Introduction to *Interdisciplinary Research Methods in EU Law*

Rossana Deplano, Giulia Gentile, Luigi Lonardo and Tobias Nowak

1. INTERDISCIPLINARY RESEARCH METHODS AND THEIR RELEVANCE FOR THE STUDY OF EU LAW

There is a growing interest in research methods for the study of EU law. Pioneering studies have focused on specific methods or approaches to the study of EU law, including interpretative methods relied upon by scholars and courts.[1] Other studies have analysed the extent to which the methods utilised by European scholars in other areas of law can enrich legal research on EU law.[2] This handbook contributes to the debate on the contemporary trends in EU law research by focusing on interdisciplinary approaches to EU law. Interdisciplinarity in legal studies is increasingly expanding to overcome the perceived limitations of doctrinal-only research,[3] as interdisciplinarity enhances our understanding of the law in its social context.

Acknowledging this gradual, ongoing evolution in legal research and legal studies, the handbook ventures outside the realm of doctrinal legal scholarship. It investigates and interrogates disciplines (and their methodologies) that have sat in the proximity of law whose contribution to legal studies largely remains canonical, such as history, economics, political science and international relations. The handbook also encourages the expansion of EU law scholarship so as to include useful contributions from disciplines such as disability studies, psychology and philosophy.

The intellectual rationale for the handbook is that engaging with a plurality of disciplines and their methodologies enriches our understanding of EU law in mutually beneficial ways. While interdisciplinary studies of EU law are not new, a systematisation and critical analysis of these contributions is missing. To fill this gap, the handbook includes chapters by leading

[1] UB Neergaard, R Nielsen and LM Roseberry (eds), *European Legal Method: Paradoxes and Revitalization* (DJØF Publishing 2011); K Riesenhuber (ed), *European Legal Methodology* (2nd ed, Intersentia 2021). For a specific application to selected areas of European private law in comparative perspective, see J Pila and A Ohly (eds), *The Europeanization of Intellectual Property Law: Towards a European Legal Methodology* (OUP 2013); T Hervey et al. (eds), *Research Methodologies in EU and International Law* (Bloomsbury, 2011).

[2] UB Neergaard and R Nielsen (eds), *European Legal Method in a Multi-level Legal Order* (DJØF Publishing 2012); U B Neergaard and R Nielsen (eds), *European Legal Method: Towards a New European Legal Realism?* (DJØF Publishing 2013); M Bartl and JC Lawrence, *The Politics of European Legal Research* (Edward Elgar Publishing 2022).

[3] B de Witte, 'Legal Methods for the Study of EU International Practice' (2022) 18(4) European Constitutional Law Review 637 (arguing that doctrinal analysis is useful only when it incorporates a degree of 'law in action').

scholars who are familiar with a variety of disciplines. It thus illustrates how EU law is seen and conceptualised by both lawyers and non-lawyers, and how the legal dimension can be incorporated into other disciplines and vice versa. Each chapter reflects on the actual or potential synergies between their disciplines, including their research methods, and EU law.

Some chapters present new material or focus on a specific issue ('specific' chapters) while others provide an overview of a field and its methodology ('synthetic' chapters). The handbook innovatively maps a largely uncharted intellectual territory at the fringes of EU law. By showing the potential for unexpected interdisciplinary connections, the handbook facilitates interdisciplinary dialogue, ultimately contributing to the pluralisation of EU law scholarship.

By stimulating deeper reflection on research methods and their use, the handbook will be an essential tool for students, researchers, policy-makers and practitioners of EU law and related areas.

2. PLURALISING EU LAW SCHOLARSHIP THROUGH INTERDISCIPLINARY LENSES

The common thread of the handbook is to go beyond the theoretical-only approach to the study of EU law and focus on interdisciplinarity – that is to say, the interplay between EU law and other disciplines. In doing so, the analysis developed in the chapters advances three complementary claims.

First, interdisciplinary studies of the law, including EU law, unveil the context in which the law is created and applied. In doing so, they shed light on the genesis, functioning and purpose of the law in ways that doctrinal work alone cannot necessarily or consistently achieve. The chapters included in the handbook collectively illustrate the importance of context in shaping the academic discourse on EU law, thus showcasing new avenues for academic inquiries into EU legal scholarship.

Second, interdisciplinary studies of EU law invite re-conceptualisations of the EU, its integration process and its laws, by elucidating the context in which it operates – including its actors, processes and measures.

Third, the study of EU law from disciplinary perspectives other than the legal one enriches doctrinal work. While doctrinal work is a valuable approach to EU legal research, this is not necessarily the most appropriate one for all research projects. Notably, interdisciplinary studies invite reflexivity in the way in which scholars 'do' EU law scholarship.

Through the multi-faceted lens of interdisciplinarity, the handbook shows how various disciplinary fields may complement each other, thus pluralising the disciplinary remit of EU law studies. Such a cross-fertilisation provides three direct and tangible benefits.

First, interdisciplinarity sheds light on an object of legal scholarship which is often hidden or lost otherwise – namely, social behaviour. Legal rules are part of social behaviour, as they ultimately acquire meaning in the interaction between individuals and institutional actors. Understanding how such actors behave through an 'external' perspective (from the standpoint of EU law) uncovers causal links and connections that shed light on the application and development of EU law and, ultimately, its impact on society.

Second, interdisciplinary studies reveal the context in which the law operates. While textual and theoretical analysis of EU law is useful to critically examine the institutional structure of the EU and its functioning, the assessment of EU law's purposes and goals requires engage-

ment with, among others, a variety of empirical and comparative methods – that is to say, a contextual approach to what the EU is, or should be.

Third, interdisciplinary studies of EU law acknowledge that there is a subjective element underpinning the creation and development of both EU law (for example through choices made by individuals and by institutions) and EU legal scholarship. Putting individual choices front and centre in academic works is a research approach much neglected among EU law scholars. Resorting to interdisciplinary studies pushes the boundaries of academic research forward by unveiling the socio-cultural determinants of European integration, as also manifested through EU law.

3. OUTLINE OF CHAPTERS

The handbook begins with an introductory chapter by Lonardo and Nowak providing critical reflections on the interplay between research method, legal research and interdisciplinarity as a tool for understanding and rationalising EU law. Chapter 1 emphasises the importance of methodological pluralism and attention to context as a way to generate insights that go beyond formalist approaches to the study of EU law.

Subsequently, the handbook is divided into two parts, each exploring a different theme. The first part examines the broad socio-legal context influencing the formation and development of EU law. Unsurprisingly, most of the chapter places emphasis on the Court of Justice of the European Union (CJEU) as one of the main institutional actors shaping EU law. Chapter 2 by Alina Tryfondou analyses the underlying social and political context of the EU's non-discrimination law concerning sex and gender in a combination of legal analysis, political science and gender studies. After critically probing and explaining the case law of the CJEU from the different disciplinary perspectives, it suggests that the Court should take a broader conceptual approach to sexual minorities. Chapter 3 by Delia Ferri analyses the relationship between disability studies and EU law, including the related scholarly literature. It shows that the application of the theoretical approaches of disability studies to the formulation and interpretation of EU law can help improve the lives of disabled persons. Specifically, the analysis demonstrates the practical influence that disability models can have on the decisions of the CJEU. Chapter 4 by William Phelan takes a historical perspective on EU law. By using the early innovative judgments of the CJEU, he demonstrates the importance of studying judicial biographies to better understand EU judgments. Studying the lives of EU judges makes it possible to test assumptions about what motivated judges to deliver these judgments.

Chapter 5 by Klaus Mathis and Martin Meier evaluates the interrelationship between economics and competition (and the legal discipline studying them). In doing so, it describes how a new behavioural model has emerged in the field of law and economics which challenges the model of perfect rationality. The argument put forward is that economic models are of practical use to evaluate the judgements of the CJEU. Consequently, the elaboration of, and reliance by the Court on, these different models and more realistic behavioural models would arguably lead to better decisions. Chapter 6 by Francesca Colli analyses the litigation behaviour and strategies of social movements by examining legal opportunity structures – namely, the possibilities for social movements to invoke courts to further their goals. It develops an analytical framework for the study of these structures and demonstrates its application in case studies of climate change litigation.

Chapter 7 by Rita Floyd shows how the three dominant European schools of security (the Copenhagen, Paris and Welsh schools) can clarify the role and function of EU law in the area of European security and defence policy. It examines recent security crises in EU member states through the lenses of the three security schools and emphasises the importance of the rule of law for the EU's security policy. It shows that depoliticisation can have positive repercussions for the progressive development of EU law in the security area.

The second part of the book offers re-conceptualisations of EU law and its underlying process of regional integration through the lens of interdisciplinarity. Chapter 8 by Armin Cuyvers, Eva Grosfeld and Daan Scheepers provides a behavioural study of the perceived legitimacy of European integration in general and of EU law in particular. By utilising a plurality of empirical methods and theoretical approaches from the field of social psychology, it shows how such methodological pluralism can be applied to study EU integration and EU law.

Chapter 9 by Roger Van den Bergh applies a law and economics approach to analyse the vertical allocation of regulatory competence in the EU. It shows the ways in which the economic analysis of federalism may be helpful to find a balance between centralisation and decentralisation of regulatory competence. It then evaluates how politics can cause inefficient distribution of regulatory power by using the COVID-19 crisis as a case study.

Chapter 10 by Marc Hertogh and Erin Jackson re-conceptualises the debate concerning the rule of law crisis in the EU by introducing an innovative research design grounded on empirical research. It investigates the social foundations of the rule of law in the EU through recourse to a variety of mixed methods tools borrowed from the social sciences. Chapter 11 by Kanita Abazi, Niklas Buscher and Torsten Selck examines the criteria used by the EU to determine the level of democracy in member states. It critically evaluates the inadequacy of the current EU concept of democracy in the light of democracy theory and argues for a more comprehensive method to assess intra-state levels of democracy than the one used by the EU.

Chapter 12 by Annette Freyberg-Inan explores how the views of the most prominent international relations (IR) schools of thought on EU integration could be fruitfully combined with the study of EU law. It argues that the pessimistic view on EU integration prevailing in IR makes integrating the two disciplines rather difficult. Nonetheless, both disciplines could benefit from combining their strengths in the field of institutional design. Chapter 13 by Giulia Gentile, Monika Glavina and Tobias Nowak examines how qualitative and quantitative methods can enhance the understanding of the application of EU law in the courts of the Member States. It shows the pitfalls and benefits of interview and survey methods as well as those of the application of machine learning to the study of the application of EU law by national courts.

Chapter 14 by Jeanne Gaakeer and Pauline Phoa presents a model for investigating the interpretative process of courts inspired by law and literature/humanities perspectives. Grounded on a legal hermeneutics approach, it provides a deeper understanding of CJEU judgments by analysing the narratives and language that the Court uses and putting them in a cultural context. Chapter 15 by Dora Kostakopoulou presents another general framework for understanding legal developments. Structured as an institutional constructivist model that focuses on institutional change, it provides a contextual examination of the evolution of socio-political and legal norms and perceptions by examining variables relating to institutionalisation processes, such as agency, institutions, discourse and space–time.

Chapter 16 by Luigi Lonardo examines the methodological Marxist legacy that a number of legal scholars preserve, sometimes implicitly, when researching EU law. It shows how critical

approaches that are based on Marxist methodology are instrumental to addressing normative questions about EU law and policy. Chapter 17 by Aravind Ganesh demonstrates the usefulness of Immanuel Kant's philosophical work on law for understanding the nature of EU integration, including its legal foundations and international relations. To that end, it engages with the writings of legal scholars who have applied Kantian ideas to explore the nature of EU law.

Chapter 18 by Carlo Invernizzi Accetti offers an alternative to the common interpretations of the nature of the EU by drawing on political theory. It analyses the structural foundations, political processes and socio-economic policies of the EU using categories, concepts and models of Christian democracy. The resulting interpretative framework provides new descriptive categories for the study of the EU integration process. Finally, using concepts and ideas of IR, Chapter 19 by Stefania Kolarz presents a framework for the analysis of factors influencing the ability of the EU to diffuse its legal norms globally. It shows how the proposed framework can shed light on the process of diffusion of EU legal standards to non-EU states in the field of data protection (GDPR).