

## PhD Workshop 2025 of the Centre for European Law

### Call for papers

#### The EU as “intrinsically a security project”? EU Law and Security

*We Europeans must be on guard. We must refocus our attention on the security dimension of everything we do. We must think about our Union as intrinsically a security project<sup>1</sup>.*

Ursula von der Leyen intends to focus her second term as Commission President on the cross-cutting theme of security. For its part, Poland has focused its presidency of the Council of the EU on seven dimensions, including “defense and security”, “security and freedom of business”, and “health security”. The Polish Minister for European Affairs concluded that the motto of the Polish Presidency would be “Security, Europe!”<sup>2</sup>. The omnipresence of the term “security” and its lexical field in national and European political discourse (sometimes referred to as “securitisation”) raises questions about its conceptual and legal contours. The aim of this workshop is to understand the implications of security throughout the Union’s legal order, in order to gain a clearer idea of how the law frames and responds to the inflation of security discourses in Europe.

#### **First focus: Notion and categories**

The Community Treaties have referred to public security from the outset. The term ‘security’ appears in EU law in Article 36 of the Treaty on the Functioning of the European Union (formerly Article 36 of the EEC Treaty), which provides that ‘public security’ may justify imports or exports restrictions between Member States. Article 45 of the same Treaty (formerly Article 48 of the EEC Treaty) states that the freedom of movement of workers may be restricted by Member States on grounds of “public policy, public security or public health”. Security thus takes the form of a derogation from the application of EU law, which Member States can invoke before the Court of Justice, which interpreted this notion several times. However, the Treaties do not provide a definition of “public security”, and it is up to the Member States invoking it and the EU institutions to outline it<sup>3</sup>. In addition to the reference to “public security”, the TEU and TFEU contain numerous references to the term “security”. Beyond the “Common foreign and security policy” and the “Area of freedom, security and justice”, the Treaties refer in particular to “national security”, which, according to Article 4(2) TEU, is linked to the essential State functions that the Union shall respect, as well as to a number of areas in which the Union “ensures security” or “contributes to security” (e.g. public health, consumer protection, the availability of supplies in the context of the CAP and the energy sector). This proliferation of references to “security” raises the question of its definition in EU law, and of how such a definition may vary over time and from one issue to another. If there are different categories or even degrees of security, how are they delimited and related? What does it mean in law to extend the scope of security beyond physical integrity? The legal value and nature of security can also be explored: one may wonder if it is a derogation/exception, a policy, a strategy, an objective, or a (possibly fundamental) right?

<sup>1</sup> Keynote speech by President von der Leyen at the GLOBSEC Forum 2024, available at: [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_24\\_4481](https://ec.europa.eu/commission/presscorner/detail/en/speech_24_4481).

<sup>2</sup> See in particular the priorities of the Polish Presidency of the Council, available at: <https://polish-presidency.consilium.europa.eu/en/programme/priorities/>.

<sup>3</sup> See MARTUCCI F., « La juridiction de l’Union et la sécurité dans un système constitutionnellement intégré », in POTVIN-SOLIS L. (dir.), *L’Union européenne et les territoires*, 1<sup>e</sup> édition, Bruxelles, Bruylant, 2022, p. 277-298.

## **Second focus: Institutions and competences**

In the Treaties, two levels of security may be observed: that of the Member States (national security, public security) and that of the Union as such, notably through the CFSP and AFSJ. However, the dividing line between the two is becoming increasingly blurred. While Article 4(2) of the TEU states that “national security remains the sole responsibility of each Member State”, the Union appears to be increasingly addressing security issues beyond the competences assigned to it. At the same time, Member States are increasingly relying on the EU to make provisions for what they consider to be security issues.

For example, with the European Commission proposal of a new Pact on migration and asylum in 2020, the emphasis was placed on the issue of security. This led to the adoption of several regulations emphasising the prevention of “any threat to the Member States’ internal security”<sup>4</sup>, or the introduction of exceptions to the right of asylum seekers to remain on EU territory in the event of “danger to national security”<sup>5</sup>. The regulation on asylum and migration management<sup>6</sup>, introduced by the Pact, is currently being challenged by an action for annulment brought by Members of the French National Assembly (Rassemblement National). The arguments put forward, based on a breach of the principle of subsidiarity, essentially concern the relocation mechanism, which would prevent Member States from carrying out their essential tasks within the meaning of Article 4(2) TEU, in particular maintaining public order and safeguarding national security<sup>7</sup>.

The regulation on artificial intelligence<sup>8</sup> is another meaningful example of this trend. Security is addressed not only in terms of positive effects - AI is a tool that can be used for security purposes - but also in terms of negative effects. Indeed, a “risk” approach has been adopted to ensure security in the face of certain consequences of AI, providing for a gradation of supervision of AI according to its classification on a risk scale. In other areas, recourse to the notion of “security” has served as a palliative in the face of the Union’s lack of competence, or the inadequacies of such competence<sup>9</sup>.

Is the division of competences between the EU and the Member States becoming increasingly blurred in the field of security? How do the principles of conferral and exercise of competences (subsidiarity and proportionality) work in the field of security? Are we witnessing the emergence of new actors responsible for security, particularly in the digital field<sup>10</sup>? If there indeed is an uncertainty about who is responsible for ensuring security, then what are the implications in terms of sovereignty?

## **Third focus: Judicial review and proportionality**

The growing role of “security” in the development and implementation of EU law necessarily involves some kind of balance with the fundamental rights protected by the EU. In this respect, the *Quadrature du Net*<sup>11</sup> saga illustrates the role of the Court of Justice as an arbitrator between the Member States invocation of “serious threats to national security” and respect for private and family life as well as the protection of

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<sup>4</sup> Recital 3 of Regulation 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders.

<sup>5</sup> Recital 25 of Regulation 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

<sup>6</sup> Regulation 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management.

<sup>7</sup> Case C-553/24, brought before the CJEU on August 14, 2024, *Assemblée nationale de la République française v. European Parliament and Council*.

<sup>8</sup> Regulation 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence.

<sup>9</sup> M. Blanquet et N. de Grove-Valdeyron explain this phenomenon in the field of public health : BLANQUET M. et DE GROVE-VALDEYRON N., « La sécurité, facteur de développement d'une politique de santé publique : l'exemple de l'Union européenne », in AFROUKH M., MAUBERNARD C., VIAL C., *La sécurité : mutations et incertitudes*, Bayonne, Institut Universitaire Varenne, 2019, 232 p.

<sup>10</sup> The DSA regulation grants major digital platforms a role in content moderation in order to guarantee the security of their service (Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services).

<sup>11</sup> See in particular case C-511/18 of the CJEU, October 6, 2020, *La Quadrature du Net*, followed by the case n°393099 of the French CE, April 21, 2021, *French Data Network*; as well as the case C-470/21 of the CJEU, April 30, 2024, *La Quadrature du Net*.

personal data. So how does the Court of Justice reconcile fundamental rights and security when they compete with each other? And how is the Court's proportionality test received by national courts?

Another form of arbitration can be observed in the field of the CFSP, where the Court of Justice has gradually extended its jurisdiction, in particular by drawing a distinction between acts directly linked to the political or strategic choices made by the EU institutions, *i.e.* choices directly dictated by a security and defence imperative, and acts not directly linked to it<sup>12</sup>. How does the Court of Justice reconcile the imperatives of the CFSP with effective legal protection? Is there a right to security in EU law? What comparisons can be made with the European Convention on Human Rights?

### **Short indicative bibliography**

- AFROUKH M., MAUBERNARD C., VIAL C., *La sécurité : mutations et incertitudes*, Bayonne, Institut Universitaire Varenne, 2019, 232 p.
- BAKARDJIEVA ENGELBREKT A., MICHALSKI A., NILSSON N. *et al.*, *The European Union: facing the challenge of multiple security threats*, Cheltenham, Edward Elgar Publishing, 2018, 247 p.
- BALZACQ T., *Téories de la sécurité. Les approches critiques*, Paris, Presses de Sciences Po, 2016, 508 p. (sur Cairn).
- FLAESCH-MOUGIN C. (dir.), *Union européenne et sécurité : aspects internes et externes*, Bruxelles, Bruylant, 2009, 442 p.
- LUCARELLI S., SPERLING J. et WEBBER M., *Collective securitisation and security governance in the European Union*, London New York, Routledge, Taylor & Francis Group, 2020, 219 p.
- MARTUCCI F. , « La juridiction de l'Union et la sécurité dans un système constitutionnellement intégré », in POTVIN-SOLIS L. (dir.), *L'Union européenne et les territoires*, 1e édition, Bruxelles, Bruylant, 2022, p. 277-298
- NGAMPIO U. (Dir.), *La sécurité en droit public*, Bayonne : Institut universitaire Varenne, 2018, 302 p.
- PIROZZI Nicoletta, *EU crisis management after Lisbon: a new model to address security challenges in the 21st century?*, Cambridge, Intersentia, 2015, 192 p.
- “The passion for security in European societies”, Editorial Comments, *Common Market Law Review*, n° 61, 2024, p. 283-296.

### **Practical aspects**

The PhD Workshop will take place on Thursday the 5th of June 2025 in the amphitheatre of the Centre for European Law of Paris-Panthéon-Assas University.

The call for papers is open to all PhD students or DPhil coming from both French and foreign universities. Papers in French and English are welcome. In addition to those relating to EU law, papers will be accepted from a variety of fields, including public law, private law, political science, philosophy and history. Papers written by several authors, including those in association with professors, are also welcome. Papers will be published in the *Annuaire de droit de l'Union européenne* (online version on Cairn).

Interested parties are invited to submit a proposal for a paper of no more than one page, together with a curriculum vitae, to [cdeateliendoctoral@gmail.com](mailto:cdeateliendoctoral@gmail.com) by Monday the 31st of March 2025.

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<sup>12</sup> See joined cases C-29/22 P and C-44/22 P of the CJEU, September 10, 2024, *KS and KD v. Council and others*.