

# Rechtsgeschichte Legal History

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<http://www.rg-rechtsgeschichte.de/rg31>  
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 31 (2023)  
<http://dx.doi.org/10.12946/rg31/298-300>

Rg **31** 2023 298–300

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## Three Cheers to Interdisciplinary Research of European Union Law

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dem Prinzip der Gleichheit zu Geltung verhalf. Dabei wird unter anderen der zweite *Defrenne*-Fall vorgestellt, bei dem der EuGH Mitte der 1970er Jahre auf Grundlage von Art. 119 des Vertrags über die Europäische Wirtschaftsgemeinschaft (EWGV), der sich auf gleiches Entgelt für Frauen und Männer bei gleicher Arbeit bezieht, die sozialen Ziele bekräftigte (67–69). Die Bedeutung von Art. 119 EWGV, der zwar von den Mitgliedstaaten vernachlässigt wurde, aber eben nicht, wie Zaccaroni schreibt, rein programmatischer Natur war, bleibt in diesem Zusammenhang unklar. Vielmehr zeigt Zaccaroni anhand weiterer Diskriminierungstatbestände – Nationalität, Alter, sexuelle Orientierung, »Rasse«, Behinderung und Religionszugehörigkeit –, wie der EuGH das Prinzip der Gleichheit gestärkt hat und an welche Grenzen es stieß (78–105).

Im vierten Kapitel widmet Zaccaroni sich der »Gleichheit als ein Recht«, wie es sich im Rahmen der europäischen Primär- und Sekundärrechtsentwicklung manifestierte. Zaccaroni unterscheidet dabei zwischen Normen, die sich einzelnen Diskriminierungstatbeständen widmen und solchen, die allgemeiner auf Gleichheit abzielen. Die EU sei hinsichtlich der Gleichheit und Nichtdiskriminierung ihrer Zeit voraus gewesen (111). Die Ausführungen zum Wert der Gleichheit reichen allerdings nicht weit genug, die Wechselwirkung der Dimensionen Wert und Recht zu prüfen und zu hinterfragen, wie die ersten Gleichheitsgrundsätze in das europäische Recht einzogen. Unklar bleibt auch, warum die ersten Richtlinien zur Entgeltgleichheit (1975) und zur Gleichbehandlung von erwerbstätigen Frauen und Männern (1976) nur in Fuß-

noten erwähnt werden, waren sie doch der erste Schritt zur rechtlichen Verankerung des Gleichheitsprinzips. Zaccaronis Fokus liegt auf den ab der Jahrtausendwende verabschiedeten Richtlinien sowie der im Jahr 2000 proklamierten *Charta der Grundrechte der Europäischen Union* und darauf, wie sie die Rechtsprechung des EuGH prägten.

Die Argumentation des Autors kulminiert schließlich in der Feststellung, dass die drei Dimensionen von Gleichheit und Nichtdiskriminierung die wirtschaftliche und die soziale Integration der Europäischen Union vereinen. Insgesamt erweist sich die Studie als anspruchsvoller Diskursbeitrag zur europäischen Rechtsentwicklung, der sich in seiner Komplexität an ein interessiertes Fachpublikum richtet. Dabei hätte eine stärkere historische Perspektive insbesondere das Argument der Wechselwirkung von Gleichheit als ein Wert einerseits und Gleichheit als ein Prinzip sowie Gleichheit als ein Recht andererseits durchaus bekräftigen können. Ein gründliches Lektorat sollte Fehler, wie den Vornamen der Klägerin in einem der berühmtesten Fälle des europäischen Sozialrechts zu verwechseln (67), beheben. Neuheitswert hat die Arbeit vor allem dadurch, dass Zaccaroni die drei Dimensionen der Gleichheit im Europarecht klar benennt und unterscheidet, wo sie andernorts wenig oder gar nicht differenziert betrachtet werden. Vor allem aber setzt er Gleichheit als einen Wert, ein Prinzip und ein Recht zueinander in Bezug und arbeitet so die Interaktion – insbesondere von Prinzip und Recht – heraus. Er strukturiert damit den Blick, den wir auf den Platz und die Bedeutung von Gleichheit im Europarecht haben, neu. ■

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## Three Cheers to Interdisciplinary Research of European Union Law\*

The seminal *Cassis de Dijon* judgment from the European Court of Justice (ECJ) is notorious among European Union (EU) scholars and students. The judgment introduced the concepts of

mutual recognition (acceptance of goods lawfully marketed in another Member State regardless of compliance with rules in the importing state) and mandatory requirements (public interest justifica-

\* ALBERTINA ALBORS-LLORENS, CATHERINE BARNARD, BRIGITTE LEUCHT (eds.), *Cassis de Dijon:*

40 Years On, Oxford: Hart 2021, VII + 290 p., ISBN: 978-1-5099-3663-2

tions for trade barriers) to European Community (EC) law. In their interdisciplinary volume, Albers-Llorens, Barnard, and Leucht not only dive into the background of the judgment – shedding new light on the complex web of context in which it is situated – but also consider the long-lasting impacts of *Cassis*, and what scholars of the EU can learn from the judgment and its scholarship today.

Schütze opens Part 1, on the making of the *Cassis* judgment, by dissecting the prevailing view that *Cassis* was a case made to temper the revolutionary approach of the ECJ in *Dassonville*. According to contemporary scholarship, in the earlier decision the Court had abandoned the international trade framework used by the General Agreement on Tariffs and Trade for a more comprehensive model, forbidding all restrictions on trade. Schütze provides an overview of select cases under Article 34 and Article 35, in the period between *Dassonville* and *Cassis*. This doctrinal work challenges the current understanding of case law development by demonstrating that at no point was the ECJ in danger of abandoning international trade law principles in favour of a more radical approach to the European market.

In Chapter 3, Catherine Barnard investigates the roots of the introduction of mandatory requirements and the principle of mutual recognition in *Cassis*. By undertaking 'legal archaeology' to contextualise the judgment as a fragment of a longer history, she concludes that the introduction of these concepts was not as surprising as scholarship may first have considered. Drawing on earlier cases and the experiences of the judicial panel ruling on *Cassis*, the arguments made by the claimants, the Advocate General opinion, and the communication of the Commission, she is able to determine the planting of the seeds that turned into the 'revolutionary' creation of the principles in *Cassis*.

In Chapter 4, Leucht concludes Part 1 of the book using archival material from the Commission and the German Government to understand the background of the Commission's communication that utilised *Cassis* as a catalyst for the single market project. She demonstrates how the Commission had the right personalities, both in the Legal Service and the Directorate General III (internal market division), to prepare it for the potential of the case to expedite market integration. She tracks the developments of the Commission communication on the legal implications of *Cassis*, as constructed by these actors, starting from quar-

antining the judgment to the scope of alcohol contents law to suggesting a general approach to free movement of goods via the mutual recognition principle. Leucht contextualises this development within the specific moment in history for the Commission and the European Parliament.

Govaere opens Part 2 of the book, on the discussions regarding the impact of *Cassis*, by considering the unintended outcomes of the judgment. Several areas of influence are unpacked. First, how *Cassis* shifted the regulatory choices of the EC institutions, as positive harmonisation began to revolve around barriers to free movement in areas not already managed by mutual recognition. Second, how this influenced the delimitation of competences in the EC, as areas considered to be tricky to overcome with mutual recognition (i. e. matters concerning public health, or environmental protection) were ultimately also accepted as areas of EC concern. Finally, Govaere establishes that *Cassis* affected national legislators, due to the ECJ requiring the inclusion of the mutual recognition principle in legislation regulating production, unless some higher objective was to be obtained by the legislation.

In Chapter 6, Weatherill considers the actual impact of *Cassis* on free movement of goods law. Although the *Cassis* principle of mutual recognition is often seen as an alternative to harmonisation in EU law, this chapter challenges this. The fact that Crème de Cassis and other blackcurrant-flavoured liqueurs are now regulated at the EU level gives some insight into the utility of mutual recognition as a tool for market management. Weatherill suggests that the principle may be a trigger for harmonisation, as the elegance and nuance of balancing it with the mandatory requirements doctrine does not allow for the same level of certainty as harmonised regulation. He notes that even the Commission's view on *Cassis* shifted from one of excitement and potential to one of uncertainty.

The impact of *Cassis* on competition law is unpacked by Albers-Llorens in Chapter 7. Whilst recognising the potential for false parallels to be drawn between free movement of goods law and competition law, she notes the comparable developments between the two distinct legal regimes after *Cassis*. She argues that there was a shift from form-based considerations to effect-based considerations in competition law that seemed to mirror the *Cassis* way of handling disputes, albeit with different outcomes for the breadth of competition

law. She also highlights the recognition of public interest considerations, and of objective justifications, in particular facets of competition law. Whilst these developments must be contextualised in the specific regime of competition law, they undeniably have some resonance with *Cassis*.

Oliver reflects upon his time in the Commission's Legal Service in his opening of Chapter 8 on the »outstanding conundrums« of mutual recognition. He notes that, even after more than forty years of application and interpretation, there are still questions left unanswered about the nature of the principle. Oliver uses hypothetical scenarios to demonstrate the difficulty of concretely defining when products are »lawfully produced and marketed in another Member State«, and to demonstrate how goods produced in third countries interact with the mutual recognition principle. Lastly, he summarises the current situation regarding the absence of mutual recognition in matters relating to public morality, and theorises about the potential of a breakdown of mutual recognition between Member States.

In Chapter 9, Baur reflects on the overlooked impact of *Cassis* on the EFTA states. Specifically, he highlights the impact of the judgment in Switzerland, where mutual recognition was adopted autonomously in internal and external trade law. Internally, *Cassis* principles are used to govern the movement of goods, services and workers through the cantons. Externally, federal law adopts the principle of mutual recognition, with some caveats and exceptions, for products lawfully sold in the EEA. The adoption of these forms of the *Cassis* principles have a Swiss flavour, but go some way to highlighting the reach of the judgment.

The development of Mutual Recognition Agreements (MRA) on product safety in recent decades is

the subject of Chapter 10. Leinarte and Barnard discuss the types of MRAs in circulation, the incentives for them, and challenges and techniques for implementing them. They note that there are economic, technical, and political benefits to MRAs, but that institutional differences and regulatory divergences make it difficult to build the foundation of trust necessary for a successful MRA. Despite these challenges, the authors find trust-building techniques in existing MRA negotiations, which might allow for a more fruitful framework for the negotiation of MRAs in the future.

Finally, this volume concludes with Alter's chapter on the lessons learned from *Cassis* in Part 3. She challenges some of the narratives presented in the book as being conspicuously neat and tidy, stating that it is unlikely there was any »grand master plan« of integration that led to *Cassis* being decided the way it was, but more likely several individual actors »moving the ball forward« on their own where possible. Alter finishes the volume with a call for scholarship to extend contextualisation of European integration history even further, beyond the bubble of the Community (or Union) and towards a more global understanding of the shaping of European integration.

Overall, this is an important contribution to scholarship on the history, nature, and impact of *Cassis* across the EU law framework and beyond, and evidences the value of interdisciplinary research for furthering our understanding of EU law and integration. It will be of interest to those working on European integration more broadly, but also to scholars wishing to embark upon legal-historical research of the internal market, as well as those seeking to understand other seminal judgments from a multi-contextual dimension. ■