

EDITORIAL

MEET THE TIME AS IT SEEKS US

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'Meet the time as it seeks us'.¹ These words by Shakespeare that open Stefan Zweig's memoirs *The World of Yesterday* provide us with perhaps the most pragmatic attitude to affront last year's unsettling and tragic events. When Zweig wrote his memoirs shortly before his suicide in exile from Nazi Germany in 1942, he looked back at the profound cultural, social and political transformation of Europe in the first half of the 20th century and tried to grasp an understanding of this tempestuous period. Today, we are also struggling to make sense out of turbulent events that recently landed several blows on our societies. The year 2015 was overshadowed by another episode of the Euro crisis, the culmination of the migration crisis and numerous terrorist attacks across the world.

These events confront our societies with essential questions and major challenges. They also raise profound queries about the role and responsibility of academic research in general, and of an academic legal journal such as the European Journal of Legal Studies (EJLS) in particular. In this context, the EJLS, like any other academic legal journal, faces a fundamental dilemma: how to stay abreast of salient political and societal developments without losing sight of the importance of thoughtful and thorough scientific analysis? On the one hand, legal academic research cannot only take place in the 'ivory tower' and has to cope with important and sometimes brutal societal changes. On the other hand, academic research plays a crucial role by the very fact that it takes a step back in order to engage in a profound reflection and analysis of current developments. Hence, there is an important time lag between immediate information and news coverage by the media and the deferred analysis by academic research. To be aware of this dichotomy and to take the time necessary for well-grounded academic reflection is all the more important in times of constantly updated news feeds, Twitter and blogging, which also increasingly gain importance in the realm of academia.

Indeed, there is often only a thin line between being topical and being ephemeral. To strike the right balance between keeping up with current developments and ensuring at the same time the academic quality of our publications, our journal relies on a two-fold strategy. On the one hand, we aim for continuity as regards the thoroughness and quality of our double-blind review process. As a researcher-run academic journal, we regularly have to face important personal and organizational changes. Finishing their

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¹ William Shakespeare, *Cymbeline* ([1623]) Act 4, Scene III.

Ph.D. at the European University Institute (EUI), Jan Zglinski, as Editor-in-Chief, and Christina Blasi, as Managing Editor, passed the management of the journal, after more than two years, on to a new team. Moreover, longstanding Head-of-Sections Vincent Réveillère and Francois Delerue, handed over to new editors what has become, after years of hard work and relentless efforts, a very dynamic and attractive legal journal. During the last years, all parting members hugely contributed to the quality and reputation of the journal. At this point, we would like to express our deep gratitude for their enormous commitment and great achievements. For the future, we aim to succeed their work by ensuring a high quality publication and increasing the visibility of the EJLS. To do so, we continue to rely on the commitment of our editors in providing thorough and critical peer reviews. This is the most important asset and quality safeguard of our journal.

On the one hand, by promoting the young, progressive and innovative profile of our journal, we intend to keep pace with new developments in both the academic and the societal sphere. Providing an energetic platform for young and emerging scholars, our journal contributes to the diversity and innovation of scholarly legal research. By focusing on the originality of our submissions, we encourage our authors to act as the agenda setters of this journal and to put forward new ideas and perspectives on current legal issues. This balance between thorough peer-review and innovativeness is, to our mind, the best way to provide a profound and insightful analysis of current developments.

Interestingly, delving into this Autumn/Winter 2015 issue, the reader will realise that all contributions are touching upon important issues related to the events that made 2015 such a turbulent year. All of them are providing new ways to think about important recent legal and societal evolutions paired with a solid theoretical and legal analysis.

The current issue kicks off with the *New Voices* section featuring an essay by *Hannes Lenk*, challenging the notion of coherence in EU Foreign Investment Policy. In the context of the current TTIP negotiations, the EU's foreign investment policy is at the focal point of public debates and criticism. The essay, however, goes beyond the familiar objections currently aired by the public and media discourse, unveiling the inner contradictions of a somewhat schizophrenic approach of the EU towards foreign investment treaties. Thus, *Hannes Lenk* points out more profound legal concerns raised by bilateral investment treaties (BITs) and investor-state dispute settlement with regard to the principles of non-discrimination and autonomy, which lie at the core of the Union's legal order.

The interplay between the legal order of the European Union and the international legal order is also the focus of the first article by *Eva Kassoti*. Currently, academic legal literature repeatedly portrays the Court of

Justice of the European Union's (CJEU) *Kadi*² saga, and more recently its Opinion 2/13,³ as symptoms of the CJEU's unwillingness and the EU's incapacity to reconcile its self-perception as an autonomous legal order with openness towards the international legal sphere. *Eva Kassoti's* article, however, takes issue with the predominant view that the CJEU's case law epitomises insurmountable conflicts between the Union as autonomous, self-contained legal order and the coherence of international law. In fact, her article conveys a more nuanced picture. Contrary to what is widely assumed, she shows that the CJEU often refers to case-law of international courts and actively engages in a judicial dialogue with the International Court of Justice (ICJ) when confronted with legal questions of international law. Hence, *Eva Kassoti* demonstrates that the CJEU contributes to the coherence – instead of the fragmentation – of international law, and argues in favour of a more self-confident role of the CJEU in the judicial dialogue with the ICJ.

The second and third articles by *Giulia Vicini* and *Fulvia Staiano* illustrate that in light of the human catastrophe that takes place at the European borders, scholarly legal debate cannot escape from discussing important issues of the current migration crisis. In her article, *Giulia Vicini* critically assesses the Dublin II and III system that is supposed to regulate the entry of asylum seekers in Europe. Analysing the conflicting case-law of the CJEU and of the European Court of Human Rights (ECtHR) in recent asylum cases, she also forcefully points out the blatant contradiction between the fundamental values that Europe repeatedly invokes and the persisting failure of the Common European Asylum System to accommodate the increasing migration flows towards Europe. Moreover, she also underscores the important role of judicial dialogue between the Strasbourg and Luxembourg courts in ensuring that the EU and its Member States live up to the values the European project used to stand for. In the same vein as *Eva Kassoti's* article, her analysis of this ongoing judicial dialogue between the CJEU and the ECtHR also nuances the widely shared view that Opinion C-2/13⁴ puts an end to the Union's and CJEU's openness towards other international human rights regimes.

Taking another perspective on the current migration challenge, *Fulvia Staiano's* article touches upon obscured forms of discrimination that immigrant women are currently facing in Europe. Her contribution explores how insights from American critical race feminism can enhance European anti-discrimination analysis by enabling it to unravel these concealed forms of discrimination. She also demonstrates that European and national migration laws currently fail to take adequately into account the vulnerability of migrant women, who often face multiple patterns of discrimination. On the contrary, these laws rather seem to reproduce and

² C-402/05 *P Kadi and Al Barakaat International Foundation v Council and Commission* ECLI:EU:C:2013:518. C-584/10 *P Commission and Others v Kadi* ECLI:EU:C:2013:518.

³ *Opinion C-2/13* ECLI:EU:C:2014:2454.

⁴ *ibid.*

entrench certain forms of discrimination. Hence, in the same way as *Giulia Vicini's* contribution, *Fulvia Staiano* puts the finger on the current failure of European and national migration rules to cope with current migration challenges in conformity with the fundamental values they are supposed to protect. Accordingly, her findings constitute a compelling invitation to critically rethink and reform the existing European and national migration laws in order to facilitate the empowerment and integration of immigrant women in our societies.

The fourth article by *Camilla Villard Duran* focuses on the social accountability of central banking, in particular with regard to the European Central Bank (ECB), the US Federal Reserve and the Brazilian Central Bank. The hiatus between the increasing importance and power of the central banks and their lack of social and political accountability has become most obvious with the still ongoing economic crisis. By demonstrating the increasing importance of soft-law for the social accountability of central banks, this article sheds a new light on this issue. Interestingly, *Camilla Villard Duran's* claim that soft law plays an increasing role in ensuring the accountability of Central Banks finds empirical support in the recent *Gauweiler*⁵ case. In this case, the Court of Justice of the European Union (CJEU) had to decide – despite of its soft-law character – on the legality of a press release setting out the modalities of the ECB's Outright Monetary Transactions (OMT) program under the EU treaties.

The fifth article by *Thomas Jaeger* on the planned implementation of road charges for foreign vehicles in Germany is another example of how academic legal research meets recent political developments. First of all, the article clearly shows that EU internal market law is not only a relic from the times when it played a pivotal role for European integration. On the contrary, internal market rules still bite and are still one of the regulatory core elements of EU law. Secondly, *Thomas Jaeger* also demonstrates that EU internal market law often goes beyond the mere guarantee of free movement of production factors and has to deal with important value conflicts. In fact, this article describes how the Bavarian CSU, in order to gain votes during the Bundestag elections in 2013, ostentatiously surfed on a wave of chauvinistic resentment, making the introduction of motorway tolls for foreigners a flagship project of its electoral campaign. From a political perspective, this motorway toll is only one amongst numerous symptoms of the recent raise of chauvinistic and even xenophobic discourses in Europe. In this respect, internal market rules are not only ensuring the mobility of goods or persons, but also constitute a political means to control whether the Member States' regulation corresponds with fundamental values of the European Union and the principle of 'good governance'.

⁵ Case C-62/14 *Gauweiler and Others* ECLI:EU:C:2015:400.

Hence, the reader will discover that all contributions of this issue are directly intertwined with legal, political and social challenges our societies currently face. At the same time, they are all engaging with an innovative theoretical debate and thorough legal analysis. This clearly demonstrates that academic legal research and writing does – and certainly should – not take place in a vacuum and cannot hide from reality. In this sense, the authors show us how academic legal research can 'meet the time where it seeks us'.

In fact, 'meet the time where it seeks us' also reads as an invitation for academic legal research and debate not to shy away from analysing and discussing current challenges that our societies are confronted with. This is all the more the case in times of profound crisis, since it is the role of law and legal rules to define the answers to these challenges and to ensure the democratic character, the freedom and openness of our societies.