

William Spence UKAEL Report FIDE Conference 2018

This year's FIDE Conference for European Law took place in Estoril, Portugal, from the 23rd to the 26th of May. I attended on behalf of the United Kingdom Association of European Law after winning its 2018 essay competition.

The Conference was opened by a keynote speech from Cambridge University's Professor Catherine Barnard entitled the "Future of Europe post-Brexit". Her speech challenged the two orthodoxies of ever closer union, on the one hand, and the indivisibility of the four freedoms, on the other. She pointed out that the ideal of ever closer union is increasingly out of step with the actual structure of the European Union. There is a palpable sense of division between Euro and non-Euro member states, and moves by several members to restrict the free movement of people through tightening up access to welfare benefits (e.g. Denmark) and prioritising the employment of local citizens (e.g. Switzerland) suggests that Britain's reluctance to accept uncontrolled migration is by no means a unique phenomenon. Professor Barnard concluded with a plea for conference members to acknowledge that there exists a variety of views among EU member states, and to adapt the Four Freedoms accordingly.

After the opening ceremony, I chose to attend seminars on taxation, state aid and distortions of competition. Here, I found the views of Julia Rapp from the European Commission's State Aid Coordination Unit most interesting. She explained how although tax optimisation is not illegal *per se*, member states have an obligation under Article 4(3) TFEU to exercise their national competencies in line with EU law (in particular, with their obligations under Article 107 TFEU). When tax rulings lead to a selective advantage, Julia Rapp was in little doubt that the Commission has a legitimate role to play in asserting the arm's length principle by fining companies such as Apple, Amazon and Starbucks. Professor Raymond Lujala responded to Rapp's intervention by pointing out that the arm's length principle is not always enshrined in national legal systems. The exact basis on which the Commission is able to assert its authority is therefore questionable. This argument was repeated by several members from the floor - notably Connor Quigley QC. Watching Julia respond was nothing short of fascinating.

On the second day of the conference I attended a seminar on the internal market and the digital economy, where Peggy Valcke (Professor at Leuven University) provided an overview of media law in the European Union. She focused on the incoming Audio-visual Media Services Directive, which will extend the 2010 version's application to online video-sharing platforms. Even though they do not exercise direct editorial control, Peggy explained how social media platforms such as Facebook may have to comply with the rules on the protection of minors and censorship of hate-speech, since users are increasingly choosing to share videos online.

During the afternoon, I returned to the state aid seminar room, where Sir Christopher Bellamy was chairing a session on the effectiveness of the Commission's state aid recovery decisions. The discussion focused on the factually unique *Micula* case. Sir Christopher posed interesting questions concerning the compatibility of EU (Article 4.3 TFEU) and international (Article 54 ICSID) law. Raymond Luja examined whether a bilateral investment treaty could prevent recovery of state aid, and pointed out that investors may have a legitimate expectation that the terms of any agreement they have reached with a member state will be honoured – notwithstanding a later intervention from the European Commission on State Aid grounds. This raises the possibility that the doctrine of legitimate expectation could undermine the enforcement of state aid rules, though the *Micula* dispute has yet to be decided.

The final day of the conference included a keynote speech by Michel Barnier, who emphasised the importance of protecting the indivisibility of the Four Freedoms. Barnier reassured the conference's attendees that he would ensure that the consequences of Brexit are felt in Britain's domestic sphere. Thus, the conference ended in stark contrast to how it began, with Barnier showing little sign of adopting the kind of flexibility hoped for by Professor Barnard.