

## Application for research funding

Date

1st of February 2021

Please note that the application and appendices should only be sent electronically to [konkurrensverket@kkv.se](mailto:konkurrensverket@kkv.se).

### 1 Applicant (person responsible for the project)

Name *	Xavier Groussot	
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\* **Person responsible for the project** is responsible for ensuring that the information given in the application form is accurate.

### 2 Administering institution

University or equivalent	Lund	Department Faculty of Law
Postal address	Box 207	Post code and city 22350 Lund
Telephone number	046 222 10 57	

### 3 Description of project

Project title The Application and Impact of the EU Charter of Fundamental Rights in Competition Law, the Digital Single Market and Sweden	
The relevance of the project to the Swedish Competition Authority (max. 240 characters) This research proposes an inquiry of the impact of the EU Charter on competition law by focusing on its Chapters VI and VII . It is of interest since it provides a study of the cross relationship between competition law and the horizontal provisions of the Charter. It also includes an in-depth institutional and procedural study of the secondary legislation related to the enforcement of competition law, e.g. Directive 2019/1, and a study of the Digital Single Market and the Digital Market Act. The impact of the Swedish principle of openness on the Charter is thoroughly analysed and focuses on its application in the competition law context.	
Project is intended to start/started, date September 2021	Project is expected to be completed, date December 2023
Summary in Swedish of the project's aim, significance and how it is to be conducted (max. 1,000 characters).  EU-stadgans senaste 10-årsjubileum kräver en översyn av dess inverkan på konkurrenslagstiftningen ur ett svenskt perspektiv. Det är välkänt i litteraturen att de rättigheter i EU-stadgan utgör effektiva verktyg för den europeiska domaren som granskar unionsinstitutionernas handlingar eller den nationella lagstiftningen i medlemsstaterna i konkurrensrätten. Det föreslagna projektet kommer att ge en djupgående analys mot bakgrund av ny rättspraxis om det klassiska förhållandet mellan konkurrenslagstiftningen och EU-stadga. Studien genomförs också med särskilt fokus på de horisontella klausulerna i EU-stadga, den	

digitala inre marknaden och Sverige. Projektet bygger på två centrala forskningshypoteser. Den första hypotesen anser att den EU-stadgan har en stark inverkan på de processuella och institutionella dimensionerna av konkurrensrätten på både EU-nivå och nationell nivå. Den andra hypotesen anser att den svenska offentlighetsprincipen kan påverka tillämpningen av EU-stadgan inom konkurrensrätten.

Also enclose a more detailed project description (Swedish or English, max 10 A4 pages) as attachment to this application.

#### 4 Description of costs

Note that the maximum allowable working time for dispensed researchers, professors and professors is 75 percent full-time. For a PhD student, research assistant or the like, the maximum working time is 85 percent of full time.

Project year 1					
Name of staff member and academic title (attach CV)		Monthly salary (before tax)	Period of employment in project, months	Working hours as a percentage of full-time	Salary cost including social security contributions
Name	Academic title				
██████████	Professor	70100	6	20	129 124
██████████	Senior Lecturer	39975	6	75	276 127
██████████	Professor	41000	6	5	18 881
Total salary cost including social security contributions					424 150
Total of other costs (taken from table 4a)					10 000
Total administrative costs including local rent					269 187
<b>Total costs including social security contributions and administration fees</b>					<b>703 337</b>

Project year 2					
Name of staff member and academic title (attach CV)		Monthly salary (before tax)	Period of employment in project, months	Working hours as a percentage of full-time	Salary cost including social security contributions
Name	Academic title				
██████████	Professor	71853	12	20	264 705
██████████	Senior Lecturer	40974	12	75	566 061
██████████	Professor	42025	12	5	38 705
Total salary cost including social security contributions					869 471
Total of other costs (taken from table 4a)					70 000
Total administrative costs including local rent					582 527
<b>Total costs including social security contributions and administration fees</b>					<b>1 521 998</b>

Project year 3					
Name of staff member and academic title (attach CV)		Monthly salary (before tax)	Period of employment in project, months	Working hours as a percentage of full-time	Salary cost including social security contributions
Name	Academic title				
██████████	Professor	73649	12	20	271 322
██████████	Senior Lecturer	41998	12	75	580 213
██████████	Professor	43075	12	5	39 673
Total salary cost including social security contributions					891 207
Total of other costs (taken from table 4a)					40 000
Total administrative costs including local rent					577 403
<b>Total costs including social security contributions and administration fees</b>					<b>1 508 611</b>

#### 4a Description of other costs

The maximum amount for other costs per year is SEK 25,000. If this amount is exceeded, this must be justified in the application.

	Year 1	Year 2	Year 3
Material and equipment			
Travel	5000	15000	20000
Other costs	5000	55000	20000
<b>Total</b>	<b>10000</b>	<b>70000</b>	<b>40000</b>

#### 5 Summary of costs (in SEK) for current funding application

Total project cost 3 733 928
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Of which funding has been sought from		Funding previously received from	
Swedish Competition Authority	Other financier *	Swedish Competition Authority	Other financier **

* Name of financier	Application submitted, date	Amount applied for
** Name of financier	Application granted, date	Amount awarded

#### 6 Other projects being led simultaneously by the person responsible for the project

Project title No other project led simultaneously
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**NOTE! The names and institutions of persons awarded research grants will be published on the Swedish Competition Authority's website.** If an application for research grants is submitted to the Swedish Competition Authority, your personal data will be registered and processed by the Swedish Competition Authority, and information about the name and institution of the grant will be published on the website.

*The Application and Impact of the EU Charter of  
Fundamental Rights in Competition Law, the  
Digital Single Market and Sweden*

KONKURRENSVERKET  
2021-02-01  
Avd AF  
Dnr 27/2021  
KSnr 363 Aktbil 22

## Background and Aims

The Charter's recent 10-year anniversary calls for a review of its impact on competition laws from a Swedish perspective.<sup>1</sup> It is well-known in the literature that the rights enshrined in the EU Charter of Fundamental Rights constitute effective tools for the European judge reviewing acts of the Union institutions or the national legislation of the Member States which have an impact in the context of competition law. The proposed project will provide an in-depth analysis and debate in light of recent jurisprudence concerning the classical relationship between competition law and the EU Charter of Fundamental Rights. Yet, it will go much further than a classical study of the relationship between competition law and EU fundamental rights. Indeed, the study is also realized with a special focus on the horizontal clauses of the EU Charter of Fundamental Rights (Articles 51 to 54), the Digital Single Market and Sweden. Sweden is an exceptionally interesting case for the study of the impact of the EU Charter since the existence of the overarching principle of openness conflicts with the application of the EU Charter. Should EU law prevail when the 'Swedish principle' offers a more solid human rights protection? Notably, this last question is closely related to the application and interpretation of the horizontal clauses of the EU Charter (in particular Articles 51 and 53). The project is based on two central research hypotheses. **The first hypothesis** considers that the EU Charter strongly impacts the procedural and institutional dimensions of competition law at both EU level and national level. **The second hypothesis** considers that the Swedish principle of openness can impact the application of the EU Charter in the field of competition law.

Of particular importance for competition laws – and thus for this project – are the procedural and institutional rights granted under the Charter, as they go beyond those previously granted under the European Convention on Human Rights. The procedural rights are to be found in particular in the Chapter VI of the EU Charter (Articles 41 to 50) and includes for instance the principle of good administration (Article 41) and the principle of effective judicial protection (Article 47). **The application and impact of these procedural rights is now fostered in the field of competition law at the national level by the recent entry into force of Directive 2019/1.**<sup>2</sup> The institutional rights of the Charter are to be found in the last Chapter: Chapter VII. This Chapter is made of four provisions: Article 51, 52, 53 and 54 of the Charter. Many of these horizontal provisions appear to be of importance in the famous *Åkerberg Fransson* case,<sup>3</sup> a

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<sup>1</sup> EU Charter of Fundamental Rights, OJ C 326, 26.10.2012, p. 391–407.

<sup>2</sup> See in particular our Working Strand II; Directive 2019/1/EU of the European Parliament and of the Council of 11 December 2018.

<sup>3</sup> See Case C-617/10, *Åkerberg Fransson* [2013] ECLI:EU:C:2013:280.

preliminary ruling reference from Sweden involving also the application and interpretation in the *ne bis in idem* principle (Article 50 of the Charter, Chapter VI ) in Swedish tax law.<sup>4</sup>

Looking at the Court of Justice of the European Union (CJEU) case law post Lisbon Treaty, it appears that the respect of the rights of defense under Chapter VI of the Charter in competition law proceeding constitutes a burning issue. This is even more true if we place it in the broader context of accession to the European Convention of Human Rights.<sup>5</sup> The Grand Chamber in Case C-17/10 *Toshiba Corporation* from 14 February 2012 reflects this growing concern.<sup>6</sup> In this case, the Court had to deal with the difficult application of the *ne bis in idem* principle in competition law. For instance, *Devroe*<sup>7</sup> offers an example of the first studies and argued that EU law has never safeguarded the *ne bis in idem* principle better than today. However, the words contrast sharply with the simple observation that in practice no one has so far been able to successfully raise a *ne bis in idem* argument in a competition law case before the General Court or the Court of Justice of the EU.<sup>8</sup> The argument is regularly raised but the CJEU systematically rejects it. In addition, literature on the Charter and its impact on competition laws are limited. Particularly, there is **no general study of the impact of the horizontal clauses of the Charter on competition law**. Through our research, we intend to remedy this gap. This gap-filling in academic research is particularly crucial as it correlates with a new trend in competition laws illustrated by the emergence of secondary legislation at EU level in order to respond to the challenges of the new technologies.

The development of new technologies have created many challenges and raised questions for the legislator how to regulate them in the competition field: their cross-border nature, vicissitudes, and enormous market powers allow some of them to be able to escape legal scrutiny. The most recent EU proposal for a Digital Markets Act (DMA)<sup>9</sup> seeks to close this gap, by laying down “harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.”<sup>10</sup> Moreover, new technologies also

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<sup>4</sup> *ibid.*

<sup>5</sup> The negotiation to the Accession to the ECHR has just been relaunched in 2019, where the EU and the Council of Europe announced their willingness to proceed with the negotiations on the EU’s accession. The negotiations will take place within an ad hoc Group composed of representatives of the 47 Council of Europe members and one EU representative. Since January 2020, the parties are formally ready to resume negotiations on the accession of the EU to the ECHR. Two negotiations meetings of the ‘47+1 group’ are already scheduled for 2021 (on 2-4 February and 23-25 March).

<sup>6</sup> Case C-17/10 *Toshiba Corporation* [2012] ECLI:EU:C:2012:72.

<sup>7</sup> W. Devroe ‘How General Should General Principles Be? Ne Bis In Idem in EU Competition Law’ in U. Bernitz, X. Groussot and F. Schulyok (eds) *General Principles of EU Law and European Private Law* (Kluwer, 2013).

<sup>8</sup> Apparently there are instances where the argument was successfully raised before national courts. For example, *ne bis in idem* motivated the High Court in *Devenish* to deny exemplary damages in a follow-on damages suit, brought by direct purchasers in the vitamin cartel case after the Commission had already imposed fines on the defendants. This is an interesting case, as it concerns the combination of public and private enforcement of competition law. High Court of England and Wales, *Devenish Nutrition Ltd v Sanofi-Aventis SA (France) and others* [2008] EWCA Civ. 1086; [2008] WLR (D) 317 (2008). The judgement was upheld by the England and Wales Court of Appeal.

<sup>9</sup> Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM (2020) 842 final.

<sup>10</sup> *Ibid*, Article 1. Gatekeepers are defined providers of core platform services if they have (a) significant impact on the internal market, (b) serve as important gateway for business users to reach end users, and (c) enjoy or are likely to enjoy a durable position (Article 3).

have the potential to undermine other European values, such as data protection.<sup>11</sup> Therefore, it was suggested that the creation of a digital single market should not only be informed by economic considerations, but also take into account fundamental rights.<sup>12</sup> It is worth noting that **the proposed DMA is aligned with the procedural and institutional rights granted in the Charter**, stating that “the fair and trusted legal environment that this proposal aims to create shall contribute to safeguarding an appropriate balance between the respective freedoms to conduct a business of providers of core platform services and their business users”.<sup>13</sup>

Finally, the procedural and institutional rights granted by the Charter have an important impact at national level in the application and interpretation of competition law by national courts and national authorities.<sup>14</sup> In Sweden, the situation is particularly fascinating since the principle of openness – which affords a maximum standard of human right protection, may conflict with the procedural and institutional rights of the Charter, i.e Articles 41, 47 and 53 of the Charter. In a recent ESO-report (*Grundlag i Gungning*) conducted by Carl Fredrik Bergström and Mikael Ruotsi, it is considered that the principle of openness is weakened by EU law.<sup>15</sup> **The report concludes that there is a clear need of modern Swedish research in this field.**<sup>16</sup> Our research precisely offers to do so by using the impact of the EU Charter in the field of competition law and by looking at the specific issue of access to file in competition cases. The application of the Charter by the public procurement authority is also of interest here. Arguably, **the principle of openness as defined by Swedish law should be respected in light of the procedural and institutional rights granted by the EU Charter.**

The aim of this research project shall thus be to analyse the Charter’s impact on competition laws from a Swedish perspective, and in particular with a focus on the digital single market. The Working Strand III constitutes the heart of our research project. It is also the most complicated strand since it is where our two main research hypotheses are conflating. The project will be realised through the following three working strands:

- Working Strand I (25% of our working time): The Institutional Dimension: The Scope of Competences under the Charter and Competition law
- Working Strand II (25 % of our working time) : **The Procedural Dimension:** Effectiveness of EU law and Proceduralization at National Level in the Enforcement of Competition law
- Working Strand III (50% of our working time): The National Dimension: Impact of the Charter in Sweden and in Swedish Competition Law and the Application of the Principle of Openness/Transparency between EU Law and Swedish Law

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<sup>11</sup> See also Speech by EVP Margrethe Vestager at the Council’s High-level Presidency Conference: “A Europe of Rights and Values in the Digital Decade”, 8 December 2020.

<sup>12</sup> X. Groussot al. “Towards General Principles 2.0: the Application of General Principles of EU Law in the Digital Society”, in Bernitz, U. et al. (eds.) “General Principles of EU Law and the Digital Legal Order”, (2020, Kluwer), pp. 425-451.

<sup>13</sup> Proposal for a Digital Markets Act, p. 11.

<sup>14</sup> See Working Strand III.

<sup>15</sup> See C.F. Bergström and M. Ruotsi, *Grundlag i Gungning*, En ESO-rapport om EU och den svenska offentlighetprincipen, 2018:1, p. 165. The ESO-report only refers very sporadically to competition law.

<sup>16</sup> *Ibid.*, pp. 165-181.

## I. The Institutional Dimension: The Scope of Competences under the Charter and Competition law

This first working strand focuses on the issue of competences and judicial review in competition law. **The DMA regulation and the Digital Single Market are used in our research as primary test cases in order to focus our field of inquiry** but other examples will also be used as it resorts from this section. According to Article 5 TEU and the principle of conferral, EU powers are limited to the competences conferred on it by the Member States as provided for in the Treaties and the objectives defined therein. In addition, the use of any such competences under EU law is subject to the principles of subsidiarity and proportionality. This also holds true for the Charter: **The rights granted under the Chapter VII of Charter are subject to the generic Union principles of subsidiarity (Article 51(1)) and proportionality (Article 52(1))**. The CJEU case law in competition law offers many examples of its institutional dimension even before the entry into force of the EU Charter of Fundamental Rights and the Lisbon Treaty. For instance, looking at recent EU Law scholarship from legal theory<sup>17</sup> to competition law,<sup>18</sup> the star competition case of *Consten and Grundig*<sup>19</sup> is consistently referred to and discussed as the key example for showing the wide margin discretion granted to the EU executive and its main consequence, i.e. the low-intensity of judicial review exercised by the CJEU in certain fields of adjudication.<sup>20</sup> As a result, the executive power of the Commission in taking decisions in this field of antitrust law is often criticized and the low-intensity of judicial review undertaken by the CJEU in this procedural and technical field is often highlighted in the doctrine.<sup>21</sup> This is so even after the entry into force of the Lisbon Treaty and the Charter.<sup>22</sup>

**Yet the Lisbon Treaty and the Charter have immensely increased the institutional dimension by streamlining it in various provisions.** It was indeed one of the clear intentions of the drafters of the Charter and Lisbon Treaty to pay a particular attention to the issue of competences and create a stronger catalogue of competences. In that respect, the Union's competences in the area of competition law are of an exclusive nature according to Article

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<sup>17</sup> See eg K. Tuori, *European Constitutionalism* (CUP, 2015) 146.

<sup>18</sup> See eg D. Geradin and N. Petit, 'Judicial Review in EU Competition Law: A Quantitative and Qualitative Assessment' (TILEC, 2010).

<sup>19</sup> Joined Cases 56 and 58-64, *Établissements Consten S.à.R.L. and Grundig-Verkaufs-GmbH v Commission of the European Economic Community*, ECLI:EU:C:1966:41.

<sup>20</sup> See J. Mendes, *Executive Discretion and the limits of EU law* (OUP, 2019).

<sup>21</sup> I. Forrester, 'From Regulation 17/62 to Article 52 of the Charter of Fundamental Rights' in U Bernitz, X Groussot and F Schulyok (eds) *General Principles of EU Law and European Private Law* (Kluwer, 2013). Forrester traces the different phases of procedural rules applicable to decisions by DG Competition in competition cases and contrasts the present situation with the applicable fundamental rights standards under the ECHR (and ECtHR case law) and the Charter. Comes basically to the conclusion that the procedures are not sufficient as competition fines have to be qualified as criminal penalties, meaning that the procedure would have to live up to the requirements under Article 6 ECHR, which they do not.

<sup>22</sup> H.H. Lidgard, 'Due Process in European Competition Procedure: A Fundamental Concept or a Mere Formality?' in P. Cardonnel, A. Rosas and N. Wahl (eds), *Constitutionalising the EU Judicial System* (Hart, 2012), 403, 407. For Lidgard, efficiency considerations appear as an important driving force in Regulation 1/2003 and procedural safeguards are only accepted to the extent that they do not create serious obstacles to Commission enforcement activities.



3(1)(b) TFEU; the specific legal base can be found under Article 103 TFEU. However, secondary EU legislation is often adopted on a dual legal basis together with Article 114 TFEU, which is the generic but shared competence for the establishment and functioning of the internal market. **Prominent examples of this practice are Directives 2014/104/EU<sup>23</sup> and Directive 2019/1/EU.<sup>24</sup>** In general, the use of a dual legal basis is viewed critically by the courts, which tend to recommend a single legal base, particularly when different legislative procedures are prescribed.<sup>25</sup> Here, while Article 103 TFEU merely requires consultation of the European Parliament, Article 114 TFEU follows the ordinary legislative procedure with the European Parliament as co-legislator together with qualified majority voting in the Council. Why is the additional use of Article 114 TFEU necessary? Under which conditions would Article 103 TFEU suffice as a legal base? Why does Article 103 TFEU as the more specific legal base not automatically derogate from the horizontal internal market provision (Article 114(1) TFEU)?<sup>26</sup> Should these issues be part of the discussions related to future of EU law and the possible enactment of a New Treaty replacing the Lisbon Treaty?

**The proposed DMA regulation refers to Article 114 TFEU as the single legal basis.<sup>27</sup>** In contrast to the ex-post competition laws of the EU as well as at national level, the DMA concerns ex-ante enforcement and thus the free movement of digital services before competition laws apply. However, **to which extent could this practice be considered as pre-empting EU and national competition laws? Could this undermine the application of Article 103 TFEU as a legal basis for the adoption of secondary EU legislation?**

In recent years, the intensity judicial review of EU legislative acts by the CJEU has increased. Darren Harvey in his dissertation shows very well the evolution of the CJEU case law in cases concerning serious interferences with fundamental rights of EU legislative acts.<sup>28</sup> This evolution leads **to a stricter proportionality test** and a reduction of the traditional wide margin of discretion.<sup>29</sup> He also shows very clearly that this shift is accompanied by an increase in process-oriented review – a more procedural approach – in number of cases outside the exceptional instances of serious interferences.<sup>30</sup> One of his main conclusions is that the methodology and intensity of constitutional review have shifted over the years.<sup>31</sup> According to

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<sup>23</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

<sup>24</sup> Directive 2019/1/EU of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

<sup>25</sup> Generally, the application of the “centre of gravity” theory will result in the more predominant legal base to be used for the adoption of legislation. See A. Engel, “The Choice of Legal Basis for Acts of the European Union: Competence Overlaps, Institutional Preferences, and Legal Basis Litigation” (2018), Springer International Publishing, Cham.

<sup>26</sup> *Lex specialis derogat legi generali.*

<sup>27</sup> See discussion by de Vries, S. (2021) “The potential of shaping a comprehensive Digital Single Market with the long awaited Digital Single Market Act”, Renforce Blog, Utrecht Centre for Regulation and Enforcement in Europe, <http://blog.renforce.eu/index.php/en/2021/01/13/the-potential-of-shaping-a-comprehensive-digital-single-market-with-the-long-awaited-digital-single-market-act-2/#more-1107>.

<sup>28</sup> D. Harvey, *The Constitutional Court of A More Mature Legal Order: Constitutional Review by the Court of Justice of the European Union* (Darwin College, Cambridge University), 3rd of (July 2019).

<sup>29</sup> *ibid* Chapter 8.

<sup>30</sup> *ibid* eg at 239 and 262.

<sup>31</sup> *ibid* 265.

him, this shift in constitutional review jurisprudence has arisen in response to wider changes to the EU's legal and political order, notably three elements are highlighted: a) an increase in procedural obligations for the EU legislature with the Lisbon Treaty and the Better Regulation initiative b) elevation of the EU Charter to the apex of the EU constitutional order c) a change in the subject matter of litigations with an increase judicial review of EU legislation dealing with highly politically charged issues.<sup>32</sup> One example here is digitalisation. **Are we going to come to a shift in the Digital Single Market? Or will there be a reduction of the margin of appreciation in the context of competition law though the impact of the EU Charter of Fundamental Rights?**

## II. The Procedural Dimension: Effectiveness of EU law and Proceduralization at National Level in the Enforcement of Competition Law

This second strand will study the proceduralization of competition law through the impact of primary law (i.e. Chapter VI of the Charter in combination with Article 19 TEU) and secondary law (Directive 2019/1/EU). A strong effectiveness narrative can be observed in recent years in the CJEU case law which irreversibly fosters the strengthening of the procedural rule of law in the European Union. We must now understand the reasons behind the rise and predominance of effectiveness in EU law.<sup>33</sup> The central reason for this evolution is the entry into force of the Lisbon Treaty. **It brings effectiveness and procedure to the fore with Article 19 TEU and the Chapter VI of the Charter (Articles 41 to 50 of the Charter).** Article 19 TEU which replaces Article 220 EC (ex Article 164 EEC)<sup>34</sup> is not neutral as its predecessor and includes an explicit reference to the need to make available 'effective remedies'. The EU Charter of Fundamental Rights also incorporates the principle of effective judicial protection in Article 47 EUCFR.<sup>35</sup> **After so many years of hiding in the CJEU case, the principle of effectiveness makes finally its coming out in the core provisions of EU law.**<sup>36</sup> Article 19 TEU is certainly

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<sup>32</sup> *ibid* 270.

<sup>33</sup> The semantic/rhetoric of unity is still present in the human rights case law of the CJEU. See: Case C-617/10, *Åkerberg Fransson* [2013] ECLI:EU:C:2013:280, para 29; Case C-399/11 *Melloni v* [2013] ECLI:EU:C:2013:107, para 60; and Case C-168/13 PPU *Jeremy F* [2013] ECLI:EU:C:2013:358, para 58. See D. Ritleng, 'De l'articulation des systèmes de protection des droits fondamentaux dans l'Union: les enseignements des arrêts *Åkerberg Fransson* et *Melloni*' RTDE 2013 (April-June) 267.

<sup>34</sup> Such a duty was deduced from the wording of Article 220 EC [ex Article 164 EEC, now Article 19 TEU] according to which 'the Court of Justice and the CFI shall ensure that in the interpretation and application of this Treaty the law is observed'. See also A. Ward, 'Remedies under the Charter in disputes arising in private law', in U. Bernitz, X. Groussot and F. Schulyok, (n 7). She points out that the Charter does not lay down any rules about the legal sanctions that should be available in cases of breaches of rights contained in it. She argues that the established case law by the Court on effective judicial protection (equivalent and effective protection) and Article 47 CFR do have significant potential for certain Charter rights to be enforceable horizontally. She also puts special emphasis on Article 47 (also in combination with Art. 19(1) TEU), which, according to her, has horizontal effects by virtue of its content.

<sup>35</sup> See also Article 41 EU Charter.

<sup>36</sup> X. Groussot and J. Lindholm, 'General Principles: Taking Rights Seriously and Waving the Rule of Law as a Stick' in K. Ziegler, P. Neuvonen, and V. Moreno-Lax (eds), *Research Handbook on General Principles of EU Law* (Edward Elgar Press, forthcoming). See also M. Bonelli, 'Effective Judicial Protection in EU Law: an Evolving Principle of a Constitutional Nature', *Review of European Administrative Law*, 2020, Volume 12, No.

the most important provision as to the competence of the CJEU. Article 47 EUCFR is nowadays the most often invoked provision of the EUCFR in the CJEU case law.<sup>37</sup> As explained by Eliantino and Muir, there is a need for further elaboration in the case law of CJEU as to the relationship between Article 47 EUCFR and Article 19 TEU, ‘which will need to determine the scope and ‘power’ of Article 19 TEU next to that of Article 47 CFR’.<sup>38</sup> We intend in our project to systematically analyze the case of the CJEU in the context of competition law.

On top of that, the proceduralization at national level will be increased through the entry into force of Directive 2019/1/EU. The recently introduced Directive (EU) 2019/1 envisages for national competition authorities to receive greater powers in effectively enforcing competition laws at national level. At the same time, specific safeguards according to Article 3 of the Directive require compliance with general EU law principles as well as the Charter in infringement proceedings under Articles 101 and 102 TFEU. Member States are obliged to guarantee *inter alia* the right to be heard and the right to an effective remedy before a tribunal in an undertaking’s defence.<sup>39</sup> This is the rights enshrined in Chapter VI of the EU Charter. With the Directive’s transposition period for Member States ending on 4 February 2021,<sup>40</sup> the amendments to the Swedish Competition Act and thus competition law enforcement in Sweden will be an important aspect of the analysis. For example, the transposition of the Directive will grant additional powers to the Swedish Competition Authority to adopt infringement decisions or to impose fines. **The study of the Directive 2019/1 makes the bridge with our last working strand.**

### III. The National Dimension: Impact of the Charter in Sweden and the Principle of Transparency

This third and last working strand is divided into two branches. The first branch studies the impact of the EU Charter (and particularly the provisions enshrined in Chapter VI of the Charter) in the competition law of Sweden. The second branch considers whether the principle of openness as applied in Swedish law conflicts or can be accommodated with the horizontal provisions of the Charter (in particular its Article 53) and principle of primacy of EU law (a principle strongly linked to the application of Article 51 of the Charter).

**The Charter binds not only EU institutions, but also national authorities in their application of EU laws under the Treaties,**<sup>41</sup> and thus has a direct influence on enforcement procedures in competition laws at national level. For the impact of the procedural and institutional dimensions of Charter rights at national level, it is important to note that there is

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2, 62. For him the codification of effective judicial protection in Article 19 TEU and 47 of the Charter, operated by the Lisbon Treaty, has stimulated an evolution of the principle.

<sup>37</sup> Seminar by Professor Claire Kilpatrick (EUI) in Lund, EU Law Discussion Group, January 2020.

<sup>38</sup> M. Eliantonio and E. Muir, ‘The Principle of Effectiveness: under Strain?’ 12 *Review of European Administrative Law*, 2019, Volume 12, No. 2.

<sup>39</sup> Article 3(2) of Directive (EU) 2019/1.

<sup>40</sup> Article 34 of Directive (EU) 2019/1.

<sup>41</sup> Case C-617/10, *Åklagaren v Hans Åkerberg Fransson*, ECLI:EU:C:2013:280.

so-called national procedural autonomy within the EU. Such national procedural autonomy is subject to the principles of equivalence, effectiveness, and effective judicial protection, developed through the case law of the Court of Justice. According to Article 19(1) TEU, “Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.” In Sweden, none of the four fundamental laws refer to the EU Charter. Similarly, EU primary law is not explicitly mentioned, but Chapter 11, Section 14, and Chapter 12, Section 10, of the Instrument of Government specify that, if a rule of fundamental law or “other superior statute” is in conflict with a provision, that provision shall not be applied.

**The impact of the EU Charter on Swedish national law and the national case law is clear.** In 2017, the Svea Court of Appeal (Case T 4721-16) followed the ruling of the Stockholm District Court and its assessment of personal data processing. The case concerned the right to personal integrity on the one hand and freedom of information and expression on the other. The plaintiff requested that seven links appearing in the Google Search engine index be removed, while Google Inc. maintained that they were of interest to the general public. In its ruling, the Stockholm District Court referred to Articles 7, 8, 11 and 16 of the EU Charter, elaborating on the possible conflicts between the provisions. In 2015, the Supreme Administrative Court (1161-14) had to decide whether the Swedish legislation on revocation of a licence to possess firearms was contrary to the prohibition not to be punished twice for the same crime, since it was based on a criminal sentence. The court examined the allegation, referring among others to Article 50 of the EU Charter; it concluded that the revocation did not constitute a criminal sentence, but an administrative measure. **However, what is the impact of the Chapter VI of the EU Charter in Swedish competition law?** Our research will provide an answer to this question.

Concerning our second branch of inquiry, the Swedish example will provide the starting point of this case study, as the principle of openness/transparency plays a much greater role than in other EU Member States.<sup>42</sup> It is common knowledge that Sweden has also played an important role in the litigation of the principle of transparency at EU level. But what is the scope of this principle in EU law and does it conflict with its EU version enshrined in Articles 41 and 47 of the EU Charter? And if it does, **is it possible to accommodate its application through the interpretation of the horizontal clauses of the Charter (Chapter VII of Charter)?**

The tendencies underpinning the body of CJEU case law can be described as follows: First, the Courts demand complete openness of the legislative process on principle in terms of ensuring complete access to the relevant documents even of the ongoing procedures (Case *Turco versus Council*, Case *Access Info*), position which is in line with the increased transparency requirements concerning general policy choices. Complete access to the documents concerning relevant administrative procedures remains also the principle (Case *Sweden/My Travel and Commission*). Such an approach relates mainly to the ended administrative procedures, as it is

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<sup>42</sup> See e.g. L. Colonna, “Reconciling Privacy by Design with the Principle of Transparency” (2020) , in (n.12) pp. 405-422. See also S. Prechal and M. E. De Leeuw, Transparency: A General Principle of EU Law? in : U. Bernitz/ J. Nergelius/C. Cardner (eds), *General Principles of EC Law in a Process of Development*, Kluwer Law International, Great Britain, 2008, p.. 204 and 229. See also for a comparative analysis, G. Meo, ‘Har Offentlighetsprincipen Blivit en Gemensam Konstitutionell Tradition? En Jämförelse Mellan Sverige, England och Italien’, ERT, Issue 3, 2020, 391.

explicitly recognized that documents relating to ongoing administrative procedures merit greater protection so as to avoid undue influence by interested parties disturbing the serenity of the procedures and affecting the quality of the general decision.<sup>43</sup> Second, the CJEU has accepted a restriction of transparency when other fundamental values, such as the protection of personal data or the right to fair trial, could be undermined due to the publication of the relevant documents. In particular, in three recent judgements the CJEU interpreted the relevant exceptions invoked in the light of more specific rules contained in the Personal Data Protection Regulation (Case *Bavarian Lager*), the State Aid Regulation (Case *Technische Glaswerke*) and its own Rules of Procedure (Case *API*). It is worth mentioning that although the Court did not base the relevant reasoning in the above-mentioned judgements on the principle *lex specialis derogat generalis*, it clearly emerges from the case law that the Regulation cannot deprive these specific access rules of their “effectiveness”.<sup>44</sup> As stated in above-mentioned ESO-report, the principle of openness as defined by Swedish law is weakened by EU law.<sup>45</sup> It can be contended that this national principle - **which affords a maximum protection in terms of fundamental rights - should be respected in light of the procedural and institutional rights granted by the EU Charter.**

## Methodology, Theory and Implementation

This project will be based on a doctrinal legal science (analytical jurisprudence)<sup>46</sup> and EU Law methodology. We will analyse and systemise the relevant legislation and case law of the CJEU on the creation of a digital single market and the application of competition laws. Moreover, we will conduct a study of legal theory on the procedural/institutional rule of law under the EU Charter of Fundamental Rights. The EU Law methodology is particularly relevant in order to study the impact of the EU Charter at both the EU level and at the national (here Swedish) level.<sup>47</sup>

In this project we rely on two research hypotheses and three working strands of research. As to the hypotheses, the first hypothesis considers that the EU Charter strongly impact the procedural and institutional dimensions of competition law at both EU level and national level. The second hypothesis considers that the Swedish principle of openness can impact the application of the

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<sup>43</sup> See Opinion of the Advocate General J. Kokott in Case C-506/08 P *Sweden/My Travel and Commission*, paras. 65-69.

<sup>44</sup> See Court of the European Union, C- 28/08, Case *Commission v .Bavarian Lager*, 2010, I-6055, paras 58-59; Court of the European Union, C-139/07, Case *Technische Glaswerke Ilmenau*, 2010, I-5885, paras. 58-61; Court of the European Union, Joined Cases C-514/07 (*Sweden and API/Commission*) , C-528/07 (*API/Commission*) C-532/07 (*Commission/API*), Decision of 21st September 2010, paras. 86-88. See also G. Godin, “Recent Judgments Regarding Transparency and Access to Documents in the Field of Competition Law: Where Does the Court of Justice of the EU Strike the Balance?”, *Journal of European Competition Law & Practice*, 2011 Vol. 2, No. 1, p.22-23.

<sup>45</sup> See n 15.

<sup>46</sup> See eg R. Alexy and A. Peczenik, ‘The Concept of Coherence and Its Significance for Discursive Rationality’, *Ratio Juris* 3(1) bis, March 1990, 130–147.

<sup>47</sup> See U. Neergaard and R. Nielsen (eds), *EU Legal Method – in a Multi-Level Legal Order* (DJOF Publishing, 2012).

EU Charter in the field of competition law. These two hypotheses lead to two main research questions. **Research Question 1:** What is the scope of the impact of the EU Charter of Fundamental Rights (in particular its Chapter VI) in competition law at the EU and Swedish level? **Research Question 2:** Can and to what extent the Swedish principle of open access impact on the application and interpretation of EU Charter of Fundamental Rights (in particular its Chapter VII)?

The Research Question 1 is treated and spread over within the three Working Strands of the project. The Research Question 2 is treated in the Working Strand III of the project. It is necessary to treat properly the Research Question 1 in order to provide a correct answer to Research Question 2. **The Working Strand III (National Dimension)** includes elements of the two research questions. It constitutes not only the heart of our research project but also the most complex Working Strand of our project and thus necessitate a working time of 50%. **The Working Strand I (Institutional Dimension)** and **Working Strand II (Procedural Dimension)** will necessitate 25% each of working time. The team will work together on the three strands of the project according to the respective percentage delineated in the budget application.

The novelty of this project will be realised by the unique approach to competition laws through the prism of fundamental rights and the specific analysis of Chapters VI and VII of the EU Charter. Our research fills clearly a gap in EU law research by looking at the cross relationship between competition law and the horizontal provisions of the Charter. The research also fills a gap at Swedish level by its study of the principle of openness in the competition law context. The interplay between two existing, yet in their combination unexplored, areas of law, will advance the legal scholarship in this area and provide extensive *savoir-faire* for the development of the digital single market and the application of the EU Charter and competition law. Therefore, it clear for us that **this research is of interest for the competition authority** and its role of enforcer of competition law in Sweden. In addition, our research includes an in-depth institutional and procedural study of the secondary legislation related to the enforcement of competition law, e.g. Directive 2019/1 and the DMA.

Our project team is composed of Xavier Groussot, Annegret Engel, and Gunnar Thor Petursson, who have extensive expertise in a range of legal areas, including EU constitutional law, EU fundamental rights, and competition law, which will allow them to undertake the proposed research project successfully within the suggested time frame of two and a half years. All of us can read and speak Swedish. We intend to disseminate the findings of this project as widely as possible in high-profile Swedish and international journals. We intend to publish six articles. Two articles written by Engel and Groussot, two articles with Engel, Groussot and Petursson, and finally two articles written by Engel. In addition, we plan to organise one conference at Lund University towards the end of the project in order to bring together the main researchers and experts in the field. Based on these findings, we intend to publish an edited a collection with a leading publishing house, such as Oxford University Press.

**Xavier Grousot**

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Box 207**KONKURRENSVERKET****2021-02-01****Avd AF****Dnr 27/2021****KSnr 363 Aktbil 22**

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**University Education/Position**

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*Professor* of EU law since December 2011

Member of the Nils Klim Prize committee, Holberg Foundation of Norway, (2020-2023)

Reviewer for the Independent Research Council of Denmark (2020-2023)

*Pro Dean* of the Faculty of Law, Lund (2015-2020)

*Associate Professor* of EU Law (May 2008-December 2011)

*Visiting Professor* at the European College of Paris, Paris II, Panthéon-Assas since 2009

*Visiting Professor* at the University of Nagoya since 2012

*Visiting Professor* at the University of Reykjavik since 2014

*Director* of the LLM in EU Business Law 2009-2019

*Director of Studies* regarding research education from 2011-2014

Member of the *Research Board* at Lund University (2009-2020)

*Assistant Director of Studies* regarding research education  
January 2009- April 2011)

*Assistant Professor in EU Law* in September 2005

Doctor of Laws. Thesis on the General Principles of Community Law ("Creation, development and impact of general principles of Community law: towards a *jus commune europaeum*?"") Defended on 4 June 2005 against Professor Takis Tridimas

Master of European Affairs (law) at the University of Lund (Sweden)

LLM of Public International Law and Human Rights at the University of Lund (Raoul Wallenberg Institute)

DEA, Droit communautaire at University Jean Moulin (Lyon III)

Maîtrise de Droit public at the University Jean Moulin (Lyon III)

Licence de Droit et Droit comparé at the University Jean Moulin (Lyon III)

Deug Droit at the University Jean Moulin (Lyon III)

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**Professional Experience**

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Feb 2000 – present

***Teaching EU Law*** (20 years' experience – around 3000 hours of teaching) at the University of Lund and *course director* (Enforcement of EU Law, EU Constitutional Law, Free Movement, Monopolies and State Aids, EU Court Procedure, EU Competition and State Aids Procedure, Moot Court, EU law and Hi-Tech Industries, EU Environmental Law), Level of students: 3<sup>rd</sup> and 4<sup>th</sup> year of law and Master's students.

- Lecturing at other *Swedish Universities*: courses of EU constitutional integration and Europa och Världen at the University of Örebro. Ground course also. Course on EU regulations at the University of Växjö for human resources managers, teaching in the MEA programme at Stockholm University (since September 2010), Teaching in Uppsala (starting in May 2013) and Umeå.
- Lecturing at other *Faculties* (Political Science department) at the University of Lund.
- Lecturing at Raoul Wallenberg Institute of Human Rights (Master Programme of Public International Law)
- Lecturing at *foreign Universities*: Guest professor in Master 2 programme (Master of Europeanization of Public Law) of University of Paris 13; Guest Professor at the University of Helsinki (2017); Guest Professor at the University of Reykjavik, Guest Professor at Nagoya University
- Visiting Professor at the University of Paris II (Panthéon-Assas), appointed in Autumn 2009, full course on EU Free Movement
- Lecturing for *Domstolsverket* (September and October 2009)
- Lecturing for judges of the East African Court of Justice (1 week training on Human Rights – Nairobi – Kenya – 2014)
- Lecturing at the summer school of European law Society (Course on EU Fundamental Rights – 2015 – Czech Republic)

*Elaboration of new courses*: EU Citizenship, Fundamental Rights and the Internal Market, EU introduction (MEBA), EC Court Procedure, European Moot Court Competition, European Constitutional Integration, Hi-tech Industries and EU law, EU State Aids and EU Environmental law.

*Intervention in Conferences*: NEF conference at Uppsala (August 2020), Keynote speech at Nantes University (February 2020), Chairman at the conference on ‘Towards and EU Criminal Procedure’ (February 2020), Chairman at NEF conference on rule of law (Stockholm, November, 2019), presentation at Bergen Nordic network meeting (October 2019), Chairman at the European Criminal law conference in Lund (October 2019), Intervention in Pisa (September 2019), EU law days in Lund (August 2019), Doctoral workshop EUI Florence (June 2019), Intervention in front of the Icelandic Supreme Court (June, 2019); Chairman at the BRI conference (Lund, May 2019), International at Lund University (Association of Swedish Judge, April 2019), Network Meeting for LERU (Edinburgh, April 2019), Chairman during the conference on Proportionality (Lund, March 2019), Network Meeting in CASS (Beijing, September 2018), Intervention at Oxford (November 2017), Chairman at NEF conference on rule of Law at Stockholm (November 2017), Intervention at Lund University (September 2017), Intervention at Utrecht University (June 2017), Chairman at NEF conference in competition law (June 2017), Intervention at Paris II (March 2017); Intervention at Helsinki University (March 2017); Chairman at the NEF conference on ECJ methodologies at Stockholm (2016), Intervention at Collège de Bruges (2016-invited), Intervention at Tilburg (2016), Intervention at Aarhus (2016), Chairman at the NEF environmental conference at Lund (2016), Intervention at Oxford (anniversary of European and Comparative law institute - September 2015), Intervention at University of Lund (Dano seminar, 2015), at Intervention at Nordic Network of European Research (June 2015), Intervention at the Reykjavik University (March 2015) Chairman of the jubileum conference – 20 years of EU Integration in Sweden (International conference Stockholm February 2015) Intervention at the University of Uppsala (January 2015 on Opinion 2/13), Intervention at Lund University (International conference, December 2014), Intervention at the University of Uppsala (International conference, May 2014), Intervention at the University of Umeå (research seminar, April 2014), Invitation at the University of Oxford (conference on EU fundamental rights, April 2014) Intervention at the University of Utrecht (International conference, March 2014), Intervention at the University of Iceland (international conference, February 2014) Intervention in June 2013 Lund (international conference), Intervention in March 2013 Uppsala (Åkerberg case), Intervention in November 2012 Stockholm (international conference), Intervention in October 2012 Stockholm; Intervention in January 2012 at European University Institute (Florence); Intervention in November 2011 at Copenhagen Business School, Intervention in Örebro November 2011, Invitation to the EU expert committee group in Antwerp, November 2011; Intervention in March 2011 at Oxford University, Intervention in November 2010 at the University of Utrecht, Intervention in October 2010 at Ho Chi Minh School of Law, Speech at University of Lyon III (November 2009), Speech for the Swedish Judge Association, Stockholm (September 2009) and Göteborg (October 2009), Speech at Oxford University on European Constitutionalism (March 2009), Speech at the SIEPS conference (Stockholm) on preliminary rulings (March-April 2009), Speech at the Commercial centre in Stockholm on the horizontal effect of general principles (December 2008), Speech at Oxford university on EU Fundamental Rights , EU law discussion group (November 2008), Chairman on the EUCFR at the NEF conference, (November, 2008);



Intervention at the PHD seminar on the financing of research (September 2008), Workshops on Pedagogy (November 2008), Speaker at the conference on the Europeanization of Public law organised by University of Utrecht (October 2007), Chairman of the Conference on Mutual Recognition and Mutual Trust in EU Criminal Law (May 2007), Co-chairman and Reporter at the Conference in Stockholm on the General Principles of Community Law (March 2007), Speech at PHD seminar for the department of Sociology of Law (January 2006), Presentation of a SIEPS Project (December 2005), Runnymede Speech at the Amsterdam Centre of International Law in 2004.

Member of the Niels Klim Committee (2020-2023)

Member of the editorial board of the Swedish Review of European Law (ERT)

Member of the editorial board of Nordic Journal of European Law

Member of the Advisory Board of Review of European Administrative Law

Member of the Advisory Board of Hanoi Law Journal

Analyst at EU Law Live

Original member / and at the creation of the Blog ‘Adjudication Europe’ (together with inter alia Daniel Sarmiento, Jan Komarek and Alberto Alemanno)

Member of the scientific board of Blog de droit européen

Member of the Research Board at Lund University

Member of the Research Board at the Faculty of Law (Lund)

Member of SIEPS Academic Council (since June 2010)

Advisory board of ETHOS (Towards the European Theory of Justice and Fairness) – Horizon 2020 project – Interdisciplinary (University of Utrecht) – project granted (2017-2019)

Advisory board of an ERC project on Economic Conditionality and the Economic Crisis

Representative of the faculty of law at the Center for European Studies, Lund (CFE)

Representative of the faculty of law at the Nordic Network of European Law

Reviewer of articles and books: European Law Review, Common Market Law Review, European Law Journal, JCMS, NJIL, Review of European Administrative Law, Journal of International and Comparative Law and Hart Publishing

Reviewer of research projects/grants: Danish Research Council, Netherland Research Council, Luxembourg Research Council, Riksbanken Jubileum Found, Niels Klim Committee, Reviewer at Lund University as part of the LU research board (MMW applications, WAF applications, Lund-Hamburg application etc)

Reviewer/Panelist in Research Evaluation for Universities: Aarhus 2015 Evaluation of the Graduate Schools), Örebro 2020 (General Evaluation of the University)

**Director of Courses** in the Master of European Affairs program (EU Constitutional law, Free Movement, State Aids, European Moot Court Competition, EU Law and Hi-Tech Industries and EU Environmental Law) and in many specialized courses, e.g. Enforcement of EU Law, State Measures Distorting Competition and European Procedural Law). Course Director of the MOOC on European Business Law (Coursera)

**Coach of the Lund team** in the European Moot Court competition since 2005, Coach of the Pictet team in public international law in 2004). Reach the semi-finals of the European Moot Court Competition in 2007 (Zagreb), 2008 (Valencia) and 2009 (Bangor), 2010 (Maastricht), 2011 (Barcelona), 2013 (Neuchâtel and Leiden) and finals in 2010; 2012 and 2014 (Luxembourg). Won two best pleading awards in 2013 (Neuchâtel and Leiden), Second best team in the 2014 final (Luxembourg), best pleading award (2015 – semi-final in Prague), won Regional Final (The Hague, 2017), runner up (2017, final in Luxembourg), Third place (2018, final in Luxembourg), runner place at EUI semi-final (2019, Florence).

### Director of Project and Research Grants

- **PI:** Grant from the Kungliga Vetenskapligt Akademi (2000, 6 months stipends for research).
- **PI:** Marie Curie Fellowship (2003, 12 month stipends for research at the Amsterdam Center of International Law).
- **PI:** In charge of the project “*Empowering national courts and authorities*” financed by the Swedish Institute for European Studies (SIEPS). This project started in January 2006 and has resulted in a book (2009).
- **PI:** In charge of the project “European Human Rights Culture”, financed by the Swedish Council of Research (*Vetenskapsrådet*). This project started in January 2008 and has resulted in a book (published in December 2013).
- **PI:** In charge of the project “Social and Green Clauses in Public Procurement”, financed by the Swedish Competition Authority (2015-2018).
- **PI:** Stipendium from LU for starting an Open Access Journal: Nordic Journal of European Law (2019).
- **Co-applicant:** Participating in the project “Proportionality in the Application of International Law: In Search of Coherence”, financed by the *Ragnar Söderberg* foundation. This project started in January 2012 and has ended in 2017.
- **Co-applicant:** Participating in the project “Rule of law and Democracy”, Horizon 2020 (Coordinating University: Utrecht). In charge of the wp on rule of law in times of crisis. Interdisciplinary, second round (2017).
- **Co-applicant:** Participating in the project “Rule of law and the role of the Judge), granted in October 2019 by *Riksbanken Jubileum* foundation (3 years project: 2020-2022).
- **Co-applicant:** Participating in the project CONNOR, granted in November 2019 by NOS-HS (funding for the organization of seminars in constitutional law in the Nordic countries).

### Organizations of Conferences and Seminars.

- Organizer of a conference on Constitutional Law and Climate Change, December 2020 (Lund)
- Organizer of a conference on EU Family law, November 2020 (Lund)
- Organizer of EU law days, August 2019 (Lund)
- Organizer of a conference on Belt and Road Initiative, May 2019 (Lund)
- Organizer of a conference on General Principles and Digitalization, November 2018 (Stockholm)
- Organizer of a conference on public procurement and discretion in November 2017 (Oxford)
- Organiser of a conference on the future of EU integration in November 2017 (Stockholm)
- Organiser of a conference on Chinese investments in Africa in November 2017 (Arusha)
- Organizer of a conference on the *Dano* case in October 2015 (Lund).
- Organizer of an international conference on the 20 years of Sweden in the EU, spring 2015 (Stockholm).

- Organizer of an international conference on EU and social rights in December 2014 (Lund).
- Organizer of an international conference on *Ne Bis in Idem* in September 2013 (Lund).
- Organizer of a conference with Professors Bernitz on the general principles and private law in November 2012. This conference will lead to a book edited by Kluwer and edited by myself.
- Organizer of the ELMC semi-final in February 2013 in Lund.
- Organizer a conference in Vietnam on Technology Transfers in October 2010.
- Organizer of a conference with Professors Bernitz and Nergelius on the general principles of EU Law that was held during the spring 2007. This conference will lead to a book edited by Kluwer
- Organizing regular seminars on EU law at Lund University
- Organizer of the 1999 Malmö conference on the General Principles of Community Law

PhD Tutor: 12 PhD Students (currently 5 PhD students under my supervision (4 as main supervisors and 2 as secondary supervisor) – 7 PhD Students have defended in 2012, 2016 (x2), 2018 and 2019 (x2), 2020). Tutoring regularly guest PhD students at the Faculty

PhD Opponent: 5 main oppositions: Opponent in May 2011, International Trade Marks and its implications on the Law of Vietnam, Opponent in November 2014 at Aarhus University on EU Human Rights Law, Opponent in December 2015 at EUI (invited), Opponent in October 2017 at Copenhagen Business School (political science), Opponent in October 2017 at Copenhagen University (citizenship), Opponent in September 2019 at Copenhagen University (Ajos case and horizontal direct effect).

Member of Jury (PHD). 7 PHD dissertations: Martin Mits (May 2010) and Emna Holm (februari 2010), Christine Kruma (May 2012) and Andrea Iossa (September 2017); Eleni Karageorgiou (October 2018), and Letizia Lo Giacco (April 2019), Elenor Lissek (February 2021) 2 *licenciat* seminars: Christine Kruma and Emma Berg and 30 PHD final seminars.

Postdoctoral positions: SI-Post-Doc: Ivana Stradner (University of Berkeley): financing for 12 months./ Eduardo Gill Pedro (University of Lund), financing for 24 months (2017-2019).

Consultant in research/ EU policy. Various consultancy works for think tanks (SIEPS), the Swedish ministry of Justice (*Remiss*), the University of Aarhus (BSS – research evaluation), law firms (Vinge), the Swedish Ombudsman (high profile DO v. BRA case), the University of Örebro (research evaluation).

Tutoring Master thesis in European Law and Public International Law. (Around 10 students each year)

Expert Opinions on academic positions (Uppsala University [2013] (x2), University of Pisa [2014], University of Umeå [2015], University of Aarhus [2016], University of Örebro [2016], University of Cyprus [2019], University of Copenhagen [2019], University of Helsinki [2020], University of Örebro [2020], University of Göteborg [2020], University of Pisa [2020])

Expert Opinion on research funding for the Dutch Research Board [2014])

Feb 2003- Feb 2004

Marie Curie Fellow (European Commission's Project – One year full funding) at the Europa Institut - Amsterdam Center of International Law

Oct 2001 – Dec 2001

Internship at the European Court of Justice, Chamber of Judge Macken

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## Publications

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## Monographs and Anthologies

- 1) *Creation, Development and Impact of the General Principles of Community Law: Towards a Jus Commune Europaeum*. Intellecta Docusys, 2005. ISBN 9162865277, 622 pages
- 2) *The Role of the National Courts in the EU: a Future Perspective*, November 2005, SIEPS, ISBN 9185129321, 98 pages.
- 3) *General Principles of Community Law*, Hogendorp Series, October 2006, ISBN 9076871671, Europa Law Publishing, 480 pages
- 4) *General Principles of EC Law in the Process of Development*, Kluwer, 2008 (book in Association with Bernitz, Nergelius and Cardner). ISBN 9789041127051, 423 pages
- 5) *Empowering National Courts*, together with Bruzelius, Inghammar and Wong., SIEPS, 2009. ISBN 9789186107093, 141 pages.
- 6) *EU-Rättslig Metod* (Second Edition), together with Hettne et al, Nordstedts, Summer 2011.
- 7) *Balancing Fundamental Rights with the EU Treaty Freedoms: The European Court of Justice as 'tightrope' walker* (Eleven International Publishing, 2012).
- 8) *The European Human Rights Culture: The Paradox of Human Rights Protection in Europe*, (Brill - Martinus Nijhoff publishers, 2013).
- 9) *The General Principles of EU Law and Private Law*, (Kluwer Law International, 2013).
- 10) *Discretion in EU Public Procurement Law* (Hart, 2019 – edited volume)
- 11) *The Future of Europe: Political and Legal Integration beyond Brexit* (Hart, 2019 – edited volume)
- 12) *The Resilience of General Principles of EU Law and Fundamental Rights in the Digital EU Legal order* (Wolters Kluwer, 2020 – edited volume)

## Articles in Journals and Anthologies

- 13) Kluwer, "From Transocean Marine Paint to Montecatini" in Bernitz and Nergelius (eds), *General Principles of European Community Law*, 2000
- 14) *Europarättslig Tidskrift*, "Towards a Binding EU Charter of Fundamental Rights?", 2003
- 15) *Non-State Actors in International Law*, Martinus Nijhoff, "UK Immigration Law under Attack and the Direct Application of Article 8 ECHR", 2003
- 16) *Legal Issues of Economic Integration*, Kluwer "The EC System of Legal Remedies and Effective Judicial Protection: Does the System Really Need Reform?", 2003
- 17) *Nordic Journal of International Law*, Martinus Nijhoff, "Proportionality in Sweden: The Influence of European Law", 2006
- 18) *Legal Science Journal*, Vietnam, "Supremacy and the Exclusive Competence of the ECJ", 2006
- 19) *Legal Science Journal*, Vietnam, "The Principle of Proportionality in EU and WTO Law", 2006
- 20) *Europarättslig Tidskrift*, "Res Judicata i EG-Domstolen rättspraxis", October 2007
- 21) *Common Market Law Review*, Kluwer, "A Triumph for Member State's Rights", Annotation of Case C-310/04 *Spain v. Council*, published in June 2007
- 22) *Civil Justice Quarterly*, Sweet and Maxwell, "Self-Standing Action and the Swedish Factortame", published in June 2007
- 23) *European Constitutional Law Review*, Cambridge University Press, Res Judicata in the Recent Jurisprudence of the ECJ: Balancing Legality and Legal Certainty, December 2007

- 24) *Review of European Administrative Law*, Europa Law Publishing, “EU law Principles in French Public Law: Un Accueil Réserve”, October 2007
- 25) *Kluwer Law International*, “Principled Citizenship and the process of European Constitutionalization”, in *General Principles of Community Law in the Process of Development*, in Bernitz and Nergelius, Kluwer, 2008
- 26) *Kluwer Law International*, “Are there general principles of Community Law affecting private Law?” in *General Principles of Community Law in the Process of Development*, in Bernitz and Nergelius, Kluwer, 2008. Together with Professor Hans Henrik Lidgard
- 27) *Yearbook of European Law*, Oxford University Press, “Supr[i]macy à la Française: Another French Exception?”, 2008
- 28) *Europarättslig Tidskrift*, “Spirit Are You There? – Reinforced Judicial Dialogue and the Preliminary Ruling Procedure”, 2008.
- 29) *Common Market Law Review*, Kluwer, “Rock the KaZaA: Another Clash of Fundamental Rights”, 2008
- 30) CED Lund, “European Moot Court Competition: A Bridge Between Student Life and Professional Life”, Pedagogical article, in *Osynligt och Självklart?* December 2008.
- 31) *Scandinavian Studies in Law Volume 55*, “European Rights and Dialogues in the context of European Pluralism, Stockholm , 2010
- 32) *Common Market Law Review*, Kluwer, “What’s wrong with OLAF: Accountability, Due Process and Criminal Justice in the European Anti-fraud Policy”, June 2010.
- 33) Robert Schumann Foundation, “Fundamental Rights Protection in the EU post Lisbon Treaty” (policy note), June 2010.
- 34) *Hart Publishing (Oxford)*, “Constitutional Dialogues, Pluralism and Conflicting Identities”, published in 2011.
- 35) Juristförlaget i Lund, “The European Moot Court Competition as a Tool for Active Citizenship and Learning”, in *Nio Terminer*, June 2011.
- 36) *Hart Publishing (Oxford)*, “Refusal to Supply by a Dominant Firm in Parallel Trade of Pharmaceuticals under the Rule of Reason”, 2011.
- 37) *Kluwer Law international*, “TRIPS Article 66.2 – Between Hard Law and Soft Law”, 2011.
- 38) *Hart Publishing (Oxford)*, “The Reach of EU Fundamental Rights Standards on Member States’ Action”, submitted in September 2011.
- 39) Robert Schumann Foundation, “Accession to the ECHR: A Legal Assessment of the Draft Accession Agreement” (policy note) , November 2011.
- 40) *Eleven International Publishing*, “Balancing as a Judicial Methodology of EU Constitutional Adjudication”, 2012.
- 41) *DJOF Publishing (Copenhagen)*, “Fundamental Rights in the EU in a Theoretical and Methodological Perspective”, 2012.
- 42) *Cambridge University Press*, “Old Rights and New Rights in the EU Charter of Fundamental Rights”, in Gerards (ed.) Cambridge University Press, to be published in 2013.
- 43) *Kluwer Law International*, *Vision, Essence and Narratives of General Principles and European Private Law – An Introduction*, published in 2013.
- 44) *IBFD publication*, *Clarifying or Diluting the Application of the EU Charter of Fundamental Rights? – The Judgments in Åkerberg and Melloni from the 26<sup>th</sup> of February 2013*, December 2013.
- 45) *Lund Univeristy Press*, *Essays in Honour of Pr. M. Bogdan, Direct Horizontal Effect in EU Law after Lisbon – The impact of the EU Charter of Fundamental Rights on private parties*, December 2013.
- 46) *Hart Publishing (Oxford)*, “Accession to the ECHR: A Legally Complex Situation”, published in 2014.

- 47) *Oxford University Press*, “Subsidiarity as a Procedural Safeguard of Federalism in Azoulay (ed.), published in 2014.
- 48) *Hart Publishing (Oxford)*, *The EU Charter of Fundamental Rights Five Years On – The Emergence of a New Constitutional Framework?*, 2015.
- 49) *Hart Publishing (Oxford)*, ‘Transparency and Liability in Leniency Programmes’: A Question of Balancing?, 2015.
- 50) *Common Market Law Review*, Kluwer, ‘Adequate Legal Protection and EU Asylum Procedures’, 2015.
- 51) *Springer*, *The Paradox of Human Rights Protection in Europe: Two Courts, One Goal?*, 2016.
- 52) *European Papers – A Journal on Law and Integration*, Regulatory Trust in EU Free Movement Law: Adopting the Level of Protection of the Other? (2016).
- 53) *International Journal Comparative Labour Law*, Kluwer, *The EU Charter of Fundamental Rights and the Weak Social Constitution?* (2016).
- 54) *Cambridge University Press*, “*Ne Bis in Idem* in the EU and ECHR Legal Orders: A Matter of (Uniform) Interpretation, 2016.
- 55) *Hart Publishing (Oxford)*, “The General Principles and the Many Faces of Coherence: Between Law and Ideology in the EU” (2017).
- 56) *Lund Univeristy Press*, *Essays in Honour of Ann Henning, Social Clauses in Public Procurement Law: A Constitutional Perspective*, 2017.
- 57) *Edward Elgar*, *Weak Right, Strong Court – the Freedom to Conduct Business and the EU Charter of Fundamental Rights*, 2017.
- 58) *Lund Univeristy Press*, *Essays in Honour of Christina Moëll, New Directions in Judicial Review? Proportionality, Subsidiarity and Impact Assesments in the Tobacco Product Directive Case*, 2017.
- 59) *Nordic Journal of Human Rights*, ‘The Duty of Mutual Trust in EU Law and the Duty to Secure Human Rights’, 2017.
- 60) *Bruylant*, *Mutual Trust in EU Law as Collaborative Law*, in *Essays in Honour of Catherine Kessedjian*, 2018.
- 61) *Hart Publishing (Oxford)*, ‘Towards Sustainable Political and Legal Integration in Europe: Peering into the Future’, in Bakardjieva and Groussot, *The Future of Europea: Political and Legal Integration beond Brexit*, 2019.
- 62) *Hart Publishing (Oxford)*, ‘The Resilience of Rights and European Integration’, in Bakardjieva Engelbrekt and Groussot, *The Future of Europe: Political and Legal Integration beyond Brexit*, 2019.
- 63) *Hart Publishing (Oxford)*, ‘The Obligation of Transparency’, in Bogojevic, Groussot and Hettne, *Discretion and Law in EU Public Procurement*, 2019.
- 64) *Hart Publishing (Oxford)*, ‘Where the Future Lies: A New Age of Proportionality?’ in Bogojevic, Groussot and Hettne, *Discretion and Law in EU Public Procurement*, 2019.
- 65) *Hart Publishing (Oxford)*, ‘The Age of Discretion: Understanding the Scope and Limits of Discretion in EU Public Procurement Law’ in Bogojevic, Groussot and Hettne, *Discretion and Law in EU Public Procurement*, 2019.
- 66) *Common Market Law Review*, Kluwer, ‘An Exercise in Intellectual Federalism on the *Finalité* of European Integration’, 2019 (Essay Review).
- 67) *Nordic Journal of European Law*, ‘SEGRO and its Aftermath: From Economic Freedoms to the “Essence of the Rule of Law”’, 2019.
- 68) *Edward Elgar*, ‘General Pinciples: Taking Rights Seriously and Waving the Rule-of-Law Stick’, in K. Ziegler, *Handbook on General Principles of EU Law*, 2020.

- 69) Kluwer Law International, 'Towards General Principles 2.0: the Application of General Principles of EU Law in the Digital Society', 2020.
- 70) Nordic Journal of European Law, 'Is this Completely M.A.D.? The Ruling of the German FCC on 5<sup>th</sup> May 2020', 2020.
- 71) Hart Publishing (Oxford), 'The Rise of Procedural Rule of Law in the European Union: Historical and Normative Foundations' (2021).
- 72) Nordic Journal of European Law, 'The Rise of Procedural Rule of Law in the European Union: Comparative and Theroretical Perspectives' (2020).

#### **Book Review and Book Essay**

- 73) *Common Market Law Review*, 'Les dix ans de la charte des droits fondamentaux: bilan et perspectives' (Tinière and Vial), published in 2021
- 74) *Common Market Law Review*, 'Oxford Principles of EU law' (Tridimas and Schutze), published in 2019.
- 75) *Common Market Law Review*, 'The Principle of Loyalty in EU Law', published in 2015.
- 76) *European Law Review*, 'Principles in European Law', published in 2015.
- 77) *Common Market Law Review*, 'EU Anti-Fraud Policy', published in 2013.
- 78) *Common Market Law Review*, 'Les Droits de l'homme dans les politiques de l'Union européenne', Candela Soriano (ed.), published in 2008.
- 79) *Common Market Law Review*, 'Fundamental Rights in the European Union- Towards Higher Law of the Land?', Mats Lindfelt, published in October 2007
- 80) *Oxford University Press*, internal review of the book, *EU Law*, Steiner et al.
- 81) *European Law Journal*, 'The Transformation of Administrative law in Europe', M. Ruffert (ed), Sellier, 2007.

#### **Written Legal Opinion**

- 82) Written Legal Opinion (*Remiss*) on the draft law on preliminary ruling in Sweden (delivered on 14 October 2005) to the Ministry of Justice
- 83) Written Legal Opinion (*Remiss*) on the draft law on implementation of medical care directive (2012).

#### **Research Paper**

- 84) Eric Stein Working paper on the Preliminary ruling procedure, October 2008.
- 85) Working paper, "The Supreme Norm of EU Law: Invoking the EU Charter of Fundamental Rights in the Lisbon Era", June 2010.
- 86) Eric Stein Working paper on the Adjudication of EU Fundamental Rights in Member States Actions, October 2010.

#### **Blog Posts**

- 87-100) I have authored blog posts in *Adjudicating Europe* (10 blog posts), in *EU Law Live* (2 blog posts in 2020) and in *Machine Lawyering* (1 blog post in 2019)

## Academic Articles in languages other than English (101-112)

101-112) I have written one article and one book chapter in Swedish, two of my articles have been translated in French and published, five of my articles have been translated and published in Romanian and two of my articles have been translated in Vietnamese.

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## Merits

Faculty Medal, for special efforts to promote and support legal research and education (June 2010). This medal was last awarded in 1987.

Nominated to Rektorsmottagning (2010)

Nominated by the faculty to the Raoul Wallenberg Foundation (2013)

Nominated by the faculty of law for the 2 year-course 'Research Leaders' (2010-2012)

Nominated to Pro Futura Scientia V, Representing Lund University (November 2009)

Research on European Human Rights Culture granted by VR and presented at Harvard-Stanford Junior Faculty conference by my co-PI (October 2018)

Winner of the ELMC in 2010 as a coach

Finalist of the ELMC in 2012 as a coach

Winner of two best pleading awards in 2013 as a coach

Finalist of the ELMC in 2014 (Second Best Team) as a coach

Finalist of the ELMC in 2017 (Second Best Team) as a coach

Finalist of the ELMC in 2018 as a coach

Finalist of the ELMC semi-final at EUI in 2019

Research grant (3 years) of the *Riksbanken Jubileum* foundation (October 2019)

Research grant (3 years) of Swedish Competition Authority (September 2015)

Research grant (3 years) of *Söderberg stiftelse* (September 2011)

Research grant (3 years) of the Swedish Council of Science (*Vetenskapsrådet*) (October 2007)

Research grant (2 years) by SIEPS for the project "Empowering National Courts and Authorities" (December 2005)

Research Grant, Marie Curie (2003 during 12 months (Feb 2003-Feb 2004) for fellowship in the Netherlands (Amsterdam Centre of International Law)

Research Grant from the Swedish Royal Academy of Science (1999, 6 months stipend)

Stipendium from LU for starting an Open Access Journal, *Nordic Journal of European Law* (2019)

Stipendium from NOS-HS, for the organisation of seminars in constitutional law (2019)

Stipendium of the Swedish Network of European Research (December 2006)

Oscar II price for the best Ph.D. in law at Lund University (March 2006)



Award from the Institute of Legal Research (*Institutet för Rättsvetenskap Forskning*) (May 2005)

Report for SIEPS on the future of the national courts (2005)

Crafoord grant in 2001

My papers in SSRN have been more than ten times ranked in the top ten lists in different areas of law. For instance, in March 2016, my paper on Fundamental Rights Protection in the EU Post Lisbon Treaty was listed in the top ten downloads for Internatioanl Institutions with 1806 downloads.

Ranked as top 10% most downloaded author in SSRN (May 2016-May 2017).

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## **Language skills**

French, mother tongue  
English, fluent  
Swedish, fluent  
Spanish, good knowledge  
Latin, ground knowledge

**Dr Annegret Engel**Faculty of Law, Lund University, Box 207, 221 00 Lund, Sweden  
[REDACTED]**EMPLOYMENT****ACADEMIC APPOINTMENTS**

- 2019-2021 Lund University, Faculty of Law, Sweden  
Senior Lecturer in EU Law (temporary) for **Enforcement of EU Law, International Trade Law, Business Negotiations, and EU Competition Law**
- 2014-2017 Cardiff University, School of Law and Politics, UK  
Lecturer in Law (Teaching & Scholarship, temporary) for Law of the European Union, EU Internal Market Law, Sports Law, and Legal Foundations
- 2011-2012 Durham University, Law School, UK  
Part-Time Teacher for Intellectual Property Law
- 2008-2010 Durham University, Law School, UK  
Part-Time Teacher for EU Internal Market Law and Intellectual Property Law

**RESEARCH APPOINTMENTS**

- 2018 Cardiff University, Wales Governance Centre, UK  
Visiting Research Fellow (6 months)
- 2011 European University Institute (EUI), Florence, Italy  
Visiting Research Student (2 months)
- 2008 British Institute of International and Comparative Law (BIICL), London, UK  
Trainee: Mapping International Law in Britain (3 months)

**OTHER APPOINTMENTS**

- 2010-2011 **European Commission**, DG Internal Market, Unit Copyright, Brussels, Belgium  
Trainee: Assisting in the research and elaboration of the Green Paper on the online distribution of audio-visual works (5 months)
- 2004 Siemens AG, Bad Neustadt, Germany  
Trainee: Assistance in Accounting and Finance (5 months)

**TEACHING TRAINING AND QUALIFICATIONS**

- Since 2016 Fellow of the UK Higher Education Academy (HEA)
- 2015-2016 Cardiff University, UK  
Postgraduate Certificate in University Teaching and Learning (PCUTL)

**EDUCATION**

- 2008-2013 Durham University, Law School, UK  
Ph.D. in EU Constitutional Law – **awarded with “No corrections” (summa cum laude)**  
*Thesis: Legal Bases in the European Union: An Analysis of pre- and post-Lisbon conflicts across the pillars*  
Supervisor: Professor Robert Schütze  
Examiners: Dr Andrés Delgado Casteleiro (internal) and Prof Takis Tridimas (external)

Synopsis: In my thesis, I have explored the structure of legal bases as well as legal basis litigation under EU law. My main contribution was the analysis of general criteria for legal basis litigation. I have discovered several flaws inherited in the quest for the correct legal basis on the grounds of overlapping competences, divergent inter-institutional interests, and inconsistencies in the courts' judgments.

- 2006-2007 Durham University, Law School, UK  
LL.M. in International Trade and Commercial Law – 61.3 (upper second class)  
*Dissertation: Divergences in international merger policies: Do global transactions require one supranational regulation?*
- 2002-2006 Schmalkalden University of Applied Sciences, Germany  
LL.B. (equivalent) in Business Law (4-year degree) – 2.4 (upper second class)  
Erasmus: University of Central England (UCE), Law School, Birmingham, UK (5 months)  
*Dissertation: Legal aspects of electronic filing*
- 2002 Werratal Gymnasium Schwallungen, Germany  
Abitur in Maths and History – 1.6 overall (AB equivalent)

## RESEARCH EXPERTISE

- EU Constitutional Law: choice of legal basis, competences overlaps, general principles of legal basis litigation, European Integration, EU internal market law, EU criminal law
- EU External Relations Law: specific status of CFSP, international trade agreements
- Brexit: previous and future relationship between EU & UK, international obligations

## PUBLICATIONS

### MONOGRAPH

- 1) Engel, A. (2018) "The Choice of Legal Basis for Acts of the European Union: Competence Overlaps, Institutional Preferences, and Legal Basis Litigation", Springer International Publishing, Cham.

### EDITED BOOK

- 2) Pereira, R., **Engel, A.** and S. Miettinen (2020) "The Governance of Criminal Justice in the European Union: Transnationalism, Localism and Public Participation in an Evolving Constitutional Order", Edward Elgar Publishing, Cheltenham.

### JOURNAL ARTICLES

- 3) Engel, A. (2021) "The Impact of Brexit on EU Criminal Procedural Law – A new dawn?", *European Papers* 6(1).
- 4) Engel, A. (2019) "The European Union and the Brexit Dilemma – A very British Problem?", *Nordic Journal of European Law* 2(1) 24-37.
- 5) **Engel, A.** and L. Petetin (2018) "International Obligations and Devolved Powers – Ploughing through Competences and GM Crops", *Environmental Law Review* 20(1) 16-31.
- 6) Engel, A. (2015) "Delimiting Competences in the EU: CFSP versus AFSJ Legal Bases", *European Public Law* 21(1) 47-59.

### BOOK CHAPTERS

- 7) Engel, A. (2020) "Opting in or opting out? The EU's variable geometry in the area of freedom, security and justice", in Pereira, R., Engel, A. and S. Miettinen (eds.) "The Governance of Criminal Justice in the European Union", Edward Elgar Publishing, Cheltenham.

Union: Transnationalism, Localism and Public Participation in an Evolving Constitutional Order', Edward Elgar Publishing, Cheltenham, 39-55.

- 8) Pereira, R., **Engel, A.** and S. Miettinen (2020) "Introduction", in Pereira, R., Engel, A. and S. Miettinen (eds.) 'The Governance of Criminal Justice in the European Union: Transnationalism, Localism and Public Participation in an Evolving Constitutional Order', Edward Elgar Publishing, Cheltenham, 1-15.

#### CASE NOTES

- 9) **Engel, A.**, Nowag, J. and X. Groussot (2020) "Spre distrugere reciprocă? Trei puncte de vedere privind hotărârea Curții Constituționale Federale germane din 5 mai 2020" [Translated by C.M. Banu], Revista Română de Drept European (Romanian Review of European Law) 3/2020 55-76.
- 10) **Engel, A.**, Nowag, J. and X. Groussot (2020) "Is This Completely M.A.D.? Three Views on the Ruling of the German FCC on 5<sup>th</sup> May 2020", Nordic Journal of European Law 3(1) 128-150.

#### WORKING PAPER

- 11) Engel, A. (2012) "Retained Distinctiveness in the Integrated Third Pillar: Safeguarding Member States' Competences in the European Criminal Law Sphere", 'Deconstructing EU Federalism through Competences', EUI Working Paper LAW 2012/06 39-49.

#### BOOK REVIEWS

- 12) "Transitional Justice und hybride Gerichte: Zur strafrechtlichen Verfolgung von völkerstrafrechtlichen Verbrechen unter besonderer Berücksichtigung des kambodschanischen Sondergerichts (Extraordinary Chambers)" (2010), International Criminal Law Review 10(2) 292-293.
- 13) "EU Criminal Law (Modern Studies in European Law)" (2010), International Criminal Law Review 10(1) 141-142.
- 14) "Das hybride Khmer Rouge-Tribunal: Entstehung, Entwicklung und rechtliche Grundlagen" (2009), International Criminal Law Review 9(2) 440-441.

#### BLOG POSTS

- 15) Engel, A. (2018) "The future relationship between the UK and the EU", Cardiff University Blog 'Welsh Brexit / Brexit a Chymru', 26 July 2018, <https://blogs.cardiff.ac.uk/brexit/2018/07/26/the-future-relationship-between-the-uk-and-the-eu/>.
- 16) **Engel, A.** and L. Petetin (2017) "Environmental protection after Brexit: A race to the bottom?", Cardiff University Blog 'Welsh Brexit / Brexit a Chymru', 7 December 2017, <https://blogs.cardiff.ac.uk/brexit/2017/12/07/environmental-protection-after-brexit-a-race-to-the-bottom/>.

## CITED EVIDENCE

2018 Report on Wales' future relationship with the European Union, External Affairs and Additional Legislation Committee, National Assembly for Wales, (with L. Petetin), evidence cited on p. 25, <http://www.assembly.wales/laid%20documents/cr-ld11491/cr-ld11491-e.pdf>.

2018 Report on the 'European Union (Withdrawal) Bill' of the Select Committee on the Constitution, House of Lords, (with L. Petetin), evidence cited on pp. 15 and 68, <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/69/69.pdf>.

## SELECTED PAPER PRESENTATIONS

- 06/2021 "Utopia of an orderly Withdrawal: The less than amicable EU-UK relationship post-Brexit", 27<sup>th</sup> International Conference of Europeanists on "Europe's Past, Present, and Future: Utopias and Dystopias", Council for European Studies, Virtual.
- 02/2020 "EU Criminal Procedural Law – The Impact of Brexit", European Criminal Law Academic Network (ECLAN) Conference: "Towards European Criminal Law", University of Nantes, France.
- 08/2019 "Securing a 'Security Partnership' after Brexit: Future Options for Cooperation between the EU and the UK", Workshop in European Legal Studies, Swedish Network for European Legal Studies (SNELS), Lund University, Sweden.
- 11/2018 "The Future Relationship between the EU and the UK: Challenges and Opportunities", EU Law Discussion Group, Centre for European Studies, Lund University, Sweden. **(Invited)**
- 09/2018 "Taking Stock across the Channel: Legal Challenges for a (bespoke) Trade Deal between the EU and the UK after Brexit", 109<sup>th</sup> Annual Conference of the Society of Legal Scholars (SLS) on "Law in troubled times", Queen Mary University of London, UK.
- 06/2018 "The UK, Brexit, and the world: Legal implications, international obligations and environmental protection", 2018 Annual Meeting on Law and Society (LSA): "Law at the Crossroads", Toronto, Canada.
- 09/2017 "International obligations vs. devolved powers – ploughing through competences and GM crops", 108<sup>th</sup> Annual Conference of the Society of Legal Scholars (SLS) on "The Diverse Unities of Law", University College Dublin, Ireland.

## REVIEWING ACTIVITIES

- 2020 Peer-reviewed one book proposal for Routledge
- Since 2019 Regular peer-reviewer for articles submitted to the Nordic Journal of European Law
- 2018-2020 Reviewing chapters as co-editor for edited book "The Governance of Criminal Justice in the European Union" (Edward Elgar Publishing)

## TEACHING EXPERIENCE

### UNDERGRADUATE TEACHING

- Main teaching expertise in EU Law, but also experienced in teaching a wide range of other subjects, including both core and optional modules:
  - Course Director for Enforcement of EU law (Lund)
  - Deputy Module Leader for Law of the European Union (Cardiff)
  - Sports Law and Legal Foundations (Cardiff)
  - Introduction to Swedish Law (Lund)
- Teaching areas have covered interdisciplinary (e.g. Sports Law) as well as rapidly developing legal topics (e.g. in relation to Brexit)
- Lecturing large groups (approx. 400 students), supplemented with small-group teaching
- Setting and marking of formative and summative assignments/examinations
- Providing constructive feedback and feed-forward to students

### POSTGRADUATE TEACHING

- Course Director for International Trade Law, Business Negotiations, EU Competition Law (Lund)
- Coach for EU Moot Court Competition (Lund)
- EU Constitutional Law (Lund), and EU Internal Market Law (Lund/Cardiff)
- MOOCs (Lund)
- Research-led, small-group teaching

### SUPERVISION

- Referee for Ph.D. mid-seminar: Anna Zemskova (Lund)
- Supervision of 5-7 LL.M. dissertations per year (Lund/Cardiff)
- Providing constructive feedback and feed-forward on structure and draft chapters
- Marking and second-marking

### PASTORAL CARE

- Personal Tutor for 30 undergraduate students per year (Cardiff)
- Advising current students on module choices, career prospects, and student support facilities and wellbeing

## ADMINISTRATIVE AND MANAGERIAL EXPERIENCE

### ADMINISTRATION

- Admissions Tutor for School Open Days and Open Afternoons at Cardiff: advising prospective students of applications, choice of programme, range of modules, extra-curricular activities, career prospects
- Admissions Tutor during Confirmation & Clearing week at Cardiff: sorting out applications according to their A-level grades, Firm and Insurance choices, evaluating extenuating circumstances, answering queries on the phone

### MANAGEMENT

- Convenor of the European Law Discussion Group (monthly academic seminars), Centre for European Studies at Lund
- Project Coordinator for Edited Book "The Governance of Criminal Justice in the European Union"
- Course Director for postgraduate modules in EU law at Lund
- Management of assessment and team moderation as Deputy Module Leader in EU law at Cardiff
- Planning and organising of research seminars and events at Ustinov College, Durham

## SCHOLARSHIPS & AWARDS

2011	Ustinov College Scholarship, Durham University, UK:	£5,264
2009	Ustinov College Scholarship, Durham University, UK:	£4,900

## PROFESSIONAL MEMBERSHIPS

02/2018	Member of the Law and Society Association (LSA)
02/2018	Member of the Wales Governance Centre (WGC), Cardiff University
11/2015	Member of the Society of Legal Scholars (SLS)
09/2014	Member of the Centre for European Law and Governance, Cardiff University

## LANGUAGE SKILLS

- Native language: German
- Bilingual proficiency: English
- Other languages: French: advanced (C1), Swedish: intermediate (B1), Italian: basic (A2)

## REFERENCES

Professor Xavier Groussot, Faculty of Law, Lund University, Box 207, 221 00 Lund, Sweden; [REDACTED]  
[REDACTED]

Professor Robert Schütze, Durham Law School, Palatine Centre, Stockton Road, Durham DH1 3LE, UK; [REDACTED]  
[REDACTED]

# CV

KONKURRENSVERKET  
2021-02-01  
Avd AF  
Dnr 27/2021  
KSnr 363 Aktbil 22

## PERSONAL INFORMATION

Name: Dr. Gunnar Thor Petursson  
Address: Heidargerdi 30, 108 Reykjavik, Iceland

## PROFESSIONAL EXPERIENCE

### Current posts:

- Professor – **School of Law, Reykjavik University, Iceland** (2016- ).
- Visiting Professor (appointed) – **Faculty of Law, University of Paris II (Panthéon-Assas), France** (2017- ).
- Visiting Lecturer – **Faculty of Law, University of Lund, Sweden**, regularly as of 2010.

### Previous posts:

- Director – **EFTA Surveillance Authority, Brussels, Belgium** May 2017-June 2020.
- Ad-hoc College Member – **EFTA Surveillance Authority**, 2014-2017.
- Chairman – **Appellate body for Telecommunications and Postal Matters**: August 2014-August 2015.
- Legal expert – **Special Investigative Commission of the Parliament**: January 2009-October 2009.
- Head of Legal M&A – **Actavis Group hf.**: October 2005-September 2008
- Senior Associate – **Logos Legal Services**: June 2004-October 2005.
- Officer, Senior Officer and Deputy Director of the *Internal Market Affairs Directorate* of the **EFTA Surveillance Authority (ESA)**: August 1999-June 2004.
- Associate – **Lögfræðistofa Suðurnesja** (law firm): December 1996-August 1997.

## EDUCATION/QUALIFICATIONS

- Dr. Juris (2014), Faculty of Law, Lund University, Sweden.
- Master of Laws (LL.M) (1998), Faculty of Law, Lund University, Sweden.
- Cand. Juris degree (1997) (5 years), Faculty of Law, University of Iceland, Iceland.
- *Bar Exam*: Admitted to practice before Iceland's District Courts (April 2002).



## RECENT PUBLICATIONS

1. *Consistent interpretation in the case-law of the Icelandic Supreme Court*, in “The effectiveness and application of EU and EEA law in national courts – Principle of consistent interpretation”, Christian Franklin (ed), (Intersentia, 2018).
2. *Commentary on Articles 8-13 and 27 EEA* in “Agreement on the European Economic Area – A Commentary”, H.H. Fredriksen, H.P Graver, O. Mestad, C. Vedder. (Nomos, 2018)
3. *Any news on Protocol 35?* (Hvað er að fréttu af bókun 35), in “Fullveldi í 99 ár – safn ritgerða til heiðurs dr. Davíð Þór Björgvinssyni sextugum” (Hið íslenska bókmenntafélag, 2017).
4. *General Principles and the Many Faces of Coherence: Between Law and Ideology in the European Union*, in “General Principles of Law – European and Comparative Perspectives”, S. Vogenauer and S. Weatherill (eds.) (Hart Publishing, 2017) Co-authors: X. Groussot and J. Hettner.
5. *Weak Right, Strong Court - The Freedom to Conduct Business and the EU Charter of Fundamental Rights*, Sionaidh Douglas-Scott and Nicholas Hatzis (eds), in “Research Handbook on EU Human Rights Law” (Edward Elgar Publishing, 2017). Co-authors X. Groussot and J. Pierce.
6. *Regulatory Trust in EU Free Movement Law – Adopting the level of protection of the other?* in European Papers – a journal on law and integration, Vol. 1, No. 3, pp. 865-896 (2016). Co-Authors X. Groussot and H. Wenander.
7. *The Paradox of Human Rights Protection Europe: Two Courts, One Goal?* In the anthology: “Shifting Centres of Gravity in Human Rights Protection. - Rethinking Relations between the ECHR, EU and National Legal Orders” O.M. Arnardóttir and A. Buyse (eds), (Routledge, 2016). Co-Authors X. Groussot and Nina-Louisa Arold Lorenz.
8. *The EU Charter of Fundamental Rights Five Years on – The Emergence of a New Constitutional Framework*. In the anthology: “The EU Charter of Fundamental Rights as a binding instrument – Five years old and growing” Sybe de Vries, Ulf Bernitz and Stephen Weatherill (eds.), (Hart Publishing, 2015). Co-Author X. Groussot.
9. *The Proportionality Principle as a Tool for Disintegration in EU Law – of Balancing and Coherence in the Light of the Fundamental Freedoms*. Faculty of Law, University of Lund, Sweden. ISBN 978-91-7473-925-1 (Dr. Juris Thesis).
10. *The European Human Rights Culture– a paradox of human rights protection in Europe?* (Book) (Martinus Nijhoff Publishers, 2013). Co-authors: Nina-Louisa Lorenz & Xavier Groussot.
11. *The outer reach of State obligations under deposit guarantee schemes - Case E-16/11 from 28 January 2013, EFTA Surveillance Authority (“ESA”) v. Iceland*. 2014, SIEPS (The Swedish Institute for European Policy Studies) Co-author: Ásta Sóllilja Sigurbjörnsdóttir.
12. *The Reach of EU Fundamental Rights on Member State Action after Lisbon*. Co-authors: Xavier Groussot & Laurent Pech: in *The Protection of Fundamental Rights in the EU After Lisbon*. Sybe de Vries, Ulf Bernitz and Stephen Weatherill (ed.). (Hart Publishing, 2013).
13. *The Scope of Application of Fundamental Rights on Member States' Action - In Search of Certainty in EU Adjudication*. Co-Authors: Xavier Groussot & Laurent Pech: in *European Legal Method, in multilevel EU legal order*. U. Neergaard and R. Nielsen (ed.) (DJØF Forlag, 2012).
14. “Balancing as a Judicial Methodology of EU Constitutional Adjudication”. Co-author: Xavier Groussot: in *Balancing Fundamental Rights with the EU Treaty Freedoms: the European Court of Justice as 'tightrope' walker*. (Eleven Law Publishing, 2012).
15. *Implementation of EEA Acts in the field of financial services – Annex VI to the final report of the Special Investigative Committee of the Parliament – 2010*.
16. *Country report on Icelandic laws regarding Citizenship* in the EUCITAC research project. Co-author Guðni Th. Jóhannesson. Available at <http://eudo-citizenship.eu/docs/CountryReports/EUDO-2009-Iceland-linked.pdf>

## RECENT CONFERENCE TALKS

- “Hlutverk og áhrif ESA – EES í 25 ár” Háskólinn í Reykjavík, 1 October 2019.
- “Two pillar – ESA supervisory role” Norway House, 15 November 2019.
- “Are general principles of EU law and EU fundamental rights respected?” at the Conference *European Standardisation for Internal Markets and its Constitutional Challenges*, Lund, Sweden, April 2017.
- “Mutual Trust as Collaborative Law in EU” at the Conference *Collaborative Law in the EU*, Paris (Panthéon-Assas), France, March 2017.
- “Regulatory Trust in EU Free Movement Law – Adopting the level of protection of the other”, presentation at the *Regulatory Governance Conference* in Tilburg, Holland, July 2016.
- “The Methodological impact of the EU Charter of Fundamental Rights on EU/EEA law”, presentation held at a conference on the *Impact of the EU Charter on EU and EEA law*, held by the Icelandic Lawyers Association and the School of Law, Reykjavik University, in March 2015.
- “How to teach primacy?” Presentation held at *NNELS Conference* in Oslo, 2014.
- “The scope of application of Fundamental Rights on Member States’ action: A new constitutional framework” Presentation held at a conference by the Institute of European and Comparative Law, University of Oxford, in Oxford England, see further <http://beucitizen.eu/wp-content/uploads/Conference-programma-9-May-Oxford1.pdf>
- “Fundamental rights in EEA law”. Invited talk at the *EFTA Court’s spring conference*, in Luxembourg, June 2013, see: [http://www.eftacourt.int/fileadmin/user\\_upload/Files/News/2013/Programme\\_EFTA-Courts-Spring-Conference\\_21-06-13.pdf](http://www.eftacourt.int/fileadmin/user_upload/Files/News/2013/Programme_EFTA-Courts-Spring-Conference_21-06-13.pdf)
- “The Scope of the EU Charter of Fundamental Rights - When should it be applied by National Courts?” presentation held at the conference *Constitutions of the EU and Nordic States - Multilevel Constitutional Order and Democratic Challenges*– held in Reykjavik, September 2012.

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