Legal Research Programme 2022

Call for papers • Application deadline: 30 January 2022

The European Central Bank (ECB) launched the Legal Research Programme (LRP) in 2008 to foster analysis of areas of law relevant to the ECB's statutory tasks and to establish closer contacts with academia.

The ECB is seeking applications from established scholars or promising early career researchers for the award of one or more scholarships to conduct legal research and publish an article on one of the topics set out below. Each scholarship is endowed with a grant of EUR 5 000, which is not compatible with any other fellowships or grants received from third parties in relation to the same research project, unless the ECB expressly consents to this. Scholars applying for a research scholarship cannot be in an employment relationship with the ECB. The scholarship will be paid provided the research paper is accepted for publication in an internationally renowned and peer-reviewed academic journal at the latest by 1 November 2023.

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Research projects

A scholarship under the LRP will be awarded to applicants who propose a research project on one of the following research areas.

1. Implications of artificial intelligence and machine learning for prudential banking supervision

Supervisors need to process vast amounts of data from different sources of information. The sheer amount of data renders it attractive for supervisors to rely on autonomous machine learning algorithms that are made available by the rapidly evolving field of artificial intelligence. Supervisors, and the ECB in particular as an EU institution, are subject to specific legal constraints such as the principle of good administration and, where a margin of discretion is allowed, the requirement to exercise discretion on the basis of an impartial assessment of facts. Research on this topic should combine a forward-looking perspective on a novel technology with a solid grounding in existing case-law.

2. Liability in relation to decision-making in EU composite procedures

The ECB exercises some of its tasks in complex institutional systems that integrate the ECB, other EU institutions, agencies and bodies, and national public authorities. Sometimes the ECB takes positions or decisions that form part of a longer procedure involving other authorities. These procedures have been dubbed 'composite procedures' and the interaction between the EU and the national level has attracted much attention in legal doctrine recently. Instead, this call for papers aims to stimulate research on the interaction between institutions, agencies and bodies at the EU level. These composite approaches to delivering European public tasks trigger questions on the legal liability (to whom, and for what part of the process) of those institutions, agencies and bodies which, in the discharge of their respective responsibilities, contribute, at EU level, to the procedures involved. Research on this topic should explore the various dimensions and challenges of liability and accountability in complex decision-making procedures involving the ECB, such as (i) the resolution of a supervised credit institution that the ECB has assessed as failing or likely to fail; or (ii) the relationship with market authorities, e.g. in the context of the determination of whether a third country central counterparty is systemically important for the financial stability of the EU or its Member States.

3. Discretion of EU institutions

Since the times of the European Coal and Steel Community, EU institutions, agencies and bodies have been entrusted with administrative tasks that implied some margins of executive discretion. With the further development of the European integration process, the number of administrative tasks entrusted to EU institutions, agencies and bodies has increased exponentially, and the scope for discretion available to carry out such tasks has likewise increased. There is therefore ample case-law on the discretion that EU institutions enjoy under the Treaties: when exercising complex and technical judgement, they are granted a broader scope for discretion than in other cases. Yet, the areas where EU institutions exercise complex and technical judgement are wide-ranging, as they include policy setting as well as (some) administrative tasks. At national level, the distinction between policy setting or 'higher administration' and other administrative competences has a bearing on the scope of discretion allowed to the relevant institutions and on the benchmark for the review of such discretion. A question for research would be whether and where a line could be drawn between the two areas, and which consequences such a categorisation may have, if any. Research on this topic should develop a conceptual framework on the basis of the Treaties, jurisprudence of the Court of Justice of the European Union (CJEU), doctrine applying to EU institutions and pronouncements or communications of the EU institutions on this matter.

4. Central bank cooperation at a time of global challenges and national solutions

The context of a changing landscape has required central banks to embrace new forms of cooperation to tackle common technological or physical challenges or to respond to other global structural changes. Increasingly attention is being paid to strengthening compliance with international norms designed to fight those global challenges and changing circumstances. Against this background, research on this topic should cover the following:

- objectives of central bank cooperation, both from the perspective of their sometimes narrowly defined mandates focusing on the domestic context, and against the more global task of contributing to the stability of the international financial system;
- subjects of central bank cooperation, such as the establishment of swap lines, coordinated interventions in the foreign exchange market, establishment of payment arrangements or undertaking of other banking operations, closer alignment of policy stances or regulatory approaches, extensive information sharing;
- formal instruments of cooperation between central banks, such as memoranda of understanding, agreements signed within the framework of the Bank of International Settlements, or other tools;
- duties of central banks to promote compliance with international standards, including in relation to the fight against tax crime and money laundering.

5. Legal framework for the application of sanctions by the ECB

On the basis of Article 34(3) of the Statute of the European System of Central Banks and of the ECB, and within the limits and under the conditions laid down by Council Regulation (EC) No 2532/98, the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. The scope of administrative sanctioning has broadened in recent years, ensuring that the ECB can sanction failure to comply with obligations in a range of different regulatory fields, which now includes supervision, monetary policy, oversight of systemically important payment systems, statistical reporting and production of banknotes. The CJEU issued its first judgments touching on the nature,

range and scope of ECB sanctioning powers specifically in the field of banking supervision, significantly expanding on the case law developed over the years in other fields. Nonetheless, many questions remain open. Research on this topic should (i) analyse the ECB's sanctions regime from an academic perspective, taking account of the similarities and differences with the practices of other EU institutions, agencies or bodies, together with eventual constructive suggestions for reform; and (ii) develop a taxonomy of the different sanctions and measures available to the ECB both in its capacity as a central bank and banking supervisor.

6. The increasing recourse to cloud services by the financial system

The banking and financial system at large is exposed to a fast-paced IT environment. One of the most relevant changes currently taking place is the increasing reliance on cloud service providers. Scale effects allow cloud providers to offer IT services at a higher quality, higher security and often at lower costs than on-premise delivery models. Organisations which do not take up such models face a considerable risk of functionally inadequate and technically obsolete IT services. This pressure to rely on cloud service providers needs to be matched with the legal requirements determined by the regulatory framework applicable to the respective user. Yet, several provisions in different parts of the applicable legal framework impose many limitations. Research on this topic should explore all relevant legal sources and concepts and deduct therefrom the legal framework that EU financial institutions need to adhere to when relying on cloud service providers, and more generally possible frictions with prudential requirements and practices.

7. Central banks and inequality

The issue of economic inequality has received increased attention since the 2008 financial crisis. Indeed, the increase in income and wealth inequality, which in most advanced economies has manifested itself since the early 1980s, has accelerated since that crisis. There has also been a greater focus on the implications of inequality for the activities of central banks. On the one hand, the prolonged period of monetary accommodation has tended to have a large impact on the price of long-term assets rather than changes in short-term interest rates, giving rise to concerns that monetary policy is mainly benefiting wealthier households. In addition, there is growing recognition that the pass-through of monetary policy is dependent on the distribution of income and wealth. On the other hand, accommodative monetary policy has decreased unemployment, benefitting the lowest income population. Outside of monetary policy, there are also questions on whether central bank digital currencies can reduce wealth equality or enhance financial inclusion. These developments raise important legal issues. To what extent do the mandates of central banks allow them to take into account or even address these issues? How does the Union's objective to work for 'a highly competitive social market economy' differ from the requirement to act in accordance with an open market economy? What is the possible relevance of the Union's objectives to combat social exclusion and discrimination, and should central banks promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child? What about the requirement to comply with the general principles of EU law, including the EU Charter of Fundamental Rights? Research on this topic should focus on the ECB and Member States' central banks and their mandate, but comparisons with other central banks are also welcome.

8. Threats to the rule of law and the integrity of the EU banking and financial system

Recent jurisprudence of the CJEU on Article 19 of the Treaty on European Union has opened up a new dimension for the rule of law, its meaning and practical implications in the EU. Questions have been raised on the lawfulness and legitimacy of certain courts, whose setup does not comply with the rule of law, with repercussions on the lawfulness and validity of their decisions. In a Union of law, as the EU prides to define itself to be, the question is whether and to which extent this can be tolerated without any consequences. The issue, apart from the ethical question of whether ways should be found to punish Member States which do not abide by rule of law standards, relates to the consequences of this situation going forward, e.g. to which extent can contracts to which a bank is a party be implemented and relied upon in a context where the judiciary is not independent, and which consequences could such a situation have from a prudential perspective; when euro area banks have established branches or subsidiaries in such Member States, which kind of cooperation is possible with local authorities; what would happen if such a situation arose in one of the Member States in the euro area (or participating in the Single Supervisory Mechanism), with the risk of these issues even affecting the valid composition of the Eurosystem's (or respectively SSM's) decision-making bodies. Research on this topic should focus on the possible implications of the new jurisprudence on the rule of law on the institutional framework of the monetary and banking union.

9. Criminal law and banking union: towards a criminal fragmentation of the banking union, or call for a single criminal law framework in EU financial law?

Since its establishment, the banking union has greatly contributed to further increase the importance of the direct administration of financial institutions in relevant sectors of the EU economy and society. The centralisation of institutional arrangements has preceded the full harmonisation of substantive rules, which in several respects has not yet been completely achieved: the application by and to EU institutions of national rules is by now a reality which academics and practitioners in the field have helped to decode and come to terms with. The application of criminal law remains a specific aspect of this subject matter, however. Despite the fact that criminal frameworks remain largely national with no prospect for harmonisation currently in sight, criminal law is very closely linked to the exercise of supervision and it can have important effects on how direct administration is carried out by EU institutions. This fragmented situation has the potential to create differences in the way administrative rules (even when harmonised) are applied, leading to an uneven playing field. Research on this topic should analyse both substantive and procedural aspects of the relation between (national) criminal law and the application (at EU level) of prudential regulation, with a focus on the extent to which jurisdictional scrutiny is allowed in the various jurisdictions, the way in which the EU administration is expected to cooperate with the criminal judicial authorities in a comparative perspective, and the possible perspective of harmonisation at EU level.

Applications

Applications should be sent by email to LegalResearchProgramme@ecb.europa.eu no later than **10 PM (CET) on 30 January 2022**. The ECB aims to assign at least one third of the assigned scholarships to Junior Scholars (i.e. scholars who are doctoral candidates or obtained their doctoral degree no earlier than 1 January 2020). To further enhance diversity, the ECB particularly encourages applications from female candidates. The selection committee aims to award the scholarships by March 2022.

Applications must include:

- the applicant's curriculum vitae;
- in the case of Junior Scholars: an official statement confirming the doctoral candidate status of the applicant or the date on which the doctoral degree was obtained;
- a proposal falling under one of the research topics mentioned above. Such proposal should be no longer than 1 500 words (not including charts, graphs, or bibliography) and consist of the following:
- a) a statement of the issues to be addressed
- b) the proposed methodology

- c) an analysis of the originality and significance of the proposed research paper in view of the existing academic literature
- d) a discussion of the feasibility for completion of the research project by 1 November 2022

About the scholarship

Each selected Scholar will be required to prepare a high-quality, original research paper of a minimum of 12 000 words in length, excluding footnotes, which must meet, in the ECB's assessment, the overall standard expected of papers published in internationally renowned and peer-reviewed academic journals.

Scholars may be invited to the ECB to present their research, before or after the completion of the research programme and payment of the grant. Scholars will be responsible for their own transportation and accommodation arrangements and costs but will be reimbursed for such costs under the ECB Terms of Reference for reimbursement of travel expenses.

The ECB may decide not to award a scholarship for any of the above research topics, or for any category of applicants if, in its opinion, no application of a sufficient quality has been submitted for that research topic or by that category of applicants. The applications will be assessed by a committee composed of legal counsels within the ECB's Legal Services.

Presentation of the research proposal

The selected Scholars will be invited to a seminar to be held at the ECB in spring 2022, to present their proposal against the background of their previous research in the relevant field. This seminar is intended to establish a productive relationship between the ECB's Legal Services and the Scholars, and to provide Scholars with constructive feedback on their research subject from practitioners in the field.

Submission of the first draft

The Scholar must submit a first draft of his or her research paper to the ECB by 15 June 2022 and must immediately inform the ECB if there is a risk of not meeting that deadline. The ECB will review and referee the research paper by 31 August 2022.

Finalisation of the draft

The Scholar is expected to take the remarks and suggestions of the ECB's review into consideration and complete the research paper by 1 November 2022.

Submission for publication

Scholars are expected to seek publication of the research paper in a well-recognised, internationally renowned and peer-reviewed academic journal. The paper should be accepted for publication by the journal by 1 November 2023 at the latest, in the absence of which the right to the honorarium will elapse, unless the ECB has granted a derogation for exceptional reasons.

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