UNIO - *EU Law Journal*. Vol. 11, No. 1, June 2025, pp. 1-3.

School of Law – University of Minho

Editorial

The European Union (EU) is currently faced with inseparable challenges – green transition, economic competitiveness, geopolitical resilience – that are decisive for the viability of the intended "*European strategic autonomy*." As such, there is an unstable equilibrium to be scrutinised scientifically (also in legal terms), as the EU must simultaneously be able to adopt adequate decarbonisation and environmental protection measures, while bridging the current competitiveness gap in a manifestly hostile geopolitical environment.

In any case, digital transition cuts across all the challenges mentioned *above*. In light of the European Parliament elections held in June 2024, a new legislative cycle in the EU and a new mandate for the European Commission have begun. The new legislative agenda for the period 2024 to 2029 has been dubbed the "*implementation mandate*." And why? Because it is important to properly implement the European legal acts adopted in the previous mandate and aimed at disciplining the functioning of the digital market: in particular the Digital Markets Act, the Digital Services Act and the Artificial Intelligence Act. This implementation effort that the European institutions intend to undertake includes investment and joint research, ongoing training, as well as the strengthening of capital markets – basically to enable scale-ups and sustain technological development. Once again, as Mario Draghi's report on European competitiveness reveals, the digitalisation of the economy is decisive for Europe's strategic autonomy, because whoever leads in technology also leads in cultural and political terms.

However, competitiveness should not be synonymous with deregulation. The EU has been engaged in a certain rebalancing of power in the digital ecosystem. And why? There is now a clear imbalance of power in favour of digital service providers, which calls for a strengthening of the position of users in their relationship with providers (providers understood here in a broad sense: online marketplaces, app stores, social networks, content-sharing platforms, online travel and accommodation platforms, collaborative economy platforms, etc.). The Internet is no longer the idyllic space of freedoms – as it was envisaged in its early days – as it has become a space of platforms, where unilaterally defined and non-transparent business models are developed. This attempt to rebalance power in the digital ecosystem is an exercise in social justice that only the EU is able to foster.

With this in mind, UNIO presents the diverse range of articles in this issue, spanning multiple areas of current relevance to EU policy, starting with:

"The European Union's climate diplomacy – trade as a path towards climate neutrality", an article authored by Ana Cardoso, which explores how trade policy cannot operate in isolation from environmental policy – and analyses what lessons can be learnt from the EU-Mercosur Free Trade Agreement, looking at the role the exclusive competences of the EU on trade can play in successful climate diplomacy, and in the forging of a path to reach the objectives set forth by European environmental legislation in the current global context of "*polycrisis*."

Following this is "Cultural and legal hybridism: in search of a new legal theory for the regulation of informational phenomena", by Alexandre Veronese. This study is a theoretical exploration of the limitations of legal theory when addressing informational phenomena – and how overcoming this limitation –, employing an abstract analysis of ideal models of Internet regulation and their interplay with user behaviour. The text critically assesses various legal theories which rely on the nation-state as a central element in defining the essence of Law – and introduces the idea of legal norms and rules as cultural and legal hybrids, borrowing from anthropology to address the complex interplay between social and digital life.

The third contribution of this issue – "Internet access as a fundamental right and structural discrimination: inter-American standards of protection" – is authored by Mônia Hennig Leal and Dérique Soares Crestane. It consists of an analysis of the access to the Internet as a core aspect of the exercise of fundamental freedoms and rights, as well as citizenship itself. This text seeks to answer the question of whether the constitutional courts of Latin American countries recognise Internet access as a fundamental right – and, if so, whether it is an autonomous or instrumental fundamental right. It also seeks to find out whether it is possible to identify any approach to the elements of structural discrimination in these judicial decisions.

Next, in the article entitled "The right not to be monitored: in defence of one of the last bastions of the human being against the emerging omniotic surveillance society", the author Iolanda Rodrigues de Brito, considering the imminent risk of extinction of privacy due to the implementation of a definitive system of omniotic surveillance – in which everyone is monitored and used to involuntarily monitor everyone else, at any time and in any place –, sets out to propose the right not to be monitored, which emerges as one of the last bastions of human dignity, freedom, human rights and democracy.

The fifth contribution of this issue, authored by Miguel Pereira, is intitled "Identifying emerging principles of digital constitutionalism in EU law and policy." In his previous work published by UNIO, the author reviewed some of the difficulties that the new technological landscape has given rise to, specifically as it concerns the provision of digital services. One of the avenues that scholars have explored as a conceptual framework to address such difficulties is the theory of digital constitutionalism – and the EU institutions appear to have adopted such a digital constitutionalist stance in their policy response. In his earlier work, the author strived to identify and isolate the core values of digital constitutionalism: the limitation (or re-balancing) of powers, the rule of law, and transparency. With these in mind, he now turns to EU law and policy governing the provision of digital services to assess the extent to which such values have been adopted by the EU institutions. To this end, the author has reviewed the major pieces of legislation in this area,

as well as sectoral legislation and instruments of soft law, including co-regulatory initiatives. Three overarching principles have been identified, whose content and definition merit further academic debate: the principle of user empowerment, the principle of due process, and the principle of transparency.

Next, the article entitled «Who should be the "controller" of personal data files in the courts? On processing personal data "acting in judicial capacity" and judicial independence. Special reference to the current legislation in Portugal and Spain», is authored by Gema Pérez Souto. The question of who should hold the status of (data) "*controller*" in the courts is still not a settled one. In this text, the author draws attention to the fact that it should be judges and courts who hold the role of "*controller*" for the processing of personal data when "*acting in judicial capacity*" – as defined in the judgment of the Court of Justice of the European Union (CJEU) of 24 March 2022 in the case C-245/20 –, making a critical analysis of this question in the current regulation in Portugal and Spain about data protection and the "*controller*" in the courts.

The last article in this issue – "Privacy *vs*. business convenience: the *Mousse* judgment and the future of data protection in the EU" – by João Pedro Sousa, analyses a ruling which represents a pivotal moment in EU data protection law, reinforcing strict limitations on personal data processing and clarifying the legal standards under the General Data Protection Regulation (GDPR). The CJEU reaffirmed that data collection must be objectively indispensable for a specified legal basis, rejecting broad interpretations of contractual necessity and legitimate interest. Additionally, the ruling confirms that the right to object cannot retroactively justify unlawful data processing, thereby strengthening consumer rights and tightening compliance obligations for businesses. By aligning with important EU legislative initiatives, the ruling sets a robust precedent for future interpretations of data protection law, influencing regulatory enforcement, corporate practices, and the evolving digital economy. Additionally, the judgment highlights the broader role of personal data protection as a safeguard for digital citizenship, reinforcing the strict application of Article 8 of the Charter of Fundamental Rights of the EU (CFREU) in the face of increasing corporate data practices. This text explores the ruling's implications for EU law and policy, particularly in balancing fundamental rights with economic interests – and concludes with a critical assessment of the ruling's potential impact on future EU data protection jurisprudence and the broader digital economy.

Editorial Team