Chapter 9

Respecting Equality: Practical Manifestations of Intergovernmental Integration Outside the Treaties

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Abstract

In this chapter I will examine the effectiveness of intergovernmental cooperation in the EU through an analysis of subsidiary treaties concluded between Member States. I will focus on the Brussels and Rome Conventions, the Fiscal Compact, Convention on the protection of the European Communities' financial interests, and the UPC Convention. I will assess their success and impact on the development of the EU, arguing that these intergovernmental agreements, despite being limited in number, represent important milestones of integration and may offer solutions to the shortcomings of the current supranational model of the EU. I will also explore the question of whether and in what areas this approach could be developed further. That is, whether these treaties could be a model for further development of the EU. From the perspective of equality between Member States, it is important that these forms of cooperation do not circumvent cooperation within the EU. In other words, not only is the interest of those states that wish to participate in cooperation important, but the perspective of those states that may not be interested in cooperation should also be considered. From the perspective of equality between Member States, it is essential that these forms of cooperation do not bypass or undermine cooperation within the EU framework. In other words, not only do the interests of the participating states matter, but also the perspectives and concerns of those Member States that choose not to take part, which must be duly considered.

Keywords: subsidiary treaties, interstate compacts, Art. 293 EC Treaty, intergovernmental cooperation, federalism, democratic legitimity, EU competences

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1. Introduction

In this part of this book the individual treaties that have been concluded between EU Member States will be focussed on. Their specificities will be analysed. The key question that this section will attempt to answer is whether these treaties represent a systemic solution that allows Member States to cooperate with each other. The essence of such cooperation should be the achievement of common objectives, but with respect for the interests of all Member States, i.e. with minimal or even no manifestation of the supranational principle in the functioning of such cooperation. This so important because they may be the answer on the shortcomings of the current model of EU integration. Therefore these problems will first be identified and conceptualised.

Today, the EU's regulatory activity has gone far beyond the core of integration. We are in a situation where the EU is also seeking to centrally regulate the areas of European cooperation that were originally peripheral in nature. The core can be primarily understood as an economic cooperation, while the periphery includes, for example, matters relating to border protection, the rights of family members of static EU citizens, etc. Nowadays, it seems as if there are no limits to European law. Indeed, the principles of subsidiarity and proportionality, which limit the exercise of EU powers, are only formally considered.[1] This phenomenon is further fuelled by factors that originate in the nature of the rules that the EU can adopt. The use of directives, or indeed regulations, but which in their conception resemble directives to some extent (GDPR is a prime example), allows the EU to regulate matters that in the US, which for example, remain related to state, not federal, law. Ultimately, the EU is increasingly manifesting itself as a federation without actually being one. In some areas, it even seems to go beyond what US federal law provides and therefore interferes with state law more than the US federation does.

Finally, the problem with the EU is that regulation moves along two poles. On the one hand, it is the over-constitutionalising of EU law. The EU 'constitution', which is generally considered to be primary law, contains regulations that both traditionally belong in constitutions, as well as a range of economic policies, policies related to them, and policies that have no direct link to them at all. This regulation is interpreted by the Court of Justice, and hence its often activistic decisions become part of this EU 'constitution'. And within the framework of interpretation, the general 'constitutional rules' are supplemented by the specific regulation of 'statutory law' contained in secondary law, thus effectively elevating it to that 'constitutional' level. This mass of law is extremely difficult to change. Changes to primary law must be approved by all Member States, which is fine, but this is how it can work with real constitutional rules, where stability is a priority. Conversely, it is inappropriate in the case of a regulation that is essentially a part of the 'constitution' by chance. In its case, on the other hand, it is reasonable to require a degree of flexibility. But this is

1 Pauknerová, 2017, p. 185.

not the case with the EU and its law. The case law of the Court of Justice adopted in these materially unconstitutional areas of regulation is similarly stable.

But over-constitutionalising is just one of the same kind of problems. The other is the fact that Member States leave too much room for the European Commission to promote its own ideology and to implement it through regulatory acts, which are actually sub-legislative legislation. In this way, regulations binding on businesses in the internal market are adopted on a large scale, and this is done in a way that does not guarantee real democratic control. The Member States are involved in the process of adopting them, but only at a bureaucratic level, through their executive in the comitology process. The democratic legitimacy of legislation adopted in this way is very low. However, problems also arise at the level between 'constitutional' law and sub-legislative legislation, namely at the level of secondary law. The latter is increasingly showing fundamental legislative and technical deficiencies. The legislation is fragmented into many separate acts. It is extremely difficult for the addressee of such legislation to navigate it and understand it. The verbosity of the regulations, both in their normative part and in the preamble, does not help to solve this problem. It is clear that there is little willingness on the part of the EU to address this in a truly systemic way. The piecemeal efforts of the past, such as the small-scale reform of consumer law, cannot be regarded as real success and a beneficial solution.

In addition to all the above, the very set-up of the EU itself, in particular the European Commission, is problematic. The EU solves problems with an ordoliberal approach. In practice, this manifests itself in an emphasis on the earliest and widest possible regulation by EU law. This has contributed to the perception captured by the often-cited slogan 'the US innovates, the EU regulates'. On the EU's side, the prevailing belief is that it has only to regulate problems even loosely related to the functioning of the internal market, ideally with a global reach. It is therefore expected that not only Member States but also third countries will adapt. But all this ultimately means creating a space in which there is over-regulation that is difficult to change and often incomprehensible to its addressees – see the problems described in the previous paragraph. The consequence is undermined economic growth in the EU compared to USA and limited scope for creativity and innovation. Repeatedly, lofty goals are set but not met – for example, the Lisbon Strategy,[2] and how it (infamously) it ended.[3] In the meantime, new targets have been set. As to whether they will be met is also questionable.

It is becoming increasingly clear that a solution from within the EU is not possible. The EU is clearly incapable of any other approach. So, the question is what to do about it and how to respond to the problems described. I believe that an

2 The original target was to be achieved by 2010 and was as follows: 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'. Presidency conclusions, Lisbon European Council, 23 and 24 March 2000.

3 Feás, 2024.

intergovernmental method of integration, closely linked to the EU, implemented through subsidiary treaties, may be such a solution. It is therefore necessary to look more closely at these existing treaties, which will be the aim of this chapter.

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2. Brussels Convention

The Brussels Convention is the only treaty ever adopted directly on the basis of Art. 293 EC Treaty. It is

> a dual convention governing, within its field of application, direct jurisdiction of the courts in the States that are bound by the Convention, coordination between courts in the event of competing jurisdiction, conditions for the recognition of judgments, and a simplified procedure for their enforcement.[4]

The EU was directly involved in its creation. In fact, the negotiations for this treaty were initiated by the European Commission the year after the EEC was created. This involvement of an international organisation is not unusual, on the one hand. International treaties are regularly negotiated in international forums by international organisations. In this case, however, it was an activity that did not fall directly within the competence of that international organisation, the EEC, and Art. 293 of the EC Treaty was the only connection. The motive for this treaty was to contribute to the creation of an internal market by ensuring adequate legal protection and legal certainty for individuals in the common market.[5] The conclusion of the additional protocol to the Brussels Convention involved the Court of Justice in its interpretation by means of the preliminary ruling mechanism, on the basis of Art. 273 TFEU.[6]

The origin of the Brussels Convention was not easy,[7] and at the time of its adoption it was perceived as a necessary, and it must be added, not very successful compromise. It was a compromise because its content reflected the influence of the United Kingdom and its common law. Thus, some of the accepted solutions were in some respects incompatible with the solutions inherent in continental law. It can be argued however, that the convention was in fact a huge success for the EU and the Member States.

4 Professor Pocar spoke these words about the Lugano Convention. Since this Convention mirrors the Brussels Convention, his words apply equally to both treaties. See Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007 – Explanatory report by Professor Fausto Pocar (Holder of the Chair of International Law at the University of Milan) OJ C 319, 23.12.2009. Pocar, 2009, p. 4.

5 eur-lex.europa.eu, 1979.

6 Protocol on the interpretation of the 1968 Convention by the Court of Justice.

7 This convention was signed only after nine years of negotiations. See: eur-lex.europa.eu, 1979.

I have several reasons for a positive assessment of the importance of this international treaty. Firstly, there are reasons of substance. The legal provisions adopted in this treaty were subsequently incorporated into the EU legal framework following the transfer of powers to the EU by the Treaty of Amsterdam, which was executed in 2001 via the Brussels I Regulation. It was only in the second step, the adoption of the Brussels I bis Regulation in 2012, that a more substantial revision took place. The success of this Convention is demonstrated by the fact that it has become the basis for determining jurisdiction and for the recognition of foreign judgments not only between Member States but also *vis-à-vis* certain third countries. The rules it introduced were taken over in the 1988 Lugano Convention, which the Member States concluded with the EFTA States.[8] The Lugano Convention thus became the legal instrument for the extended application of the rules agreed and contained in the Brussels Convention. Even the Lugano Convention, as a successful project, exists today, only the rules for jurisdiction and the recognition and enforcement of judgments in civil and commercial matters have been updated (mirroring developments within the EU). Therefore, the original Lugano Convention was also replaced by the 'New Lugano Convention' in 2009.[9] How else to measure the success of a piece of legislation other than by the fact that it has stood the test of time and inspired other states? In this respect, the Brussels Convention has indeed been an extremely successful venture, not least in the area of justice, an area that is very sensitive to the Member States.

Once again, it is necessary to emphasise the fact that the Brussels Convention was the product of intergovernmental cooperation between Member States, which gradually led to supranational cooperation. The Member States were therefore able, as equals, to define the parameters of the cooperation and the legislation adopted based on it. With modifications, this has persisted to the present day. The regulation adopted by the supranational method is therefore based on rules that were originally agreed intergovernmentally.

The success of the Convention is further underlined by the fact that it has acted as an inspiration to Member States for their further codification work in the field of private international law. The spillover effect has worked very effectively. Indeed, cooperation in the area of determining the jurisdiction of the courts had, by necessity, to be supplemented by another form of cooperation in the area of determining the

8 88/592/EEC: Convention on jurisdiction and the enforcement of judgments in civil and commercial matters - Done at Lugano on 16 September 1988.

9 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters OJ L 147, 10.6.2009, pp. 5–43

applicable law.[10] This was the only way to solve the problems associated with fundamentally negative phenomena such as forum shopping.[11] Unification of the rules for determining applicable law is a sensible answer to this problem, which brings us to the Rome Convention.

3. Rome Convention

The Rome Convention was the second convention adopted in the field of private international law. It was negotiated in 1980 but did not enter into force until 1991. It is now only applicable in relation to Denmark.[12] Denmark has a special regime – an opt-out from cooperation in the area of freedom, security and justice. This treaty was built on the Brussels Convention by establishing universally applicable rules for determining the applicable law in disputes with an international element.

The Rome Convention is remarkable in many respects. This is mainly because it is not a true subsidiary treaty, since Art. 293 EC Treaty did not envisage a unification of the rules for determining the applicable law, even on an expansive interpretation. Nevertheless, the treaty is in all respects a *de facto* subsidiary treaty. It originated with the EU Member States and only the EU Member States could become a party to it.[13] Protocol to this treaty established the power of the Court of Justice to ensure a uniform and correct interpretation of the Rome Convention.[14] Finally, in a joint declaration, the Member States declared their interest in sharing with the Court of Justice and with other Member States information on judgments which have become res judicata and have been handed down pursuant to the Convention on the law applicable to contractual obligations by the courts,[15] which were empowered to ask preliminary questions, i.e. the highest courts of the Member States.

10 The Guiliano-Lagarde Report explicitly states: 'As for the legal basis of the work, it was the unanimous view that the proposed harmonization, without being specifically connected with the provisions of Art. 220 of the EEC Treaty, would be a natural sequel to the Convention on jurisdiction and enforcement of judgments'. Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris IOJ C 282, 31.10.1980, pp. 1–50

11 Forum shopping in international private law refers to the practice of litigants taking actions in jurisdictions where they believe that the court will in their case most likely to provide a favourable judgment.

12 And some overseas territories of EU countries.

13 See Art. 28 of the Rome Convention and the condition contained therein that signature is possible nly in case of the States that party to the Treaty establishing the European Economic Community

14 First Protocol on the interpretation of the 1980 Convention by the Court of Justice (consolidated version) / 1980 Rome Convention Official Journal C 027, 26/01/1998 P. 0047–0051

15 Joint Declaration to the Rome Convention.

The Rome Convention can also be considered an example of a very successful integration project.[16] The reasons for this conclusion are the same as those applied in the case of the Brussels Convention. The development of these treaties went hand in hand with the development of EU competences. After the intergovernmental method of agreeing on the rules had proved its worth, the Rome Convention was also materially transformed into EU law. Valdhans and Myšáková refer to the conversion of existing rules into an EU regulation.[17] When adopting the EU Regulation, the Commission also introduced amendments, i.e. the Rome Convention was not taken over as it was. However, this is understandable as the successor regulation[18] was adopted after almost three decades, so it was indeed necessary to update the rules.

4. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the Fiscal Compact)

This treaty is not a conceptually subsidiary treaty, as Art. 293 EC Treaty does not envisage that at all. Its focus is on issues relating to the national economy and its limits, areas which are not regulated by this provision. It was adopted to reinforce the budget discipline of euro area governments. As regards its legal status, there is no doubt that this treaty is an intergovernmental international treaty.[19] Nevertheless, this treaty has significant similarities with subsidiary treaties, and it is for these that it belongs in this chapter. In the interim since its adoption, EU institutions have attempted to incorporate it into EU law, arguing that this is an obligation under Art. 16 of this treaty, as this provision requires the incorporation of this treaty into EU law. However, I believe that this is an obligation imposed on the Member States, as they are the signatories to this treaty, and not on EU institutions, namely the European Commission. For some reason, the Member States have not yet taken this step.

The European Commission argues that the benefits of incorporating this treaty into EU law will be:

> Consistency of EU fiscal rules within the Economic and Monetary Union; Voluntary participation of non-euro area Member States; Complementing and strengthening the Stability and Growth Pact, taking into account the appropriate flexibility built into the Pact; Simplification of the legal framework; Better monitoring and enforcement of

16 At the time this treaty was adopted, it was not generally accepted in this way. On the contrary, its shortcomings were pointed out. See Horlacher, 1994, p. 173.

17 Valdhans and Myšáková, 2008.

18 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

19 This is also how it is referred to by official EU sources. See: European Union, no date.

fiscal rules; Incorporating the Treaty into the EU's legal and institutional framework will enhance its democratic legitimacy.[20]

Neither of these reasons appear to be convincing. The last claim comes across as the most problematic. One might also interpret this argument to mean that the European Commission does not consider the approval of an international treaty by national parliaments to be sufficiently democratic. Nevertheless, it is hoped that this is not the case. However, I believe that this Commission's statement confirms the observation made at the beginning of this chapter that EU legislation (including its accompanying documents) too often uses a lot of words which, as they sound more grandiose, actually become emptier. Playing on the democratic deficit is one of the EU's favourites actions.

In fact, there are only two relevant arguments for incorporating this Treaty into EU law. Firstly, there is the aforementioned commitment in its Art. 16. There is no reason for this treaty to exist on its own outside EU law once Member States have become signatories to it. The second argument is that incorporating this treaty into EU law would remedy the current problematic relationship of this treaty with the regulation contained in primary EU law in the same area.[21]

So let us look at where the problematic nature of the Fiscal Compact lies. It is a fact that Member States can conclude any international agreement between themselves, so long as they do not interfere with EU competences. It is true that economic policy is only coordinated by EU law. The EU's competence in this area is therefore very limited. However, the Fiscal Compact lays down rules for the management of Member States' economies that complement, concretise and ultimately modify the rules of EU law adopted for the same area. The Fiscal Compact further modifies voting in the EU institutions. Art. 7 of the treaty introduces in effect, the 'automatic adoption of a proposed measure or recommendation by the Commission against the euro area Member State concerned in the excessive deficit procedure, unless a qualified majority of the contracting parties whose currency is the euro is opposed'.[22] This means that the intergovernmental treaty is intertwined with the EU's internal arrangements and decision-making of EU institutions.

The Fiscal Compact also introduces its own enforcement mechanism, which is unusual in international law.[23] Similarly to the Brussels and Rome Conventions, Art. 273 TFEU is used, which establishes the Court of Justice's power to enforce the treaty. The difference is that the Court's primary task is not to ensure a uniform interpretation of the Fiscal Compact in the Member States, but to enforce compliance with it. It is therefore not analogous to the procedure under Art. 267 TFEU, but rather to

20 European Commission, Directorate General for Economic and Financial Affairs, 2017.

21 In particular those contained in Protocol No 12 of the excessive deficit procedure. OJ C 202, 7.6.2016, p. 279-280.

22 Kusák et al., 2012, p. 55.

23 Týč, 2012, p. 110; Tomášek, 2012, p. 39; Týč and Sehnálek, 2017, pp. 192 and subseq.

Art. 259 TFEU. What is worth noting is that the Commission cannot bring an action before the Court of Justice under Art. 273 TFEU itself. All the above suggests that if the primary objective of the Member States was to regulate the issue by amending primary law, then such an amendment would be legally sound. However, this was not possible for reasons of time and due to of the opposition of some Member States (namely the United Kingdom and the Czech Republic). The remaining states therefore used the international treaty as a standard instrument of public international law, which essentially bypassed the factual impossibility of changing EU primary law in a non-standard way. An attempt to ensure compliance with EU law is contained in Art. 2 of the Fiscal Compact, but this provision is only relevant from an internationalist perspective. It confirms that the Fiscal Compat is not a later treaty that replaces to some extent an earlier treaty (which is the TFEU), but merely supplements existing rules with new ones. However, this is clear and a given from the perspective of EU law, and nothing in the Fiscal Compact can alter this. From this point of view, Art. 2 of the Fiscal compact is a rather obvious statement, but it cannot justify the fact that this treaty regulates matters already regulated by EU law

The Fiscal Compact is, in my opinion, a clear demonstration that the EU, despite all the federal language in its law and in its activities, remains merely an international organisation. In my opinion, it is unthinkable that the sub-states of a federation should in any way circumvent federal law by their own jointly adopted arrangements. This treaty is also proof that, if necessary, EU institutions are willing and able to accept a solution that is pragmatic and effective, even if it is a controversial solution from the point of view of EU law. However, despite any reservations I may have as a lawyer, this solution is legitimate and democratic. It has been ratified by standard processes in the Member States.[24]

5. Convention on the Protection of the European Communities' Financial Interests

In principle, a similar treaty to the Fiscal Compact was the Convention on the protection of the European Communities' financial interests, which was also adopted to make part of the national law of the Member States the rules envisaged by that treaty, which were linked to the EU and its law. This treaty was also not the treaty envisaged by Art. 293 of the EC Treaty. Nevertheless, it had a clear subsidiary nature, by virtue of Art. K.3 TEU (MAA). This provision allowed the Council to draw

24 In the Czech Republic, the question was whether the qualified procedure for the adoption of treaties (under Art. 10a of the Constitution) or the ordinary procedure (under Art. 10 of the Constitution) should be used. It was noted that the Treaty did not confer new powers on the EU and that the latter procedure was therefore sufficient.

up conventions for Member States, which could adopt them in accordance with their respective constitutional requirements.[25] The difference with the Fiscal Compact was that the Convention on the protection of the European Communities' financial interests did not regulate in a new and different way issues already regulated by EU law. It built on EU rules and aimed to contribute to the better functioning of EU law by uniformly defining, criminalising and sanctioning fraud in the management of EU funds. In this respect, the Convention was closer to the Brussels and Rome Conventions in terms of its relationship with EU law. It also shared the same fate. Following the extension of the EU's competences by the Lisbon Treaty, the Convention was in principle replaced by secondary EU law.[26]

6. Agreement on a Unified Patent Court

The Agreement on a Unified Patent Court is another international treaty that was not foreseen by Art. 293 EC Treaty but meets the parameters allowing itself to be considered a subsidiary treaty. However, like the Fiscal Compact, the Agreement on a Unified Patent Court has certain specific characteristics that make it unique. The aim of this treaty is to create a common three-instance court of participating Member States for the settlement of disputes relating to European patents and European patents with unitary effect. It is therefore an international treaty that can only be concluded between Member States and not necessarily by all of them. This treaty establishes a court which has a dual nature. From a national perspective, this court is international in nature. It does not form part of the national judicial system, and from the viewpoint of each respective Member State, it may operate in a foreign language, apply its own procedural rules, and involve judges of foreign nationality. However, from the perspective of EU law, this court is regarded as a national court of the respective Member State. In fact, it has jurisdiction over cases that have been decided by national courts, with the proviso that it will enforce the rules contained in EU law in the field of patents, and national rules in international law. This very specific solution was adopted because, on the one hand, the Member States clearly did not have the will to create new EU courts and thus federalise the EU judiciary. At the same time, however, it was necessary to preserve the primacy of the EU judiciary and to ensure the priority application of EU law, which the national nature of the Unified Patent Court allows and ensures.

25 See Art. K.3 Sec. 2(c). TEU.

26 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. See Point 25 of its Preamble and its Art. 16.

From the Member States' perspective, the treaty touches upon a sensitive area of justice. Nevertheless, given its predominantly technical focus, the transfer of competences in this domain was presumably more politically acceptable. Indeed, patents cannot be regarded as a subject closely related to the security of the State and its public order. However, it should also not be forgotten that the potential economic and financial consequences in this area can also be considerable. This may further complicate the existing and evidently difficult position of manufacturers from new EU Member States, who on the one hand lack the innovative potential of competitors from the old Member States, nor do they have the necessary know-how and financial resources to consistently protect their own intellectual and industrial property. This is probably the reason why the Czech Republic, Hungary, Slovakia and others have signed but not ratified the treaty. Poland, Croatia (and, outside our region, Spain) have not even signed it.

7. Conclusion

The number of subsidiary treaties concluded between Member States is not high. In this case, however, quantity does not outweigh quality. Indeed, each of these treaties was a significant milestone in the development of European integration and most of them have contributed significantly to the current supranational form of the EU. The question that was sought to be answered in this chapter was whether these treaties represent a systemic solution to cooperation between Member States. I believe that this is indeed the case. Several reasons can be identified to make this conclusion. These treaties provide detailed regulation of certain issues and do so without the risk of 'surprises' that can occur when EU secondary law is adopted. I am referring to those situations where the EU adopts very specific legislation on a very general basis in primary law which, although approved by national governments in the Council, would never be approved by national parliaments. This is not the case with subsidiary treaties. Their democratic legitimacy is therefore higher compared to the EU legislation. It should also be said that the process of their discussion in national parliaments is more judicious, more thorough and more professional than the process of discussing secondary legislation in legislative procedures. In fairness, however, it must be admitted that both positive arguments also have a disadvantage – the time-consuming nature of the adoption of these treaties.

These treaties also make it possible to regulate matters that are politically sensitive and where the transfer of powers is unwelcome in some Member States. Still, history shows that they act as a precursor to future EU regulation. Any functional cooperation established between Member States based on a subsidiary treaty may be later transformed into intra-EU cooperation once it is established and proven. In line with the bicycle theory, they can be deemed a progressive instrument of EU federalisation in a way that will be more generally acceptable than the 'Brussels dictates' currently criticised in many countries.

These treaties offer the advantage of accommodating national interests and needs while simultaneously making use of the existing EU institutional framework. The Court of Justice can ensure their uniform interpretation and effective enforcement, and the Commission may play a key role as an initiator and impartial mediator in the negotiation process between Member States. These are significant benefits. Nevertheless, the EU has recently shown reluctance to acknowledge or build upon them.

However, there is also the question concerning in which areas such treaties can be concluded. It appears that the gradual expansion of the EU's competences has in essence, narrowed or even eliminated the space for concluding such agreements. And where such space still exists – such as in the field of double taxation – there seems to be little political will among the Member States to make use of it. Both these aspects represent a genuine problem. In my view, the EU requires a more fundamental reform of its system of competences. Only once such a reform has taken place can the broader use of subsidiary treaties be meaningfully considered. I believe that the EU has reached a stage where it is no longer sufficient merely to define the areas in which it has competence. It is equally important that primary law explicitly and clearly identifies those areas which remain fully within the competence of the Member States. In federal systems, such a division is standard practice. This delineation should be declaratory in nature. Its function would not be to establish Member State competences ex novo, but rather to set clear limits to EU action. Within those limits, there would be greater scope for the use of subsidiary treaties. This process can be envisaged being accompanied by both a reduction in the scope of certain existing EU competences and, conversely, by a form of functional federalisation in those areas where EU powers would be retained. In this context, subsidiary treaties could play a valuable role in fields such as migration, social policy, taxation, health care, education, and other similar domains.

References

Attenborough, E. (2021) 'Dispute Resolution Post-Brexit Transition Period' [Online]. Available at: https://www.whitecase.com/insight-alert/dispute-resolution-post-brexit-transition-period (Accessed: 30 December 2024).

Bělohlávek, A. (2004) 'Pravomoci soudů a výkon rozhodnutí v kontextu vývoje evropského civilního procesu', *Právní rádce*, 2004/12. pp. 15–19.

eur-lex.europa.eu (1979) 'Report by Mr. P. Jenard on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters', *Official Journal of the European Communities*, 1979/22, pp. 1–65. [Online]. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1979:059:FULL:EN:PDF (Accessed: 5 January 2025).

European Commission, Directorate General for Economic and Financial Affairs (2017) 'Integrating the Treaty on Stability, Coordination and Governance into EU law: completing the European Economic and Monetary Union: the Commission's contribution to the Leaders' [Online]. Available at: https://data.europa.eu/doi/10.2765/45348 (Accessed: 5 January 2025).

European Union (no date) 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (also known as the fiscal compact)' [Online]. Available at: https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-stability-coordination-and-governance-in-the-economic-and-monetary-union-also-known-as-the-fiscal-compact.html (Accessed: 5 January 2025).

Horspool, M., Humphreys, M. (2006) *European Union Law*. Oxford: Oxford University Press.

Pocar, F. (2009) 'Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007 – Explanatory report' [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52009XG1223%2804%29 (Accessed: 30 December 2024).

Kusák M., Pítrová, L., Bambasová, H., Durica, J., Elischer, D., Francová, O. (2012) 'Právní aspekty smlouvy o stabilitě, koordinaci a správě v hospodářské a měnové unii', *Acta universitatis Carolinae – Iuridica*, 2012/1, pp. 43–68.

Lagarde, P. (no date) 'Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I.' [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31980Y1031%2801%29 (Accessed: 30 December 2024).

Pauknerová, M. (2017) 'Evropské mezinárodní právo soukromé a zamyšlení nad výročím Římských smluv', *Právník*, 2017/3, pp. 179–191.

Rozehnalová, N., Týč, V., Novotná, M. (2000) *Evropské mezinárodní právo soukromé*. Brno: Masarykova univerzita.

Sada, A., Drusian, E. (2024) 'United Kingdom and the ratification on June 27 2024 of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters' [Online]. Available at: https://www.aoshearman.com/en/insights/united-kingdom-and-the-hague-convention-on-the-recognition-and-enforcement-of-foreign-judgments (Accessed: 27 December 2024).

Valdhans, J., Myšáková, P. (no date) 'Rome I and Rome II regulations – Alies or enemies?' [Online]. Available at: https://www.law.muni.cz/sborniky/dp08/files/pdf/mezinaro/valdhans.pdf (Accessed: 30 December 2024).

Sehnálek, D. (2019) *Specifika výkladu práva Evropské unie a jeho vnitrostátní důsledky*. Praha: C.H. Beck.

Týč, V. (2012) 'Smlouva o stabilitě, koordinaci a správě v hospodářské a měnové unii z hlediska jejího dopadu na právní řád ČR', *Acta universitatis Carolinae – Iuridica*, 2012/1, pp. 109–117.

Tomášek, M. (2012) 'Proměny sankčních mechanismů ve světle Smlouvy o rozpočtové odpovědnosti', *Acta universitatis Carolinae – Iuridica*, 2012/1, pp. 33–41.

Týč, V., Sehnálek, D. (2017) 'Mezinárodní smlouva jako možný perspektivní nástroj další evropské integrace', *Právník*. 156(3), pp. 192–212.

Wikipedia (no date a) 'Interstate compact' [Online]. Available at: https://en.wikipedia.org/wiki/Interstate_compact (Accessed: 22 November 2024).

Wikipedia (no date b) 'National Popular Vote Interstate Compact' [Online]. Available at: https://en.wikipedia.org/wiki/National_Popular_Vote_Interstate_Compact (Accessed: 22 November 2024).

Part IV

COOPERATION WITHOUT UNIFICATION – EQUAL, DIVERSE, TRUSTING