COMMON MARKET LAW REVIEW

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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.

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Establishment and Aims

The Common Market Law Review was established in 1963 in cooperation with the British Institute of International and Comparative Law and the Europa Instituut of the University of Leyden.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 aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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

Nina Poltorak, *European Union Rights in National Courts*. Alphen aan den Rijn: Kluwer Law International, 2014. 416 pages. ISBN: 9789041158635. EUR 145.

National courts are the ordinary courts of EU law and "are closely involved in the correct application and uniform interpretation of European Union law and also in the protection of individual rights conferred by that legal order" (Opinion 1/09, para. 84). While discharging themselves of that task, national courts take recourse to national procedural law. In absence of EU rules on the matter, Member States are free to organize their judicial system and to enact procedural law. However, since national procedural law can obstruct the application of EU law, the ECJ has imposed a number of limits on the freedom of the Member States in that regard. The

book addresses these limits (*effet utile*, the requirements of equivalence and effectiveness, effective judicial protection) and covers for that purpose all strands of the Court's case law. The use of national procedural law as an instrument to enforce EU law is analysed and the impact of EU law requirements on national procedural rules is considered. It is the most up-to-date work on the issue at present and is therefore a port of call for anyone writing on the topic.

The book's first four chapters are rather theoretical in nature and introduce the reader to the various concepts and doctrinal debates connected to the enforcement of EU law in national courts. Chapter 1 contains a number of definitions and theoretical considerations regarding the relationship between rights and remedies in EU law. Chapter 2 sets out the concepts of institutional and procedural autonomy. Chapter 3 tackles the relationship between the principle of effectiveness (*effet utile*) and the principle of effective legal protection, whereas chapter 4 analyses the requirements of equivalence and effectiveness. The next ten chapters each cover a specific instance of the enforcement of EU law in national courts. Chapter 5 deals with the right to a court in EU law, more specifically with the existence of an actionable right. Chapter 6 concerns the notion of a court and the availability of procedures for the enforcement of EU law claims. The right to fair trial is covered in Chapter 7. In Chapter 8 the author explores the effect of EU law on the competence and jurisdiction of national courts. Chapter 9 provides a good overview of the application of EU law by national courts of their own motion (*ex officio* application). Chapter 10 deals with provision of interim protection by national courts against national measures either conflicting with EU law or implementing a provision of secondary EU law that is contrary to higher ranking rules of EU law. Chapter 11 covers the issue of standing of natural and legal persons. Time-limits are considered in Chapter 12. Chapter 13 delves into the question of the reopening of final decisions contrary to EU law and provides a clear analysis of the Court's case law on the principle of *res judicata*. The fourteenth and last chapter covers sanctions, restitutions and compensation claims.

This book review is not the right place to embark upon a detailed chapter-by-chapter analysis of the book. One thing worth having a closer look at here is the argument that autonomous subjective procedural rights exist in EU law independent from the subjective substantive rights they seek to protect. It is one of the main ideas behind the book and comes back in various chapters. According to the author, such autonomous rights exist in EU law as an emanation of the right to effective judicial protection. Rather than merely serving the purpose of enforcing subjective substantive rights, they create an independent right of action, for example the right to compensation and the right to restitution. Another example given by the author is the concept of "objective direct effect", whereby an individual is allowed to rely on the direct effect of a provision of EU law to have set aside conflicting national rules in absence of the existence of a substantive right. The author infers from this that the direct effect of such a provision confers upon an individual a right to legal protection separate from a substantive right, concluding that "direct application of EU law does not always involve granting some rights … the only right that is given … the right to legal protection understood as eliminating the national rules non-compliant with the EU standard". The author thus makes a distinction between two types of rights that can be conferred by the direct effect of an EU law provision, namely the procedural right to have set aside a conflicting national norm and the actual substantive right. Whereas both rights can be relied on in vertical relationships, only the procedural right can always be relied on in horizontal situations, and thus allows for horizontal effects of unimplemented directives, such as in the cases of *Unilever* (Case C-443/98) or *CIA* (Case C-194/94). This procedural approach to the question of direct effect seeks to find a middle way between the two competing visions on primacy that exist in legal scholarship, i.e. the primacy model and the trigger model (borrowed from Dougan, "When worlds collide! Competing visions on the relationship between direct effect and supremacy", 44 CML Rev, 931–963). Whereas the primacy model detaches primacy and the setting aside of conflicting national rules from direct effect, distinguishing between exclusion and substitution, the trigger model requires direct effect in order to activate the setting aside of a contradicting provision of national law on the basis of primacy. The former model allows for the horizontal application of unimplemented

directives whereas the other model finds this highly problematic. The concept of an autonomous invocation right seems thus to allow for the merger of the primacy model and the trigger model. On the one hand, one could argue however that the proposal of the author fully subscribes to the primacy model and uses a particular conception of direct effect to square the circle. In the end, it is about setting aside the conflicting national norm (exclusion) without replacing it with the substantive provision (substitution). On the other hand, the author's suggestion implies that a (procedural) right to have set aside a conflicting national rule is being conferred upon a private individual in horizontal relations. This remains an application of the principle of direct effect, i.e. the granting of a (procedural) right, and is problematic as the Court has held that a directive cannot have horizontal direct effect, without making a distinction between a substantive right and a procedural right. A right remains a right. Nevertheless, the existence of autonomous subjective procedural rights remains an option to be further explored and the book reminds us of the fact that more than fifty years after *Van Gend & Loos* the debate on the direct effect of EU law is still not moot.

A more general comment concerns the scope of the book and the fact that the title may suggest that the study will focus on the process of how EU law rights are enforced in national courts. Readers expecting a focus on national courts will, however, be disappointed. The book is a doctrinal analysis of the case law of the ECJ, without a strong connection with national law. Statements about how the ECJ's case law affects national courts therefore remain general; practical recommendations to judges and lawyers are made without a real connection to national issues. This is in itself not a problem. A thorough doctrinal study on the theme of national procedural autonomy with a number of general recommendations certainly has a place in EU legal scholarship. However, the author indicates in the introduction that the book "discusses both the reasons, manner and consequences of the required modification of national legal remedies as well as practical recommendations pertaining to individual legal remedies present in national law – how they must be understood and modified in national courts' jurisprudence and what are the rights of an individual demanding that an EU claim be enforced". Given that recommendations regarding national procedural rules will most likely only be useful when translated into a specific national procedural context, the book does not live up to that promise. Further to this, a remark regarding form should be made. The book is a translation of a book previously published in Polish. Translated works often suffer from a number of drawbacks and this book is no exception. It appears that the language review has not been performed adequately and the level of English is therefore not always of an appropriate standard. This makes the book sometimes difficult to read.

That being said, the author delivers an intelligent analysis of the case law of the Court of Justice on the matter. It provides much food for thought and demonstrates that a lot of issues are still waiting to be explored. The study of the interaction between EU law and national procedural law is an exciting feature and not solely reserved to procedural lawyers. It touches upon the fundamentals of EU law, like direct effect and primacy, and requires us to rethink the relationship between EU law and Member State law. The book therefore transcends the level of a mere systematic overview of the case law of the Court and is truly of a scholarly nature. Yet, at the same time it provides lawyers, judges, and students with a comprehensive and accessible introduction to the issue of the impact of EU law on national procedural law. It is therefore a valuable addition to the study of the enforcement of EU law rights in national courts and is recommended reading for those who want to learn more about the EU's composite system of judicial protection.

Janek Tomasz Nowak
Leuven

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