



## Editorial

United in diversity or divided by uniformity?

At a time of uncertainty and political confrontation within the EU, this edition of *UNIO – EU Law Journal* addresses the problems that arise from upholding the uniform application of EU law, while also respecting the autonomy and singular character of each of the Member States' legal orders. This is the great challenge that lies ahead: to be united in diversity and not divided by uniformity. Therefore, the present issue of our journal presents a myriad of examples of areas of law where the relationship of interdependence between the EU's and national legal orders is evident, but not without difficulties and questions.

The first work, by Luis Jimena Quesada, analyses the current challenges in the field of social rights in the Union, especially at the jurisprudential level, in the context of the “European Pillar of Social Rights”, which was announced by the President of the European Commission, Jean-Claude Juncker, in 2015, and formally adopted in April 2017. Social rights are a legally, constitutionally and politically sensitive matter, but the economic and social crisis of the last decade has shown that they will have to be an important element in the construction of ‘an even closer Union’.

The following text, by Mariana Boçon, addresses another problem of great social importance – that of non-discrimination. Her paper regards the CJEU's judgment in the *CHEZ* case, which she considers a milestone for the implementation of the Directive 2000/43/EC, by opening the possibility of indirect discrimination by association. This new interpretation opens up a new understanding of discrimination situations that can significantly impact the current promotion of equal treatment for all persons in the EU.

Next, we present a work on a subject that somehow combines the questions of social policy and the fight against discrimination – that of immigration. Marco Calabrò examines some profiles of the regular migration phenomenon in Italy, describing the most recent and relevant regulatory interventions in the welfare sector, both at state and local level. The problems raised by the phenomena of migrations are amongst the most complex, difficult and divisive in the EU, and Italy's experience is certainly of great comparative value.

Still under the large umbrella of fundamental rights, but now regarding criminal law matters, Alessandra Silveira and Pedro Freitas reflect on the recent jurisprudence of the CJEU on personal data retention and its implications for criminal investigation

in Portugal. The authors affirm that it is urgent to draw conclusions from this recent ruling by the CJEU, which declares the invalidity of Directive 2006/24. This all the more relevant as many criminal convictions were based on the access to potentially illegitimate data, in Member States where the transposed legislation continued to apply following the declaration of invalidity of Directive 2006/24 – as was the case in Portugal.

Marta Gatti's paper addresses the issue of companies' human rights compliance, describing the EU's support of the adoption of a corporate social responsibility policy by EU undertakings, both within and outside the EU borders. On the other hand, her article focuses on the most recent developments in the field of human rights reporting at national level and, in particular, on the French commitment to implement mechanisms to prevent infringements on human rights across the supply chain.

The next two papers analyse questions of administrative law. Sophie Fernandes examines the provision of the Portuguese Code of Administrative Procedure that establishes a duty of administrative annulment of final administrative acts contrary to EU law, following the Kühne judgment of the Court of Justice of the European Union. However, a closer reading reveals, according to the author, that the provision is not entirely compatible with the case-law of the CJEU. For this reason, she seeks to decipher its meaning and scope, and to find an interpretative solution that is compatible with EU law.

María Pilar Canedo Arrillaga describes the European model of enforcement of competition law, where the Administration (and not the Courts) has the role of applying the relevant regulations, in order to defend competition. This model raises the question of how can an Administration that applies all the rules and acts largely as a regulator itself, can also be subject to competition rules.

Joana Abreu's work takes us back to courts, especially to the particular problems raised by the right to effective judicial protection within the EU constitutional and legal order. The author sustains that an inter-jurisdictional paradigm – and not the replication at the Union level of national instruments – is the proper approach to today's EU constitutionality control; unlike other proposals, this model will allow the promotion of effective judicial protection at a constitutional level as a new EU dogmatically thought phenomenon.

Joana Domingues brings us a well-known, but not widely discussed problem: that of the consequences of the Babel Tower within the EU. The CJEU's judicial pronouncements, with normative and binding force, are the result of collegial decisions and drafted by jurists in a language that is usually not their mother tongue. In addition, they are also the result of various permutations associated with the necessary legal translation from and to (and vice versa) the working language of the Court and the official languages of the European Union. The published judgments presented as authentic are, in most cases, translations. This poses a peculiar set of questions that have to be addressed, as they are at the very core of the European integration process.

Last, but not least, Mariana Alvim's work regards the controversial and much discussed issue of Article 50 of the TEU. However, the author goes beyond what has been the typical discussion about this norm, and tries to understand if there can be a withdrawal of the declaration of intent to leave the EU – she wants to know if the 'divorce' may actually be stopped.

One paper closes this edition, in our non peer-review section. Maria José Costeira addresses the issue of the Private Enforcement Directive, analysing the proposal of transposition of the Private Enforcement Directive into the Portuguese legal system. She examines several aspects of the preliminary draft, which went through public discussion, but mainly highlights the proposed articles about definitions, liability, means of proof and the potential impacts it could have on the organisation of the Portuguese judicial system. The author criticises some incoherencies and points out some problematic aspects of the proposal and the necessary amendments that should be made to remedy them.

### **Editorial Board**