

**Prague Law Working Papers Series No III/2019 – 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>

**Martin Hobza** titled his paper **ECJ Khorassani Case: (Re)Defining the Scope of MiFID II Regulated Distribution?** He argues that the scope of activities in financial markets which are regulated as distribution of financial instruments and services is to a significant degree determined by the contents of an investment service of reception and transmission of orders in relation to financial instruments in the meaning of MiFID II. The issue has been quite recently influenced by the European Court of Justice which stated in the judgement in *Khorassani* case that the relevant investment service does not include brokering with a view to concluding a contract covering portfolio management services. The paper thus examines possible impacts of the judgement on distribution scenarios utilizing brokering of framework contracts between clients and investment firms leading to purchase or sale of financial instruments. It aims on answering the following question: does such distribution scenario present provision of investment service of reception and transmission of orders in the meaning (re)defined by ECJ? The answer has crucial impact on the regulatory regime of the respective activities as well as related duties of the broker (distributor). In case the answer is positive, such brokering would be generally subject to rather demanding MiFID II rules. In case it is not, the brokering would fall out of scope of MiFID II.

**Martin Krčmář** focused his paper on **Personal Liability for Anticompetitive Conduct in the Context of the Trade Agreement between EU and Colombia, Peru and Ecuador**. His article concerns personal liability for anticompetitive conduct within the context of the Trade Agreement in question. Particularly, the purpose of the article is to provide an overview and a comparison of the regulatory standards in the affected jurisdictions. Despite certain efforts to further harmonize the rules which stipulate personal liability of individuals, the practices within the EU vary, and a single legislation which is applicable equally for all Member States has not been adopted. Unlike with the EU, the legislation of all three Andean signatories of the Trade Agreement, i.e. Colombia, Peru and Ecuador, allows for a specific sanction for anticompetitive conduct committed by the representatives of the companies concerned. Besides providing a description of the respective statutory rules, the author aims to provide specific examples of the decision-making practices adopted by the competition authorities which have focused on identifying the attribution of company representatives' conduct.

**Eliška Kllimentová** contributed a paper titled **Independent Regulatory Agency: Delegation of Powers**. She emphasizes that the existence of independent regulatory agencies – independent bodies which operate at arm's length from the government and which are not directly accountable to the voters or their elected representatives – is still the object of intense debate. Independent regulatory agencies emerge in democratic policies across the world. It is difficult to find *de lege ferenda* rationale for their existence in a democracy where public policy is supposed to be made by electorally accountable people and where public institutions are not usually endowed with a high degree of independence. Thanks to economic theories and principles this article reveals a justification of their existence and gives arguments for their creation. The instrumental rationality problem, the problem of time inconsistency and the credible commitment problem constitute a heavy burden for government in some areas. A delegation of regulatory powers in these areas from the government to an independent body represents a solution to all these problems. The knowledge gained from economic theories can be beneficial for comprehension of the functioning of independent authorities and for setting their institutional legal framework.

**Tomáš Richter** devoted his paper to the issue of **Parallel Reorganizations under the Recast European Insolvency Regulation – A Hypothetical Case Study**. His article aims to explore the implications of the repeal, through the recast European Insolvency Regulation 2015/848, of the rules in

Article 3(3) and Article 27 of the original EIR which required that secondary insolvency proceedings take the form of a liquidation (winding-up). The article's goal is to start to develop an understanding of what will – and what will not – be feasible within the new regulatory framework laid down for non-liquidation secondary proceedings under the Recast EIR. In doing so, the article analyses the new EU regime in the setting of a notional experiment – a hypothetical corporate debtor who wishes to reorganize in parallel proceedings in the Czech Republic, where it is incorporated and where its COMI is, and in the Slovak Republic, where it has its only establishment. The article therefore tests the key variables of parallel non-liquidations conducted under the Recast EIR not in the abstract but in the context of real-life rules on reorganizations contained in insolvency codes of Member State which have both adopted relatively modern provisions on reorganizations, broadly modelled on the U.S. Chapter 11 template. Based on the outcomes of the notional experiment, the article concludes that in principle, the Recast EIR provides EU debtors with a feasible cross-border platform to reorganize in more than one Member State, provided that the insolvency laws of the Member States involved show a reasonable degree of convergence.

Václav Šmejkal\*

---

\* Associate Professor JUDr. Václav Šmejkal, Ph.D., Charles University Law Faculty, Prague and ŠKODA AUTO University, Mladá Boleslav, Czech Republic