

The Eclipse of the Legality Principle in the European Union

Edited by
Leonard Besselink
Frans Pennings
Sacha Prechal

75

EUROPEAN MONOGRAPHS



Wolters Kluwer
Law & Business

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Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-3262-8

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Printed in Great Britain.

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EUROPEAN MONOGRAPHS

Editor-in-chief Professor David O'Keeffe

In this series *European Monographs* this book *The Eclipse of the Legality Principle in the European Union* is the seventy-fifth title. *The titles published in this series are listed at the end of this volume.*

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List of Abbreviations

AB	Administratiefrechtelijke Beslissingen (Journal on Case Law)
AC	Law Reports Appeal Cases
ACER	Agency for the Cooperation of Energy Regulators
AFM	Autoriteit Financiële Markten (Financial Markets Authority)
ALL E.R.	All England Reports
ARSP	Archiv für Rechts- und Sozialphilosophie
AZR	Ausländerzentralregister
BEREC	Body of European Regulators for Electronic Communications
B.vE	Bundesgesetz über die verdeckte Ermittlung
BVerfG	Bundesverfassungsgericht
BverwGE	Bundesverwaltungsgericht
BImSchG	Bundes-Immissionsschutzgesetz
CBP	College Bescherming Persoonsgegevens
CC	Conseil constitutionnel
CEBS	Committee of European Banking Supervisors
CEEP	European Centre of Employers and Enterprise Providing Public Service
CEIOPS	Committee of European Insurance and Occupational Pension Supervisors
CESR	Committee of European Securities Supervisors
CFI	Court of First Instance (Court of Justice EU)
CLA	Collective Labour Agreement
CLP	Current Legal Problems
CML.Rev.	Common Market Law Review
CLWP	Commission's Legislative and Work Programme
DNB	De Nederlandsche Bank
DPC	Data Protection Convention

List of Abbreviations

DuD	Zeitschrift Datenschutz und Datensicherheit
EACH	European Association of Central Counterparty Clearing Houses
EC	European Commission
ECA	European Collective Agreement
ECJ	European Court of Justice
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECLAN	European Criminal Law Academic Network
ECR	European Court of Justice Reports
ECSA	European Community Shipowners Association
ECSDA	European Central Securities Depositories Association
EDPS	European Data Protection Supervisor
EEA	European Economic Area
EES	European Employment Strategy
EESC	European Economic and Social Committee
EGAOB	European Group of Audit Oversight Bodies
EIPA	European Institution of Public Administration
EJSB	Eurojust Joint Supervisory Board
EJSS	European Journal Social Security
ElRev	European Law Review
EP	European Parliament
ESC	European Social Charter
ESD	European Social Dialogue
ETF	European Training Foundation
ETUC	European Trade Union Confederation
EWC	European Works Council
FESE	Federation of European Securities Exchanges
FSA	Financial Services Authority
GALA	(Dutch) General Administrative Law Act
GG	Grundgesetz
HMSO	Her Majesty's Stationery Office
HRA	Human Rights Act
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGC	Intergovernmental Conference
ILO	International Labour Organization
IWCFC	Interim Working Committee on Financial Conglomerates
JB	Jurisprudentie Bestuursrecht
JBPlus	Jurisprudentie Bestuursrecht Plus
JHA	Justice and Home Affairs
JIT	Joint Investigation Teams
LJN	Landelijk Jurisprudentie Nummer
M&M	Markt & Mededinging
MiFID	Markets in Financial Instruments
MoU	Memorandum of Understanding

NCA	National Competition Authority
NJ	Nederlandse Jurisprudentie
NJV	Nederlandse Juristen-Vereniging
NJW	Neue Juridische Wochenschrift
NRA	National Regulatory Authority
NTB	Nederlands Tijdschrift Bestuursrecht
NTER	Nederlands Tijdschrift voor Europees Recht
NVzW	Neue Zeitschrift für Verwaltungsrecht
NYR	Not Yet Reported
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the EC
OMC	Open Method of Coordination
OVG	Oberverwaltungsgericht
PJCC	Police and Judicial Cooperation in Criminal matters
QB	Law Reports Queen's Bench
REALaw	Review of European Administrative Law
SCE	European Cooperative Society (Societas Cooperativa Europaea)
SDC	Social Dialogue Committee
SE	European Company (Societas Europaea)
SEA	Single European Act
SEW	Tijdschrift voor Europees en economisch recht (Dutch Magazine)
SME	Small and Medium Enterprise(s)
SPA	Social Policy Agreement
TCN	Third Country National
TEC	Treaty of the European Communities
TEEC	Treaty on the European Economic Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TILEC	Tilburg Law and Economics Center
UEAPME	European Association of Craft, Small and Medium-sized Enterprises
UNICE	Union of Industrial and Employers' Confederations of Europe
VIS	Visa Information System
VwVfG	Verwaltungsverfahrensgesetz
Wash. and Lee L. Rev.	Washington and Lee Law Review
Wft	Wet op het financieel toezicht
WL	Westlaw
WLR	Weekly Law Reports
WPPJ	Working Party on Police and Justice
WRR	Wetenschappelijke Raad voor het Regeringsbeleid

Preface

For lawyers legality seems a very well known phenomenon, as it is a basic notion in many areas of law. It means that a particular rule or act has to be based on acts adopted by Parliament. Sometimes it even has a more specific meaning in specific areas of law.

In this study we studied legality, however, from a different perspective: that of the European Union, and, in more specifically, that of the multi-layered legal order. Is legality a useful concept in this perspective and what does it mean in this context?

Twenty-one outstanding legal scholars, most of them working at the Europa Institute of Utrecht University have studied and discussed this issue in the past three years. On 5 November 2009 the Europa Institute organized a conference on this topic on the basis of the papers which had so far been prepared.

Mark van Hoecke, University Professor of Legal Theory at the University of Gent; Linda Senden, Professor of European Law at the University of Tilburg; Arjen Meij, Visiting Professor at the Utrecht University (G.J. Wiarda chair); Stephen Weatherill, Jacques Delors Professor of European Community Law at the University of Oxford commented on the papers. These comments have been very useful for the finalization of this book. The organizers received a welcome grant from the Wiarda institute for the organization of this conference.

Finally we have to thank Fiona McGrath, PhD student at the School of Social and Political Science, University of Edinburgh who corrected mistakes in the language of the papers.

Utrecht, 29 September 2011

Leonard Besselink, Frans Pennings and Sacha Prechal

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