

Report on the activities of the Institute of European Law

2023

Introduction

The Institute of European Law was founded in 1990 and works on the basis of a statute approved by the Faculty Board of the Law Faculty (SU) on 22 January 1990 and by the Vice Chancellor of Stockholm University on 15 February 1990. The statute has thereafter been amended according to decisions by the Vice Chancellor, most recently on 20 May 2021. According to the Statute the Institute's objective is to promote research and education in European Law in general, and in European Union Law, in particular. According to Article 3 of the Statute, the Institute shall fulfill its objectives by:

- developing and maintaining a specialized library;
- initiating, leading and coordinating research projects;
- gathering and processing research documentation and material;
- organizing lectures, seminars, symposia and similar qualified educational activities;
- participating in various activities of Stockholm University that are within the Institute's sphere of interest;
- cooperating with other research institutes with similar objectives.

The Institute shall strive to cooperate with educational institutions, associations, organizations and public authorities active in the Institute's field of activity.

Institute's Board

The Institute's Board consisted of the following members in 2023: Prof. Antonina Bakardjieva Engelbrekt (SU), Elisabeth Eklund (Delphi), Olivier Linden (Kommerskollegium), Ass. Professor Claes Granmar, Director Anna Falk (JK), Adrian Engman (DO) (as of 1 July 2023), Ass. Professor Sideek Seyad Mohamed (SU), Ass. Professor Jaan Paju and Professor Jane Reichel (SU). The Board was appointed for a new mandate from 1 July 2023 until 30 June 2026 by decisions of the Vice Chancellor from 17th and 31st August 2023, respectively.

Antonina Bakardjieva Engelbrekt acted as Chair of the Institute's Board and Professor Björn Lundqvist acted as Director of the Institute.

Researchers involved in the Institute's activities

During 2023 the following persons have been involved in the Institute's activities.

- Professor Antonina Bakardjieva Engelbrekt
- Professor Björn Lundqvist
- Associate Professor Helene Andersson
- Associate Professor Claes Granmar
- Associate Professor Sideek Seyad Mohamed
- Associate Professor Jaan Paju
- Doctor of Laws Branka Marusic
- Doctoral Candidate/Doctor of Laws Gloria Golmohammadi

- Doctoral Candidate Niousha Nademi.
- Doctoral Candidate, advokat Pernilla Norman.
- Doctoral Candidate/Doctor of Laws Markus Skarpsvärd
- Doctoral Candidate Arvin Tayari.

External funding

The researchers at the Institute have been working with various research project supported by internal funding and external research grants.

Doctoral projects

The following projects were completed in 2023:

- Gloria Golmohammadi defended successfully her thesis on 6 October 2023. The thesis is entitled “The Principle of Participatory Democracy in the EU: The Role of Lawmaking Consultation” Supervisor: Antonina Bakardjieva Engelbrekt, co-supervisor Professor Mauro Zamboni). Faculty opponent was Prof. Deirdre Curtin (EUI, Florence) and the Assessment Committee consisted of Professors Joana Mendes (Luxembourg University), Patricia Poppelier (University of Antwerpen) and Joakim Nergelius (Örebro University).
- Markus Skarpsvärd defended successfully his thesis on 8 December 2023. The thesis is entitled “The Costs of Legal Certainty: A Forensically-Informed Methodology on How to Identify the Relevant Costs in Exclusionary Abuse Cases” (Supervisor: Lars Henriksson, Stockholm School of Economics; co-supervisors Jan Rosén and Björn Lundqvist, SU) Faculty opponent was Christian Bergqvist, Associate Professor (Copenhagen University). Members of the Assessment committee were Docent Helene Andersson, Associate Professor Vladimir Bastidas (Uppsala University) and Prof.
- Ronny Gjendemsjø (University of Bergen).

The following doctoral projects are pursued by co-workers of the Institute during 2023

- Niousha Nademi, “Relevant Market and Market Power when Companies Compete through Innovation. Competition in the New Economy”, project funded by the Swedish Competition Agency (Supervisor: Björn Lundqvist).
- Pernilla Norman, “Nationella IT-ramavtal ur upphandlingsrättsligt, konkurrensrättsligt och dataskyddsperspektiv” (Supervisor: Jaan Paju).
- Arvin Tayari, “Personal Autonomy in the Age of Big Data” (supervisor: Björn Lundqvist; co-supervisors Prof. Giorgio Monti, Tilburg University and Ass. Prof. Stanley Greenstein).
- Alina Murg Perlmutter resumed her PhD project “European Courts’ judicial review of competition cases involving 'complex economic or technical assessments” (Supervisor: Antonina Bakardjieva Engelbrekt, co-supervisor Björn Lundqvist).
- Senem Eken Uyd: “Free movement of Capital to and from Third Countries” (Supervisor: Sideek Seyad Mohamed). Senem is working as Adjunct Lecturer at Örebro University.

Educational activities

The one-year **master program in European Economic Law** continues to attract a stable number of international applications, which allows forming each year a group of 25-30 well-qualified students from different countries and diverse background. The structure of the program is by now settled with a Fall Term comprising an introductory course on EU Economic Law from a Constitutional Perspective (15 ECTS), followed by a choice between three elective courses (EU Competition Law, EU Banking and Financial Law and Internal Market Law and its Social and Digital Dimension, 15 ECTS each). In the Spring Term, students take the course EU Legal Methods in Research and Practice (15 ECTS) and the

program ends with a Master Thesis in EU Economic Law (15 ECTS). In the academic year 2022/2023 the courses were given on campus and a class of approx. 24 students graduated from the LLM program. In the academic year 2023/2024, the program is also almost entirely held in person with a group of 29 students. Program directors are Antonina Bakardjieva Engelbrekt and Jaan Paju.

Several **elective courses** in EU law are currently offered to students from the Swedish law program and Erasmus students. The elective courses of the master program are also offered as elective courses to Swedish students, trying to create synergies and cost-efficient solutions. The list of courses is the following:

Spring Term B period

- EU External Trade Relations Law (Course Director: Claes Granmar, 15 ECTS)
- Praktisk europaprocess (Course Director: Claes Granmar, 15 ECTS)

Fall Term B period:

- EU Competition Law (Course Director: Björn Lundqvist, 15 ECTS)
- EU Banking and Financial Law (Course Director: Sideek Seyad Mohammed, 15 ECTS)
- The Internal Market and Its Digital and Social Dimension (Course Director: Jaan Paju, 15 ECTS)

Claes is also responsible for the pan-Nordic moot court in human rights which has been connected to the course Praktisk europaprocess (Course Director: Claes Granmar, 15 ECTS). The pan-Nordic moot court in human rights is administrated from Stockholm University.

The **undergraduate course in EU law** (7.5 ECTS) is given as before during the first term of the law education. Course Director during the Spring Term of 2023 has been Björn Lundqvist and during the Fall Term of 2023 - Antonina Bakardjieva Engelbrekt.

Seminars and other events

In recent years the Institute has received financial support from the Cassel foundation for the seminar series in EU law. A total of 9 seminars were held throughout 2023 on a variety of topics - from fundamental rights and EU constitutional law to Internal Market and competition law. The seminars were given in various formats: in person, hybrid form or online via Zoom. The seminars have been generally well-attended. A list of the seminars is attached.

Library

Books:

According to the Law Department's policy all specialized libraries used to receive an annual sum of 40.000,00 SEK for books and library maintenance. This funding has been reduced in 2023. In 2023 more than 35 titles were purchased.

In 2023, the Institute received a generous donation of books from the estate of the late professor Ulf Bernitz. These books are now being included in the EU library and in the digital catalogue (cf. below).

Digital catalogue:

The Library has a digital catalogue where search in the library books can be carried out. A thorough update of the catalogue was carried out during the summer 2021. The catalogue boasts with some 1000 titles. The catalogue is currently being updated with the books from the estate of professor Ulf Bernitz.

The Institute's webpage

The Institute's webpage can be found on: www.instituteforeuropeiskratt.se

Stockholm, 1 February 2024

Antonina Bakardjieva Engelbrekt

Institute Chair of the Board

Björn Lundqvist

Institute Director

Seminar series 2023

Realizing the Principle of Participatory Democracy in the EU - The Role of Law-making Consultation

den 4 december 2023, kl. 11:30 till 13:00

Gloria Golmohammadi LLD Stockholm University will discuss (parts of) her recently defended thesis. Gloria's thesis sheds light on an EU foundational principle, the principle of participatory democracy, and assesses its implications for EU multi-level law-making, focusing on how the principle can be given expression through consultation.

EU external trade and the challenges of “adequate” data protection

den 3 oktober 2023, kl. 09:00 till 12:00

At the seminar, leading experts on privacy and data protection from Asia, Australia and Europe will discuss the efforts of the EU to ensure an “adequate” level of data protection overseas under the GDPR.

Keynote

Megan Richardson (Professor of Law at the Melbourne Law School, the University of Melbourne): Why Countries Like Australia Fail to Achieve Adequacy under EU Data Protection Laws

Speakers:

Christopher Kuner (Affiliate Professor at the University of Copenhagen and Senior Privacy Council at the Brussels office of Wilson Sonsini & Rosati): Is EU data transfer regulation fit for purpose? A critical view

Simone Fisher-Hübner (Professor at the Computer Science Department at Karlstad University): Bridging the gaps by privacy enhancing technologies

Seminar: Regulating Access and Transfer of Data

den 18 september 2023, kl. 16:00 till 18:00

Institutet för Europeisk rätt, Offentligrättens seminarier och Institutet för rättsinformatik (IRI) bjuder in till gemensamt seminarium där Björn Lundqvist presenterar sin senaste bok *Regulating Access and Transfer of Data*, som undersöker den legala infrastrukturen för att samla in, lagra och distribuera data på nätet och sakernas internet.

Kollegorna Jane Reichel och Katarina Fast vid Stockholms universitet kommenterar boken utifrån ett offentligt och rättsinformativt perspektiv.

Björn Lundqvist är professor i europarätt med inriktning mot konkurrensrätt vid juridiska institutionen, Stockholms universitet.

The Proposal for an AI Act from the perspective of the European legislator - where are we, and where are we going?

den 16 juni 2023, kl. 14:00 till 15:30

The Swedish Law and Informatics Research Institute and the Institute of European Law have the great pleasure and honour to invite Dragoş Tudorache MEP European Parliament and Rapporteur for the AI Act.

Mr Tudorache is the Chair of the Special Committee on Artificial Intelligence in the Digital Age (AIDA) and the LIBE rapporteur on the AI Act. He will discuss the legislative process that has characterised the AI Act thus far as well as provide insights into future developments. Associate Professor Stanley Greenstein will act as discussant.

Seminar on Normative Foundations for European Criminal Law

den 23 maj 2023, kl. 12:00 till 13:30

This paper claims that there is a compelling justification for EU action in criminal law to protect European public goods and other key transnational interests.

For a long time, criminal law was not considered an area falling in the European integration project. However, nowadays EU has a broad competence in this field, including harmonization of domestic criminal legislation and engagement in enforcement through Europol, Eurojust and the European Public Prosecutor's Office. While such powers are vital for fighting cross-border crime, it should not be forgotten that application of criminal law powers has significant consequences for individuals. In addition, application of EU's legislative competences in the area of criminal law might not be well-received by the Member States due to the resulting limitations to the national sovereignty. Consequently, whether EU should legislate in the field of criminal law is not clear.

Speaker: Jacob Öberg, Professor in European Union Law at University of Southern Denmark
Discussant: Annika Suominen, Associate Professor in Criminal Law, Stockholm University
Chair/Moderator: Björn Lundqvist, Professor of European Law with a focus of competition law, Head of EU Law

A new era for EU law and preliminary rulings in Sweden?

den 17 maj 2023, kl. 12:00 till 13:30

In a decision of 20 December 2022, the Swedish Supreme Court has finally acknowledged the duty for last instance courts to request preliminary rulings – even when no such request has been made by the parties. However plain the Supreme Court's decision may seem to an EU

lawyer, Swedish courts have shown a reluctance in seeking guidance from the Court of Justice of the European Union. Now it seems like the tide has finally turned.

During the seminar, Elisabeth Eklund, Partner at Advokatfirman Delphi, and Helene Andersson, Counsel at Advokatfirman Delphi and Associate Professor in EU Law, will present the Supreme Court's ruling and discuss its potential impact in Sweden and elsewhere in the European Union where requests for preliminary rulings are scarce. Graham Butler, Professor of Law at the University of Southern Denmark, will act as discussant.

Free Movement of Persons in the Nordic States

den 9 mars 2023, kl. 12:00 till 13:30

Can it be argued that there exists a concept of Nordic citizenship, founded on inter-Nordic cooperation and its relationship with EU law and EEA law? The newly published anthology, *Free Movement of Persons in the Nordic States - EU Law, EEA Law, and Regional Cooperation*, looks into a possible Nordic Citizenship (Hart Publishing). The editors present the anthology and discusses the outcome of the contributions.

Researchers from all five Nordic States (Denmark, Finland, Iceland, Norway and Sweden) explore the tensions, gaps, and overlaps arising from the interplay of EU citizenship, EEA law, and the Nordic initiatives that aim to facilitate cross-border mobility of persons in the region. The analysis takes a dual approach. Firstly, it tracks the legal development of nationality law in Nordic states. Secondly, it sets out the rights of residence and access to social rights that follow from the three different regimes. It asks if the Nordic States, through their regional cooperation, are 'going beyond' EU free movement law, making naturalisation to a citizenship in a Nordic state particularly attractive. The anthology gives a new perspective on EU citizenship and free movement law.

Katarina Hyltén-Cavallius is Assistant Professor of Law at Linnaeus University

Jaan Paju is Associate Professor of European Law, and lecturer in Constitutional Law at Stockholm University

Judicial dialogues between Supreme administrative courts and the ECJ

den 2 mars 2023, kl. 11:30 till 13:00

The preliminary reference procedure has long been envisaged as a judicial dialogue between the European Court of Justice and national courts. However, in reality the relationship between the Luxembourg court and national Supreme Administrative Courts appears to be closer to a relationship of living apart together than to a happy marriage between equal partners.

Professor Rob van Gestel from Tilburg University will give a talk about: what is behind this? Together with a colleague he has conducted a study of the existing literature, combined with a case law analysis and interviews with judges, which has learned that there are a number of important stumble blocks hindering the communication between courts on both sides. One can

think of language barriers, time constraints, and a failing digital infrastructure. However, on a deeper level there also appears to be a lack of mutual trust that prevents Supreme administrative courts from using the possibilities the preliminary reference procedure provides, such as the opportunity to offer provisional answers to the Court regarding the questions that have been referred, and for the Court of Justice to share power with the Supreme Administrative Courts and treat them as genuine co-actors in the process of European law making. Their study offers three possible scenarios to move forward, which can be labelled as cooperation, coordination and collaboration. Especially in the last scenario, dialogue also entails that the Court of Justice needs to share more responsibility with supreme administrative courts and treat them more as decentralized European courts.

Leaving doors ajar: The determinants of judicial law-making on the CJEU

den 21 februari 2023, kl. 12:00 till 13:30

Why do courts of precedent reference third-parties' legal arguments in their judgments?

We argue that references to third-party briefs allow courts to expand on the precedent they set in their judgments, clarifying what the law is and what it is not, as well as strengthening the legitimacy of their decisions. Citing briefs negatively may also increase compliance pressure on recalcitrant societal actors. Drawing on original data from preliminary rulings of the Court of Justice of the European Union, we show that the Court is more likely to dismiss member states' arguments when legal uncertainty is high and when the Court faces serious concerns about the direction of its case law.

Johan Lindholm is Professor of Law at Umeå University. During the seminar he will be presenting an article authored together with Daniel Naurin (UiO) and Philipp Schroeder (LMU).