

KLUWER LAW INTERNATIONAL

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Liber Amicorum Piet Jan Slot

Edited by

Mielle Bulterman

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Liber Amicorum Piet Jan Slot



Foreword

An inspired European Scholar

The publication of a *Liber Amicorum* is meant to be a festive occasion. In Germany such a book is, not without reason, called a *Festschrift*. But it might also be a nostalgic moment when it means that the scholar in question is leaving a Chair to which he has lent lustre. Unexpected events prevented me from honouring my commitment to contribute substantively to the *Liber Amicorum* for Piet Jan Slot, but the editors have been so kind as to allow me to add a laudatory note with a nostalgic flavour to this collection of tributes.

In Piet Jan Slot's case, the *Liber Amicorum* marks his retirement from a position to which he has devoted his time and considerable talents for more than a quarter of a century: that of professor of economic administrative law at the Faculty of Law, Leiden. The title of the Chair was altered to European and economic law a few years ago. This position involves not only the study of domestic and international, in particular European economic law, but also the directorship of the Europa Institute, the oldest European institution devoted to the study of European Law, as it proudly announces on his website. Moreover, the Faculty and the Institute lose in him someone who saw his profession not only as an intellectual challenge, but also as a fine opportunity to contribute as a lawyer to what Article 1 of the EU Treaty still calls "the process of creating an ever closer union among the peoples of Europe".

Today, nobody will deny that it is worthwhile to study and teach the role of law in the construction of European integration. It is a highly interesting, sometimes even fascinating subject and an indispensable element of any serious programme of legal education. But for the generation of post-war jurists to which Piet Jan Slot belongs, it is more than that. This dwindling group is still motivated by their own or their family's experiences during the Second World War. In their eyes, European

integration is “the answer to the atrocities of the Second World War”, to quote from Piet Jan’s statement on his personal homepage (Leiden scientists and scholars). For this reason, he continues, “the development of the European Community/Union has been a source of inspiration. The process of gradual integration has restored confidence between the peoples of Western Europe. It should now spread to Central and Eastern Europe whose inhabitants have endured the dominance of foreign power until the nineteen nineties.”

Let there be no mistake about it. To consider European integration as a value as such, that should be respected and fostered, doesn’t mean the uncritical acceptance of European law and the way it is made. It only means that in interpreting and applying European law, one prefers as far as possible to search for solutions that maintain, develop and enrich the legal order established by the various European Treaties.

As André Malraux claimed, “il y a deux façons d’être homme, la première est de cultiver la différence, la seconde à approfondir la communauté”. Piet Jan belongs to those who have consciously chosen the second approach. This is what distinguishes him fundamentally from certain well-known figures who state that the task of a professor of European law in the Netherlands – and the reason why he receives his salary – is to devise ways and means to reduce the influence of Europe in Dutch internal affairs. Luckily that has not been the way Piet Jan is accustomed to look at his profession.

P.J.G. Kapteyn
The Hague

Personal Foreword

When I was a child, like many children I used to ask anyone around me a lot of questions. This also held in relation to my father. My father would try to answer my many questions as well as you can to a young child. I remember him trying to explain to me what a company is, how it works, and how stock prices are affected by various factors. And even though many details were beyond me, he managed to explain things in such a way that I felt I understood the basic principles, as being perfectly natural – and he did it in a way which made me find it all fascinating.

He would also talk about some of the big competition law cases he was working on, or which were of interest to him for books or articles he was writing. He somehow managed to simplify the issues involved in a way that even gave me the impression that I understood the vital elements of the cases completely. I remember, too, that when my father was correcting assignments from his LL.M class, he would often reword the questions in order to let me have a go at answering them. And to my great surprise, I felt that I knew every correct answer in a self-explanatory manner. There was no doubt in my mind that I completely understood the often complex interrelations and subtle distinctions at hand.

In 2004 I enrolled at the law school of the University of Aarhus, Denmark. Contrary to what many people may believe, this choice was certainly not made as a result of any, however subtle, suggestion or hint from my father's side. Actually, for a long time I thought my future would be in computer science.

One of the features of legal science which has special appeal to me, is the exact nature of the solutions produced. There is a very clear distinction between arguments that are valid and those that are not; furthermore, a correct answer can usually be verified by a court of law or by an administrative authority. While this of course does not always necessarily hold true, it is the precise nature of the argumentation and the applicable solutions that I find fascinating.

As a grownup I have realized that the answers to a lot of the legal questions that my father presented to me are not as simple and straightforward as I in my youthful grandiosity was led to believe. What remains, however, is my appreciation and in fact admiration for my father's ability to identify and analyse the crucial issues of a complicated matter and consequentially express them in a clear way adequately attuned to the listener. As his son I have benefited richly from this ability and I am convinced that many others have as well, including students and colleagues.

While my father has taught me many useful skills and abilities, I can honestly say that I have also been able to teach him a few things. For example my father probably wouldn't have begun snowboarding at the age of almost 63 without my guidance and instigation. He is now an apt snowboarder: in fact, his proficiency resulted in him receiving an offer to become an instructor in Whistler, Canada. So who knows if his second career might not be a senior snowboarding instructor?

In any case, I sincerely wish him a happy retirement with all the intellectual and physical challenges that he may wish for.

Joris Slot

Biography of Piet Jan Slot

Personal

Piet Jan Slot, born 19 March 1944, 's Gravenzande, The Netherlands

Education: Master of Laws and Master of Economics, Free University Amsterdam (1968), Doctor of Laws, Utrecht University (1975)

Principal Functions

1971-1976	Lecturer, Department of Economics, Utrecht University
1976-1982	Deputy head Legal department Shipping and maritime affairs department (Scheepvaart en Maritieme Zaken), Ministry of Transport, Public Works and Water Management
1982-present	Professor of Economic administrative law, later renamed European and Economic Law, at Leiden University
1982-present	Director of the Leiden <i>Europa Instituut</i>
1991 and 1996	<i>Jean-Monnet</i> visiting professor Rheinische Friedrich-Wilhelms-Universität, Bonn
1994-1995	Visiting professor University of Paris II, Panthéon-Assas
2000-2001	Visiting professor Stanford University (2000-2001).

Secondary Functions

Editor of *Common Market Law Review* (1982-present)

Chairman of the International Institute for Energy Law (1986-2006)

Editor of *Markt en Mededinging* (1998-present)

Head of group of experts to assist the PHARE countries to assess the compatibility of their national legislation with the Energy Charter Treaty (1993-1995)

Member/Chairman Competition Law group (1982-2003)

Fellow of the Society for Advanced Legal Studies (1998-present)

Member of the board of the European Maritime Law organisation (2002)

Member of the Management committee of the European Air Law Association (2002-2003)

Member of the Commissie Internationale Sociaal-economische Aangelegenheden SER (1990-present)

Legal adviser Maritime Law U.N. Commission for South East Asia and the Pacific

General Rapporteur Fide Congress (1988 and 2000)

Ad hoc judge, District court, The Hague (2004-present)

Select bibliography of Piet Jan Slot

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- Exploiting the internal market: co-operation toward 1992*, Deventer: Kluwer Law and Taxation Publishers, 1988, co-editor with M.H. van der Woude
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Articles

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Introduction

The title of this *Liber amicorum* is borrowed from a well-known article by Piet Jan Slot, in which he gave a masterful overview of 40 years of developments in the field of competition law. He is a mountain-lover – enjoying climbing, skiing and snowboarding. And from high on a mountain, one can enjoy a broad overview over varied terrain. One can see the broad shape of developments; one can pick out similarities and connections. This aspect reminds us of the sheer quantity and range of Slot's publications. The wide variety of the contributions in this Liber is certainly not surprising.

Part I – The internal market, the freedoms and harmonization

Part I contains a number of contributions concerning *the core of substantive EC law: the internal market*. In “Minimum harmonization after *tobacco advertising* and *Laval un partneri*”, Michael Dougan starts from the question whether more stringent national regulatory standards, adopted pursuant to Community secondary legislation aimed at minimum harmonization, can be enforced by the host State against goods or services which have been lawfully marketed in their country of origin in compliance with the basic Community norms. Community measures which permit Member States to adopt more stringent protective standards inevitably leave certain inequalities of regulatory burden for undertakings, Dougan explains that in some prominent case law, the Court of Justice showed itself to be quite hostile to this phenomenon. This could even have consequences for the Community's social initiatives. Cases such as *Tobacco advertising* (I and II) and *Laval* have not helped provide a clear and coherent answer to the question what possibilities remain for Member States to enact more stringent rules following minimum harmonization. The Treaty still needs to accommodate differences in the extent to which the various Member States can and wish to agree upon a common welfare agenda.

Staying with harmonization, the second chapter, by Wessel Geursen, “Harmonization in a globalizing marketplace”, takes the Community’s export of its rules on the use of the name “champagne” in order to illustrate the impact of globalization on harmonization of laws. Geursen recounts how a special Champagne clause was inserted in the agreement between Switzerland and the European Community, exemplifying how harmonized legislation may be shared with third countries. Such sharing tends to increase in the context of a globalizing economy. There could otherwise be a negative tendency as a result of excessive regulatory competition (the so-called “race to the bottom”), and harmonization is the way to avoid this. Geursen’s next example to illustrate these processes is the agreements in order to prevent residents of Member States being able to avoid any form of taxation on interest they received on bank accounts in another Member State. Moreover, since regulatory competition does not stop at the EU borders and mobile targets such as capital are easily moved to third countries, harmonization must also transcend EU borders, and extend to third countries.

The need to take account of social policy objectives in a context where borders are being abolished was the basis for the inclusion of the prohibition of sex discrimination in relation to pay in the original EEC Treaty. Otherwise, fair and open economic competition between the Member States would have been impossible, if there were differences between legislation of the Member States. This was the basis for harmonization within the Treaty itself. Rikki Holtmaat examines the latest stage in the development of combatting sex discrimination, in her chapter “Sexual harassment as sex discrimination: A logical step in the evolution of EU Sex Discrimination Law or a step too far?” It has gradually been acknowledged that it is not enough to prohibit only *unfavourable* treatment, but it is necessary also to prohibit other forms of unfavourable behaviour, where people are *abused or intimidated* on grounds of belonging to certain group. Nevertheless, she comes to the finding that sex discrimination and sexual harassment are two very different legal concepts, which are awkwardly combined in the Sex Equality Directives. There is no reason to restrict the prohibition of sexual harassment to situations where there is (also) sex discrimination – but this is, according to Holtmaat, what the European Union has done in regulating sexual harassment (only) in the sphere of its sex discrimination legislation. This can lead to conceptual confusions, which may have negative consequences. Judges must consider whether they need to take account of the fact that sexual harassment is placed in the context of sex discrimination law. She concludes that some sexual harassment cannot be combated through the EU rules, as it is not dependent on the sex of the victim, and there is no “general” prohibition of sexual harassment in EU law.

In Chapter 4, “The free movement of capital in the EC and with third countries and its application on the basis of the judgments of the European Court of Justice”, M.R. Mok traces the development of the free movement of capital, from its rather slow start, to its current position, as a fully-fledged freedom within the internal market. He looks at the scope of this freedom, and the exceptions. He examines how relations with third countries are involved in the free movement of capital.