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School of Law – University of Minho

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Editorial

On May 2019 the Final Conference of the Jean Monnet Project INTEROP – "*EU Digital Single Market as a political calling: interoperability as the way forward*", took place at the noble Auditorium of the Law School of the University of Minho. The two-days Conference received the inputs of several national and international scholars, in Portuguese language, in order to address main INTEROP aims and goals in a proximity perspective and giving space to young researchers – Master's and PhD students – to take part on the project's results. During the Conference there was a Round Table for Young Researchers, selected through an analysis, made by a Key Staff Member of the Project – Professor Joana Covelo de Abreu –, of a call for abstracts. One of the papers produced to that Round Table was submitted through the blind peer review process of UNIO and was published in this number.

This issue of UNIO – *EU Law Journal* addresses final conference inputs and also acknowledges young researchers' initiative concerning INTEROP scope of action and tries to take it Digital Single Market concerns and expectations further, preparing the aftermath of that Jean Monnet Project. Furthermore, and since it is not a special issue, it also has a text that, despite being influenced by digital matters (namely access to administrative documents), addresses topics outside INTEROP aims but it has revealed itself as actual and needed to the discussion of EU law matters and was introduced in this volume. The interaction with scholars, stakeholders, policy makers, civil servants and judicial operators can be perceived through this issue.

We open this edition of UNIO with a paper by Piedade Costa de Oliveira, Member of the Legal Service of the European Commission, addressing the topic of electronic commerce and collaborative economy in the light of a Digital Single Market. With this contribution, the author intends to outline how the EU is regulating collaborative economy, taking as referral the e-Commerce Directive, the ECJ's digressive jurisprudence and the Commission's pragmatic approach on the matter.

We continue this issue with a contribution by Caterina Fratea, Professor at the Department of Law of the University of Verona, where the author links electronic commerce and fashion industry in order to raise the curtain on which are the challenges posed to competition law before an established Digital Single Market. Particularly, the author aims at assessing how online sales affect market strategies and competition law, focusing on selective distribution agreements. For that purpose, the paper deals with ECJ's jurisprudence and how it revealed that certain contractual

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clauses demand competition rules to be rethought, paying particular attention to the recent Geo-blocking Regulation.

In this context, we proceed with the contribution of Maria de Almeida Alves, Lawyer at Vieira de Almeida & Associados Law Firm, which addresses the General Data Protection Regulation (GDPR)'s framework and stresses the difficulties of relating it to the Directive on certain aspects concerning contracts for the supply of digital content and digital services. In the paper, the author questions whether the mentioned Directive – aiming at protecting consumers – went too far and if it can create difficulties when entering GDPR's scope of application. For that reflexion, the author departs from the European Data Protection Supervisor's Opinion 4/2017 and the European Data Protection Board's Guidelines 2/2019 in order to answer the title's question: "are worlds colliding?".

The paper deriving from the Round Table of Young Researchers, authored by Pedro Petiz Viana, Trainee Lawyer and Master Student in Law and Informatics of the Law School of the University of Minho, addresses the topic about online legal platforms, linking it to the demands of sectorial regulation and competition law, focusing particularly on the behaviour of the Portuguese Bar Association and ECJ's jurisprudence, in order to understand if this is the beginning of a 4.0 law practice in the European Union and, specifically, in Portugal.

The issue continues with a contribution by Mônia Clarissa Hennig Leal, Coordinator of the Master and PhD Program in Law of the University of Santa Cruz do Sul (UNISC), Brazil, where the topic of digital democracy is focussed in order to scientifically think how there was an change from a *status activus digitalis* to a disinformation stage which can lead to a new wave of judicialization of politics. In fact, by theorizing the notion of *status activus digitalis* as a fundamental condition in an era of digital democracy (based on Jellinek and Häberle's theory of status), the author recalls the importance of participation, that can only be well conceived if informed, to relate it to the new phenomenon of fake news and how it can lead to a real threat to democracy.

The following text, co-auhtored by Alexandre Veronese (Professor of social and legal theory at the University of Brasília), Alessandra Silveira (Jean Monnet Project INTEROP Coordinator) and Amanda Nunes Lopes Espiñeira Lemos (PhD candidate in Law at the University of Brasília), aims at discussing the ethical and technical consequences of Artificial Intelligence and how the data protection framework in the European Union is able to allow citizens to empower themselves before these new technological challenges, despite concluding the the EU legal order is still struggling to find solutions to effectively protect its citizens from automated unfair and/or unreasonable syllogisms derived from Artificial Intelligence algorithms.

Maria Belén Sánchez Domingo, Professor of criminal law at Rey Juan Carlos University, Madrid, presents a paper addressing the Directive 2016/680 in order to assess how personal data protection has been met on judicial cooperation in criminal matters' field of action. The author, recalling this Directive's goal of protecting personal data while it is exchanged between competent authorities within the European Union for criminal matters, stresses the main issues concerning its application and transposition to national legal orders.

In a different approach, Francisco Pereira Coutinho, Professor at the Law School of the New University of Lisbon, addresses a topic concerning Western Sahara's self-determination and the role that Portuguese foreign policy plays on

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the issue, particularly after the ECJ's decision *Front Polisario*. The author, departing from its personal experience on trying to access documents before national and European institutions, sets a clear explanation on how the Portuguese Government, by approving Council decisions that expressly extended EU/Morrocco agreements to Western Sahara, is breaching EU and international law.

In the section of non-peer review articles, there are two contributions of the Portuguese judiciary, namely by Alexandre Au-Yong Oliveira and Pedro Verdelho. The first author is a Portuguese Judge and a lecturer at the Portuguese Centre for Judicial Studies; the second author is a Portuguese Public Prosecutor at the Prosecutor General's Office – Cybercrime Office.

Alexandre Oliveira addressed, in a pedagogical approach, the recent developments of interoperability in the Area of freedom, security and justice, particularly addressing Regulations 2019/817 and 2019/818 which aim at sharing information and improving security while promoting fundamental rights protection, in order to question how sensitive data (such as biometrical data) and the large amount of data that will be stored in interoperable databases will be protected.

Pedro Verdelho's paper, in a narrative perspective, deals with the topic of how to obtain digital evidence for criminal proceedings (taking as legal referral the Budapest Convention) in a globalized world, particularly digital evidence related to Internet service providers which determine that an evidence of a crime can be found anywhere. The contribution also addresses the drafting process of the Second Additional Protocol to the Budapest Convention and its influence in obtaining evidence from the cloud.

The Editorial Team