

European law and technological innovation

Optional seminar, Spring 2018

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Technological innovation has transformed the human condition significantly over the past fifty years. Having resulted in unprecedented growth and increases in people's living standards, technology is believed to have had a major impact on individuals and societies alike. It should not come as a surprise, therefore, that the continuous promotion of technological innovation has become one of the key policy objectives of modern societies, which have adapted their legal frameworks accordingly.

The European Union is no exception in that regard. Although the EU institutions are clearly committed to technological innovation, maintaining and promoting such innovation can only take place against the background of existing EU law provisions and doctrines. As such, the desire to promote and sustain technological innovation and the specificities this process entails have to be reconciled with the protection of undistorted competition, the free movement within the EU internal market, and the fundamental right to privacy. As a result, both the EU institutions when acting in a legislative or regulatory capacity and the EU courts have been called upon to make careful and refined balances, reconciling the perceived need for technological innovation and the protection of the rule of law within the EU's legal order.

This seminar-structured course will explore how this balance has been struck throughout the substantive law of the European Union. It will question whether, and if so, to what extent, EU law takes technological innovation considerations explicitly or implicitly into account. Specific attention will be paid in that respect to the EU's desire to maintain 'technological neutrality' in the application of its regulatory framework. To that extent, 6 three-hour lecture/seminar sessions will be organised, in which different aspects of the relationship between EU law and technological innovation will be discussed. During those seminars, we will discuss three main themes, each of which will be analysed over two sessions, which, apart from the first session, will take place on Wednesdays from 13.00 to 16.00. All classes will take place in the LCII-LL.M classroom in B33, 2nd floor at the Sart Tilman campus.

- I. Innovation and EU free movement law
 - a. Thursday 22 February 2018, 13.00 – 16.00: course introduction, free movement rights and intellectual property law
 - b. Wednesday 28 February 13.00-16.00: the sharing economy: innovation in search of a new legal framework?
- II. Innovation and EU competition law
 - a. Wednesday 7 March, 13.00-16.00: the roles of innovation in competition law analysis (I)
 - b. Wednesday 14 March, 13.00-16.00: the roles of innovation in competition law analysis (II)
- III. Innovation and EU data protection law
 - a. Wednesday 21 March, 13.00-16.00: from privacy to data protection law
 - b. Wednesday 28 March, 13.00-16.00: data protection and technological innovation: possibilities and limits

For each session, a number of cases and materials will be available on eCampus (please check the platform regularly), in order to allow you to take part more actively in the discussion sessions. Given the limited number of participants to the seminar, I expect this to be an interactive venue and I will stimulate questions and debate at this time. My purpose is not necessarily to provide you with all the answer, but to stimulate critical thinking on a relevant and important subject-matter.

The course will be evaluated during an oral exam, which will take place in May-June. At the exam, you will be asked to discuss the topics covered in class, showing that you have indeed understood and reflected on them. The exam will contain two questions, for which you will have 30 minutes of preparation time. The exam itself will last for 20 minutes.

Readings

I. Innovation and EU free movement law

Seminar I : technological innovation and the EU freedoms of movement

- CJEU, Case 15/74, *Centrafarm BV and Adriaan de Peijper v Sterling Drug Inc.*, EU:C:1974:114.
- CJEU, Case 16/74, *Centrafarm BV and Adriaan de Peijper v Winthrop BV*, EU:C:1974:115.
- CJEU, Case C-348/04, *Boehringer Ingelheim KG and Others v Swingward Ltd and Dowellhurst Ltd*, EU:C:2007:249.
- Regulation 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, *OJ L* 361, 31.12.2012, p. 1–8.

Seminar II : enabling technological innovation through internal market law : the case of the collaborative economy

- COM(2016) 356 - A European agenda for the collaborative economy.
- SWD(2016) 184 - European agenda for the collaborative economy - supporting analysis.
- S. Ranchordas, 'Does Sharing mean Caring ? Regulating innovation in the sharing economy', *Minnesota Journal of Law, Science and Technology* (2015), 414-475.
- CJEU, C-434/15, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, EU:C:2017:981.

II. Innovation and EU competition law

Seminar III : the roles of innovation in competition law analysis – articles 101 and 102 TFEU

- P. Ibanez Colomo, ‘Restrictions on innovation in EU Competition Law’, LSE Law, Society and Economy Working Papers 22/2015.
- European Commission – Competition Policy Brief June 2014 – standard essential patents.
- CJEU, C-170/13, *Huawei Technologies Co. Ltd v ZTE Corp. and ZTE Deutschland GmbH*, EU:C:2015:47.
- T. Schrepel, Predatory Innovation: The Definite Need for Legal Recognition, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2997586.

Seminar IV : the roles of innovation in competition law analysis – merger control policy and academic debates

- European Commission – Competition Policy Brief April 2016 – EU merger control and innovation.
- N. Petit, ‘Significant Impediment to Industry Innovation: A Novel Theory of Harm in EU Merger Control?’, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2911597.
- N. Petit, ‘Innovation Competition, Unilateral Effects and Merger Control Policy’, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3113077.

III. Innovation and EU data protection law

Seminar V : privacy, data protection and the genesis of a more detailed legal framework

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *OJ L 281*, 23.11.1995, pp. 31–50.
- CJEU, C-131/12, *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, EU:C:2014:317.
- Case C-362/14, *Maximillian Schrems v Data Protection Commissioner*, EU:C:2015:650.

Seminar VI : the GDPR, its practical consequences and lessons for the relationship between EU law and technological innovation

- Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *OJ L 119*, 4.5.2016, p. 1–88.