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"Functions and Constitutional Dimensions of Effectiveness"

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Abstract

The research paper analyses the functions and constitutional dimensions of effectiveness. The principle of effectiveness is one of the most important, enigmatic and multi-facetted tenets of EU law. While the principle is regularly associated with the enforcement of EU law, effectiveness has more to offer. The paper examines the polyvalent uses und capacities of effectiveness. It also analyses the manifold functions performed by the principle across the spectrum of its manifestations. This multitude of functions demonstrates that the principle does not have a single legal foundation or purpose. The final part of the paper thus casts light on the constitutional dimensions of effectiveness and its complex relationship with other constitutional principles within a multilevel legal order. The conclusions identify resulting challenges for EU law enforcement.

Keywords:

Rule of Law, Multilevel Governance, Effectiveness, Agencification, Enforcement, Judicial Review, Fundamental Rights, Mutual Trust, Primacy, Democracy

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I. Introduction

The research paper seeks to look into the complex interrelations of the Rule of Law with other fundamental concepts (such as the principles of democratic self-determination, effectiveness, protection of fundamental rights). As demonstrated by earlier studies, the Rule of Law is interlinked with and mutually dependent on many principles. Some scholars dubbed it a meta- or umbrella principle with many sub-guarantees for that reason.[2] Yet, functional and justificatory relationships appear to be more entangled and intrinsically complex than that. For example, the European Commission emphasizes that compliance with the rule of law is "the backbone of any modern constitutional democracy" and adherence to the rule of law "a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law".[3]40

On the other hand, the Rule of Law itself is rooted in these basic values. It is more than an institutional framework with formal guarantees to ensure law- and faithful implementation of EU law. It is intrinsically linked to respect for democracy and for fundamental rights and therefore fosters substantive cohesion, too.

The relationship between the Rule of Law and the principle of effectiveness is perhaps the most complex and tempting. The principle of effectiveness is certainly one of the most scintillating, enigmatic, and multi-facetted tenets of EU law. It has also become the bogeyman of criminal lawyers in the past for its perceived tendency of steamrolling procedural safeguards and fundamental rights. The paper will hence look into this relationship in particular. Yet, it will not stop there. The principle of effectiveness operates as an interface between various principles and rights. It performs multiple functions in a dazzling array of contexts. In light of its omnipresence, the paper offers a panoramic view of constitutional dimensions with respect to enforcement issues.

Section 1 examines the meaning and the polyvalent uses and capacities of the principle effectiveness. It also analyses the doctrines deriving from and securing the principle.

Section 2 summarizes the functions performed by the principle of effectiveness.

Moving beyond present doctrine Section 3 turns to the constitutional pedigree of the principle of effectiveness and casts light on its conceptualisation and boundaries within a multilevel legal order. It will clarify its relationship with other constitutional principles and examine how the different and sometimes conflicting foundations can be aligned.

Section 4 dares an overall conclusion.

II. Meaning, capacities and use of the principle of effectiveness

The principle of effectiveness is not a legal newcomer emerging in the wake of European integration. It has been around in international and European human rights law much longer. This traditional principle of effectiveness has two main characteristics.[4] First, it is a method of interpretation. Human rights, in

[2] Ester Herlin-Karnell, *General principles and EU criminal law*, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), p. 513, 523; Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 7; Cristina Saenz Perez, Mutual trust as a driver of integration: which way forward?, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), 530, 539.

[3] Also European Commission, "A Europe that delivers", Communication on Enforcing EU law, COM(2022)518 final.

[4] Georgios Serghides, The Principle of Effectiveness and its Overarching Role in the Interpretation and Application of the European Convention on Human Rights (ECHR): The norm of all norms and the method of all methods,

particular, are to be applied in a practical and effective way. Legal interpretation must not render them illusory. Second, the principle of effectiveness is a norm of international law inherent in each human rights provision. As such "effectiveness" is an indispensable capacity, or an inherent element, of an international legal rule.[5] Legal provisions are created to operate with effectiveness within their relative scope. Effectiveness is part and parcel of the *raison d'être* of such provisions. Obviously, both characteristics are connected. The principle demands giving effect to the international legal rule, which feeds into the use of effectiveness as interpretation method.

At first glance, the legal situation is not much different in the legal order of the European Union. The principle of effectiveness features prominently in the case law of the ECJ. It works "primarily as functional interpretation based on effet utile".[6] Similarly and most commonly, "effectiveness is understood in EU law as effective judicial protection of individual rights and freedoms."[7]

Pursuant to Articles 47 and 19 TFEU member states are to provide access to independent courts and guarantee fair trial-proceedings and "any remedy, 'must be "effective" both in law and in practice'."[8] Notably, this scope of protection extends to 'any provision of a national legal system and any legislative, administrative or judicial practice, which might impair the effectiveness of Union law.[9] Effective protection aims beyond fundamental rights. It applies in all fields covered by Union Law. The EU, thus, seems to have emancipated the notion of effectiveness from the sphere of FR protection. It applies to EU law in general; irrespective of the legal nature of the provision; vertically and horizontally.

Something similar can be witnessed with respect to the second characteristic: effectiveness as a norm of international law. In the European context, effectiveness presents itself as a principle inherent in EU law.[10] This inherent capacity of effectiveness protects the integrity of EU legal order as such. Unlike

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2022; Daniel Rietiker and Sofie Steller, The Principle of Effectiveness: And its Overarching Role in the Interpretation and Application of the ECHR, Völkerrechtsblog, 10.10.2022, doi: 10.17176/20221010-110235-0.

[5] On the relation of effectiveness and law, Meinhard Hilf and Saskia Hörmann, Effektivität – ein Rechtsprinzip?, in: Völkerrecht als Wertordnung, FS Tomuschat, 2006, pp. 913-945, 915ff., who argue that a minimal quantum of effectiveness is a precondition for the legal validity of legal norms.One may argue that compulsory nature and being effective is a defining characteristic of any legal rule. In international law, its relevance is arguably more pronounced. At international level, fewer legal institutions and safeguards exist, which secure compliance making inhererent claims of a compulsory nature quantitatively more important.

[6] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 11.

[7] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 10. Especially, Art. 19 para. 1 TFEU calls on Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union Law. This obligation testifies to the important role of national courts for the effective implementation of EU law and fundamental rights in particular. Similar to the situation in the Council of Europe, respect of fundamental rights is upheld not only by the ECJ (in the case of preliminary referrals or actions for annulment) but also by national courts acting as functional European courts where member states act within the scope of applicability of union law.

[8] Simona Demkova and Herwig CH Hofmann, General principles of procedural justice, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), pp. 209, 212; Paul Craig and Grainne DeBúrca, EU Law, Oxford, 6. ed. 2015, p. 245.

[9] ECJ Judgment of 19 June 1990, Case C-213/89 (Factortame), EU:C:1990:257, paras 19-20; Paul Craig and Grainne DeBúrca, EU Law, Oxford, 6. ed. 2015, pp. 231ff.; Simona Demkova and Herwig CH Hofmann, General principles of procedural justice, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), pp. 209, 212 also referring to Sacha Prechal and Rob Widdershoven, Redefining the Relationship between "Rewe-Effectiveness" and Effective Judicial Protection, 4 Review of European Administrative Law (2011) 31 for a discussion on the relation between the notions of effectiveness and effective judicial protection.

[10] European Commission, "A Europe that delivers", Communication on Enforcing EU law. COM(2022)518 final; Heike Krieger, Das Effektivitätsprinzip im Völkerrecht, 2000, Berlin: Duncker & Humblot, pp. 936, 942, 944: fundamental principle underlying union legal order, inherent legal principle introducing duties to cooperate and refrain from thwarting EU obligations. Pierre Pescatore, The Doctrine of Direct Effect: An Infant Disease of Community Law, 8 European Law Review (1983), 155: legal rules have a practical purpose, which is to operate effectively. Pescatore even refers to effectiveness as the very soul of legal rules.

human rights-focused invocations of effectiveness, it has acquired a much stronger and functional meaning in the EU context. It is a major building block in the construction and preservation of the EU´s supranational legal order, which implies effectiveness considerations different from classic public international law. As it is not a stand-alone legal order its effectiveness requires reaching across all levels of the multi-level system; in particular deeply into national law.

At this systemic level, effectiveness is inextricably linked to the rule of law and the very nature of EU governance through law. In this light, effectiveness is much more than an optimisation obligation ("Principle"). It constitutes a conditio sine qua non for the functioning of the rule of law and the unity of EU law.[11] As such, it provides a compelling normative argument for key legal features of the EU legal order (and doctrines of EU law) that guarantee its viability.[12] Most prominently, claiming to be a supranational multi-level legal order primacy of supranational laws over all national law is key.[13] Protecting its authority further commands compliance and execution at the national level as otherwise the EU would lack the means to achieve its policy goals and implement its political decisions. Due to the lack of full integration and the multi-level architecture of the Union the integrity and functioning of EU law depends on loyal cooperation and abstaining from thwarting EU provisions. Primacy hence goes hand in hand with duties to cooperate and prohibits actions that frustrate effective compliance and unity of EU law. The principle of effectiveness therefore allowed the ECJ to construct a unique and intricate relationship between EU law and national laws around (and beyond) the notion of "effet utile".

Although often perceived as a means of vertical integration, the principle of effectiveness cannot bring about a level of integration and supranationality that is not grounded in the EU treaties. The EU is not fully integrated and has not been endowed with comprehensive competences. Competences are often shared and many zones of national exclusivity and carve outs for national traditions and preferences persist. Tensions and confrontation between diverging interests and values therefore cannot be excluded. Often they are intrinsic to the EU legal order itself. In such situations, the principle of effectiveness may perform an additional mediating function. Its flexibility allows for resolving conflicts and tensions through balancing of interests or creation of tailor-made solutions and structures.[14]

However, the main thrust is clearly directed towards execution and uniform application of EU law to preserve its unity and authority. The central function of judicial recourse to preserve the effectiveness of the rule of law coupled with doctrinal innovations like direct effect, state liability, mutual trust and effective interpretation[15] reveal that effectiveness, from the beginning, had a strong functional bend. As the integrity of EU law is reliant on compliance throughout the EU realm, the principle of effectiveness evolved into a driver of active enforcement.[16] While direct effect, effective remedies, and effective access to justice empower citizens to invoke provisions and rights granted under EU law in national courts

[11] ECJ (GC), Judgment of 6 March 2018, Case C-284/16 (Achmea), EU:C:2018:158.

[12] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 20: a guarantee for the functioning and coherence of the Community legal order; Accetto, Matej and Zleptning, Stefan, The Principle of Effectiveness: Rethinking its Role in Community Law, 11 European Public Law (2005), 375-403, 379 ff..

[13] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 14f. However, Mendez-Pinedo and Klament (Marcus Klamert, Rationalizing Supremacy: Supremacy, effectiveness, and two standards of equality in EU law, VerfBlog, 2021/10/18, https://verfassungsblog.de/rationalizing-supremacy/, DOI: 10.17176/20211018-182946-0, p. 2) appear to see effectiveness as a related concepts but not the source of primacy.

[14] As a mediating principle, effektiveness resolves tensions by balancing countervailing interests but also helps identify insurmountable limits inherent in the EU´s legal orders. National identity and traditions or fundamental rights, for instance, may stipulate thresholds that EU bodies must not breach even in the interest of effective enforcement.

[15] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 14 with further references to ECJ case law.

[16] See European Commission, "A Europe that delivers", Communication on Enforcing EU law, COM(2022)518 final; Simona Demkova and Herwig CH Hofmann, General principles of procedural justice, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), pp. 209, 212.

and enlists them in the service of active implementation of EU law, the principle of effectiveness also obliges national authorities to apply and give proper effect to EU law. The spectrum of actions encompasses EU-friendly applications, swift implementation of judgments, or disapplying national law to render EU provisions effective.[17]

The ECJ repeatedly used the principle of effectiveness in ways that amount to micromanaging judicial and legal matters at the national level. In this direction, the ECJ´s effectiveness jurisprudence might limit national legal practices, rule out certain preferences, and curtail procedural autonomy.[18] The principle of effectiveness sets aside legal precedent, annihilate countervailing legal opinion and ride roughshot over national traditions and established legal principles; all for the sake of primacy and unity of EU law. Procedural laws are bend into shape to secure European policy goals.

Over time, the court has moulded effectiveness into a granular yardstick of compliance. Sometimes it uses the concept as a guideline to choose between two, at least, different interpretations or competing options: "a handy device for best result instrumentalism."[19] On other occasion effectiveness assumes doctrinal functions allowing the court to gauge the cumulative effects of enforcement measures (e.g. to check whether a combination of sanctions is dissuasive and proportional).[20]

What smacks of overreach, is in essence a reminder that the sui generis multi-level governance system of the EU entrusts member states with active implementation, not just passive compliance. Effectiveness provides the doctrinal tool to achieve these results.[21]

Such interventions, nevertheless, have raised the ire of scholars, judges, and lawmakers alike. The gist of the matter seems to be that the limits of enforced homogeneity and equivalence remain unclear. The concept of effectiveness lacks theoretical depth to provide coherent explanations, why a certain result is supposedly the "best". It also offers no bright-line rules defining constitutional limits like legality, finality or procedural autonomy.

That said, effectiveness in enforcement does not boil down to compliance and enforcement only. It includes positive obligations to introduce structural measures in the executive or judicial branch even attribution of new competences and responsibilities. Effectiveness in this context is to protect the institutional and political capacity to govern by means of law. To guarantee the functioning of the EU legal order a functioning institutional framework must be guaranteed.[22]

There exists a fine line though as to how far these positive obligations can be stretched. Primary law is its natural limit. Although the ECJ has developed effectiveness into a governing principle, which "mediates between the EU and national legal orders" and may require action to strengthen the legal authority

[17] For an overview of the ECJ´s relevant case law see Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 14 f.

[18] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 10, 14. For instance, effectiveness may require disapplying procedural rules or disregarding precedent. It also creates binding effect for future cases even though national law follows an inter partes-approach. Yet, the ECJ has shied away from casting doubt on the finality (res iudicata) of national decision at odds with EU law; ECJ, Judgment of 16 March 2006, Case C-234/04 (Kapferer v. Schlank u. Schick), Slg.2006, I-2585; ECJ, Judgment of 3 September 2009, Case C-2/08 (Amministrazione dell'Economia e delle Finanze and Agenzia delle entrate v. Fallimento Olimpiclub Srl), paras. 22 f., 29ff.; Paul Craig and Grainne De Búrca, EU Law, Oxford, 6. ed. 2015, pp. 242, 273.

[19] Crit. Malcom Ross, Effectiveness in the European Legal Order(s): Beyond Supremacy to Constitutional Proportionality?, 31 European Law Review (2006), 474- 496, 486.

[20] Martin Böse, Die Verpflichtung der Mitgliedstaaten der EU zur Einführung „wirklich abschreckender Sanktionen", in Unternehmenssanktionen in der Europäischen Union, Dannecker/Meyer (eds.), Baden-Baden: Nomos, 2023, p. 15, 36.

[21] The ECJ, at least partly, conceived of effectiveness as a legal and jurisdictional lever to promote enforcement, remove obstacles and standardize implementation.

[22] Meinhard Hilf and Saskia Hörmann, Effektivität – ein Rechtsprinzip?, in: Völkerrecht als Wertordnung, FS Tomuschat, 2006, pp. 913-945, 937, 944.

of EU law,[23] it cannot write the necessary competences into the treaties. What we can see, however, are multiple effectiveness-based competence triggers and passerelles embedded in the treaties; namely Art. 83 para. 1 and Art. 83 para. 2 TFEU. Effectiveness thus comes into play as a linchpin whether EU action, in particular legislation is warranted.

ECJ and European policy-makers also invoke the principle of effectiveness to fuel and sustain operational principles such as sincere cooperation, mutual recognition and availability. In their view achieving key policy goals like the AFSJ hinges on enhanced, effective cooperation. Sincere cooperation requires that Member States cooperate horizontally amongst themselves and vertically with EU institutions to ensure the effectiveness of EU law.[24] Mutual recognition and availability enable the smooth interlocking of legal orders, which is indispensable lacking full integration. Effectiveness for its parts supports the integrity and viability of these cooperation mechanisms. For instance, the ECJ stipulates duties to cooperate and inform.[25] The court also notoriously delimits admissibility standards and grounds for refusal. This extends to operational principles or underlying preconditions like mutual trust.[26] Such aspects are construed as effectiveness-driven requirements rather than empirical factors. The symbiotic synthesis between effectiveness and the rule of law, which supports these mechanisms,[27] has become increasingly tenuous though. Rule of Law regression in some member states erodes the foundation on which they rest.[28]

Mutual trust may also collide with the promise of effective fundamental rights protection. Effectiveness apparently comes into conflict with effectiveness at this point. To resolve the conflict the principles behind the competing claims to effectiveness must be uncovered and aligned.

The real problem appears to be the unsettled relationship beween protected legal interests, Rule of Law and FR protection. Yet, before we turn to these constitutional aspects, an interim chapter summarizes the capacities and functions of effectiveness for the sake of clarity.

[23] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 20.

[24] Cristina Saenz Perez, Mutual trust as a driver of integration: which way forward?, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), 530, 534.

[25] ECJ, Judgment of 5 April 2016, Case C-404/15 (Aranyosi), paras. 79, 104.

[26] Cristina Saenz Perez, Mutual trust as a driver of integration: which way forward?, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), 530, 539: Together with several other principles effectiveness defines the normative value and meaning of mutual trust, p. 534: "As an evolution of the horizontal dimension of sincere cooperation, mutual trust has the ultimate aim of guaranteeing the effectiveness of EU criminal law" (mutual trust as a tool to fulfil the principle of effectiveness).

[27] Frank Meyer, The Rule of Law in the Enforcement of EU law: Shortcomings and future standards, Jean Monnet Network on EU Law Enforcement Working Paper Series, 2023: Where this fundamental premise is challenged and mutual trust in the rule of law conditions of one or more Member State is eroded, the Union's DNA is corrupted and the edifice is in danger of decaying; regarding this grave danger ECJ (GC), Judgment of 25 July 2018; Case C-216/18 PPU (LM), EU:C:2018:586, para. 36; Koen Lenaerts, On Checks and Balances: The Rule of Law within the EU, 29 Columbia Journal of European Law (2023) 25, 43ff.

[28] ECJ (GC), Judgment of 25 July 2018; Case C-216/18 PPU (LM), EU:C:2018:586; ECJ, Judgment of 17 December 2020, Case C-354/20 PPU (Openbaar Ministerie), ECLI:EU:C:2020:1033, paras. 31ff.; Koen Lenaerts, On Checks and Balances: The Rule of Law within the EU, 29 Columbia Journal of European Law (2023) 25, 43ff., 47; highly critical of the ECJ´s reluctance Laurent Pech and Dimitry Kochenov, Respect for the Rule of Law in the Case Law of the European Court of Justice, SIEPS 2021:3, p. 165 ff., considering the LM test ill-advised and unrealistic for captured justice system. Indeed, the LM test flatly ignores the objective dimension of independence.

III. Capacities and functions

The brief tour d´horizon has illustrated the remarkable career of the principle of effectiveness and its tremendous versatility. Its functions range from a rather modest method of interpretation to an integrative principle, which mediates between levels of governance and balances competing claims to effectiveness. In between, effectiveness has emerged as

- a guarantor of effective judicial protection of individual rights and freedoms
- a "source that constitutes the very nature of EU law and the public authority of the European Union itself"; as such effectiveness has spawned important doctrines that guarantee unity and viability of EU law, notably primacy, direct effect, state liability, mutual trust and effective interpretation[29]
- a decisive driver and yardstick for compliance and enforcement of EU law
- a principle to sustain operational principles such as sincere cooperation, mutual recognition, availability, and mutual trust
- a justification for duties to cooperate and their specific contents
- a source of positive obligations to introduce structural measures in the executive or judicial branch
- a linchpin (whether EU action is warranted) to prompt EU bodies into action, be it at the legislative or the executive level
- and more generally a governing principle preserving the overall institutional, political and legal integrity of the EU legal order.

1. Guarantor of effective judicial protection of individual rights and freedoms

Effectiveness has long been a mode of interpretation that directs practitioners towards interpretations and applications that render fundamental rights practical and effective. In this guarantor-function, it also nurtures positive obligations derived from these rights and freedoms to ensure access to courts; both institutionally and procedurally.

2. Source that constitutes the very nature of EU law and the public authority of the European Union itself

As a source and constituve element of EU law effectiveness functions as doctrinal justification for legal doctrines, effect, and operational mechanisms that help implement and sustain EU public authority. Primacy, direct effect, state liability, mutual trust and effective interpretation all find their common origin (at least partly) in the principle of effectiveness.

3. Driver and yardstick for compliance and enforcement of EU law

Effectiveness has become a crucial decision-making parameter and justification for EU-friendly implementation. It demands and justifies enforcement-focused application of national law. In this context, it buttresses and channels EU law`s claim to primacy. Where EU law and national law collide, effectiveness militates in favour of disapplying contrary norms and practices at the national level. However, it is not yet settled, which limits national autonomy and tradition draw in the sand. In terms of effective

[29] Von Bogdandy, Armin and Bast, Jürgen (eds), Principles of European Constitutional Law (2nd ed.) (Cambridge: Hart/Beck), 2011, p. 29f.

judicial protection of individual rights and freedoms, effectiveness must show its integrative capacities and reconcile conflicting interests.[30]

Furthermore, effectiveness has evolved into a more concrete yardstick to gauge progress and compliance with EU legal standards;[31] for instance, it serves as a vehicle to formulate Rule of Law-preconditions for judicial independence. Effectiveness helps translate abstract legal standards into practical EU law requirements. This function is not necessarily benign or neutral. Frequently, effectiveness comes across as a silver bullet or magic wand. Effectiveness has a track record as versatile door-opener that empowers the ECJ to dictate results or procedures in lieu of specific legislation or specific legislative competences. In the era before the entry into force of the Lisbon treaty, effectiveness supplied the decisive argument why an obligation to introduce dissuasive, effective, and proportional sanctions for violations of secondary EU law actually meant criminal punishment.[32]

In less creative fashion, effectiveness serves as yardstick to define miminum standards and upper limits.[33] It is used (as a doctrinal device!) to assess cumulative effects of combining (different kinds of) measures under the same policy with a view to the same infringement.[34] In this context, effectiveness sets normative and functional thresholds not only for a base level of implementation but also against overenforcement.

4. Principle sustaining operational principles

Regarding sincere cooperation, mutual recognition, availability, or mutual trust the principle of effectiveness functions as justification why cooperation should be prioritized.[35] Yet it is here where two functions of effectiveness collide: Effective implementation might run counter to the effective protection of fundamental rights. In mediating between competing claims to effectiveness, the notion of effectiveness also provides a normative platform to integrate and coordinate conflicting legal interests.

5. Justification for duties to cooperate and their specific contents

Quite often, effectiveness is invoked as a normative argument not to refuse cooperation prematurely but to actively work towards execution of requests etc. In this function, it creates a justificatory link between Rule of Law, interests to be protected in the case at issue and actual law enforcement activities. It also provides a benchmark for the promulgation of specific duties; e.g. to inform about concerns, to alleviate

[30] See e.g. ECJ, Judgment of 5 December 2017, Case C-42/17 («Taricco II») scrupulously navigating between effective enforcement of EU policies and national legality concerns. Conflicts also arise between interests of the defendant and alleged victims claiming effective investigations.

[31] Leaving aside crucial methodological questions, effectiveness supposedly measures and defines sufficiency and necessary elements of enforcement actions and sanctions; see ECJ, Judgment of 1 March 2022, Case C-493/21 (K.M.), paras. 21f. 23, 26; ECJ, Judgment of 6 October 2021, Case C-544/19 (Ecotex Bulgaria), paras. 100, 107. Another prominent example would be the definition of specific elements and indicators of judicial independence; ECJ, Judgment of 27 February 2018, Case C-64/16 (Associação Sindical dos Juízes Portugueses), EU:C:2018:117.

[32] Effectiveness considerations have shaped the ECJ´s reasoning in cases such as ECJ, Judgment of 6 December1990, Case C-2/88-IMM (Zwartveld u.a.); ECJ, Judgment of 8 July 1999, Case C-186/98 (Nunes and De Matos), ECJ, Judgment of 10 July 1990, Case C-326/88 (Hansen); Kai Cornelius, Steuerstrafrechtliche Verweisungen im Spannungsfeld des deutschen und europäischen Bestimmtheitsgrundsatzes, FS Rengier, München: C.H.Beck, 2018, 461, 468.

[33] Martin Böse, Die Verpflichtung der Mitgliedstaaten der EU zur Einführung „wirklich abschreckender Sanktionen“, in Unternehmenssanktionen in der Europäischen Union, Dannecker/Meyer (eds.), Baden-Baden: Nomos, 2023, p. 15, 17ff.

[34] See ECJ, Judgment of 1 March 2022, Case C-493/21 (K.M.), paras. 21f. 23, 26; ECJ, Judgment of 6 October 2021, Case C-544/19 (Ecotex Bulgaria), paras. 84, 99, 100.

[35] But see also footnotes 27, 28.

concerns, to remove risks of FR violations). In some cases, effective protection of fundamental rights could even establish a stand-alone duty to cooperate to prevent impunity.[36]

6. Source of positive obligations to introduce structural measures in the executive or judicial branch

In connection with fundamental rights and values of the EU effectiveness provides a strong justification of potent enforcement structures. Derived from the rule of law and the rights and freedoms to be protected member states are under an obligation to organize their judicial system and law enforcement agencies to ensure compliance with the CFR and TEU. For instance, the court system must facilitate effective access to justice. Courts must be independent and impartial. As regards law enforcement, these obligations expect member states to make resources available, train and reorganize their officers and prosecutors (within general budgetary constraints) to conform to normative requirements.

7. Linchpin (whether EU action is warranted)

Effectiveness may also prompt EU bodies into action, be it at the legislative or the executive level. It functions as a mixed normative-empricial standard to justify legislative competences and compliance with the subsidiarity principles. In some cases, effectiveness is hard-wired into specific treaty norms for this purpose. Art. 83 para. 2 TFEU is the most obvious example.[37] The yellow card-mechanism is another. Effectiveness hence plays a crucial role in the legislative arena.[38] From a constitutional vantage point, effectiveness provides a key argument for the allocation of legislative powers and duties at the supranational level in the first place.

8. Governing principle preserving the overall institutional, political and legal integrity of the EU legal order

As the paper emphasized above, effectiveness functions as a multidimensional flexible mediating device and a source of legal doctrine sustaining the system. It supports the allocating of legislative and enforcement powers, mediates between conflicting effectiveness-led interests and justifies defining doctrines such as primacy, direct effect, state liability for delayed transposition of EU obligations, or mutual trust.

9. Interim Conclusions

Overall, the principle of effectiveness has had a remarkable career. Its ascent appears even more surprising as it is not explicitly mentioned in EU primary law. However, the principle of effectiveness is recognized as a general principle of EU law. Many scholars trace its origin to the loyalty obligation under Art. 4(3) TEU.[39] Yet, its many meanings suggest that the effet utile alone cannot explain this

[36] See ECtHR, Judgment of 9 July 2019, App. no. 8351/17 (Romeo Castaño/Belgium), para. 234.

[37] Ester Herlin-Karnell, *General principles and EU criminal law*, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), p. 513, 524. Necessity for the effective implementation of a Union policy is a precondition for the criminal law compentence in Art. 83(2) TFEU. Effectiveness triggers the ius puniendi of the European Union.

[38] Effectiveness also seems to provide a handy argument to support the introduction of particular liability concepts, most notably for legal persons. It also offers guidance to define sentencing thresholds or the legitimate scope of cumulative sanctions; e.g. it might require confiscation to strip convict of the proceeds of their crimes; Martin Böse, Die Verpflichtung der Mitgliedstaaten der EU zur Einführung „wirklich abschreckender Sanktionen", in Unternehmenssanktionen in der Europäischen Union, Dannecker/Meyer (eds.), Baden-Baden: Nomos, 2023, p. 15, 35 f.

[39] Ester Herlin-Karnell, *General principles and EU criminal law*, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), p. 513, 523; Marcus Klamert, Rationalizing Supremacy: Supremacy, effectiveness, and two standards of equality in EU law, VerfBlog, 2021/10/18, https://verfassungsblog.de/rationalizing-supremacy/, DOI: 10.17176/20211018-182946-0, p. 2: "Effectiveness has emerged from loyalty as a means to

variety.[40] Referring to its legal nature as principle, which legal theorists describe as normative optimisation commands (Optimierungsgebot) will not get us far either.[41]

In view of the panorama of meanings, capacities, and uses, it seems doubtful whether European jurist can derive a sufficiently comprehensive uniform concept of effectiveness. Experts have "concluded that the concept of effectiveness is both elusive and difficult for EU law scholarship. There is no general agreement on a single meaning and scope."[42] This insight also raises the question whether a uniform concept is useful at all in both legal and practical terms or rather obscures complexity and diversity of its sources and applications.

While that might be true, there is still something to learn from the origins and rationalisations of effectiveness. There are constitutional sources, which lay hidden underneath the umbrella label and deserve further exploration. The concept is embedded in a complex matrix of various other principles of EU law[43] highlighting its capacities, yet also unveiling crucial desiderata.

IV. Constitutional Sources

1. Rule of Law

The most obvious connections exists between the rule of law and effectiveness.[44] Respect for the rule of law and the maintenance of at least reasonably effective rule of law institutions and practices form central attributes of a modern, functioning, legitimate political order.[45] The rule of law therefore is dependent on effective compliance and enforcement of EU law[46] and necessitates effective administrative and judicial structures in the member states. Effectiveness allows converting the rule of law from an abstract principle into a yardstick for national judicial structures and permissible behaviour of state agents.

The intimate connection between the Rule of Law and effectiveness finds another expression in Art. 4 para. 2 TEU. By compelling primacy of the application of EU law, the principles of effectiveness ensures that EU law, theoretically and practically, can and must take full effect in all member states. It not only stresses the equality of Member States but also sees to its actual implementation. This standard is not exclusively member state-centred preventing different treatment of different member states. In securing the same standards across the union, Art. 4 para. 2 and the principle of effectiveness also guard again

ensure that Union law takes full effect in national law". Klament denies, however, that supremacy is intrinsically linked with effectiveness.

[40] In same instances, effectiveness works as a stand-alone principle to produce an "effet utile"; in other instances, effective protection (e.g. of individual rights) might even clash with effet utile-led interpretations of law.

[41] Cristina Saenz Perez, Mutual trust as a driver of integration: which way forward?, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), 530, 535.

[42] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 25. The ECJ invokes effectiveness in a variety of ways, in very different contexts, and for a multitude of divergent purposes.

[43] Elvira Mendez-Pinedo, The principle of effectiveness of EU law: a difficult concept in legal scholarship, 11 Juridical Tribune (2021) 5, 12.

[44] Theodore Kostadinides, The rule of la was the constitutional foundation of the general principles of EU law, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), 287, 295; Heike Krieger, Das Effektivitätsprinzip im Völkerrecht, 2000, Berlin: Duncker & Humblot, p. 924; Eberhard Schmidt-Aßmann, Das allgemeine Verwaltungsrecht als Ordnungsidee, 2004, pp. 59, 84: rule of law demands enforcement and obedience to the law; on the other hand, the rule of law in the guise of fundamental rights and principles also reins in effective enforcement.

[45] Frank Meyer, The Rule of Law in the Enforcement of EU law: Shortcomings and future standards, Jean Monnet Network on EU Law Enforcement Working Paper Series, 2023.

[46] The idea of governing by law presupposes that legal requirements are fulfilled and complied with. This concerns administrative implementation as much as accepting and enforcing final judicial decisions; see e.g. European Commission for Democracy through Law (Venice Commission), Report on the Rule of Law, Study No. 512 / 2009, CDL-AD(2011)003rev., para. 58; ECJ, Judgment of 19 December 2019, Case C-752/18 (Deutsche Umwelthilfe), EU: C:2019:1114.

discrimination of EU citizens. Their equal treatment would be threatened if subjected to diverging implementations of EU law by different Member States.

Despite these obvious connections, the relationship is, in fact, quite ambiguous. Strikingly, as an enforcement principle of EU law effectiveness is often suspected of testing, if not stretching the limits of the rule of law. In the enforcement context, the rule of law, hence, is usually discussed as a limitation or a counterweight against overreaching enforcement. To make matters more complicated the principle of effectiveness is itself janus-faced since it also comprises the effective protection of individual rights not only as vehicle for the enforcement of EU law[47] but also an important limitation thereof[48].

Rule of law and effectiveness thus cohabitate in a complex antagonistic and symbiotic connection. At present, the focus of the debate is on balancing the rule of law, fundamental rights, and effectiveness. While it is acknowledged that in this process the rule of law (as a principle) needs to be adjusted to the specific supranational, multilevel settings in which enforcement takes place, the discussion still misses a crucial point. As a fundamental principle of EU law the rule of law is a systemic precondition and driver for cooperation and enforcement. Effective enforcement is an essential element to prevent the erosion of the rule of law; however multipolar the legal situation in individual enforcement cases may be. It provides a powerful political and constitutional justification of enforcement.

2. Democratic Principle

A similar ambiguous relationship exists between effective enforcement and (on the other hand) the principle of democracy. Democratic self-determination requires parliamentary decisions be honoured and properly implemented. An effective rule of law appears indispensable for effective self-rule. The principle of effectiveness might therefore be rooted in the principle of democracy as well.[49]

Democratic self-determination only works as long as citizens perceive it as reliable and real. Proper execution of the public will greases the machinery of democratic rule and prevents that parts of society turn their back on parliamentary and judicial processes. Effective implementation of legislative decisions therefore gives the principle of effectiveness some extra weight. However, it is not only the abstract democratic principle that effective execution serves. The policies and rights behind each provision and democratic decision have to be factored in as well. Effectiveness so understood may lend strong output legitimation to enforcement actions;[50] though its strength is relative to the importance of the interests pursued.

Output legitimation turbocharges effectiveness, but not without considerable limits. It cannot compensate a lack of input legitimation; that is, deficits in the democratic decision-making process. In this re-

[47] Koen Lenaerts, On Checks and Balances: The Rule of Law within the EU, 29 Columbia Journal of European Law (2023) 25, 29; ECJ, Judgment of 22 December 2010, Case C-279/09 (DEB), EU:C:2010:811. This entails effective access to courts, effective scope and depth of review, appropriate relief.

[48] Koen Lenaerts, On Checks and Balances: The Rule of Law within the EU, 29 Columbia Journal of European Law (2023) 25, 30. Most important, fundamental rights of all persons concerned must be honoured in the application process (fair trial etc.!). Enforcement measures are also not immune from review, which must on top satisfy certain conditions; for instance an independent judiciary, ECJ, Judgment of 27 February 2018, Case C-64/16 (Associação Sindical dos Juízes Portugueses), EU:C:2018:117, para. 41; on the ECJ´s concept of judicial independence, see ECJ, Judgment of 19 September 2006, Case C-506/04 (Wilson), EU:C:2006:587, paras. 49-52.

[49] Heike Krieger, Das Effektivitätsprinzip im Völkerrecht, 2000, Berlin: Duncker & Humblot, p. 924; Meinhard Hilf and Saskia Hörmann, Effektivität – ein Rechtsprinzip?, in: Völkerrecht als Wertordnung, FS Tomuschat, 2006, pp. 913-945, 919: Decisions adopted in the democatic legislative process will only be accepted in the long run by the citizenry if they are effectively applied and produce results. Effectiveness complements democratic self-determination and helps sustain its viability.

[50] This kind of output legitimation does not result from an expertocratic background but from the visible realisation of legal norms; in the context of international criminal law see Jesse on the relation between optimal application and high acceptance (substantive legitimacy through optimal application), Björn Jesse, Der Verbrechensbegriff des Römischen Statuts, 2009, Berlin: Duncker & Humblot., p. 70

spect reckoning with the impact and consequences of certain new soft law mechanisms might be overdue;[51] e.g. quite often the EU resorts to legislation plus monitoring bodies and subsequent recommendations to guide the implementation process. In some cases, EU bodies postulate legal benchmarks and create (legally relevant) presumptions of technical conformity or compliance[52] (based on rather abstract authorizations). Detractors might accuse such structures of bypassing democratic control and watering down rule through law.

Too strong a focus on output could also clash with fundamental rights and legality. The EU should not be allowed to tip the scales in favour of EU law enforcement by couching enforcement action in democratic terms. As an abstract legal principle, it must not be relied on directly in absence of any or in conflict with positive legal regulations. In particular, it would distort the balancing process or discretionary decision-making were EU bodies allowed to invoke democratic self-determination to reason their decisions and propel enforcement.[53]

Enforcement deficits eroding the belief in effective self-rule may by contrast, justify legislative reforms, which must be reconciled with fundamental rights under Art. 52 CFR. In these circumstances two claims to effectiveness collide as FR are another source of effectiveness.

3. Fundamental Rights

The ECJ`s case law on the rule of law appears to fulfill a tense double function: effective protection of individual rights and the rule of law. Fundamental rights are at the same time depending on and checking the effective enforcement of EU law. The identified trends in enforcement complicate the situation. They have produced very different and innovative enforcement structures[54] that purportedly serve the rule of law but classic human rights doctrines struggle with.

The developments pose an enormous challenge to reconcile the duty to respect and protect fundamental rights with these new structures.[55] The construction of effectiveness as a driver of enforcement finds several constitutional constraints. Important limits are set by other general principles of European law (legality, legal certainty) and, of course, fundamental rights. Alas, no blueprints exist in national systems that could be drawn on when it comes to assessing new types of enforcement with respect to their legal effects and accountability. Overall, effectiveness might even show integrative capacities by providing a framework to balance conflicting interests.[56] However, many challenges and open questions persist. In

[51] E.g. Mariolina Eliantonio and Oana Stefan, Soft Law Before the European Courts: Discovering a common pattern?, 37 Yearbook of European Law (2018) 457, 464.

[52] Lisette Mustert and Miroslava Scholten, "Controls in the case of the EU civil aviation safety rules", In *Controlling EU Agencies*, herausgegeben von M. Scholten, A. Brenninkmeijer, Cheltenham: Edward Elgar, p. 252; Meyer, F. 2020. „Protection of fundamental rights in a multijurisdictional setting of the EU." In *Controlling EU Agencies*, herausgegeben von M. Scholten, A. Brenninkmeijer, Cheltenham: Edward Elgar, 134, 145; Shaffer, Gregory, & Pollack, Mark (2012). Hard and Soft Law. In J. Dunoff & M. Pollack (Eds.), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (pp. 197-222). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139107310.011

[53] Yet, the necessitaties of effective self-determination may come into play in the legislative process. Introduction and justification of new instruments or procedures could draw on output deficiencies and invoke effective democratic self-determination to overcome fundamental rights concern (especially in the context of the Art. 52 CFR proportionality check).

[54] Meyer, F. 2020. „Protection of fundamental rights in a multijurisdictional setting of the EU." In *Controlling EU Agencies*, herausgegeben von M. Scholten, A. Brenninkmeijer, Cheltenham: Edward Elgar, 134, 148ff.; for instance direct centralised enforcement (plus panoply of sanctions plus soft law acts), indirect decentralised enforcement (plus panoply of sanctions plus soft law acts), shared enforcement, indirect enforcement with centralized guidance, parallel national (criminal law) enforcement.

[55] Meyer, F. 2020. „Protection of fundamental rights in a multijurisdictional setting of the EU." In *Controlling EU Agencies*, herausgegeben von M. Scholten, A. Brenninkmeijer, Cheltenham: Edward Elgar, 134, 145ff.

[56] In essence, effectiveness like mutual recognition is a neutral concept, which cannot resolve conflicts by itself. Conflicts must be settled or mitigated by reference to other (external) norm hierarchies (treaties, constitutions etc.), unless a principle is itself tied to certain interests or the embodiment of a prioritization of certain interests over others. Yet, effectiveness provides mechanisms and methodologies to concentrate coordination and balancing processes.

the final section, the emphasis will be on the uncertainties surrounding determining and measuring effectiveness itself.

V. Challenges, Deficits

References to effectiveness are legion. I have catalogued its various meanings and functions above. In quite dramatic contrast, it too often remains unclear what effectiveness actually means and how to measure it. In some instances, EU and member states authorities are called upon to enforce EU law effectively with little indications or guideposts what goals or results are to be achieved or how to "get the job done". In other instances, the EU requires specific changes by claiming their necessity to secure effectiveness (sometimes based on impact assessments) without clear theoretical reasoning as to why this is the case. If the EU intends to govern by law it should have a theoretical framework in place to explain why something is (in)effective. Assuming that the constitutional standing of effectiveness at least partly rests on its capacity to achieve certain practical and legal results the importance of how to measure and assess effectiveness cannot be underestimated.

Yet, analysing the monitoring and assessment methodology of EU institutions does not get us very far. They apparently do not follow a standardized set of methods and criteria to measure effectiveness in ways amenable to legal assessments. The dearth of theory affects the normative and the empirical side. Empirically, legal sociology has fallen out of fashion. There is hardly any interest in how law shapes social realities, human behaviour and attitudes: Research into what regulatory device might shape behaviour in what way, which variables influence the impact and acceptability of certain measures and so forth is rare. Admittedly, developing a robust sociological understanding of the functioning of EU law sounds like a Herculian task, let alone across the numerous levels of governance and member states. However, acknowledging this fact does not help find a comprehensive answer how to measure what works or not. True, this problem is not unique to the EU, but aggravated in light of the enormous weight its proponents are placing on effectiveness. Insofar and at least trying to enrich our understanding of effectiveness with insights from sociology or behavioural economics would be worthwhile.

Unfortunately, normative uncertainties compound the problems. Effectiveness is supposed to defend the unity and integrity of EU law, which militates in favour of a homogeneous, uniform approach. Yet, in many instances effectiveness merely demands effective achievement of policy goals. Where EU and member states sanction to enforce their measures have to satisfy an abstract trias of requirements.[57] EU law does not compel/mandate uniformity here; measures must be suited to achieve results. What variance EU law accepts as long as results are functionally equivalent between jurisdictions or whether it perhaps even requires diverging approaches when different national contexts so dictate, remains an open question.

As other thoughtful research papers explained, the enforcement of EU law itself is premised on contradictory assumptions.[58] On the one hand, creating a level playing field[59] is an important goal of EU policies, which implies a high level of uniformity in enforcement across the EU. Yet, admittedly, how much uniformity is due also depends on whether EU law in the area at issue demands maximal or minimal harmonization.

On the other hand, effective enforcement (or indeed: effective policy-making more generally) often requires some form of sensitivity and adaptation to differences in local circumstances – in terms of cultural, economic, legal, natural and social contexts within which EU law operates. This implies a certain level of discretion for member states in determining how exactly to enforce EU law and hence the existence of differences between member states in the way EU law is enforced (differentiated enforcement). Sebastiaan Princens paper focuses on this tension and identifies scope and types of differentiation (case-based, territorial, based on harmonized methodology or discretionary etc.).

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[57] ECJ, Judgment of 21 September 1989, Case 68/88 (Greek Maize).

[58] Sebastian Princen, EULEN Research Paper.

[59] Sebastian Princen rightly explains in his EULEN Research Paper that "level playing field" could refer to many different things: equal conditions, policy outcomes, protection of rights, procedures.

In criminal law one may add that measuring effectiveness implies dealing with the complex correlations of swift and certain investigations, punishment and prevention, in particular which element or combinations yield the best preventive result.

Even more puzzling, EU law has no definitive answer whether effectiveness is an empiricial or a normative concept; whether e*ffectiveness must be achieved in formal terms (technical compliance) or in substantive terms (ontological or deontological? Measurable effects, achieving policy outcome vs. technical compliance with norms, justice etc.?)*. I suggest there might be different answers for different emanations of effectiveness.

Where does this leave us now in terms of measuring and standardising effectiveness in enforcement? I would conclude that present practices feature at least several common characteristics. First, there is a strong focus on technical implementation and proceduralisation.[60] Struggling with defining substantive thresholds, EU bodies put a strong emphasis on institutional frameworks and procedural mechanisms. Perhaps compliance is easier to patrol in these cases. When it comes to substance and actual impact, all sides are struggling.[61] Some critics point to a lack of legislative detail (or uniformity) in multi-level structures. They argue that there is too little guidance in substantive terms.[62] Other criticize a lack of policies or common standards for European law enforcement. Loads of legislative regulation (even here gaps may exist) do not guarantee effective implementation. If left to national level and practices, these lacunae breed enforcement deficits.[63]

While this observation is definitely true in some cases, there seems to be a temptation in others to define catalogues of legal criteria and standards that must be fulfilled. This approach allows lawyers to assess compliance technically and tick boxes. This leads to a certain overjuridification of enforcement, which risks losing sight of substance and impact. Lawyers demand what lawyers can comprehend and assess. Obvioulsy, this is not good enough for effective enforcement.

[60] See Simona Demkova and Herwig CH Hofmann, General principles of procedural justice, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), pp. 209, 214.

[61] Defining and measuring substantive benchmarks for the implementation of normative goals is a theoretical and methodological challenge for jurists (e.g. does effectiveness refer to compliance and strict transposition of legal provisions or implementation of underlying legislative purposes and justifications?); on measuring the added value of EU criminal law, Wouter van Ballegooij, eucrim 2/2016, 90, 91. With respect to competition law Maciej Bernatt offered a matrix to measure negative effects of populism on the effectiveness of competition law enforcement in his presentation at the Heidelberg workshop.

[62] Simona Demkova and Herwig CH Hofmann, General principles of procedural justice, in: Katja Ziegler, Päivi Neuvonen, Violeta Moreno-Lax, Research Handbook on General Principles in EU law: Constructing Legal Orders in Europa (Cheltenham: Edward Elgar, 2022), pp. 209, 222.

[63] John Vervaele, Towards a European Reassessment of Punitive Law Enforcement?, 2023 (The Hague: eleven), p. 42.