
Broberg, Morten

Published in: Common Market Law Review

Publication date: 2016

Document Version
Publisher's PDF, also known as Version of record

Citation for published version (APA):
Editorial comments: Presiding the Union in times of crisis:
The unenviable task of the Netherlands 327–338

Articles
A. Wallerman, Towards an EU law doctrine on the exercise of
discretion in national courts? The Member States’
self-imposed limits on national procedural autonomy 339–360
A. Steinbach, The lender of last resort in the eurozone 361–384
E. Gambaro and F. Mazzocchi, Private parties and State aid
procedures: A critical analysis of the changes brought by
Regulation 734/2013 385–418
J. Mendes, Discretion, care and public interests in the EU
administration: Probing the limits of law 419–452
N. Dunne, Convergence in competition fining practices in the EU 453–492

Case law
A. Court of Justice
The legal nature of the duty to review prohibitions or restrictions on
the use of temporary agency work: AKT, A. Davies 493–508
Improving consumers’ enforcement of their rights under EU
consumer sales law: Froukje Faber, P. Rott 509–526
The UCPD’s notion of “commercial practice”: UPC Magyarország,
B. Keirsbilck 527–542
Pregnancy-related employment breaks, the gender dynamics of free
movement law and curtailed citizenship: Jessy Saint Prix,
S. Currie 543–562

Book reviews 563–596
Aims
The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal & Regulatory U.S., 76 Ninth Avenue, 7th Floor, New York, NY 10011–5201, USA. Website: www.wklawbusiness.com

Common Market Law Review is published bimonthly.
Subscription prices 2016 [Volume 53, 6 issues] including postage and handling:
Print subscription prices: EUR 818/USD 1157/GBP 583
Online subscription prices: EUR 773/USD 1097/GBP 555
This journal is also available online. Online and individual subscription prices are available upon request. Please contact our sales department for further information at +31(0)172 641562 or at sales@kluwerlaw.com.
Periodicals postage paid at Rahway, N.J. USPS no. 663–170.
U.S. Mailing Agent: Mercury Airfreight International Ltd., 365 Blair Road, Avenel, NJ 07001. Published by Kluwer Law International B.V., P.O. Box 316, 2400 AH Alphen aan den Rijn, The Netherlands

Printed on acid-free paper.
COMMON MARKET LAW REVIEW

Editors: Thomas Ackermann, Loïc Azoulai, Marise Cremona, Michael Dougan, Christophe Hillion, Niann H. Nic Shuabhe, Wulf-Henning Roth, Ben Smulders, Stefaan Van den Bogaert

Advisory Board:
Ulf Bernitz, Stockholm
Kieran Bradley, Luxembourg
Alan Dashwood, Cambridge
Jacqueline De Heuthe de la Rocheüre, Paris
Claus-Dieter Ehlemann, Brussels
Giorgio Gaja, Florence
Walter van Gerven†, Leuven
Roger Goebbels, New York
Daniel Halberstam, Ann Arbor
Gerard Hogan, Dublin
Laurence Idol, Paris
Francis Jacobs, London
Jean-Paul Jacqué, Brussels
Daniel Jan Kuijper, Amsterdam
Ole Lando, Copenhagen

Managing Editor: Alison McDonnell
Common Market Law Review
Europa Instituut
Steenschuur 25
2311 ES Leiden
The Netherlands

e-mail: a.m.mcdonnell@law.leidenuniv.nl

Aims
The Common Market Law Review is designed to function as a medium for the understanding and analysis of European Union Law. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication. The Common Market Law Review was established in 1963 in cooperation with the British Institute of International and Comparative Law and the Europa Institut of the University of Leyden.

Editorial policy
The editors will consider for publication manuscripts by contributors from any country. Articles will be subjected to a review procedure. The author should ensure that the significance of the contribution will be apparent also to readers outside the specific expertise. Special terms and abbreviations should be clearly defined in the text or notes. Accepted manuscripts will be edited, if necessary, to improve the general effectiveness of communication. If editing should be extensive, with a consequent danger of altering the meaning, the manuscript will be returned to the author for approval before type is set.

Submission of manuscripts
Manuscripts should be submitted together with a covering letter to the Managing Editor. They must be accompanied by written assurance that the article has not been published, submitted or accepted elsewhere. The author will be notified of acceptance, rejection or need for revision within three to nine weeks. Digital submissions are welcomed. Articles should preferably be no longer than 28 pages (approx. 9,000 words). Annotations should be no longer than 10 pages (approx. 3,000 words). Details concerning submission and the review process can be found on the journal’s website http://www.kluwerlawonline.com/toc.php?pubcode=COLA


Every year, very large sums of money are transferred as development assistance from the wealthier countries in the Global North to the less well-off Global South. For many years extensive research has been carried out with regards to these transfers of resources, but apart from human rights lawyers surprisingly few legal scholars have engaged with the topic. As a consequence scholarly legal writings are rather sparse in the field of development cooperation. Dann is one of the few scholars working on the law of development cooperation. In 2013 he published a major monograph, originating in his German *Habilitationsschrift.* The English edition makes it clear, however, that the original German book – *Entwicklungsrecht. Theorie und Dogmatik des Rechts der Entwicklungszusammenarbeit* – has been substantially revised and updated before being translated into English. On the back of the English edition, the reader is informed that “by focusing on the rules of development cooperation, [the book] puts forward a new perspective on the institutional law dealing with the process, instruments and organization of this cooperation. Placing the law in its theoretical and political context, it provides the first comparative study on the laws of foreign aid as a central field of global autonomy and asks how accountability, autonomy and human rights can be preserved while combating poverty”. This delimitation is somewhat puzzling – first of all, because the book focuses on the institutional rather than on the substantive law of development cooperation. In the opinion of this reviewer, the substantive law of development cooperation has developed from being overwhelmingly political to, today, also having a perceptible legal connotation. Hence, already for this reason the substantive law of development cooperation would seem to be worth examining. In contrast, the institutional aspects of international development cooperation have always had an appreciable legal connotation (albeit clearly influenced by the
different political winds that have been blowing). This is not to say that the institutional aspects do not also deserve close scrutiny, but arguably if the choice were to be between the substantive and the institutional aspects, the former would seem to be the most attractive for a legal researcher looking for virgin territory waiting to be explored.

The book’s raison d’être is presented at pages 1–2. Here the author explains that the aim is “[t]o understand converging as well as divergent elements [organizing and structuring development cooperation] and to analyse them critically”. This the book does, through a “vertical comparison of national, supranational and international regimes to understand” the law of development cooperation. To this end the author has chosen to focus on the relevant laws of the World Bank, the European Union and Germany. With regard to the choice of these three donors, the author “contends that beyond the obvious differences in the nature of these actors, there is convergence in the general structures of their laws organizing and structuring development cooperation”. In other words, through a comparative legal analysis of Germany, the EU and the World Bank, the author will make general statements about the law of development cooperation without including the United States, without including Great Britain, without including France, without including the Scandinavian countries and the Netherlands; all of which have played important roles in the field of development cooperation and its regulation? And certainly they have not played less important roles than has Germany. In the contemporary world it would also have seemed natural to include new donors such as China and Qatar in the examination; at least if we take a broader approach to development cooperation than the narrow one established through the OECD’s definition of “official development assistance” (ODA). Indeed, in the same vein it would probably have made the book more aligned with the realities of the world of today if Dann had ventured to broaden his examination so far as to also cover private transfers (e.g. remittances and private sector aid). Dann however excludes such a broader approach by delimiting his study to the provision of “public funds and hence the category of ODA as it is defined by the OECD” (p. 13).

Another issue which arguably deserved more thorough attention is the handling of humanitarian assistance in the context of development cooperation. Whereas Dann’s book covers both types of assistance, it would have seemed recommendable if the readers were made aware more explicitly that different legal schemes apply. This is first of all the case with respect to the substantive rules, but the differences also impact on the institutional regulation. Perhaps one way whereby the difference between humanitarian aid and development assistance could have been bridged would have been by adding a “classic humanitarian aid actor” to the three actors otherwise covered (i.e. an actor that is almost exclusively active in the field of humanitarian aid).

The book constitutes three parts. Thus, following a general introduction to the work, part I provides approximately 100 pages under the heading “Institutional and intellectual history of development cooperation”. In part II the reader is offered about 150 pages concerning the “Constitutional foundations of the law of development cooperation”. And part III provides us with almost 200 pages on the “Administrative law of development cooperation”.

Part I essentially provides a very detailed historical account. Whether one likes such a detailed, descriptive account is probably a question of personal preferences. In the opinion of the present reviewer, this kind of account is only justified if it serves a purpose towards the book’s overall objective. Unfortunately, it is difficult to see where the author draws on the account given in part I in the two subsequent parts of the book.

In part II, Chapter 4, i.e. about halfway through the work, Dann turns to “principles of the law of development cooperation”. On the very first page he identifies four “paramount” concepts – or principles: (i) development, (ii) collective autonomy, (iii) individual autonomy, and (iv) coherence and efficiency. On the second page of Chapter 4 he observes that “[t]hese four principles have shaped the law of development cooperation and open four perspectives on relevant norms.” And he continues: “They help to bring order to diversity of rules and mechanisms, and pose their own specific questions to the law. They transform established
general principles of international law into field-specific sectorial principles of development cooperation law. At the same time, there might also be tensions between them…. Most of the remaining part of the chapter provides an examination of “the individual substance of these principles and highlight areas of tension”. Admittedly, this bold approach left me somewhat baffled. Thus on the face of it, Dann first identifies four principles that, according to him, have shaped the law of development cooperation – but without carrying out anything even remotely resembling a dedicated examination of (or a justification for the existence of) the four principles. Having simply identified the principles, he goes on examine their substance. Somehow this does not add up. Whereas the subsequent examinations of the substance of the four identified principles (as well as the examinations that follow in the book’s part III) to some extent support the identification of the four principles, it still remains that there does not appear to be a thorough and convincing examination leading to them being singled out as the four guiding principles in the law of development cooperation. In this context, an important question is whether Dann is right in his identification of the four principles? Duly answering this question basically presupposes that we can test Dann’s singling out of the four principles; but this is impossible without access to the examination. This means, to give but one illustration, that we do not know why Dann has found that the do-no-harm principle does not figure amongst the guiding principles.

The presentation of the substance of the four principles is followed by five chapters making up the book’s Part III on administrative law of development cooperation. Here the book’s subtitle (A comparative analysis of the World Bank, the EU and Germany) is given flesh and blood. Dann examines the legal aspects of different ways of providing official development assistance (ODA) as well as the accountability in the transfers of official development assistance. The examinations are thorough although they suffer from the fact that Dann bases himself on only the three actors listed above. Indeed, at times the author acknowledges himself the inherent limitation in this (e.g. p. 429).

As stated in the introduction of this review, Dann is one of the few scholars working in the field of the law of development cooperation. Moreover, a volume of over 500 pages dedicated to the law of development cooperation is a rare occurrence and therefore must be applauded. As also observed above the English-language work was based on Dann’s German thesis. Translating a work from one language into another correctly is difficult. The task becomes even more challenging if the translator must also ensure that the translated work does not “retain the linguistic tone” of its original, and the translation requires insight into complex legal and political issues, requiring thorough knowledge of the applicable specialized terminology. Despite these very considerable challenges, the English edition of the book is an excellent translation. Both Dann and the translator, Andrew Hammel, are to be commended for an impressive translation of the work into English.

Morten Broberg
Copenhagen
Aims
The Common Market Law Review is designed to function as a medium for the understanding and analysis of European Union Law, and for the dissemination of legal thinking on all matters of European Union Law. It thus aims to meet the needs of both the academic and the practitioner.

Editorial policy
The editors will consider for publication manuscripts by contributors from any country. Articles will be subjected to a review procedure. The author should ensure that the significance of the contribution will be apparent also to readers outside the specific expertise. Special terms and abbreviations should be clearly defined in the text or notes. Accepted manuscripts will be edited, if necessary, to improve the general effectiveness of communication. If editing should be extensive, with a consequent danger of altering the meaning, the manuscript will be returned to the author for approval before type is set.

Submission of manuscripts
Manuscripts should be submitted together with a covering letter to the Managing Editor. They must be accompanied by written assurance that the article has not been published, submitted or accepted elsewhere. The author will be notified of acceptance, rejection or need for revision within three to nine weeks. Digital submissions are welcomed. Articles should preferably be no longer than 28 pages (approx. 9,000 words). Annotations should be no longer than 10 pages (approx. 3,000 words). Details concerning submission and the review process can be found on the journal’s website http://www.kluwerlawonline.com/loc.php?pubcode=COLA.