András Osztovits & János Bóka (eds.), Policies of the European Union from a Central European Perspective (Book Review)

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Countless books have been written about the policies of the EU with different perspectives in mind: some are veritable commentaries; many others were conceived as more traditional textbooks, while others undertook to provide a historical overview or a practice-oriented review of the development of EU policies – to name but a few approaches. One would, however, be hard-pressed to find all too many volumes which looked at the EU and its field of activities from the point of view of Central Europe. For historical reasons, relations with the EU have played a unique role in the lives of Central European (CE) states before they eventually joined the European integration project. Arguably – and that is the obvious starting point of the collected volume under review here – these states have retained a distinctive approach to the EU subsequent to their accession as well.

According to the editors – András Osztovits[1] and János Bóka[2] – the focus of this book is twofold: to present the implementation of EU law in Central Europe and to examine in what ways Central European proposals or applied solutions have influenced EU law-making and practice. It is easy to agree with the editors that the latter point has not been at the forefront of all too many analyses.

The book itself is divided into thirteen substantive chapters, looking at various EU policies from the abovementioned perspective. The first three studies stand out somewhat from this concept as they deal with more

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general aspects of EU law: the concept of supremacy, some foundational concepts of EU law, and the cross-cutting field of fundamental rights protection. The remaining chapters focus on either an EU policy as a whole (*e.g.* the Common Commercial Policy) or elements of certain policies (*e.g.* judicial cooperation in criminal matters) and how they relate to the Central European perspective. The book is not fully comprehensive in terms of the fields of activities of the EU as some policies or sub-policies are absent from the discussion (*e.g.* migration policy is not covered, only asylum; the internal market is only addressed in light of more specific policies), but the book nevertheless provides a rich overview of some of the most crucial Union policies and their implementation in the Central European region.

Following the Foreword by the editors explaining the concept and rationale of the volume,[3] the book starts off by contrasting the concept of the supremacy of EU law and the idea of 'legal imperialism' by Péter Metzinger.[4] The task undertaken by Chapter 1 is not an easy one: especially in recent years, many debates (both legal and political) have emerged regarding the limits of the supremacy (or perhaps more precisely, the primacy of application) of EU law, especially in light of the 'identity clause' enshrined in Article 4(2) TEU. The author essentially argues that the principle of the rule of law can and should be contrasted with the principle of democracy in the EU context. The analysis, while presenting interesting opinions rooted in legal theory and sometimes even philosophy, occasionally descends into less convincing argumentation involving references to less clear concepts such as the titular legal imperialism itself, drawing up only cursorily explained images of "perverse exaggeration(s)" of the rule of law that end up obstructing democracy. The autonomous nature of the EU legal order is also analyzed and, at times, criticized by highlighting some of the inconsistencies in CJEU case law as well as different standpoints taken by different international tribunals on the nature of EU law – the latter question logically leads to another quandary: to what extent should EU law be separated from, and treated differently from 'classic' international law. It is in the exploration of supremacy that the Central European focus becomes more visible in the chapter via an elaboration of relevant constitutional court decisions relating to EU law. Conflict of jurisdiction between

3 András Osztovits & János Bóka (eds.), *Policies of the European Union from a Central European Perspective,* Central European Academic Publishing, Miskolc – Budapest, 2022, pp. 11–12.

4 Péter Metzinger, 'In the Shadow of Legal Imperialism: The Supremacy of EU Law Over the Member States', *in* Osztovits & Bóka (eds.) 2022, pp. 13–54.

various dimensions of judicial power within the EU is also touched upon, including the question of *ultra vires* acts of the EU, as is the alleged self-isolation of EU law. Although this chapter is the longest one in the volume, perhaps a more concise analysis with a narrower focus could have benefited its argumentation even more. Undoubtedly, however, the issues raised will influence the future direction taken by the EU.

In Chapter 2, Krzysztof Masło looks into the place and role of Fundamental Rights in the legal order of the EU.[5] An overview of the familiar history of how fundamental rights became a firm tenant of EU law is provided, and the scope of application of the Charter is elaborated upon, taking into account relevant jurisprudence as well. The author then turns to CJEU case law relevant to fundamental rights (more precisely, the EU Charter) and national judicial systems and cooperation in criminal matters, respectively. These are the most interesting elements of the chapter that provide interesting insights relevant to various Central European states. As a critique, it can be mentioned that the chapter devotes perhaps too much space to the general aspects of fundamental rights protection (one of the most widely discussed topics of EU public law), and although it does enrich the overall analysis with 'regional' examples, less attention is paid to Central European states' approaches as would be expected in the context of this volume. The author makes the valid argument that the uncertain contours of the EU Charter contribute to disputes regarding the interference of the CJEU with matters of national competence. In this regard and others, the analysis could have benefited from a broader examination of the relevant jurisprudence, including, but not limited to recent cases relating to Hungary.[6]

Chapter 3, authored by János Bóka, reflects upon some of the foundational EU issues that were also discussed by the Conference on the Future of the EU.[7] In doing so, it looks at some 'myths' that the author attributes to the EU and aims to undertake a sort of 'myth-busting'. The chapter makes

5 Krzysztof Masło, 'The Place and Role of the Fundamental Rights in the EU Legal System', *in* Osztovits & Bóka (eds.) 2022, pp. 55–72.

6 *Cf. e.g.* Judgment of 23 November 2021, *Case C-564/19, IS,* ECLI:EU:C:2021:949. *See e.g.* Ágoston Mohay & István Szijártó, 'Criminal procedures, preliminary references and judicial independence: a balancing act? Case C-564/19 IS', *Maastricht Journal of European and Comparative Law*, Vol. 29, Issue 5, 2022, pp. 629–640.

7 János Bóka, 'De-mistifying the European Union: Reflections on the margins of the conference on the future of the European Union' *in* Osztovits & Bóka (eds.) 2022, pp. 73–84. Nota bene: The conference itself and its outcomes are not discussed in

a good number of valuable arguments and points out many evergreen questions pertaining to European integration and its theoretical foundations. To name but one, it ponders whether a European *demos* and a 'European democracy' as such exists, essentially answering both questions in the negative, emphasizing the problems of legitimacy regarding the European Parliament (EP). It is argued in the chapter that "European democracy can be contrasted with the concept of a Europe of nations or a democracy of democracies" and that the EP lacks the appropriate legitimacy to act as the true keeper of democracy in the EU as a whole. While the latter may be true, one should also bear in mind that in the EU context, 'democracy' can and should only be interpreted within the limits of the scope of EU law and the institutional framework of the EU – in other words, only relating to the exercise of the competences conferred upon the EU from the Member States, and not to the Member States in general. It is only in this context that the EP is meant to safeguard 'democracy' – and taking into account its extensive powers, especially since the Lisbon Treaty, it is undoubtedly well equipped to do so in a legal sense. With this also in mind, the true purpose of the directly elected EP, at least in our view, is not to be contrasted with national democracies but to be understood as complementary to them. As the decades-long debate concerning the 'democratic deficit' of the EU has shown, national parliaments are not in a position to effectively scrutinize the EU institutions in the overall exercise of their competences. The author's support for a possible 'red card' procedure for national parliaments is a welcome one and one that could substantially strengthen the direct influence of national legislatures on European affairs without altering the status of the EP. It is important to point out, in agreement with most of the overall arguments of the author, that the abovementioned relation of complementary legitimacy should also not be reversed: in the EP, political ideas and statements sometimes overtake legal boundaries – though this is perhaps to be expected from such a thoroughly political and politicized institution, and, to be fair, 'outputs' of the EP's political power (*i.e.* its non-legislative decisions) remain non-binding. The topics raised in this chapter, partly in reaction to the outcomes of the Conference on the Future of the EU have been and will continue to be debated for the foreseeable future, and the author provides useful arguments for a more conservative interpretation of the EU integration process. It can be noted, however, that

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the paper *per se*. Instead, it constitutes a reaction to many problems raised at the Conference.

the focus of the chapter is only partly geared towards Central European member states, not that this makes the question discussed any less relevant.

Chapter 4 delves into the Common Commercial Policy: István Csongor Nagy provides an excellent assessment of the Member States' playing field under the exclusive competence of the EU regarding said policy.[8] The author points out that, perhaps surprisingly, the margins of the CCP are not entirely clear – which in turn allows the Member States a level of 'independence' in developing their non-EU trade relations. The chapter shows that this playing field is actually significant, as the EU's competence does not cover foreign investments and investor–state dispute settlement *per se*, the EU retransferred the competence of concluding investment treaties to the Member States and, thirdly, a 'grey zone' also exists regarding measures having an impact on, but not specifically linked to trade. The paper also addresses the interaction between EU law and investment-related dispute settlement based on international law, where many milestone cases were connected to Central European states (*e.g.* the rulings in the *Electrabel* and the *Micula* cases). Tensions emanating from the exclusive nature of the EU's competence and the aim of some Central European states to favor countries from the former Eastern bloc in their trade relations are also laid bare and serve as food for thought regarding the (in the words of the author) channelling-in of Central European economic interests into the Common Commercial Policy.

In Chapter 5, András Tóth deals with the contribution of Central European countries to the development of EU competition law.[9] The author comprehensively examines the preliminary ruling procedures of the CJEU that have contributed to the evolution of European competition law. Adhering to the thematic framework of the study, this is carried out within the context of Central European member states, identifying two main areas: the issue of restriction of competition 'by object' and the relationship between EU and national competition law. Regarding the restriction of competition 'by object', the author highlights the development trajectory and application framework shaped by the CJEU's practice, drawing attention to the CJEU's narrow interpretation requirements. Concerning the above, the author introduces, in a logically structured manner, how the evaluation of

8 István Csongor Nagy, 'Common Commercial Policy and Member States Playing Fields', *in* Osztovits & Bóka (eds.) 2022, pp. 85–102.

9 András Tóth, 'Central European Countries' Competition Law Practice Contribution to the Development of EU Competition Law' *in* Osztovits & Bóka (eds.) 2022, pp. 103–118.

new behaviors unfolds in the assessment of restriction of competition 'by object'. Within this context, the necessity of category extension analysis is emphasized to determine the required level of harm. The strength of the chapter lies in its exhaustive presentation of the issues related to the parallel application of national and European competition law, with a special focus on conditions for the realization of the *ne bis in idem* principle, for example.

Ştefan Deaconu and Andrei Lupu analyze the procurement policy of the EU in Chapter 6, examining the evolution of procurement regulations in Central and Eastern European countries.[10] They shed light on how this development unfolded compared to Western EU countries, with a specific focus on the Central and Eastern European countries, particularly Romania. In our view, a similar in-depth analysis would be worthwhile for other Central and Eastern European countries, as the authors have done in the case of Romania. Following the same logic, they explore how arbitration can be utilized as an alternative dispute resolution method regarding procurement procedures in individual countries. In this regard, the authors believe that the practice will likely lead to more robust legal solutions in the coming years. The authors consider the COVID-19 pandemic to be a defining moment in the evolution and trends of procurement procedures (especially due to state restrictions). This consideration is unquestionable, given its profound impact on various aspects of life beyond digitalization, including public health. Another significant driver of changes in European procurement policy is the circle of large procurement projects implemented through the Recovery and Resilience Facility.

In Chapter 7, Andrzej Marian Świątkowski focuses on EU labor law, social policy, and special digital employment in the context of Central and Eastern European countries.[11] The author scrutinizes the status of self-employed people working on digital platforms in Central and Eastern European countries. According to the author, the algorithmic management of work and individuals performing it appears to be the most challenging aspect in a unified sample of atypical – electronic – forms of employment. Throughout the analysis, the author draws attention to the significant asymmetry detected between the real and fictitious employment freedom

10 Ştefan Deaconu & Andrei Lupu, 'EU Public Procurement Policy' *in* Osztovits & Bóka (eds.) 2022, pp. 119–138.

11 Andrzej Marian Świątkowski, 'EU Employment Law and Social Policy and the Need to Develop Unitary Electronic Technology of Work by Central and Eastern Member States' *in* Osztovits & Bóka (eds.) 2022, pp. 139–154.

of individuals working on digital platforms, attributed to the continuous performance evaluation of algorithms behind the platform. With sufficient detail and various studies, the author substantiates that platform workers generally work more than regular employees. The difference is even more pronounced when it comes to work during nights and non-working days, exposing them to greater negative effects on mental and physical health. Regarding status determination and entitlements, the author considers it essential to differentiate between self-employed people whose dependency level closely resembles that of employees and those who genuinely work independently. We can agree with the author's standpoint that these occupations should be treated specifically. However, the legal and employment traditions of EU Member States may create conflicts stemming from such differentiation.

Matej Kačaljak addresses the tax policy of the EU from a Central European perspective (Chapter 8).[12] The author examines how Central European Member States have contributed to the development of EU tax principles and, more broadly, EU tax policy. Within this context, he investigates the evolution of General Anti-Abuse Rules, third-party responsibility in VAT fraud, and the issue of special levies. The author examines and compares the development of General Anti-Abuse Rules, drawing on the experiences of the Czech Republic and Slovakia. He highlights that before the ATAD regulation,[13] the CJEU concluded that there was no EU general principle obliging Member States to combat abuse in the field of direct taxation. Nevertheless, there were divergent developments in the Czech Republic and Slovakia concerning direct taxes, as the Czech Supreme Administrative Court used the Halifax test as inspiration in the former. The Chapter underlines conflicts in the application of the knowledge test/doctrine between the CJEU and authorities or courts of Central European Member States in relation to VAT frauds. These national authorities and courts tend to apply the 'declared supplier' doctrine due to the difficulties in conducting knowledge tests. The author similarly examines the issue of special levies in detail, addressing the question of digital taxes and the CJEU's practice in the examination of additional taxes. He draws attention to the CJEU's main focus on whether these specific levies should be considered

12 Matej Kačaljak, 'The Policies of the European Union from an East-Central-European Perspective Tax Policy' *in* Osztovits & Bóka (eds.) 2022, pp. 155–172.

13 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

direct or indirect taxes. The author concludes that the development process is not one-sided, since the dynamics between the Member States influence the overall development of the EU.

Zsolt Hajnal analyses the formation of characteristics in European and national consumer protection law in Chapter 9.[14] The author identifies the unique features of consumer protection law, jurisdiction, and institutional systems within the Visegrád Countries (V4). He examines the issue of dual-quality goods and highlights the active role played by the countries of the V4 in addressing the matter through Directive 2019/2161/EU. Through a comprehensive analysis of legal practices, the author underlines that out of 260 completed cases, the V4 countries initiated preliminary ruling procedures in 61 cases related to unfair terms in consumer contracts, undoubtedly influencing the development of EU law. The author provides detailed insights into how individual EU Member States interpret – broadly or narrowly – the concept of consumers, in alignment with their respective legal traditions. Special attention is given to alternative dispute resolution methods for consumer grievances, and the author meticulously outlines the different definitions of warranty and guarantee claims within the V4, placing significant emphasis on traditional variations. He highlights the specific characteristics of Hungarian law in the field of warranty, however, in our view, it is also worth adding that according to the Hungarian Civil Code,

> "in the case of a contract that involves a consumer and a business party for the sale of goods treated as movable property, or for the supply of digital content and digital services, the consumer shall not be permitted to repair the defect himself or herself or have it repaired by others at the obligor's expense."[15]

Finally, the author envisions a future where consumer protection policies and rules are faced with new types of goods (*e.g.* AI), information flow, and advertising structures. In our view, this will most probably affect all legal disciplines and areas, but consumer protection undoubtedly deserves special attention.

14 Zsolt Hajnal, 'The Emergence of Member States' Characteristics in European and National Consumer Law' *in* Osztovits & Bóka (eds.) 2022, pp. 173–196.

15 Act V of 2013 on the Civil Code, Section 6:159(2a).

In Chapter 10, Agnieszka Mikos-Sitek turns to the field of the Common Foreign, Security and Defence Policies.[16] Apart from highlighting the specificities of these policies within the EU framework (*i.e.* that these policies still retain many intergovernmental characteristics, resulting in an institutional and legal playing field that differs from 'general' Union rules), the author notes the relevance of the wider European security context, referring for instance to the accession process of Central European EU Member States to NATO as well. As the author rightly notes, these policies have newly regained their prime importance in the context of events – such as the armed conflict in Ukraine or the presence of the Russian military in Belarus – not only for Central European states, but for them maybe even more pressingly than for Member States.

Chapter 11 is devoted to Asylum Policy: Ágnes Töttős looks into a policy field that has become one of the most debated ones in recent years, where many tensions have emerged within the EU – and many Central European states have indeed been a part of the political struggle and, often, legal disputes.[17] The chapter gives an account of various conflicts, including the clash regarding the 2015 relocation decisions taken by the Council, which the author identifies as the root cause of mistrust in asylum affairs between Central European states (most notably Hungary) and the EU. Reasons behind the long-standing deadlock in asylum reform negotiations are explored, also regarding the so-called New Pact, a package of asylum (and migration) related proposals set forth by the Commission in 2020, one that was heralded as representing a more balanced view than the previous Commission's position, taking into account security-related concerns often raised *inter alia* by Central European states. Yet the position of the V4 regarding the New Pact was not necessarily all that different. Thought-provokingly, the author also mentions the concept of instrumentalization of migration as an aggressive foreign policy tool by some states, mentioning Libya and Belarus as examples. The chapter uses an impressive number of primary sources to lay out her arguments, although perhaps the scope of literature used could have been expanded further.

In the penultimate Chapter 12, András Osztovits provides a thorough examination of the present and the possible future of judicial cooperation in

16 Agnieszka Mikos-Sitek, 'Common Foreign, Security and Defense Policies' *in* Osztovits & Bóka (eds.) 2022, pp. 197–216.

17 Ágnes Töttős, 'European Asylum Policy and its Reforms from a Central and Eastern European Perspective' *in* Osztovits & Bóka (eds.) 2022, pp. 217–238.

civil matters.[18] Firstly, the author sheds light on the fundamental approach of EU Member States from the early stages of the community, providing the reader with an understanding of the dynamics of the development of judicial cooperation in civil matters. For instance, he highlights that in order to ensure the preservation and protection of cultural and legal traditions of Member States, even a single 'veto' (*i.e.* an objection in line with Article 81(3) TFEU) from national parliaments may be sufficient to oppose legislative changes affecting family law regulations. The author comprehensively presents the EU sources of civil procedure law, conflict of laws, and the cooperation of national authorities and courts. Additionally, he emphasizes digitalization steps that accelerate and streamline cross-border taking of evidence. The author places significant emphasis on the development of mutual trust in the practice of the CJEU, an aspect that is hard to dispute. In the field of judicial cooperation in civil matters, he highlights that conflict of laws in matters of personal status and matrimonial matters are the most divisive. Within this context, the recognition of same-sex marriages in another Member State is particularly noteworthy. The chapter also considers the usefulness of setting up or designating a judicial body at the EU level with the power to designate the court between Member States to hear a case if none or to (or more) determine their jurisdiction in the case. This could be modelled on common national procedural rules that allow for a similar logic within a Member State.

Judicial cooperation in criminal matters is explored in the final part (Chapter 13) of the edited volume, authored by Balázs Elek.[19] The study gives an overview of EU harmonization in criminal matters in general (with a particularly interesting insight into semantic differences between '*intime* conviction' and 'beyond reasonable doubt'), which is followed by brief assessments of the implementation of notable EU criminal cooperation instruments and principles in Central Europe. The chapter does not fail to make the necessary connections to the ECHR where needed and also mentions a perceived occasional 'suspicion' between judicial authorities in older and newer Member States, notwithstanding the presumption of mutual trust.

18 András Osztovits, 'The Present and Possible Future of Judicial Cooperation in Civil Matters' *in* Osztovits & Bóka (eds.) 2022, pp. 239–258.

19 Balázs Elek, 'Criminal Judicial Cooperation from a Central and Eastern European Perspective' *in* Osztovits & Bóka 2022, pp. 259–279.

The strength of this volume, as already mentioned in the introduction, lies in that it examines different EU policies with a specific regional focus. Thus, it can be recommended to all researchers and practitioners who are interested in the specificities of the implementation of different policy fields in the Central and Eastern European Member States. With the Hungarian presidency of the Council of the European Union imminent in the second half of 2024, the topicality of the volume is unquestionable, and the issues raised in it are worthy of elaboration when pondering the future of the EU – whether in an academic sense or at the political level.