Editorial

As the world is almost entirely on lockdown in an effort to stop the spreading of the novel coronavirus, new legal debates are arising. These include the need for certain extreme measures (e.g., full lockdowns, access to citizens' mobile data), the limits and implications of extraordinary governmental powers as well as the consequences of such measures for ongoing administrative procedures. Academic scholars, experts on virology and laymen all have an opinion and want to contribute. Striking an appropriate balance between safeguarding human health and the respect for fundamental and human rights (e.g., freedom of movement) while keeping public administration functional has become a challenge in itself. The EU and Member States' responses to the crisis show not only that the virus has become a common enemy but also a mutual interest in safeguarding human life. However, administrative and financial measures differ greatly and the first political disagreements are emerging. Northern and Southern European countries do not seem to agree for example on the need to trigger the European Stabilization Mechanism. The role of the EU in this crisis is starting to be questioned. While the international outbreak of the virus indeed gives rise to multiple relevant legal questions concerning constitutional law, there are many intemporal issues on administrative law that remain relevant during these challenging times. This issue of REALaw aims to offer an overview of other relevant legal issues that deserve your attention, even in times of crisis.

First, Jorge Agudo, directs our attention towards the concept of mutual recognition in his article 'Mutual Recognition, Transnational Legal Relationships and Regulatory Models'. In Agudo's analysis this concept that plays a significant role for all EU freedoms, is at the core of the transnational legal relations between Member States within the EU. His broad definition of mutual recognition encompasses variations such as the Council's power (Article 53.1 TFEU) to adopt a Directive on the recognition of diplomas and any provision in a Directive that provides for some form of either automatic or conditional mutual recognition, whether explicit or not. Agudo argues that the longstanding discussion comparing mutual recognition with principles such as equivalence and country-of-origin is artificial because each variation of mutual recognition will involve both aspects, albeit with different relative weights. Any variation of mutual recognition requires a transnational legal relationship between countries but using a centralised regulatory model within the EU, for example, by adopting a regulation, will not lead to the 'horizontal opening-up of national legal orders'. The author argues that a relational regulatory model will lead to horizontal transnationality which can be beneficial for the validity and effectiveness of mutual recognition.

Second, Enrico Gagliardi and Laura Wissink discuss in their article 'Ensuring effective judicial protection in case of ECB decisions based on national law', a

novelty in EU law that is a true sign of the intertwinement of national and EU Law. As a result of the centralization of the prudential banking supervision, organised via the Single Supervisory Mechanism, the European Central Bank (ECB) has the power and the duty to apply all relevant EU law, including, where EU law is composed of Directives, national legislation transposing them (Article 4(3) SSM Regulation). As a consequence, the ECJ has now been confronted with several cases that concern decisions by the ECB based on the application of national law. Bearing in mind that the jurisdiction of the ECJ is limited when national law is concerned (based on the wording of Articles 263 and 256 TFEU), the authors discuss these cases and assess how the court deals with national law in other types of legal proceedings. Interestingly enough the authors bring forward suggestions to improve effective judicial protection at the EU level. Alternatives like enhancing the dialogue between the CJEU and the national courts by informal cooperation or by using the mechanism envisaged by Article 24(2) of the Statue of the Court of Justice of the European Union, on the basis of which the CJEU may request additional information from national courts. Deemed somewhat less feasible by the authors but nonetheless worth mentioning, is the use of a broad interpretation of Article 4(3) TEU to allow for a reverse preliminary procedure where a (non-binding legal opinion) from the national court would be given.

Third, the article 'The ECJ as the EU Court of Appeal: some evidence from the appeal case-law on the non-contractual liability of the EU' by Giulia Gentile focuses on the role of the ECJ as a court of appeal in the EU legal order. The article discusses how the role of the ECJ as a court of appeal has grown in the number of cases and how it has developed. Also, the author investigates how the appeal procedure shapes the judicial dialogue between the General Court in first instance and the ECJ as a court of appeal. The analysis starts by investigating what may be considered a question of law since bringing appeal cases to the court is only allowed for these questions. Furthermore, Gentile indicates differences between the courts when interpreting EU law, using the EU appeal cases concerning the non-contractual liability of EU institutions as a case study. One of the findings is that the ECJ as a court of appeal is fulfilling its duty to enhance the protection of individual rights by adopting a broad notion of 'plea of law' to enable parties to seek judicial protection against incorrect General Court decisions. Although the author emphasizes that the limitations of her findings, the article paints a relevant picture of the development regarding the appeal proceedings at EU level.

Fourth, Micaela Lottini describes and analyzes the developments concerning SOLVIT. The idea of SOLVIT is clear. The SOLVIT network provides assistance when a EU citizen is confronted with unfair rules or decisions and discriminatory red tape while living, working or doing business in another EU Member State. It reminds the relevant authorities of the EU citizens rights and works

with them to solve problems. In her article 'The SOLVIT Network: State of the Art and Possible Future Developments' Lottini identifies possible future developments in the SOLVIT network on the basis of the 2017 Communication 'Action Plan on the reinforcement of SOLVIT: bringing the benefits of the single market to citizens and businesses'. This communication proposes new actions to strengthen the strategic role of the SOLVIT network, both for the protection of the citizens and businesses as well asfor the effective enforcement of EU law. Lottini discusses the SOLVIT network in the context of the strategies and initiatives for the integration of the internal market that were developed by the European Commission, looks back upon the evolution of the network over the past fifteen years and analyses the 2017 Action Plan. The author argues that the SOLVIT network has an important role to play in enhancing effective 'compliance' with EU law by working at an individual level, at an administrative level, and also at a regulatory level. The Action Plan introduces the idea to create an 'arbitration procedure' before the Commission in case parties cannot agree on how to resolve a specific internal market problem. SOLVIT is and will be in the future a relevant and more informal alternative to the formal infringement proceedings provided for by the EU Treaties.

Fifth, Oskar Gstrein discusses one of the most intriguing problems of internet governance in the digital era in his article 'Right To Be Forgotten: European Data Imperialism, National Privilege or Universal Human Right?'. The increasing amounts of personal data that are being collected on individuals and the question how that affects them over time, has led to EU General Data Protection Regulation (GDPR) and Right To Be Forgotten (RTBF). The judgment of the ECJ in Google vs CNIL (C-507/17) on 24 September 2019 should have clarified the territorial scope of that right and could have provided more clarification on many other issues. Instead, it raises doubts about the enforceability of the GDPR within the complex, multi-layered governance structure. Gstrein concludes that many issues concerning the RTBF remain unclear at the European level and have to a certain extent been clarified at the Member State level, allowing for differences between Member States. A relevant question for the EU legal order is whether the lack of clear answers from the ECJ will result in more fragmentation towards the national level or in more dialogue towards universal rights for data subjects, specifically where it concerns delisting and the RTBF.

With each issue of REALaw the editorial board tries to provide insightful case law analysis for important decisions by the ECJ that fall within the scope of the journal. This issue of REALaw features a case law analysis by Sim Haket. In 'Popławski II: A Half-Hearted Embrace of Hierarchical Supremacy' Haket discusses two important implications of this case. First, the case highlights the pre-eminence of EU law over national law, and conceptualises consistent interpretation and State liability as a consequence of this hierarchical relationship. Second, the ECJ rejects the possibility to disapply conflicting national law solely on the basis of supremacy, i.e. without having recourse to direct effect. The

author wonders why the ECJ opted for this approach that does not seem to be entirely consistent from a theoretical point of view with the hierarchical relationship between EU and national law.

We close this issue with a book review. *Modernising Public Procurement. The approach of EU Member States* is a comparative book edited by Steen Treumer and Mario Comba which was published by Edward Elgar in 2018. Livio Girgenti provides the readers of REALaw with a concise review of this important book. The volume is a collection of country reports, edited by distinguished authors in the field of public procurement. The reports were written by a good mix of young and senior scholars. The book is part of the European Procurement Law series edited by Roberto Caranta and Steen Treumer. Girgenti concludes that the book is an essential tool for scholars, practitioners and judges, and can be used to improve the dialogue between different legal systems.

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