



# *Verba volant, sed imperant?*

## The legal challenges of EU Communication

Jean Monnet Chair 2023-2026  
Prof. Jacopo Alberti

### *Call for papers*

#### **Background and rationale of the project**

Communication, particularly in its digital dimension, is acquiring an increasingly important role in the regulation of current societies.

The EU is in no way immune from this evolution. Conversely, its very peculiar nature (not a sheer international organization, not yet a State) makes it even more difficult to properly communicate its actions and to deal with its announcements.

The legal science has devoted very little attention so far to the communication means and strategies of EU institutions, since they were perceived as being either as a mere demonstration of functions and powers already provided for by legal texts, or as a simple anticipation of a decision to be subsequently taken through legal acts. In a nutshell, the typical approach of legal scholars to communication can be summarized by an old Latin motto, which says: '*verba volant, scripta manent*'. Spoken words fly away, only what is written remains – and, thus, deserves to be taken into consideration, being able to impose rights and obligations on individuals.

However, in the information society we are currently living in, this approach is not fully convincing. As a matter of fact, the social perception of the role of a public body is more and more often embodied by the way in which this same body communicate to the general public. Likewise, over the recent years crucial decisions of the EU institutions have been taken through announcements, press releases or tweets; and the use of social networks has de facto enabled these decisions to produce their effects without the need of being transposed into a formal legal act.

One may think, for instance, about the decision to move the European Medicine Agency's headquarter from London to Amsterdam, that has been firstly adopted through a tweet; the European Central Bank's programme to counteract the financial speculation over sovereign bonds, that has been taken through an announcement; the so called 'EU-Turkey Agreement' on the management of the Syrian refugees crisis, which has actually been adopted only in the form of a press release.

Despite having a clear non-legal nature, these decisions have deeply affected the rights and interests of companies, individuals, local entities, such as the holders of bank accounts of Countries under the attack of financial speculation or the migrants that were trying to enter in Europe. And it is not by chance that all these 'decisions' (communications?) have been highly debated at political level and have been even challenged before the European Court of Justice, the EU General Court, the German Federal Constitutional Tribunal.



## Past studies in the field

The role of communication in the public sphere is not a new research topic for sciences other than EU Law.

Since the end of the 90s, political scientists have been questioning “*regulation by communication*” (e.g. Majone, 1997); economists have been addressing the role of Central Banks’ communication in the implementation of monetary policies, particularly in the recent period of financial attacks on sovereign bonds after the failure of Lehmann Brothers; sociologists are more and more often studying the role of mass media in communicating the EU as well as the means through which the same EU communicates its activities; furthermore, the conditions under which a provision can assume a normative power is a topic deeply debated in classic legal theory.

Conversely, legal sciences have not studied systematically the value of EU communication yet. When these issues have arisen before EU Courts, the matter has been solved either applying the settled principle on the possibility to challenge only those acts that are formally able to produce legal effects (e.g., the *Gauweiler* case, with regard to the question on the validity of the press release) or has been dismissed thanks to the settled principles on the limits to the access to justice for individuals (*von Storch*) or on the non-reviewability of acts (allegedly) taken by the Member States (*NF*). In all cases, the system has decided not to adapt its settled traditions to the brave new world.

Moreover, legal studies have often tackled the topic of communication from a *private* perspective, namely discussing the role of social media communication among individuals (e.g. whether online conduct may justify the dismissal of an employee or the prosecution of a criminal offence). Yet, the legal value of the *public* communication of institutions and/or of their political leaders has not yet been explored, especially with regard to the EU dimension. However, their attention has been usually devoted to acts that have an ambiguous nature, being formally non-binding yet *de facto* binding... but that are, at least, *acts*. In the information society we are currently living in, where the impact on individuals’ rights and obligations is more and more often created by bare communicative tools, this approach seems to deserve a step forward. After having taken a first major step in discussing whether there was not only a hard law, but a soft one as well, it is now time to embrace the next, consequential development: going even beyond soft law, and debating whether some non-legal sources can produce effects that are comparable to the ones produced by ‘traditional’ law.

## The Call for Papers

Against this framework, the Chair aims at fostering innovative and interdisciplinary studies focusing (preferably, yet not exclusively) on the following issues:

- **Mapping the phenomenon:** the power of communication is very well known and studied in field such as monetary policy, banking, as well as in those field covered by behavioral sciences and what political science, since few decades, calls the ‘regulation by information’. Yet, after the rise of social media and circumstances such as the pandemic and the wars on the Eastern side of Europe, it is still relevant to set the scene and map when, where and to what extent communication strategies are becoming *de facto* tools for steering behaviors of natural and legal persons, substituting legal acts.
- **Theoretical questions:** is communication capable to produce legally binding effects and, thus, to be considered a fully-fledged new source of law? In case, how and under which conditions may this happen? To what extent the studies brought forward so far by legal theory and philosophy (including, among others, studies on BES and jurisprudence) can be applied to the very peculiar institutional and normative setting of the EU? The need of going beyond

the hard/soft law divide, already intensively debated by legal and political scholars, can be brought so far to acknowledge the rise of a new method of co-production of legal sources by public authorities and regulated entities also through communication means?

- **Institutional questions:** do EU institutions, bodies, offices and agencies use communication strategies to expand their powers both within and beyond their institutional boundaries (e.g. acting where lacks a proper legal basis)? Could this happen also to the detriment of the Member States or *viceversa* could national governments erode EU prerogatives through communication means? Which impact do these phenomena have on the principle of EU institutional balance? To what extent the existing democratic accountability mechanisms are able to control the communicative dimension of executive bodies?
- **The making of EU Communication:** which is the ‘governance of communication’ within each EU institution and the procedures to be followed to this end? To what extent are the differences among EU institutions justifiable? Which impact have had social media on EU Communication? To what extent internal codes of conduct (or their absence, such as within the European Council) are able to steer EU Communication and the perception of the EU at national level? Which is the impact of EU multilingualism on the EU communication strategies?
- **Judicial protection:** if words are stones, to what extent the current judicial remedies, both at national and EU level, are valuable shields against them? Are there specific policy fields (e.g. banking and finance), where communication plays a particularly relevant role, in which the current case-law requires an *ad hoc* evolution? How could (or should) evolve the EU case-law and the EU system of judicial protection to deal with the impact on individuals’ rights and obligations made by public communication? More precisely, how do the settled principles on judicial protection (e.g. capability to produce legal effects vis-à-vis third parties; interest in bringing the action; direct and individual concern; sufficiently manifest and serious breach; legitimate expectations) or on the interpretation and application of EU Law (e.g. primacy; direct effect; consistent interpretation) apply when the EU ‘act’ at stake is an announcement or a press release?

## Conference and Young Researchers Platform of the Jean Monnet Chair

The best papers will be presented at the Conference *Verba volant, sed imperant? The legal challenges of EU Communication*, which will take place at the University of Ferrara in September 2024, with a high-level line-up of speakers from Academia and EU institutions.

The Authors of the best papers (even if not selected for being presented at the Conference) will be invited by the Chair to join a Young Researchers Platform (YRP) that aims at share knowledge and inputs on the topic covered by the Chair. The YRP will be open to scholars (Ph.D. Candidates and Post-doc researchers) from all over the world and from different academic background.

## Practical information

### *Submissions*

Please send a 500 words abstract of your research together with a short CV to [jmchair.eulaw@unife.it](mailto:jmchair.eulaw@unife.it). Abstract can be written in English, Italian or French. However, if selected, the research shall be presented in English, which will be the working language of the Conference.

### *Who can apply?*

The call is open to early career academics (up to 35 years old) and practitioners.

*Deadline for the call*

30 June 2024. Authors will be notified of decisions no later than 7 July 2024. Travel and accommodation expenses of Authors of selected abstracts will be reimbursed according to the Jean Monnet financial settlements.

*Organisation*

The Conference is organized by the Jean Monnet Chair, hold by Prof. Jacopo Alberti, together with Samuele Barbieri, Marcella Cometti, Riccardo Torresan, Tolindo Fina and Paolo Silvestri, members of the Chair's Staff.