

EUROPEAN ECONOMIC REGULATION LAW

NETWORKS LAW THROUGH THE PERSPECTIVE OF EU STRATEGIC AUTONOMY

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I - Overview of the topic

The European Union has taken, and continues to take, significant measures aiming at opening up to competition network-based sectors. The economic activities covered by such networks are key components of social life and EU economy: transports, infrastructure (ports, airports, motorways, and energy infrastructure), electricity, gas, digital networks.

By opening up those sectors to greater competition, EU law did substantially change the rules applicable to such activities. The understanding of these rules needs a crosscutting approach, combining internal market law, EU competition law, the legal regime of core economic freedoms,

Moreover, recent major events – such as the pandemic, the decrease of multilateralism and the conflict in Ukraine – has fostered new legal orientations for the functioning and the regulation of network markets. New tendencies are underway, like a greater focus on EU independency, and a deep insistence on EU strategic autonomy with the development of new tools of financing (EU green deal, RePoWer action plan). The aim of this course is to combine the study of the various regulated markets in Europe with the growing imperatives linked to the Union's strategic autonomy.

II – General bibliography

The course is supported by a handout (see annex). Students can also refer to the following readings – easy access can be used through the database “Stradalex” (on line: https://athena.upec.fr/discovery/openurl?institution=33BUCRET_INST&vid=33BUCRET_INST:upec&vid=33BUCRET_INST:upec&rft.mms_id=997644224404611&url_ctx_val=&isServicesPage=true&url_ctx_fmt=null)

P. Corruble, *EU competition law applicable to liner shipping and seaports*, Bruylant, coll. Droit de la concurrence

M. Karpenschiff, *Manuel de droit européen des aides d'Etat*, 4ème ed., Bruylant, coll. Droit de la concurrence

L. Vogel, *European Competition Law*, Bruylant, 2020 (on line stradalex)

S. de La Rosa, *Droit européen de la commande publique*, Bruylant, coll. Manuel, 2021

S. de La Rosa (dir.), *Principes des contrats publics en Europe*, Bruylant, coll. Administratif Law, 2022

Useful reviews : Concurrences, Europe (Lexis Nexis), Common Market Law, Cahiers de droit européen (Stradalex), Revue des affaires Européennes (Stradalex), EU law live (en ligne : <https://eulawlive.com/>).

III – Syllabus

CHAPTER 1 - OVERALL PRESENTATION OF NETWORK ACTIVITIES, LEGAL FRAMEWORK AND CURRENT ISSUES (slide 1)

- **Learning objectives**

- How to define a network industry: existence of a general interest (art. 106), natural monopolies, economy of scale
- How to define regulation in this context: seek of equilibrium under imperfect competition
- Scope of network regulation in EU law: communications, gas, electricity, rail, road, air, postal services
- Principles underpinning regulated markets: Unbundling of upstream and downstream operations, Non-discriminatory third party access to the network, setting up of regulatory authorities, recognition of universal service
- New issues of EU strategic autonomy

Section 1 – Network activities and services of general economic interest (SGEI) - Introduction

Art. 106 TFUE

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

Section 2 – A new legal landscape for network activities

Electricity & Gas : Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas

Telecommunication: Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)

Train / transport : Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure

Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS REPowerEU Plan, COM 2022 230 final

Règlement (UE) 2021/1119 établissant le cadre requis pour parvenir à la neutralité climatique et modifiant les règlements (CE) n° 401/2009 et (UE) 2018/1999 («loi européenne sur le climat»)

Section 3 – General principles underlying network activities

Section 4 - Issues of EU strategic autonomy and Green Deal

Communication 2019 on Green Deal

Strategic autonomy

Section 4 – Case study / interplay of rules : case ANODE (CJ, 7 september 2016, Association nationale des opérateurs détaillants en énergie (ANODE), aff. C-121/15)

CHAPTER 2 - NETWORK INDUSTRIES WITHIN THE FRAMEWORK AND EU ECONOMIC LAW (SLIDE 2)

Section 1 – Articulation of network industries and competition law

A – Applicability of EU law : concept of undertaking / geographical scope

B – Abuse of dominant position

C – Trust

Section 2 – Articulation of network industries and EU law public procurement

§1 – The core principles of public procurement: Telaustria case

§2 – The scope of the harmonized directives

CHAPTER 3 - ARTICULATION BETWEEN NETWORK ACTIVITIES AND EU SECTORAL POLICIES (SLIDE 3)

Section 1 – Energy policy

§1 – Legal base and principles : art. 194 TFEU

Article [194](#) of the Treaty on the Functioning of the European Union introduces a specific legal basis for the field of energy based on shared competences between the EU and the EU [Member States](#), leading them towards a common energy policy

§2 – Main dimensions

§3 – Current issues of strategic autonomy

COM(2022) 230 final, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, REPowerEU Plan

Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage

Specific tool of financing - Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund

Section 2 – Transport policy

§1 – Legal base : art. 90 and f. TFEU

§2 – Articulation with internal market

§3 – Current issues in the context of green deal

Section 3 – Network policy

§1 – Legal base : art. 170 TFEU

§ 2 – Legal Issues for financing and determination

CHAPTER 4 - CURRENT TRANSFORMATIONS AND ON GOING PROCESS OF LIBERALIZATION OF TRANSPORT - THE CASE OF RAIL (SLIDE 4)

Section 1 – Overview of the evolution of the legislative framework

§1 – Succession of packages of directives

§ 2 – Distinction between open access to network and PSO agreements

Section 2 – Current legal issues of the opening up to competition of railway activity

CHAPTER 5 - NEW TOOLS OF EU FUNDING AND THE EVOLUTION OF EU STATE AID FOR NETWORK INDUSTRIES (SLIDE 5)

Section 1 – General recalling of state aid framework

Section 2 – Use of derogatory regimes for network and SGEI: Altmark (compensation), SGEI framework, de minimis

Section 3 – Exemption mechanism

Section 4 – New issues of funding through EU green deal / Just Transition Fund