



DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



LEGAL AFFAIRS

**UPCOMING ISSUES
OF EU LAW**

Subtitle

- 15:00 - 15:10 Opening remarks:
Pavel Svoboda MEP, Chair of the
Committee on Legal Affairs
- 15:10 - 15:40 *Applying EU law as national law:
experiences in the courtroom*
Dr. Wolfgang Heusel, Director, ERA
Academy of European Law
Intervention by Prof. Dr. **Rüdiger Stotz**,
Court of Justice of the European Union



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Applying EU law as national law:
Enforcing EU law in the
courtroom

Dr Wolfgang HEUSEL (ERA)

Overview

1. The application of EU law by the national judiciary
2. Enforcing EU law in the courtroom: some remarks on methods and procedures
3. A case for mutual trust: judicial cooperation in the European area of justice
4. Efficient enforcement requires skills and knowledge: a case for ongoing training

1. The application of EU law by the national judiciary

- The challenge for national judges as first judges of European Union law
- The challenge for the EU of a decentralised system of application of common rules of law
- Complexity and dimension of EU law vs national recruitment criteria for judicial staff

2. Enforcing EU law in the courtroom: some remarks on methods and procedures

- The doctrines of direct effect and primacy
- No remedy – no right
- Preliminary rulings – judicial cooperation between national courts and the CJEU:
 - Concept and practical relevance
 - The national judge's responsibility

3. A case for mutual trust: judicial cooperation in the European area of justice

- Concept and requirements of judicial cooperation
- From Tampere via The Hague and Stockholm to Brussels
- Strategic guidelines for the next five years: consolidation first?

3. A case for mutual trust: judicial cooperation in the European area of justice

Civil justice cooperation:

- Commerce & consumer protection: Brussels I and related regulations
- Insolvency
- Family: Divorce, maintenance, parental responsibility

3. A case for mutual trust: judicial cooperation in the European area of justice

Criminal justice cooperation:

- European Arrest Warrant
- European Investigation Order
- Lacking effective implementation at member states level
- The EPPO proposal

4. European judicial training

- The case for EU law training for judges (and other legal practitioners)
- Judicial training as a European remit
- Judicial training in the EU member states – a study for the European Parliament
- European and national training providers

Presentation by

Dr. Wolfgang Heusel
Academy of European Law (ERA)



Policy Department C

Email: poldep-citizens@ep.europa.eu

15:40 - 15:55

*Monitoring the implementation
of EU law: tools and challenges*

Marta Ballesteros, Milieu

15:55 - 16:30

Discussion



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**Ensuring Implementation
of EU Law**

Outline

- Definitions
- Transposition: trends and hurdles
- Compliance promoting tools
- EU Pilot and infringement procedure

Introduction

- This contribution aims to highlight:
 - the need for a strong EU policy for monitoring and enforcing implementation of EU law as part of the principle of the rule of law
- Definitions
- The note covers:
 - compliance-promoting tools;
 - EU Pilot (pre-infringement) and infringement procedure
- Key findings:
 - Longstanding problems of implementation of EU law
 - Difficulties of the Commission to systematically identify and enforce all breaches of EU law.

Transposition

- Monitoring timely (and correct) transposition of directives is a Commission priority
- General continuous trend of late transposition:
 - Increase of late transposition infringement cases 2009-2011
 - In 2012: Most Member States subject to infringements
 - Positive impact to Art 260(3) and Member States react
- Barriers for timely and correct transposition:
 - vagueness of directives – political compromises,
 - national administrative and legislative procedures,
 - differences of interpretation by national and EU authorities.

Timely Transposition - Recommendations

- No need for longer transposition deadlines

Member States

- Prior to adoption: MS internal structural coordination
- Post adoption: MS systems with accountable bodies for transposition

Commission

- TIPs and expert meetings on transposition and implementation
- Use of regulations when time is crucial for effectiveness

EP

- Improved monitoring and enforcement of regulations by Commission

Compliance promoting tools

- Call for strategic use of compliance promoting tools
- Systematic use of
 - conformity checking studies (and correlation tables),
 - TIPs,
 - package meetings.
- Compulsory use of correlation tables
 - Inter-Institutional Agreement
 - Commission resources
- EU Inspections for environment complementing “EU Pilot” or infringement procedures: Commission, EEAgency

EU Pilot and infringement procedure

“EU Pilot”

- Majority of cases are solved through “EU Pilot”
- Aims at:
 - Correcting problems of compliance with EU law at an early stage through partnership relationship between Commission and MS;
 - Reducing the number of infringements
 - Providing more rapid answers to citizens

EU Pilot and infringement procedure

“EU Pilot”

- The effectiveness of the close dialogue is questioned due to:
 - the absence of control on rules (time) leading to long periods of non-compliance cases
 - Absence of control on decisions taken at unit level with no review
- No legal basis in the Treaty: another layer of dialogue
- No clear legally binding rules
- In 2012: More than 2800 complaints lead to 621 EU Pilot; 2200 were not processed
- Examples show that complainants' involvement increases effectiveness – but dichotomy on objectives

EU Pilot and infringement procedure

Infringement procedure

- Article 258 TFEU led to 2 steps:
 - The letter of formal notice allowing MS submit observations
 - The reasoned opinion
- Effectiveness is recognised: deterrent effect and enforcement
- ... and yet the Commission maintains the objective to reduce the number of infringements
- Transparency: Lack of data and information on status of cases and arguments/basis for decisions
- No clear legally binding rules governing the procedure: time limits and involvement of complainants

Recommendations: EU Pilot and infringement procedure

- Legality and legitimacy of EU Pilot should be ensured:
 - Legitimacy: transparency and involvement of complainants
 - Legality: Legally binding act on the rules governing it
- Regulation defining
 - the role of parties in EU Pilot and in infringement procedure
 - clear timely start and end of EU Pilot and infringement
 - avoiding long non-compliance due to long communications Commission & Member State
- The EP involvement in “EU Pilot” / complaint-handling procedure: copy of letters and complaints (contact point)

Recommendations: EU Pilot and infringement procedure

Effectiveness

- Development of clear legal definition of the purpose of EU Pilot
- Access to EU Pilot data base by complainant
- Internal review of services decisions on EU Pilot
- Success of EU Pilot according to solutions to breaches of EU law

Transparency

- Public access to an user-friendly data base on infringement cases
- MS access to motivations for acceptance or rejection of responses

Efficiency

- Resources
- Awareness raising campaigns

Presentation by

Marta Ballesteros

marta.ballesteros@milieu.be

Milieu Ltd



Policy Department C

poldep-citizens@ep.europa.eu

15:55 - 16:30

Discussion

16:30 - 16:45

*European Private International
Law: the way forward*

Prof. Xandra Kramer,
Erasmus University, Rotterdam



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European Private
International Law: the Way
Forward

Introduction

- EU private international law
 - International jurisdiction; applicable law; recognition and enforcement
 - Residual rules
- Aims
 - Role, policy, legislative framework
 - Activities past legislature – studies
 - Possible courses of action

Competence and policy

- Area of freedom, security and justice
- Judicial cooperation: Art. 81 TFEU
 - Limits family law
- Evolving policy
 - Access to justice; mutual trust
 - Coherence
 - Recovery economy, mobility
 - Consolidation, codification, completion

Current legislative framework

- **Art. 81 TFEU**
 - Regulations (13) – core EU PIL
 - Regulations (2) ‘residual’ - service, evidence
 - Directives (2) - legal aid, mediation
 - Pending proposals
- **Connected directives - Art. 114 TFEU**
- **Influence CJEU**
- **Conventions Hague Conference**

EP studies gaps and framework

- Existing gaps:
 - Non family: property; trusts; agency; corporations -- privacy; collective redress
 - Family law: marriage; registered partnerships; names; adoption; parentage; status and capacity natural persons
- Other issues:
 - Incoherence, recurrent rules, related costs

Mapping policy options

- 1) *Ad hoc* completion of framework
- 2) Consolidation of existing instruments
- 3) Codification into a more comprehensive framework
- 4) European Code of Private International Law (ECPIL)

Towards a European 'Code' of Private International Law?

- **Advantages**
 - Single instrument - systematic
 - Transparency and accessibility (costs)
- **Possible pitfalls**
 - Different traditions 'code' - political support
 - General concepts - specific rules (gaps)
 - Limits family law - diverging substantive laws

The Way Forward

- Short and midterm:
 - Gradual completion of the framework
 - Non family law - corporate and property law
 - Family law – names, status
 - Consolidation and codification
 - Implementation and evaluation
- Longer term:
 - A comprehensive framework or ‘code’

Presentation by

Xandra Kramer
Erasmus School of Law
Erasmus University Rotterdam
The Netherlands



Policy Department C

[Email: poldep-citizens@ep.europa.eu](mailto:poldep-citizens@ep.europa.eu)

16:45 - 17:00

*European intellectual property
law: what lies ahead*

* **Dr. Alfred Radauer,**
Technopolis Group



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**European Intellectual
Property Law: What Lies
Ahead**

IPR in general...

- Exclusive rights in a wide range of things
 - However, not a uniform body of law
 - Relates to various different areas of law, such as patent law, copyright law, trademark law, design law
- Economically highly important subject
- However, also subject of much debate
- Probably most important issue: striking the balance between right holder's rights, third parties and the general public

Patents (I)

- Patents: Exclusive rights granted for technological inventions fulfilling patentability criteria
- Rather little legislative activity compared to trademarks and copyrights due to EPC in the 1970s
- Current EPC system leads only to grant of bundle of national patents

Patents (II)

- Parliament 2009-2014 saw principal agreement on unitary patent package
 - Council Regulation No. 1257/2012 (on unitary patent)
 - Council Regulation No. 1260/2012 (on language/translation issues)
 - Agreement on Unified Patent Court (ratifications still required)
- Upcoming parliament to monitor implementation

Trademarks (I)

- Signs or symbols that when used in trade indicate the commercial origin of goods or services
- Two main legislative actions in the past
 - Trademark Directive of 1988
 - Regulation establishing Community Trade Mark (2004)

Trademarks (II)

- Two pieces of draft legislation
 - Proposal for a Regulation amending Council Regulation EC No. 207/2009 on the Community Trade Mark
 - Proposal for a Directive to Approximate the Laws of Member States relating to Trade Marks (Recast)
- Current topic of discussion

Copyright (I)

- Copyright regulates creation and use of range of cultural goods such as books, films, computer programs
- Incremental approach to harmonisation in copyright instead of wholesale approach with other IP tools
- Creation of a series of Directives (the “acquis”)

Copyright (II)

- Legislative action in 2009-2014
 - Term Amendment (for Sound Recordings and Performers Whose Performances are Embodied in Such Recordings) (2011)
 - Orphan Works Directive (2012)
 - Directive on Collective Management (2014)
- White Paper expected for 2014
- Developments in the future
 - Short term: Scope of rights, exceptions, enforcement
 - Long Term: Unitary European Copyright?

Trade secrets

- Trade secrets: information of commercial value due to relative secrecy
- Economically very important
- Significant heterogeneity in rules across EU Member States
 - Fragmented protection
 - Risk of undermining trade secret owner's competitiveness in the Internal Market
- Proposal for a European Directive in November 2013 on Trade Secrets highly debated

Further topics to be worked on...

- **Enforcement**
 - New Communication announced by the EC on an Action Plan addressing IPR infringements in the EU
- **International activity**
 - International treaties, including some suggested by the WIPO

Presentation by

Lionel L. Bently
University of Cambridge/CIPIL

Alfred Radauer
Technopolis Group Austria

Policy Department C
[Email: poldep-citizens@ep.europa.eu](mailto:poldep-citizens@ep.europa.eu)

17:00 - 17:15

Robot law

* Prof. **Erica Palmerini** / Dr.
Andrea Bertolini, Scuola
Superiore Sant'Anna, Pisa

17:15 – 18:00

Discussion

18:00

End of workshop



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Regulating robotics: a
challenge for Europe

Robotics: a strategic sector for the European Market

Estimated impact of advanced robotics by 2025: \$1,7- 4,5 trillion per year

Robotics for healthcare

Autonomous vehicles

Service Robotics

The need for regulation: Which role for Europe?

From a 'disruptive' technology to a true potential

Transparent regulatory environment

Transnational nature

A fundamental rights perspective

The way to Responsible Research and Innovation

Open science and transparent innovation

Orientation towards societal needs

Ethical acceptability of technology

Incorporating social and ethical values in the innovation process



Human Enhancement

Exceeding Human Limits

Conferring New Capabilities



Human Enhancement: sketching some issues

- Which form of intervention on the human body should be allowed, mere recuperation or also enhancement?
- Who should be entitled to make such a choice?
- According to which principles?

Human Enhancement: working conclusions

- Relevance of the fundamental principles of Dignity, Equality, and Solidarity

- Vulnerability, a value?

Invulnerability:
neither attainable, nor desirable

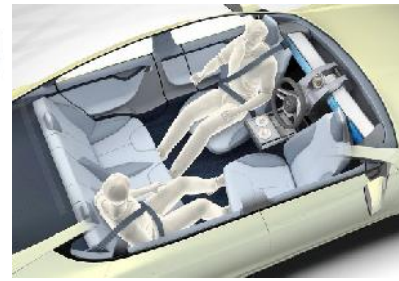
- A common European Approach

A step back: what Robots are and how they shall be defined

There is not an all-encompassing definition

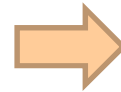
«1 a: a machine that looks like a human being and performs various complex acts (as walking or talking) of a human being [...]»

More insight is gained by identifying differences



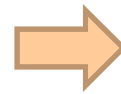
From the 'laws of robots' to a functional regulation of robotics

Profound technical differences



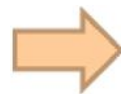
A case-by-case approach

Similar technological traits do not raise the same legal issues



Identify the societal impact of single applications

Same legal issue may require different solutions



Devise the right incentives based on desirability

Liability: providing the right incentives

- Who should pay for damages?

The User?

The Producer?

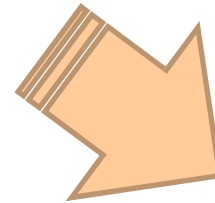
The Robot itself?

- Rationale of liability rules
 - Promoting **safety**
 - Offering **compensation**

Liability: driverless vehicles

Uncertainty: who should be liable between producer and driver?

Technology Chilling Effect of
the Defective Product Directive



Alternatives:

Third Party Insurance

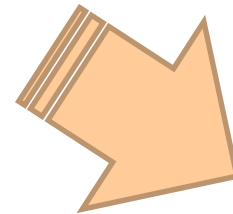
First Party Insurance

Liability: robotic prostheses

Unlimited possible uses

Difficulties in assessing **Defectiveness**

Obligation to favour their development



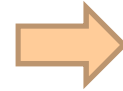
Alternatives:

No Fault Plan

Liability exemption

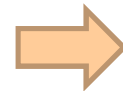
Liability: surgical robots

Keeping medical liability separate



Should be still based on negligence

Avoiding transforming medical liability in product liability claims

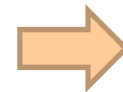


Limit direct actions towards the producer

Provide patients with information recorded by the robot

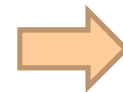
Liability: personal care robots

Unforeseeability of
the conduct of the
robot



Attributing
legal personhood
to the robot

High
purchase/lease
costs for elderly and
disabled



Incentivize
Long Term Care
Insurance Contracts

Standardization

Product Safety

Adopt *ex ante*, **narrow tailored technical rules** to define **high standard safety requirements**

Professional Requirements

Adopt **standardized professional requirements** and a **licensing system** for the use of devices such as surgical robots

Presentation by

Andrea Bertolini
Erica Palmerini

INSTITUTE
OF LAW,
POLITICS AND
DEVELOPMENT



Scuola Superiore
Sant'Anna

Policy Department C

Email: poldep-citizens@ep.europa.eu

17:15 – 18:00 Discussion

18:00 End of workshop