



Application of EU law in the national context: principles and challenges for a judge


Amelia Raluca Onișor, PhD
judge



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Specific characteristics of Union law

 own terminology

 autonomous concepts in EU law systems/international law



national legal

 EU law acts are drafted in **24 languages** – equally authentic + given uniform interpretation and application in all MS



- terminology peculiar to it and legal concepts that do not necessarily have the same meaning as the corresponding concepts that may exist in the law of the MS (*Cilfit*, 283/81, EU:C:1982:335, paragraph 19).
 - „**Jurisdiction**” -- autonomous and uniform interpretation throughout the EU; that interpretation must take into account not only the **wording** of those provisions but also their **context** and the **objective** pursued by the legislation in question (*Oberle*, C-20/17, EU:C:2018:485, paragraph 33).

The Autonomy and the Meaning



Autonomous terminology. Practical example

Public Policy

- Every MS has its own definition
- A 45(1)(a) B1Recast Regulation – refusal of the enforcement of a judgement – manifestly contrary to public policy

Are the fundamental rights in the scope of the public policy?

The meaning of public policy in the sense of A45(1)(a) is the same as in national law?

(Krombach & Bamberski, C-7/98, EU:C:2000:164)



Autonomous terminology. Conclusions

If NO reference to the domestic law– presumption of autonomous concept

Irrebuttable?

NO

Exceptions: no uniformization possibility or only a partial harmonisation is needed

Who is deciding? The national judge?

Between 24 voices and one meaning

1. Grammatical or literal (textualism)?

- Regulation No 1/58 – ‘principle of linguistic equality’ - ‘full multilingualism’
- ***Consorzio Italian Management***, C-561/19, EU:C:2021:799 - **all versions equally authentic**

The Art of Interpretation: How Judges Speak the Language of EU Law

***Stauder*, Case 29-69, EU:C:1969:57**

- DE ...vorgesehenen Maßnahmen Butter nur gegen einen auf ihren Namen ausgestellten Gutschein erhalten können.' ('Member States shall take all measures necessary to ensure that . . . those entitled to benefit from the measures laid down in Article 1 may only receive butter in exchange for a coupon issued in their names)
- FR - 'bon individualise',
- NL - 'op naam gestelde bon',
- IT - 'buono individualizzato'

Grammatical or literal (textualism)?

- **textualism, as a method of interpretation, does not suffice where linguistic divergences exist.**
 - ‘in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it publication’. (*Stauder*, Case 29-69, EU:C:1969:57) –
 - But still can be used for **reinforcing legal reasoning**
- Also - relying on the contextual and/or teleological interpretation of the EU law provision in question so as **to discard a linguistic version** of that text which is at odds with the common meaning shared by the other

EU law as a puzzle:
each piece must fit
perfectly

Systematic interpretation

- each provision of EU law must be interpreted in such a way as to guarantee that there is no conflict between it and the general scheme of which it is part
- no provision of EU law should be redundant - in light of its '*effet utile*'
- '*a contrario*', '*ad absurdum*', '*a fortiori*'

Interpretation of EU law

Systematic interpretation

- in interpreting a provision of EU law - consider not only its wording, but also the context in which it occurs and the objectives pursued
- the operative part of a EU act is indissociably linked to the statement of reasons for it, so that, when it has to be interpreted, account must be taken of the reasons
- a EU law act must be interpreted, as far as possible, in such a way as not to affect its validity
- where - several interpretations, preference - interpretation which ensures that the provision retains its effectiveness
- (*Sturgeon*, C-402/07 și C-432/07, EU:C:2009:716)



When words fail, purpose speaks

Teleological interpretation

- Q: an EU law provision is ambiguous or incomplete?
 - A: interpreted in light of the objectives it pursues
- **Lindqvist**, C-101/01 [2003] ECR I-12971, the ECJ ruled that ‘[i]n the light of the purpose of the directive [i.e. the protection of the right to respect for private life], the expression data concerning health used in Article 8(1) thereof must be given a wide interpretation so as to include information concerning all aspects, both physical and mental, of the health of an individual’
- **Commission v Portugal**, C-55/02, a wide interpretation to the words ‘reasons not related to the individual workers concerned’ used in Article 1(1) of Directive 98/59

Interpretation of EU law

Teleological interpretation (functional)

- if the wording of **secondary EU law** is open to more than one interpretation, preference -to the interpretation **consistent with primary law**
- ‘or’ means alternative?
- ”the conjunction ‘or’ may, linguistically, have an alternative or a cumulative sense and must consequently be read in the context in which it is used and in light of the objectives of the act in question. In the present case, having regard to the context and objective of Directive 2011/95 as set out in recitals 3, 10 and 12 thereof, and taking account of the case-law [...], that conjunction must, in Article 14(6) of that directive, be understood in a cumulative sense”. (*M and others*, C-391/16, C-77/17 and C-78/17, EU:C:2019:403).


Functional + systematic interpretation tools

Preamble

- no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions nor for interpreting those provisions in a manner clearly contrary to their wording (*Karen Millen*, C-345/13, EU:C:2014:2013)

travaux préparatoires – limited use – only to support an interpretation

- confirming the interpretation of Treaty change – the scope of Article 263 TFEU: the origins of the distinction between regulatory and legislative acts (*Inuit*, C-583/11 P, EU:C:2013:625)
- the purpose and aim of that legislation, as is apparent from the relevant *travaux préparatoires*, was to extend the prohibition to cover non-Danish operators offering gaming in Denmark over the Internet (*Bent Falbert and Others*, C-255/16, EU:C:2017:983)



The Judicial Conversation Between Luxembourg and National Courts

- **Primacy**
- **Full effect and effective judicial protection**
- **Direct effect**
- **Consistent interpretation** - interpretation of national law in accordance with the requirements of EU law

Consistent Interpretation – The Art of Judicial Harmony

choose only those interpretative versions of domestic law which are the most compatible with the EU laws purpose and spirit

‘National courts must not rewrite the law in the name of Europe, but they must read it in its light.’

✓ *In conformity with EU law*

✗ *Contra legem – when loyalty becomes distortion*

Consistent interpretation

own interpretation, without being either compelled to make or prevented from making a reference to the Court for a preliminary ruling before doing so (*Kücükdeveci*, C-555/07, EU:C:2010:21)

❑ But **not *contra legem*** interpretation

Q: ***contra legem***?

R1: contradicts the very wording of the national provision at issue (legality), principle of non-retroactivity, legal certainty
the requirement for national law to be interpreted in conformity with Community law – cannot be interpreted as requiring the referring court to give a domestic act a retrospective effect to the date by which Directive should have been transposed, as the referring court would otherwise be constrained to interpret national law contra legem. (Impact, C-268/06, EU:C:2008:223)

❑ **Example** of acceptable consistent interpretation:

❑ to change its case-law in accordance with the interpretation of the CJEU

National jurisdiction

- International jurisdiction may be established uniformly at EU level (Regulation 1215/2012, Regulation 2201/2003, Regulation 4/2009 etc)
- National jurisdiction – national law
- Rules of procedures not established uniformly at EU level – national law

procedural autonomy

Other rules of procedure

- **qualification of legal situations based on EU law** – national court based on national law
- **Compensation for damages in case of infringing EU law** - *Brasserie du Pêcheur*, C-46/93 and C-48/93, EU:C:1996:79 – national court based on national law
 - State liability cannot be conditioned by a proof of misuse of powers in the exercise of a public function or of the intention of the national authority to cause harm
 - National law cannot limit the damage eligible for compensation to the damage caused to certain individual goods, to the exclusion of profit forgone by private individuals

Procedural autonomy. Principle of equivalence

Whether EU law rights are subject to treatment *not less favourable* than that afforded to rights based on national law

- prescription/time-barring actions
- judicial charges
- rules of evidence, burden of proof
- rules on time-limits for appeals

two-step test of equivalence:

- **Is there a similar action available on the basis of domestic law?**
 - How? comparing the purpose, cause of action and 'essential characteristics' of the relevant actions (example: domestic small claims procedures vs. procedure based on Regulation (EC) No 861/2007)
- if YES
 - **are the rules applicable to an EU law action as favourable as those applicable to that domestic action?**

Application of EU law *ex officio*

an express national or EU legal provision that requires the national courts to apply a given EU law norm

If an EU law provision must be applied *ex officio* (consumer law) - then - obligation for the national courts

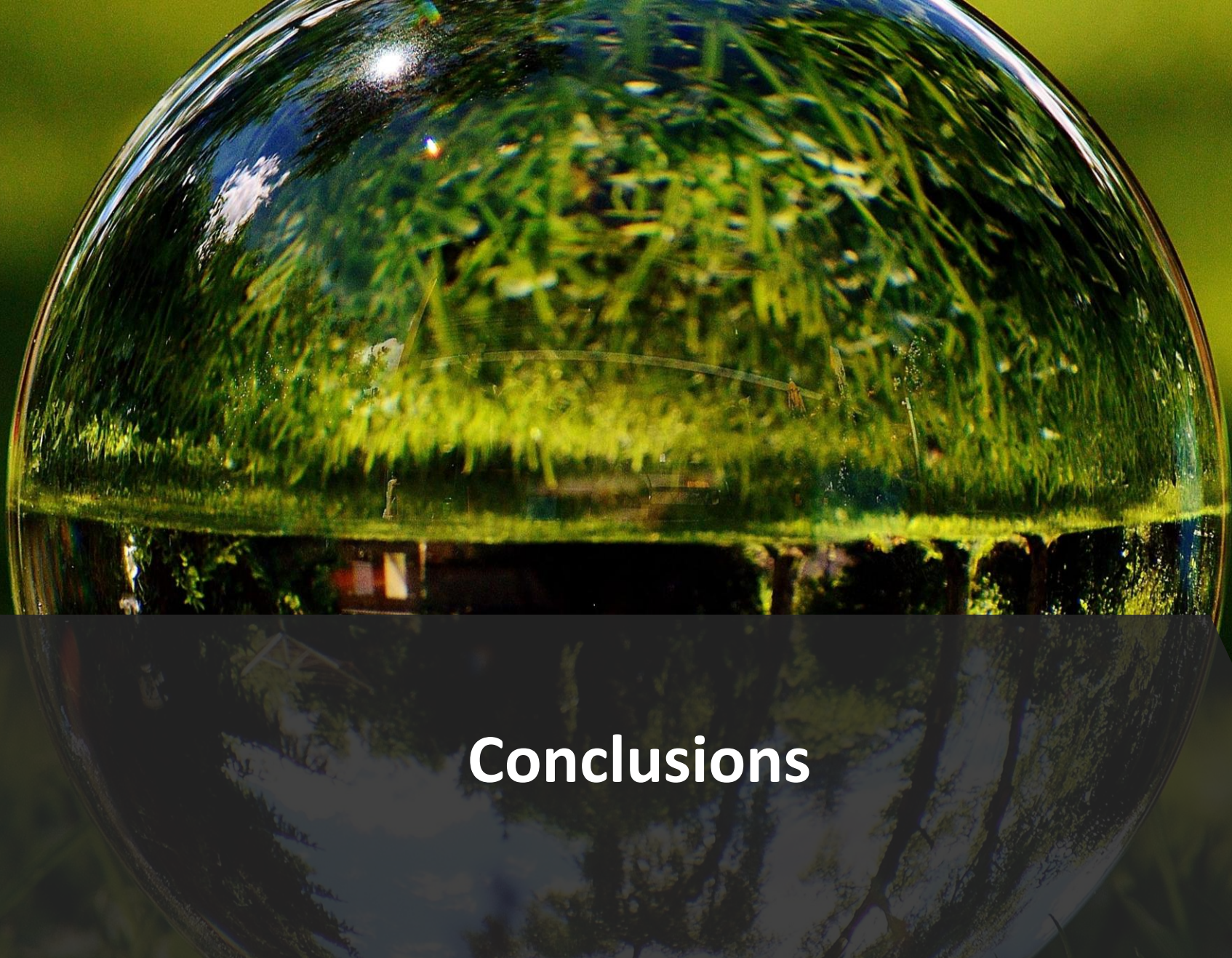
- If the EU law provision has a public policy character?
 - debatable
 - in competition law - no clear obligation

the principle of effectiveness requires it

- the principle of effectiveness does require that parties be given a genuine opportunity to raise a plea based on Community law before a national court. Otherwise, the national court must have the power to raise that plea of its own

the principle of equivalence requires it

Regarding the *iura novit curia* principle, a national court is *obliged* to rely on points of law (EU law) *ex officio*, where national civil permits that regarding national law



Conclusions

Thank you!

amelia.onisor@inm-
lex.ro

