

**Bernd H. Oppermann / Hilmar Fenge / Vasco Pereira da Silva /
Sylvia Calmes-Brunet / Regina Valutyte (Ed.)**

International Legal Studies III

by European Scholars of the ELPIS Network



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*Bernd H. Oppermann, Hilmar Fenge, Vasco Pereira da Silva,
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Preface

The International Legal Studies III (ILeS) of European and International scholars contents written versions of lectures in three languages given at academic occasions of the ELPIS University Network between 2013 and 2015. It is successor to the first edition of International Legal Studies of European scholars, which was issued and published in 2009, and to the second edition of International Legal Studies of European scholars (2013).

The ELPIS Network of – meanwhile – almost 40 European and third-country law faculties exists for well over 30 years and keeps expanding, with its youngest partner-members being, amongst others, the world renowned Symbiosis Law School of Pune/India, UNIPLAC University (Brazil), Gadjah Mada Universitas Yogyakarta and Mykolas Romeris University of Vilnius. ELPIS, an acronym due to some European fashion, stands for “European Legal Practice Integrated Studies”, meaning also “hope” in the Greek language; hope for Europe. Therefore, all the contributions of the present publication refer, in every possible way, to Europe.

Besides academic exchange of students and scholars, ELPIS has initiated several projects in order of developing European modules, European intensive courses, pilot projects (TEMPUS), an undergraduate program for law ELPIS I (MLE/CLE/ planned LL.B.), and the graduate program ELPIS II (“European Legal Practice LL.M. joint degree”), an ERASMUS MUNDUS MASTER COURSE. The latter has staged the frame for the annual graduation ceremonies partly conserved through some contributions to this publication: Most of the contributions are products of lectures having been held at different locations as, *e.g.*, Hanover, Bucharest and Rouen (from October 2013 to November 2015).

Originally designed as a joint degree of the Faculties of Law of the Universities Hanover, Le Havre, Lisbon and Rouen, the LL.M. ERASMUS MUNDUS MASTER COURSE still represents a quite new product of European education. The program is primarily directed towards international applicants from universities outside of Europe, being interested in studying at two universities of the consortium. In addition, the program aims to attract European candidates who wish to specialize on cross-border and international matters. The requirement of spending two years at different universities abroad is mandatory.

The LL.M. program has been supported as a pioneer through the European scheme ERASMUS MUNDUS I by generous grants for its international students and

scholars. Our program is backed and evaluated by the European enforcement agency EACEA. Furthermore, the components of the program ELPIS II are accredited according to the national standards. Most recently, the German part of the joint degree program has been accredited under the supervision of the German agency ZEvA.

After twelve years of experience with our program, we have achieved an accurate number of alumni having started successful careers in the academic field at most prestigious institutions, entered positions in international organizations, or already working for prestigious, internationally operating law firms. We are proud of having achieved this success, despite occasionally being confronted with challenges through merely regionally-minded factors; however, we always continued our project by the means of effective cooperation of the consortium.

More to the point of the present publication, corporate criminal law in a comparative view builds the basis for the contribution of Prof. *Susanne Beck* (Hanover). *Beck* emphasizes the differences between certain common law countries and especially Germany regarding the mentioned topos, with regard (amongst other elements) also to the “cultural background” of the legal orders at hand.

Prof. *Cláudio Brandão* (Recife) provides a deep insight into the legal history and the basis of criminal law theoretics of Latin America *in toto*, by focussing on the reception of the Spanish great theorist of both theology and law, Francisco de Vitoria (about 1480–1546). Some of the latter's most eminent works, like “De legibus” and “Relectio de Potestate Civili” are presented in highly informative extracts.

Prof. *Sylvia Calmes-Brunet* (Rouen) tries to shed light upon the highly sensitive issue of regional languages in the French Republic and their constitutional and legal basis. Naturally, the European Charter for Regional or Minority Languages (1992) and France's difficulties to ratify it, provides a significant background to her analysis.

The father of the ELPIS program, Prof. *Hilmar Fenge* (Hanover) focuses on the delicate issue of contract law principles, especially regarding the Romanian civil law. Certain provisions of the country's “Noul Cod Civil” deal mainly with a “partial sendoff of the principles of relativity and non cumul”. The contribution has therefore a necessary view on the legal order of one of the newest EU member states, effectively helping to strengthen ties within the Union.

Prof. *Claas Friedrich Germelmann* (Hanover) presents his view of the also very sensitive issue of the existence of a European identity, based on a very thorough analysis of European law. Especially the difficult relation between national identi-

ties of the member states and the EU identity is being shed light on, keeping constantly in mind the necessity of European integration.

Prof. *Bernd H. Oppermann* (Hanover), the direct successor of Prof. *Fenge* as the head of the ELPIS program between 1999 and 2015, issues (hopefully) valuable insights regarding the first “legal clinic” in Hanover and the experiences made with said educational experiment. Furthermore, a more general approach regarding the possible enrichment of legal education not only in Germany by the means of “clinical legal education” is given.

Prof. *Vasco Pereira da Silva* (Lisbon), the current head of the ELPIS consortium, not only issues a beautiful ‘overture’ to this collective volume, but also focuses on certain pathologies regarding the Portuguese administrative law; *Pereira da Silva* interestingly points out the necessity of a “cultural psychoanalysis” for the Portuguese administrative law, based on its development especially through the last decades. Various elements of Portugal’s administrative law are therefore thoroughly presented, in the light of the necessity of legal protection.

Prof. *Peter Salje* (Hanover) offers highly valuable insights in his expertise of German energy law within the European context. Certain issues and problems of recent energy production regarding the Common Market are emphasized; furthermore, large portions of the current German “Act for the Development of Renewable Energies” (EEG 2014) are presented, seen within the context of European law.

The contribution of Prof. *Regina Valutyte* (Vilnius) focuses on the very sensitive issues of passenger name records (PNR) and data retention, providing an analysis of recent (and possible future) European developments, especially the (late) Data Retention Directive and certain draft PNR directive elements. The central digital rights Ireland judgment by the EU Court of Justice is also dealt with.

Dr. *Dimitrios Parashu* (Hanover) analyses the Regulation 316/2014, which settles the matter of applying Art. 101 (3) TFEU in regard to agreements about technology transfer; and *Erick Caetan Alves Nos* (Hanover) offers very valuable information about lobbying and the tries to gain legal control over it, within the European Union.

The views of the respective authors do of course not necessarily represent the view of the board of editors. For the very first time in the history of the mentioned publications, such a board was established – in order both to further strengthen ties within and to emphasize the constant growing of the ELPIS Network.

During recent years, the ELPIS Network has already initiated a few other publications. The present edition is supposed to further deepen this informal tradition

by continuing a series of International Legal Studies (ILeS) by European and International scholars of ELPIS.

Hanover, March 2016

For the board of editors (Sylvia Calmes-Brunet,
Hilmar Fenge, Bernd Oppermann, Vasco Pereira
da Silva, Regina Valutyte)

Bernd Oppermann and Dimitrios Parashu

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The present, third volume of *International Legal Studies* (ILeS) is a successor to the first edition of ILeS, which was issued and published in 2009, and the second edition of ILeS, which followed in 2013. It, once more, contains a collection of articles contributed by various European and International scholars, mostly deriving from lectures, which were given in three languages at different academic events of the ELPIS Law faculty network between 2013 and 2015. One of these events is – traditionally – the annual symposium preceding the graduation ceremony for the participants of the “European Legal Practice LL.M. joint degree” (ELPIS II) programme.

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