

## EDITORIAL

*A special issue in honour of Alison McDonnell: basso continuo of the Common Market Law Review*

Alison McDonnell retires in December 2022 after thirty-two years as the veritable anchor and indeed embodiment of the *Common Market Law Review*.

Throughout that long period, Alison has undertaken an enormous breadth of responsibilities in her role as Managing Editor of one of the world's leading academic legal journals. To produce so many issues per year, every year, like clockwork, for over thirty years – enough to fill a generous bookshelf in its own right – is already a remarkable achievement. But Alison has also been very much the “public face” of *CMLRev* for countless contributors from myriad fields of EU legal studies and across generations, countries and indeed continents. In addition, she has been the indefatigable engine of our international Editorial Board – the centre of a continuous stream of online communications from Oslo to Florence, Edinburgh to Munich, punctuated by our regular in-person meetings, often in Brussels but also visiting Liverpool, or how about Warsaw, now it's time for Dublin ... And unseen by many eyes – whether those of our journal's many contributors or even those of her fellow Editors – Alison has managed *CMLRev*'s editorial team at Leiden University, where she has also been a most valued member of the Europa Instituut. From her office in the Faculty of Law, she has driven forward the production of every single green-faced issue of *CMLRev*, collaborating closely with Kluwer Law International as our publisher, as well as maintaining regular contact with members of our (even more) international Advisory Board.

It should come as no surprise that Alison has an astonishing depth of knowledge of and experience in EU law. She has managed *CMLRev* through much of the EU's own evolution and witnessed, from close quarters, virtually every key development since the Union itself was created by the Maastricht Treaty: from constitutional conventions and various enlargements, to sovereign debt crises and pandemic recovery programmes. Alison has put that enormous knowledge and experience to good use in her own academic outputs: co-editing the leading text *The Law of the European Union* (also published by Kluwer, now in its 5th edition), editing various collections of scholarly essays, and contributing her own papers on topics ranging from citizenship and equality rights, to solidarity in the

Euro-crisis, via the challenges of effective judicial protection under EU law. But above all, Alison has employed her knowledge and experience for the collective benefit of EU scholarship through her work at *CMLRev*: deciding which new CJEU cases are significant enough to warrant annotation, identifying novel trends and interesting topics on which to invite papers, spotting emerging authors from whom to encourage submissions, synthesizing the themes and topics of upcoming conferences, and providing her own invaluable input into *CMLRev*'s editorial process through detailed comments on draft papers and considered judgements about publication.

Yet Alison is far more than an impressive whirl of productivity and a uniquely insightful scholar of EU law. She is also among the kindest and wisest of colleagues and friends. In that regard, we would like to highlight three particular sets of relationships that have been much enriched by Alison's inexhaustible personal qualities.

First, her liaison with countless contributors to *CMLRev*. Alison has built and maintained a vast network of EU legal scholars spanning many countries and many fields. And she has always been eager to expand her contacts by meeting new authors – particularly to help address what we, as a journal, acknowledge to be an important challenge, that of improving the balance and diversity of our contributorship. That challenge was a special concern for Alison during the dark period of the Covid crisis – as she reminded the Editorial Board of the particular burdens falling upon those with care responsibilities, and the disproportionate impacts likely to weigh upon their career progression. With all contributors, the successful as well as the unsuccessful, we know that Alison acted with courtesy and (when the occasion required) with diplomacy. Her editorial work, often of the most subtle and elegant kind, sought to enhance the expression of the words, and the impact of the thoughts, of our large and varied community of contributors. With many authors, mutual correspondence developed beyond the functional and into the personal: so many of us have smiled in delight when Alison wrote to congratulate us on some happy news, or felt warmly touched when she gently enquired after a poorly relative. It is hard to imagine a more friendly and constructive “public face” for any academic journal. For many colleagues, Alison *is* the *Common Market Law Review*, and we have all benefitted greatly from that natural elision.

Secondly, Alison's support for early careers researchers – among whom we know (many of us from our own experience) that her friendly touch was particularly appreciated. Nurturing the next generation of EU scholars is a responsibility and a privilege to which Alison has been dedicated throughout her working life – and over more than three decades, that adds up to quite a few new generations! Alison has taken great care and invested

particular attention in encouraging and fostering younger academics as they chart their course through an often difficult and sometimes quite isolated career path – aware of the different challenges involved in each of many distinct national academic systems, and sensitive also to the particular complexities that often confront those embarking upon a more international route towards academic progression – again, all with a careful eye on the goal of promoting greater balance and diversity among our contributors. Alison would not hesitate to remind her sometimes forgetful Editors of the particular importance we should attach to providing detailed and constructive feedback on submissions from early career researchers. But her behind-the-scenes support went much further than that: proposing emergent scholars to annotate major CJEU cases in the pages of *CMLRev*; encouraging us to identify new authors from the next generation as we travel across Europe to examine doctoral theses or chair conference sessions; conceiving and coordinating our Annual Prize for Young Academics in EU Law and publicly celebrating its worthy recipients; actively promoting the involvement of fresh names and faces at our regular “*CMLRev* on tour” events. Many of us have very fond memories of gathering in the Netherlands in 2013 for a major conference to celebrate our journal’s 50th anniversary – a conference designed precisely to showcase the talent of a whole cohort of upcoming EU scholars from right across the continent.

Thirdly, Alison’s role as head of our editorial family. The Editorial Board of the *Common Market Law Review* is a very special place. As a truly international group of scholars, we come from very different backgrounds, look at events and issues from often quite divergent perspectives, invest our own attention and energy in a wide range of academic interests, and of course, bring to the common table our own peculiar and invariably strong personalities. Yet the end product of our particular experiment in scholarly and social engineering is altogether harmonious and profoundly rewarding: we enjoy a strong *esprit de corps*, united in our joint dedication to the success of the journal, joined by iron cast bonds of mutual respect and collaboration. Alison is directly responsible for so much of that special atmosphere. Each and every one of us recalls how, when we first joined the Editorial Board, we were welcomed by Alison with care and attention, encouragement and reassurance. And it did not take very long at all, for each and every one of us to realize just how pivotal Alison is to the success of our collective endeavours: meticulously organizing our varied tasks, politely chasing our occasional delays, effectively managing our regular bottlenecks, patiently collating our sometimes voluminous comments, diplomatically reconciling our more or less marked differences, faithfully communicating our decisions to contributors, and always affectionately

indulging our little individual quirks. Over the decades, many new editors have joined the Board, while many old colleagues have embarked upon fresh opportunities, but throughout that time and across those changes, Alison has unfailingly performed her role as our steady *basso continuo*. To each and every one of us, Alison is far more than an invaluable colleague; she is also a very dear friend. It has been difficult to imagine *CMLRev* without her. But now, we must do more than merely imagine the unimaginable! And we are immensely grateful that Alison is already passing on her knowledge and experience, kindness and wisdom, to her successor – Anna Krisztián, our new Managing Editor – to whom we extend our warmest welcome.

The *Common Market Law Review* has made a unique contribution to EU legal studies. And Alison has made a unique contribution to the *Common Market Law Review*. And so Alison's role in the flowering of EU law as an academic discipline, and in the development of the Union legal order as such, has also been both far-reaching and profound. By this Special Issue, we wish to pay tribute to Alison's marvellous career, and express our deepest gratitude and affection for her many years of industry, of inspiration and of friendship. We will endeavour to live up to the high standards she has already set, for generations of EU legal scholars to come. And we wish her every happiness in her newfound retirement – from the chance to deepen her love of music while playing the 'cello, to many more wonderful holidays in her beloved Sardinia, to the blessings of a full family life surrounded by her devoted husband, children and grandchildren.

We are delighted that so many past and present Editors of the *Common Market Law Review* were able to contribute to this Special Issue. And we thank Kluwer Law International for its enthusiastic participation in and generous support for this project. Authors were offered an entirely free choice of topic, subject only to the constraints of a strict deadline and suggested word count, and were otherwise encouraged to emulate our journal's "editorial style" – by exploring contemporary issues or revisiting classic doctrines of EU law, preferably using a punchy or even provocative narrative approach, while not feeling unduly obliged exhaustively to explore or reference every passing concept or claim.

Following that cue, several contributions address certain "core issues" of Internal Market law in the light of important recent developments and debates. Monti examines the future of EU merger control – with an eye on the next review of the legislative framework – offering his analysis of the key debates (some already familiar from years gone past, others of a more novel and contemporary nature) that the Union institutions must surely address: for example, the scope of merger control by the Commission

under Union law, and the interconnections between merger control as an Internal Market policy and as an instrument of trade defence policy. Van den Bogaert is also concerned with issues of Union competition policy – but his paper focuses on the ever-controversial inter-relationship between EU law and sport, and more specifically, the ongoing drama and pending litigation surrounding the (first proposed, then abandoned, perhaps to be revived, albeit in a modified form) “European Super League” – a controversy that once again highlights the strong tensions at work between regulatory functions and commercial interests in the governance of European football.

Similarly, several contributions revisit certain “classic topics” of EU law, concerning the place of the CJEU within the Union’s legal order, again in the light of more contemporary challenges and concerns. Thus, Prechal addresses the system of effective judicial protection under EU law. Her paper provides an overview of the legal framework governing the ability of individuals to invoke the exclusive jurisdiction of the Union courts to determine the legality of Union directives – exploring questions about the standing requirements laid down in Article 263 TFEU and the alternative pathway to judicial review provided by preliminary references under Article 267 TFEU. Dashwood also analyses the nature of the Union judicial system according to the jurisprudence of the CJEU – but his focus lies on the case law concerning the compatibility between international agreements providing for a system of intra-EU arbitration (on the one hand) and the fundamental principles protecting the autonomy of Union law (on the other hand). Dashwood’s hard-hitting analysis argues that the Court’s case law has developed along increasingly misguided lines – based on often unpersuasive reasoning, aimed at countering sometimes non-credible threats, while creating problems not just of legal uncertainty, but also for the rule of law.

That analysis paves the way for a series of papers that further address concerns over the proper nature of the Court’s role and responsibilities within the Union legal order and, indeed, the prominent position occupied by the CJEU within the wider European legal space. Roth’s paper is also grounded in the field of competition law – and specifically about the framework governing private damages actions in respect of infringements of Union law – but his real focus lies on the relationship between the Court and the Union legislature: he considers delicate questions about the balance between judicial and legislative competence, when it comes to primary responsibility for the elaboration of complex policy questions. The Court’s institutional position also provides the main focus of the analysis written by Timmermans: his article tackles the CJEU’s relationship with the senior national courts of the Member States – a longstanding debate that has nevertheless been injected with new vigour, greater urgency and higher

risks, as the judges seek to hammer out ways of reconciling the integrity of the Union legal order (on the one hand) with diverse claims to domestic constitutional identity (on the other hand).

O’Leary takes this discussion about the role of the CJEU in another crucial direction: by carefully considering the law and practice of the ECtHR’s new “advisory opinion” procedure, she invites us to reconsider some of the constitutional objections against EU accession to the ECHR voiced by the CJEU in *Opinion 2/13* and grounded in the need to protect the autonomy of Union law – thereby hoping to reduce some of the obstacles that might hamper future collaboration between Europe’s two great supra-national judicial institutions in their common task of upholding fundamental rights and freedoms. And focusing precisely on the latter theme, Smulders offers a detailed examination and comparison of both the jurisprudence of the ECtHR and the case law of the CJEU concerning the requirements associated with judicial independence – in the combined senses of Article 6 ECHR, Article 19 TEU and Article 47 CFR – with specific reference to the rule of law problems affecting various Contracting Parties to the ECHR/Member States of the EU. As his paper concludes, there is (despite occasional appearances or suggestions to the contrary) a remarkable degree of convergence in the approach of the two courts to the serious threats against judicial independence posed in countries like Poland.

Of course, many of the themes that now inform research into the proper role and responsibilities of the CJEU – questions about democracy and identity within the Union, issues surrounding the Union’s relations with wider Europe – are not limited to scholarly writings about the EU’s judicial system as such. Those themes reflect much wider debates about the direction and legitimacy of European integration – including the status and significance of the Union’s core values (such as democracy, respect for human rights, and the rule of law), the changing legal nature and implications of Union membership, and what makes the latter different from being outside the Union, as well as Europe’s place within the fast-evolving global environment.

Another set of contributions engage with precisely such debates as seen from their wider institutional and policy perspectives. Jacqué focuses on the Union’s internal efforts to enhance observance of its core values. His paper offers a critical evaluation of the European Parliament’s recent proposals for reforms to the Union’s legislative procedures and electoral rules – ostensibly following on from the conclusions of the Conference on the Future of Europe, but in fact reviving several much older proposals that would seek to bolster the position and influence of the European Parliament itself, in ways that the latter believes would enhance the Union’s democratic



credentials, but that also carry the risk of having certain less desirable and potentially destabilizing institutional consequences. By contrast, Ackermann is more concerned with the external dimension of Union action to promote its core values. His contribution assesses the Commission's proposal for a directive that would impose corporate "human rights due diligence" obligations in relation to international value chains, as part of a wider strategy of using access to the Internal Market as leverage to improve fundamental rights compliance by actors outside the EU. In particular, Ackermann's paper interrogates and evaluates accusations (for example) that the proposed legislation amounts to a new European human rights imperialism; that it would impose certain unfair competitive disadvantages upon the Union's own businesses; and that it blurs the boundaries between public and private responsibility for defending and promoting the Union's core values.

Such ideas about the internal and the external are brought together in the paper by Cremona and Nic Shuibhne, who consider the question of how Union membership compares and contrasts with the legal relationships created between the EU and some of its closest neighbours. On the one hand, they note an important mutual influence between the terms of Union membership and the agreements with close neighbours: a convergence of and emphasis on shared values at the same time as a borrowing, within the Union legal order itself, of certain ideas about conditionality, familiar for much longer in the field of EU external relations. On the other hand, that mutual influence perhaps throws into even sharper focus the important differences that remain between being on the inside and sitting on the near-outside: their paper emphasizes the continued, indeed enhanced, importance of the particular institutional and governance disciplines that come with Union membership. That idea provides the point of departure for the joint contribution by Dougan and Hillion: they regard Hungary as an example of what happens when the Union's shared values are directly threatened from within, while the power of conditionality proves insufficient to secure respect for the core disciplines of membership – ultimately leaving the Union with the choice between endorsing or refusing a deviant regime's claim to "membership ... on our own terms" – a choice, they argue, the Union must clarify and confront much more clearly and decisively than it has arguably managed thus far.

This Special Issue closes with a paper by Azoulai that weaves together and reflects further upon many of those themes about democracy, identity, legitimacy and membership. He considers the challenges facing EU law, and EU lawyers, posed by the Union's recent evolution (often under the pressure of external challenges and threats) into a more complex and contested entity whose policies and actions touch directly upon fundamental societal

questions about redistribution and fairness, inclusion and otherness. The foundation and character, merits and drawbacks, of the Union legal system are no longer the preserve of a specialist international scholarship. The capacity of Union law to touch directly upon many millions of lives, often for the better, but in some cases for the worse, demands new approaches and tools, informed by new concerns and questions, that many of us are only beginning to grapple with. It is fitting that this closing paper was inspired by a passing comment from Alison herself – “*We are lawyers, we are Europeans, and we are people*” – a straightforward expression of profound things, said with sincerity and compassion – and thus delightfully typical of her own endearing style.

Thomas Ackermann, Loïc Azoulay, Marise Cremona, Michael Dougan,  
Christophe Hillion, Giorgio Monti, Niamh Nic Shuibhne, Ben Smulders,  
Stefaan Van den Bogaert