

Editorial Note

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THE FIRST TEN YEARS OF THE CROATIAN YEARBOOK OF EUROPEAN LAW AND POLICY

With this issue, the Croatian Yearbook of European Law and Policy celebrates its 10th anniversary. It thus enters what we could call a journal's adolescence.

During these 10 years, it has witnessed the changes that the EU has undergone. This anniversary is therefore an opportunity to revisit some of the events of the last decade, but also to look to the future.

CYELP's birth followed the biggest ever enlargement of the EU. It has thus seen the societies and legal systems of the new Member States gradually adapting to their new EU family.¹ Its first volume was published in the year when Croatia started accession negotiations with the EU. CYELP has thus followed Croatia into membership,² and this volume is the first published after Croatia has spent a full year as a member. The enlarge-

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¹ S Rodin, 'Discourse and Authority in European and Post-Communist Legal Culture' (2005) 1 CYELP 1; T Čapeta, 'Courts, Legal Culture and the Enlargement of the EU' (2005) 1 CYELP 23; Z Kühn, 'European Law in the Empires of Mechanical Jurisprudence: The Judicial Application of European Law in Central European Candidate Countries' (2005) 1 CYELP 55; Z Kühn, 'The Authoritarian Legal Culture at Work: The Passivity of Parties and the Interpretational Statements of Supreme Courts' (2006) 2 CYELP 19; M Bobek, 'A New or a Non-Existent Legal Order? Some (Early) Experience in the Application of EU Law in Central Europe' (2006) 2 CYELP 265; B Havelkova, 'The Effectiveness of Transposed EU Equality Law in the Czech Republic' (2006) 2 CYELP 299; A Albi, 'Selected EU Judgments by CEE Constitutional Courts: Lessons on How (Not) to Amend Constitutions?' (2007) 3 CYELP 39; Y Goldammer and E Matulionytė, 'Towards an Improved Application of European Union Law in Lithuania: The Examples of Competition Law and Intellectual Property Law' (2007) 3 CYELP 307; A B Capik and M Petschko, 'One Says the Things Which One Feels the Need to Say, and Which the Other Will Not Understand: Slovak Pension Cases Before the CJEU and Czech Courts' (2013) 9 CYELP 61.

² M Vinković, 'Gender Equality and the Process of Harmonisation of the Croatian Labour Law' (2005) 1 CYELP 203; T Marktler, 'The Power of the Copenhagen Criteria' (2006) 2 CYELP 343; I Rangelov, 'EU Conditionality and Transitional Justice in Former Yugoslavia' (2006) 2 CYELP 365; S Rodin, 'Identity and Divergence of Discourses in Croatia and Europe' (2007) 3 CYELP 229; I Andrassy, 'Constitutional Implications of EU Membership: An Overview of Constitutional Issues in the Negotiating Process: The Croatian Perspective' (2008) 4 CYELP 223; B Stanić, 'The Interpretative Effect of European Law in the Judgment of the Croatian Constitutional Court No U-III-1410/2007' (2008) 4 CYELP 249; M Gregović, 'A Human Rights Based Evaluation of the Croatian Asylum System in the Context of Europeanization' (2011) 7 CYELP 135; A Lazowski, 'European Union Do Not Worry, Croatia is Behind You: A Commentary on the Seventh Accession Treaty' (2012) 8 CYELP 1.

ment process is not over,³ and CYELP looks forward to future contributions analysing and criticising it.

CYELP's birth also followed the rejection of the Constitutional Treaty for Europe. Even if the 'no' vote by the majority of citizens of two of the founding Member States has been interpreted in many ways, no one could dispute that it also meant dissatisfaction with the European project. Dissatisfaction was not necessarily related to the project for the European future, but rather with what the EU already was. It is difficult to find a different explanation of the fear of the 'Polish plumber' expressed in France at the time. The citizens' refusal of Europe caused a serious political and identity crisis. To put an end to it, the EU Member States negotiated the Lisbon Treaty.⁴ From one point of view, this Treaty was the big cheat of EU citizens. Almost the same substance was repackaged and renamed, thus giving political leaders the opportunity to circumvent the citizens' voice by avoiding referenda. On the other hand, if compared with the previous Treaty versions, citizens gained in many ways from its entry into force. We need only mention the attribution of binding force to the Charter of Fundamental Rights, leading recently to the invalidation of excessive interference of EU decision-makers into the private sphere of citizens;⁵ the increased role and importance of the European Parliament in decision-making at the European level; the involvement of national parliaments in EU federalism through the novel procedure of subsidiarity supervision;⁶ or the citizens' initiative, already in use on several occasions.⁷

³ A Petričušić, 'Regional Cooperation in the Western Balkans: A Key to Integration into the European Union' (2005) 1 CYELP 213; M Spornbauer, 'Benchmarking, Safeguard Clauses and Verification Mechanisms: What's in the Name? Recent Developments in Pre- and Post-Accession Conditionality and Compliance with EU Law' (2007) 3 CYELP 373; I Göçmen, 'Starting to Shine, But How Brightly? Standstill Provisions in Association Law between Turkey and the Community' (2009) 5 CYELP 151; F Korenica and D Doli, 'The Politics of Constitutional Design in Divided Societies: The Case of Kosovo' (2010) 6 CYELP 265.

⁴ J Shaw, 'The Reform Treaty: More Questions Than Answers', Editorial Note (2007) 3 CYELP; T Čapeta, 'Legal Instruments in the Reform Treaty – Simplified?' (2007) 3 CYELP 157; S Constantin, 'Rethinking Subsidiarity and the Balance of Powers in the EU in Light of the Lisbon Treaty and Beyond' (2008) 4 CYELP 151; S Blockmans, 'Is it a Bird? Is it a Plane? The German Constitutional Court's *Lissabon-Urteil*', Editorial Note (2009) 5 CYELP; L Roots, 'The Impact of the Lisbon Treaty on the Development of EU Immigration Legislation' (2009) 5 CYELP 261.

⁵ Joined cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd v Minister for Communications, and Marine and Natural Resources and Others and Kärntner Landesregierung and Others* EU:C:2014:238.

⁶ D Wyatt, 'Could a "Yellow Card" for National Parliaments Strengthen Judicial as well as Political Policing of Subsidiarity?' (2006) 2 CYELP 1; V Paskalev, 'Network for a European Democracy: Are the National Parliaments up to the Job?' (2011) 7 CYELP 43; D Jancić, 'Representative Democracy Across Levels? National Parliaments and EU Constitutionalism' (2012) 8 CYELP 227.

⁷ The list of all citizens' initiatives, whether they are still open for signing or closed, including those which the European Commission has answered, can be found at <<http://ec.europa.eu/citizens-initiative/public/welcome>> accessed 18 November 2014.

Soon after the rejection of the Constitutional Treaty, and before the Lisbon Treaty entered into force, the EU faced another crisis, and one that is still with us – an economic one. Hitting first the banks and then the states as sovereign debtors, it has threatened the stability of the euro and the competitiveness of the EU internal market. Among urgent measures aimed at restoring the confidence of markets in the EU, the Member States adopted, outside the EU formal framework, the European Stability Mechanism (ESM) Treaty. At the same time, amendments to the TFEU (in Article 136 TFEU) were introduced according to the novel simplified procedure of Treaty amendments. In a situation where neither experts nor politicians had a clear idea of how to resolve the crisis, it was inevitable that the issue would come to the legal arena.⁸ In the diplomatically resolved *Pringle* case,⁹ the full CJEU endorsed the political arrangements agreed at the EU level. Under strict conditionality, Greece was saved from bankruptcy. Market trust increased after the appointment of the new ECB president, Mario Draghi. The so-called Draghi effect led to the reduction of costs of borrowing for EU states on the verge of bankruptcy and calmed the economic crisis for some time. However, austerity, notwithstanding the warnings of some economists, most notably the NY Times' commentator Paul Krugman, has become *modus vivendi* in many EU states, bringing citizens onto the streets more and more often. Indeed, the economic crisis seems not to be over.

The measures adopted to circumvent the crisis keep being challenged in the courts. Thus, the crisis brought to the CJEU the first, and therefore historical, preliminary reference by the German Federal Constitutional Court.¹⁰ Again, on the agenda is the constitutional question of the boundaries of EU powers and the appropriate institution to control them (the so-called *Kompetenz-Kompetenz* problem). However, this time, the question is discussed in direct dialogue between the two courts, and the context is highly sensitive. If the judicial decisions do not support political compromises, the economic crisis might hit hard again.

The Lisbon Treaty strengthened further the EU's external visibility, endowing it with legal personality, strengthening the CFSP and leading to the establishment of the European Action Service.¹¹ In external rela-

⁸ K Pantazatou, 'Economic and Political Considerations of the Court's Case Law Post Crisis: An Example from Tax Law and the Internal Market' (2013) 9 CYELP 77.

⁹ Case C-370/12 *Thomas Pringle v Government of Ireland, Ireland and The Attorney General* EU:C:2012:756.

¹⁰ German Federal Constitutional Court (Press release no 9/2014 of 7 February 2014) <<https://www.bundesverfassungsgericht.de/en/press/bvg14-009en.html>> accessed 18 November 2014.

¹¹ M Brkan, 'Exploring EU Competences in CFSP: Logic or Contradiction?' (2006) 2 CYELP 173; S Blockmans, 'The Role and Impact of the EU's Common Foreign and Security Policy towards the Western Balkans (2001 – 2006)' (2006) 2 CYELP 209; A Dimopoulos, 'The Com-

tions, the EU has recently had to face two big international crises. The Crimea crisis worsened relationships with Russia. At the same time, the EU is, together with the rest of the world, facing the threat of the Islamic caliphate state. This does not mean that the trade aspects of the EU's external policy have remained neglected. Quite the reverse, the EU and the US engaged in negotiations on the first comprehensive trade treaty – the Transatlantic Trade and Investment Partnership (TTIP), the implementation of which is expected to significantly boost both the EU and US economies.

World crises, humanitarian or economic, have led many people to try and settle in the European Union. Thus, the EU's immigration and asylum policies,¹² as well as the further development of the area of freedom, security and justice,¹³ have become the most vibrantly developing area of EU law. At the same time, the further incorporation of fundamental rights by both the case law and the Charter, coupled with the recognition of the horizontal effects of these rights,¹⁴ is leading gradually to the redefinition of the internal market fundamental freedoms.¹⁵

The human rights arguments penetrate all areas of life, including the case law of the European Courts. A further step – the accession of the EU to the Rome Convention of Human Rights and Fundamental Freedoms – is wanted by some and feared by others. Probably the most im-

mon Commercial Policy After Lisbon: Establishing Parallelism Between Internal and External Economic Relations?' (2008) 4 CYELP 101; J Schmidt, 'Common Foreign and Security Policy and European Security and Defence Policy after the Lisbon Treaty: Old Problems Solved?' (2009) 5 CYELP 239; J Santos Vara, 'The Establishment of the European External Action Service: The EU in Search of a Stronger Role on the International Stage' (2011) 7 CYELP 109; J Brsakoska Bazerkoska, 'Making the Most of the EU's External Competences in the Social Area: The EU and the International Labour Organisation' (2013) 9 CYELP 119.

¹² M Romić, 'Obtaining Long-term Resident Status in the European Union' (2010) 6 CYELP 153; N Bačić, 'Asylum Policy in Europe: The Competences of the European Union and Inefficiency of the Dublin System' (2012) 8 CYELP 41; M Jay, 'Homogeneity, the Free Movement of Persons and Integration Without Membership: Mission Impossible?' (2012) 8 CYELP 77; I Goldner Lang, 'Is There Solidarity on Asylum and Migration in the EU?' (2013) 9 CYELP 1.

¹³ S D Coutts, 'The Lisbon Treaty and the Area of Freedom, Security and Justice as an Area of Legal Integration' (2011) 7 CYELP 69.

¹⁴ D Wyatt, 'Horizontal Effect of Fundamental Freedoms and the Right to Equality after Viking and Mangold, and the Implications for Community Competence' (2008) 4 CYELP 1; M Carević, P Kiš and F Kuhta, 'Minimum Wages as an Obstacle to the Free Provision of Services' (2008) 4 CYELP 75.

¹⁵ T Perišin, 'Interaction of Fundamental (Human) Rights and Fundamental (Market) Freedoms in the EU' (2006) 2 CYELP 69; I Maletić, 'The Boundaries of the Internal Market after the Lisbon Treaty: A Closer Look at Article 95 EC' (2009) 5 CYELP 19; M Mataija, 'Internal Situations in Community Law: An Uncertain Safeguard of Competences within the Internal Market' (2009) 5 CYELP 31; S Gregor, 'Why Market Freedoms Are No Fundamental Rights: A Competence Approach' (2010) 6 CYELP 1; S Rodin, 'National Identity and Market Freedoms after the Treaty of Lisbon' (2011) 7 CYELP 11; J Hojnik, 'The EU Internal Market and National Tradition and Culture: Any Room for Market Decentralisation?' (2012) 8 CYELP 117.

portant decision awaited by the legal academic community, for which the Court decided to sit in its plenary formation, is its Opinion on the Draft Treaty on the accession of the EU to the mentioned Convention.¹⁶ As the Opinion is expected in December 2014, CYELP hopes to offer its readership a comment in the next volume.

In its first 10 years, CYELP has also witnessed the renewal and rebalancing of the EU institutional structure. Thus, CYELP has lived through the appointment and reappointment of Herman Van Rompuy as the first president of the European Council, as well as Catherine Ashton as the first High Representative for Foreign Affairs and Security Policy. CYELP's first ten years coincided with the European Commission under the leadership of the twice nominated president José Manuel Barroso. As CYELP is leaving behind its childhood, the leading figures in the EU institutions are changing. At the parliamentary elections in May this year, 751 new MEPs were elected, among whom, for the first time, also 12 Croatian MEPs. Martin Schulz was again appointed the European Parliament's president. The EU has also chosen the new Commission. In July, Jean Claude Juncker was elected as the new Commission's president and his Commission took over from Barroso's team on 1 November 2014. Vice-president of the Commission and the newly appointed EU High Representative for Foreign Affairs and Security Policy is again a woman, former Italian Foreign Affairs Minister, Federica Mogherini. Finally, the EU leaders also agreed on the European Council's new president, electing to this post Donald Tusk, former Polish prime minister, who will take on his function as of 1 December 2014.

The authors publishing in CYELP are, however, usually more interested in another EU institution – its Court of Justice. This institution has also undergone some changes during CYELP's first ten years. The most significant one for us, of which CYELP's entire editorial board is extremely proud, was the appointment of Professor Siniša Rodin, one of CYELP's founders and its first editor-in-chief, as the first Croatian judge at the CJEU. We can happily announce that Judge Rodin did not leave us, but agreed to remain a member of CYELP's editorial board.¹⁷ The first Croatian judicial post at the General Court was filled by former university professor, Vesna Tomljenović.

Membership of the CJEU has not increased only due to the enlargement of the European Union, but also due to the promise given by the

¹⁶ Opinion 2/13 (pending).

¹⁷ CYELP has another personal connection with the Court of Justice. The Croatian artist, Mr Milan Trenc, who has provided CYELP with its lovely cover, has donated his work entitled 'Empty Suit' to the Court of Justice on the occasion of the first year of Croatia's membership in the EU. The picture hangs on the wall of the 'Salle des pas perdus' in the Court's Palace.

Member States (in the form of a declaration attached to the Lisbon Treaty) to increase the number of Advocates General from eight to eleven. The increase started in 2013 with the appointment of the Polish AG to the new permanent AG position for that country. In 2015, Court membership will increase by two, as two new AGs will be appointed to additional rotating positions. The number of judges at the General Court has not changed, despite the wish of the CJEU. Namely, the Member States were unable to agree on a rotation system for the additional judges, at first proposed to increase by 12 and later by 9. As the number of new cases at the General Court this year might approach 1,000, which is a significant increase in relation to past years, the question of reorganisation of the EU judiciary will most certainly not leave the political agenda in the coming years. A new proposal envisages two judges per Member State, and the parallel dismantling of the Civil Service Tribunal and the transfer of its judges to the General Court.

All three EU Courts have undergone an internal clean-up and modernisation of their Rules of Procedure. The CJEU's new Rules came into force in 2012, while the Rules of Procedure of the other two Courts still await political approval. The new rules will facilitate access to the Courts, both for different applicants bringing direct actions, and for national courts initiating preliminary ruling procedures. Croatian courts did not wait long to engage in dialogue with the CJEU. In fact, they were so eager to establish cooperation that the first reference was rejected as premature, as the facts of the case predated Croatia's accession.¹⁸ Hopefully, this will not discourage other Croatian courts. CYELP is looking forward to the first comments on Croatian EU-related case law.

This short overview of the past 10 years of CYELP shows, we hope, that the mission envisaged at its beginning 'to be an academic forum of emerging European scholarship in the region and to create a free academic exchange among scholars from Member States actual and Member States to be'¹⁹ has been accomplished. All articles quoted in this contribution were published in CYELP's previous volumes (alongside many other articles that have not been cited here). And even though the European Union has changed in many respects since CYELP's birth, the journal's original idea is the same. Only the topics to explore have changed. Therefore, we invite existing but also new generations of scholars to contribute to the optimum development of European integration by offering their critical views on all aspects of EU law and policy.

¹⁸ Case C-254/14 *VG Vodoopskrba d.o.o. za vodoopskrbu i odvodnju protiv Đure Vladike* EU:C:2014:2354.

¹⁹ As expressed in the first Editorial Note (2005) 1 CYELP.

CYELP would not have made it to its 10th birthday had it not been for its editorial board, whose members were willing to review articles and propose ideas to improve the publication, its executive editors, without whom communication with all the authors, printers and reviewers would stop, students who were there to help them even if their exams were approaching, and finally, but no less importantly, its language revisers and copyeditors who made the content of CYELP easy and pleasurable to read. I wish to thank all of them and congratulate them on the 10th birthday of our joint publication.

The new phase of CYELP's life demands a new editor-in-chief. The next volume will, therefore, be headed by a new person, but this editor intends to stay with CYELP's editorial board for many years to come.

Zagreb, November 2014