National institutional autonomy within the European legal order: an Actor-Network-Theory framework

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The 1st working paper of the EUDAIMONIA project stressed the difficulties associated with the combination of different social sciences to study common objects. These have different ontological and epistemological stakes, leading to varying degrees of theorization, research design and methodologies. It also stressed that the adoption of isolated disciplinary lenses may only lead to the elaboration of narrow-range theories and partial empirical explanations. The concepts studied in this project – especially "autonomy" – and the research question raised – is the European Union (EU) too intrusive in the way it drafts laws and imposes obligations on (directly democratically legitimate) member states? – demand a comprehensive approach allowing for answers to both normative concerns and practical considerations. Autonomy as *principle* – what the EU should do to preserve national sensibilities while at the same time pursuing its regulatory harmonizing mission – and autonomy as *practice* – especially in terms of perceptions, i.e. by those who are the recipients of the authoritative norms of the EU – may be combined within a single framework, since normative and empirical considerations are not necessarily mutually exclusive. Normative arguments are not only developed by the scholar but are also reappropriated or opposed by practitioners in practice, and normative theories may not be developed without contextual considerations if they are to avoid strong dissonances with the context they seek to influence.

The EUDAIMONIA project thus seeks to combine social theory with legal scholarship to unpack the concept of national institutional autonomy. The use of sociology to study legal phenomena is not a novel phenomenon (Benaka and Travers 2013). The most renowned

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sociologists treated of the question of law (Weber 1978[1922]; Durkheim 1984[1893]; Parsons 1991[1951]; Bourdieu 1987; Habermas 1996; Luhmann 2008). These authors applied their theories and paradigms to the study of norms – e.g. the reasons for their acceptance or rejection by members of society – and lawyers – e.g. the acceptance of the authority of unelected judges in democratic systems. But our purpose is slightly different. It consists in laying the social scientific foundations of an approach that allows for the combination of black-letter scholarship with political science and sociology, and not simply to study legal affairs from a different scientific perspective. The reasons for such an association were highlighted in the 1st WP: classic legal scholarship is the academic reflection of a shared practice in the broader legal profession. Scholars and practitioners alike study acts and case law and try to assess whether their interpretation is self-explanatory or on the contrary requires the use of external considerations – teleology, general principles, proportionality, etc. – in order to achieve the purposes of law: dictate behavior in unequivocal fashion. In a nutshell, the difference between scholarship and practice is very thin and at times inexistent in the legal system (see Bartl and Lawrence forthcoming). On the other hand, legal scholars seeking to find answers to interpretation problems would soon realize that the classic Kelsenian solution – every legal problem finds a solution within the legal system – may quickly suffer from shortcomings. The use of social theories to explain legal phenomena precisely lies in the fact that contextual (read extra-legal) factors influence interpretative dynamics and orientate lawyers' decision-making. Norms and behavior feed into each other, and our approach must account for this interplay.

We chose in consequence a theory of social action that would allow us to perform this combination: Actor-Network-Theory (ANT) (Callon and al. 1986; Callon 1984; Latour 2005; Law and Hassard 1999; Akrich and al. 2006). This approach is mostly famous for including "non-humans" in social configurations. While the focus of ANT theorists was mostly on the impact of technology on society, this general inclusion of non-human actants would allow us to "take the law seriously" (Joerges 1996) in analyzing empirically the behavior of agents in charge of its production at the European level and of its implementation at the national level. Some ANT enquiries about law have already been conducted (Latour 2009; McGee 2014 and 2015), although not on the legal system of the EU.

The framework paper is divided in 3 parts. In the first section, I sketch out the basic tenets of ANT, connect those to broader considerations about the sociology of law and use the core concepts of the approach to the specificities of the EU legal system (I). Then, I will narrow the approach down to the specific object of enquiry developed here: national institutional

autonomy. These steps will allow us to detail the way forward in our investigation, from research design to methodology (II).

I) ANT and EU law

The interplay between norms and behavior was at the core of the development of social sciences in the 20th century. Soon after World War II and the birth of political science after the New Deal, several social scientists stepped away from classic public law analyses of governmental institutions and shifted to behavioral studies of voters (Campbell and al. 1960) or members of social classes (Lipset 1960) in order to unpack social dynamics such as societal "cleavages" transcending institutional arrangements (Lipset and Rokkan 1967). Societal considerations such as class, gender, economics or simply power became influential concepts that became the core of political science and sociology in 1960s and 1970s, corresponding to the decline of the state as the sole regulator and influencer of politics to the profit of private interest groups and market actors – otherwise known as the "neoliberal turn" that generated felt consequences beyond the scientific realm (Jobert 1994). This pluralist vision of politics (Dahl 1961) turned the focus on actors and strategies, ideas and interests and relegated the study of rules to the background, the latter becoming the monopoly of legal scholars.

Yet the end of the Cold War and its stabilized international relations theories on the balance of power (Mearsheimer 1990), the development of transnational and regional bodies such as the EU with the resistance of the state as the main entity of politics (Milward 1992) despite its foreseen progressive decline (Elias 2001 [1991]) gave an increasingly complex picture of society where sole behavioral components could not sufficiently explain continuity and change in society. Institutions thus became once more important elements of study in reaction to the behavioralist turn, explaining the label "neo-institutionalism" (Hall and Taylor 1996). Despite the differences between the rational, historical and sociological variants, all strands of neo-institutionalism point towards the renewed need to study the rules of the game of society that frame the conduct of actors and vice-versa.

Norms had to be included in empirical social scientific studies, but because of the deep ontological and epistemological divides explored in the 1st working paper, the recoupling of disciplines studying norms such as legal scholarship with behavioral disciplines such as political science and sociology did not fully occur despite the existence of hybrid currents like law in context or empirical legal studies. The purpose of the EUDAIMONIA project is to pick

up on the call by neo-institutionalists to combine norms and behavior. While the recoupling of disciplinary insights that are hardly compatible is no easy task, there are existing frameworks on social theory that can help us in building the approach we need to develop. We argue that ANT is such a framework.

A) ANT: an approach that allows for the introduction of law into social analysis

Sociology is the social science that constantly leads its disciples to reflect on its own practices, the latter being a part of the social phenomena it seeks to investigate. This sociology of science or "sociology of sociology" (Cotterrell in Freeman 2006:17) is precisely what ANT is. ANT is not a theory – as the tentative rebranding "actant-rhizome ontology" indicates (attributed to Lynch: see Latour in Law and Hassard 1999: 19). It is rather an approach that invites social scientists to constantly rethink and unpack the classic concepts of social science, *society* and *social* being notions that were too often ill-defined according to Latour (2005). He claims that most social scientists too quickly assume that most actors are connected and shape up a whole baptized society. On the contrary, he claims that the duty of social scientists precisely lies in identifying situations where two distinct entities have been "assembled". This *assemblage* is precisely what constitutes the social. Assembling entities supposes that "actants"[2] pursue strategies or are affected by the behavior of others or changes in their immediate environment. The entities that are not connected by "mediators" or "intermediaries" are just part of the "plasma" (Ibid: 241-246) gathering all isolated phenomena that the researcher should leave out of the enquiry (see de Sutter in McGee 2015: 197-209). In other words, instead of assuming that all things are by nature social, it is up to the researcher to "flatten" the world – meaning that we should get rid of most if not all core assumptions she would possess of said world – and start observing.

ANT's ontology is thus the following: the social should not be assumed, it should be reassembled on its own terms. It tells us that not every entity is connected, which opens an intellectual path that many contemporary social scientific accounts may hardly account for: that agents or actants are not necessarily perceiving or even being aware of the activities of others. This is particularly at odds with rational-choice political science that takes actors as fully informed entities with a great awareness of the interests of others and thus always act in

[2] Instead of using the concepts of *actor* or *agent* traditionally employed in sociology, ANT scholars prefer the more generic label of actant that allows for the inclusion of non-human entities as part of the social. See more below.

consequence or in anticipation of others. ANT is more neutral in terms of expectations: one cannot assume the modes and rationales of actants to awake, one must observe whether it happens. The reason behind this neutrality can also be found in one of the most controversial elements of ANT: the fact that *non-humans* may play a major role in shaping social relations. The point was made in one if not the most cited work on ANT: Callon's study of the protection of scallops in the St-Brieuc bay (Callon 1984). Callon showed that the attempts of a small group of scientists tried to stop fishermen from overfishing scallops in the bay in order to limit the effects on the population of scallops in Brittany. These scientists seek to persuade fishermen and producers that a new technique discovered in Japan may change the development of scallops and ensure that these keep reproducing and flourishing. The network includes the scallops along with scientists and fishermen. These are the object of experiments whose results could change the course of the social forever (even though this would fail in Callon's example), a change started with the development of a technique on the other side of the world. The latter point stresses the idea that the distinction between micro and macrosociology is irrelevant in ANT, since the global always starts somewhere local and leaves fingerprints that are easily traceable.

Central and equally important for social theorists of law is the role played by technology in ANT, a point forcefully displayed by the unexpectedly rich study of some non-human actants: baboons (Strum and Latour in Callon and al. 2006: 71-85). Baboons share many characteristics with humans in terms of social organization. They know how to negotiate, experiment and even manipulate in order to achieve their goals, and adapt their sociability as such. In societies that are more similar than expected at first glance, the authors show convincingly that the only distinctive element distinguishing networks involving humans from all others is *technology*. While baboons may only use resources in their immediate environment to achieve their goals (making their sociability very complex), humans have the distinct possibility of shaping material resources following several engineering techniques in order to reduce complexity. This voluntary process of "complication" (meaning the succession of various operations in order to provide an output not provided by nature itself) leads to the stabilization of behavior and evolves across a larger scale of actants located beyond the immediate environment of studied participants (and thus, leading to the rejection of the local-global distinction). The use of "extrasomatic resources" precisely distinguishes contemporary complicated societies from complex primitive (read tribal) modes of associations or simply interactions among animals.

This ontology has strong consequences over the way we can produce knowledge about the world and about the assemblages that the researcher tries to make. Callon (1984) gave 3 core principles that he applied in his famous inquiry on scallops: *agnosticism*, *generalized symmetry* and *free association*. The first refers to the necessary abstention from assuming differences across actors and point of views. Generalized symmetry refers to the need to assess these viewpoints on the same terms, and free association refers to the inclusion of non-humans into the social and the ability of nature to be more than a passive element of context and be a genuine actant. Since the social needs to be reassembled and that most entities are found in the plasma, observing social ties may be more tedious than expected. The best way that Latour (1988) and Callon (1984; 1979) found to observe it was to stick to "controversies". Disagreements about the proper course of action leads actants to change relationships or be changed by others. The discovery of some type of knowledge (electric vehicles, scallops' survival in hostile environments, etc.) would lead an actant or a group of actants to "translate" the terms of the debate, that is to place themselves between 2 other entities and reframe the social. Scientists would publish journal articles refuting previous work (Latour 1988, especially chapter 1) and providing new interpretations and schemes, e.g. the famous controversy opposing Roger Guillemin to Andrew Schally about hormones. Controversies lead actants to do something about their knowledge, conviction or craft and to establish pre-established understandings or configurations. These considerations have 2 immediate consequences. The 1st relates to the relative easiness of studying society from an ANT perspective: actors are moving during controversies, simply begging the social scientist to trace their deeds in order to describe the assemblage. The 2nd consequence is connected and depicts the uneasiness of studying the social in uncontroversial situations. Since these do not lead to attempts by actors to change the course of events, there is no fingerprint nor new material that could help us in reassembling the social. Relationships would remain stabilized by simple 'intermediaries' which are not according to Latour himself worth of investigating (Latour 2005). Reassembling may only happen or can only be shown regarding unstable networks, which limits the usage of the approach.

These ontological and epistemological stakes have considerable consequences in terms of theory testing and building. Since the researcher can only trace empirical fingerprints that actants leave out for observations, and that every assemblage is unique since every development has an incidence for the ordering of the social (in other words, it is not possible to hold certain conditions *ceteris paribus*), the 1st option – theory testing – is foreclosed. That is at odds with most contemporary social scientific developments, especially in political science where the development of theories (based on strong but silent ontological and epistemological

assumptions) lead to the creation of hypotheses (describing foreseen correlations in the data while causation is often justified at the theoretical level) that are verified empirically. Since for ANT disciples, assumptions are the main reason for overloaded social theories leading to inaccurate descriptions of reality, only the second option – theory building – is a possibility. It means that it is only after an inductive observation of reality that the researcher may try to generalize (in Beach and Pedersen's terminology [2018], to "snowball outwards") insights to other social phenomena, and thus provide a theoretical understanding of the world. If this approach helps for overcoming the researcher's personal bias in terms of assumptions, it also requires demanding empirical analyses in order to provide a sociological explanation of reality. Latour's work on the sociology of science required multiple investigations about controversies distributed over space and time in order to identify processes behind the transformation of artefacts into scientific truths or the turn from simple actant to obligatory passage point. His work on the *Conseil d'État* in France – which at first glance would seem to be a primary source of inspiration for social scientists investigating the impact of law on society – is not to be confounded with his earlier work on science. As noted by Audren and Moreau de Bellaing (2013), his anthropological study of the highest French administrative court may hardly be generalized to other situations, because it stresses the specificities of French administrative adjudication and does not try to provide a general sociology of law. In order to use ANT and to apply it to the contemporary application of EU law, the social scientist needs to stick to the classic development of the theory or turn to other authors (McGee 2014 and 2015) to be insightful.

Since theory-testing is not an option, only inductive investigations are possible, which narrows down the range of methods available. The approach is not theoretically grounded however, since the ontology of ANT provides for some general guidelines about social reality. But symmetry of viewpoints and agnosticism mean that direct and free observation – i.e. ethnography – is more than advocated by ANT scholars. All methods that test hypotheses such as inferential statistics (regression models), Qualitative-Comparative Analysis (QCA) or comparative case studies designed to prove variation among pre-established variables are not available in such studies. If ethnography allows for a pure observation of the social, freed from pre-established cognitive frames, it does not allow for wide generalization and cannot be confronted to other social scientific approaches – especially those leading to theory-testing.

B) ANT: promises and challenges

At first glance, ANT seems like a surprising choice as a theory of social action to understand the concept of national institutional autonomy from a legal perspective. ANT is at odds with other sociological approaches developed by the likes of Weber, Parsons, Durkheim, Giddens or Bourdieu since it denies that strong structural factors determine or at least orientate agency. To put it bluntly, ANT looks like a marginal approach. In the *Cambridge Handbook of Social Theory* (a major contribution split into 2 massive volumes), ANT is only discussed in a single paragraph – whereas the approaches of the aforementioned authors all receive a dedicated chapter – which rather stresses the limits of the approach (here the absence of distinction between the actants) than shows its potential (Shilling in Kivisto 2021: 260 – 261). Moreover, except for Latour's work on the Conseil d'Etat and McGee's attempts to employ this approach to self-reflect on his professional craft as a practicing lawyer (McGee 2014 and 2015), the use of this social theory for understanding legal phenomena remain scarce.

ANT offers nonetheless interesting possibilities to overcome the deficiencies identified in EUDAIMONIA's first working paper regarding social theory and legal scholarship.

1) ANT's promises: revisiting national autonomy

Legal scholarships and empirical social sciences have different epistemological stakes. Doctrinal research has a prospective purpose: legal scholars aim to promote their interpretation of the law for the foreseeable future. Political science and sociology on the contrary lead their disciples to look at past events and explain the reasons behind their occurrence. These diverging objectives would seem to indicate an impossible reconciliation between law and the other social sciences. Such a coupling however would be helpful. Law is a moving object reappropriated by actors who amplify or dilute its content. A norm, even when enshrined in a text, does not find application if it is not embraced by some members of society. Norms are not self-enforced. Studying actorness is often a crucial missing element in legal scholarship, and the recourse to other sources of theoretical inspirations may fill this gap (see Bois and Dawson in Bartl and Lawrence 2022). Approaches focused on actors and contextual factors may not however fully replace classic doctrinal accounts. The latter convey the state of the debate not only in legal scholarship but for the entire legal profession[3]. Doctrinal developments are 'controversies'

[3] The use of doctrine by professional is more related to the specificities of the studied legal system. Latour showed that judges in the Conseil d'État did not have much interest in doctrinal debates, whereas I displayed

(thus echoing developments of the sociology of science) that embody the societal struggle that lawyers have about what the law says, this struggle being for the most part their monopoly (Bourdieu 1987; Luhmann 2008). Instead of being purely ignored by empirical social scientists, doctrine should be studied as empirical material revealing the parameters of the controversies, which would in turn lead legal scholars to provide normative and at the same time empirically informed interpretations of the law.

ANT allows for this coupling of theoretical accounts, or rather frees itself from any theoretical inspiration and remains open to any type of input – legal, contextual or otherwise. First, it leads us to open black boxes that seem closed. For example, unanimity voting in areas such social security does not a priori raise questions of potential intrusion of the EU. Since these require the consent of all member states to be approved in the Council, national autonomy is observed *de jure*. But ANT scholars would not consider that the adoption of legislative acts are ending the process. They would rather see it as an intermediary phase that would create a baseline for subsequent practice. As highlighted in the 1st EUDAIMONIA working paper, perceptions of national institutional autonomy are also shaped by subsequent practice. The context of transnational politics leads to a permanent interrogation of the preservation of national specificities. The EU does not generate a common sense of societal belonging found in member states. The absence of common historical references and above all else of a common language bars the EU from creating a strong feeling of "input legitimacy" (Scharpf 1999). Even if norms are adopted following procedures agreed by member states, the feeling of distance felt by many citizens between what happens in the Brussels bubble and their own lives could potentially trigger impressions of intrusive actions by the EU (Dahl 1994). This nexus between integration and national autonomy suffers moreover from a lot of instability. The "semi-permanent" revision process (de Witte 2002) started since Maastricht constantly shifts the borders between the EU and national legal orders, creating a sense of cacophony about competences. EU law and the acquis are hardly finished projects despite the official enactments of directives and regulations. They are however products of engineering "in action", meaning that those are subject to controversies and redefinitions by European *and* national actants.

The absence of input does not mean however that the absolute preservation of national institutional autonomy is a core tenet of EU law. In some controversies about EU law, the course of action in some situations favored harmonization at the EU level, even in realms that were

that CJEU judges not only used but also tried to influence doctrinal developments in EU law in order to legitimize rulings (Bois 2021).

formerly core state powers. The adoption of the Six-Pack and Two-Pack during the sovereign debt crisis precisely shows this. At a time where pre-existing arrangements in economic governance showed their limits and that controversies surrounding the economic course of action (e.g. austerity vs injection of liquidities) were many, the EU in agreement with all member states decided to reinforce harmonization and constraints at the European level, even if this meant that most member states could be subject to sanctions for not respecting the deficit and debt criteria of the renewed Stability and Growth Pact. At a broader societal level, some see the emergence of a European public sphere (Habermas 2012) increasingly asking for broader cooperation at the transnational level.

The debates surrounding the preservation of national institutional autonomy are constantly in flux. Moreover, these are not unidirectional since differences if not divergences across issue areas are possible. In situations that are all controversial, member states representatives sometimes favor integration (even 'by stealth': Schmidt 2020) and in other situations choose to put national interests first, independently of the adoption of legal instruments. Economic governance is an example of the first alternative, while the management of the migration crisis displayed the opposite tendency (Börzel and Risse 2018). Despite the adoption of a common relocation scheme for refugees and asylum seekers in the EU in 2015[4], 3 member states chose not to implement the provisions of this decision because their representatives felt that these contravened the core political priorities of their countries[5].

2) The challenges associated with ANT

The ontology and epistemology of ANT open interesting possibilities to associate black-letter legal scholarship with a sociological account. Producing knowledge when using this approach also comes with its set of challenges, with drastic consequences in terms of methodology.

ANT demands that we stop with assumptions and observe the world as it. It considerably limits opportunities of generalization, since every actant and every configuration are unique. The development of investigations about a single area of EU law such as data protection could not apply to other areas of EU law and may prove accurate only at the time the research was made, not saying much about the past. This is the major limit of Latour's work on the Conseil d'Etat,

[4] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

[5] Which triggered the launching of an infringement procedure: https://ec.europa.eu/commission/presscorner/detail/DA/IP_17_1607

since his descriptions of the highest French administrative court only apply to the highest administrative judges at that time.

Moreover, ANT theorists reject most accounts provided in other social theories. While Latour accepts that some concepts such as Bourdieu's "habitus" have analytical value, the paradigmatic dimensions of social theories must all be set aside since they would be overloaded with the assumption that everything must be social (whereas Latour asks for reassembling these ties). While spontaneous sociology carries assumptions that must be deconstructed, other social scientific accounts provide explanations for similar but different phenomena. These explanations traditionally serve as source of inspiration when studying new fields. Weberian 'ideal types' are abstract models whose characteristics may allow us to study the social by highlighting the gaps between the model and reality. These devices are traditionally not available with ANT, which advocates a purely inductive approach. But one may not even speak of grounded theory or theory at all[6], since all phenomena are historicized and may not necessarily be reproduced anywhere else. Only the main (ontological?) characteristics of the approach – the general concepts of actor-network, enrolment, translation, etc. – may be reemployed to study assemblages.

If all phenomena are unique, they must be described as such by the researcher. ANT scholars thus favor ethnography as the main if not only method of observation of the social. Ethnographic studies provide the most accurate picture of reality. Observations without a pre-established purpose (found in semi-structured interviews or regression models) ensure that the researcher provides unbiased observations. However, ethnography is an interpretive method (Gerring 2012), which means that is not subject to manipulative experimentation. The latter characterizes today's mainstream political science approaches. Co-variation, Qualitative Comparative Analysis, case studies and regressions are all designed to allow for reproduction of their model and thus generalization. They take the empirical phenomena under study as examples or samples of a broader population. While this also remains true for ethnography, this method does not provide tools for a more systematic inference on the rest of the population. If I were to conduct an ethnographic study of (for example) a competition authority using EU legal provisions in Romania, there is nothing in ethnography (other than an educated guess) that would allow me to use those results for a similar authority in another member state, at a different point in time or in another issue area. We would not thus fulfill EUDAIMONIA's purposes of

[6] Latour's ambiguity vis-à-vis the use of the word "theory" – which he rejected first and then embraced in *Reassembling the Social* – is confusing in that regard.

providing a general definition of national institutional autonomy in EU law by dividing the legal order into 18 subcomponents. This would require a multitude of ethnographic studies (we chose 4 member states with 6 issue areas[7], meaning 24 ethnographic studies) without having the research design ability to coordinate ethnographic results within a single theoretical approach.

II) The way forward: designing a research path by using a non-operationalizable approach?

The limits of ANT described in the previous section are many, especially in terms of generalization and data collection. The intrigue raised about assemblages and the possibility to include non-humans into the picture will lead us to stick with the general tenets of the approach, but to emancipate ourselves from it when it comes to research design and methodology.

A) Using ANT's conceptual toolbox

The absence of a clear picture in an EU at a crossroads nowadays does not allow for the testing of a general theory about national institutional autonomy in EU law. Instead, it requires a careful distinction between issue areas. Moreover, it also demands that social scientists, lawyers or otherwise, follow these controversies with an agnostic point of view, apply a principle of generalized symmetry across all expressed viewpoints (meaning considering the positions of EU staff and national administrations), and associate legal developments as integral part of the analysis rather than mentioning those as an element of background. That is why ANT is a useful approach here.

The research that will be carried out by EUDAIMONIA researchers in the next few years will thus apply the analytical toolbox applied by ANT theorists. We will consider that EU legal developments are not indicating ends but are rather an intermediary step in a broader process that remains *controversial*. We will study empirically these controversies by following the actors which are connected in a broader set of interrelations. However, we will not presume that all actors – EU civil servants and national bureaucrats – are necessarily interrelated. We will rather follow the processes leading these actors to be *assembled* or not in the network. Since these administrations are directly working together, we cannot presume that these are working

[7] See the project's objectives at : https://www.lcii.eu/eudaimonia/

together or even related somehow. We will have to find out whether some intermediaries or mediators allow for such assemblages and turn our *actants* into *actor-networks*.

As such, the role of law must be defined within this framework, which is not an easy task. While ANT allows for the inclusion of non-humans into the network, can law be defined as an actor-network? Is it rather a mediator or an intermediary? These questions will demand an exhaustive literature review along with conceptual engineering. Far from concluding here, we may hypothesize that law is an actor-network that binds together EU and national institutions. The enactment of norms triggers something at national level, whether this is implementation or contestation. The question remains about law's self-impact in this process. Is the existence of a norm enough to trigger said reactions, or is law mobilized by other actors in the process? The description of assemblages will lead to identify the existence or not of other actors which would facilitate the redistribution of roles and strategies between actors, making some of them *obligatory passage points* (OPPs) in EU law implementation. It will also lead us to see whether the existence of EU law generates a *displacement* of some actants who are obliged to follow the path set by OPPs or not. In other words, we will determine whether a successful *translation* occurs in contemporary EU legal developments. Callon showed that translation sometimes fails. We will see if it is successful or not in the EU legal order and try to show that failed translations may be the result of a perceived undue intrusion in national legal systems. Put simply, we will try to show that successful translations display a harmonization that was not contested on the grounds of national institutional autonomy, and on the contrary try determine whether failed translations resulted from a perceived infringement of that principle.

B) Innovative research design and methodology

We will skew away from ANT's tenets when it comes to research design. As far as the principle of asymmetry goes, the interdisciplinary collaboration between legal scholars and empirical social scientists will allow for an approach of several point of views without having to do an impossible amount of ethnographic work in a project running for 5 years and carrying just 5 members.

Since every assemblage is historicized, we will divide the EU legal order into 18 areas of EU law to provide specific accounts about several administrative issue areas, with the purpose to find out if the perceptions about the principle of national institutional autonomy varies according to:

- **Issue area**: these being *competition*, *railway liberalization*, *electricity and gas*, *electronic communications* and *audiovisual media*, *digital single market*, *prudential regulation in financial services*, *budgetary soundness*, *border protection*, *food safety*, *environmental protection*, *transport safety*, *data protection*, *general consumer protection*, *asylum protection*, *consumer protection*, *equality and antidiscrimination* and *medicinal products*
- **Member state**: we chose 4 Member states showing diversity in terms of 1) time of entry in the EU and 2) legal traditions. These are *France*, *Poland*, *Portugal* and *Romania*.

The combination of 18 areas and 4 member states gives us a table of 72 entries that looks remote from what ANT scholars traditionally do. We will proceed like this anyway because the legal scholars of the project have the talent and energy to analyze the norms associated with each issue area. To be more accurate, all 18 legal areas have a dedicated legislative instrument that precises its content[8]. The classic black-letter legal analysis of these legislative instruments will give us the viewpoint expressed by the Commission, the Council and the Parliament, without coming back to the process that changed the original draft to the text adopted by the co-legislators. It is possible that the viewpoint of the Commission has been altered and differs from what was originally intended by the desk officer in charge of starting the policy process. But since the scope of the enquiry remains broad compared to the time and manpower of the project, we will stick to arguments made by specialists of public policy in the EU who state that the original draft of the Commission guides extensively the discussions of the legislator, the latter only bringing amendments to the text, whereas the main argument remains unchanged through the whole policy process (Coen and Richardson 2009; Laurens 2018). In sum, we apply the principle of generalized symmetry dear to ANT theorists but use *legal scholarship* to provide of the viewpoints of EU actors, an endeavor allowed by the existence of several legislative texts.

Analyzing the viewpoints of national administrations regarding these texts will however be qualitative. The main purpose of the project is to find out whether the recipients of EU legal obligations believe that the legislator and the Commission are too intrusive or not when drafting laws, and whether there are variations across member states and issue areas. Perceptions cannot be unveiled by legal scholarship alone. It is found by studying the actors in charge of implementing/transposing norms at the national level, not in the norms themselves. We will thus carry out a qualitative analysis of national institutional autonomy by studying the national

[8] Such as the GDPR for data protection or Regulation 1/2003 for competition law

actors entrusted to apply EU obligations. An analysis of all 18 legal areas identified in the project is not possible within the timeframe of EUDAIMONIA. We picked 6 of those to carry out the analysis: *competition law*, *data protection*, *environment protection*, *railway liberalization*, *equality and non-discrimination* and *prudential financial regulation.*

Because of the impossibility of generalizing findings if using ethnography, we will use other methods. Instead of observing directly participants in the "making of law" (or in that case its application by national civil servants), we will prepare the contact with identified professionals by retracing the ties binding national administrations with EU rules. It involves tracking first the relevant national authorities according to issue areas (these can include ministries or independent agencies). The nature of the bodies involved, and whether these were chosen according to pre-established national administrative traditions or imposed by EU legislation will already tell us if the principle of institutional autonomy was respected or not *de jure*[9], and complete the analysis with *de facto* perceptions about these. The identification of these relevant bodies (located at the meso-level of analysis) will allow us to identify the people responsible within those bodies of the use of EU rules. This consists in a *mapping* of all relevant stakeholders, along with the analysis of their careers and trajectories via a *CV analysis* of the identified players. These trajectories and affiliations would help us unpacking the relationships that national bureaucrats have with Europe, e.g. whether European affairs are a professional vocation or if it is just a small component of a broader career.

The combination of all relevant stakeholders combined with the analysis of relevant provisions will lead us to identify the challenges that national administrations have when implementing EU norms. This combined work will already lead to provide some answers to our queries but will also raise further questions that may only be answered by having a direct contact with our stakeholders. The preparation of *semi-structured interviews combined with open-ended questions* will be very helpful in that regard. The semi-structure will consist in adopting a standardized interview guide that will eventually allow us to generalize findings but also to spot continuities or differences across actors, states or issue areas. But since we remain keen on applying the principles of agnosticism and generalized symmetry (which have the noble purpose of not imposing the researcher's biases to the actors under study), we will always associate the semi-structured question with a follow-up question that will let the interviewee

[9] While we expect EU rules to harmonize the substance of norms, the principle of institutional autonomy could imply that member states remain free to choose the procedures conducive of such harmonization. If the latter imposes a certain administrative design, we have to investigate whether actors believe that the EU went too far or on the contrary highlight the reasons behind their acceptance of such obligations.

explain freely the response[10]. This method seems to be an acceptable compromise between the specificity of each network and the willingness to generalize findings for the whole EU and provide a comprehensive answer to our research question.

The in-depth qualitative analysis of 6 issue areas across 4 member states will bring (24) illustrations that will allow us to compare findings, and to provide already some results to the rest of the scientific community (see II.C). But they will mostly serve as an intermediary point and a steppingstone to the second phase of the project, which will consist in reaching out to all stakeholders in all member states in the 18 issue areas identified. This objective is very ambitious and does not allow for a purely qualitative approach. The results of the investigation carried out in 4 member states will help us in generating a broader questionnaire sent to all relevant national civil servants. The research here will consist in doing the mapping carried out across the 4 member states in 6 issue areas to all 27 states across the 18 identified issue area. The CV analysis will not be replicated here since the mapping serves the bigger purpose of identifying the recipients of a *questionnaire*. This questionnaire will be informed by the empirical evidence collected in France, Poland, Portugal and Romania and will be standardized to all participants, not allowing this time for open-ended responses[11]. The purpose here becomes to provide EU-wide trends, meaning that only a lighter qualitative approach combined with a statistical analysis may help us here. The qualitative component will be found in the questions themselves, and the aggregated results (eased by the *multiple-choice question* model) will shed light on pan-European perceptions. In order to account for statistical imbalances created by divergences the number of responses across member states and issue areas, we will not only analyze the raw results but also apply standardized coefficients to ensure that imbalances do not skew the results (ensuring that variances are all equal).

These results will help us in providing a last interdisciplinary step corresponding to the 3rd work package of the project. We will employ these broad empirical results and read these in conjunction with the findings of Maxime Tecqmenne's doctrinal analysis on the impact of the Charter of fundamental rights across several areas of EU law. Maxime's purpose is also to provide a systemic pan-European explanation, but by using normative doctrinal scholarship. His work along with Principal Investigator (PI) Pieter Van Cleynenbreugel's input on impartiality and independence as principles of good governance will bring rich normative

[10] For example, an example about data protection could be: "Do you believe that the obligation found in the GDPR to create an independent administrative body is asking too much of member states?" with a follow-up question being "Why is that?"

[11] This is where we totally emancipate from ANT.

insights about national institutional autonomy, and postdoc Julien Bois and 2 PhD students (starting by September 2022) will apply qualitative social-scientific methods found in political science and sociology in order to confirm, amplify or nuance these normative arguments with empirical evidence about the perceptions of actors. Taken together, we will be able to forge recommendations to all identified stakeholders, at the EU and national levels. These recommendations will combine desirability and feasibility about the possibilities of harmonization at the EU level while respecting national sensibilities, a topic that has become increasingly trendy in the 21st century (Bellamy 2019).

C) Outputs of the project

The research carried out in the EUDAIMONIA project will lead to several research outputs. The most important will be the production of 3 doctoral theses, which will all take the format of cumulative articles. These will be published in several peer-reviewed journals from law, political science and sociology.

Moreover, the PI will analyze all 18 areas of EU law identified in the project, which will lead him to publish comparative legal analyses of EU administrative law. These will highlight the application of several normative principles found in EU law such as impartiality, loyalty or independence leading to a cumulative substantiation of the concept of national administrative autonomy over the next 5 years.

The postdoctoral researcher will provide an in-depth case study of the reception of the GDPR by the French independent administrative agency "Commission Nationale de l'Informatique et des Libertés". He will then proceed with a comparative analysis of the results of the interviews conducted in the 4 chosen member states (with first an intermediary publication about 2 member states, then with a broader perspective combining all empirical results together).

The PI and postdoctoral researcher will work closely together to provide accounts of the challenges of combining various social sciences within a single theoretical framework. Some of these challenges were highlighted in the first working paper of the project, which will be modified and submitted to a socio-legal journal with the purpose of joining the broader community of researcher looking for more interdisciplinarity between law and other social sciences and join other projects seeking to develop newer methodologies to study law in context.

All these contributions will take the form of EUDAIMONIA working papers freely accessible on the website of the project. These will propel several discussions culminating in the organization of a conference gathering representatives from the stakeholders identified in the project, where the 5 researchers will not only display the results of their collaborative work, but also provide the recommendations which will then be reproduced in a policy paper freeing itself from the classic academic constraints and be made available to all interested citizens.

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