

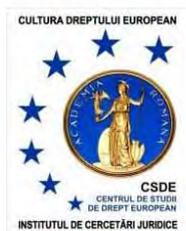
**Interviewing European Union.
Wilhem Meister
in EU Law**

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Interviewing European Union.
Wilhem Meister
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INTRODUCTION

The present book is a challenge for its editors: it was the temptation of plain inquisitiveness that has led them, in the first place, to this form of dialogue, unusual for the legal community. Unlike many fields of humanities, lawyers are not interviewed by virtue of the legal studies themselves, but for collateral issues (holding a position, special events – winning/losing proceedings covered by media). The book was a challenge also for our interlocutors, to whom we would like to thank for their kindness supportive efforts and their positive approach to our initiative. We would also like to thank those who expressed their intention to take part in this initiative, but unfortunately did not have the time needed to take part in the interview. Their help consists of impetus to invite other personalities and to set up a mini-encyclopaedia of European Union law.

European Union law, and perhaps European law generally, is scholarly without being protracted, and is explained to the reader, without being pedant. The intellectual journey taken together with the personalities invited in this volume means an effort in inverse proportion to this kind of reading. In order to truly comprehend, one needs a culture of European law, a feeling of hunger for details that are not found in treaties, monographs or papers. We are aware of our limits, but we are proud of the boundlessness of the answers given by the interlocutors, and their openness towards new horizons of

well-tempered and fruitful inquisitiveness. We become what we are aware to be, however in our dialogues, every answer leads to a new experience, they are not words from a book masterfully assembled, but feelings of a special academic and cultural reality. This book grants us the opportunity to construe a semantic perspective of facts and concepts that otherwise seem to be limited; we are witnessing an era of European law, but also, most of the times, an era of European meta-law. Guidance offered to young researchers are in fact a sum of elements employed to clarify the boundlessness of European law – at the crossroads of national law and international law each with its own rules. The research adventure in the field of law should start with this book: here one is able to find guidance from those who succeeded, by gaining multilayered competences in both academia and practice. Our thoughts for those that contemplate studying European law are that they wish to escape a precisely determined field of a barren academic area for the European inter/multidisciplinary vastness (although itself being limited). Unlimited inquisitiveness is an issue of lack of interest, but European law offers more and more particular and surprising examples of relevant skilled research, dissimilar to that threatening and uncomfortable vision of research performed for its sake. In performing research in EU law there are no shallow types of research, but only badly drafted questions; this is why inside the legal culture of our country we have placed an emphasis on methodological issues.

Lately knowledge is a power that does not stem from its quantity, but from its quality. European law is one of the intellectual forms of a dynamic and at the same time precise spirit. Not only humans are able to interpret and apply

concepts and facts. Today, machines are by far more efficient – in terms of memory, data storage or searching facilities. Computers and programs are undoubtedly more efficient than human beings: but, despite of these challenges, the present volume proves that imagination, order and understanding are higher than any quantitative developments.

The dialogue is an initiatory cultural form for each and every age and for each and every kind of learning. Contemporary science, even legal science, is becoming more and more specialized, as skills become more sophisticated. The dialogue is rediscovered during conferences and debates. There is also another dialogue, hard to perceive, that is carried out through published studies and papers. The present dialogues are a follow-up of the human work of understating the reality.

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	Advocate General
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court of Germany)
CESL	Common European Sales Law
CFSP	Common Foreign Security Policy
(the) Charter	(the) Charter of fundamental rights of the European Union (also 'EUCFR')
CJEU	Court of Justice of the European Union
Coreper	Permanent Representatives Committee
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
CST	Civil Service Tribunal
DCFR	Draft Common Frame of Reference
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ed.	Editors' note
EEAS	European External Action Service
E(E)C	European (Economic) Community
EIB	European Investment Bank
EP	European Parliament
ESM	(Treaty establishing the) European Stability Mechanism

EU	European Union
Fiscal Compact	see “TSCG”
GC	General Court
IIA	Interinstitutional Agreement
MEP	Member of the European Parliament
MP	member of Parliament
OECD	Organisation for Economic Co-operation and Development
para.	paragraph
PECL	Principles of European Contract Law
PIL	private international law
R.R.D.E.	Revista română de drept european (Wolters Kluwer Romania)
TEU	Treaty on European Union (Lisbon)
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
WTO	World Trade Organization

RENÉ BARENTS

Born in 1951; graduated in law, specialisation in economics (Erasmus University Rotterdam, 1973); Doctor of Laws (University of Utrecht, 1981); Researcher in European law and international economic law (1973-74) and lecturer in European law and economic law at the Europa Institute of the University of Utrecht (1974-79) and at the University of Leiden (1979-81); Legal Secretary at the Court of Justice of the European Communities (1981-86), then Head of the Employee Rights Unit at the Court of Justice (1986-87); Member of the Legal Service of the Commission of the European Communities (1987-91); Legal Secretary at the Court of Justice (1991-2000); Head of Division (2000-09) in and then Director of the Research and Documentation Directorate of the Court of Justice of the European Union (2009-11); Professor (1988-2003) and Honorary Professor (since 2003) in European law at the University of Maastricht; Adviser to the Regional Court of Appeal, 's-Hertogenbosch (1993-2011); Member of the Royal Netherlands Academy of Arts and Sciences (since 1993); numerous publications on European law; Judge at the Civil Service Tribunal since 6 October 2011.

First of all we would like to thank you warmly for accepting this interview.

1. As a first question, we would like to ask you to provide a short description of your formative years in law, which is certainly very useful to “apprentices” in law.

That was before the present 'BAMA' system. After four years of study at what is now called the Erasmus University Rotterdam (NL), I obtained my academic degrees in law and in economics (1973).

2. How would you assess your main professional periods? Which of them was the most challenging?

In other words, we would like to ask you about your professional experiences at the EU courts. For a significant period of time, you have acted as legal secretary at the Court of Justice. Therefore, you are very familiar with the EU judicature. What models do you have among the members of the EU courts?

I worked for five years for an advocate general, followed by five years at the Legal Service of the Commission and after that for nine years for a CJEU-judge. Every period was a challenging one since it allowed me to work from different perspectives on the same problems.

I have no models among members of the EU-courts; however I learned a lot from Pieter Verloren van Themaat, the first Dutch advocate general at the CJEU, for whom I worked from 1981 to 1986.

3. From your point of view, what would be the main challenges for the current European Court of Justice?

To integrate the Fundamental Rights Charter into EU-law to the extent that the rights and principles contained in the Charter become the main source of inspiration of the ECJ's case law.

4. Could you please comment on the most important recent developments concerning the EU legal order – from your point of view?

The main threat to the EU-legal order is the fragmentation caused by intergovernmental treaties (ESM, Budgetary

Discipline) and practices which, since they are concluded between less than 27 member states, risk to create distortions that in the long run might affect the unity of the internal market. The same threat is caused by the absence of effective measures to combat the euro-crisis and the shifts in the institutional equilibrium of the EU. Without an efficient economic and monetary union you cannot have an internal market. In other words, there is no alternative to a ‘federalisation’ of the EU, either in its present form or as a nucleus of a number of continental member states.

5. What does it mean the “Autonomy Of [European Union] Law” from the point of view of Post-Lisbon developments and more generally for the developments of constitutionalism at EU level?

Autonomy of EU-law means nothing more than that EU-law itself stipulates (through its courts) how it is to be interpreted and to be applied. Only on that condition EU-law can be applied in every Member State on the same conditions, which is a necessary requirement for its effectiveness in terms of Articles 2 and 3 TEU. Because EU-law (according to the case law) is autonomous, it is also constitutional, since it sets its own standards of effectiveness and legality. Autonomy of law reflects that in a period of globalisation, the state is no longer the sole source of law, in spite of what constitutional courts might rule. It reflects that the centuries old link between state, territory and law is coming to an end.

6. What is the relationship between EU Courts in “saying the law”? Does the “lower” EU Courts - CST and GC – follow a “self-restraint” attitude (or deference) towards the “higher authority” – the ECJ?

It seems obvious to me that you look for precedents in the case law of the superior courts. However, I have no difficulty

in defending an opposite solution if necessary. There is certainly 'respect', but no 'deference' or 'fear' (to be annulled).

7. What is the role of documentation (and more generally) of legal doctrine in EU Courts decisions?

The role of legal doctrine in EU courts decisions is very limited. The influence of the case law on legal doctrine is far greater. In my opinion, that is the way it should be. If not, we would not have direct effect, no primacy, no direct effect of directives, no state responsibility and many other things.

8. What would be the limits – if any – concerning the academic opinions expressed by Judges? In this context, which is your point of view on dissenting opinions; is this a kind of “knowing for the sake of knowing” (as in case of concurring opinions) or could that lead to a genuine familiarisation with the ECJ as a whole?

As far as their composition is concerned, the EU courts are international tribunals. Once you introduce dissenting opinions, it will only be a question of time before member states are trying to influence the attitudes of 'their' judges'. Do not forget that the EU is not a state or a federation.

As a member of a court you should be cautious in what you say (in public) and what you write. In my opinion you cannot defend a particular point of view which is not accepted, now or later, by the court of which you are a member since that would be incompatible with your duty to keep the secret of the deliberations.

9. A final question: Which advice/recommendation would you give to young researchers in (EU) law?

First, learn your languages, at least two.

Second, stay abroad to study or to work.

Three, keep yourself informed not only about legal developments (that is obvious), but also about political events and trends.

Fourth, when you are young, every day, week, month or year counts twice for your future.

Thank you very much.