ECB Legal Research Programme 2019

Call for papers

The European Central Bank (ECB) is seeking applications from established scholars or promising early-career researchers for up to six legal research scholarships to be awarded in 2019. The Legal Research Programme (LRP) was launched in 2008 to foster analysis of areas of law relevant to the ECB's statutory tasks, and to establish closer contacts with scholars. The LRP scholarships will be awarded in two categories. The first category of applicants (the 'Junior Scholars') includes scholars who are doctoral candidates or obtained their doctoral degree no earlier than 1 January 2017. The second category of applicants (the 'Senior Scholars') includes all scholars whose academic qualifications do not meet the criteria for inclusion in the Junior Scholars category.

Each scholarship is endowed with a grant of EUR 5 000 (for Junior Scholars) or EUR 7 000 (for Senior Scholars), which is not compatible with any other fellowships or grants received from third parties in relation to the same research project, unless the ECB expressly consents to this.

RESEARCH PROJECTS. Applicants who are awarded a scholarship under the LRP (the 'Scholars') will be required to write a research paper during 2019 on one of the following research topics.

1) Extraterritorial sanctions, central banks and financial services

Recently, the United States has started to enforce a new set of sanctions against various countries and entities. Some of these sanctions have a limited US connection, applying to non-US financial institutions, which may be subject to restrictions on their access to the US dollar. The extraterritorial character of certain of these sanctions is controversial. In June 2018, the European Commission adopted an amendment to the Blocking Regulation (Council Regulation (EC) No 2271/96) to counteract the effects of the extraterritorial application of US sanctions on Iran. These developments present a strong interest for research both from a practical perspective, concerning the implementation of sanctions on the financial services sector and on the activity of central banks, and from a conceptual perspective, concerning the limits under public international law to the sanctioning of foreign entities and the status of global reserve currencies. In this context, important principles of US law, such as the presumption against extraterritoriality, also merit consideration.

2) The interpretative autonomy of the Court of Justice of the European Union in relation to Union law

The interpretative autonomy of the Court of Justice of the European Union (CJEU) in relation to Union law is a central theme in many of its recent judgments concerning the participation of Member States or of the Union in systems of adjudication, such as under the European Convention on Human Rights or investment arbitration, and the application of the 'acte clair' doctrine. The notion of interpretative autonomy is thus directed to adjudicators both outside and inside the Union. What are the legal arguments and the underlying considerations of the CJEU in developing its concept of autonomy? What are the limits and requirements for Union law to be used by non-Union adjudicators and what does the CJEU's close scrutiny of the 'acte clair' doctrine signify? Important developments from the

perspective of Union law result from the judgments of the Court of Justice in Case C-284/16 *Achmea* and Case C-416/17 *Commission* v *France*, which in effect shield the autonomy of the CJEU in the interpretation of Union law. A similar outcome is anticipated in Opinion 1/17 on the EU-Canada Comprehensive Economic and Trade Agreement (CETA). From the perspective of international law, the practice of international tribunals and their take on the case-law of the CJEU could also be analysed. This also raises the broader question of how the concept of interpretative autonomy impacts on the development of a rule-based international order, especially in current times.

3) The impact of the principle of proportionality on the ECB in the fields of banking supervision and monetary policy

The principle of proportionality is a general principle of Union law (now set out in Article 5(4) TEU), which applies to the ECB in the fields both of monetary policy and banking supervision. In the context of banking supervision, the General Court detailed some of the implications of this principle in its judgment in Case T-122/15 *Landeskreditbank Baden-Württemberg* v *ECB*. The principle of proportionality may also play an important role when assessing the interference of ECB supervisory decisions in the fundamental rights of individuals, e.g. banks or their management. In the case of monetary policy, the Court of Justice set out important clarifications on the application of the principle of proportionality in its judgment in Case C-62/14 *Gauweiler and Others* and C-493/17 *Weiss and Others*.

Research on this topic could include an analysis of the scope of review of the CJEU, also comparing the requirements following from the principle of proportionality in the field of banking supervision and monetary policy E.g. Is there greater scrutiny as regards supervisory decisions given the impact on fundamental rights? What aspects does the CJEU take into account when assessing the proportionality of ECB decisions and other legal acts?

4) Intergovernmental agreements in the field of economic governance and the banking union: benefits and risks for the integrity of Union law

Member States have increasingly made use of intergovernmental agreements to address various issues during and after the crisis. Further analysis is needed to explore the impact of this approach on Union law from a conceptual perspective. In particular, research needs to focus on the legal limits of what Member States can agree outside the Treaties, and how such agreements interact or overlap with the powers of the Union and its institutions and agencies, in light of the judgment of the Court of Justice in Case C-370/12 *Pringle*. A good case study would explore the Intergovernmental Agreement establishing the Single Resolution Fund. Here, a mixture of Union and international law was used, with the latter preferred for all the arrangements in respect of funding of bank resolution, due to the possible link to fiscal implications for Member States. However, the IGA has various consequences for Union law. For example, it sets the permanence of the Union legal framework for resolution as a condition for its use, thus intertwining the intergovernmental approach with the Union legislative process. A suitable text would illustrate the legal implications that such intergovernmental agreements

have created, together with the consequences for the development of the banking union and the Economic and Monetary Union, and in particular the level of influence enjoyed by Member States.

5) The transition from interbank offered rates to risk-free rates in the euro area and the issue of contract continuity

The euro area's critical benchmarks, the euro interbank offered rate, EURIBOR, and the euro overnight index average, EONIA, are required to be compliant with the Benchmarks Regulation (Regulation (EU) 2016/1011 of the European Parliament and of the Council) by 1 January 2020. However, it is uncertain whether current efforts to make EURIBOR compliant will succeed by that date, whilst EONIA in its present form is not compliant. Moreover, the ECB's euro short-term rate, ESTER, the successor risk-free rate (RFR) to EONIA, will only go live in October 2019 leaving market participants little time to develop term rates based on ESTER. Even if the deadline for compliance is extended, as is currently proposed, replacing EONIA by reference to ESTER (or an alternative compliant risk-free rate developed by the market) in existing contracts could lead to the risk of parties seeking to withdraw from the contract on the grounds that the new rate is a different benchmark to that agreed. This is particularly likely if the new rate is calculated on the basis of a significantly revised methodology which makes them financially much worse off. Given this background, research could survey the laws on contract frustration (or similar rights) and force majeure in jurisdictions such as Germany, France, Italy, Netherlands, Belgium and Spain in the context of the move to RFRs. A comparative assessment of the legal risks for each jurisdiction could also be provided.

6) Cybersecurity in the financial sector: a legal perspective

Strengthening cyber-resilience figures high on the policy agenda and is of critical relevance not least for the financial sector. Over recent years legislative bodies, regulators and standard setters have issued legislation and guidance on cybersecurity at Member State, Union and international level (in particular, the G7 'fundamental elements of cybersecurity for the financial sector', the CPMI-IOSCO guidance on cyber resilience for financial market infrastructures, and, at Union level, the NIS Directive (Directive (EU) 2016/1148 of the European Parliament and of the Council)). Both central banks, financial sector overseers and supervisors, also in their roles as catalysts and as market infrastructure operators, and intelligence, defence and law enforcement authorities have stepped up their activity with respect to cybersecurity. The development of this multi-level and partially decentralised regulatory framework, and the involvement of various actors of very different natures, fields of competence and geographical scope leads without a doubt to legal questions. Is the regulatory framework on cybersecurity for the financial sector really something new from a legal perspective or is it just 'old wine in new bottles'? What exactly is regulated? How many regulators are there? What are their responsibilities? Is there any regulatory overlap? What is the scope for mutual recognition, equivalence or substituted compliance?

APPLICANT CATEGORIES – RESEARCH GROUPS.

Junior Scholars: scholars who are doctoral candidates or obtained their doctoral degree no earlier than 1 January 2017.

Senior Scholars: scholars whose academic qualifications do not meet the criteria for inclusion in the Junior Scholars category.

Research Groups: applications may be also submitted by research groups, comprising a maximum of three scholars. Applications submitted by research groups will be assessed in the Senior Scholars category, unless all the members of the research group individually qualify as Junior Scholars.

None of the Scholars involved in a research paper may be in an employment relationship with the ECB.

SCHOLARSHIP DETAILS. The ECB will award up to six LRP scholarships for one or more of the six research topics listed above. The ECB aims to allocate at least two LRP scholarships to Junior Scholars. The ECB may decide not to award a scholarship for any of the above research topics, or for any category of applicants if, in its opinion, no application of a sufficient quality has been submitted for that research topic or by that category of applicants. The applications will be assessed by a committee composed of legal counsels within the ECB's Legal Services. Each selected Scholar will be required to prepare a high-quality, original research paper of a minimum of 12 000 words in length, excluding footnotes, which must meet, in the ECB's assessment, the overall standard expected of papers published in internationally renowned and peer-reviewed academic journals. Scholars may be invited to the ECB to present their research, even after the completion of the research programme and payment of the grant. They will be responsible for their own transportation arrangements and costs, but will be reimbursed for such costs under the ECB Terms of Reference for reimbursement of travel expenses. The Scholarship will be paid upon completion by the selected Scholar of all five phases of the Legal Research Programme, ending with acceptance for publication of the research paper in an internationally renowned and peer-reviewed academic journal within the required deadline.

PHASE 1 - SUBMISSION OF THE APPLICATION. Applications must include the applicant's curriculum vitae and a proposal for one of the research topics described above. Applications submitted for the Junior Scholars category must include an official statement confirming the doctoral candidate status of the applicant or the date on which the doctoral degree was obtained The proposal must consist of: (i) a statement of issues to be addressed; (ii) the proposed methodology; (iii) an analysis of the originality and significance of the proposed research paper in view of the existing academic literature; and (iv) a discussion of the feasibility for completion of the research project by November 2019. Proposals should be no longer than 1 500 words (not including charts, graphs, or bibliography). Applications should be sent by email to: LegalResearchProgramme@ecb.europa.eu no later than 15 February 2019. The ECB will notify applicants of the outcome of their proposal by 30 March 2019.

PHASE 2 - PRESENTATION OF THE RESEARCH PROPOSAL. The selected Scholars will be invited to a seminar to be held at the ECB in spring 2019, to present their proposal against the background of their previous research in the relevant field. This seminar is intended to establish a productive

relationship between the ECB's Legal Services and the Scholars, and to provide Scholars with constructive feedback on their research subject from practitioners in the field.

PHASE 3 - SUBMISSION OF THE FIRST DRAFT. The Scholar must submit a first draft of his or her research paper to the ECB by 15 July 2019, and must immediately inform the ECB if there is a risk of not meeting that deadline. The ECB will review and referee the research paper by October 2019.

PHASE 4 - SUBMISSION OF THE SECOND DRAFT. The Scholar is expected to take the remarks and suggestions of the ECB's review into consideration and will complete the research paper by 30 November 2019.

PHASE 5 - COMPLETION OF THE FINAL DRAFT AND PUBLICATION. Scholars are expected to seek publication of the research paper in a well-recognised, internationally renowned and peer-reviewed academic journal. The paper should be accepted for publication by the journal by 30 September 2020 at the latest. In addition, at an earlier stage, the research paper may be considered for publication in the ECB's Legal Working Paper Series.

Following completion of all five phases above, including acceptance of the research paper for publication in an internationally renowned and peer-reviewed academic journal, Scholars will receive the final honorarium.