

Sub-project: Towards a European Legal Method in EU Market Law: Synthesis or Fragmentation?

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1. Presentation of the Problem

The *subject* of this sub-project is related to the general project as the focus is largely the same one as this, however limited to EU market law. This field of law is in the sub-project as a point of departure again limited to primary law regarding particularly internal market and competition law (especially Articles 28, 39, 43, 49, 56, 81, 82, and 86 EC). Thus, the *objective* here is to answer the three research questions of the general project, however limited to EU market law. The *importance* of this area may be claimed to follow from the fact that it largely constitutes the heart of EU law and thus has a primary and unavoidable interest, and it has been of crucial significance from the very beginning of the life of the EC/EU. As it has been pointed out by Walker, it is probably true that there remain as many versions of EU law as there are Member States.¹ However, here it will be of interest to examine what there might be of common ground at the international academic and court level with regard to legal method and theory in the area of EU market law. If not too developed, it will be argued that it is essential that efforts towards a development of a common legal method and theory are made in order to ensure aspects such as legal certainty and predictability – and in the very end: legitimacy. Also, due to the by now unavoidable importance to almost every citizen of the EU, there is a need to explain this aspect better to the common public, including *e.g.* students, civil servants, politicians, and journalists.² Legal method and theory may be said to constitute the correct door to open in order to truly understand and apply EU market law.

2. Theory and Method

Generally, the project will use *the theory and method* outlined in the main project description. However, particular approaches taking into account the special traits of the field under scrutiny will be developed. It will be an essential part of the research process that criteria as to selection of sources worthy of scrutiny are carefully developed and applied. In this regard, it may be emphasized that regarding *the first and second research questions*, the intention is to limit the analysis to a few significant internationally oriented law journals to be able to find answers.³ Furthermore, the most important works of Danish legal scholars regarding EU market law are to be taken into account. Regarding the case law the analysis will be limited to cases concerning particular aspects of EU market law, which are to be defined in detail during the research process. In addition, published Danish judgments will be considered.⁴ Both aspects (legal academic work and case law; both at the EU and the national level) will be examined from an evolutionary perspective in order to detect more exactly what kind of transformation legal method and theory in EU market law is undergoing. Focus

¹ Walker, N.: *Legal Theory and the European Union: A 25th Anniversary Essay*, Oxford Journal of Legal Studies, 2005, p. 582.

² In this regard, it should be considered that the sheer number of legal texts in EU law is overwhelming. In Communication from the Commission - Codification of the *Acquis communautaire*, COM/2001/0645, it is stated that: "... the total *acquis communautaire* (secondary legislation) currently comprises about 80 000 Official Journal pages ..."

³ For a list and analysis of significant European law journals, see de Witte, B.: *European Union Law: A Unified Academic Discipline?*, EUI Working Papers RCAS 2008/34.

⁴ See *e.g.* Neergaard, U.: Chapter 9. Countries with 3-5 Rulings: Denmark, Portugal and the United Kingdom. Denmark, In: *Article 234 EC and Competition Law. An Analysis*, Ed. by Rodger, B. J., 2008, pp. 511-528.

will be put on explicit statements of legal method as well as a deduction as to what may be observed; this largely being based on a dogmatic approach, however carefully and (self-)critically applied.⁵ Besides the issues which were raised in the general project, additional issues, such as the importance of interdisciplinary and comparative approaches as well as cultural differences and the degree of legal formalism will be examined. Also, it is worth mentioning regarding *the third research question* that the results from the analysis of the foregoing questions constitute the basis of analysis and will be evaluated in light of the relevant legal theories of relevance.

(4.660 keystrokes)(max. 4.800)

⁵ See *e.g.* Hesselink, M. W.: *The New European Legal Culture*, 2001, p. 9.