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FÉDÉRATION INTERNATIONALE
POUR LE DROIT EUROPÉEN

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From Paris (1952) to The Hague (2021)

FIDE between the past and present

Morten Rasmussen

When the French lawyers André Philip, Maurice Rolland, Gérard Rosenthal and Michel Libersa met at the Palais de Justice in Paris at the end of 1952 to establish and define the purpose of the *Association des juristes européens* (AJE), they could hardly imagine how fundamentally the process of European integration would transform Europe over the next 70 years leading to the European Union of the present day. Nevertheless, the ambitions of this small group of pro-European French lawyers were high. Their aim was to ‘bring together and organise the jurists of the various countries of Europe attached to the European idea, for the joint study of the problems of public and private law which the development of the European Community poses, and for the purpose of bringing to the latter any legal help it may need’. With the formal launch of the AJE in July 1954, it proved much harder than expected to bring the European jurists together in one association. Seven years later, in October 1961, FIDE was finally established in Brussels, but only after the AJE, together with the director of the legal service of the European Commission Mi-

chel Gaudet, had worked hard to get associations of European law established in every Member State of the new European Communities (EC).

FIDE would follow the same agenda as originally formulated by the AJE. On the one hand, the task was to organise a European forum for academics, judges and practitioners interested in European law. On the other hand, the leading members of FIDE were strongly in favour of deeper European integration and wanted to actively support and facilitate the development of the European Court of Justice (ECJ) and the EC. However, it would quickly turn out that the relatively loose organisational structure chosen for FIDE would stand in the way of the second objective. The rotating membership of the *Bureau* and the lack of a permanent secretariat deprived FIDE of the leadership that could have developed a more consistent role for the association in relation both to the European institutions and the Member States. As a result, the ambition that FIDE could bring the EC ‘any legal help it may need’ was not fulfilled.

Their aim was to bring together and organise the jurists of the various countries of Europe attached to the European idea

1. Morten Rasmussen is an Associate Professor at the Saxo Institute, University of Copenhagen.

In the 1960s, FIDE congresses did support and legitimise the foundational doctrines of a ‘new legal order’ of constitutional European law. But the association never managed to organise a coherent transnational field of European lawyers beyond the congresses, and at the national level, the Member State associations were faced with an uphill fight to convince national legal elites about the merits of European law. In the 1970s, the importance of FIDE diminished, compared to the leading European law journals and the new

congresses. In the following decades, FIDE would focus on topical questions of European integration, such as trade liberalisation in the 1980s. However, the main focus of the association was now simply to organise the FIDE congresses, the broader ambition to function as ‘the wheeling flank of the army of European jurists’ (as cited below in the article by C. M. Wissels) for the constitutional interpretation of European law, in cooperation with the ECJ and the Commission, had been abandoned.



The question is how best to contribute to the contemporary debates about the EU and the many challenges Europe faces at the moment

European University Institute, along with a weakening of the activities of several of the national associations. Nevertheless, the ECJ under President Robert Lecourt attempted to use the venue offered by the FIDE congresses to engage with national judges and legal elites in order to justify and legitimate its case law. The result was a number of frank but also heated debates about the role of fundamental rights in European law at the FIDE

With FIDE still going strong in the new millennium, the question is how best to contribute to the contemporary debates about the EU and the many challenges Europe faces at the moment. Here the history of the association offers two divergent paths. FIDE can mobilise ideologically in favour of deeper integration, as it did in the past, and support and legitimise the continuing efforts of the supranational institutions and European fede-

ralists in this direction. Alternatively, FIDE can continue to focus on its congresses and move towards a more open and creative debate with national legal elites about what kind of European Union and what kind of European legal order fits the needs of contemporary Europe. Given how difficult it has been to defend the fact that European law has developed a constitutional practice, while the EU still has no popularly endorsed European Constitution, it may well be that the second path will lead to stronger solutions in the long term.

To read more about the history of FIDE: 60

Alexandre Bernier, *Constructing and Legitimizing: Transnational Jurist Networks and the Making of a Constitutional Practice of European Law, 1950-1970* (2012) *Contemporary European Law* 21, 3, pp. 399-416.

Morten Rasmussen, 'Establishing a Constitutional Practice: The Role of the European Law Associations', in Kaiser W. and Meyer J.-H. (eds), *Societal Actors in European Integration: Polity-Building and Policy-Making 1958-1992* (Palgrave Macmillan, 2013), pp. 173-196.

Rebekka Byberg, 'A Miscellaneous Network: The History of FIDE 1961-94' (2017) *American Journal of Legal History* 57, 2, pp. 142-165. (2020).



FIDE: A driving force of European integration and the development of EU law

————— José Luís da Cruz Vilaça¹ —————

I like FIDE, I always enjoyed FIDE Congresses, I am proud to have been FIDE President for the biennium 2016-2018. Why is that so?

First of all, FIDE has been, over the last 60 years or so, the most important and influential biennial gathering of European jurists discussing EU law: academics, judges, lawyers, members of all branches of the legal profession.

Since 1961, FIDE has ensured close cooperation between the European law Associations of each Member State and candidate countries to accession, as well as Associations of those European countries who decided to stay outside the Union but share common civilisational values of freedom, democracy and social cohesion, like Norway and Switzerland.

Over the years, as the common umbrella organisation of those Associations, FIDE has received increasing recognition among the international legal community for its remarkable influence on the development of European Union law, the mutual rapprochement between the different European legal traditions and the strengthening of the foundations of our common EU legal order.

Every two years, the FIDE Congresses bring together a growing number of lawyers and legal professionals from different backgrounds. The XXVIII Congress of Estoril in 2018 – the last that was held before the COVID-19 pandemic – was attended by more than 600 participants from European and non-European countries.

Every Congress is a great meeting of many of the best and most prestigious legal minds of Europe willing to discuss some of the most important and topical issues of European integration, the EU legal order and the rule of law in Europe.

Just to mention some of the latest topics for discussion, these range from the internal market and competition in the digital age to the protection of personal data in the new economy, from tax rulings to the challenges of immigration and asylum, from banking union to the division of competences between the EU and the Member States, from private enforcement of competition rules to the role of national courts in applying Union law, from Economic and Monetary Union to European citizenship, from public procurement to the information society, from the Charter of Fundamental Rights to the energy and environmental transition, from Brexit to

1. José Luís da Cruz Vilaça, Partner, Cruz Vilaça & Associados, Lisbon; President of FIDE (2016-2018); Former Judge of the Court of Justice of the European Union.

the role of parliaments in the European Union.

A forum which can boast such vast expertise provides an outstanding foundation for bringing a comparative dimension to our debates – an essential tool in understanding the diversity of legal realities in Europe and beyond. If I might coin a phrase, FIDE is where expertise meets dialogue.

But the comparative aspect is only one of many characteristics of the work of FIDE. During my tenure as President, I had the opportunity to observe and grasp its organisation, working methods and traditions. It is not a permanent think-tank or an organised research structure. FIDE is in fact a loosely institutionalised federation of legal experts, which is very well placed to shape the scientific and cultural framework of European legal thinking and the dissemination of knowledge amongst established academics and practitioners, as well as the younger generations of lawyers.

It is my personal experience that the involvement of the Court of Justice in every FIDE Congress and the personal commitment of its President and Members not only help to provide solutions for some of the thorniest organisational issues (such as interpretation in different languages) but greatly enhance

the quality of the debates and their practical interest. The same must be said of the support of the other EU institutions – notably the Commission, the Parliament, the Council, the ECB and other agencies and bodies – and of the involvement of its most senior officials, in particular as Rapporteurs for the different topics, speakers and moderators of the discussions.



**FIDE is where
expertise meets
dialogue**

In my view the FIDE Congresses also greatly contribute to the dialogue and mutual understanding between the EU judiciary and the other European judicial orders – the national courts and the European Court of Human Rights - giving their members and highest representatives the opportunity to meet and to participate in the discussions.

But I would also like to stress the importance of the contribution and the involvement of civil society and its institutions: universities, foundations, associations, law firms and companies, on whose support and involvement the success of a congress may depend, without calling into question the independence and autonomy of the discussions and the choice of topics.

Each Congress also requires huge organisational efforts and the mobilisation of important personal, financial and logistical resources.

The Portuguese candidature to the organisation of the second Congress to be held in Portugal, in 2018, was approved during the FIDE Steering Committee meeting in Madrid, at the occasion of the XXIV Congress, in 2010 - eight years in advance of the first available date. We immediately started to think about the general lines of the Congress with one main concern in mind: how to organise it without involving taxpayers' money?

The XXIX Congress, which was to be held this year in The Hague, is patiently waiting for the improvement of the situation created by the COVID-19 pandemic to take place next year. I wish our Dutch colleagues every success and good luck in their endeavours.

This says a lot about the difficulties and challenges facing initiatives on this scale.

However, as important as Congresses may be, they represent in fact the culmination of FIDE's activity, which continues between Congresses.

Just to mention my own experience, I recall that during the two years of the Portuguese presidency the Steering Committee prepa-

red and implemented several far-reaching decisions for FIDE's activity, which were approved at its two annual meetings, among them: the conclusion of a Protocol with the European Institute of Florence to house FIDE's archives, the construction of a permanent FIDE website and, most notably, the acceptance of a Romanian association as the newest member of FIDE.

Above all, FIDE as a lively and dynamic organisation will always be, to a large extent, the result of the commitment of the national associations that are its members.

At this point, I would like to conclude these unpretentious reflections by warmly congratulating my dear friend and colleague Daniel Sarmiento Ramirez-Escudero and EU Law Live for publishing this Weekend Edition on FIDE and thanking him for the remarkable efforts he is deploying for the progress and better understanding of EU law.

I wish him and his colleagues of the Executive Committee of the Spanish Association for the Study of European Law, an active and dedicated member of FIDE, every success.



The long and winding but thrilling road from FIDE 2020 to FIDE 2021!

The FIDE 2020 Board ¹

It was in a small pub in Tallinn in 2012, late at night, that a group of Dutch jurists visiting the biannual Congress of the International Federation for European Law (FIDE) in Estonia, brought up the bold idea of bringing FIDE to The Netherlands. FIDE had convened in the home of the Dutch seat of government on two previous occasions: in 1963 and in 1984. Much like the European Union itself, The Hague has changed since 1984. It has grown, its skyline has been transformed and its position as an international city of peace and justice consolidated, along with the presence of EU agencies Europol and Eurojust. The original plan was to welcome over 500 EU lawyers back to The Hague in May 2020. Only a little over a year ago the last national reports were finalised for what was to be the XXIX FIDE Congress Publications in May 2020. In February 2020 the organisation was well on track.

What a year it has been since. Despite it becoming rapidly clear that ‘the coronavirus’ was something to be taken seriously, we could have not imagined its devastating effects. It was still with an optimistic mindset, that we diverted our joint efforts towards a Congress

in the late summer of 2020. One should never lose hope too soon. But when it slowly but certainly became clear that this would also be too soon, we decided, together with the FIDE Steering Committee, the Court of Justice and other partners to move the Congress by a full year to 12-15 May 2021.

As we decided to push through with the publication of the three Congress volumes - we wanted the reports out there as a tangible result of the hard work of all rapporteurs – we were genuinely touched by the patience, resilience and cooperative spirit of all. At a time that Europe seems more divided and we are physically more distant from one another, there is also a strong sense of being in this together as Europeans.

In this spirit and with renewed energy we are now focusing on the organisation of FIDE 2021. To be honest, it will not be FIDE as usual. The pandemic is transforming the way we work and accelerating the speed at which we adopt technological innovations. Nevertheless, we have high hopes for an interesting, engaging, hybrid congress, partly in The Hague and partly online, hopefully with

1. Corinna Wissels (President), Member of the Administrative Jurisdiction Division of the Dutch Council of State; Marleen Botman (Social Programme Officer), Attorney-at-law at Pels Rijcken & Droogleever Fortuijn; Clara van Dam (Young FIDE), Assistant Professor Leiden Law School; Herman van Harten (Secretary General), Judge at the District Court of The Hague; Marlies Noort (Treasurer), Agent before the Court of Justice of the EU, Dutch Ministry of Foreign Affairs; Jorrit Rijpma (Scientific Programme Officer), Professor, Leiden Law School.

a few hubs across Europe, where delegates can meet and join the online discussions. We are currently developing the format and discussing possibilities with our congress partner Congress by Design, which has been quick to adjust its working methods to this new reality.

The impact of FIDE as an organisation and its members on the development of European law has been well-documented (2) and will be further discussed in this Weekend Edition. From the outset FIDE formed a unique transnational network bringing together key actors who stood at the basis of the 'new legal order' (3), who shaped European law as a discipline in its own right, and who legitimised the Court's 'constitutional' understanding of European Law at its early conferences in The Hague (1963) and Paris (1965) (4).

Whereas in the early 1960s, European law had yet to achieve its full potential, participants of the 1984 Congress may have considered primacy and direct effect as largely settled, as the European Communities were to embark on Jacques Delors' internal market project. At the same time, they could not have imagined the exponential growth in services, and the exciting, yet also disruptive, effects of the internet and new technology. In 2021, after years of crises that have shaken the EU to its very foundations and a pandemic that raises new questions of EU law, the European Union seems once again in need of FIDE to act as 'the wheeling flank of the army of European jurists' (5), to understand, explain and defend a Union that is based on the rule of law, and notably, on common values the members of FIDE hold dear. In our modern society, European cooperation is not just an option, it is a necessity.



The EU seems once again in need of FIDE as 'the wheeling flank of the army of European jurists'

2. J. Laffranque, 'FIDE – Uniting Great Minds of European Law: 50 Years of the International Federation for European Law', *Juridica International* XVIII, 2011, pp. 173-181. See e.g. also S. Lee Mudge & A. Vauchez, 'Building Europe on a Weak Field: Law, Economics, and Scholarly Avatars in Transnational Politics' *AJS* Vol. 118, No. 2, 2012, pp. 449-492. The Spanish FIDE 2010 organisation did a fantastic job in making many of the archives of FIDE accessible to its members: <https://www.fide-europe.org/members-login/>, visited 1 February 2020.

3. Judgment of 5 February 1963, Case 26/62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, ECLI:EU:C:1963:1.

4. M. Rasmussen, 'Establishing a Constitutional Practice of European Law: The History of the Legal Service of The European Executive, 1952-65', *Contemporary European History* Vol. 21 No. 3, 2012, p. 395.

5. A. de Vreese, 'Droit communautaire et droit national', 14 *Cahiers de Bruges* Vol. 14, No. 399, 1965, quoted in: A. Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity*, Cambridge University Press, Cambridge, 2015, p. 137.

The XXIX FIDE Congress Publications

In keeping with good practice and tradition, the XXIX FIDE Congress addresses three main topics for which distinguished General Rapporteurs have been invited to draft a questionnaire on the current relevant legal issues on a European and national level. Rapporteurs from the FIDE Members Associations and prominent experts from the EU institutions have responded with country reports and institutional reports. Based on this input the General Rapporteurs compiled a General Report on each topic. All the reports have been published in the FIDE XXIX Congress Publications.

While in the early days the Commission's Legal Service would ask FIDE to report on certain questions (6), the current selection of the three main topics is the result of lively discussions. The organisers of the FIDE XXIX Congress took advantage of valuable contributions by the FIDE Steering Committee, by bringing together the academic community in the Netherlands and benefiting greatly from the input from practitioners, as well as the FIDE members, colleagues and friends in the European Institutions and Member States. The three topics under discussion at the FIDE 2021 Congress revisit some of the classic tenets of EU law, whilst bringing new questions to the table triggered by the needs of modern society. Our aim has been to appeal to both specialists and general EU lawyers.

The XXIX FIDE Congress Publications are the result of the work of a great variety of EU jurists, who, in true European spirit, joined efforts to provide the General Rapporteurs with answers to their questionnaires in various national reports. The General Rapporteurs have compared, evaluated and brought together the insights from the national reports in their General Reports. Together with the Institutional Reports, written by experts from the EU Institutions, and a special report on the EFTA Court, the Congress Publications thus present the state of the art on the three topics of the XXIX FIDE Congress.



Meeting of FIDE's Steering Committee, The Hague, 2019

The three FIDE 2021 topics revisit the classic tenets of EU law and bring new questions to the table

6. Rasmussen, 2012, p. 384.

From the outset, we have sought to involve a new generation of European lawyers. Renaming the PhD seminar the ‘Young FIDE Event’ reflects the ambition to draw young EU lawyers from a broad range of professional backgrounds. For the first time, ‘Young Rapporteurs’ have also been asked to report to the FIDE Congress on the discussions at the Young FIDE Event and contribute to the fourth Congress Volume to be published after the Congress.

Even before FIDE 2021 has taken place, three Congress Volumes have been made available [open access](#), and can as such inform scholars and practitioners in this field. More than with any other FIDE edition, the reports form but a starting point for an in-depth discussion of the state of the law and its future course.

Volume 1: National courts and the enforcement of EU law: the pivotal role of national courts in the EU legal order.

Topic 1 of the XXIX FIDE Congress addresses the pivotal role of national courts in the enforcement of EU law within the Member States. This topic lies at the very heart of the Union legal order and its relationship with the national legal systems, therefore fitting perfectly within FIDE’s framework and approach to EU law. Marleen Botman and Jurian Langer meticulously edited this report. It includes the questionnaire and the final report prepared by the General Rapporteur Professor Michael Dougan, an institutional report from Advocate General Bobek and 25 national reports, pointing out national trends in the enforcement of EU law. The national reports include contributions from well-

known European law professors, practitioners and experts. In addition to these reports from almost all Member States, the volume also covers the United Kingdom and EFTA-countries.

The crucial role of national courts in the European Union’s decentralised enforcement system is already very well established in EU law and scholarship in relation to the ever-evolving topics such as supremacy, direct effect, effective judicial protection and the preliminary reference procedure. Professor Michael Dougan focuses upon these classical topics in his questionnaire in an original and innovative way by inviting the national rapporteurs to reflect upon the impact of the very latest developments of the Court of Justice’s case law in relation to these topics. Hence, this volume gives the most extensive and thorough take of the temperature of EU law at the national level in recent years. It provides its reader with a wealth of information regarding the current state of play by the national judiciary of these classical topics. The picture that emerges from this volume is varied and colourful but nonetheless demonstrates the existence of a mature and coherent legal system at the national level. The report by Professor Michael Dougan is nicely supplemented by Advocate General Bobek’s highly useful and at points critical overview of the recent case law of the Court of Justice in the matters covered by the questionnaire. In sum, the volume constitutes a goldmine for comparative and EU lawyers.

As the topic is not only rather far-reaching but also very fast-moving, the Court of Justice has delivered, since the completion of the report, several important judgments on the

enforcement of EU law before the national courts that are of direct relevance for the issues addressed in this report. One recalls cases such as [C-573/17](#), *Popławski* and [C-411/17](#), *Inter-Environnement Wallonie*. Likewise, national courts have delivered noteworthy judgments, like the infamous decision by the Bundesverfassungsgericht of 5 May 2020 granting several constitutional complaints directed against the Public Sector Purchase Programme of the European Central Bank. All these new developments merit further attention and discussion during the FIDE conference in 2021. Enough food for thought!

Volume 2: Data Protection – setting global standards for the right to personal data protection

In May 2021, the EU's new regulatory framework for the protection of personal data entered will have been in force for three years. The reports in Volume 2 of the FIDE publications take stock of the first year of its application. As the [review](#) of this Volume in EU Law Live noted, the national reports were compiled with 'meticulous care, and provide an important source of detailed information on Member State law'. They are brought together and complemented with the excellent report of general rapporteur Orla Lynskey and the report by institutional rapporteurs Anna Buchta (EDPS) and Herke Kranenborg (European Commission).

If the volume shows one thing, it is that, albeit a very specialised area of EU law, it raises general questions of EU regulation, governance, enforcement, as well as fundamental rights protection. This is also confir-

med in the current pandemic. Extensive testing, tracking and new technologies put data protection into the spotlight. To what extent can an employer track the work done remotely by his staff? How can we balance data protection with public health, remembering that data about a person's health are particularly sensitive? Only last month, the plan to speed up testing in the Netherlands, by flying samples to a lab in Abu Dhabi raised serious concerns with the Dutch data protection authorities and eventually meant that the deal fell through. The development of tracking applications and the role of (non-EU) tech companies in their development, have raised concerns not just with privacy experts, but with citizens in general.

Although the focus of the reports was on the application of the new data protection regime *within* the Member States, the effects of this regulatory framework are felt well beyond the borders of the European Union. As was pointed out by Christopher Kuner, the international impact of the new regime may deserve attention, as it will most definitely have at FIDE 2021 itself. This will include a discussion on how data flows between the EU and the UK will be regulated post-Brexit.

Two recent rulings from Luxembourg are, in the words of institutional rapporteur Kraneborg, the talk of the town. And they are likely to remain so for the foreseeable future, not least because they may have a bearing on the negotiations with the UK in this area. First, in July 2020, the Court also invalidated the new adequacy decision under the new EU/US Data Protection Shield (*Schrems II*, [C-311/18](#)), after it had already

annulled the previous adequacy decision under the EU/US Safe Harbour (Schrems I). What is [interesting](#) is that the Court ‘not only consistently interprets the GDPR in light of the Charter, but moreover uses its precedent on an EU data retention measure (...) to define the constitutional contours of an adequate level of protection relevant also in relation to a third country’. . . Second, earlier this month, in October 2020, the Court in a string of cases returned to the compatibility of national data retention regimes. One of the purposes for such retention was national security, an objective that also features prominently in the Schrems II case.

In the national reports frequent reference was made to the Court’s case law in *Digital Rights Ireland* ([C-293/12](#)) and *Tele2/Watson* ([C-203/15](#) and [C-698/15](#)). In those cases, the Court established that general and indiscriminate surveillance fails to pass the strict necessity and proportionality and violate EU data protection standards. In *La Quadrature du Net and Others* ([C-511/18](#)), the Court confirms this case law. It also frequently refers to =Schrems II and its Opinion on the EU/Canada PNR Agreement, which according to [Woods](#) show that one of the Court’s underlying concerns is with the access of state actors to personal data collected by private operators .

Nonetheless, the Court does accommodate Member States’ interests in safeguarding national security, public security and combating serious crime. In particular as regards national security, the Court is more permissive. In these cases the Court carries out a delicate balancing exercise between the positive obligations flowing not merely from the right to data protection, but also with the positive

obligations incumbent on states to take effective measures against crime against (vulnerable) persons.

Volume 2 had provided us with a firm basis upon which to proceed. As EU data protection continues to develop, both in practice and in the courts, we know the topic is in safe hands with our rapporteurs. We look forward to discussing with you at FIDE 2021!

Volume 3: EU Competition Law and the Digital Economy – protecting free and fair competition in an age of technological (r)evolution.

The evolution of online platforms over the past decade has led to major changes in the competitive landscape of the digital economy. The ‘platformisation’ process is visible across all sectors of the economy. Online platforms have not only managed to challenge traditional players, but have also changed the rules of the (competitive) game altogether. For consumers, they have created new means of communication, entertainment, transport, and financial services in return for little to no cost. At the same time, they have triggered the attention of competition law authorities in Europe and globally. Unlike traditional players, online platforms appear to compete *for* the market rather than *on* the market. While the arrival of platforms may have made competition more dynamic, the winner-takes-all scenario that is often the outcome is hard to challenge for new market players. Because of this evolving reality, the adaption of competition law policy to online platforms has become a priority.

This process is, however, more challenging than it would appear at first. This is not a

story of old wine in new bottles. The reliance on new business and economic models, as well as the utilisation of (personal) data and (self-learning) algorithms give rise to many new legal questions and requires us to revisit many of the core components of competition law.

Volume 3, which is dedicated to this topic, includes a state of art overview of current practice by EU Courts and the European Commission as well as the national competition authorities and courts of 26 European jurisdictions. The volume, edited by Daniel Mândrescu, is based on a questionnaire, which includes some of the main legal and practical challenges in the application of competition law policy to online platforms, answered by national experts of each jurisdiction in the form of a national report. General rapporteurs Nicolas Petit and Pieter van Cleynenbreugel and Institutional rapporteur Thomas Kramler (European Commission) have done an excellent job.

An inquiry into the various national reports quickly shows that current practice is diverse. The cross border reach of leading online platforms has not translated into enforcement coverage as very few authorities have taken on these players. Consequently, many of the substantive and theoretical problems remain unexplored. Only a small number of authorities and courts have looked at market

definition, theories of harm and the role (personal) data in relation to platforms. This outcome is surprising, as the national reports show a consensus that these topics need to be addressed.

The different views and approaches taken by competition authorities across Europe provide an insight into the current journey towards a common (European) approach and emphasise the need for it given the cross-border nature of competition in the digital economy.

To foster a multidisciplinary law-in-context approach, European thinkers from other disciplines - historians, political scientists and economists – have been actively invited to contribute

The practical value of this volume and its topic has only increased since its publication, with the rise in investigations launched against online platforms. Many of the challenges identified will inevitably play a key role in the investigations against current digital economy giants such as Google, Apple and

Amazon. The impact of these cases is not limited to Europe, as similar cases have been initiated around the world.

In parallel to these enforcement efforts, new legislative initiatives have been launched, both in and outside Europe. These seek to remedy some of the ‘blind spots’ of competition law policy in digital markets. As part of these initiatives, the introduction of new ex-ante enforcement tools, a new legal qualification of market power (‘gatekeeper’) and restorative remedies are now being conside-

red. Hopefully, by the time of the FIDE Congress some of these new developments will have taken a more concrete form that will allow us to also cover them during the Congress sessions.

Plenary sessions of the XXIX FIDE Congress

European Union law cannot be considered in isolation. To foster a multidisciplinary law-in-context approach, European thinkers from other disciplines - historians, political scientists and economists – have been actively invited to contribute to sessions of the XXIX FIDE Congress to reflect on the road ahead. We are delighted that highly distinguished keynote speakers, such as commissioner Frans Timmermans and the President of the Court of Justice Koen Lenaerts, and learned panellists all offered their continuous support to the XXIX FIDE Congress. (click [here](#) to see the programme).

After years of turmoil, the question poses itself: will Europe muddle through, or is there reason to hope for a new European *réveil*? For a Europe that can lead the way in a Green Revolution, that remains a champion of fundamental rights protection and fosters growth and innovation?

Solidarity and the rule of law, already identified as key issues for FIDE 2020, take on a new meaning at our FIDE 2021 Congress

The FIDE 2021 Congress also looks at the critical role that national and European judges – who in many Member States function under increased scrutiny and pressure – play in safeguarding the very foundations upon which our legal order was built: the values listed in the Treaty on European Union.

The pandemic raises new questions of EU law, whilst leaving old ones unresolved. Solidarity and the rule of law, already identified as key issues for FIDE 2020, take on a new meaning at our FIDE 2021 Congress. Hopefully we will be able to discuss with our learned panellists, how we may apply lessons learnt from previous crises on how to overcome the current one. Brexit, making headlines as we speak, will have come to a conclusion.



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News Highlights

Week 19 October to 23 October 2020

Offsetting damages due to use of the vehicle: preliminary questions concerning ‘emissions cheat devices’ in vehicles published

Monday 19 October

[READ MORE ON EU LAW LIVE](#)

The Regional Court of Erfurt in Germany’s preliminary questions to the Court of Justice in *A. G. E. v B AG* (C-276/20), about offsetting damages for actual use of a vehicle, relating to the ‘emissions scandal’ cases, were published.

Netherlands’ action for annulment against Commission’s State aid decision allowing compensation for prohibition of coal published

Monday 19 October

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Official publication was made of an annulment action ([T-469/20](#)) challenging the European Commission’s Decision in State aid case [SA.54537](#) concerning compensation to a Dutch company running a coal-fired power plant shut down under a closure law.

Regulation proposed as part of an ‘EU Global Human Rights Sanctions Regime’

Tuesday 20 October

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A Council Regulation to impose EU sanctions for serious human rights abuses across the world was proposed and would complement a proposed Council Decision, to form an ‘EU Global Human Rights Sanctions Regime’ – a shift from geographical sanctions to thematic sanctions.

Syrian Ministers added to EU sanctions list

Monday 19 October

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The Council of the EU added seven recently appointed Syrian government ministers to the list of individuals and entities subject to EU sanctions, by two measures that were published last Friday.

ECtHR: forced participation of a minor in an isolated religious activity at school did not breach human rights

Tuesday 20 October

[READ MORE ON EU LAW LIVE](#)

The European Court of Human Rights ruled in *Perovy v. Russia* (application no. 47429/09) that there was no breach in a case regarding the right to education and the freedom of religion under the ECHR in connection with the Russian Orthodox rite of blessing in the classroom.

Advocate General Szpunar: foreign nationals who enjoy international protection in a Member State can be detained in another if the Charter is respected

Tuesday 20 October

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Advocate General Szpunar delivered his Opinion in *M and Others* ([C-673/19](#)), on the interpretation of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Council agrees on 2021 catch limits for the Baltic Sea

Tuesday 20 October

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The Council of the EU has reached an agreement on catch limits for the Baltic Sea in 2021, limiting the total allowable catches (TACs) for several fish stocks in order to allow them to recover while ensuring sufficient economic activity for fishermen.

Preliminary questions concerning telecoms operators carrying out judicially ordered interceptions published

Tuesday 20 October

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The Italian Council of State's request for a preliminary ruling to the Court of Justice concerning the calculation of rates for telecoms operators to carry out judicially ordered interceptions was published ([C-318/20](#)).

EU gateway linking Member States' contact tracing apps goes live

Tuesday 20 October

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An EU-wide gateway linking several Member States' coronavirus contact tracing apps went live after a successful pilot phase.

Infringement procedures opened against Cyprus and Malta for 'selling' EU citizenship

Tuesday 20 October

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It was announced by the European Commission that it is launching infringement procedures against Cyprus and Malta by issuing letters of formal notice regarding their [investor citizenship schemes](#), also referred to as 'golden passport' schemes that 'sell EU citizenship'.

European Parliament adopts three proposals on AI regulation at Plenary

Wednesday 21 October

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The European Parliament adopted three proposals on how it considers artificial intelligence should be regulated at the EU level, supporting an AI-specific ethics framework, civil liability system, and intellectual property system.

Court of Justice to clarify meaning of rules for determining jurisdiction over consumer contracts under the Lugano Convention

Wednesday 21 October

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Official publication was made of a preliminary ruling request on Article 15(1)© of the Lugano Convention to determine jurisdiction for parties initially domiciled in the same State (no cross-border activity) when the contract was concluded.

Open Source Software Strategy 2020-2023 adopted by Commission

Wednesday 21 October

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An Open Source Software Strategy 2020-2023 was adopted by the European Commission, setting out objectives for progress towards EU digital autonomy, sharing and reusing software and applications, and sharing the Commission's source code.

AG Pikamäe suggests the Court dismiss the appeal in staff case Alvarez y Bejarano, on judicial review of statutory acts

Wednesday 21 October

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Advocate General Pikamäe's Opinion in *Alvarez y Bejarano and Others* ([C-517/19 P](#)), advised on the standard of judicial review, and suggested setting aside the judgment of the General Court in Joined Staff Cases T-516/16 and T-536/16, concerning EU institutions' refusals of travel and reimbursement rights.

Relevant criterion in determining State aid in public-private systems is the 'constant public control of the subsidies', Court of Justice confirms

Wednesday 21 October

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The Court of Justice ruled in *Société ECO TLC* ([C-556/19](#)) on whether a system involving a private, non-profit eco-body approved by public authorities receiving contributions in return for waste treatment services that redistributes subsidies in light of environmental and social targets, is State aid.

Commission's Third Report on the progress made in the fight against human trafficking

Wednesday 21 October

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The European Commission published a Third Report on the progress made in the fight against human trafficking, which sets out priority areas for Member States to focus on to combat human trafficking.

Council adopts position on next EU common agricultural policy

Wednesday 21 October

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The Council of the EU has agreed on its negotiating position on the post-2020 common agricultural policy reform package, balancing new environmental commitments with flexibility for Member States in reaching them.

ECB enhances its internal whistleblowing framework

Thursday 22 October

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The European Central Bank announced an enhanced internal whistleblowing framework vis-à-vis a secure online platform allowing for anonymous reporting so ECB employees can flag wrongdoing without fear of retaliation.

Council's position on the proposal for a new public sector loan facility

Thursday 22 October

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The Council of the EU agreed its position on the Proposal for a Regulation on the public sector loan facility under the Just Transition Mechanism, adhering to it but suggesting certain changes to the Commission's proposal presented in May this year.

Nutrition service supplies are independent from general fitness services and exempt from VAT, says AG Kokott

Thursday 22 October

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Advocate General Kokott delivered her Opinion in *Frenetikexito* ([C-581/19](#)), advising the Court on whether human health activity and nutrition services are to be regarded as ancillary or independent to the fitness and physical well-being activity, and whether those services must be supplied or that they may be merely made available.

Informal agreement to reform rail passenger rights endorsed

Thursday 22 October

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An informal rail-reform agreement between the European Parliament and Council of the EU, provisionally agreed and reported on [earlier this month](#) has been 'endorsed' today by 'EU ambassadors' – the Council's Permanent Representatives Committee (Coreper).

European Fiscal Board's annual report 2020

Thursday 22 October

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The European Fiscal Board published its fourth annual report, documenting the implementation of the EU's fiscal rules for the 2019 cycle of fiscal surveillance and highlighting several points of stress calling for future improvement.

Council position on the Capital Markets Recovery Package

Thursday 22 October

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The Council of the EU agreed its position on the Capital Markets Recovery Package, which contains targeted amendments to the EU capital market rules to help EU companies raise capital on public markets, support the lending capacity of banks and boost investment in the real economy.

AG Campos Sánchez-Bordona: long-term lease contract for construction of a building is a public works contract and should be awarded through a public tender procedure

Thursday 22 October

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Advocate General Campos Sánchez-Bordona delivered his Opinion in *Commission v Austria* ([C-537/19](#)), an action for failure to fulfil obligations regarding Articles 2, 28 and 35(2) of the Public Procurement [Directive 2004/18](#).

Council Presidency's conclusions on artificial intelligence and human rights

Thursday 22 October

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The Council of the European Union's *Presidency* issued conclusions that show a focus on a 'human-centric', 'fundamental-rights based' approach to AI regulation, calling for a review of existing legislation, consideration of new legislation, and of the particular features of AI applications.

ECtHR: disciplinary sanctions against doctors in France are not 'convictions for a criminal offence' and do not activate the ban of double punishment

Thursday 22 October

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The European Court of Human Rights unanimously declared inadmissible *Faller v. France* (application no. 59389/16) and *Steinmetz v. France* (no. 59389/16), on the alleged breach by France of the right not to be tried or punished twice under Article 4 of Protocol No. 7 to the European Convention on Human Rights (ECHR).

Commission launches consultation to consider reform of EU's Alternative Investment Fund rules

Thursday 22 October

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The European Commission launched a consultation as it is considering changes to the EU's [Alternative Investment Fund \(AIF\) market](#), noting that the AIF Managers Directive [2011/61](#), could be made more efficient.

Court of Justice clarifies when a trademark is put to genuine use for all goods in a category

Thursday 22 October

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The Court of Justice delivered its judgment in *Ferrari* ([joined cases C-720/18 and C-721/18](#)) on the genuine use of a trademark covering automobiles and their parts with regard to high-end luxury cars.

Commission Notice on the application of Articles 2-5 of Directive 2009/33 published

Thursday 22 October

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A Commission Notice ([2020/C 352/01](#)) on the application of Articles 2, 3, 4 and 5 of Directive [2009/33](#) on the promotion of clean road transport vehicles in support of low-emission mobility, as amended by Directive [2019/1161](#), was officially published.

European Ombudsman: no maladministration in how Commission dealt with anti-dumping investigation in the context of the COVID-19 pandemic

Friday 23 October

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The European Ombudsman issued a decision in case 924/2020/TE, concluding that no maladministration existed in the Commission's refusal to put on hold an anti-dumping investigation (into imports of Chinese aluminium products) due to the COVID-19 pandemic or, in the alternative, to give an Italian importer more time to respond to information requests sent to it by the Commission.

Gradual lifting of travel restrictions: new updated list of third countries

Friday 23 October

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The Council of the EU revised the list of countries for which travel restrictions should gradually be lifted as of 22 October 2020. This is an update to Recommendation 2020/912 on the temporary restrictions on non-essential travel into the EU, issued on 30 June 2020.

Second time EU imposes sanctions due to cyberattacks: Bundestag hack

Friday 23 October

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For a second time, the EU has imposed restrictive measures against cyberattacks through a CFSP Decision and Council Implementing Regulation, against two individuals and an entity for taking part in a cyberattack on the German Federal Parliament.

EU representatives meet Western Balkans counterparts to discuss Justice and Home Affairs matters

Friday 23 October

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Representatives of the Presidency of the Council of the EU and the European Commission met with their counterparts from the Western Balkans at the annual EU-Western Balkans Ministerial Forum to discuss Justice and Home Affairs matters.

Fundamental Rights Agency calls for increased protection of victims of online crime

Friday 23 October

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To mark European Day of Justice on 25 October, the EU Agency for Fundamental Rights issued recommendations urging the EU and Member States to step up the protection of victims of online crime such as fraud, bullying, harassment, and online hate speech.

Insights, Analyses & Op-Eds

Editorial Comment: “Is it time to talk about genuine EU taxes and the reform of the EU’s ‘tax architecture’?”

Editorial Comment

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Examination of how the EU can ensure peace, prosperity and equality when its budget amounts to approximately a fifth of the United States’ annual military spending, a ‘fiscal Union’, and a critical look at the EU’s structural taxing and budget powers.

Court of Justice limits formal requirements to VAT bad debt relief

By Darya Budova

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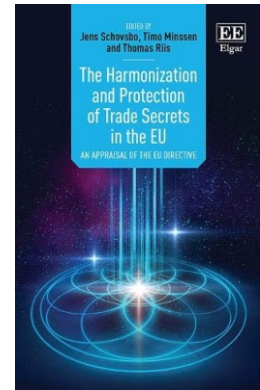
Analysis of the Court of Justice’s ruling in the ‘bad debt relief’ case *E* ([C-335/19](#)), holding that adjustments must not be dependent on *continued* ‘taxable person’ status, and that insolvency status must be looked at proportionately, in the context of registration and non-insolvency-status conditions imposed by Polish legislation before Article 90 of the VAT Directive enabling relief could apply.

Library - Book Review *By* Davide Arcidiano

 **JENS SCHOVSBØ, TIMO MINNSEN AND THOMAS RIIS (EDS.)** [READ MORE ON EU LAW LIVE](#)

THE HARMONIZATION AND PROTECTION OF TRADE SECRETS IN THE EU: AN APPRAISAL OF THE EU DIRECTIVE

The reviewer considers the book to be a very welcome piece of legal literature both for scholars and practitioners not only for the high quality of the contributions but also for the overall design of the book which draws a comprehensive picture of the issues raised by the implementation of the Directive trying to offer the proper legal solutions to some of them.





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IRA publishes overview of antisemitic incidents recorded in the EU in the last decade
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AG Szpunar: embedding copyright-protected works freely available to the public is a 'communication to the public'
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AG's Opinion on how to determine the jurisdiction for civil liability actions based on a breach of competition law
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Entry into office of Athanasios Rantos as new Advocate General at the Court of Justice
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Council: emergency temporary derogations in support of the rail sector in light of COVID-19
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