



Issue 2 - November 2014

Dear Colleagues,

It is with great pleasure that we are presenting the second issue of this Newsletter, the purpose of which is to provide a platform of exchange of experiences and ideas among staffers of the European Parliament and the Congress in the area of legal affairs.

The theme of this issue of the newsletter is the various aspects of Better Regulation, which is a topic high up on the EU agenda today. It is one of the key responsibilities of the Committee on Legal Affairs, it is one of the responsibilities of the First Vice-President of the new European Commission, Mr. Frans Timmermans, it is highly relevant for the on-going negotiations for a Transatlantic Trade and Investment Partnership, and it is the main rationale for the recent setting up of a European Parliamentary Research Service.

The question of better regulation also ties in with the last newsletter, which focused on EU Intellectual Property Law. In this context, the Committee on Legal Affairs is about to launch a pilot project whereby the Directive on Copyright in the Information Society (the so-called "InfoSoc Directive") dating from 2001 will be evaluated using all of the better regulation tools at the Parliament's disposal in anticipation of a proposal for new EU legislation on copyright. A public hearing is to be held on 11 November 2014 in order to launch a Working Group on IPR and Copyright Reform, and an upcoming visit by the Committee in May 2015 to Washington D.C. will also be discussed.

This issue furthermore includes an interview with the new Chair of the Committee following the May 2014 elections, Mr. Pavel Svoboda, dealing with his background and expectations for this legislature, as well as an article on the Hague Convention on Choice of Court Agreements. The next edition of the newsletter will include a presentation of a number of other key Members of the Committee.

Antoine Ripoll
Head of the European Parliament's
Liaison Office with the US Congress

Robert Bray
Head of Unit
Committee on Legal Affairs
European Parliament

"Laws are like sausages, it is better not to see them being made."

(This quote is widely attributed to German statesman Otto von Bismarck, though it is possibly the brainchild of an unsung nineteenth century state legislator in the Illinois House of Representatives).

Subscriptions: please email the JURI Secretariat : juri-secretariat@europarl.europa.eu

Credits & Acknowledgments

European Parliament - Committee on Legal Affairs

Head of Secretariat: **Robert BRAY** - robert.bray@europarl.europa.eu

Administrator responsible: **Magnus NORDANSKOG** - magnus.nordanskog@europarl.europa.eu

Editorial/Production Assistant: **Marcia MAGUIRE** - marcia.maguire@europarl.europa.eu

Better Regulation

The European Union is an international organization set up between 28 European nation states under the rules of Public International Law by three Treaties:

1. The Treaty on the European Union (TEU),
2. The Treaty on the Functioning of the European Union (TFEU), and
3. The Treaty establishing the European Atomic Energy Community (EURATOM).

In addition to these three founding treaties, the Charter of Fundamental Rights of the European Union and the accession treaties for those new Member States who have joined since the organization was originally founded in the 1950s enjoy binding force at the same level of those treaties. Together these instruments make up the "constitutional" foundation of the European Union.

According to Article 5 TEU, the limits of Union competence are governed by the principle of conferral, which means that the Union may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

The use of Union competences is furthermore governed by the principle of subsidiarity - meaning that in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level - and the principle of proportionality - meaning that the content and form of Union action shall not exceed what is necessary to achieve the objectives if the Treaties.

Law-making in the European Union is therefore conducted in a complex division of competences between the Member States and the Institutions of the European Union. Much attention is thus given to establishing the correct legal basis for any action at EU level, and the Court of Justice of the European Union is the ultimate arbitrator on such issues given its power of judicial review of EU acts.

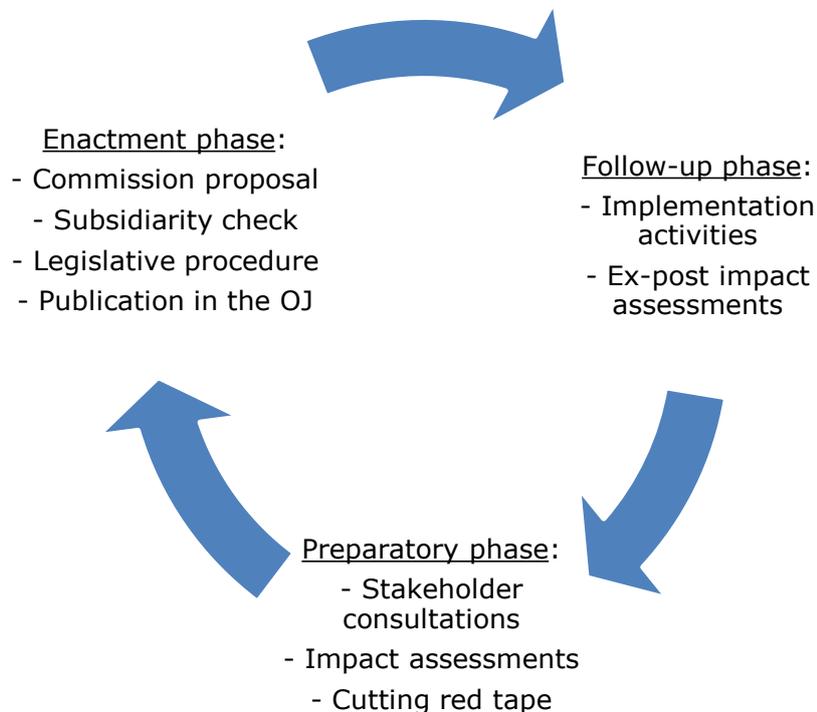
The enactment of regulation in the EU is however mainly a responsibility for three other EU Institutions, namely the European Commission - a collegial administrative body consisting of one member each nominated by the Member States and supported by a large civil service, with powers of initiating legislation at EU level and tasked with monitoring the implementation of such legislation under the Treaties (representing the European dimension of the EU) - , the Council of the European Union - consisting of governmental ministers from each Member State (representing the national dimension of the EU), and enjoying the right of initiative in some areas, in particular those not subject to conferral, mainly intergovernmental issues relating to foreign affairs - , and the European Parliament - consisting of 751 directly elected representatives (representing the citizens' dimension of the EU).

According to Montesquieu's model of division of power between an executive, a legislative and a judicial branch, the Commission, and in some respects the Council, would make up the executive branch and the Parliament together with the Council would constitute a bicameral legislative branch (and the Court of Justice would be the judicial branch). A more fitting, however also not entirely correct, analogy might however be found in the world of corporate governance, whereby the Commission would be the CEO, the Council the Board of Directors and the Parliament the Meeting of Shareholders conducting oversight. In academia, the institutional set-up of the EU is however most often described as *sui generis*, an entity onto itself devoid of comparable existing entities in the world, and because of its complexity one needs to be aware of its distinguishing characteristics in order to understand it fully.

Towards the end of the 1980s, when the body of European legislation adopted on the basis of the Treaties was starting to become very cumbersome, not least as a result of the creation of the Internal Market which was completed in 1992, at the initiative of primarily Northern European Member States a movement to ensure the efficiency of law-making at the European level emerged.

The Commission, taking into account its role as the "Guardian of the Treaties", has therefore gradually over the last quarter century set up strategies intended to cover all of the law-making activities in the EU in order to simplify legislation, make procedures more streamlined and transparent, and to ensure that citizens and stakeholders are able to fully influence and access EU regulation.

While these actions originally and for a long period of time were piecemeal, often considered as secondary considerations to the policy objectives to be attained, primarily focused on the procedure in the Parliament and the Council, and could most correctly be characterized as an afterthought, in the aftermath of the financial crisis and the end of self-regulation, the EU made the deliberate choice to focus its activities on creating better conditions for ensuring growth and employment, not least with a focus on small and medium-sized enterprises, by founding its activities on Smart Regulation and Regulatory Fitness, a horizontal agenda focused on evidence-based policy making throughout the legislative procedures. The perspective was now intended to be holistic, moving from a focus on "how a bill becomes a law" to an overhaul of everything that happens before the Commission presents a proposal and after a legislative act is published in the Official Journal of the European Union. Questions of stakeholder consultations and impact assessments at all levels of legislation and its implementation as well as the reduction of administrative and regulatory burdens (the "cutting of red tape") now became key. This is a schematic presentation of the smart regulation policy cycle:



1. Better Regulation and the Committee on Legal Affairs

Within the European Parliament, the Committee on Legal Affairs is the standing committee responsible for all horizontal issues relating to better regulation. In addition to its responsibility for legislative dossiers within central legal areas, such as civil law and procedure, private international law, commercial law, company law and intellectual property law, the Committee has a very important role as the Parliament's legal advisor. This role follows from the Committee's responsibility for the interpretation, application and monitoring of Union law and international law, and includes giving opinions to other committees in Parliament concerning the legal bases of legislative proposals and on the delegation of legislative powers to the Commission, compiling and analyzing reasoned opinions from Member States' national parliaments on the application of the principle of subsidiarity (see page 2) and recommending to the President of Parliament whether to initiate litigation or intervene in on-going cases in the Court of Justice.

Over the last legislature, matters relating to better regulation have gained more prominence, and in addition to an annual report on better law-making and the principles of subsidiarity and proportionality and an annual report on the monitoring of the application of EU law, the Committee has adopted own-initiative non-legislative resolutions on a number of more specific topics in the area. The most important of these include impact assessments, delegated and implementing acts and European administrative procedure law.

The ultimate goal of these resolutions is to pave the way for a renegotiation of the Interinstitutional Agreement of better law-making from 2003, which is in dire need of an update to take into account the major changes to the legislative procedures which have occurred in the last 10 years, not least the enhanced role of the Parliament as a result of the overhaul of the Treaties which resulted from the entry into force of the Lisbon Treaty in 2009.

2. Better Regulation and the new European Commission

On 10 September 2014, the then President-elect of the European Commission, Jean-Claude Juncker presented his proposal for portfolios for 26 commissioners-designate. The High Representative of the Union for Foreign Policy and Security Policy, Federica Mogherini, who is also a vice-president of the Commission, had already been endorsed by the heads of state and government in the European Council on 30 August 2014 in a package deal with Donald Tusk, who would become the new President of the European Council.

Mr. Juncker's proposed team will consist of six vice-presidents, in addition to Ms. Mogherini, each of whom will be leading a project team consisting of Commissioners. One of these vice-presidents, Mr. Frans Timmermans, former Foreign Minister of the Netherlands, has been given the title of First Vice-President, and will be the right hand of Mr. Juncker. He will be responsible for interinstitutional relations and the better regulation agenda and is supposed to guarantee that every Commission proposal is truly required and that the aims cannot best be achieved by Member States. This is the first time that there would be a Commissioner dedicated to the better regulation agenda. In addition, he would also be expected to act as a watchdog, upholding the Rule of Law and the Charter of Fundamental Rights in the Commission.

Many commentators have seen this move by Juncker as a result of some eurosceptic parties increasing their share of the votes in the May 2014 election to the European Parliament, representing a further move of the center of gravity away from the EU to Member States.

Before the new Commission took office on 1 November 2014, the Commissioners-designate were subject to hearings in the European Parliament during the month of October 2014 in order to evaluate the Commissioners-designate on the basis of their general competence, European commitment and personal independence. Parliament also assesses each Commissioner-designate's knowledge of his or her portfolio and communication skills. While the Parliament will have to approve the new Commission, it can only vote on the college as a whole and not on individual Commissioners-designate. However, following the hearings in

2004 and 2009 of the new Commission, Parliament was able to use the threat of not voting for the Commission in order to have the President replace those designated Commissioners which Parliament had announced that it was not willing to accept. As a result of the hearings held last month, one Commissioner-designate was replaced and some minor reshuffling of responsibilities took place before the Parliament voted to approve the Commission on 22 October 2014.

The performance of Mr. Timmermans at his hearing in front of the Parliament was generally considered the strongest among all of the hearings. In addition to showing linguistic and cultural dexterity and a real commitment to and confidence in the European integration project, he presented himself as a well-prepared and well-informed advocate for the rule of law in the EU, and was therefore considered well-suited to take on his proposed portfolio, in particular the challenges of better regulation, in the new Commission.

3. Better Regulation and the Transatlantic Trade and Investment Partnership

The negotiations for a Transatlantic Trade and Investment Partnership (T-TIP), which began in the summer of 2013, include a chapter on "Regulatory Coherence and Transparency".

Both USTR and the European Commission have stressed that this does not constitute a deregulatory agenda but aims rather at enhancing regulatory cooperation by ensuring the compatibility of regulations and standards on both sides of the Atlantic. The US and the EU already have very strong regulations in most areas, not least health and safety, consumer protection and environmental protection. This negotiating chapter therefore aims at reducing burdens in cases where there are unnecessary costs or non-conversion between the two systems, in particular through the development of rules and principles on global issues of common concern. Examples include challenges in connection with state-owned enterprises – not least potential distortion as a result of localization measures in order to favor domestic producers – and a will to embrace the high standards concerning intellectual property rights achieved in the EU and the US, which do not necessarily exist or are not respected in other countries.

The negotiations on this chapter have thus far not seen much movement and have therefore been the subject of much uncertainty and speculation. The US side has however identified three priorities in this area: transparency (open and accessible procedures), public participation (the solicitation of stakeholder input, known as "Notice and Comment" in the US) and accountability (how the input is taken into account). The connection between this negotiating chapter and the EU better regulation agenda is therefore obvious.

Both sides are now looking into what action could be taken in particular sectors, since there are different problems faced in different regulatory areas and there is different potential for reform and convergence in each area. T-TIP will focus on areas of regulation where there are at present no bodies or existing rules and standards. Significant resources are therefore being put into this exercise by both sides. While there is still uncertainty as to what extent regulatory coherence or convergence could be achieved, many observers have stated that on a scale from full harmonization at one extreme to mutual recognition (e.g. of patent decisions) at the other, it is likely that the overall end result will be found somewhere in the middle of these extremes, depending on the sector, and bearing in mind that one size does not fit all. The next negotiating round to be held in December 2014 or early in 2015 will have a strong focus on regulatory issues.

It has been stressed by several involved stakeholders that the economies in the US and the EU are recovering, but have not fully recovered. Job creation and job maintenance are therefore of key importance in this area and the end goal is to increase growth and competitiveness, while bearing in mind that we are not talking about competition between the EU and US, but between the EU/US and the rest of the world. For instance, there is some concern among EU investors that they are unable to get a fair hearing in US courts, and this warrants looking into, not least in order to enhance the confidence in the respective legal systems.

While these negotiations are on-going, the Committee on Legal Affairs and the Committee on International Trade will hold a joint public hearing on T-TIP with a focus on regulatory aspects and the proposals for Investor-State Dispute Settlement (ISDS) and arbitration. This is planned to take place during December 2014 or early in 2015 once the Commission has published its conclusions of the public consultation on ISDS which closed this Summer. The two Committees are also planning to hold further public hearings on administrative procedures in the EU and the US and on "TTIP: What's in it for the EU citizen?" during 2015.

4. European Parliamentary Research Service (EPRS)

At a seminar held in Brussels on 30 January 2014 on Better Law-Making in Europe, Klaus Welle, the Secretary-General of Parliament, held a key-note speech on "Better Law-Making: Past, Present and Future".

Mr. Welle underlined that this is an area underpinned by the business concept of Total Quality Management and includes four major steps:

1. Agenda setting

The starting point of which is the obligation of the Commission in accordance with Article 17 of the Treaty of the European Union (TEU) to "initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements", and which is complemented by Parliament's Cost of Non-Europe Impact Studies, ultimately underscoring the need for better interinstitutional legislative planning and the urgent need to update the 2003 Interinstitutional Agreement on Better Law-Making in order to adapt it to the new legislative environment created by the entry into force of the Lisbon Treaty;

2. Consultation

Where Mr. Welle pointed to the US Government Accountability Office (GAO) as inspiration and expressed the idea that the European Court of Auditors should step up its activities in line with the more pro-active approach of the GAO in pointing to wasteful or non-productive action as an inspiration to better targeted future action, while also highlighting that a recent agreement between Parliament, the Committee on the Regions and the Economic and Social Committee should be implemented in a way which would allow for initiatives to be fed back into the Commission's annual work program, and stressing the increasing positive role of national parliaments when it comes to the subsidiarity mechanism and their role as discussion fora for legislative initiatives, and finally underlining the importance of Parliament stepping up its participation in the Commission's expert groups and consolidating its stakeholder consultations by making use of its national offices in the Member States and making targeted use of Parliament's newly established Impact Assessment Unit;

3. Legislation

Here Mr. Welle pointed to the need for Parliament to create its own expertise, not least illustrated by the refocusing of the role of its lawyer-linguists to function as legislative drafting consultants for Members rather than mere linguistic revisers, and the need to consolidate and expand the expertise found in its policy departments, committee secretariats and the European Parliament Research Service (EPRS), which was set up with the US Congressional Research Service (CRS) as an obvious inspiration; and finally,

4. Scrutiny

Taking a note from the US Congress activities in the field of regulatory oversight, where Mr. Welle highlighted the need for Parliament to become more proactive in asking difficult questions to the Commission and the Council, exemplified by the setting up of the Economic Governance Unit, strengthened action in the field of banking supervision and the possibility of

creating a sub-committee to the Committee on Economic and Monetary Affairs on scrutiny in the Euro zone.

EPRS was set up as a Directorate-General in the Secretariat of the European Parliament at the end of 2013 in order to bring together several pre-existing analytical and support services to Members and committees. The Directorate for Impact Assessments and European Added Value had been set up a couple of years earlier following the adoption by the Committee on Legal Affairs of a resolution calling for independent impact assessments in legislative procedures. This Directorate was put together with the Library of the European Parliament, and together with the creation of a brand new Member's Research Service, tasked with providing tailored briefings and research for Members, it formed the EPRS.

5. Upcoming Better Regulation activities of the Committee on Legal Affairs

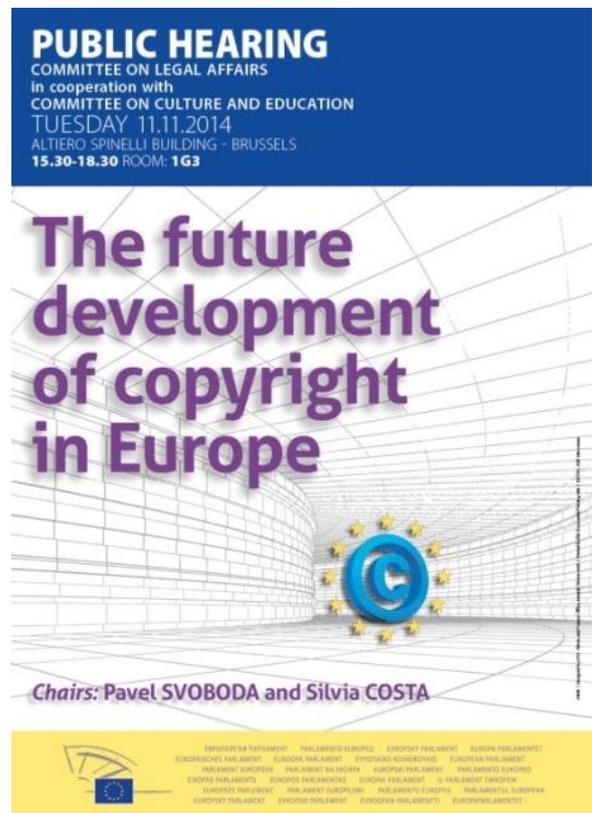
The new Commission has identified the reform of Copyright in the Digital Society and Economy as one of 10 main priorities for its mandate of the term 2014-2019, and has announced that it will conduct public consultations, impact assessments and other preparatory analytical work before presenting proposals for EU legislation and other action within the next two years.

In view of this, and since Intellectual Property Law is one of the competences of the Committee on Legal Affairs (see [Newsletter No 1 of June 2014](#)), the Committee has decided to set up a Working Group on IPR and Copyright Reform, which will consist of Members and staff of the Committee as well as from the Committee on Culture and Education, the Committee on the Internal Market and Consumer Protection and the Committee on Industry, Research and Energy. The Group is expected to meet once a month, starting in December 2014, in order to hear invited experts from in particular academia, civil society and other interested stakeholders, and to discuss particular subject areas relevant to IPR and copyright reform, with a view to drawing up working documents aimed at assisting Members in assessing and working with upcoming Commission proposals and activities in this area.

To launch this Working Group, the Committee will hold a public hearing in Brussels on 11 November 2014 on the future of copyright in Europe in cooperation with the Committee on Culture and Education:

Please click on the [programme of the hearing](#).

In addition, the Committee will attempt to stay ahead of the Commission during the preparatory work for its upcoming proposals by conducting its own parallel better regulation activities. The first step will be to draw up an implementation appraisal report on the main piece of current legislation in the area of copyright in Europe, namely the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (the [InfoSoc Directive](#), Official Journal L 167 22.06.2001, p. 10). This report will be accompanied by a so-called ex-post impact assessment which will be commissioned to the Committee by the EPRS. The results of the report will then be followed up with a public consultation and an ex-ante impact assessment of the resulting suggestions for policy options when it comes to reforming copyright in Europe, all in anticipation of the parallel activities of the Commission.



PUBLIC HEARING
 COMMITTEE ON LEGAL AFFAIRS
 in cooperation with
 COMMITTEE ON CULTURE AND EDUCATION
 TUESDAY 11.11.2014
 ALTIERO SPINELLI BUILDING - BRUSSELS
 15.30-18.30 ROOM: 1G3

The future development of copyright in Europe

Chairs: Pavel SVOBODA and Silvia COSTA

EUROPEAN PARLIAMENT - PARLAMENTO EUROPEO - EUROPEES PARLAMENT - EUROPA PARLAMENTI
 EUROPEISKT PARLAMENT - EUROPA PARLAMENTI - EYROPAN PARLAMENTI - EUROPEISKA PARLAMENTET
 PARLAMENT EUROPEEN - PARLAMENTI NAJEDNA - EUROPEJSKI PARLAMENTI - PARLAMENTO EUROPEO
 EUROPA PARLAMENTI - EUROPEJSKI PARLAMENTI - EUROPA PARLAMENTI - IL PARLAMENT EUROPEO
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The Committee is also planning a visit to Washington D.C. in May 2015 by a delegation of its Members and staff, with the purpose of discussing questions of mutual interests pertaining to Civil Law, regulatory aspects of T-TIP, administrative procedures and Intellectual Property Law with Members of Congress, the US administration, the Supreme Court and civil society.

Interview with Mr. Pavel Svoboda, chair of the Legal Affairs Committee

Mr. Pavel Svoboda (EPP, CZ) was recently elected Member of the European Parliament; subsequently he was elected by acclamation, chair of the Committee on Legal Affairs.



Mr. Svoboda, you have a strong academic background as a Professor of European law at the Law Faculty of Charles University. Your former posts include those of Attorney at Law, Deputy Minister of Foreign Affairs, Ambassador of the Czech Republic to the Council of Europe, Minister, and Chairman of the Legislative Council of the Czech Republic. What motivated you to become a MEP?

I have dedicated my professional career since 1999 to European integration and EU law. I have also been involved in politics, so my candidature was really a logical step and an obvious mixture of both. And of course I can make a joke by saying that after teaching EU law for two decades, I wanted to make sure I have not been teaching nonsense.

What are your first impressions of Brussels and the European Parliament? What has surprised you most?

I must admit, the first weeks and months have been very hectic with the time-consuming but also interesting tasks of a committee chair. I haven't had time yet to discover what Brussels has to offer, so far I have only seen the expressway from the airport to the Parliament and back – I have not even had time yet to furnish my apartment. However, despite the long working days, I have certainly enjoyed meeting new people and colleagues interested in the European integration process. It is very encouraging and inspiring.

I'm intrigued by some of Parliament's special procedures, being elected as chair by acclamation, for instance. At the same time, I have appreciated the professional way of working: the meetings are always very well prepared, efficiently conducted with limits for speaking time, etc. Even though some procedures and practices might be different, I know from experience that the most important thing is good relationships, no matter where you are.

Which are the key issues you would most like to address in your work as an MEP and as a chair of the legal affairs committee?

Above all, I will work hard to be a good chair of the Committee on Legal Affairs. I am encouraged by the good practices and traditions developed by previous chairs. I would like to make European citizens feel that the European project is useful and that they benefit by the work we do here. For example, by enhancing civil law cooperation, we can make the life of citizens who have move across borders easier by facilitating mutual recognition of public documents.

When it comes to copyright, we must adapt the legislation to the XXIst century. Things have changed greatly over the last few years. However, at the same time, we have to make sure that this will not lead to anarchism and lack of copyright, as that would mean the disappearance of artistic work and software. Just as companies developing new medicines need profits to compensate for their investments, copyright holders need incentives to innovate and create something new. We must take account of the challenges of the new era and find a balance between protection of authors, stakeholders, and the interests of the general public. In referring to medicines, we need to offer correct incentives for the development of medicines whilst ensuring that citizens have access to them.

Protection of intellectual property rights is one of the key topics addressed in the negotiations for a Transatlantic Trade and Investment Partnership. So, from your point of view, what are the key concerns?

Intellectual property rights should be very carefully considered in this context. They are important drivers of economic growth and competitiveness. The US and Europe have similar interests; so it is obvious that the two continents should cooperate without constant trade battles. Bringing down all possible barriers for trade is essential and obviously one of our priorities. However, there are certain sensitive issues and principles that Europe cannot abandon, such as different positions on key social, ethical and cultural matters. This is where we have to maintain our position; we cannot forsake the values on which Europe is based.

Better regulation and cutting red tape will be one of the key priorities for the coming years in the EU. How can this important objective be achieved?

I have noticed that often while our stakeholders complain about the amount of European legislation, yet, and often in the same breath, they demand new regulations. However, better regulation does not always mean less regulation. Evidently, there are pieces of legislation that need to be removed, but also here we need to strike a balance between quantity and quality.

We should develop impact assessment at different levels and make sure our legislation is evidence-based. The European Parliament should use the existing instruments, such as ex-post evaluations and added-value reports, and develop these further so that we can truly impose evidence based legislation.

Finally, we have learned that besides politics, also music plays an important role in your life – Could you tell us a bit more?

I am a member of Czech sacred music society since the 1990s. I play double bass and some trumpet, but mainly I sing; and I am a choir conductor. I like to collect Christmas carols from different countries and rewrite them in Czech. This is not an easy task as accents vary in different languages, yet accents influence melody. In addition, I collect canons and catches and I have published one secular part collection and one spiritual.

Puer nobis nascitur



①
Pu - er no - bis na - sci-tur, re - ctor an - ge - lo - rum,
②
in hoc mun - do pa - sci-tur Do - mi - nus do - mi - no - rum.

The Hague Convention of 30 June 2005 on Choice of Court Agreements

The genesis of the Hague Convention on Choice of Court Agreements goes back to the idea of a worldwide convention on jurisdiction and judgments, negotiated within the framework of the Hague Conference on Private International Law. However, owing to the very technical nature of such a project, it was decided that the starting point for this process was a simpler agreement on jurisdiction based on choice of court agreements in commercial cases.



The aim of the convention is to make choice of court agreements as effective as possible. For that purpose, it seeks to ensure that the chosen court must hear a case when proceedings are brought before it, that any other court before which proceedings are brought must refuse to hear them, and that the judgment of the chosen court must be recognized and enforced.

However, there are exceptions. For example, the chosen court need not hear the case where the choice of court agreement is null and void under its law. In that case, any other court seised of the matter is not obliged to stay proceedings. There are also exceptions for public policy reasons.

The convention also contains provisions on the recognition of a judgment issued by a court chosen under the provisions of the convention. In this connection, there is no obligation to give effect to a judgment awarding exemplary or punitive damages, as such awards are not permissible in many states.

The scope of the convention is limited to exclusive choice of court agreements in international cases. It concerns commercial contracts only, and excludes consumer and employment contracts. Other exclusions cover family law and transport contracts. In the area of intellectual property rights; it only covers copyright and related rights (including licensing agreements), whereas other areas of intellectual property law are not covered.

Contracting parties can also make a declaration excluding other matters. The Council of the European Union has decided to make a declaration excluding insurance contracts, with the exception of major commercial insurance and re-insurance contracts, from the convention. The purpose of this is to ensure that consumer and other small-scale insurance contracts, which are covered by particularly strict rules in the European Union, cannot be made subject to the decisions of foreign courts.

The convention aims to do for choice of court agreements what the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 has done for arbitration agreements.

What is of particular relevance for the European Union is that the convention, to some extent, mirrors the content of the so-called Brussels I Regulation, which concerns jurisdiction and the recognition and enforcement of judgments within the Union. Article 26 of the convention provides that if there is a conflict of rules with regard to jurisdiction, the Brussels I Regulation will prevail over the convention where none of the parties is resident in a contracting state that is not a Member State of the European Union. Where one or more of the parties is resident in a contracting state that is not a Member State of the European Union, the convention will prevail.

With regard to the recognition and enforcement of judgments, the Brussels I Regulation will prevail where the court that granted the judgment and the court in which recognition is sought are both located in the European Union. This means that the generally more limited grounds

for non-recognition laid down in the Brussels Regulation will apply in place of the wider grounds of the convention.

From a public international law perspective, the convention contains a so-called REIO (regional economic integration organization) clause. This allows the European Union to become a party to the convention as if it were a state.

The European Union has already signed the convention. Following lengthy deliberations, the Council of the European Union has now decided to ratify it. The European Parliament is currently preparing its position on the ratification, as its consent is required before the instrument of ratification can be deposited.

So far, only Mexico has ratified the convention. The European Union will in all likelihood do so soon. The European Union has considerable interest in the United States doing the same, as that will enable the provisions of the convention to apply to the considerable volume of trade between Europe and the United States which is reflected in international contracts.

For in-depth information on the convention, readers are invited to consult the [Explanatory Report on the 2005 Hague Choice of Court Agreements Convention](#) on the convention by Trevor Hartley and Masato Dogauchi.