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Editorial

Coping with Diversity and EU Private Law

Reading through this third issue of our journal, one could say that it deals with different forms of autonomy-in-diversity and how to cope with them juridically. I hesitate to use the word diversity here, as it has become a newspeak code word, hiding a political agenda that often does not at all believe in diversity of laws and viewpoints, but am nevertheless reclaiming it as our European jurisprudence has a very long tradition of taking diversity serious, especially in the form of the *comitas* to recognize foreign law in the doctrines on conflicts of laws. On a more scholarly level, comparative law is another discipline where diversity in law has a central position. In her article 'Who's afraid of comparative law', Giesela Rühl studies the relationship between these two disciplines (international private law and comparative law) and gives a general overview of how comparative law is precisely in the context of a unified international private law even more necessary. By happy coincidence, we are able to publish in the same issue two contributions proving her point in the field of succession law and (immovable) property law. Both Elise Goossens and Celia Martínez-Escribano analyse the interpretation and effects of the European Succession Regulation in the context of diversity of concepts and rules of national property law relating to land and to the recording or publicity of property rights in land. Whereas the Succession Regulation is one of the European instruments that can most clearly simplify matters for citizens in daily life, a lot of *comitas* may be required to make it effectively work well in relation to immovable property.

Another traditional form of diversity within the EU, namely the procedural autonomy of Member States to determine the remedies for rights created by EU law, has been restricted rather drastically by the case law of the Court of Justice, as demonstrated in the article of Fabrizio Cafaggi and Paola Iamicelli. Although the principles of effectiveness, proportionality and dissuasiveness leave some flexibility to come to somewhat different results in different areas of law, the dialogue discussed is not meant to accept diversity but rather to ensure compliance. The focus on almost complete control and compliance is also a central problem in the article by Ole Hansen on the reluctant creation of private markets for welfare services. Here, too, public authorities have difficulties in accepting the risks that accompany the benefits of using diversity, and the author analyses the different ways the conflicting purposes could be balanced.

Philipp Hacker is proposing in another elaborate and well-documented article again another aspect of a diversity: the huge heterogeneity of the individual members of subgroups that EU law is trying to protect by uniform rules for rather

blunt categories; he analyses how new technologies may help us to personalize these legal rules and thus tailor the regulatory apparatus in order to minimize regulatory error.

Mel Kenny on the other hand, is reviewing a book on a topic where setting aside diversity may have become a main purpose: human rights; the book itself fortunately shows the diversity of approaches. In the conference reports, the diversity of small states is on the agenda together with a variety of questions relating to contracts for the supply of digital content. We are confident that our readers will thus enjoy this diversity of topics and perspectives.

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Co-editor in chief