

Wolfgang Heusei • Jean-Philippe Rageade
Editors

The Authority of EU Law

Do We Still Believe in It?

Springer

Contents

Part I The authority of European law

The authority of European law: Do we still believe in it?.....	3
Joseph H. H. Weiler	
1 The concept of “authority”.....	3
2 Reasons for the current stress on the authority of EU law.....	5
3 Material welfare and the authority of EU law.....	5
4 Values and the authority of EU law.....	7
5 Two ostensibly conflicting sets of values.....	8
6 Democracy, human rights and the rule of law: An inextricable triad.....	9
7 Active citizenship, clientelism and the sense of rights and duties.....	10
8 Diversity as European strength.....	12
9 No <i>demos</i> , no democratic accountability, no democratic representation: the democratic deficit.....	13
10 The role of the court.....	17

The Court of Justice of the European Union as the guardian of the authority of EU law: A networking exercise.....	21
--	----

Koen Lenaerts

1 Introduction.....	21
2 The dialogue between the Court of Justice and the national courts of the Member States.....	21
3 The dialogue between the national courts of the Member States.....	25
4 Conclusion.....	30

Part II The impact of legislation on the authority of EU law

A view front the European Commission.....	33
Karen Banks	
1 Lobbyists, delegated and implementing acts, and subsidiarity.....	33
2 Quality of legislation.....	36

Can the authority of EU law be taken for granted? A tale of principles and realities.....	39
Giorgio Maganza	
1 Introduction.....	39
2 Can the law-making affect the authority of EU law?.....	41
3 What is most likely to affect the authority of EU law?.....	45
4 Conclusion.....	49
A view from Parliament.....	51
Diana Wallis	
1 Introductory remarks.....	51
2 The politician as legislator.....	52
3 Democracy and transparency.....	53
4 The parliamentary legislative process.....	54
5 Contrasting example of the European Parliament legislative process	55
6 End thoughts.....	57
Part III The authority of EU law: A view from Constitutional and Supreme Courts	
L'autorite du droit de l'Union europeenne - Le point de vue d'un juge frangais.....	61
Jean-Marc Sauve	
1 Les juges frangais ont elabore des mecanismes d'articulation qui limitent les risques de conflit entre le droit europeen et le droit national.....	62
2 Cette oeuvre pretorienne ne suffit toutefois pas à aplanir toutes les difficultes.....	66
A view from the Danish Supreme Court in light of the <i>Ajos Judgment</i>...	73
Lars Hjortnaes	
1 Brief introduction to the <i>Ajos</i> judgment and background of the case.....	73
2 Interpreting Danish law in conformity with EU law.....	76
3 The binding effect of a principle of EU law.....	79
4 Perspectives.....	84
EuGH-EGMR-BVerfG: Von der Multipolarität zum Verbund der Gerichtsbarkeiten im Bereich des Grundrechtsschutzes.....	87
Christine Langenfeld	
1 Vorbemerkung.....	87
2 Der Gerichtsverbund im Bereich des Grundrechtsschutzes - Marksteine der Rechtsprechung des Bundesverfassungsgerichts.....	88
3 Herausforderungen und Zielsetzungen des Gerichtsverbunds im Bereich des Grundrechtsschutzes.....	106
4 Schlussbemerkung.....	110
The authority of EU law as viewed from a National Court: The United Kingdom.....	113
Lord Thomas of Cwmgiedd	

1	Introduction.....	113
2	The role of courts.....	113
3	The perceived position of the CJEU in relation to UK political and public opinion.....	116
4	The case law in relation to age discrimination.....	117
5	The need to reconsider the approach of courts.....	118
6	The development of a separate UK EU jurisprudence.....	121

**The authority of EU law: The case of horizontal application of
fundamental rights.....** 123

Maciej Szpunar

1	Introductory remarks.....	123
2	Interpretation of fundamental rights and general principles of law as a challenge to the authority of EU law.....	125
3	Autonomy of EU law.....	125
4	General principles in horizontal situations.....	126
5	What does “horizontal application” mean?.....	126
6	The effect of Art. 51 of the Charter.....	127
7	Do the general principles of EU law matter after the Charter became a binding instrument?.....	128
8	May the general principles of EU law apply in horizontal situations?....	128
9	Consistent Interpretation of national law: limits resulting from <i>non contra legem</i>	131
10	Legal certainty for individuals.....	131
11	Conclusions.....	133

Part IV Remaining and new obstacles to the single market rules:

**Does the economic crisis justify a weakening of the authority
of EU law?**

**The authority of the law: Some personal reflections on the internal
market and European integration.....** 137

Marc van der Woude

1	Introduction.....	137
2	When did it go wrong?.....	139
3	Some uncertainties.....	143
4	Dealing with uncertainty.....	145

The authority of EU law: What does it require and why is it fading?.... 149

Hans-Jürgen Hellwig

1	Introduction.....	149
2	Constitutive elements of the authority of the law.....	150
3	Realism as a precondition for respecting the authority of the law.....	151
4	The Monetary Union.....	153
5	Migration.....	154
6	A Europe of variable geographic composition and various speeds.....	154

7	Intergovernmental versus community Solutions.....	155
8	Enforcement.....	157
9	Public support.....	159
10	The reaction of EU institutions.....	160
“Questions identitaires” as challenges to the single market.....		163
Luis Ortiz Bianco		
Protectionism in Central and Eastern Europe and the EU Internal Market: the case of retail..... 169		
Ilya G. J. Bruggeman and Christian Verschueren		
1	Introduction.....	169
2	The rise of protectionism and populism.....	170
3	Protectionism against Western retailers in Central and Eastern Europe...	173
4	Economic impact of protectionism.....	176
5	Filing cases for infringements against EU law.....	178
6	Prevention is better than cure.....	183
7	Conclusion: The Single Market more important than before?.....	188
Part V The Economic and Monetary Union as an illustration of “the incomplete union”: The authority of EU law stuck half-way between supranational and national sovereignty		
Die Wirtschafts- und Währungsunion als Herausforderung der Autorität des Unionsrechts..... 195		
Peter-Christian Müller-Graff		
1	Zur Bedeutung der Frage nach der Autorität des Unionsrechts.....	195
2	Die Befolgung des Rechts der Wirtschafts- und Währungsunion als Herausforderung für die Autorität des Unionsrechts.....	201
3	Antworten auf die Herausforderungen.....	212
The need to complete the EMU: cui bono?..... 221		
Gerolf Annemans		
1	Introduction.....	221
2	Establishing an EU Finance Minister.....	222
3	Turning the European Stability Mechanism (ESM) into a European Monetary Fund (EMF).....	223
4	Expansion of the Euro area.....	224
5	Further convergence of tax policies.....	226
6	Risk-sharing and risk-reduction.....	226
7	Conclusions.....	228
Completing v. rethinking the European Monetary Union?..... 231		
Pierre-Henri Conac		
Completing v. rethinking the European Monetary Union?..... 235		
Bernd Kaltenhäuser		
1	Foundations of the Monetary Union.....	235

7	Intergovernmental versus community Solutions.....	155
8	Enforcement.....	157
9	Public support.....	159
10	The reaction of EU institutions.....	160
“Questions identitaires” as challenges to the single market.....		163
Luis Ortiz Bianco		
Protectionism in Central and Eastern Europe and the EU Internal Market: the case of retail..... 169		
Ilya G. J. Bruggeman and Christian Verschueren		
1	Introduction.....	169
2	The rise of protectionism and populism.....	170
3	Protectionism against Western retailers in Central and Eastern Europe...	173
4	Economic impact of protectionism.....	176
5	Filing cases for infringements against EU law.....	178
6	Prevention is better than cure.....	183
7	Conclusion: The Single Market more important than before?.....	188
Part V The Economic and Monetary Union as an illustration of “the incomplete union”: The authority of EU law stuck half-way between supranational and national sovereignty		
Die Wirtschafts- und Währungsunion als Herausforderung der Autorität des Unionsrechts..... 195		
Peter-Christian Müller-Graff		
1	Zur Bedeutung der Frage nach der Autorität des Unionsrechts.....	195
2	Die Befolgung des Rechts der Wirtschafts- und Währungsunion als Herausforderung für die Autorität des Unionsrechts.....	201
3	Antworten auf die Herausforderungen.....	212
The need to complete the EMU: cui bono?..... 221		
Gerolf Annemans		
1	Introduction.....	221
2	Establishing an EU Finance Minister.....	222
3	Turning the European Stability Mechanism (ESM) into a European Monetary Fund (EMF).....	223
4	Expansion of the Euro area.....	224
5	Further convergence of tax policies.....	226
6	Risk-sharing and risk-reduction.....	226
7	Conclusions.....	228
Completing v. rethinking the European Monetary Union?..... 231		
Pierre-Henri Conac		
Completing v. rethinking the European Monetary Union?..... 235		
Bernd Kaltenhäuser		
1	Foundations of the Monetary Union.....	235

7	Intergovernmental versus community Solutions.....	155
8	Enforcement.....	157
9	Public support.....	159
10	The reaction of EU institutions.....	160
“Questions identitaires” as challenges to the single market.....		163
Luis Ortiz Bianco		
Protectionism in Central and Eastern Europe and the EU Internal Market: the case of retail..... 169		
Ilya G. J. Bruggeman and Christian Verschueren		
1	Introduction.....	169
2	The rise of protectionism and populism.....	170
3	Protectionism against Western retailers in Central and Eastern Europe...	173
4	Economic impact of protectionism.....	176
5	Filing cases for infringements against EU law.....	178
6	Prevention is better than cure.....	183
7	Conclusion: The Single Market more important than before?.....	188
Part V The Economic and Monetary Union as an illustration of “the incomplete union”: The authority of EU law stuck half-way between supranational and national sovereignty		
Die Wirtschafts- und Währungsunion als Herausforderung der Autorität des Unionsrechts..... 195		
Peter-Christian Müller-Graff		
1	Zur Bedeutung der Frage nach der Autorität des Unionsrechts.....	195
2	Die Befolgung des Rechts der Wirtschafts- und Währungsunion als Herausforderung für die Autorität des Unionsrechts.....	201
3	Antworten auf die Herausforderungen.....	212
The need to complete the EMU: cui bono?..... 221		
Gerolf Annemans		
1	Introduction.....	221
2	Establishing an EU Finance Minister.....	222
3	Turning the European Stability Mechanism (ESM) into a European Monetary Fund (EMF).....	223
4	Expansion of the Euro area.....	224
5	Further convergence of tax policies.....	226
6	Risk-sharing and risk-reduction.....	226
7	Conclusions.....	228
Completing v. rethinking the European Monetary Union?..... 231		
Pierre-Henri Conac		
Completing v. rethinking the European Monetary Union?..... 235		
Bernd Kaltenhäuser		
1	Foundations of the Monetary Union.....	235

2 The evolution of the EMU.....	236
3 Future perspectives.....	237

Part VI Current Threats to the rule of law in the EU: The fundaments on which the authority of EU law rests

Article 7 TEU and the rule of law mechanism: A dissuasive weapon or a paper tiger?.....	241
--	-----

Inger Österdahl

1 Introduction.....	241
2 Article 7: The mother of all mechanisms?.....	241
3 Expulsion from the EU?.....	246
4 What's in the Rule of Law Framework?.....	250
5 Conclusion: A persuasive paper tiger?.....	257

Upholding the rule of law for the future of Europe.....	261
--	-----

Emmanuel Crabit

1 The rule of law cannot be taken for granted.....	261
2 The rule of law is essential for the application of EU law.....	264
3 The rule of law is crucial for economic growth.....	266
4 The rule of law is a key component of the debate on the future of Europe.....	268

Developpements recents du cadre juridique de l'Union europeenne pour faire face aux menaces pour les valeurs democratiques dans les Etats membres.....	271
---	-----

Maria Jose Rangei de Mesquita

1 Remarques introducitives.....	271
2 Evolutions du cadre juridique de l'Union pour faire face aux menaces pour les valeurs de l'Union europeenne.....	273
3 Remarques (critiques) conclusives et reflexions pour l'avenir.....	285

Les attaques terroristes et l'etat d'urgence en France.....	291
--	-----

Francis Lamy

1 L'etat d'urgence : un regime donnant temporairement certains pouvoirs renforcees de police administrative aux prdfets et au ministre de l'interieur, qu'ils utilisent, s'ils l'estiment necessaire.....	292
2 Mise en ceuvre de l'ötat d'urgence.....	294
3 Appreciation sur l'etat d'urgence.....	297
4 Conclusion.....	300

Current threats to the rule of law in the EU: The foundation on which the authority of EU law rests.....	301
---	-----

Pauline Koskelo

1 Introductory remarks.....	301
2 The rule of law and judicial independence as a key pillar of it.....	302
3 Constitutional guarantees: And the importance of a solidly rooted constitutional culture.....	303

4 Access to an independent judiciary as an element of EU law.....	304
5 The concept of judicial independence.....	305
6 The EU context.....	306
Part VII The crisis of the European project undermining the authority of EU law: The EU in search for legitimacy	
The EU, democracy and institutional structure: Past, present and future.....	311
Paul Craig	
1 Introduction.....	311
2 Institutional structure and democracy: The past.....	313
3 Institutional structure and democracy: The present.....	314
4 Institutional structure and democracy: The future—four constraints.....	316
5 Institutional structure and democracy: The paradox.....	330
Legitimität und Finalität des europäischen Projekts.....	335
Wolfgang Heusei	
1 Das Legitimitätsproblem der Union: Ursachen und Wirkung.....	336
2 Die künftige Entwicklung der EU: „ever closer Union“ oder „united in diversity“?.....	343
Europa muss noch enger zusammenwachsen.....	347
Katarina Barley	
Quo vadis Europe? The future of Europe under pressure.....	351
Wiebe de Vries	
1 Introduction.....	351
2 Europe's future in uncertain times.....	353
3 The rule of law in Europe is challenged.....	354
4 Scenarios for the future of Europe.....	354
5 The future of the EU at the crossroads.....	356
The European Union's never-ending search for legitimacy.....	359
Pedro Silva Pereira	
1 The EU's search for legitimacy: introductory remarks.....	359
2 The “democratic deficit” in the EU: Reality and perception.....	360
3 Three core reasons for the “democratic deficit” in the EU.....	361
4 “Democratic deficit” in the EU: What can we do about it?.....	363
5 For a true and meaningful European dimension of the European elections.....	363
6 Strengthening the link between the vote of the citizens and the decisions of the European institutions.....	365
7 Ensuring enough room for political alternatives and democratic choices at national level within the economic governance of the Eurozone.....	367
8 Time for a “democratic offensive” in the European Union.....	368

L'UE: quelle legitimite ? Quel avenir ?.....	371
Jean-Luc Sauron	
1 Quelle legitimite ?.....	371
2 Quel avenir ?.....	372
The role of government and trust in the market economy.....	375
Nadja König and Ludger Schuknecht	
1 Introduction.....	375
2 Core tasks of government: Someconceptual issues.....	376
3 The role of government and trust in the market economy: Some stylised facts.....	379
4 The link between trust andgovernment activities.....	391
5 Conclusions.....	393