FOREWORD

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I am honoured to introduce this 2024 edition of the *THEMIS Annual Journal*. Every year, the Journal follows the *THEMIS Competition*, which the European Judicial Training Network (EJTN) has organized since 2010.[1] That prestigious competition offers future or recently appointed judges or prosecutors from the Member States and third countries that are candidates for EU membership[2] a platform enabling them to perfect their practical knowledge of EU law and the European Convention of Human Rights (ECHR) and their communication skills. The participating teams, assisted by experienced tutors, increase their knowledge of topics of common interest in European law, especially in the areas of criminal and civil procedure, family law and administrative law. The competition stimulates critical thinking on EU law instruments governing these areas, including difficulties that may arise concerning their interpretation and correct application in national legal systems. Most cases and topics are also designed in such a way as to encourage participants to reflect on how these instruments fit together with national rules, taking into account the complexity of the multi-level system of fundamental rights protection in the EU.

The benefits for participants go far beyond enhanced 'technical' expertise in EU law. The THEMIS Competition, which forms part of the EJTN's 'initial training' activities, spurs the development of a common judicial culture in the EU. A clear illustration is the fact that, every year, one semi-final is dedicated to 'judicial ethics and professional conduct', whereas the grand final addresses judicial protection in the European Union.[3] The EJTN should be commended for offering future judges or prosecutors from all over Europe an opportunity to engage in high-level discussions on these topics. A clear connection can be made in this respect between the THEMIS Competition and the mission conferred upon the Court of Justice by the Treaties, which is to ensure that 'in the interpretation and application of the Treaties the law is observed'.[4] That mission relates to the very *raison d'être* of EU law which, as the Court already explained in 1963,[5] is to create individual rights that are directly enforceable before national courts and for which

* All opinions expressed are personal to the author.

1 The competition was, however, created in 2006, on a joint initiative from the Portuguese Centre for Judicial Studies (CEJ) and the National Institute of Magistracy in Romania (NIM).

2 Participation to the competition is open to judicial trainees originating from the EJTN's members and observers.

3 According to the THEMIS Competition Rules published on the EJTN's website, that covers, in particular, the 'right to an effective remedy' and the 'right to a fair and public hearing before an independent and impartial tribunal'.

4 Art. 19(1), first subparagraph, TEU.

5 CJEU, *van Gend en Loos*, judgment of 5 February 1963 (EU:C:1963:1), 26/62.

effective remedies must therefore exist.[6] The Court cannot fulfil that 'constitutional' mission without the assistance of national courts, which are primarily responsible for ensuring that all EU citizens effectively enjoy the rights conferred upon them by EU law. That explains why the Court described the preliminary ruling procedure as the 'keystone' of the EU judicial system,[7] and, consequently, as an essential condition for upholding the EU rule of law.[8] It is crucial for future judges and prosecutors in the Member States to understand the seminal role they will play in upholding that value during their judicial careers.[9] That responsibility has 'mechanically' increased with the unprecedented expansion of EU law into a wider range of areas such as environmental protection, asylum and migration, data protection, and cross-border judicial cooperation in criminal, civil and commercial matters. In a unique atmosphere combining professionalism, fair play and good humour, the THEMIS Competition fosters mutual trust between participants beyond the differences in legal cultures and systems. It thus promotes the participants' awareness of belonging to the same judicial community. In that sense, the competition contributes in real time to the consolidation of the Area of Freedom, Security and Justice, which is one of the main objectives of the European Union.[10]

This edition of the *THEMIS Annual Journal* contains twelve contributions submitted for the semi-finals of the 2024 competition. They cover very different topics which all raise current challenges in the European legal space, such as the admissibility of evidence and respect for fundamental rights in the context of European investigation orders, the use of non-fungible tokens for money-laundering, the use of artificial intelligence for facial recognition in the context of law enforcement, the effectiveness of EU law in the context of international sports arbitration, or the use of social media by members of the judiciary. That 'sample' of legal thinking on issues of common interest is very useful. It reflects how young judicial professionals tackle those legal issues and balance the various interests and legal instruments or concepts at stake. It also serves as a model for all judicial trainees from the EU, stimulating their interest in European law, their capacity to develop legal reasoning, ensuring compliance with both EU law and the ECHR, and more generally their taste for excellence.

It follows from all the foregoing that the true winner of the THEMIS Competition is the trust which European citizens place in our justice systems. The EJTN has perfectly understood the importance of initial training in that endeavour, in close partnership with the Court of Justice.[11]

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6 K. Lenaerts, J.A. Gutierrez-Fons and S. Adam, 'Exploring the Autonomy of the European Union Legal order', *ZaöRV* (2021/1), at 75.
7 CJEU, *Accession of the European Union to the ECHR* (EU:C:2014:2454), Opinion 2/13 of 18 December 2014, at para. 176, and Case C351/22, *Neves 77 Solutions* (EU:C:2024:723), judgment of 10 September 2024, at para. 52.
8 CJEU, case C-64/16, *Associação Sindical dos Juízes Portugueses* (EU:C:2018:117), judgment of 27 February 2018.
9 See Art. 2 TEU.
10 Art. 3(2) TEU.
11 In a *Statement* published in 2023, the Court of Justice expressed its commitment to further strengthen cooperation with the EJTN ['Supporting the European Judicial Training Network (EJTN) to shape a sustainable European judicial culture', Panorama 2023, available on the website of the Court of Justice].

FOREWORD

THEMIS EDITORIAL COMMITTEE

We are delighted to present the 2024 issue of the *THEMIS Annual Journal*, marking the sixth year of this publication highlighting the European Judicial Training Network's (EJTN) renowned THEMIS Competition. This unique platform brings together young magistrates from across the European Union, offering them an opportunity to test their knowledge of European law while sharing innovative ideas for its future development. Each year, the competition serves as a forum for exploring contemporary legal issues either of a cross-border nature or of common interest to most Member States, for connecting them with broader European principles and for gaining new judicial skills and perspectives. The THEMIS Competition plays a vital role in training future judges and prosecutors, in particular by enhancing their understanding of EU law, developing practical skills and nurturing a judicial mindset grounded in European values.

Since it became an official EJTN activity in 2010, the competition has continuously evolved to meet the changing needs of new generations of magistrates.[1] The four semi-finals deal every year with various topics of criminal law, administrative law, civil law and judicial ethics/professional conduct. They involve up to 11 teams each, placed under the guidance of tutors. Jurors (European judges, prosecutors and scholars) select the top eight teams that will take part in the Grand Final. The latter consists of two parts, both of which relate to issues of judicial protection in the EU: an essay based on a common case for all teams and four series of pleadings in fictitious cases before a moot court composed of the jury members of the Grand Final. This process allows nearly 200 participants annually to deepen their knowledge of EU law and create new connections with fellow judicial trainees from across Europe.

This 2024 issue of the *Annual Journal* marks an important step in its history, announcing a major evolution in both content and format. Until the previous edition, the *Annual Journal* was an 'internal' publication of the EJTN. Although hard copies were distributed to all judicial training institutions within the EJTN, and an online version was available on the Network's website, dissemination among legal academics and practitioners was relatively limited. During the first half of 2025, the taskforce in charge of rethinking the THEMIS Competition[2] decided that time had come to increase the visibility of the best material produced by the participating teams. That required reshuffling the *Annual Journal* into a fully fledged academic publication

1 From 2006 to 2009, the competition was organized by Portugal's Centre for Judicial Studies (CEJ) and Romania's National Institute of Magistracy (NIM).

2 Composed of Ingrid Derveaux (EJTN's Secretary General), Octavia Spineanu-Matei (Judge at the Court of Justice of the European Union), Emmanuelle Laudic-Baron (*École Nationale de la Magistrature* – France), Amelia Onisor (*National Institute of Magistracy* – Romania), Umit Oral (*Institut de Formation Judiciaire/ Instituut voor Gerechtelijke Opleiding* – Belgium), and Melanie Rems (*Federal Office of Justice* – Germany).

referencing the main legal databases in Europe. We are grateful to *Anthemis* for their enthusiasm and dedication in accompanying the EJTN and the newly established editorial committee in that endeavour.

Our editorial promise is quite simple: to publish studies combining a doctrinal, sometimes comparative, dimension with elements of judicial practice, written by magistrates who are at the heart of the issues of justice and the rule of law as founding values of the Union and part of our common constitutional legacy.

Advancing this promise aligns with EJTN's core mission, which is to foster a common European judicial culture built up on mutual trust. On the one hand, it is such as to encourage wider participation in the competition in the future by teams originating from more Member States than in the past. It will also stimulate even more excellence among participants, as, from now on, there is a prospect for them to have their work better promoted through an international publication. On the other hand, we believe that the *Annual Journal* can truly become an instrument of dialogue among magistrates in Europe, as it offers a unique mosaic of how young magistrates in different justice systems on the continent approach legal issues of common interest. That mosaic also represents useful material to other legal professionals, such as lawyers or academics, better equipping them for future litigation or research.

This change in format and distribution must be accompanied by reflection on how the content of the *Annual Journal* might evolve. In the past, only the best papers submitted in the semi-finals were published. Although the current issue is still largely based on semi-final papers, we intend to better promote in the future the materials produced by the teams that performed best in the Grand Final. Such an evolution is, indeed, in line with the fact that the Journal has its roots in a competition. Without prejudice to other evolutions in the future, this 2024 issue has already innovated on this point with a *testimonial by the winners of the 2024 edition* of the competition on their experiment as participants.

Turning now to the 'substantive' contributions in the area of *criminal law*, a first paper by a German team examines the recent difficulties that arose concerning *cross-border judicial cooperation in the context of EncroChat Investigations*.[3] The authors address in particular legal issues arising in the context of European Investigation Orders (EIOs) which aimed to allow evidence collected in one Member State to be used in another Member State. One of those issues concerns the rights of the defence in Articles 47 (right to fair trial) and 48 (presumption of innocence) of the Charter of Fundamental Rights of the EU (hereafter, 'the Charter'). The paper explores the implications of the landmark *EncroChat* judgment of the Court of Justice,[4] in which the latter has clarified which national law applies to ascertaining the lawfulness of an EIO and how EU law protects the fundamental rights of the individuals subject to the collection of evidence through the interception of telecommunications. The authors formulate critical views about that judgment and a decision of the German Federal Court. They argue in particular that their interpretation of EU law, whilst promoting mutual trust and the effectiveness of judicial cooperation in criminal matters, involves undue interference

3 *EncroChat* has been offering seemingly tap-proof smartphones (so-called 'crypto phones') among customers in 140 countries since 2015. It is common ground that those smartphones are regularly used by criminal offenders, in order to conceal their offences and make investigations more difficult.

4 Case C-670/22, Judgment of 30 April 2024, *M.N. (EncroChat)* (EU:C:2024:372).

with fundamental rights envisaged from the perspective of German constitutional law, and entails a risk of circumvention of national rules governing the admissibility of evidence in criminal investigations. In order to overcome those concerns, they advocate for the adoption of EU rules governing the admissibility of evidence gathered in another Member State. In the second paper, a Hungarian team discusses the *Proposal for a common European Regulation on the transfer of criminal proceedings*.[5] After explaining the problems caused by regulatory fragmentation in the EU in the investigation phase, the authors offer critical views on the specific EU instrument governing transfers recently proposed by the European Commission.[6] Whilst recognizing that such a legal instrument would fill in an important gap in the area of judicial cooperation in criminal matters within the EU, they argue that some important issues shall have to be tackled to reconcile it with fundamental rights, including the right to an effective judicial remedy guaranteed in Article 47 of the Charter. The third paper in the area of criminal law, authored by a Portuguese team, explores the challenges raised by law enforcement authorities by *money laundering through the use of non-fungible tokens (NFTs)*.[7] The authors emphasize that money laundering cases using NFTs have multiplied over the past few years, as NFTs provide money launderers with new opportunities to blur the origins of illicit gains. They argue that the existing EU regulatory framework on money-laundering and crypto-assets might not adequately address that fast-growing phenomenon. In order to better tackle the cross-border nature of most infringements, they suggest, in particular, better coordination between the authorities in charge of financial supervision and the fight against money laundering in the Member States with EU bodies such as the EPPO. The positive role that judicial authorities can play in enforcing existing legislation and investigating money laundering cases involving NFTs is also highlighted.

Another series of papers deals with contemporary issues arising in the area of administrative law. A first paper by a French team, at the intersection between administrative and criminal law, examines the *use of retrospective facial recognition by law enforcement authorities in Europe*. The authors describe the lack of transparency in the use of this technology by Member States, its heterogeneous development and the absence of dedicated legal frameworks at domestic level. The conjunction of these factors generates threats for the rights to private life and data protection, due in particular to the large databases of facial imagery linked to civil identity of individuals and the mass collection of facial image evidence that retrospective facial recognition requires. They argue that existing European instruments are too broad to address the use of that investigating tool properly and therefore advocate for a specific instrument harmonizing the legal regimes governing it in the Member States. The second paper, prepared by a Greek team, explores *the use of AI by tax administrations* aiming to boost their efficiency. In their paper, the authors examine the balance to be struck between such efficiency gains and respect due to the general principles of EU administrative law, such as the right to be heard, to access one's file and to be given reasons, the principle of equality and the right not to be

5 This proposal has since been adopted. See Regulation (EU) 2024/3011 of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters (*OJ* 2024 L 2024/3011).

6 COM/2023/185 final.

7 The authors define an NFT as 'a unique code that represents a digital and physical good, like a digital trading card, which uses blockchain technology to certify the authenticity and ownership of that specific and unique digital object'.

discriminated, as well as the principle of proportionality. In accordance with the rules enshrined in the recent AI act adopted by the EU,[8] they underscore the responsibility of tax authorities to ensure transparency, accountability as well as human agency and oversight in order to mitigate the risks that AI creates when used in public administration. In a third and last paper in the area of administrative law, a Hungarian team examines the *WhatsApp* case before EU Courts, in which key issues arise concerning admissibility of a direct action initiated against binding decisions of the European Data Protection Board (EDPB).[9] The authors express critical views on the position of the General Court, which considered in essence, at first instance, that the decision at issue was preparatory in nature as it was addressed to a national data protection authority responsible for adopting a final decision and that the decision was therefore not of direct concern to the applicant. They argue in particular that references for a preliminary ruling on the validity of such decisions – in the context of challenges against decisions by national data protection bodies – do not offer the same level of effectiveness as a direct action before EU courts as they do not allow the Court of Justice to examine issues of fact pending before national courts. It remains to be seen whether the Court of Justice will confirm on appeal the General Court's strict position.

In the area of *civil law*, a first contribution by a French team deals with the European Commission's 2022 *proposal for a Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood*.[10] After examining EU legal instruments in force dealing with private international law issues connected to family matters, the paper offers a critical and contextualized analysis of the balance that the proposal intends to strike. They shed light on that respect of the proposed rules aimed to promote the rights of moving EU citizens and the child's best interests. However, they also highlight the guarantees that the proposal contains for preserving different conceptions among the Member States of what a 'family' constitutes, and public order requirements concerning the establishment and recognition of parenthood. They describe the rules envisaged under the proposal as a desirable development, taking stock of the profound transformation of the concept of 'family' in our society over the past few decades. The second paper, prepared by a German team, addresses the sensitive and much-debated issue of *judicial oversight of arbitration awards by courts in the Member States in the light of EU law*. They discuss a case recently decided by the Court of Justice concerning arbitration in the sports sector,[11] in essence defending the latter's strict position as being necessary to uphold the primacy and effectiveness of EU law. They acknowledge, however, that a balance must be struck between the autonomy of the parties wishing to submit their disputes to effective arbitration procedures and the autonomy of EU law. Against that background, the authors come up with an original proposal, *i.e.*

8 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) no. 300/2008, (EU) no. 167/2013, (EU) no. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (*OJ* 2024 L 2024/1689).

9 Case T-709/201, *WhatsApp Ireland v European Data Protection Board* (EU:T:2022:783). An appeal is pending before the Grand Chamber of the Court of Justice (see case C-97/23 P).

10 COM/2022/695.

11 Judgment of 21 December 2023, *International Skating Union v Commission* (C-124/21 P, EU:C:2023:1012). See also, for the most recent development in EU case-law concerning this topic, the judgment of 1st August 2025, Case C-600/23, *Royal Football Club Seraing* (EU:C:2025:617).

extending the possibility to make references to a preliminary ruling to the Court under Article 267 TFEU to arbitration bodies, even when they have their seat outside the EU as it is the case for the Court of Arbitration for Sport based in Lausanne. In the third paper in the area of civil law, a Romanian team explores the legal intricacies concerning the validity and enforcement of *asymmetric jurisdiction clauses in private contracts*, especially in the light of the Brussels I Recast Regulation.[12] In essence, such asymmetry arises where one of the parties enjoys more options than the other one(s) regarding issues of jurisdiction under a contract binding upon them.

The fourth and last area covered in this issue relates to *judicial ethics and rules governing the professional conduct of judges and prosecutors*. In a first article, a French team discusses the *interplay between diversity among members of justice systems and impartiality*, which forms part of the fundamental guarantees attached to the right to a fair trial guaranteed by Article 6 ECHR and the right to an effective judicial remedy guaranteed by Article 47 of the Charter. Increased attention is paid to diversity within the judiciary in a large number of justice systems in the EU. The authors argue in that context that diversity could prove to be an asset for increasing the impartiality of judges in Europe. They conclude that, although reinforcing diversity within the judiciary is not an easy task, increased knowledge and training about biases might deliver positive results in terms of impartiality and thus, in turn, reinforce the trust in minority groups in justice systems. In a second paper, a Dutch team explored the *judiciary's response to the attack in 2022 by a group of three activists against Vermeer's masterpiece, 'The Girl with a Pearl Earring', as a protest against what they denounced as an insufficient public action to address climate change*. The criminal court's verdict in the appeal proceedings surprised many observers, as it did not impose a prison sentence to avoid a so-called 'chilling effect' on other people's exercise of their freedom of expression and freedom of peaceful assembly, including through civic disobedience.[13] The authors examine the case through the prism of judicial ethics and explore, in particular, the challenges that cases like this one pose to the judiciary and what role the judge's own moral views can play in it. After providing an overview of the case law of the ECtHR and of Dutch courts on the 'chilling effect' of criminally sanctioning protestors, they reflect on citizens' expectations *vis-à-vis* the judiciary in a case such as that one. Codes of judicial ethics do not preclude judges from having opinions on politics, but require from them that they show 'reserve and discretion' when expressing such opinions, so as to guarantee public trust in judges' independence and impartiality. The authors argue that judges faced with a case of provocative activism must overcome three categories of challenges: the challenge of *instrumentalisation*, which means that justice should avoid being used to promote the interests of a particular group; *delegitimisation*, meaning in essence that carefully balanced and reasoned judgments are necessary to minimize the negative impact of the decision on the court's credibility; and *identification*, referring to the requirement for judges to maintain distance with the interests of the parties involved – in particular the protestors – in order to pass judgement without prejudices and biases. In their conclusion, they highlight the thin line judges must walk when deciding such cases, balancing out their personal beliefs and own

12 Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (*OJ* 2012 L 351).

13 That decision was based on a provision of the Dutch Criminal Code on 'legal pardon' (Art. 9a).

moral code with the basic ethical principles of impartiality and independence. In a third and last paper, a Spanish team discusses some of the *most pressing challenges resulting from active use of social media by judges and prosecutors* on the basis of interviews with three Spanish judges and a survey among young Spanish judges.[14] Whilst some argue that limits are necessary to avoid any possible excesses and protect impartiality, others take the view that judges should be able to use social media as freely as anyone else, based on the fundamental right of freedom of expression. The authors plead in favour of a nuanced approach, accepting as a principle the active participation of judges to social media but with certain limits aimed to protect their impartiality and the dignity of judicial offices. In their opinion, the Bangalore principles of judicial conduct (independence, impartiality, integrity, propriety, equality, and competence and diligence), in particular, should always constitute a point of reference when appraising whether social media use by a judge is appropriate or not. The development of an individual ethos by all judges and prosecutors wishing to be active on social media should be encouraged, albeit benefitting from the appropriate guidance and scrutiny from councils for the judiciary and other competent bodies. The authors thus acknowledge that judges must exercise caution on social media and, in particular, maintain an appearance of impartiality. However, that should be without prejudice to their capacity to be active on social media, as such communication can be a valuable tool for spreading relevant and accurate information about the law and judicial activity within society.

Finally, we wish to express our sincere appreciation to all the teams for their hard work, to the jurors for their thorough evaluation and selection of the best papers[15] and to the EJTN Secretariat staff, especially Flavio Mastrorillo as project manager of the THEMIS Competition, for their dedication in organizing it. Their collective efforts give practical effect to this volume's purpose: building a bridge between EU legal doctrine and daily judicial practice in the Member States.

The Editors

14 The paper also contains a comparative analysis among judiciaries in various EU Member States.

15 Jūlija Muraru-Kļučica, Razvan Horatiu Radu and Consuelo Scerri Herrera (semi-final on EU and European Criminal Procedural Law); Hrvoje Miladin, Dario Simeoli and Hanna Werth (semi-final on EU and European Administrative Law); Aleš Galič, Paola Giacalone and Emma-Jean Hinchy (semi-final on EU and European Civil Procedural Law); Stylianos Bios, Christopher McNall and Andrea Moravčíková (semi-final on Judicial Ethics and Professional Conduct), Mariana Canotilho, Lorenzo Salazar, Françoise Tulkens, Dalia Vasariené and Peter George Xuereb (Grand Final).