

Prague Law Working Papers Series No III/2024 – New issue of Charles University in Prague Faculty of Law Research Papers

The new issue of Prague Law Faculty's open-source electronic periodical offers a set of working papers on various topics. The following provides a general outline of their content. Their full versions can be downloaded free of charge from <http://www.prf.cuni.cz>

Miroslav Jakab contributed a paper titled: **Behavioural Economics in EU Competition Law: A Brief Overview**. His contribution to PLWP examines the influence of behavioural economics on EU competition law as seen through the lens of public bodies and available academic literature. Behavioural economics highlight systematic biases such as the status quo bias or overconfidence, which can significantly impact consumer and business behaviour in some cases, thereby affecting market structures and competition dynamics. The research presented in his paper explores how these insights are applied in key areas of competition law enforcement, including market definition, the assessment of market power, merger control, the analysis of exclusionary practices, remedies, and sanctions. The author argues that empirical analysis is essential to properly account for behavioural biases in the application of competition law. While the benefits of integrating behavioural perspectives are clear, a cautious and context specific approach to applying behavioural findings is desirable, particularly when designing remedies and sanctions, to avoid adverse outcomes. This is also important in the area of merger review, where competition authorities have to account for behavioural biases materialising in the future. In such cases, one should pay special attention as to whether (1) the market conditions are prone to exhibit consumer biases and (2) the merged entity would be in a position to take unique advantage of such biases, and (3) evidence on the intent of the merging parties.

Václav Šmejkal called his contribution: **The EU Chips Act as a Challenge to Power-Sharing and Convergence within the European Union**. His paper is about the EU's new industrial policy and the EU Chips Act as its new and important instrument, that brings a number of new elements to the standard concept of the roles of the EU and Member States in promoting industrial development. The key role should henceforth be played not by Member States, their national priorities and money, but by the EU as a whole, represented primarily by the European Commission. The paper considers whether such a concept is in line with EU primary law and whether the EU Chips Act creates sufficient preconditions for the new EU industrial policy not to degenerate into the old competition over who will support the "national industrial champions" more and thus further divide the EU into centre and periphery. It concludes that while the innovative concept of the EU Chips Act strengthens the role of the Commission, the financial weakness of the EU's common budget still leaves strong levers in the hands of individual states. It will be up to the Commission, and in addition to the Commission, it will also depend on the activity and support of smaller and peripheral Member States, whether boosting the development of the chip industry will unite or divide the EU.

Laura Galloro and **Martina Guida** treated in their text the issue of **Legal Status of Hackers under International Humanitarian Law: The Case of Anonymous**. Nowadays, the authors argue, cyber operations characterize war scenarios, posing important challenges to international community. Considering the scarcity and the fragmented character of international law rules designed for cyberspace, it is easily comprehensible how difficult it turns out to apply the proper discipline to concrete actors and situations that develop in that context. The aim of this study is to determine the legal classification of a specific group of cyber actors, specifically a hacker group, under International Humanitarian Law (IHL). The focus will be on analysing the legal status of the Anonymous group in the context of the Ukrainian-Russia conflict. In addition to defining combatants under IHL, the initial section of the paper will examine whether Anonymous can be considered as such. Once ruled

out this possibility, the paper will investigate whether Anonymous can be categorized as civilians participating in hostilities, based on the International Committee of Red Cross (ICRC) Interpretive Guidance on Direct Participation in Hostilities under IHL and the Tallinn Manual 2.0. Assuming that Anonymous can be classified as such, the second part of the paper will explore the implications of this legal recognition focusing on the risks linked to the loss of protection granted to civilians by International Humanitarian Law.

The same authors, **Laura Galloro** and **Martina Guida**, have added a second text, a very topical one, dedicated to **The Limits of UN Security Council Action in Imposing Economic Sanctions under UN Charter and International Law: The Subtle Balance Between International Security and Human Rights Compliance**. The UN Security Council plays today a key role in the increasingly complex international relations scenario. This paper examines the limitations of the United Nations Security Council in implementing economic sanctions, focusing on the tension between such sanctions and international human rights law. First, it will be defined the notion of economic sanctions, as well as their applicability conditions. A critical aspect of this analysis involves the conflict between the imposition of economic sanctions and the potential violations of human rights, illustrated through a case study of the sanctions imposed on Iraq. The investigation will assess whether the limitations on human rights are rooted in the UN Charter and if human rights norms can be considered erga omnes obligations. Upholding the latter hypothesis, it will be conducted a legal analysis, employing the necessity and proportionality tests to evaluate when economic sanctions may breach human rights standards. This examination aims to highlight the delicate balance between maintaining international security and respecting human rights, advocating a more stringent framework governing Security Council action. By delving into these complex themes, the research seeks to shed light on a coherent legal approach that reconciles the imperatives of state security with the fundamental rights of individuals.

Václav Šmejkal*

* Associate Professor, JUDr. Václav Šmejkal, Ph.D., Faculty of Law, Charles University, Prague, Czech Republic and Škoda Auto University Research Center, Czech Republic. ORCID: 0000-0003-1403-9494.