

# An Ever-Changing Union?

*Perspectives on the Future of EU Law  
in Honour of Allan Rosas*

Edited by  
Koen Lenaerts  
Jean-Claude Bonichot  
Heikki Kanninen  
Caroline Naômé  
and  
Pekka Pohjankoski

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# EDITORS' PREFACE

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## I. Introduction

European Union (EU) law is not static. Rather, in the words of Allan Rosas, the EU legal order is a 'moving target'.<sup>1</sup> That image is as apt as ever at a time when the EU is faced with populist forces that oppose further integration, when one of its Member States has, for the first time in history, decided to leave the EU, and when long-standing values such as the rule of law are under renewed threat. In addition, migration flows across the EU's external borders as well as – subsequently – over its internal frontiers have catapulted a host of novel legal challenges to the top of the EU agenda, whilst the long-term future of Economic and Monetary Union remains an open question. Those macro-level developments have an impact on the lives of individuals, be they EU citizens or third country nationals who pursue the dream of a better life in Europe.

Those developments raise difficult questions that the EU Courts are called upon to resolve. In so doing, they must uphold the rule of law within the EU, whilst reading the law in a way that enables European societies to overcome the challenges that they face. EU law is indeed a 'moving target', because it requires the EU Courts to strike the right balance between continuity and change. *Continuity* because those courts must always remain committed to upholding the values on which the EU is founded, and *change* because those courts must also contribute to building a more equal and fairer society for the next generation.

The present volume pays homage to the legacy of Allan Rosas, one of the finest legal minds in the field of EU law, a long-serving judge at the Court of Justice, a respected academic and, above all, a person who has always been committed to promoting European values in and outside the courtroom.

The content of the present volume seeks to reflect Allan Rosas' career and scholarship. On the EU bench, Allan Rosas has played a leading role in shaping the Court's case law over the past 18 years. A search of the Court of Justice's case law database reveals that, during that time, he has served as *juge rapporteur* in more than 50 cases heard by the Full Court or the Grand Chamber of the Court, although this is only the tip of the iceberg as far as the breadth of his judicial work is concerned.

Allan Rosas arrived at the Court of Justice in January 2002, after a successful career in academia, as an advisor to the Finnish government and at the European Commission Legal Service. It did not take long for Allan Rosas to begin making an impact at the Court. During his freshman year, he made his debut as *rapporteur* before the then Full Court in the seminal *National Farmers' Union* case, which not only concerned the sensitive public health issue of so-called 'mad cow disease', but also raised the question whether a Member State had

<sup>1</sup> A Rosas and L Armati, *EU Constitutional Law* (Oxford, Hart Publishing, 2018) Preface to the Third Edition.

standing to challenge, before its own courts, the validity of two Commission decisions that were addressed to it, despite the fact that the time-limit for bringing annulment proceedings before the EU Courts had expired.<sup>2</sup> In order to protect legal certainty, the Court replied in the negative. In so doing, it referred, albeit implicitly, to the idea that the EU system of judicial protection is coherent and complete. That very same idea has constantly underpinned the law of the EU on remedies, and can actually be found in more recent judgments of the Court of Justice, such as that in *Rosneft*.<sup>3</sup>

Much has changed since the Court of Justice delivered that judgment. Indeed, when Allan Rosas first arrived at the Court, the EU and its law were very different from those that currently exist. To begin with, the Treaty of Nice had not entered into force and the 2004, 2007 and 2013 enlargements had yet to take place. The Court was then much smaller, with just 15 judges and eight Advocates General. Since 2002, the workload of the Court has steadily increased. For example, in 2002, the Court decided 513 cases, of which 241 were preliminary references. By contrast, in 2018, it decided 760 cases, of which 520 were preliminary references.<sup>4</sup> In terms of scope, the list of subject matters on which the Court of Justice is more often called upon to rule has also expanded considerably. Whilst in 2002 agricultural cases were among those at the top of the list, in 2017 and 2018 cases pertaining to the Area of Freedom, Security and Justice (AFSJ) were among the most prevalent.

Those statistical data reveal that European integration has continued to move forward according to two different, albeit complementary, dynamics, ie that of *deepening* and that of *widening*. The 'deepening' of European integration means, in essence, that the EU has consistently striven to strengthen the values on which it is founded. The EU has become more democratic, the fundamental rights discourse of the EU has been strengthened and the rule of law within the EU has been upheld both internally and externally. Three examples taken from the case law in which Allan Rosas was *rapporteur* may illustrate this point.

First, with the entry into force of the Treaty of Lisbon, the Treaties

... now establish symmetry between the procedure for adopting EU measures internally and the procedure for adopting international agreements in order to guarantee that the European Parliament and the Council enjoy the same powers in relation to a given field, in compliance with the institutional balance provided for by the Treaties.

...

While, admittedly, the role conferred on the [European] Parliament in relation to the [Common and Foreign Security Policy (CFSP)] remains limited, since [that EU institution] is excluded from the procedure for negotiating and concluding agreements relating exclusively to the CFSP, the fact remains that the Parliament is not deprived of any right of scrutiny in respect of that European Union policy.<sup>5</sup>

Accordingly, the Council has a duty to inform the European Parliament immediately and fully at all stages of the procedure of negotiation and conclusion of international

<sup>2</sup>Case C-241/01 *National Farmers' Union*, EU:C:2002:604.

<sup>3</sup>Case C-72/15 *Rosneft*, EU:C:2017:236.

<sup>4</sup>The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the grounds of similarity (one case number = one case). See Court of Justice, Annual Report 2002 and 2018, 'Statistics of Judicial activity', [https://curia.europa.eu/jcms/jcms/Jo2\\_7032/en/](https://curia.europa.eu/jcms/jcms/Jo2_7032/en/).

<sup>5</sup>Case C-658/11 *Parliament v Council*, EU:C:2014:2025, paras 56 and 69. See also A Rosas, 'Recent Case Law of the European Court of Justice Relating to Article 218 TFEU' in J Czuczaj and F Naert (eds), *The EU as*

agreements. That duty gives concrete expression to the principle of democracy on which the EU is founded. Thus, in *Parliament v Council* (EU-Tanzania Agreement),<sup>6</sup> the Court of Justice annulled a CFSP decision by which the Council had concluded and ratified an international agreement with Tanzania on the conditions of transfer of suspected pirates, on the ground that no information was provided to the European Parliament by the Council on the progress of the negotiations pertaining to that agreement.

Second, the fact that fundamental rights have progressively gained centre stage in the EU legal discourse can be illustrated by the seminal judgment of the Court of Justice in *Omega Spielhallen*.<sup>7</sup> In that case, the Court gave impetus to the line of case law according to which the national rules based on fundamental rights protection may justify limitations on free movement. Most importantly, it interpreted fundamental rights as a means of allowing room for diversity when it comes to the Member States giving different weight to the common values that all Europeans embrace. This is so, for example, where a Member State decides that laser games – which involve participants pretending to shoot one another – are incompatible with human dignity, or where it decides that the use of titles of nobility is at odds with a republican form of government.<sup>8</sup> Whilst *Omega* was decided prior to the entry into force of the Treaty of Lisbon and thus, of the Charter as a fully binding primary law text, that judgment remains good law and has served to explain how the EU system of fundamental rights protection operates.

Third, the Court of Justice has made clear that the incorporation of international law obligations into the EU legal order can only take place in compliance with the rule of law within the EU, of which fundamental rights – as recognised in the Charter – are part and parcel. Ensuring such compliance is of paramount importance when it comes to imposing restrictive measures on individuals. As *juge rapporteur* in more than 20 cases involving such measures, Allan Rosas has contributed to paving the way for determining the legal requirements with which EU restrictive measures must comply in a post-*Kadi I* scenario.<sup>9</sup>

As to the second dynamic, the scope of European integration has become increasingly broad, both in terms of the number of actors involved in the EU decision-making process and in terms of the subject matters over which the EU enjoys legislative and regulatory powers. European integration has crossed the Rubicon, moving on from the internal market paradigm as it now also seeks to create and develop an area without internal frontiers where citizens may move freely and securely and where the Member States may trust that justice will be administered transnationally. That EU objective entails the recognition and enforcement of national measures that may impose limitations on the exercise of fundamental

*a Global Actor: Bridging Legal Theory and Practice. Liber Amicorum in Honour of Ricardo Gosalbo Bono* (Leiden, Brill-Nijhoff, 2017) 363.

<sup>6</sup> Case C-263/14 *Parliament v Council*, EU:C:2016:435.

<sup>7</sup> Judgment of 14 October 2004, *Omega*, C-36/02, EU:C:2004:614.

<sup>8</sup> Case C-208/09 *Sayn-Wittgenstein*, EU:C:2010:806.

<sup>9</sup> See, eg, Cases C-548/09 P *Bank Melli Iran v Council*, EU:C:2011:735; C-380/09 P *Melli Bank v Council*, EU:C:2012:137; C-130/10 *Parliament v Council*, EU:C:2012:472; C-239/12 P *Abdulrahim v Council and Commission*, EU:C:2013:331; C-630/13 P *Anbouba v Council*, EU:C:2015:247; C-605/13 P *Anbouba v Council*, EU:C:2015:248; C-263/14 *Parliament v Council*, EU:C:2016:435; and C-45/15 P *Safa Nicu Sepahan v Council*, EU:C:2017:402. See, in this regard, A Rosas, 'EU Sanctions, Security Concerns and Judicial Control' in E Neframi and M Gatti (eds), *Constitutional Issues of EU External Relations Law* (Baden-Baden, Nomos, 2018).

rights. Thus, in order to ensure the uniform interpretation and application of EU norms pertaining to the AFSJ, the Court of Justice had to develop a new procedural framework that would allow it to deliver its judgments expediently in situations where, for example, a person is in custody or a child is abducted by one of his or her parents. Allan Rosas' imprint is clearly visible in that regard. Not only did he chair the Court's Committee on procedural matters during the overhaul of the Court's Rules of Procedure,<sup>10</sup> he also presided over the Chamber that heard the first cases dealt with under the urgent preliminary ruling procedure (PPU).<sup>11</sup>

The widening of the European integration project has also given rise to new and delicate questions that have, for example, called upon the Court of Justice to examine the application of old principles to a new legal context. This is notably the case of the principles of mutual recognition and mutual trust. The judgment of the Court in *NS and Others*, in which Allan Rosas was *juge rapporteur*, may illustrate that point.<sup>12</sup> In those Joined Cases, the Court stressed the importance of mutual trust as a constitutional principle that underpins the entire AFSJ but that may, under exceptional circumstances, be limited by the need to ensure protection of fundamental rights.

Another example that illustrates that dynamic of widening is the case law on access to documents. Undeniably that case law has been influenced, in a positive way, by Nordic democratic traditions that support the contention that the principle of transparency is of the essence in order for government officials to remain accountable. That influence has taken place not only by means of Member States, such as Sweden and Finland, bringing actions for annulment and appeals before EU Courts, but also by the involvement of civil societies across Europe in defending that principle. The Court has also contributed to developing a 'transparent Europe', whilst stressing the fact that transparency is not absolute but must – where democracy, fundamental rights and the rule of law so require – be subject to limitations. For example, in *Commission v Breyer*,<sup>13</sup> another case in which Allan Rosas was *juge rapporteur*, the Court of Justice was called upon to interpret the fourth subparagraph of Article 15(3) TFEU, a provision introduced by the Treaty of Lisbon that states that the Court of Justice is subject to the right of access to documents but only when exercising its administrative tasks.<sup>14</sup> Contrary to the views of the Commission, the Court held that that Treaty provision could not be interpreted as excluding from the scope of application of Regulation No 1049/2001 documents relating to court proceedings that are drawn up by a Member State and in the possession of the Commission.<sup>15</sup> This was because such an interpretation would be at odds with the 'widening' of the scope of that right, by virtue

<sup>10</sup> See Rules of Procedure of the Court of Justice of 25 September 2012 [2012] OJ L265/1.

<sup>11</sup> C-195/08 PPU *Rinau*, EU:C:2008:406. See, in this regard, A Rosas, 'Justice Denied? The European Court of Justice and the Area of Freedom, Security and Justice' (2009) 11 *Cambridge Yearbook of European Legal Studies* 1.

<sup>12</sup> Case C-411/10 and C-493/10 *NS and Others*, EU:C:2011:865.

<sup>13</sup> Case C-213/15 P *Commission v Breyer*, EU:C:2017:563.

<sup>14</sup> The fourth subpara of Art 15(3) TFEU reads as follows: 'The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.'

<sup>15</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43.

of the Treaty of Lisbon, notably in so far as it now covers not only documents of all EU institutions but also those of bodies, offices and agencies of the EU.

By following the present text up to this point, our faithful reader will no doubt have understood that Allan Rosas has played an important role in shaping the case law of the Court of Justice that has deepened and widened European integration. However, the impact of his ideas is much broader and has transcended the judicial sphere. Extrajudicially, his wide-ranging research encompasses not only most areas of EU law, but also administrative law and public international law.<sup>16</sup> In the field of EU law, in particular, his scholarship has marked a generation of academics, civil servants and practitioners by influencing the way in which they read EU law. More specifically, his writings have focused on providing a constitutional perspective on the EU and its law,<sup>17</sup> on explaining the role that fundamental rights are called upon to play in the European integration project<sup>18</sup> and on providing a critical assessment of the interplay between international law and EU law.<sup>19</sup>

Mirroring Allan Rosas's judicial and academic work, this volume is divided into four parts, that are described below in sections II to V of the present text.

## II. The Changing Union

The six chapters of the first part of the volume address the changing nature of the Union itself. The opening chapter by Koen Lenaerts analyses the impact of the refugee crisis of the past few years on the development of EU asylum law. Describing both the EU's internal and external responses to the crisis, the chapter presents some of the challenges the EU

<sup>16</sup> See, eg, A Rosas, *The Legal Status of Prisoners of War. A Study in International Humanitarian Law Applicable in Armed Conflicts* (Helsinki, Suomalainen Tiedeakatemia, 1976), and T Koivurova and A Rosas, 'The CBSS as a vehicle for institutionalised governance in the Baltic Sea Area, in comparison with its two sister organisations in the north' (2018) 98 *Marine Policy* 211.

<sup>17</sup> See, eg, A Rosas and L Armati, n 1 above. See also A Rosas, 'Separation of Powers in the European Union' (2007) 41 *The International Lawyer* 1033, and A Rosas, 'The European Court of Justice in Context: Forms and Patterns of Judicial Dialogue' (2008) 1 *European Journal of Legal Studies* 121.

<sup>18</sup> See, eg, A Rosas and H Kaila, 'L'application de la Charte des droits fondamentaux de l'Union européenne par la Cour de justice: un premier bilan' (2011) 16 *Il Diritto dell'Unione Europea* 1; A Rosas, 'The Charter and Universal Human Rights Instruments' in S Peers et al (eds), *The EU Charter of Fundamental Rights: A Commentary* (Oxford, Hart Publishing, 2014) 1685; A Rosas, 'Five Years of Charter Case Law: Some Observations' in S. de Vries et al (eds), *The EU Charter of Fundamental Rights as a Binding Instrument Five Years Old and Growing* (Oxford, Hart Publishing, 2015) 11, and A Rosas, 'The European Union and Fundamental Rights/Human Rights: Vanguard or Villain?' (2017) 7 *Adam Mickiewicz University Law Review* 7.

<sup>19</sup> See, eg, B Brandtner and A Rosas, 'Human rights and the external relations of the European Community: an analysis of doctrine and practice' (1998) 8 *European Journal of International Law* 468; A Rosas, Case Note on *Portugal v Council of the European Union* (C149/96) (2000) 37 *Common Market Law Review* 797; A Rosas, 'Implementation and enforcement of WTO dispute settlement findings: an EU perspective' (2001) 4 *Journal of International Economic Law* 131; A Rosas, 'With a Little Help from My Friends: International Case-Law as a Source of Reference for the EU Courts' (2006) 5 *The Global Community YILJ* 220; A Rosas, 'The Status in EU Law of International Agreements Concluded by EU Member States' (2011) 34 *Fordham International Law Journal* 1304 (2011); A Rosas, 'Exclusive, Shared and National Competence in the Context of EU External Relations: Do Such Distinctions Matter?' in I Govaere and Others (eds), *The European Union in the World: Essays in Honour of Marc Maresecau* (Leiden, Brill-Nijhoff, 2014); A Rosas, 'EU External Relations: Exclusive Competence Revisited' (2015) 38 *Fordham International Law Journal* 1073, and A Rosas, 'The EU and international dispute settlement' (2017) 1 *Europe and the World* 1.

Courts have faced in these situations of urgency, political pressures and the need for effective judicial protection. With emphasis on the Court of Justice's role in upholding the rule of law, Lenaerts discusses, inter alia, the EU's mandatory relocation scheme and the EU-Turkey Statement on migrant flows, as well as the need to guarantee access to justice for persons seeking asylum and a fair sharing of responsibility among the Member States.

In the second chapter, Christiaan Timmermans assesses the evolution of the principle of mutual trust in EU law, contrasting the idea of mutual recognition in the internal market with its counterpart within the AFSJ. Timmermans demonstrates that mutual trust, originally linked to mutual recognition, fully emerged following Opinion 2/13 as a fundamental principle of EU law, albeit subject to certain limits. While Timmermans critically evaluates the Court of Justice's reasoning concerning the principle of mutual trust in the context of the Draft Agreement on the EU's accession to the ECHR in that Opinion, he does not rule out the possibility that a solution for the EU's accession might be found in the future.

In the third chapter, José Narciso da Cunha Rodrigues reflects on the concept of national identity and its significance for the European project. After providing an overview of national identity in the context of EU law and in the case law of several constitutional courts of the Member States, Cunha Rodrigues suggests that that concept has a constitutional dimension. However, for him, national identity is not static but rather evolves over time owing to the interdependence that exists between states, which makes defining it a challenge. By linking national identity with that of the individual, Cunha Rodrigues underlines its importance as an essential component of European integration.

Síofra O'Leary's chapter describes and evaluates the development of the law relating to the acquisition and loss of nationality and the enjoyment of citizenship-type rights by non-nationals under the ECHR and EU legal regimes. O'Leary highlights certain similarities in the approaches of the European courts in Strasbourg and Luxembourg as regards, in particular, the way in which the relevant rights are framed and limits are imposed on states' discretion in connection with issues such as the revocation of nationality or expulsion. Demonstrating that certain EU rules are reminiscent of more classic rules of international law, O'Leary nonetheless recognises the incremental progress that has been made following the creation of EU citizenship.

Looking at how the still-recent sovereign debt crisis in Europe and beyond has shaped EU law, the chapter by Miguel Poiars Maduro reflects on the ways in which that crisis has clarified the law on public debt relief. Poiars Maduro's analysis focuses especially on deciphering what limits, if any, EU law imposes on such debt relief. Through an analysis of the concepts of financial assistance and debt relief, as well as the relevant legal texts and the Court of Justice's case law, he discusses the need to preserve market discipline and to subject financial assistance to strict conditionality.

In the last chapter of this section, Olli Rehn examines past shortcomings in – and future challenges for – the EU's economic governance. Discussing various economists' macroeconomic philosophies, Rehn assesses the capacity of markets to keep economies on a sound basis in general, and those within Economic and Monetary Union (EMU) in particular. While Rehn describes the failures of market discipline and approves of the EU's fiscal policy rules, monitored and enforced by Union bodies, he concludes that both rules and market discipline are needed in the EU and will continue to be needed in the future.

### III. The EU's Judicial Actors: Evolving Roles

The six chapters of the second part of the volume describe and evaluate the evolving role of various judicial actors within the EU legal order. In the opening chapter, Vassilios Skouris discusses the absence of dissenting opinions in the EU Courts. Following a presentation of arguments both in favour of and against dissents, Skouris considers their relative merits and disadvantages in the particular context of the Court of Justice. Emphasising the need for the Court of Justice to speak with one voice in the interests of clarity, Skouris considers that the relatively high number of judges sitting in cases before that Court, as well as the need to engage dissenters in helping formulate the final decisions are factors that continue to militate against the use of dissenting opinions at the Court both now and in the future.

In the second chapter of this part, Heikki Kanninen reflects on the expanding role of the General Court within the judicial-institutional framework of the Court of Justice of the European Union. Following a description of the genesis and development of the General Court as an independent judicial body, Kanninen evaluates its role both in the administrative and the judicial sphere, as it currently emerges from a period of reforms. Considering that the present resources of the General Court provide an opportunity to reform the EU judicial system as a whole, Kanninen looks to the future by discussing a potential transfer of jurisdiction from the Court of Justice to the General Court, as well as the need for internal reorganisation of the latter.

In the next chapter, Niilo Jääskinen considers the phenomenon of judicial dialogue between the Court of Justice and the supreme administrative courts of the Member States. He analyses this interaction from three angles in particular: first, a quantitative analysis of preliminary references from national supreme administrative courts, second, the judicial dialogue between the Court of Justice and the Supreme Administrative Court of Finland, and, third, that between the Court of Justice and a number of other national administrative courts. Jääskinen's analysis portrays the dialogue between these judicial actors as involving large volumes and questions of both greater and lesser importance and as having a distinct and significant, albeit incremental, impact on the development of EU law.

Lorna Armati's chapter provides another perspective on judicial dialogue between national supreme courts and the Court of Justice. Armati's contribution focuses on forms of combative and conciliatory judicial dialogue by comparing and contrasting the Danish Supreme Court's preliminary reference in *Ajos* with that of the Italian Constitutional Court in the so-called *Taricco II* case. In addition to an exposition of the relevant EU law background to the debate, her analysis encompasses a broader reflection on the role of the preliminary ruling mechanism within the EU's judicial system and the implications that certain national courts' confrontational style may have on that firmly established – yet ultimately fragile – system.

In the fifth chapter of this part, Clemens Ladenburger reflects on the principle of mutual trust with a particular focus on some of its necessary corollaries. In his view, these include, notably, independent judicial authorities, a need for common standards on criminal procedure and penitentiary systems, as well as for common values and a common level of fundamental rights protection under the EU Treaties. As Ladenburger proceeds to

examine specific questions such as the independence of prosecutors for issuing European Arrest Warrants, the EU's powers to address prison conditions in Member States or the extension of mutual trust to third countries (including in the case of the United Kingdom's exit from the EU, ie Brexit), it becomes apparent that the application of the principle of mutual trust remains a complex exercise both for the EU legislator and national courts alike.

The final chapter of this part of the volume is by Jean-Louis Dewost, who pays tribute to Allan Rosas' work acting as an agent of the European Commission before the Court of Justice. The compilation of cases in which Rosas acted as the Commission's agent includes such diverse areas of law as electricity excise duties, international aviation agreements and fishing licences. As Dewost recalls these cases, he provides a glimpse into the earlier career of the dedicatee of this volume.

#### IV. Rights of the Individual in Times of Change

The six chapters in the third part of the volume deal with rights of individual actors as the EU evolves. The first chapter, by Marc Jaeger, presents and evaluates a recently introduced procedure allowing for confidential treatment of security-related material before the General Court. After describing the genesis of the new procedure, Jaeger elaborates on the reasons that led to its adoption and on related case law of the EU Courts that laid its jurisprudential groundwork. Although, at the time of writing, the new procedure is yet to be used in practice, Jaeger provides some reflections concerning its potential future application.

In the second chapter, Marek Safjan and Dominik Düsterhaus argue that certain rights guaranteed under EU law give rise to a 'right to have rights' for EU citizens, which the courts, including the Court of Justice, must protect. The authors suggest that this right may also be significant in assessing rule of law violations affecting the relevant rights that EU citizens may derive from primary EU law, with particular reference to recent developments in Poland. Although aware of the jurisdictional limitations of the Court in deciding cases, Safjan and Düsterhaus note the complementarity of guarantees provided by preliminary references and infringement proceedings for judicial protection, and underline the inalienability of the rule of law in the Member States and its importance for the proper functioning of the EU legal order.

Küllike Jürimäe's chapter on the cross-border mobility of companies in the EU analyses the recent developments in the Court of Justice's case law regarding the right of establishment for legal persons. Following an overview of the classic case law in this field and a thorough analysis of the more recent *Polbud* judgment, Jürimäe takes account of the inherent restrictions to which the Court's role in the preliminary ruling procedure is subject. According to her, the requisite legal certainty for economic operators might be best achieved through legislative action and the Commission's recent proposal on corporate cross-border mobility is thus a positive development.

In the fourth chapter of this part, Heidi Kaila examines how the law on the free movement of goods has adapted to more general developments in EU law. Kaila evaluates the ever more diverse reasons advanced to justify restrictions on the free movement

of goods. Her taxonomy of accepted justifications reveals that the right to free movement of goods is qualified by various competing considerations; proportionate restrictions can be justified on grounds such as fundamental rights protection, respect for the national identity and the proper functioning of society, as well as the protection of health, consumers or the environment. Considering the law in this field to be complex, she welcomes efforts to clarify and codify it in the future.

Eleanor Sharpston's chapter discusses the place of religion in EU law, and the Court of Justice's recent case law on discrimination on grounds of religion in particular. Looking at four recent cases (*G4S Secure Solutions*, *ADDH*, *Egenberger* and *IR*), Sharpston evaluates the Court's approach, detecting certain inconsistencies in the case law to date. While Sharpston considers the four cases to be comparable in that they each require, at the end of the day, the balancing of an individual's religious freedom (including the right not to practice religion) and an employer's right to neutrality or to enforce a particular religious ethos, she notes that finding that balance remains a thorny challenge for the future.

In the final chapter in this part, Philip Alston assesses the impact of austerity policies on the protection of human rights. Following an introductory definition of 'austerity', Alston illustrates the effects of austerity-driven policy by using the United Kingdom as a case study. He then evaluates how international human rights bodies have responded to the challenge that austerity measures pose to the protection of human rights. Alston concludes that the responses have so far been largely inadequate. As he identifies future challenges, he also formulates proposals for a way forward.

## V. EU External Relations and New Horizons

The six chapters of the final part of the volume address issues involving the EU's international agreements, its external relations more broadly, and Brexit. In the opening chapter of this part, Sacha Prechal discusses the legal implications of the EU's accession to the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence. Following a brief overview of its contents, Prechal undertakes an analysis of the EU institutions' proposals concerning the legal bases for the EU's signature of and accession to the Convention. Acknowledging that the Convention is to be concluded as a 'mixed' agreement, Prechal critically evaluates the ongoing accession debates and reflects on the extent to which the conclusion of the Convention by the EU might fall within the Union's exclusive external competence.

Joni Heliskoski's chapter assesses the conclusion of the EU's international agreements in fields falling within the non-exclusive competence of the EU. In the light of the recent case law of the Court of Justice, Heliskoski discusses the possibilities for the EU either to exercise its non-exclusive external competence without Member State participation or to refrain from exercising that competence and to conclude 'facultative' mixed agreements. Considering that the use of the EU's shared external competence is likely to continue to be characterised by the conclusion of such mixed agreements, Heliskoski points to a number of issues which might dissuade the Member States from resorting to facultative mixity in the future.

The third chapter of this part, by Jean-Claude Bonichot, analyses recent developments regarding the law on extradition of persons between EU Member States and third countries. Drawing parallels with the Court of Justice's classic free movement of persons case law, Bonichot discusses the evolving protection against extradition of EU citizens in light of the recent *Petruhhin*, *Pisciotti* and *Raugevicius* trilogy of cases. In his view, these rulings, as well as certain other recent developments in this field, highlight the growing importance of EU citizenship, the particular nature of EU law's perspective on the law of extradition and the crucial role of the Court in reshaping, where necessary, its classic case law to meet new challenges.

In the fourth chapter, Pekka Pohjankoski evaluates the legal feasibility of expelling a Member State from the EU. After an introduction to the law concerning expulsion of states from international organisations, Pohjankoski addresses, on the one hand, the potential powers of the Union to expel one of its constituent members and, on the other hand, the possibility for the other Member States to rely collectively on general international law to expel, as a last-resort remedy, one of their peers. Whilst cautioning against any such expulsion, Pohjankoski concludes that such a measure could, in theory at least, be envisaged if all the other autonomous remedies provided for by the EU legal order had first been exhausted.

David Edward's chapter reflects on the lessons to be learned from Brexit as a larger phenomenon rather than as a specific event. By focusing on the concepts of 'sovereignty' and 'immigration', Edward demonstrates how widespread misunderstandings of these ideas have had a detrimental effect on political discourse and outcomes, particularly in the UK. As he challenges certain of the more misguided arguments, Edward contends that strict compliance with the terms of the EU Treaties is a strong antidote against encroachments on national sovereignty and that the internal market, by its very nature, requires free movement of persons between Member States.

In the final chapter of the volume, Aindrias Ó Caoimh evaluates the change that the exit clause of Article 50 TEU has had on the fundamental nature of the 'ever closer union'. Describing how the introduction of that provision by the Lisbon Treaty changed the permanent Union into one where membership is reversible, Ó Caoimh considers the substantial impact that a Member State's exit has on the Union, as well as on the departing Member State and its citizens. Expressing doubt as to whether those who framed the EU Treaties fully understood the full magnitude of the change in the fundamental philosophy of those treaties when they introduced Article 50 TEU, Ó Caoimh advocates revision of those treaties in a manner that is faithful to their original philosophy.

## VI. Concluding Remarks

This volume is a small token of gratitude for everything that Allan Rosas has done for the development of EU law over his 18 years of service at the Court of Justice. The Editorial Committee has endeavoured to bring together an outstanding group of EU law experts all of whom have the pleasure of knowing him personally.

Throughout the volume, readers will discover that the contributors do not limit themselves merely to describing the existing law and case law, but also provide thorough

explanations as to the reasons why they believe that the EU legislator and the Court of Justice, respectively, came to a given outcome. Written in a clear and entertaining style, this book seeks to provide a solid analytical basis for future debates about the EU. It is a thoughtful and rigorous study that addresses a challenging set of questions for scholars and students alike.

Allan Rosas will be greatly missed at the Court. His invariably incisive questions during hearings that made lawyers and agents struggle, his openness to different points of views during deliberations, his capacity to build consensus as President of Chamber, his willingness to contribute as a team-player and his positive attitude have been, and will continue to be, a great source of inspiration for his colleagues at the Court.

But above all, his respect for the Court and his firm believe in the idea of justice for which it stands will continue to operate as a constant reminder that the EU is, first and foremost, a Union based on the rule of law.