation of EU Legal Framework to Reduce Food Waste: The Case of Spain' (2022) 31(4) European Energy and Environmental Law Review 202

1667. Hansen O and Ritchie H G, 'Private Governance of Electricity Supply to End Users: The Range and Limitations of Unilateral Variation Clauses and Contractual Discretion in Commercial Electricity Supply Contracts' (2021) 30(6) European Energy and Environmental Law Review 242

1668. Hedemann-Robinson M, 'Access to Environmental Justice and European Union Institutional Compliance with the Aarhus Convention: A Rather Longer and More Winding Road than Anticipated' (2022) 31(3) European Energy and Environmental Law Review 175

1669. Hoek N, 'The Habitats Directive and Heath: The Strain of Climate Change and N Deposition' (2022) 31(1) European Energy and Environmental Law Review 41

1670. Huhta K, 'C-718/18 Commission v. Germany: Critical Reflections on the Independence of National Regulatory Authorities in EU Energy Law' (2021) 30(6) European Energy and Environmental Law Review 255

1671. Johansson A and Derelius A, 'Legitimacy and Consistency of Free Allocation in the EU ETS: The Role of Substitutes in Product Benchmarks' (2022) 31(3) European Energy and Environmental Law Review 163

1672. Kelly G, 'Linking Emissions Trading Schemes: Assessing the Potential for EU-South Korea Linkage' (2022) 31(3) European Energy and Environmental Law Review 135

1673. Leal-Arcas R, Faktaufon M and Kyprianou A, 'A Legal Exploration of the European Union's Carbon Border Adjustment Mechanism' (2022) 31(4) European Energy and Environmental Law Review 223

1674. – – and others, 'Green Bills for Green Earth: How the International Trade and Climate Regimes Work Together to Save the Planet' (2022) 31(1) European Energy and Environmental Law Review 19

1675. Mortensen B O G, 'The Danish Income-Cap Regulation in the Power Supply Sector' (2022) 31(2) European Energy and Environmental Law Review 105

1676. Puharinen, S-T, 'Free Rivers or Legal Certainty? Review of Hydropower Permits under EU Water Law' (2022) 31(1) European Energy and Environmental Law Review 54

1677. Ruge R, 'The Reality Gap: Simplification of Environmental Law as Key for the Acceleration of Permit Procedures for Europe's Green Deal' (2022) 31(4) European Energy and Environmental Law Review 258

1678. Stefanova B M and Zhelev P, 'Testing the Premises of International Society in the European Energy Union: The Pluralism/Solidarism Nexus' (2022) 60(5) Journal of Common Market Studies 1255

1679. Vicente M, 'The European Union's Proposal for the Modernization of the Energy Charter Treaty' (2022) 31(3) European Energy and Environmental Law Review 124

1680. Weko S, 'Communitarians, Cosmopolitans, and Climate Change: Why Identity Matters for EU Climate and Energy Policy' (2022) 29(7) Journal of European Public Policy 1072

1681. Yessenamanova M and others, 'Environmental Auditing: The EU Practice in the Context of Pursuing Sustainable Development Policy' (2022) 31(4) European Energy and Environmental Law Review 211

1682. Zochling J, 'Cling Together, Swing Together: On the Relationship Between the EU and Euratom' (2021) 30(6) European Energy and Environmental Law Review 266

16 Research – Science and technology

1683. Archibugi D, Evangelista R and Vezzani A, 'Regional Technological Capabilities and the Access to H2020 Funds' (2022) 60(4) Journal of Common Market Studies 926

1684. Bruno RL and others, 'The Two Disjointed Faces of R&D and the Productivity Gap in Europe' (2022) 60(3) Journal of Common Market Studies 580

1685. Varju M, 'The Protection of Technology Sovereignty in the EU: Policy, Powers and the Legal Reality' (2022) 47(4) European Law Review 568

17 Education – Training – Culture

(Higher education / Lifelong learning / Qualifications / Youth programmes / Culture / Language / Books, reading and libraries / Audiovisual policy / Sport)

1686. Akaliyski P, Welzel C and Hien J, 'A Community of Shared Values? Dimensions and Dynamics of Cultural Integration in the European Union' (2022) 44(4) Journal of European Integration 569

1687. Bahanov B, 'Interpretation in EU Multilingual Law' (2022) 7(1) European Papers – A Journal on Law and Integration 465

1688. Cino Pagliarello M, 'Higher Education in the Single Market Between (Trans)National Integration and Supranationalisation: Exploring the European Universities Initiative' (2022) 44(1) Journal of European Integration 149

1689. Davies C, 'UEFA›s Financial Fair Play Regulations: Legality and Viability Post-COVID-19' (2022) 43(3) European Competition Law Review 103

1690. De Silva V T, 'Are National Football Federation Bodies Governed by Public Law? Setting the Boundaries of EU Public Procurement Directives [Case Notes]' (2022) 29(1) Maastricht Journal of European and Comparative Law 156

1691. De Witte F and Zglinski J, 'The Idea of Europe in Football' (2022) 1(2) European Law Open 286

1692. Doppler-Speranza F and Gasparini W, "Europe Gets More Game Everyday'. Professional Basketball, Transatlantic Sports Models and European Integration Since the 1950s' (2021) 27(2) Journal of European Integration History 303

1693. Gerards C, Schunz S and Damro C, 'Opportunity, Presence and Entrepreneurship: Why the EU Acts Externally on Higher Education' (2022) 60(5) Journal of Common Market Studies 1237

1694. Guirao Soro G, 'Institutional Policies and Individual Decision-Making in Artistic Migrations: The Case of Spanish Artists and Art Mediators in the European Union' (2022) 24(4) European Societies 1

1695. Kitagawa F and others, 'Anchoring Talent to Regions: The Role of Universities in Graduate Retention Through Employment and Entrepreneurship' (2022) 56(6) Regional Studies 1001

1696. Marruzzo L, 'UEFA›s Monopoly v the European Super League: Chronicle of an Already Written Ending?' (2022) 43(5) European Competition Law Review 219

1697. Mosna A, 'Give Art Market Regulation a Chance' (2022) 29(3) Maastricht Journal of European and Comparative Law 304

1698. Pansardi P and Tortola P D, 'A "More Political" Commission? Reassessing EC Politicization through Language' (2022) 60(4) Journal of Common Market Studies 1047

1699. Parrish R, 'EU Sport Diplomacy: An Idea Whose Time Has Nearly Come' (2022) 60(5)

Journal of Common Market Studies 1511

1700. Rohde-Liebenau J, 'EU Identity Visions and Narratives of 'Us' and 'Them' in European Schools' (2022) 24(4) European Societies 409

18 External Relations_

(International organisations and groupings / Human rights / External service – External assistance / Common Foreign and Security Policy / Security and defence / NATO / OSCE / Terrorism: international dimension / External trade / WTO / Eastern and Central Europe / Wider Europe – Neighbourhood policy / Northern dimension / Balkan region / Enlargement)

1701. Adler-Nissen R and Eggeling K A, 'Blended Diplomacy: The Entanglement and Contestation of Digital Technologies in Everyday Diplomatic Practice' (2022) 28(3) European Journal of International Relations 640

1702. Akyıldız F, 'Openness and Accountability in Turkey in the Context of Accession to the European Union' (2022) 22(1) Hrvatska i komparativna javna uprava 67

1703. Alibekov A Y, 'Foreign Experience in Prosecutor's Participation Institution Development in Kazakhstan Civil Procedure' (2022) 29(1) Maastricht Journal of European and Comparative Law 47

1704. Alpan B and Öztürk A E, 'Turkish Foreign Policy in the Balkans Amidst 'Soft Power' and 'de-Europeanisation'' (2022) 22(1) Southeast European and Black Sea Studies 45

1705. Anghel V and Jones E, 'Failing Forward in Eastern Enlargement: Problem Solving Through Problem Making' (2022) 29(7) Journal of European Public Policy 1092

1706. Ariel J and Haftel Y Z, 'Mostly in Its Backyard: Security Provisions in EU Economic Agreements' (2022) 60(6) Journal of Common Market Studies 1419

1707. Aydın-Düzgit S, Rumelili B and Topal A E, 'Challenging anti-Western Historical Myths in Populist Discourse: Re-Visiting Ottoman Empire–Europe Interaction During the 19th Century' (2022) 28(3) European Journal of International Relations 513

1708. Baetens F, 'The Transitional Mechanism Regulating Extra-EU Bilateral Investment Treaties Has Turned 10: High Time to Re-Assess' (2022) 47(4) European Law Review 437

1709. Barnier M, 'My Secret Brexit Diary: A Glorious Illusion' (2022) 47(3) European Law Review 424

1710. Batzella F, 'Engaged But Constrained. Assessing EU Actorness in the Case of Nord Stream 2' (2022) 44(6) Journal of European Integration 821

1711. Becker M, 'Externalising Internal Policies Via Conflict: The EU's Indirect Influence on International Institutions' (2022) 29(4) Journal of European Public Policy 589

1712. Bellanova R and de Goede M, 'Co-Producing Security: Platform Content Moderation and European Security Integration' (2022) 60(5) Journal of Common Market Studies 1316

1713. Benaglia S, 'India and the European Union in a Turbulent World' (2022) 60(2) Journal of Common Market Studies 498

1714. Blatter J and Schulz J, 'Intergovernmentalism and the Crisis of Representative Democracy: The Case for Creating a System of Horizontally Expanded and Overlapping National Democracies' (2022) 28(3) European Journal of International Relations 722

1715. Blockmans S, 'The Birth of a Geopolitical EU [Editorial]' (2022) 27(2) European Foreign Affairs Review 155

1716. Bošković Matić M and Kolaković Bojović M, 'New Approach to the EU Enlargement Process – Whether COVID-19 Affected Chapter 23 Requirements?' [2022] 6 EU and Comparative Law Issues and Challenges Series 330

1717. Bove V and Böhmelt T, 'Arms Imports in the Wake of Embargoes' (2021) 27(4) European Journal of International Relations 1114

1718. Brandao A P and Camisao I, 'Playing the Market Card: The Commission's Strategy to Shape EU Cybersecurity Policy' (2022) 60(5) Journal of Common Market Studies 1335

1719. Brazys S and Schoonvelde M, 'Home Field Advantage? EU-ACP Economic Partnership Agreement Meeting Locations and Textual Tone' (2022) 60(4) Journal of Common Market Studies 903

1720. Broschek J and Goff P M, 'Explaining Sub-Federal Variation in Trade Agreement Negotiations: The Case of CETA' (2022) 60(3) Journal of Common Market Studies 801

1721. Broude T and Haftel Y Z, 'The Growing Pains of Actorness: The European Union in Global Investment Governance' (2022) 44(5) Journal of European Integration 749

1722. Burri M, 'Approaches to Digital Trade and Data Flow Regulation Across Jurisdictions: Implications for the Future ASEAN-EU Agreement' (2022) 49(2) Legal Issues of Economic Integration 149

1723. Butler G, 'The Legal Relations of the European Union with the Vatican City State and Holy See' (2022) 27(2) European Foreign Affairs Review 263

1724. Cezar R F, 'Who Governs the Promotion of Social Objectives in EU's Trade Policies?' (2022) 56(2) Journal of World Trade 283

1725. Chaban N and Headley J, 'Special Section (Part 2): Perceptions, Narratives and Attitudes: New Perspectives and Geographies in the Study of External Perceptions of the EU' (2022) 27(1) European Foreign Affairs Review 57

1726. Chacha M and Nussipov A, 'The Breadth-Depth Trade-off and Varieties of Preferential Trade Agreements' (2022) 60(3) Journal of Common Market Studies 821

1727. Cheong D and Kim S Y, 'Confirming the Status Quo: The Political Economy of EU-ACP Economic Partnership Agreements' (2022) 29(3) Journal of European Public Policy 448

1728. Chornyi V, 'Rules of Origin in the EU-UK Trade and Cooperation Agreement: Conceptual and Practical Challenges' (2022) 49(3) Legal Issues of Economic Integration 293

1729. Christofis N, 'Securitizing the Aegean: de-Europeanizing Greek–Turkish relations' (2022) 22(1) Southeast European and Black Sea Studies 83

1730. Ciesielska-Klikowska J and Kamiński T, 'Paradiplomacy and Its Impact on EU Foreign Policy' (2022) 18(1) Journal of Contemporary European Research 48

1731. Cladi L, 'Crisis and Change in European Union Foreign Policy: A Framework of EU Foreign Policy Change' (2022) 60(4) Journal of Common Market Studies 1211

1732. – – 'European Union Contested: Foreign Policy in a New Global Context' (2022) 60(5) Journal of Common Market Studies 1529

1733. Claussen K, 'Next-Generation Agreements and the WTO' (2022) 21(3) World Trade Review 380

1734. Cremona M, 'Managing EU Cooperation Agreements, Council Discretion and Legal Basis: European Commission v Council of the European Union (C-180/20)' (2022) 47(2) European Law Review 273

1735. Crochet V, 'Trade Defence Instruments: A New Tool for the European Union's Extractivism' (2022) 33 European Journal of International Law 381

1736. Czechowska L, 'Joint Bodies and the Regularization of Strategic Interaction: A Comparison of the European Union's Strategic Partnerships with Japan and India' (2022) 60(4) Journal of Common Market Studies 1144

1737. De Witte F, 'The Liminal European: Subject to the EU Legal Order' [2021] 40 Yearbook of European Law 56

1738. Di Salvatore J, Polo S and Ruggeri A, 'Do UN Peace Operations Lead to More Terrorism? Repertoires of Rebel Violence and Third-Party Interventions' (2022) 28(2) European Journal of International Relations

1739. Dillon T, 'TV Quotas Under the AVMS Directive after Brexit' (2022) 56(2) Journal of World Trade 307

1740. Dolan T M, 'Ultimatums, Bargaining, and the Duty to Preserve Alternatives to War' (2022) 28(2) European Journal of International Relations 495

1741. Donkervoort I and Onderco M, 'The WMD Non-Proliferation Clause in EU Trade Agreements' (2022) 27(2) European Foreign Affairs Review 223

1742. Dür A and Gastinger M, 'Spinning a Global Web of EU External Relations: How the EU Establishes Stronger Joint Bodies Where They Matter Most' (2022) Journal of European Public Policy 1

1743. Eckert S, 'Sectoral Governance Under the EU's Bilateral Agreements and the Limits of Joint Institutional Frameworks: Insights from EU-Swiss Bilateralism for Post-Brexit Relations with the UK [Symposiums]' (2022) 60(4) Journal of Common Market Studies 1190

1744. Ferri D and Donnellan K, 'The Implementation of the Marrakesh Treaty in the European Union: An Important Piece in the Accessibility Jigsaw?' (2022) 49(3) Legal Issues of Economic Integration 269

1745. Gao H, 'China's Changing Perspective on the WTO: From Aspiration, Assimilation to Alienation' (2022) 21(3) World Trade Review 342

1746. Gaspar-Szilagyi S, 'The 'Palm Oil Wars' or How the EU's 'Inflated' Common Commercial Policy Might Need to Prioritize Its Non-Trade Values' (2022) 27(1) European Foreign Affairs Review 29

1747. Gastinger M and Dür A, 'Joint Bodies in the European Union's International Agreements: Delegating Powers to the European Commission in EU External Relations' (2021) 22(4) European Union Politics 611

1748. Gehrke T, 'EU Open Strategic Autonomy and the Trappings of Geoeconomics' (2022) 27(Special Issue) European Foreign Affairs Review 61

1749. Giedraityte I, 'EU and US Narratives of Order and Disorder in Their Southern Neighbourhoods after the Migration Crisis' (2022) 27(1) European Foreign Affairs Review 61

1750. Hackenesch C and others, 'Populist Radical Right Parties' Impact on European Foreign Aid Spending' (2022) 60(5) Journal of Common Market Studies 1391

1751. Hahonou E K and Olsen G R, 'Niger – Europe's border guard? Limits to the Externalization of the European Union's Migration Policy' (2021) 43(7) Journal of European Integration 875

1752. Hamilton T, 'Defending Ukraine with EU Weapons: Arms Control Law in Times of Crisis' (2022) 1(3) European Law Open 635

1753. Helwig N, 'The Ambiguity of the EU's Global Role: A Social Explanation of the Term 'Strategic Autonomy'' (2022) 27(Special Issue) European Foreign Affairs Review 21

1754. – – and Sinkkonen V, 'Strategic Autonomy and the EU as a Global Actor: The Evolution, Debate and Theory of a Contested Term' (2022) 27(Special Issue) European Foreign Affairs Review 1

1755. Heupel M, Heaphy C and Heaphy J, 'Seeing Reason or Seeing Costs? The United States, Counterterrorism, and the Human Rights of Foreigners' (2022) 28(1) European Journal of International Relations 131

1756. Hoxhaj A, 'The EU Common Regional Market Proposals for the Western Balkans' (2022) 49(3) Legal Issues of Economic Integration 311

1757. Hrynkiv O, 'Export Controls and Securitization of Economic Policy: Comparative Analysis of the Practice of the United States, the European Union, China, and Russia' (2022) 56(4) Journal of World Trade 633

1758. Hsieh P L, 'The Roadmap to the ASEAN-EU FTA in the Post-Pandemic Era' (2022) 49(2) Legal Issues of Economic Integration 125

1759. Jenichen A, 'The Politics of Normative Power Europe: Norm Entrepreneurs and Contestation in the Making of EU External Human Rights Policy' (2022) 60(5) Journal of Common Market Studies 1299

1760. Jeremic J and Jayasundara-Smits S, 'Long After Dayton: A Journey Through Visual Representations of War and Peace in Bosnia and Herzegovina' (2022) 22(3) Southeast European and Black Sea Studies 335

1761. Jones C, 'Understanding the Belt and Road Initiative in EU-China Relations' (2021) 43(7) Journal of European Integration 915

1762. Jongen H and Scholte J A, 'Inequality and Legitimacy in Global Governance: An Empirical Study' (2022) 28(3) European Journal of International Relations 667

1763. Jordana J, Holesch A and Triviño-Salazar J C, 'Trans-Governmental Regulatory Networks and the European Union's Involvement in Global Governance: An Occasional Instrument?' (2022) 44(5) Journal of European Integration 677

1764. Jüde J, 'Making or Un-Making States: When Does War Have Formative Effects?' (2022) 28(1) European Journal of International Relations 209

1765. Kasteng J, Kokko A and Tingvall P, 'Who Uses the EU's Free Trade Agreements? A Transaction-Level Analysis of the EU-South Korea FTA' (2022) 21(1) World Trade Review 93

1766. Keller F and Zoller-Rydzek B, 'Trade and Attitude Towards the EU: What Really Matters' (2022) 27(1) European Foreign Affairs Review 127

1767. Králiková M, 'Importing EU Norms: The Case of Anti-Corruption Reform in Ukraine' (2022) 44(2) Journal of European Integration 245

1768. Kyris G, 'State Recognition and Dynamic Sovereignty' (2022) 28(2) European Journal of International Relations 287

1769. Langendonk S, 'EU-China Security Paradox: Cooperation Against All Odds?' (2022) 60(5) Journal of Common Market Studies 1530

1770. Lee H W and Kim Y, 'Who Uses the Special Differential Treatment Provisions of the WTO?' (2022) 56(1) Journal of World Trade 141

1771. Lelli M, 'EU Accession Conditionality and Compliance with the Energy Community Treaty: A Missing Link' (2022) 27(2) European Foreign Affairs Review 161

1772. Limenta M, 'Toward an ASEAN-EU FTA: Examining the Trade and Sustainable Development Chapter in the Prospective Indonesia-EU CEPA' (2022) 49(2) Legal Issues of Economic Integration 191

1773. Lin C-F, 'The Roadmap to the ASEAN-EU FTA: Reimagining SPS Cooperation in the Region-to-Region Context' (2022) 49(2) Legal Issues of Economic Integration 169

1774. Lin-Greenberg E, Pauly R and Schneider J G, 'Wargaming for International Relations Research' (2022) 28(1) European Journal of International Relations 83

1775. Lonardo L, 'May Member States' Courts Act as Catalysts of Normalization of the European Union's Common Foreign and Security Policy?' (2021) 28(3) Maastricht Journal of European and Comparative Law 287

1776. – – 'Weapons, Humanitarian Assistance, Sanctions: A Legal Analysis of the EU's Immediate Response to the Russian Invasion of Ukraine of 2022' (2022) 47(3) European Law Review 410

1777. Lopez J A G and Sancho M M, 'The US and EU Solar Trade Remedies Saga: The Globalization of Mercantilism' (2022) 56(4) Journal of World Trade 615

1778. Low P, 'The WTO in Crisis: Closing the Gap Between Conversation and Action or Shutting Down the Conversation?' (2022) 21(3) World Trade Review 274

1779. Mahdi G and Karamelikli H, 'The Impact of Sanctions Imposed by the European Union Against Iran on Their Bilateral Trade: General versus Targeted Sanctions' (2022) 21(1) World Trade Review 33

1780. Mancini I, 'The European Parliament and Civil Society in EU Trade Negotiations: The Untold Story of an Erratic Engagement' (2022) 27(2) European Foreign Affairs Review 241

1781. Marković Khaze N, 'Perceptions of the EU in the Western Balkans vis-a-vis Russia and China' (2022) 27(1) European Foreign Affairs Review 81

1782. Marošková T and Spurná K, 'Why Did They Comply? External Incentive Model, Role-Playing and Socialization in the Alignment of Sanctions Against Russia in Albania and Montenegro' (2021) 43(8) Journal of European Integration 1005

1783. Martin G and Sinkkonen V, 'Past as Prologue? The United States and European Strategic Autonomy in the Biden Era' (2022) 27(Special Issue) European Foreign Affairs Review 99

1784. Martins B O and Mawdsley J, 'Sociotechnical Imaginaries of EU Defence: The Past and the Future in the European Defence Fund' (2022) 60(6) Journal of Common Market Studies 1458

1785. Marx A and Westerwinter O, 'An Ever More Entangled Union? The European Union's Interactions with Global Governance Institutions' (2022) 44(5) Journal of European Integration 597

1786. Miadzvetskaya Y, '"Code of Absence": EU-Belarus Legal Framework' (2022) 27(2) European Foreign Affairs Review 181

1787. Mole N, 'EU Accession and Multiple Respondents' (2022) (3) European Human Rights Law Review 273

1788. Mustasilta K, 'Preventing What for Whom? EU Conflict Prevention Efforts in Pursuit of Autonomy' (2022) 27(Special Issue) European Foreign Affairs Review 39

1789. Nessel C and Verhaeghe E, '"A Force for Good": The Narrative Construction of Ethical EU-Vietnam Trade Relations' (2022) 60(3) Journal of Common Market Studies 741

1790. Nhung N and Trinh H Y, 'Demystifying the Sustainable Development Chapter in the EU-Vietnam FTA' (2022) 49(2) Legal Issues of Economic Integration 217

1791. Nissen A, 'Not That Assertive: The EU's Take on Enforcement of Labour Obligations in Its Free Trade Agreement with South Korea' (2022) 33 European Journal of International Law 607

1792. Norrevik S, 'Foreign Economic Policy in the European Parliament and Economic Interdependence with Foreign Powers' (2021) 22(4) European Union Politics 700

1793. Nouwen S M H, 'Exporting Peace? The EU Mediator's Normative Backpack' (2022) 1(1) European Law Open 26

1794. Novitz T, 'Sustainable Labour Conditionality in EU Free Trade Agreements? Implications of the EU-Korea Expert Panel Report' (2022) 47(1) European Law Review 3

1795. Odijie M E, 'Unintentional Neo-Colonialism? Three Generations of Trade and Development Relationship Between EU and West Africa' (2022) 44(3) Journal of European Integration 347

1796. Ognjanoska L, 'Promoting the Rule of Law in the EU Enlargement Policy: A Twofold Challenge' [2021] 17 Croatian Yearbook of European Law & Policy 237

1797. Onderco M and van der Veer A R, 'No More Gouda in Moscow? Distributive Effects of the Imposition of Sanctions' (2022) 60(6) Journal of Common Market Studies 1345

1798. Otjes S, van der Veer H and Wagner W, 'Party Ideologies and European Foreign Policy. Examining the Transnational Foreign Policy Space' (2022) Journal of European Public Policy 1

1799. Palacios M M, 'Building Resilience Against Secondary Sanctions in an Increasingly Polarized World: The Amendment of the EU Blocking Statute' (2021) 23(4) European Journal of Law Reform 480

1800. Pelkmans J, 'Linking "Values" to EU Trade Policy – a Good Idea?' (2020) 26(5-6) European Law Journal 391

1801. Plew S, '›Make America Rich Again': The Nationalist Motives Compromising Good Faith Usage of the Essential Security Exception of the GATT Article XXI' (2021) 23(4) European Journal of Law Reform 465

1802. Poli S, 'The Right to Effective Judicial Protection with Respect to Acts Imposing Restrictive Measures and Its Transformative Force for the Common Foreign and Security Policy' (2022) 59(4) Common Market Law Review 1045

1803. Poutala T, Sinkkonen E and Mattlin M, 'EU Strategic Autonomy and the Perceived Challenge of China: Can Critical Hubs Be De-Weaponized?' (2022) 27(Special Issue) European Foreign Affairs Review 79

1804. Priebus S, 'Watering Down the 'Nuclear Option'? The Council and the Article 7 Dilemma' (2022) 44(7) Journal of European Integration 995

1805. Pushkina D, Siewert M B and Wolff S, 'Mission (Im)Possible? UN Military Peacekeeping Operations in Civil Wars' (2022) 28(1) European Journal of International Relations 158

1806. Rangel de Mesquita M J, 'Judicial Review of Common Foreign and Security Policy by the ECtHR and the (Re)Negotiation on the Accession of the EU to the ECHR' (2021) 28(3) Maastricht Journal of European and Comparative Law 356

1807. Rapp K, 'Justifying Force: International Law, Foreign Policy Decision-Making, and the Use of Force' (2022) 28(2) European Journal of International Relations 337

1808. Rasi A, 'The Entitlement of the European Union to Exercise Diplomatic Protection: An International Customary Law Perspective' (2021) 6(3) European Papers – A Journal on Law and Integration 1269

1809. Raynor B, 'The Shadow of Sanctions: Reputational Risk, Financial Reintegration, and the Political Economy of Sanctions Relief' (2022) 28(3) European Journal of International Relations 696

1810. Reus-Smit C, 'The End of Global Pluralism?' (2021) 27(4) European Journal of International Relations 1249

1811. Rickard S J, 'Economic Geography, Politics, and the World Trade Regime' (2022) 21(3) World Trade Review 367

1812. Rieker P and M Riddervold, 'Not So Unique After All? Urgency and Norms in EU Foreign and Security Policy' (2022) 44(4) Journal of European Integration 459

1813. Samokhvalov V and Strelkov A, 'Cross-Dimensional Network of Democracy Promotion: Public Administration Reform in Post-Euromaidan Ukraine' (2021) 43(7) Journal of European Integration 799

1814. Sanchez-Graells A, 'The Growing Thicket of Multi-Layered Procurement Liberalization Between WTO GPA Parties, as Evidenced in Post-Brexit UK' (2022) 49(3) Legal Issues of Economic Integration 247

1815. Saramago A, 'Post-Eurocentric Grand Narratives in Critical International Theory' (2022) 28(1) European Journal of International Relations 6

1816. Sato S, 'EU's Carbon Border Adjustment Mechanism: Will It Achieve Its Objective(s)?' (2022) 56(3) Journal of World Trade 383

1817. Schatz V J , 'The Status of Crimea and the Sea of Azov as a Jurisdictional Hurdle in Ukraine v. Russia: A Comment on the UNCLOS Annex VII Arbitral Tribunal's Award concerning Preliminary Objections' (2022) 47(3-4) Review of Central and East European Law 400

1818. Shyrokykh K, 'Human Rights Sanctions and the Role of Black Knights: Evidence from the EU's Post-Soviet Neighbours' (2022) 44(3) Journal of European Integration 429

1819. Siddi M, 'The Partnership That Failed: EU-Russia Relations and the War in Ukraine' (2022) 44(6) Journal of European Integration 893

1820. Soyaltin-Colella D, 'How to Capture the Judiciary Under the Guise of EU-Led Reforms: Domestic Strategies of Resistance and Erosion of Rule of Law in Turkey' (2022) 22(3) Southeast European and Black Sea Studies 441

1821. Stein A, 'Committed Sponsors: External Support Overtness and Civilian Targeting in Civil Wars' (2022) 28(2) European Journal of International Relations 185

1822. Stender F and others, 'The Trade Effects of the Economic Partnership Agreements Between the European Union and the African, Caribbean and Pacific Group of States: Early Empirical Insights from Panel Data' (2022) 60(6) Journal of Common Market Studies 1495

1823. Strelkov A and Samokhvalov V, 'Why Are Success Stories Not Copied? Emulating Advocacy Strategies Amongst Eastern Partnership Think-Tanks' (2022) 27(2) European Foreign Affairs Review 203

1824. Sundstrom M R, 'Inspiration or Provocation? Sweden's Feminist Foreign Policy in National Newspapers in EU Member States' (2022) 27(2) European Foreign Affairs Review 283

1825. Šćepanović J, 'Commonwealth of Independent States at 30: Why Does Russia Still Support This Organization?' (2022) 22(2) Southeast European and Black Sea Studies 187

1826. Taylor M R, 'Inside the EU–China Human Rights Dialogue: Assessing the Practical Delivery of the EU's Normative Power in a Hostile Environment' (2022) 44(3) Journal of European Integration 365

1827. Theiler T, 'International Functionalism and Democracy' (2022) 28(2) European Journal of International Relations 312

1828. Thomas J, 'Dispute Resolution under USMCA: Modifications to NAFTA and the Potential Implications' (2021) 23(4) European Journal of Law Reform 428

1829. Tokhi A, 'International Organizations, European Union Access, and Authority' (2022) 44(5) Journal of European Integration 617

1830. Troy J, 'The Realist Science of Politics: The Art of Understanding Political Practice' (2021) 27(4) European Journal of International Relations 1193

1831. Tyushka A, 'The Power and Performance of 'Association Bodies' Under the EU's Association Agreements with Georgia, Moldova and Ukraine [Symposiums]' (2022) 60(4) Journal of Common Market Studies 1165

1832. – – Phinnemore D and Weiss W, 'Joint Institutional Frameworks in EU Bilateral Agreements: Joint Bodies, Rules and Principles, and Special Procedures' (2022) 60(4) Journal of Common Market Studies 1124

1833. Un M B and Arikan H, 'Europeanization and De-Europeanization of Turkey's Gender Equality Policy: The Case of the Istanbul Convention' (2022) 60(4) Journal of Common Market Studies 945

1834. Unfried M and others, 'Cross-Border Impact Assessment for EU's Border Regions' (2022) 24(1) European Journal of Law Reform 47

1835. Utkin S, 'Suspicious Neighbour: Russia's Role in the Quest for the EU's Strategic Autonomy' (2022) 27(Special Issue) European Foreign Affairs Review 121

1836. Van Bergeijk P A G, 'Sanctions Against the Russian War on Ukraine: Lessons from History and Current Prospects' (2022) 56(4) Journal of World Trade 571

1837. Vidačak I, 'The Effects of EU Conditionality on Patterns of Policy Engagement of Civil Society Organizations in Candidate Countries' (2021) 21(4) Southeast European and Black Sea Studies 571

1838. Vroege B, 'Exporting Arms Over Values: The Humanitarian Cost of the European Defence Fund' (2021) 6(3) European Papers – A Journal on Law and Integration 1575

1839. Wang X and Song X, 'Terroir and Trade War: Reforming China's Legislation on Generic Terms Under the Influence of the EU and US' (2022) 56(1) Journal of World Trade 165

1840. Weiss M and Biermann F, 'Networked Politics and the Supply of European Defence Integration' (2022) 29(6) Journal of European Public Policy 910

1841. Wessel R A and others, 'The Future of EU Foreign, Security and Defence Policy: Assessing Legal Options for Improvement' (2020) 26(5-6) European Law Journal 371

1842. Westerwinter O, 'Transnational Governance as Strategy? Mapping and Explaining the European Union's Participation in Transnational Public-Private Governance Initiatives' (2022) 44(5) Journal of European Integration 695

1843. Wouters J and Hegde V, 'Reform of Global Trade Governance: The Role of the European Union' (2022) 44(5) Journal of European Integration 715

1844. Zaun N and Nantermoz O, 'The Use of Pseudo-Causal Narratives in EU Policies: The Case of the European Union Emergency Trust Fund for Africa' (2022) 29(4) Journal of European Public Policy 510

1845. Zhunussova T, 'What Does It Take to Be a Loyal Member? Revisiting the 'Good Membership' Obligations in the Law of International Organizations' (2022) 14(1) European Journal of Legal Studies 65

19 Law

(Nature, effect and principles of EC law / European Court of Justice – legal issues / European Conventions / European Treaties / European Court of Human Rights / Legal systems and traditions)

1846. Albanesi E, 'The European Court of Human Rights' Advisory Opinions Legally Affect Non-Ratifying States: A Good Reason (from a Perspective of Constitutional Law) to Ratify Protocol No. 16 to the ECHR Scrutiny' (2022) 28(1) European Public Law 1

1847. Andersen H, 'Time to Reconsider Direct Applicability of WTO Law to ECJ Jurisprudence? – The Three Arguments from Commission v Hungary (Higher Education)' (2022) 47(4) European Law Review 550

1848. Arnull A, 'European Union Law and the Contra Legem Principle' (2022) 47(3) European Law Review 291

1849. – – 'Non-Member States and Access to the Union Courts' (2022) 47(2) European Law Review 264

1850. Azoulai L, 'Living with EU Law' (2022) 1(1) European Law Open 140

1851. Baraggia A, 'The "Conditionality" Regulation Under the ECJ's Scrutiny: A Constitutional Analysis' (2022) 47(5) European Law Review 687

1852. Bárd P, 'In Courts We Trust, or Should We? Judicial Independence as the Precondition for the Effectiveness of EU Law' (2021) 27(1-3) European Law Journal 185

1853. – – and Kochenov D V, 'War as a Pretext to Wave the Rule of Law Goodbye? The Case for an EU Constitutional Awakening' (2021) 27(1-3) European Law Journal 39

1854. Barnes M M, 'State-Owned Entities and Human Rights: The Role of International Law' (2022) (5) European Human Rights Law Review 532

1855. Bartl M, 'Politics of European Legal Research: Behind the Method' (2022) 47(5) European Law Review 727

1856. Bastos F B, 'Judicial Annulment of National Preparatory Acts and the Effects on Final Union Administrative Decisions: Comments on the Judgment of 29 January 2020, Case C-785/18 Jeanningros, EU:C:2020:46' (2021) 14(2) Review of European Administrative Law 109

1857. Beckers A, 'A Societal Private Law' (2022) 1(2) European Law Open 380

1858. Bianchini S, 'Retrospective Application of New Laws to Pending Proceedings' (2022) (3) European Human Rights Law Review 310

1859. – – 'Excessive Duration of Proceedings' (2022) (4) European Human Rights Law Review 412

1860. Blockx J, 'Effet Utile Reasoning by the Court of Justice of the European Union Is Mostly Indirect: Evidence and Consequences' (2022) 14(1) European Journal of Legal Studies 141

1861. Blom-Hansen J and others, 'Transposition' of EU Regulations: The Politics of Supplementing EU Regulations with National Rules' (2022) Journal of European Public Policy 1

1862. Bobek M, 'What Are Grand Chambers For?' [2021] 23 Cambridge Yearbook of European Legal Studies 1

1863. Bohacek L, 'Mutual Trust in EU Law: Trust "in What" and "Between Whom"?' (2022) 14(1) European Journal of Legal Studies 103

1864. Bonelli M, 'Infringement Actions 2.0: How to Protect EU Values Before the Court of Justice' (2022) 18(1) European Constitutional Law Review 30

1865. Boschetti B and M D Poli, 'A Comparative Study on Soft Law: Lessons from the COVID-19 Pandemic' [2021] 23 Cambridge Yearbook of European Legal Studies 20

1866. Brandao N, 'The Right of Defence Under Regulation (EU) 2018/1805 on the Mutual Recognition of Freezing Orders and Confiscation Orders' (2022) 13(1) New Journal of European Criminal Law 28

1867. Broberg M, 'Broberg and Fenger on Preliminary References to the European Court of Justice' (2022) 47(4) European Law Review 586

1868. Brown C M, 'The Contribution of the European Union to the Rule of Law in the Field of International Investment Law Through the Creation of a Multilateral Investment Court' (2021) 27(1-3) European Law Journal 96

1869. Caeiro P, 'Constitution and Development of the European Union's Penal Jurisdiction: Responsibility, Self-Reference and Attribution' (2022) European Law Journal <https://doi.org/10.1111/eulj.12443> > accessed 4 December 2022

1870. Cafaggia F and Iamiceli P, 'Uncertainty, Administrative Decision-Making and Judicial Review: The Courts' Perspectives' (2021) 12 European Journal of Risk Regulation 792

1871. Canihac H, 'The Making of an Imagined "Community of Law": Law, Market and Democracy in the Early Constitutional Imaginaries of European Integration' (2022) 18(1) European Constitutional Law Review 2

1872. Carević M, 'Caught on the Radar of the European Commission: Croatian Experiences with the Infringement Procedure' [2021] 17 Croatian Yearbook of European Law & Policy 279

1873. Challet C and Bachelier P, 'Can Kosovo Be Considered as a "Third Country" in the Meaning of EU Law? Case Note to Spain v. Commission [Case Note]' (2021) 28(3) Maastricht Journal of European and Comparative Law 399

1874. Chen Z, 'Tort Conflicts Rules in Cross-Border Multi-Party Litigation: Which Law Has a Closer or the Closest Connection?' (2021) 28(5) Maastricht Journal of European and Comparative Law 626

1875. Cherednychenko O O, 'Regulatory Agencies and Private Damages in the EU: Bridging the Gap between Theory and Practice' [2021] 40(1) Yearbook of European Law 146

1876. Cherednychenko O O, 'Pathways to Interpersonal Justice in European Private Law: Top-Down or Bottom-Up?' (2022) 1(2) European Law Open 423

1877. Cheruvu S and Fjelstul J C, 'Improving the Efficiency of Pretrial Bargaining in Disputes Over Noncompliance with International Law: Encouraging Evidence from the European Union' (2022) 29(8) Journal of European Public Policy 1249

1878. Christensen M L, 'Networks and Narrative: Visualizing International Law New Voices' (2021) 14(2) European Journal of Legal Studies 27

1879. Ciacchi A C, Bisschop L and Repasi R, 'The Public-Private Challenge in Comparative Law and Governance [Editorial]' (2022) 9(2) European Journal of Comparative Law and Governance 115

1880. Clooney A, 'The Right to a Fair Trial in International Law' (2022) (1) European Human Rights Law Review 78

1881. Coffey G, 'An Exploration of ECtHR Jurisprudence Governing the Administration of Release Processes for Life and Long-Term Sentence Prisoners: Perspectives from the United Kingdom' (2021) 12(4) New Journal of European Criminal Law 594

1882. Collins H, 'Interpersonal Justice as Partial Justice' (2022) 1(2) European Law Open 413

1883. Collinson J, 'Deporting EU National Offenders from the UK after Brexit: Moving from a System that Recognises Individuals, to One that Sees only Offenders' (2021) 12(4) New Journal of European Criminal Law 575

1884. Condon R R, 'The Effectiveness of Kobler Liability in National Courts' (2021) 14(1) Review of European Administrative Law 223

1885. Cotter J, 'To Everything There Is a Season: Instrumentalising Article 10 TEU to Exclude Undemocratic Member State Representatives from the European Council and the Council' (2022) 47(1) European Law Review 69

1886. Cozzi A, 'The Italian Constitutional Court, the Plurality of Legal Orders and Supranational Fundamental Rights: A Discussion in Terms of Interlegality' (2022) 1(3) European Law Open 606

1887. Cremona M, 'Managing EU Cooperation Agreements, Council Discretion and Legal Basis: European Commission v Council of the European Union (C-180/20)' (2022) 47(2) European Law Review 273

1888. D'Andrea S and others, 'Asymmetric Cross-Citations in Private Law: An Empirical Study of 28 Supreme Courts in the EU' (2021) 28(4) Maastricht Journal of European and Comparative Law 498

1889. Dashwood A, 'Republic of Moldova v Komstroy LCC: Arbitration Under Article 26 ECT Outlawed in Intra-EU Disputes by Obiter Dictum' (2022) 47(1) European Law Review 127

1890. Davio V, 'Detention in the Hungarian Transit Zones: A Case of Higher Fundamental Rights Protection by EU Law Vis-a-Vis the ECHR' (2022) 47(3) European Law Review 393

1891. D'Cunha C, '"A State in the Disguise of a Merchant": Tech Leviathans and the Rule of Law' (2021) 27(1-3) European Law Journal 109

1892. De Albuquerque P P, 'The Role of History in the ECHR Case Law' (2022) (2) European Human Rights Law Review 127

1893. De Lucia L, 'The New Aarhus Regulation and the Defensive Behaviour of the European Legislator' (2022) 15(2) Review of European Administrative Law 7

1894. De Vries A, 'Recent Developments Concerning the Right to Silence and Privilege Against Self-Incrimination Under the Charter of Fundamental Rights of the EU – A Critical Reflection on Case C-481/19 DB v Consob' (2022) 15(1) Review of European Administrative Law 31

1895. De Witte F, 'Here be Dragons: Legal Geography and EU Law' (2022) 1(1) European Law Open 113

1896. Dederke J, 'CJEU Judgments in the News – Capturing the Public Salience of Decisions of the EU's Highest Court' (2022) 29(4) Journal of European Public Policy 609

1897. Deffains B and Perroud T, 'Current Issues on Regulation: A View from France' (2022) 28(1) European Public Law 53

1898. Delfino R, 'European Union Legislation and Actions' (2021) 17(4) European Review of Contract Law 373

1899. – – 'European Union Legislation and Actions' (2022) 18(1) European Review of Contract Law 63

1900. – – 'European Union Legislation and Actions' (2022) 18(2) European Review of Contract Law 200

1901. Doroga S and Mercescu A, 'A Call to Impossibility: The Methodology of Interpretation at the European Court of Justice and the PSPP Ruling' (2021) 14(2) European Journal of Legal Studies 87

1902. Dukes R, 'Authoritarian Liberalism: A Labour Law Perspective' (2022) 1(1) European Law Open 150

1903. Dunbar R, 'Article 3(5) TEU a Decade on: Revisiting 'Strict Observance of International Law' in the Text and Context of Other EU Values' (2021) 28(4) Maastricht Journal of European and Comparative Law 479

1904. Englisch J, ''Detailing' EU Legislation Through Implementing Acts' [2021] 40(1) Yearbook of European Law 111

1905. Enqvist L and Naarttijarvi M, 'Administrative Independence Under EU Law: Stuck Between a Rock and Costanzo?' (2021) 27(4) European Public Law 707

1906. Erdos D, 'Comparing Constitutional Privacy and Data Protection Rights Within the EU' (2022) 47(4) European Law Review 482

1907. Esposito F and de Almeida L, 'European Union Litigation' (2022) 18(1) European Review of Contract Law 67

1908. Fabre-Magnan M, 'The Paths to a Progressive European Code of Private Law' (2022) 1(2) European Law Open 436

1909. Fahey E, 'The European Parliament as a Defender of EU Values in EU-Japan Agreements: What Role for Soft Law and Hard Law Powers?' (2022) 47(3) European Law Review 331

1910. Federico V, Moraru M and Pannia P, 'The Growing but Uneven Role of European Courts in (Im)migration Governance: A Comparative Perspective [Editorial]' (2021) 14(Special Issue) European Journal of Legal Studies 1

1911. Ferri D and Martinico G, 'Revisiting the Ruiz Zambrano Doctrine and Exploring the Potential for Its Extensive Application' (2021) 27(4) European Public Law 685

1912. Fick S and Vols M, 'Horizontality and Housing Rights: Protection Against Private Evictions from a European and South African Perspective' (2022) 9(2) European Journal of Comparative Law and Governance 118

1913. Fink M, 'Reasoned A(I)Administration: Explanation Requirements in EU Law and the Automation of Public Administration' (2022) 47(3) European Law Review 376

1914. Fisicaro M, 'Protection of the Rule of Law and "Competence Creep" via the Budget: The Court of Justice on the Legality of the Conditionality Regulation: ECJ Judgments of 16 February 2022, Cases C-156/21, Hungary v Parliament and Council and C-157/21, Poland v Parliament and Council' (2022) 18(2) European Constitutional Law Review 334

1915. Fjelstul J C, Gabel M and Carrubba C J, 'The Timely Administration of Justice: Using Computational Simulations to Evaluate Institutional Reforms at the CJEU' (2022) Journal of European Public Policy 1

1916. Fox S J, 'Evolution: Police Cooperation in the EU' (2022) 9(4) European Journal of Comparative Law and Governance 396

1917. Franko K, "See No Evil': Towards an Analytics of Europe's Legal Borderlands' (2022) 1(1) European Law Open 131

1918. Fromont L and Van Waeyenberge A, 'Trading Rule of Law for Recovery? The New EU Strategy in the Post-Covid Era' (2021) 27(1-3) European Law Journal 132

1919. Gallo D, 'Rethinking Direct Effect and Its Evolution: A Proposal' (2022) 1(3) European Law Open 576

1920. Gérardy M, 'The Use of Copyrighted Technical Standards in the Operationalisation of European Union Law: The Status Quo Position of the General Court in Public. Resources.Org (T-185/19)' (2022) 13 European Journal of Risk Regulation 532

1921. Glavina M, 'The Reality of National Judges as EU Law Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Slovenia and Croatia' [2021] 17 Croatian Yearbook of European Law & Policy 1

1922. Goldoni M, 'From Trauma to Apathy: On the Hegemonic Force of European Authoritarian Liberalism' (2022) 1(1) European Law Open 158

1923. Graham L, 'Taking Strasbourg Jurisprudence into Account' (2022) (2) European Human Rights Law Review 163

1924. Greco G, 'EUIPO Boards of Appeal in the Light of the Principle of Fair Trial Scrutiny' (2022) 28(1) European Public Law 19

1925. Grist A, 'Access to Court and State Immunity' (2022) (4) European Human Rights Law Review 420

1926. Gulati D, 'Legislative Effectiveness from a Legislative Drafter's Perspective: Analysing the Transgender Persons (Protection of Rights) Act, 2019' (2021) 23(3) European Journal of Law Reform 378

1927. Halberstam D, 'Understanding National Remedies and the Principle of National Procedural Autonomy: A Constitutional Approach' [2021] 23 Cambridge Yearbook of European Legal Studies 128

1928. Hamenstadt K, 'Judicial Review of Immigration Detention in the UK, USA and EU: From Principles to Practice' (2022) 15(1) Review of European Administrative Law 63

1929. Harkin T, 'The Case Law of the Court of Justice of the European Union on 'Judicial Authority' and Issuing European Arrest Warrants' (2021) 12(4) New Journal of European Criminal Law 508

1930. Harpaz G and Reich A, 'Kosher and Halal Slaughtering Before the Court of Justice: A Case of Religious Intolerance?' (2022) 28(1) European Public Law 35

1931. Hesselink M W, 'Justifying Contract in Europe: Political Philosophies of European Contract Law' (2022) 47(2) European Law Review 280

1932. – – 'Reconstituting the Code of Capital: Could a Progressive European Code of Private Law Help Us Reduce Inequality and Regain Democratic Control?' (2022) 1(2) European Law Open 316

1933. Hickey E, 'We Can Only Presume: Relationship Between Protection of Commercial Interests and General Presumptions of Confidentiality Shrouded in Mist as Court of Justice Upholds European Medicines Agency Disclosure of Clinical Study Reports' (2021) 12 European Journal of Risk Regulation 871

1934. Hilpold P, 'The Judgment of the German Constitutional Court and the Conflict Between the German and the European "Popular Spirit"' [2021] 23 Cambridge Yearbook of European Legal Studies 159

1935. Hofmann R, 'Formalism versus Pragmatism – A Comparative Legal and Empirical Analysis of the German and Dutch Criminal Justice Systems with Regard to Effectiveness and Efficiency' (2021) 28(4) Maastricht Journal of European and Comparative Law 452

1936. Höpner M, 'Proportionality in the PSPP Saga: Why Constitutional Pluralism Is Here to Stay and Why the Federal Constitutional Court Did not Violate the Rules of Loyal Conduct' (2021) 6(3) European Papers – A Journal on Law and Integration 1527

1937. Horak F, 'Human Dignity in Legal Argumentation: A Functional Perspective' (2022) 18(2) European Constitutional Law Review 237

1938. Howard E, 'Headscarves and the CJEU: Protecting Fundamental Rights or Pandering to Prejudice' (2021) 28(5) Maastricht Journal of European and Comparative Law 648

1939. – – 'Headscarves and the CJEU: Protecting Fundamental Rights and Pandering to Prejudice, the CJEU Does Both' (2022) 29(2) Maastricht Journal of European and Comparative Law 245

1940. Hoxhaj A and Zhilla F, 'The Impact of COVID-19 Measures on the Rule of Law in the Western Balkans and the Increase of Authoritarianism' (2022) 9(4) European Journal of Comparative Law and Governance 271

1941. Huckova R and Semanova M, 'The Position and Regulation of Gatekeepers in the Context of the New European Legislation' (2022) 6 EU and Comparative Law Issues and Challenges Series 509

1942. Husa J, 'Comparative Law, Literature and Imagination: Transplanting Law into Works of Fiction' (2021) 28(3) Maastricht Journal of European and Comparative Law 371

1943. James A, 'Procedural Fairness and Access to Court' (2022) (4) European Human Rights Law Review 422

1944. Jentsch V, 'Contractual Performance, Breach of Contract and Contractual Obligations in Times of Crisis: On the Need for Unification and Codification in European Contract Law' (2021) 29(6) European Review of Private Law 853

1945. Joerges C, 'Authoritarian Liberalism, Authoritarian Managerialism and the Search for Alternatives: Comments on Michael A. Wilkinson's Authoritarian Liberalism' (2022) 1(1) European Law Open 178

1946. Kalintiri A, 'Judicial Review of Administrative Discretion in the Administration State' (2021) 14(2) Review of European Administrative Law 121

1947. Karapetian A, 'The Impact of Emerging Preventive Restructuring Mechanisms on Directors' Duties to Creditors in the Event of (Pre-)Insolvency in the UK and the Netherlands' (2022) 9(2) European Journal of Comparative Law and Governance 187

1948. Karner M, 'Interplay Between European Union Criminal Law and Administrative Sanctions: Constituent Elements of Transposing Punitive Administrative Sanctions into National Law' (2022) 13(1) New Journal of European Criminal Law 42

1949. Kaspiarovich Y and Levrat N, 'European Union Mixed Agreements in International Law under the Stress of Brexit' (2021) 14(2) European Journal of Legal Studies 121

1950. Kenny D and Musgrove McCann L, 'Directive Principles, Political Constitutionalism, and Constitutional Culture: The Case of Ireland's Failed Directive Principles of Social Policy' (2022) 18(2) European Constitutional Law Review 207

1951. Kochenov D and Morijn J, 'Strengthening the Charter's Role in the Fight for the Rule of Law in the EU: The Cases of Judicial Independence and Party Financing' (2021) 27(4) European Public Law 759

1952. – – and Butler G, 'Independence of the Court of Justice of the European Union: Unchecked Member States Power After the Sharpston Affair' (2021) 27(1-3) European Law Journal 262

1953. Komanovics A, 'Hungary and the Luxembourg Court: The CJEU's Role in the Rule of Law Battlefield' [2022] 6 EU and Comparative Law Issues and Challenges Series 122

1954. Koutrakos P, 'Confronting the Complexities of Mixed Agreements – Opinion 1/19 on the Istanbul Convention' (2022) 47(2) European Law Review 247

1955. – – 'Primacy, the Rule of Law and the Autonomy of the EU Legal Order: Three Common Threads' (2022) 47(3) European Law Review 289

1956. Krajewski M, 'Relative Authority of Judicial and Extra-Judicial Review: EU Courts, Boards of Appeal, Ombudsman' (2022) 47(4) European Law Review 584

1957. Krepelka F, 'Transformations of Directives into Regulations: Towards a More Uniform Administrative Law?' (2021) 27(4) European Public Law 781

1958. Krommendijk J, 'National Courts and Preliminary References to the Court of Justice' (2022) 47(2) European Law Review 283

1959. Kukovec D, 'The Court of Justice of the European Union for Hedgehogs' (2021) (1) Jean Monnet Papers <https://jeanmonnetprogram.org/paper/the-court-of-justice-of-the-european-union-for-hedgehogs/ > accessed 22 November 2022

1960. Larsen S R, 'European Public Law After Empires' (2022) 1(1) European Law Open 6

1961. – – 'The Constitutional Theory of the Federation and the European Union' (2022) 47(5) European Law Review 720

1962. Łazowski A, 'Court of Justice of the European Union and the United Kingdom after Brexit: Game Over?' (2022) 47(5) European Law Review 666

1963. Leijon K and Glavina M, 'Why Passive? Exploring National Judges' Motives for Not Requesting Preliminary Rulings' (2022) 29(2) Maastricht Journal of European and Comparative Law 263

1964. Leino-Sandberg P, 'Enchantment and Critical Distance in EU Legal Scholarship: What Role for Institutional Lawyers?' (2022) 1(2) European Law Open 231

1965. Londardo L and Ruiz Cairo E, 'The European Court of Justice Allows Third Countries to Challenge EU Restrictive Measures' (2022) 18(1) European Constitutional Law Review 114

1966. Mancano L, 'A Theory of Justice? Securing the Normative Foundations of EU Criminal Law Through an Integrated Approach to Independence' (2022) European Law Journal <https://doi.org/10.1111/eulj.12442> > accessed 4 December 2022

1967. Maranaku E, 'The Right Not to Be Punished Twice: A Differentiation Between Administrative and Criminal Punishments' (2022) (5) European Human Rights Law Review 511

1968. Marique Y and Slautsky E, 'Resistance to Transplants in the European Administrative Space: An Open-Ended Reading of Legal Changes' (2021) 14(1) Review of European Administrative Law 7

1969. Marques F, 'Rule of Law, National Judges and the Court of Justice of the European Union: Let's Keep it Juridical' (2021) 27(1-3) European Law Journal 228

1970. Martire J, 'The Missing Piece of the European Crisis: Europe's Autoimmunitary Disease' (2021) (2) Jean Monnet Papers <https://jeanmonnetprogram.org/paper/the-missing-piece-of-the-european-crisis-europes-autoimmunitary-disease/ > accessed 22 November 2022

1971. Mathews J, 'Law of Administrative Organization of the EU. A Comparative Approach' (2022) 15(2) Review of European Administrative Law 79

1972. Mavronicola N, 'Torture, Inhumanity and Degradation Under Article 3 of the ECHR: Absolute Rights and Absolute Wrongs' (2022) (2) European Human Rights Law Review 216

1973. Mayoral J A and Wind M, 'Unleashed Dialogue or Captured by Politics? The Impact of Judicial Independence on National Higher Courts' Cooperation with the CJEU' (2022) 29(9) Journal of European Public Policy 1433

1974. McCann A, 'The Emergence of Assisted Dying Legislation in Europe in Light of Supra-National Governance Failures Editorial' (2022) 9(1) European Journal of Comparative Law and Governance 1

1975. McQuigg R, 'Responding to a Crisis: The European Court of Human Rights and the COVID-19 Pandemic' (2022) (4) European Human Rights Law Review 383

1976. Menéndez A J and Müllerson R, 'Three Times Lucky: In Dialogue with Rein Müllerson' (2022) 1(2) European Law Open 446

1977. Merdzanovic A and Nicolaidis K, 'Advocacy for a Citizen-Centric Rule of Law Agenda: How Do We Bring the Rule of Law to Life?' (2021) 27(1-3) European Law Journal 297

1978. Micklitz H-W, 'What Kind of Private Law for What Kind of Europe? A Rejoinder to Martijn Hesselink's "Progressive Code"' (2022) 1(2) European Law Open 402

1979. Miller J A, 'Peering Inside the Preliminary Reference Box: Coleman v Attridge Law' (2021) 6(3) European Papers – A Journal on Law and Integration 1553

1980. Mitsilegas V, 'The EU External Border as a Site of Preventive (In)Justice' (2022) European Law Journal <https://doi.org/10.1111/eulj.12444> accessed 4 December 2022

1981. Monar J, 'Reflections on the Place of Criminal Law in the European Construction' (2022) European Law Journal < https://doi.org/10.1111/eulj.12446> accessed 4 December 2022

1982. Monica A, 'The State-Owned Maritime Concessions in Italy: The Cross-Border Interest Issue and the Ongoing Reform of the Sector' (2022) 15(2) Review of European Administrative Law 35

1983. Moraru M and Bercea R, 'The First Episode in the Romanian Rule of Law Saga: Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociatia Forumul Judecatorilor din Romania, and Their Follow-Up at the National Level' (2022) 18(1) European Constitutional Law Review 82

1984. Morvillo M and Weimer M, 'Who Shapes the CJEU Regulatory Jurisprudence? On the Epistemic Power of Economic Actors and Ways to Counter It' (2022) 1(3) European Law Open 510

1985. Möschel M, 'Jura Novit Curia and the European Court of Human Rights' (2022) 33 European Journal of International Law 631

1986. Neuvonen P J, 'A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?' (2022) 1(1) European Law Open 60

1987. Nicola F G, 'Legal Diplomacy in an Age of Authoritarianism' (2021) 27(2) Columbia Journal of European Law 152

1988. Nicolaides P, 'The Danger of Judicial Nationalism' (2021) 28(6) Maastricht Journal of European and Comparative Law 741

1989. Nicolosi S F, van Schagen E and Sluijs J, 'In Search for "Good" Evidence and Its Use for Better EU Legislation: Context, Insights and Prospects from Different Policy Domains [Editorial]' (2022) 24(1) European Journal of Law Reform 3

1990. Novotná M and Štefanko J, 'Conceptual Autonomy and Semantic Identity in EU Law: Balancing on the Edge of Prescription and Extinguishment of a Right' (2021) 71(6) Zbornik Pravnog fakulteta u Zagrebu 849

1991. Oliveira e Silva S, 'Regulation (EU) 2018/1805 on the Mutual Recognition of Freezing and Confiscation Orders: A Headlong Rush into Europe-Wide Harmonisation?' (2022) 13(2) New Journal of European Criminal Law 198

1992. O'Neill A, 'BREXIT, Democracy and the Rule of Law' (2021) 27(1-3) European Law Journal 50

1993. O'Neill R, 'Effet Utile and the (Re)Organisation of National Judiciaries: A Not So Unique Institutional Response to a Uniquely Important Challenge?' (2021) 27(1-3) European Law Journal 240

1994. Östlund A, 'Effective Judicial Protection – to What Effect and at Whose Service?' (2022) 47(2) European Law Review 175

1995. Ouwerkerk J W, 'Old Wine in a New Bottle: Shaping the Foundations of EU Criminal Law Through the Concept of Legal Interests (Rechtsgüter)' (2022) European Law Journal < https://doi.org/10.1111/eulj.12447> accessed 4 December 2022

1996. Ovádek M, 'The Making of Landmark Rulings in the European Union: The Case of National Judicial Independence' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2066156> accessed 30 November 2022

1997. Partlett W, 'Russia›s 2020 Constitutional Amendments: A Comparative Analysis' [2021] 23 Cambridge Yearbook of European Legal Studies 311

1998. Pavani G, 'European Sharing and Collaborative Cities: The Italian Way' (2022) 28(1) European Public Law 79

1999. Pavone T, 'The Ghostwriters: Lawyers and the Politics behind the Judicial Construction of Europe' (2022) 47(5) European Law Review 723

2000. Persdotter M and Iossa A, 'On Legal Geography as an Analytical Toolbox for EU Legal Studies' (2022) 1(1) European Law Open 126

2001. Peršak N, 'Principles of EU Criminalisation and Their Varied Normative Strength: Harm and Effectiveness' (2022) European Law Journal < https://doi.org/10.1111/eulj.12445> accessed 4 December 2022

2002. Petrić D, 'How to Make a Unicorn or 'There Never Was an "Acte Clair" in EU Law': Some Remarks about Case C-561/19 Consorzio Italian Management' [2021] 17 Croatian Yearbook of European Law & Policy 307

2003. Pistor K, 'Legal Coding Beyond Capital?' (2022) 1(2) European Law Open 344

2004. Poesen M, 'Regressing into the Right Direction: Non-Contractual Claims in Proceedings Between Contracting Parties Under Article 7 of the Brussels Ia Regulation [Case Note]' (2021) 28(3) Maastricht Journal of European and Comparative Law 390

2005. Polak J, 'Varying Perceptions of the Legal Effect of EU Post-Legislative Guidance' (2022) 47(1) European Law Review 52

2006. Pollicino O, 'Judicial Protection of Fundamental Rights on the Internet: A Road Towards Digital Constitutionalism?' (2022) 47(1) European Law Review 143

2007. Popelier P and others, 'A Research Agenda for Trust and Distrust in a Multilevel Judicial System' (2022) 29(3) Maastricht Journal of European and Comparative Law 351

2008. – – Gentile G and van Zimmeren E, 'Bridging the Gap Between Facts and Norms: Mutual Trust, the European Arrest Warrant and the Rule of Law in an Interdisciplinary Context' (2021) 27(1-3) European Law Journal 167

2009. Power V, 'Ships, Sovereign Immunity and the Subtleties of the Brussels I Regulation: Case C-641/18 LG and Others v. Rina SpA, Ente Registro Italiano Navale: Ships, Sovereign Immunity and the Subtleties of Brussels I: Rina [Case Note]' (2021) 28(3) Maastricht Journal of European and Comparative Law 419

2010. Pressi M, 'The Use of Algorithms Within Administrative Procedures: National Experiences Compared Through the Lens of European Law' (2021) 14(2) Review of European Administrative Law 69

2011. Princen S, 'The Use of Evidence in Evidence-Based Legislation: A Reflection' (2022) 24(1) European Journal of Law Reform 147

2012. Purnhagen K P, 'You Want It Extra CRISPERY? Legal Disruption Through New Plant Breeding Technologies in the EU' [2021] 40(1) Yearbook of European Law 374

2013. Rajkovic N M, 'The European Union and Critical Legal Cartography: Old Geopolitics, Worn Geopoetry and the Return of Geopower' (2022) 1(1) European Law Open 144

2014. Ramos V C, '2021 – Turning Point for the EU and EU Criminal Law?' (2021) 12(4) New Journal of European Criminal Law 505

2015. Ramshaw A, 'A Crack in the Mirror: Reclaiming the Human Rights Narrative from Strasbourg in Agenda Setting Theory and Legal Narrative' (2022) (2) European Human Rights Law Review 144

2016. Reich A, 'The Impact of the European Court of Justice on Neighbouring Countries' (2022) 47(4) European Law Review 592

2017. Reiners K and Versluis E, 'NGOs as New Guardians of the Treaties? Analysing the Effectiveness of NGOs as Decentralised Enforcers of EU Law' (2022) Journal of European Public Policy 1

2018. Renberg K M and Tolley M C, 'Mapping Europe's Cosmopolitan Legal Order: A Network Analysis of the European Court of Human Rights, the Court of Justice of the European Union, and High National Courts' (2021) 14(2) European Journal of Legal Studies 45

2019. Rennuy N, 'Posted Workers, Judges and Smokescreens: Narrowing the Gap in Judicial Control' (2022) 47(4) European Law Review 463

2020. Rodin S, 'Time, History and Legal Interpretation' (2021) 28(4) Maastricht Journal of European and Comparative Law 433

2021. Romeo G, 'What's Wrong with Depoliticisation?' (2022) 1(1) European Law Open 168

2022. Ruffert M, 'Law of Administrative Organization of the EU: A Comparative Approach' (2022) 47(1) European Law Review 147

2023. Runcheva Tasev H, Apostolovska-Stepanoska M, Ognjanoska L, 'The Potential of Article 259 TFEU as a Tool for Upholding the Mutual Trust in the EU' (2022) 6 EU and Comparative Law Issues and Challenges Series 625

2024. Scarcello O, 'Authoritarian Constitutionalism: An Oxymoron? The Case of Costantino Mortati's Early Writings (1931-1940)' (2021) (3) Jean Monnet Papers <https://jeanmonnetprogram.org/paper/authoritarian-constitutionalism-an-oxymoron-the-case-of-costantino-mortatis-early-writings-1931-1940/> accessed 22 November 2022

2025. Schmitz B, 'Rethinking the Public Interest in Consumer Protection: A Critical Comparative Analysis of Article 6 Rome I Regulation' (2022) 9(2) European Journal of Comparative Law and Governance 210

2026. Scolnicov A, 'Lifelike and Lifeless in Law: Do Corporations Have Human Rights?' (2022) (4) European Human Rights Law Review 353

2027. Singh D R, 'Legal Tradition and Human Rights: A Quantitative Comparative Analysis of Developing Countries' (2021) 23(3) European Journal of Law Reform 339

2028. Somek A, 'Two Times Two Temperaments of Legal Scholarship and the Question of Commodification' (2022) 1(3) European Law Open 627

2029. Soroiu A and de Carvalho M C, 'Lawtify Premium: Public.Resource.Org (T-185/19), a Judicial Take on Standardisation and Public Access to Law' (2022) 15(2) Review of European Administrative Law 57

2030. Spano R, 'The Rule of Law as the Lodestar of the European Convention on Human Rights: The Strasbourg Court and the Independence of the Judiciary' (2021) 27(1-3) European Law Journal 211

2031. Steinebach Y, 'Administrative Traditions and the Effectiveness of Regulation' (2022) Journal of European Public Policy <https://doi.org/10.1080/13501763.2022.2070240> accessed 30 November 2022

2032. Szwed M, 'The Polish Constitutional Tribunal Crisis from the Perspective of the European Convention on Human Rights' (2022) 18(1) European Constitutional Law Review 132

2033. Šadl U and others, 'Law and Orders: The Orders of the European Court of Justice as a Window in the Judicial Process and Institutional Transformations' (2022) 1(3) European Law Open 549

2034. Tagiuri G, 'How EU Law Politicises Markets and Creates Spaces for Progressive Coding' (2022) 1(2) European Law Open 390

2035. Teasdale J, 'Implementation of Law Reform Proposals in the United Kingdom: A Continuing Dilemma?' (2021) 23(4) European Journal of Law Reform 405

2036. Tjon Soei Len L K L, 'Progress Towards What? On the Need for an Intersectional Paradigm Shift in European Private Law' (2022) 1(2) European Law Open 363

2037. Trotter S, 'On the Potential of Place and Place of Potential' (2022) 1(1) European Law Open 135

2038. Tryfonidou A, 'The ECJ Recognises the Right of Rainbow Families to Move Freely Between EU Member States: The VMA Ruling' (2022) 47(4) European Law Review 534

2039. Tzanou M and Karyda S, 'Privacy International and Quadrature du Net: One Step Forward Two Steps Back in the Data Retention Saga?' (2022) 28(1) European Public Law 123

2040. Vallejo R, 'The Private Administrative Law of Technical Standardization' [2021] 40(1) Yearbook of European Law 172

2041. Van Cleynebreugel P, 'The Commission's Digital Services and Markets Act Proposals: First Step Towards Tougher and More Directly Enforced EU Rules?' (2021) 28(5) Maastricht Journal of European and Comparative Law 667

2042. – – 'BPost and Nordzucker: Searching for the Essence of Ne Bis In Idem in European Union Law: ECJ 22 March 2022, Case C-117/20, BPost v Autorité belge de la concurrence Case C-151/20, Bundeswettbewerbsbehörde v Nordzucker AG e.a' (2022) 18(2) European Constitutional Law Review 357

2043. Van Elten K and Rehder B, 'Dieselgate and Eurolegalism. How a Scandal Fosters the Americanization of European Law' (2022) 29(2) Journal of European Public Policy 281

2044. Van Samsonow W, 'Executive Powers During the COVID-19 Epidemic' (2022) 9(1) European Journal of Comparative Law and Governance 56

2045. Varga Z, 'The Effectiveness of the Kobler Liability in National Courts' (2022) 47(1) European Law Review 141

2046. Vauchez A, 'EU Law, Down to Earth' (2022) 1(1) European Law Open 148

2047. Vergara M E and Puig G V, 'The Quiet Architect Finds Its Voice: The Primacy of the Law of the European Union After Press Release No 58/20 of the Court of Justice of the European Union Scrutiny' (2021) 27(4) European Public Law 673

2048. Visser I, Breedeveld J A and Hasnaoui Y, 'Different Models of Forbearance and Mortgage Enforcement Proceedings: Comparing Default Resolution Approaches in Europe' (2022) 9(2) European Journal of Comparative Law and Governance 152

2049. Vogiatzis N, 'The Administrative Functions of the Court of Justice of the European Union' (2022) 47(2) European Law Review 222

2050. Von Papp K, 'EU Law and International Arbitration: Managing Distrust Through Dialogue' (2022) 47(1) European Law Review 146

2051. Voorwinden A, 'Regulating the Smart City in European Municipalities: A Case Study of Amsterdam' (2022) 28(1) European Public Law 155

2052. Vranes E, 'Enforcing WTO/GATS Law and Fundamental Rights in EU Infringement Proceedings: An Analysis of the ECJ's Ruling in Case C-66/18 Central European University' (2021) 28(5) Maastricht Journal of European and Comparative Law 699

2053. Waele H D, 'Re-Appraising Success and Failure in the Life of the European Court of Justice' [2021] 23 Cambridge Yearbook of European Legal Studies 54

2054. Wallerman Ghavanini A, 'Mostly Harmless: The Referring Court in the Preliminary Reference Procedure' (2022) 47(3) European Law Review 310

2055. Weber F, 'The Pluralism of Values in an Identity-Framed Verbund: Federal Belonging in the European Union After the Rule of Law Conditionality Judgments' (2022) 47(4) European Law Review 514

2056. Weiss W, 'Pandemic and Administrative EU Soft Law: Persistent Challenges to the Rule of Law in the EU and Possible Solutions' (2022) 15(1) Review of European Administrative Law 7

2057. Wild B, 'ECtHR Cases April-June 2021'(2022) 13(1) New Journal of European Criminal Law 100

2058. – – 'ECtHR Cases July-September 2021' (2022) 13(1) New Journal of European Criminal Law 116

2059. – – 'ECtHR Cases October-December 2021' (2022) 13(1) New Journal of European Criminal Law 130

2060. Winter L B, 'European Public Prosecutor's Office: Article-by-Article Commentary' (2021) 12(4) New Journal of European Criminal Law 624

2061. Witte A, 'The Interaction Between Administrative and Judicial Review at the European Level: Notes on the Judgment of the General Court of 6 October 2021 in Joined Cases T-351/18 and T-584/18, Ukrselhosprom PCF LLC and Versobank AS v ECB' (2022) 15(1) Review of European Administrative Law 45

2062. Zhelyazkova A and Thomann E, '"I did It My Way": Customisation and Practical Compliance with EU Policies' (2022) 29(3) Journal of European Public Policy 427