

Preface

The Union of today is faced with numerous legal, economic, social and many other risks that are seriously affecting its economic development as well as growth. Excessive and inadequate legal regulation act restrictively upon the activity of entrepreneurs on the market, on the one hand, and lowers the confidentiality of consumers, on the other. This in turn affects the functioning of the Union's internal market and restrains economic growth of the European Union (EU) in comparison to other important players on the global market. The consequences are reflected upon societal prosperity. The features common to all social disturbances that are taking place in the world today are, firstly, the fact that they are caused by inadequate reactions to existing risks and, secondly, the fact that they affect the world globally. The strong interdependence between the mentioned risks creates a "magical circle" that is very difficult to break and leads to serious consequences, which contribute to financial instability as well as economic crises. The Union's awareness of these risks is demonstrated in numerous communications, reports and recommendations and particularly in the European Strategy for Smart, Sustainable and Inclusive Growth (Europe 2020).¹ Europe 2020 insists upon measures necessary to achieve the so-called smart growth, meaning upon measures that are going to strengthen knowledge and innovation as key drivers for future economic growth as well as progress of the Union. It also emphasises sustainable growth and promotes a more resource-efficient, greener and more competitive economy. Finally, it promotes inclusive growth fostering a high-employment economy delivering social and territorial cohesion. These are the three key ingredients necessary for Europe's social market economy of the twenty-first century.² From a legal point of view,

¹ Communication from the Commission, Europe 2020, A Strategy for Smart, Sustainable and Inclusive Growth, COM (2010) 2020, Brussels, 3.3.2010.

² Ibid., p. 3.

these goals require a significant improvement of the existing Union's regulatory framework, the ineffectiveness of which presents one of the most important barriers to the development of technology, industry and consequently of economic growth. As rightly emphasised by the European Commission, in an era of globalisation, in which barriers to movement of goods, services and people are falling, citizens expect from legal regulations to ensure their safety and welfare, while businesses expect that legal regulations enable a level playing field and boost competitiveness.³ However, if a regulatory framework across the Member States is scattered, inconsistent, outdated or does not take the interests of its addressees adequately into account, legal regulations may do exactly the opposite. It is precisely due to these reasons that the Union insists upon the introduction of better or so-called smart regulations in all affected areas of EU legislation. This belongs to one of the key strategic goals of Europe 2020, according to which "to face up to the challenges we face inside and outside Europe, policies, laws and regulations need to adapt to the fast pace of technological change, to foster innovation, to protect the welfare and safety of Europeans".⁴

The book *Legal Risks in EU Law* addresses these serious issues from a horizontal and interdisciplinary perspective by observing and analysing primarily legal and consequently inseparable economic, societal, environmental and other risks in different areas of EU legislation. Legal regulation is always enacted in a public interest in order to achieve a variety of goals, such as to ensure a fair and competitive market, to protect health, to provide safety, to stimulate innovations, to preserve the natural environment, to protect climate, etc.⁵ Therefore, the interdisciplinary analysis of risks deriving from legal regulation in various fields is the most appropriate approach to observe the legal risk issue from different angles. On the other hand, the horizontal approach indicates that despite of the diversity of the studied subject matters and EU policies as well as the differences in applied research and writing methodology, all of the contributions tend to offer similar results. It is common knowledge that legal regulation should deliver policies and meet expectations of those to whom it is addressed, by taking into account all of the effects the regulation might have on the addressee's interests. This should include a thorough examination of economic, social, environmental and other important impacts of their legislative drafts.⁶ However, in today's global society characterised by an increasing speed of changes, fast technology and economic progress, this seems to be a difficult task for lawmakers to achieve. Here is where the risk management usually includes an invitation to all relevant stakeholders to engage

³ European Commission, Better Regulation—Simply Explained, available at: http://ec.europa.eu/smart-regulation/better_regulation/documents/brochure/brochure_en.pdf, p. 3.

⁴ Ibid., p. 1.

⁵ Ibid., p. 3.

⁶ Wiener (2004), pp. 483–500.

in a public consultation or elaboration of independent reports, i.e. impact assessments. Unfortunately, the decision to launch regulatory initiatives is very often taken before the publication of impact assessment reports. Since a lawmaker does not dispose with the expertise necessary to respond properly to developmental challenges in specific regulatory fields, this results in regulations either offering inadequate protection or restricting market freedom. As a consequence a legal risk occurs that by its definition “commonly refers to a situation where the applicable law does not provide for a predictable and sound solution” and “might also refer to situations where the answer provided by the applicable law does not fit the market reality, or where the law does unnecessarily complicate or burdens a transaction”.⁷

Bearing all that was said in mind, it is the primary mission of the authors gathered under the single roof of the book *Legal Risks in EU Law* to identify and analyse the causes as well as consequences of legal risks in regulatory frameworks of various EU policies and beyond. Over several decades now, the Union has been faced with numerous legal risks that are adversely affecting the functioning of the EU and the development of EU law. Particularly, due to the constraints of the principles of subsidiarity and proportionality, it is getting more and more difficult to justify the Union’s authority to regulate in a variety of competence areas. Internal market, consumer protection, social policy, foreign policy, environmental policy, etc. are only some of the areas to which this book dedicates its chapters and horizontally examines the Union’s approach to regulation and management of legal risks. In doing so, the authors generally come to very similar conclusions concerning the inability of the Union’s regulatory methods to respond properly to existing legal and consequently economic and other existing risks and challenges. Especially, approximation, i.e. harmonisation of different Member States’ laws as the most extensively used means of EU legal regulation, at the end of the day resulted in overregulation and further differences at national levels. New differences in legal regulation caused by the Union’s attempts to remove existing regulatory differences between Member States affected the realisation of the Union’s supreme goal of the establishment and proper functioning of the internal market. Furthermore, discrepancies caused by departures in application and interpretation of harmonised national regulatory frameworks across the Union seriously affect the principle of effectiveness of EU law. This is getting even more complicated by the fact that every single EU legal act has to be translated into 24 EU official languages. Despite the principle of equal authenticity, according to which all language versions of the same EU legal act are presumed to be authentic and to have the same meaning, imperfections in legal translations often result in different meanings of the same legal rules. Consequently, by managing legal risks deriving from the diversity of Member States’ laws presenting barriers to trade and to the Union’s economy, the Union actually produced new legal risks that need management of their own. This serious failure contributed to the legal uncertainty of

⁷ UNIDROIT Explanatory Notes on Preliminary Draft Convention on Harmonised Substantive Rules Regarding Securities Held With an n Intermediary, Rome, 2004, p. 7.

stakeholders acting on the internal market and lowered their economic activity and cross-border transactions. The improper response to the management of legal risks thus resulted in the creation of further legal, economic as well as other kinds of risks, and it also adversely affected the development and economic growth of the Union.

The book *Legal Risks in EU Law* is the first in a line of publications that will try to set a new and innovative path offering effective solutions to the here presented issues. The application of an original interdisciplinary approach to legal risk management should enable a better understanding of the interests of all stakeholders included in the complex regulatory processes. Both on the level of the EU and of the Member States, lawmakers need to apply a completely new regulatory approach that will, besides focusing on general legal issues, give more attention to the specific needs of a certain regulatory field (e.g. technology, industry) and to various impacts of enacting legal regulations on the future development of the concerned and other related areas. This requires the abandoning of a traditional discipline-oriented approach in favour of new alternative regulatory methods that will accentuate the role of the interdisciplinary approach in legal regulation. The initiative for the creation of a new and innovative regulatory approach for the management of legal risks was born within the international interdisciplinary network of excellent scientists named Global Legal Network (GLN).⁸ This interdisciplinary network that was formed in November 2014 in Lille (France) gathers academic scholars and practitioners coming from more than 15 European countries, as well as from the USA, Canada, Brazil and many other countries who specialise in legal, economic, political, sociological, philosophical and other sciences. Such a joint venture of science and practice mixed with valid expertise and knowledge of experts coming from a variety of disciplines guarantees the invention of new and effective regulatory approaches. Bearing in mind the significant lack of similar scientific projects at the international level, the members of GLN started a long-lasting project “Interdisciplinary Studies on Legal Risk Management and Better Regulation in Europe” that can generally be divided in three main stages. The first stage, the results of which are presented in the book *Legal Risks in EU Law*, is dedicated to the thorough analysis of causes and consequences of failures in regulatory approaches and legal risks management. Since proposing of new and effective methods of legal regulation and risk management depends heavily upon the understanding of the current situation, this stage appears to be crucial. The second stage deals with the comparative analysis of a variety of regulatory and risk management methods existing in laws of European and other world countries that can offer valid lessons and insights to the EU. The research results of the first two stages will open the door to the third and most creative stage dedicated to the development of innovative regulatory approaches for the management of legal risks in EU law. By pursuing this interdisciplinary project, the GLN members aim to achieve scientific results that will significantly contribute to the accomplishment of

⁸ Visit the Global Legal Network at: <http://www.global-legal-network.eu/>.

key EU strategic goals on better regulation and consequently on the smart, sustainable and inclusive growth of the EU.

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