

European Constitutional Law Review

2018 VOLUME 14 ISSUE 1

Contributions by

Sophie Robin-Olivier, Zane Rasnača, Elise Muir, Claire Kilpatrick, Sara Iglesias Sánchez, Stefano Giubboni, Sacha Garben, Hanna Eklund, Mark Dawson, A.C.L. Davies, Marise Cremona, Robert Böttner

Subjects

SOVEREIGNTY: On Macron's view of a *Europe of Sovereignty*; COURT OF JUSTICE OF THE EUROPEAN UNION: The notion of Purely Internal Situations; The division on competences in Free Trade Agreements; EUROPEAN COMMISSION: Project Teams, equality of Commissioners and the principle of collegiality, and future institutional design; SOCIAL EUROPE: The concept of Social Displacement; The social implications of economic integration; Fundamental rights and the social *acquis*; The impact of EU Enlargements on social displacement; Posted workers and new member states; The Court of Justice's management of and approach to the social *acquis*; Social policy coordination and the European Semester; The European Pillar of Social Rights



CAMBRIDGE
UNIVERSITY PRESS

EuConst
2018/I

BOARD OF EDITORS

Leonard F.M. Besselink, co-editor-in-chief
University of Amsterdam

Monica Claes, co-editor-in-chief
Maastricht University

Jan-Herman Reestman, co-editor-in-chief
University of Amsterdam

W.T. Eijssbouts
University of Amsterdam

John W. Sap
Open Universiteit and VU Amsterdam

Thomas Beukers
European University Institute, Florence

Jan Komárek
University of Copenhagen

Gerhard van der Schyff
University of Tilburg

Mattias Wendel
Humboldt-Universität zu Berlin

Aida Torres Pérez
Universitat Pompeu Fabra, Barcelona

François-Xavier Millet
Court of Justice of the European Union

Thomas A.J.A. Vandamme
University of Amsterdam

Bastian Michel, managing editor
University of Amsterdam

Matteo Bonelli, managing editor (a.i.)
Maastricht University

Andrew Faughman, language editor
Amsterdam

Special language advisers
Jeremy B. Bierbach
Amsterdam

Russell E.M. Lawson
Oxford

BOARD OF ADVISERS

Andreas Auer
Professor emeritus of public law, Universities of
Zurich and Geneva

Marta Cartabia
Vice-president of the Italian Constitutional Court
and Professor of constitutional law, Università
Milano-Bicocca

Paul Craig
Professor of English law, St. John's College, Oxford

Gráinne de Búrca
Professor of law, New York University School of Law

Bruno De Witte
Professor of European law, Maastricht University,
and European University Institute, Florence

Olivier Dubamel
University Professor, IEP (Sciences Po), Paris

Spyridon Flogaitis
Professor of administrative law, University of Athens

Jörg Gerkrath
Professor of European law, University of
Luxembourg

P.J.G. Kapteyn
Former judge at the ECJ

Rick Lawson
Professor of European law, Leiden University

Koen Lenaerts
President of the Court of Justice and Professor of
European law, KU Leuven

Ingolf Pernice
Professor of public law and of international and
European law, Humboldt-Universität zu Berlin

Jit Peters
Professor emeritus of public law, University of
Amsterdam

Lucas Prakke
Professor emeritus of comparative constitutional
law, University of Amsterdam

Sacha Prechal
Judge at the ECJ and Professor of international and
European institutional law, Utrecht University

W.H. Roobol
Professor emeritus of European history, University
of Amsterdam

Dominique Rousseau
Professor of public law, Université Paris I
Panthéon-Sorbonne

Wojciech Sadurski
Professor in jurisprudence, University of Sidney and
professor extraordinarius, University of Warsaw

András Sajó
Judge at the European Court of Human Rights

Mirosław Wyrzykowski
Professor of constitutional law, University of
Warsaw

Peter G. Xueereb
Professor of European and comparative law,
University of Malta

Jiří Zemánek
Judge at the Czech Constitutional Court and
Professor of European Union law, Charles
University, Prague

EUROPEAN CONSTITUTIONAL LAW REVIEW

2018 VOLUME 14 ISSUE 1

CONTENTS

Editorial

European Sovereignty – 1

Articles

Sara IGLESIAS SÁNCHEZ – Purely Internal Situations and the Limits of EU Law: A Consolidated Case Law or a Notion to be Abandoned? – 7

Robert BÖTTNER – The size and structure of the European Commission: legal issues surrounding project teams and a (future) reduced College – 37

The Displacement of Social Europe – Special Section – 62

Claire KILPATRICK – The displacement of Social Europe: a productive lens of inquiry – 62

Elise MUIR – Drawing Positive Lessons From the Presence of ‘The Social’ Outside of EU Social Policy *Stricto Sensu* – 75

Sophie ROBIN-OLIVIER – Fundamental Rights as a New Frame: Displacing the Acquis – 96

Hanna EKLUND – Enlargements, and Displacements of Social Europe: the Example of Sweden – 114

Zane RASNAČA – Identifying the (dis)placement of ‘new’ Member State social interests in the posting of workers: the case of Latvia – 131

A.C.L. DAVIES – How has the Court of Justice changed its management and approach towards the social *acquis*? – 154

Stefano GIUBBONI – Freedom to conduct a business and EU labour law – 172

Mark DAWSON – New governance and the displacement of Social Europe: the case of the European Semester – 191

Sacha GARBEN – The European Pillar of Social Rights: Effectively Addressing Displacement? – 210

Case Note

Marise CREMONA – Shaping EU Trade Policy post-Lisbon: Opinion 2/15 of 16 May 2017 – ECJ, 16 May 2017, Opinion 2/15 *Free Trade Agreement with Singapore* – 231

EDITORIAL POLICY & GUIDELINES FOR CONTRIBUTORS

The journal is edited in the Hogendorp Centre for European Constitutional Studies, a Jean Monnet Centre of excellence. This Centre is based in the University of Amsterdam. Published four times a year. In the tradition of the Hogendorp Centre, the *European Constitutional Law Review* (EuConst) follows the classical approach of constitutionalism, to discuss EU law's developments as well as comparative public law of the member states, political and constitutional theory and history. The journal is a platform for scholarly discussion of European constitutional events and evolution. It is open to contributions in this field from any country in the world and from any discipline. These contributions should satisfy as to substance, apart from the common scholarly criteria, two specific conditions, to a) have a distinctly European relevance and b) include a reference to and discussion of legal aspects involved.

Submitting an article, case note or book review

The editors of the *European Constitutional Law Review* are happy to receive contributions on relevant subjects at any time. Before submitting, authors should ensure that their contribution falls within the scope of EuConst as stated above.

Articles, case notes and book reviews can be sent by email to euconst@uva.nl. Manuscripts should be attached in Microsoft Word format (and not, specifically, in PDF format) to enable editing, anonymisation and comments. EuConst has an exclusive submission policy. Authors are required to state clearly, when submitting, that their contribution is not under consideration elsewhere.

Authors of article contributions are asked to aim for a length of no more than 10,000 words (including footnotes). Case notes and book reviews should not exceed 5,000 words. Upon request, the editors will consider whether relaxation of these limits is justified.

All submissions must be written in good English. Authors who are uncertain whether their English is of sufficient quality, should have their manuscript reviewed and edited by a native speaker with a background in law.

Copyright, licence to publish and open access policy

Contributors retain copyright. By submitting to EuConst, authors agree that upon acceptance of their contribution they will grant an exclusive licence to publish by signing and returning the appropriate Licence Form. Authors can make their contributions available through academic repositories. For more information, including terms and conditions of publication and authors' rights of reuse, see journals.cambridge.org/EuConst_CTF.

Revisions and house style

Accepted contributions will be edited, linguistically and substantively, subject to authors' approval. Authors should ensure that their submissions conform to the house style. A style sheet is available on the journal website, journals.cambridge.org/euconst.



The G.K. VAN HOGENDORP CENTRE FOR EUROPEAN CONSTITUTIONAL STUDIES, short: HOGENDORP CENTRE, is a Jean Monnet centre of excellence at the University of Amsterdam. Founded in 1996, it promotes research and course development in the field of European Constitutional Studies, bringing together the disciplines of constitutional (including comparative) law, history, political theory. Gijsbert Karel van Hogendorp, 1762-1834, is the *auctor intellectualis* of the Dutch Kingdom's first constitution, of 1814.