

# Culture, Politics and Europe: *en route* to Culture-Related Impact Assessment

by Jörg Michael Schindler<sup>1</sup>

Munich  
July 2012

<sup>1</sup> Lawyer, M.A. in Cultural Administration, Department of Urban Planning and Building Regulation, Munich.

This essay is based on a recent publication of the author: "Kulturpolitik und Recht 3.0 - Von der Kulturverträglichkeitsprüfung zur kulturbezogenen Folgenabschätzung" (Cultural Policy and Law 3.0 - from Cultural Compatibility *en route* to Culture-Related Impact Assessment), Köln/ Cologne 2011, ISBN 978-3-930395-87-3. The opinions expressed reflect the views of the author, a member of the European Association of Cultural Researchers (ECURES); they intend to stimulate a discussion among European and international colleagues.

## Abstract

*Art. 167.4 TFEU was incorporated into the founding treaties of the EU by the Maastricht Treaty in order to replace the historically-determined cultural blindness of the EU's institutions by the obligation to take into account cultural-political motives. The clause has a protective function and an active dimension. In recent years, the protective function has receded into the background of the discussion, although it is predicated on a more comprehensive, resource-friendly and enduring cultural-political effect. The reason for this is that practical implementation of the protective function has so far constituted an unsolved problem. As such, and in the face of an astonishingly perplexed corpus of administrative and legal theory, the practice of the EU institutions continues to lag far behind both the long-standing and current expectations of European citizens, particularly those of persons engaged in the cultural sector. The practice of "integrated impact assessment", which the EU has been developing for the last 10 years and which is increasingly being imitated in the European States, is an obvious solution to the current ineffectiveness of Art. 167.4 TFEU's protective function. This model – which of all known potential solutions is the one most likely to fulfil Art. 167.4 TFEU's protective function – is easily justifiable in legal terms and can be described with considerable precision on the basis of existing practical instruments. It may be named 'Culture-Related Impact Assessment' (CRIA).*

## Table of Contents

Introduction .....	3
A. A Brief Historical Overview of the Cultural Policy Integration Clause of the TFEU .....	5
I. Cultural Policy Expectations .....	5
II. Disappointing Practice .....	6
III. Deficient Theory .....	8
B. Theory: Clarifying Some Aspects of EU Cultural Law .....	9
I. The Concept of Culture .....	9
II. Member-State Cultural Sovereignty as an Object Worthy of Protection? .....	10
III. Roots in Sincere Cooperation, Subsidiarity or Proportionality .....	11
IV. Relationship to Other Cross-Sectional Clauses .....	13
V. Obligation to Substantiate .....	13
C. Upgrading Practice: Integrated Impact Assessment .....	14
I. Definition and Background .....	15
II. Organisation of Impact Assessment .....	16
III. First Improvements for Cultural Politics .....	17
IV. Elements of Culture-Related Impact Assessment in Environmental Impact Assessment and Gender Mainstreaming .....	19
D. Approaching the Ideal: Cultural Aspects in the Integrated Impact Assessment .....	20
I. Existing Bases for Developing Further EU Cultural Awareness .....	20
II. Proposed Measures: How Integrated can Integrated Impact Assessment be? .....	21
III. The Role of the Member States .....	22
IV. A Vision for Culture-Related Impact Assessment .....	24
E. Conclusion .....	25
References .....	26

## Introduction

The fact that the relationship of the European Union (EU), as a supranational organisation, to culture is not synonymous with the relationship of Europe to culture is one of the most irritating and at the same time historically understandable symbolic and functional anomalies of the EU, which is today considered an association of constitutions or even a constitutional project itself. An important reason for this is the principle of limited powers, which, as a cornerstone of the contractual construct “European Economic Community” (EEC), forbade the slightest mention of culture – probably the most local of all human (self-)interpretation systems – which was deemed to be irrelevant to economic harmonisation on the European level. In fact, the imposition on the EEC of enforced cultural-political ignorance was a constructional defect in that it did not protect the objects of Member-State cultural policies themselves from being influenced.

An attempt, incomplete to this day, to remedy the functional defect described began with the Maastricht Treaty in 1992, which introduced the (largely identically-formulated) predecessor article of today’s Art. 167 TFEU<sup>2</sup>, called the “article on culture”, into the founding legal texts of the EEC. This was subsequently to be named the EC.

Specifically, the aim was to lay the foundations for *two functions* of what is today the EU.

The first function, which is of particular importance for the relationship between the EU and the Member States at least in symbolic terms, is the empowerment of the EU to take unambiguously cultural-political action (“cultural competence”). In practical terms, one of the main purposes of the steps taken in 1992 was to lay down in specific legal terms a development that had in fact successfully commenced in the 1970s and had made dynamic progress in the meantime.

Second, one of the main concerns was to render “culture” an important factor in the framework of other policies. In the creation of a single European market, the EC had proven – not only in the eyes of the cultural sector – to be a “culturally blind harmonisation machine” that so far was not legally mandated to take “cultural” particularities into account in the elimination of obstacles to competition. The second function was set forth in Sec. 4 of the “article on culture” of the TEC (known as the “horizontal clause”), which is today worded as follows:<sup>3</sup>

- “1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
  - improvement of the knowledge and dissemination of the culture and history of the European peoples,
  - conservation and safeguarding of cultural heritage of European significance,
  - non-commercial cultural exchanges,
  - artistic and literary creation, including in the audiovisual sector.

---

<sup>2</sup> The requirement was previously codified as Art. 128 TEC (until 1999) and as Art. 151 EC (from 1999 to 2009).

<sup>3</sup> My emphasis.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.
4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.
5. In order to contribute to the achievement of the objectives referred to in this Article:
  - the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
  - the Council, on a proposal from the Commission, shall adopt recommendations.”

The initially more striking and constructive function of this cultural-political article as a substantiation of competence to support, coordinate and complement the Member States (cf. Art. 7 TFEU) is undoubtedly important and is comparatively easily managed. From the very beginning, contrary to the expectations of civil society, this circumstance incited European administrative practice to consider Art. 167.4 TFEU first and foremost as an enjoiner to actively promote culture in all areas of politics (active dimension). However, the (cultural-)political successes and disputes in the distribution of predominantly monetary grants (today particularly in the field of the “creative industries”)<sup>4</sup> tend to distract from the existing unsolved problems with regard to Art. 167.4 TFEU’s precept to protectively take into account cultural aspects in all areas of politics (“protective function”). This “dynamic of opportunistic ignorance” was unintentionally strengthened by the differentiating addition to the contractual provision through the Treaty of Amsterdam, which stated that as a horizontal clause, Art. 167.4 TFEU prescribes the protection and promotion of culture in equal measure in all areas of politics (“in particular [...]”).

It is now all the more urgent to differentiate between *the active dimension* and *the protective function* of the cultural-political horizontal clause because the two aspects are not simply two sides of the same coin. Rather, the effect of the protective function is more comprehensive and sustainable than that of the active dimension. On the one hand, this is due to the legal distinction between the effects of active and defensive rights, or between goals and objects of protection. In the process of granting benefits and facilitating the realisation of goals, state bodies dispose over an additional margin of discretion due to the limited nature of the means available to them. As it is not possible to meet all needs at the same time, selective measures are sufficient. In contrast, the obligation to shield objects of protection from unfavourable state influences must be observed without exception.

At the same time, it should not be forgotten that pluralistic societies give rise to important forms of cultural expression which are not eligible for state cultural support in the strict sense, i.e. direct support, due to their convictions (e.g. state-critical positions) or due to basic state principles (particularly those concerning religious practice in light of the separation of the state and religious communities).

In other respects, it is also important that the protective function, by its very nature and even in terms of its immediate effects, is more resource-efficient than the active dimension. Its effect is also more enduring, in that within the context of regulatory policy it predominantly influences rules of the political community that are valid for an open-ended term.

---

<sup>4</sup> Cf. e.g. <http://www.wearemore.eu>.

To this day, the implementation of the protective function of Art. 167.4 TFEU in the framework of the European legal and administrative order – the orientation of which is de facto still primarily economic – remains an unsolved task both of the EU's governance, particularly in the context of its ongoing reform, and of the Member States. There is a good case to believe that this implementation will be successful once Art. 167.4 TFEU has been institutionalised as an important coordinate in the EU's integrated impact assessment.

## **A. A Brief Historical Overview of the Cultural Policy Integration Clause of the TFEU**

It is by now a universally recognised phenomenon that it is in principle difficult to reconcile the laws of the market with the cultural needs of people and harmonisation with individualisation. It is worth recalling in passing that after the pathological nationalisms of the 19<sup>th</sup> and 20<sup>th</sup> centuries (which were primarily cultural phenomena), the laws of the market were successfully implemented – particularly on the European level – as instruments of peaceful integration. On the other hand, the last 40 years have seen an exponential rise in the insight that democratic communities are formed in arenas defined by prior cultural, historical and linguistic understandings the boundaries of which pre-date those of the markets.<sup>5</sup> This insight constitutes not merely an advance in knowledge, but stands in a reciprocal relationship with the actual blurring of the boundaries of political economies, even beyond the limits of the western world.<sup>6</sup>

### **I. Cultural Policy Expectations**

The formulation of Art. 167.4 TFEU can be traced back to a proposal made in 1982<sup>7</sup> and was integrated into the Maastricht Treaty at a relatively late stage in the drafting process. Although political comments made immediately after the signing of the Treaty were cautious, what is most striking about them is the very high expectations that the actors of the time placed in the future significance of the new contractual provision. In the face of the unchanged basic structures of the EC Treaty, the general expectation that the primacy of the economy would be loosened was concretised in calls for more participation possibilities for cultural-political actors and for transparent cultural-political justification of all EC measures.

The decision-making processes per se were to become more transparent in order to enable cultural-political actors to enhance them by means of empirical data, or at least to draw attention to (potential) cultural-political trouble spots. The executive bodies of the EC were to be obliged to accompany their legislative proposals with declarations regarding cultural consequences, much in the same way as descriptions of the financial ramifications of draft laws were drawn up in the Member States or environmental impact studies were prepared prior to such drafts. This obligation was to be enforceable in court. European legal acts were to be evaluated regularly by a council consisting of administrative members of the European Commission and actors from civil society.

---

<sup>5</sup> Cf. German Federal Constitutional Court (2009), para. no. 249 – [HTM](#) (EN), [HTM](#) (DE).

<sup>6</sup> This has been reflected since 2005 on the global level, particularly in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, cf. S. v. Schorlemer (2007), pp. 40 et seq. – [PDF](#) (DE).

<sup>7</sup> Cf. Wiesand (1987), p. 123 (DE).

As early as 1996, the European Forum of Arts and Heritage (nowadays “Culture Action Europe”), a European advocacy association of Member State and regional cultural organisations, suggested:

*“All Commission proposals should include a section explaining the expected and factual effects on cultural activity and expression as well as the opportunities for cultural life within these proposals. [...] It is important to point out that in other policy areas of Community action, culture is often used as an instrument to achieve other objectives: for example development of training skills, creation of new jobs, urban regeneration, anti-racism measures, establishment of an information market. It is therefore essential that the Community - when using culture as an instrument - acts with proper concern for the impact of its action on cultural life and artistic values. [...] it is necessary to construct a framework so that Community institutions can identify when and where there is a need for an analysis of the effects of their activity on culture.”<sup>8</sup>*

As such, the forum was an ideological trailblazer for what today is known as impact assessment – which so far, however, has not granted an appropriate position to cultural politics.

## II. Disappointing Practice

In fact, to this day, officials and politicians (as well as scientists, see below) have had astonishingly little use for the horizontal cultural clause and have thus become the right target of harsh criticism from civil society:

*“The failure to properly implement 151.4 and its predecessor almost 15 years after introduction of the culture Article is inexcusable.”<sup>9</sup>*

From the very beginning, the European Commission put off remedying the cultural-political implementation deficit given from the perspective of Art. 167.4 TFEU. Although it initially promised to “systematically [take] account of the cultural dimension in Community policies and programmes” (1992)<sup>10</sup>, later in the “First Report on the Consideration of Cultural Aspects in European Community Action” of 1996 it merely promised for the future “a way” – *Method* in the German text – of what had “certainly been implemented” even before the Maastricht Treaty.<sup>11</sup> Consistently with this, this report predominantly listed political measures dating from the time before the Maastricht Treaty. The cited promise was never fulfilled.<sup>12</sup> By attributing a merely symbolic value to the horizontal cultural clause, the possibility of a substantial cultural-political development of the EC was de facto given up. As recently as 2004, the Commission responded to a European Parliament member’s proposal to introduce a “cultural impact study” in analogy to the instrument of the “environmental impact study” in self-sufficient vein<sup>13</sup>, saying it intended nothing of the sort, preferring to continue its pragmatic application of (what was then) Art. 151.4 EC, which it said had proven to be efficient.<sup>14</sup>

---

<sup>8</sup> European Forum of Arts and Heritage (1996), my emphasis – [HTM](#) (EN).

<sup>9</sup> R. Fisher (2007), p. 5 – [PDF](#) (EN).

<sup>10</sup> Commission of the European Communities (1992), Conclusions (p. 17) – [HTM](#) (EN), [PDF](#) (DE).

<sup>11</sup> Commission of the European Communities (1996), Introduction para. 2 et seq. – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

<sup>12</sup> Cf. R. Fisher (2007), p. 2 – [PDF](#) (EN).

<sup>13</sup> European Parliament, Written Question E-2648/04 by Bart Staes to the Commission (26/10/2004) – [DOC](#) (EN).

<sup>14</sup> Parlement européen, E-2648/04FR, Réponse donnée par M. Figel au nom de la Commission (23/12/2004) – [DOC](#) (FR).

The first real attempt at a paradigm shift – the medium- and long-term effects of which are not yet foreseeable and which will moreover depend on the manner of implementation by European actors – can be seen in the 2007 European Agenda for Culture in a Globalising World, which was praised and welcomed by many:<sup>15</sup>

“Il s’agit d’un document historique pour notre domaine, qui pour la première fois va donner une vue d’ensemble de la vision communautaire en matière de culture.”<sup>16</sup>

This agenda must be considered in close parallel to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions<sup>17</sup>, in the negotiation of which the EU and its Member States for the first time recognised themselves together as a cultural-political entity, indeed as a strong one vis-à-vis the USA and its notions of a global economic order. In the Convention – which codifies the sovereign right of states to take measures in support of cultural diversity, and which places itself “on an equal footing” with the WTO treaties<sup>18</sup> – the EU, too, promised to “endeavour to create in [..., her] territory an environment which encourages individuals and social groups [...] to create, produce, disseminate, distribute and have access to their own cultural expressions [...] including persons belonging to minorities and indigenous peoples”.<sup>19</sup> It is true that in instrumental terms, the European Agenda for Culture reads as an application of the administrative reforms pursued by the EU since 2002 under the heading “Better Regulation”, including impact assessment, to cultural policy.<sup>20</sup> However, to date no substantial practical changes within the meaning of the protective function of Art. 167.4 TFEU have been discernible. After all, with regard to this requirement, the text of the European Cultural Agenda states – although “merely” and without making the important distinction between the protective function and active dimension – as follows:

“the Commission shall strengthen its internal inter-service coordination and deepen its analysis of the interface between cultural diversity and other Community policies in order to strike the right balance between different legitimate public policy objectives, including the promotion [!, J.M.S.] of cultural diversity, when making decisions or proposals of a regulatory or financial nature. For example, the Commission has recently created a new inter-service group to this effect.”<sup>21</sup>

Nonetheless, the European Agenda for Culture constitutes an extremely important basis for the further development of cultural politics in Europe.

Before the European Agenda for Culture, the Council of the European Union – in the configuration of the ministers of culture – had accompanied the aforementioned development with occasional, but clear warnings to the Commission to go beyond rhetoric and deliver on its commitments. Additionally, in the dispute regarding fixed book prices between politicians for competition and culture respectively, it had used the horizontal cultural clause as a means to justify cultural-economic examinations of the probable effects of fixing book prices and/or of prohibiting this practice. Here, the Council, too, tended to invoke Art. 167.4 TFEU as a merely fundamental or general legitimisation of cultural-political participation in the EC/EU’s decisions. In council configurations other than that of the

---

<sup>15</sup> Commission of the European Communities (2007) – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

<sup>16</sup> O. Quintin (2007), p. 44 – [PDF](#) (FR); Cf. C. Gordon (2010), p. 102; E. Psychogiopoulou (2008), p. 53.

<sup>17</sup> See the text of the Convention on [PDF](#) (EN), [PDF](#) (FR), [HTM](#) (DE).

<sup>18</sup> S. v. Schorlemer (2007), p. 59 – [PDF](#) (DE).

<sup>19</sup> See Art. 7 of the Convention.

<sup>20</sup> Cf. [http://ec.europa.eu/governance/better\\_regulation/index\\_en.htm](http://ec.europa.eu/governance/better_regulation/index_en.htm).

<sup>21</sup> Commission of the European Communities (2007), para. 4.4 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

cultural ministers, the horizontal cultural clause was of no importance; accordingly, the comments of the council of ministers of culture are best viewed *inter alia* as an attempt to give more weight to its own voice within the “Council” as an institution.

The comments of the European Parliament on today’s Art. 167.4 TFEU are similar, although they have been a great deal clearer than the Council of Ministers’ warnings to the Commission. Thus, as early as 1992 the Parliament criticised the “frequently vague or symbolic character” of the Commission’s declarations “which await specific implementation and a decisive, courageous setting of priorities”.<sup>22</sup> However, by calling as early as 1997 for a new contractual provision that would require all acts and measures potentially entailing a cultural impact to be compatible with the cultural objectives,<sup>23</sup> the Parliament likewise displayed a rather resigned tendency from an early stage with regard to the horizontal clause, although the latter had only been in force for four years and has remained substantially unchanged to this day. Within the European Parliament, too, cultural policy had always had difficulty asserting itself in the context of actual conflict situations.<sup>24</sup>

In view of this entangled political situation, from time to time the European Court of Justice was expected to give decisive impulses towards the implementation of what is today Art. 167.4 TFEU. The Court “ensure[s] that in the interpretation and application of the Treaties the law is observed” (Art. 19 TEU); of course, this phrase already acknowledges politicians to have a great deal of creative leeway in the fulfilment of the treaties, a fact which is moreover convincing from the point of view of democracy theory. In very general terms, in order to ensure the separation of powers, the European Court of Justice limits itself, in its examination of terms largely open to interpretation such as “cultural aspects” and “take into account”, to the question of whether the Union’s course of action is clearly unjustified or is being taken abusively.<sup>25</sup> An evaluation of the European Court of Justice’s (and the European Court of First Instance’s) case law database for the period from 1997 to June 2012 shows that out of a total of approximately 13,300 decisions, the number of cases where cultural aspects per se were explicitly mentioned was in the lower two-digit range. This is in diametric opposition to the cultural-political observation that the Union’s course of action constantly affects culture to a greater or a lesser degree. The European Court of Justice avoids the morpheme “culture” to the greatest extent possible. In terms of content, it seems to consider that in straightforward cases there clearly exists an abstract duty to take cultural aspects into account. However, it assesses compliance with this duty according to a very broad standard in that it considers even the mere suggestion that cultural aspects are being taken into account to be sufficient.

### III. Deficient Theory

Academic legal theory, which ought to address practical “grey areas” in a productive manner and provide important impulses, already faces stiff challenges in the shape of dynamic changes in European law and the latter’s strong politicisation. These challenges are further exacerbated by unfocused terms such as “cultural aspects” and “take into account”. This may be due to the fact that legal theory appears strangely lethargic with regard to Art. 167.4 TFEU. To date, systematisation and academic dispute have been largely neglected. Attempts at decisive and varied interpretation are con-

---

<sup>22</sup> European Parliament (1993), pp. 176 (No. 8), 181 (No. 33), my translation.

<sup>23</sup> Cf. European Parliament (1997), Nr. 2 – [HTM](#) (EN), [HTM](#) (FR), [HTM](#) (DE).

<sup>24</sup> Cf. E. Psychogiopoulou (2008), p. 82.

<sup>25</sup> Cf. ECJ, Case C-248/95, SAM v. Germany – [HTM](#) (EN), [HTM](#) (FR), [HTM](#) (DE).



cealed, in academia as well as politics, by the reference to a “pragmatic” approach. However, such approaches need to be elaborated in detail if the implementation of Art. 167.4 TFEU or proposals for its reform are to be possible. For an instrument to be used pragmatically, it must first be distinctly understood.

## **B. Theory: Clarifying Some Aspects of EU Cultural Law**

Five main legal interpretative problems have hitherto been insufficiently discussed in European jurisprudence. This problem persists despite the fact that cultural-political practice urgently requires their solution, since in the words of Christopher Gordon it may be assumed that

“[m]uch of the wider disillusion about the rhetoric/reality gap occurs through ‘category confusion’ arising from failure to clarify the terms of debate and actions”.<sup>26</sup>

Specifically, the areas concerned are the concept of culture; the question of the extent to which Art. 167.4 TFEU protects the cultures or cultural competencies of the Member States; as an embodiment of what fundamental legal principles the Article may be understood; what the significance of the horizontal cultural-political clause is in relation to other horizontal clauses; and finally whether the taking into account of cultural aspects in the framework of the legislative process has in fact to be documented.

### **I. The Concept of Culture**

In legal as in general discourse, certain items or fields are deemed to pertain to culture without any doubt, i.e. to fall within the “narrow” or “affirmative” definition of culture (e.g. art, monuments, folklore). Other items or fields are subsumed under culture inconsistently depending on societal factors or the specific situation, i.e. they fall within a broad definition of culture (e.g. food culture, legal culture). In practical legal terms, for cultural aspects to be taken into account, one first needs to interpretatively determine on a case-by-case basis what actually constitutes them. There are two main competing points of view as to the criteria on which such a definition should be based.

Part of the literature favours as a point of departure that which is culturally-politically defined as culture in the Member States by virtue of the latter’s cultural sovereignty. Thus, the Member States’ cultural sovereignty is deemed to confer the power to define the EU’s legal concept of culture. The structural problem arising from the fact that politically-recognised concepts of culture differ from Member State to Member State is dealt with by attributing nothing but a mediating role to the EU’s institutions. Another current of the literature proceeds, in legal terms, on the assumption that EU law comprises an independent concept of culture. This is deemed to materialise from a direct contemplation of existing shared European convictions and to develop through concept-forming statements by the EU’s executive bodies in official texts. Proponents of both points of view are united in their emphatic assertion, in line with the politically prevalent one<sup>27</sup>, that the concept of culture must be handled “pragmatically” and “dynamically”. Behind this affirmation is merely the basically endorsable

---

<sup>26</sup> C. Gordon (2010), p. 106.

<sup>27</sup> Cf. Commission of the European Communities (1996), Introduction (p. 3) – [PDF \(EN\)](#), [PDF \(FR\)](#), [PDF \(DE\)](#).

view that in an area as sensitive for nation states' self-perception as cultural politics, it is in the interests of European integration not to pursue any policies against nation states.

That the concept of culture is, however, the wrong place to call into question the relationship between the EU and its Member States is demonstrated by borderline cases that cannot be solved "pragmatically". Do certain memories of communist and fascist tyrannies pertain to culture within the meaning of Art. 167.4 TFEU, even where the Member States concerned or even the majority of the Member States do not recognise such memories? Would the memory of the Armenian genocide pertain to such culture if Turkey were a Member State? In terms of foreign policy, the European Parliament in particular has stated its position on the latter question in a clear and exemplary fashion. As it happens, the convincing answer to both questions is yes. Therefore, EU law must be deemed to include a legally autonomous concept of culture. Meanwhile, pursuant to my approach, the Member States could – in analogy to the European law on services of general interest – influence an EU concept of culture that would differentiate between regions.<sup>28</sup>

Furthermore, the concept of culture is also the wrong place to solve the problem of how to demarcate Art. 167 Secs. 1, 2, 3 and 5 TFEU as an enabling provision from other enabling provisions. This problem arises in legal terms because different enabling provisions with varyingly strict prerequisites provide authority for varyingly far-reaching EU measures. This is why to date, advocates of the opinion tending to attribute culture-defining power to Member States have – as it happens, inconsistently – asserted that among other things, neither education nor science constitute culture within the meaning of Art. 167 TFEU, since separate enabling provisions exist for these fields elsewhere in the treaty. According to this argument, pursuant to the Treaty of Lisbon the same should apply to sport and the law on State-Church relations. This artificial narrowing of the customary concept of culture with respect to Art. 167 TFEU's function also, unnecessarily, foreshortens the scope of application of the horizontal clause. In fact, the problem of competition can – as is customary – be solved by considering the standards that enable (for instance) the law on State-Church relations or education to constitute a more specific enabling basis than (only) Art. 167 Secs. 1, 2, 3 and 5 TFEU, so that they attain precedence over the latter, or alternatively by focusing on the political emphasis of a political project.

Disencumbering the concept of culture under European law from the two problems named would contribute significantly to the clarification of European cultural policy law.

## **II. Member-State Cultural Sovereignty as an Object Worthy of Protection?**

As has been shown, the problem of the concept of culture is closely related to the question of whether the cultural article as a whole is dominated by the idea that European politics must protect the cultural sovereignty of the Member States. This question mainly concerns pure cultural politics pursuant to Art. 167.1, 2 TFEU; however, for the sake of consistency, the answer is also applied to the horizontal cultural clause. The key question with regard to pure cultural politics is whether the EU is entitled to exert direct cultural-political influence on matters within the jurisdiction of a Member State whose cultural-political aims contradict those of the EU. With regard to the horizontal cultural clause, the question is whether "cultural aspects" to be taken into account are aspects corresponding to the European Union's concept of culture or aspects cited as such by a Member State.

---

<sup>28</sup> Cf. the author's study cited under footnote 1, pp. 89 et seq.

To date, the literature has predominantly advocated the protection of Member States' cultural sovereignty as the basic principle of Art. 167 TFEU ("Principle of nation-state representation").<sup>29</sup> The reason is that pursuant to Sec. 2 of the provision, the EU may "support and supplement" Member States' actions only where necessary and only in the areas defined by the provision. The first is construed as a requirement that any intervention be consensual. This interpretation is supported by Art. 167.1 TFEU's reference to the cultures of the Member States, which can be used to interpret Sec. 4. At the same time, the converse conclusion arising from Art. 4.1 TFEU shows that the cultural article substantiates less than a shared competence of the EU.

The opposite view holds that it is possible for the EU to pursue cultural policies that are incompatible with the cultural policies of a Member State. This view argues that the majority opinion confuses "cultural aspects" with "cultural-political aspects" and bases its argument mainly on the example of minority cultures. A specific question in this context would be whether in the event that a Member State adopted anti-pluralistic cultural promotion policies (e.g. involving the conscious neglect of Sinti or Roma cultures), the EU should be prohibited from promoting minority cultures "in a supplementary fashion".

Again, the better arguments are on the side of the supra-national solution. For one thing, Art. 167.4 TFEU would be the only horizontal clause in the treaties that protects political structures. This would be contradicted by the wording "cultural aspects", while (for instance) the provision of the treaty that concerns the churches and ideological communities (Art. 17 TFEU) refers explicitly to Member States' laws on State-Church relations. Second, if all 27 Member States were to abolish all forms of cultural promotion in order to improve their public finances and were to maintain that the EU, too, was entitled to use its painstakingly-saved EU contributions only to promote agriculture and heavy industry, the EU would nonetheless remain obliged pursuant to Art. 167.1 TFEU to contribute to the development of Member States' cultures while protecting their national and regional diversity. The "diversity of its cultures" can hardly be assumed, in a worst-case scenario, to mean the diversity of 27 internally homogenous national cultures.

Third, the abolishment of the principle of unanimity in Art. 167.5 TFEU, i.e. the possibility to adopt EU-wide cultural promotion programmes even against the votes of a minority, shows that even in the area of pure cultural politics, unanimity with concerned Member States is not required. This line of argument is further strengthened by the EU's autonomous international-law obligation to protect and promote cultural diversity through the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>30</sup>

### **III. Roots in Sincere Cooperation, Subsidiarity or Proportionality**

A key to a better understanding of the horizontal cultural clause lies in the question of its relationship to the fundamental principles of the founding treaties. Considering the clause in the light of either the EU principle of sincere cooperation<sup>31</sup>, subsidiarity<sup>32</sup> or the principle of proportionality<sup>33</sup> gives rise

---

<sup>29</sup> G. Ress, J. Ukrow (2011), marginal note 114, 153.

<sup>30</sup> Cf. A. v. Bogdandy (2008), not only pp. 253 et seq., but also p. 275 – [PDF](#) (EN).

<sup>31</sup> G. Ress, J. Ukrow (2009), marginal note 154, 159.

<sup>32</sup> C. B. Cunningham (2001), p. 161; P. Kearns (2004), p. 396.

<sup>33</sup> J. Sparr (2008), marginal note 39.

to different further arguments regarding the problem of the concept of culture and cultural sovereignty, and has different consequences for the process of “taking into account”.

In the history of European law, the oldest of the legal principles named is the principle of sincere cooperation within the EU (today’s Art. 4.3 TEU, often called “principle of loyalty”).<sup>34</sup> EU loyalty comprises, in particular, the obligation of the EU’s executive bodies to show consideration for the justified interests of the Member States. This shows that a “requirement to be considerate” constructed via the principle of EU loyalty reinforces the theory of the competence-protecting effect of the horizontal cultural clause, and is particularly compatible with an interpretation of Art. 167.4 TFEU that emphasises the cultural sovereignty of the Member States. Following this approach, the European Court of Justice, for instance, would tend to be obliged to assess the importance of a cultural aspect not on the basis of considerations intrinsic to culture, but rather in the light of the cultural-political and constitutional-law priorities of the Member State concerned. The consent of a State’s government to a culture-harming measure would exclude the possibility of such measure being assessed as culture-harming in the framework of Art. 167.4 TFEU following, for instance, a legal action initiated by persons from that country engaged in the cultural sector.

The principle of subsidiarity, for its part, is valid as a stand-alone principle deriving from the principle of EU loyalty, and therefore leads to similar, but more tangible results. By unanimous consensus, the cultural article itself creates a close link to the principle of subsidiarity through the use of the phrase “if necessary” in para. 2 for the field of pure cultural politics. Pursuant to the principle of subsidiarity, in accordance with Art. 5.3 TFEU the Union takes action in areas outside its exclusive field of competence only if and to the extent that the objectives of the measures being contemplated cannot be sufficiently realised by the Member States either on a central, regional or local level, but rather are, due to their scope or effects, better realisable on the EU level. The principle of subsidiarity concerns the “whether” aspect of Union activity. The disadvantage of the principle of subsidiarity arises from the fact that it does not apply in areas where the EU has exclusive competence. Spaces “free from the duty to have in view cultural compatibility” would arise. If, for instance, the EU were to forego the decoration of Eurozone money with cultural motives in the framework of monetary policy, for which it alone is responsible, at least on the grounds of the subsidiarity principle no argument could be derived from Sec. 167.4 TFEU. Clearly, Art. 167.4 TFEU does not provide for any such limitation of its effect.

Unlike the principle of subsidiarity, the principle of proportionality describes the “how” of a measure, i.e. its type, scope and intensity. It, too, was first codified in the Maastricht Treaty, although it has long belonged to the recognised unwritten legal principles of the E(E)C. It states that measures that interfere with the rights of other legal entities must pursue a legitimate aim for which they are objectively suitable, and must be necessary and appropriate (proportional). Because the principle of proportionality follows from the principle of the rule of law, in the context of jurisprudence – which is typically category-oriented – it ultimately always relates also to individual interests, not just to Member-State interests. Unlike a linkage to the other two principles mentioned, the constructive linkage of the horizontal cultural clause with the principle of proportionality would therefore require an executive EU body to determine the importance of a cultural aspect not just by considering the cultural-political interests of the Member States, but also to perform an intrinsic evaluation with regard

---

<sup>34</sup> Cf. S. Bitter (2002) – [HTM](#) (EN).

to culture-relevant provisions of the treaties, particularly basic cultural rights. Incidentally, the question of a measure's proportionality is one of the main areas of legal deliberation today.

Since the reasons that speak for a linkage with the horizontal cultural clause are better, it can be assumed that Art. 167.4 TFEU represents a dependent element of every proportionality assessment in the EU. Incidentally, this is particularly evident with regard to the currently dominantly popular active dimension of the horizontal clause. In this respect, as is only logical, the principle of proportionality as a functional equivalent replaces the principle of subsidiarity of "pure" cultural competence pursuant to Art. 167 Secs. 2, 3 and 5 TFEU, because – in the event that the EU is chiefly and legitimately realising a different contractual goal – what is at stake with regard to cross-sectional aspects is no longer the question of "whether" but only the question of "how". Accordingly, the European Court of Justice, too, mostly deals with horizontal clauses including cultural aspects under the heading of proportionality.

#### **IV. Relationship to Other Cross-Sectional Clauses**

In terms of its regulatory technique, Art. 167.4 TFEU is not unique among other cross-sectional standards. Similar standards exist *inter alia* with regard to equality (Art. 8 TFEU), employment, education and health (Art. 9 TFEU), non-discrimination (Art. 10 TFEU), protection of the environment (Art. 11 TFEU), of consumers (Art. 12 TFEU) and animals (Art. 13 TFEU). The highly-charged relationship between the market and culture is thus rendered even more complex by the influence of many "poles", with environmental protection and equality assuming dominant positions even with regard to culture. Successfully embodied as environmental impact assessments (German *Umweltverträglichkeitsprüfung*) and gender mainstreaming, the latter issues therefore have a role model function for cultural politics.

Meantime, as is shown by the article numbers attributed to the above-mentioned examples in the "Principles" section of the TFEU, the horizontal cultural clause – figuring as it does in part three, "Union Policies and Internal Actions" – is not exactly placed in pole position. Even if the academic literature repeats as a fundamental quasi-mantra the assertion that all horizontal clauses are weighted equally, commentaries on individual requirements regularly undertake comparisons that deduce privileges from different wordings or positions. With regard to the horizontal cultural clause, making an exception for individual cases it must be concluded that in general there is more evidence against than for an above-average weighting of cultural aspects. As such, according to the current state of development of the treaties, Craufurd Smith's assertion may prove true that

"[the] failure to indicate the importance of cultural considerations may ultimately prove more problematic than the Treaty's failure to define what is meant by the term 'culture'."<sup>35</sup>

#### **V. Obligation to Substantiate**

In line with cultural-political expectations, there is a further ongoing discussion in jurisprudence as to whether the horizontal cultural clause requires measures that affect cultural aspects to be substantiated in cultural terms. Art. 296.2 TFEU stipulates in a general manner that legal acts of the EU must be substantiated or else, in extreme cases, risk invalidity. However, it is generally recognised in the

---

<sup>35</sup> R. Craufurd Smith (2007), p. 52.

interests of a functional administration that substantiations need only refer to the most important considerations in each case, i.e. those on which the specific process in question is legally and factually based.

Advocates of compulsory cultural-political justification have so far been unable to break through the wall of this procedural economy argument. This issue once again highlights the problem of the unclarified or egalitarian comprehension of the sum of the EU's legal cross-sectional clauses; for the sake of consistency, all of them would have to be invested with equal corresponding compulsory effects. As such, the view that favours the provision of cultural-political reasons has rightly remained isolated. In doctrinal terms, the conclusion reached is therefore that culture-related considerations must be included in the substantiation of a legal act only if "cultural aspects" are a focus of such act.

In practice, recognising such a focus naturally presupposes a perceptual pattern that is not merely economic in structure, but that includes well-established cultural-related categories. Experience has shown that to date, such categories are under-represented in European studies in general.

### **C. Upgrading Practice: Integrated Impact Assessment**

Practitioners and legal theorists tend to diverge in their interpretation of Art. 167.4 TFEU in that whereas the former read the article primarily as a procedural law postulate, the latter generally focus, without any practically exploitable results, on its material aspects. This is rather obstructive to communication between administrative practice and jurisprudence. In fact, it would make sense to establish a connection between the horizontal cultural clause and impact assessments.<sup>36</sup>

Over the last few years, impact assessment as a procedure has become established as a main ingredient in the preparation of political decisions in the EU. Impact assessment is able to fulfil cultural-political expectations of the horizontal cultural clause better than these have been fulfilled to date. In fact, the missing link between impact assessment and the law is, for easily comprehended reasons, not actually a legal but a historical phenomenon. For impact assessment is not primarily a result of the desire to act lawfully; rather, it originally constituted a voluntary self-imposed commitment under the administrative concept of better governance, and thus stemmed from administrative practice.

The fact that in this respect changes in EU law can be observed and influenced is particularly evident if one considers that while the Commission's actual procedural law – in the form of the Rules of Procedure of the European Commission (RoP)<sup>37</sup> and the appurtenant Implementing Rules of the Rules of Procedure (IR-RoP) in the version in force since 2010 – provides conceptually for impact assessments, it does not make such assessments compulsory, as the documents published for impact assessment purposes do. It is true that a special report of the European Court of Auditors on the impact assessment procedure dating from as recently as 2010 bore the title "Impact Assessments in the EU institutions: do they support decision-making?". However, in terms of contents such report no longer questioned impact assessments per se, but rather made suggestions for their improvement and expansion.

---

<sup>36</sup> Cf. R. Fisher (2007), p. 4 – [PDF](#) (EN); E. Psychogiopoulou (2008), p. 348.

<sup>37</sup> Dec. 2010/138/EU, Euratom, O. J. L 55, 05.03.2010, p. 60 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

The developments described justify the expectation that in years to come, impact assessment will, as a constant practice in EU governance and administration, assume common-law status as standard practice under the Rules of Procedure and even in fundamental terms under “EU constitutional law”. Indeed, corresponding indications already exist. Thus, the European Court of Justice has – albeit without referring specifically to the actual practice of impact assessment – derived from the principle of proportionality the conclusion that certain consequences of a political project must be scientifically examined. Conversely, it has deemed proper performance of impact assessment to constitute proof that EU legislators have exercised their discretion legitimately.<sup>38</sup> In the opinion of European Court of Justice judge Thomas von Danwitz, EU legislators are obliged by the principle of proportionality to “take into account *all* factual circumstances as well as *all* available technical and scientific data”.<sup>39</sup> This is also the context in which one must consider the linkage of the horizontal cultural clause, as a dependent part of every proportionality assessment under EU law, with (the) impact assessment.

## I. Definition and Background

The historical predecessor of impact assessment is what in German is known as the *Umweltverträglichkeitsprüfung* – literally “environmental compatibility assessment”, i.e. environmental impact assessment. Through a EEC directive issued in 1985, this became an environmental standard for all medium- to large-scale construction projects in the EU, although it had its origins in the USA. The fact that in German, the content of Art. 167.4 TFEU is usually circumscribed as *Kulturverträglichkeitsprüfung* (literally “cultural compatibility assessment”) shows that the term is heavily oriented towards the concept of environmental impact assessment as it was actually contemplated in the early 1990s, although the proposal was later abandoned. From the decision-making perspective, what is significant for environmental impact assessment is first, the separation between factual research based on scientific criteria and normative, political evaluation; second, the structuring of the factual research as a preliminary examination including the establishment of an examination framework and process, and the subsequent main examination; and third, the involvement of the public. All of these features are reflected in the impact assessment.

Performing an impact assessment involves analysing different regulatory options on the basis of scientific studies in the framework of the legislative process. Such analysis has to take into account, in as comprehensive and inter-disciplinary a manner as possible, all of the intended and unintended consequences of the options under examination in order to facilitate a subsequent evaluation of the results with regard to the need for, and the chances of success of, a political regulation. The analysis includes hearing members of the public as the “sum of the parties who may be unintentionally affected”, i.e. in effect any person wishing to participate.

The background to the development and establishment of impact assessment procedures is a dramatic increase in the complexity of the living environment, both in fact and in terms of human perception thereof. Globalised external and liberalised internal relationships of political territorial au-

---

<sup>38</sup> Cf. in particular the conclusion of Advocate General Sharpston of 16 March 2006 in Case C-310/04, para. 82 et seqq., almost in the sense of a shifting of the burden of proof; on that topic, see ECJ 7 September 2006, same case, para. 128 et seqq., and conversely ECJ 8 June 2010, Case C-58/08, paras. 65-68 – available at <http://curia.europa.eu/>.

<sup>39</sup> T. von Danwitz (2010), marginal note 150, my emphasis.

thorities (regions, states, confederations of states) lead in equal measure to rationally justified governance deficits and to a loss of representation experience regarding the organs of state authority. Societal willingness to conform decreases. Against this background, basing decision-making procedures on scientific practice makes decisions less subjective, while involving the public generates additional knowledge and can compensate at least partially for representation deficits.

## II. Organisation of Impact Assessment

The European Commission's 2001 White Paper "European Governance" tried to address the EU's image problem by promising to ensure a greater openness of the political process as well as better legislation. Subsequently, these goals quickly became associated with the "Lisbon Strategy", which aimed to make Europe the most competitive knowledge-based economy in the world (2000), as well as with the environment-centred sustainable development strategy resolved by the European Council of Göteborg (2001).

In 2002, the Commission issued a more specific communication on impact assessment, which included the following striking comment:

*"Impact Assessment identifies the likely positive and negative impacts of proposed policy actions, enabling informed political judgements to be made about the proposal and identify trade-offs in achieving competing objectives. It also permits to complete the application of the subsidiarity and proportionality protocol annexed to the Amsterdam Treaty. [...] The new impact assessment method integrates all sectoral assessments concerning direct and indirect impacts of a proposed measure into one global instrument, hence moving away from the existing situation of a number of partial and sectoral assessments."*<sup>40</sup>

Since then, impact assessment has become a fixed component of the European political process and is refined on an ongoing basis. The basic structure of impact assessment consists of two distinct procedural parts. In the initial phase of the development of a measure, a "roadmap" is drawn up in the framework of what is known as a scoping, and is published on the internet. This roadmap pre-programmes all of the subsequent steps (*"Initial Impact Assessment screening & planning of further work"*). The roadmap names the problem to be solved and proposes various possibilities of action, the most suitable of which will become apparent in the course of the decision-making process. Within a certain time-frame, the contemplated courses of action are examined with regard to their potential consequences; this involves the specific naming of batteries of questions and other means to be used (e.g. internal or external studies, public explanations of a specialist nature). Competence for providing answers to the questions raised is distributed within the Commission. As a rule, provision is made for a public "consultation" via the internet, i.e. calls for and acceptance of civil society opinions. Publication of the roadmap ensures that members of the public have the possibility, from an early stage, to draw attention to aspects that have been overlooked and/or to prepare to become involved with regard to controversial aspects.

The large-scale impact assessment takes place in the next stage in the form of implementation of the roadmap. The most recently revised Commission guidelines for such implementation, and therefore by extension also for the planning or roadmap stage, were published in 2009. These guidelines provide the departments working out the proposed measures with relatively detailed instructions on

---

<sup>40</sup> Commission of the European Communities (2002), para. 1, my emphasis – [PDF \(EN\)](#), [PDF \(FR\)](#), [PDF \(DE\)](#).



how to perform an impact assessment. The current instructions include a high two-digit number of key questions divided into three thematic clusters; they relate to “economic”, “social” and “environmental” consequences. No specifically culture-related questions were included either in the 2002 guidelines or the Commission’s first draft of the guidelines for 2009; rather, such questions were incorporated into the questions on “social” consequences in 2009 only upon pressure from the specialist public.

Individual directorates general (the “Ministries” of the European Commission) have published guidelines by topic area that supplement and make more specific the Commission’s general guidelines. Thus the directorate general responsible for employment, social affairs and equal opportunities has provided a comprehensive “Guidance for assessing Social Impacts within the Commission Impact Assessment system”.<sup>41</sup> However, contrary to what one might expect given the thematic grouping of the key questions in the Commission’s general guidelines, these guides do not address any culture-specific consequences. To date, nor has any comparable working instrument been published by the directorates general competent for culture.

Impact assessments result in an impact assessment report that states, on a scientific basis, what assessed mode of action is best on the basis of its effects. In organisational terms, the party “chiefly” responsible for the performance of the impact assessment is the department that supplied the initiative to structure a problem politically and into whose field of competence it falls. However, it must from an early stage, through an Impact Assessment Steering Group established on a project-by-project basis, coordinate the impact assessment with the Commission’s central departments as well as with the departments whose own measures are likely to be influenced or that could contribute to the initiative’s goals.<sup>42</sup> For the purposes of continuous project-independent quality control, the EU has institutionalised an “Impact Assessment Board” consisting of five senior EU officials; this submits an opinion and if necessary demands improvements before a proposal, including an impact assessment report, is referred to the Commission. In recent years, approximately one third of impact assessment reports have been referred back to the administration for improvements, although these are of course early years.

The so far seldom-attained, but declared goal of the EU’s executive bodies is for impact assessment reports also to become the main basis for discussion of Commission proposals during the further political procedure in the European Parliament, the Council and the European Member States.<sup>43</sup>

### **III. First Improvements for Cultural Politics**

Compared to the traditional rules of procedure, impact assessment would seem to herald a significant change in mentality. In the Commission’s Rules of Procedure, the duty of the department in charge to involve other departments in the planning of a policy from an early stage is still linked to the criterion of a “justified interest” of other parties. This criterion is ultimately linked to a historical model of ministerial management that essentially provided for a clear delimitation of competences and was associated with conflicting interests. This model gave rise to a habitual competitive-thinking-based managerial procedure in the course of which, in the interests of the prestige of individual de-

---

<sup>41</sup> Available at [http://ec.europa.eu/governance/impact/key\\_docs/key\\_docs\\_en.htm](http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm).

<sup>42</sup> Cf. European Commission (2009), para. 2.2 – [PDF \(EN\)](#), [PDF \(FR\)](#), [PDF \(DE\)](#).

<sup>43</sup> Cf. Commission of the European Communities (2008), para. IV – [PDF \(EN\)](#), [PDF \(FR\)](#), [PDF \(DE\)](#).

partments, superior knowledge was kept under wraps rather than shared, and the desire to assert one's "own" proposal in as unadulterated a form as possible prevented the perception of appropriate criticism.

As a rule, this situation was detrimental at least to the directorate general specifically responsible for culture in the narrower sense, as one of a current total of 43. Other directorates feel cooperation with the cultural department to be a bureaucratic burden or a luxury, while with regard e.g. to equal opportunities and the environment, network structures have formed between the directorates.<sup>44</sup> However, of all things with regard to today's Art. 167.4 TFEU, the directorate general for culture itself – which feels that it is understaffed for such purpose – is accused as one of a number of departments of not doing enough in order to forcefully assert the horizontal cultural clause.<sup>45</sup>

In the past, if a department in charge did not consider a matter to be of justified interest to the directorate general for culture, the latter formally only had to be informed of proposed measures through the standard procedure "before the proposal was submitted to the Commission". It then had only two to three weeks to request changes to the proposal, which was already fully drafted and had been mutually coordinated at an early stage between the departments consulted.<sup>46</sup> Obviously, such a request only stood a chance of success in extreme cases. Also obviously, the fact that receipt of timely, complete information depended on the goodwill of the managing department meant that directorates general were only likely to provide relevant criticism on a very small scale if they wished to be consulted in future.

Impact assessment is a contemporary model of team-oriented project work that seeks to create synergies and in particular to prevent losses caused by friction in the structuring of an area of life, society or politics. As a rule, the criterion for internal administrative and, later on, external involvement tends to be any somehow comprehensible interest and the question of what departments "can contribute" to ensuring the factual completeness of the predicted effect – i.e. competency. Horizontal effects of normative rules are functional because competences always represent only a few aspects of a homogenous real-life reality.

Since a political project is apt to become widely known even in the start-up phase and at the latest upon publication of the roadmap, there is hardly any benefit for directorates general in not consulting, at an early stage, other directorates that might have an interest in certain aspects of the project. A new prestige value is created by involving the Impact Assessment Board between the planning and implementation stages of a project as a qualitative monitoring instance whose job is to examine not the success, but the methodology and completeness of the decision-making bases. Ultimately, for a field as diverse and conceptually complex as culture extending to realms far-removed from state control, the opening of the political process to civil society in general constitutes an improvement of as-yet inestimable value.

Last but not least, the publicity of the process in the form of the impact assessment report benefits the cultural-political desideratum of a substantiation obligation regarding effects on culture if the attempt to establish culture as a regular area of investigation is successful.

---

<sup>44</sup> Cf. E. Psychogiopoulou (2008), pp. 76 et seq., 81.

<sup>45</sup> Cf. C. Gordon (2010), pp. 109 et seq.

<sup>46</sup> Cf. No. 23-4 IR-RoP.

#### IV. Elements of Culture-Related Impact Assessment in Environmental Impact Assessment and Gender Mainstreaming

Environmental impact assessment and gender mainstreaming are not only obvious models for culture-related impact assessment<sup>47</sup>, but also comprise certain points of interface with which culture-related impact assessment can easily connect. Thus, with regard to environmental impact assessment for construction projects, the relevant EU directives bindingly provide (and have done since 1985) for a taking into account of effects on the “cultural heritage”, particularly any effects of a particular site on “historical, cultural or archaeologically significant landscapes”.<sup>48</sup> Interestingly, the US model for European environmental impact assessment referred even more clearly and apparently in broader terms to cultural aspects of the “environment”. The declared purpose of the “National Environmental Policy Act of 1969” is

“that the Nation may -- [...] 1. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings [...] 4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice.”<sup>49</sup>

Of course, to date, cultural aspects have not attained the significance in the framework of environmental impact assessment that monument and landscape conservationists had hoped for.<sup>50</sup> However, the last decade has seen the ever-more-successful development and testing of methodical approaches to allow the probable effects of contemplated planning options on cultural assets and cultural landscapes to be determined and described. As such, the forecasting of effects of political decisions on culture has long been legitimised and established in the context of the “environment”. It is, however, limited in this respect to cultural values that can be physically described and localised either as objects, as spatial arrangements or as places in the inherited cultural landscape.

In contrast, “gender mainstreaming” deals with effects on cultural behavioural patterns and ultimately also value judgements. This takes place on the basis of a highly-developed cultural theory of gender, empirically supported by considerable historical evidence suggesting that most differences between the genders are the mutable results of socio-cultural practice (“doing gender”). It is true that gender mainstreaming differs significantly from both environmental impact assessment and culture-related impact assessment in that the latter are more conservative in effect and are non-statist with regard to the assets they protect, whereas the former is rather a statist societal reform programme. However, culture-related impact assessment in its ideal form and gender mainstreaming have in common a shared socio-cultural sensitivity and the desire to determine ancillary and remote effects of political actions on the basis of careful scientific investigation.

Incidentally, equal treatment can be considered to benefit cultural diversity in that it increases cultural freedoms and the possibility of participation for all genders. The value of integrated impact assessment becomes clearly visible in cases of conflict between culturally-determined exclusivity and equal opportunities (e.g. in church labour law). It is true that the solution of such conflicts of values is

---

<sup>47</sup> Cf. E. Psychogiopoulou (2008), p. 348.

<sup>48</sup> Art. 3 resp. Appendix III No. 2 Dir. 85/337/EEC – [HTM](#) (EN), [HTM](#) (FR), [HTM](#) (DE).

<sup>49</sup> Sec. 101 [42 USC § 4331] – [HTM](#) (EN).

<sup>50</sup> Cf. Bond et al. (2004), p. 38.

not a task for impact assessment in the strict sense. However, integrated impact assessment creates the basis for a transparent political decision that can claim recognition and is particularly accessible to democratic control by virtue of the fact that it distinguishes, determines and highlights the respective effects in a transparent participatory procedure. In fact, the resolution of inevitable conflicts between diverging objectives in the framework of the EU's activities constitutes one of the key functions of integrated impact assessment.

#### **D. Approaching the Ideal: Cultural Aspects in the Integrated Impact Assessment**

One of the particular characteristics of European integration is a dynamic that, whether considered as an opportunity or a danger, seems difficult to reverse. It is for good reason that the initial contemplations in the preamble to the TFEU proclaim an "ever closer Union", "progress" and "constant improvements".<sup>51</sup> In the literature, the European Union itself is characterised as a "flowing concept", its constitution as a "constitution of change". In the context of European policy-making and European integrated impact assessment, this means that another cultural policy is possible.<sup>52</sup> To create such a policy, concrete, i.e. legally coherent, practically feasible concepts are needed. The possibility of a different EU cultural policy as an alliance between practice and the law lies in the cultural-political use of integrated impact assessment.

In no other area of politics is the introduction of an instrument of participatory, differentiated assessment of the impact of state power exertion more justified than for culture, as a phenomenon that – for good reasons – tends to materialise at a considerable distance from the state and constitutes the ultimate challenge for (post-)modern societies in terms of both knowledge and values.

#### **I. Existing Bases for Developing Further EU Cultural Awareness**

As has been shown in specific terms above, integrated impact assessment is currently a particularly illuminating showcase of European governance dynamics. In a dialectic and sometimes experimental process, governance is seeking ways, on the legitimising level of administrative law, to fulfil the constitutionally-defined tasks of the European Union as best possible by adjusting to reality.<sup>53</sup> Constitutional law is adopting useful contents, techniques and institutions as necessary in a process of receptive learning.<sup>54</sup> The key questions of the European Commission's Impact Assessment Guidelines evidently reflect the EU's policy areas and their weighting fairly well in quantitative terms. However, the Guidelines also draw upon this normative background particularly in order to evaluate the answers:

---

<sup>51</sup> Cf. also the first sentences of the preamble to the TEU and the Charter of Fundamental Rights of the European Union; in general on the significance of preambles in a comparative legal context, P. Häberle (1998), pp. 921, 929.

<sup>52</sup> Cf. C.B. Cunningham (2001), pp. 160 et seq.; A. Forrest (1994), p. 17.

<sup>53</sup> Cf. European Commission (2009), para. 1.2: "The Commission's impact assessment system: [...] helps to ensure coherence of Commission policies and consistency with Treaty objectives such as the respect for Fundamental Rights and high level objectives such as the Lisbon or Sustainable Development strategies [...] helps to ensure that the principles of subsidiarity and proportionality are respected, and to explain why the action being proposed is necessary and appropriate." – [PDF \(EN\)](#), [PDF \(FR\)](#), [PDF \(DE\)](#).

<sup>54</sup> Cf. J. Kersten (2011), p. 587.

“The IA may be influenced by legal obligations or previous political choices. Where such limitations result from the legal context i.e. *limitations/obligation for EU action fixed in primary or secondary EU legislation, international law*, or obligations related to fundamental rights, the IA should explain why certain policy options are necessary or not feasible. In such cases, the IA will need to place a strong emphasis on the *subsidiarity/proportionality issues* in the description of options.”<sup>55</sup>

The approaches described above allow the manner in which limitations and obligations arise from Art. 167.4 TFEU to be seen in more detail than before. Culture within the meaning of this provision is that which was and will in future be defined as culture in the EU’s official documents; what may be concluded with relative certainty on the basis of such documents to constitute culture within the meaning of EU law; and what is protected and promoted as culture by the Member States. Over and above this, EU cultural definitions and policy do not depend in legal terms on the political goodwill of individual Member States. In its protective function, Art. 167.4 TFEU reinforces and extends the original principle of proportionality in the light of cultural criteria.

On the level of international public law, since 2007 the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions has been an important point of departure.<sup>56</sup> It has been referred to as “un peu le ‘protocole de Kyoto’ de la culture”.<sup>57</sup> In particular through Art. 7, 10 and 11 of the Convention, the EU – which acceded to the Convention as did, separately, its Member States – undertook to strive for framework conditions favourable to culture, to involve civil society and to report regularly on its activities in this respect. The parallels to the intersection with Art. 167.4 TFEU and material elements of impact assessment are obvious. The areas of international law and Union law addressed under the topos of “cultural diversity” reinforce each other.<sup>58</sup>

## II. Proposed Measures: How Integrated can Integrated Impact Assessment be?

Clearly, one of the most important interim goals is for culture to be granted a paragraph of its own in the Commission’s Impact Assessment Guidelines alongside the paragraphs concerning economic, social and environmental effects. Culture is no more a social phenomenon than economics. The disadvantages that may threaten it can be assessed to a large extent, but by no means completely using mere social science methods. If the purpose of impact assessment is not to replace, but to prepare political decision-making,<sup>59</sup> the greater ambivalence of interpretative knowledge in the humanities compared to that in the natural and social sciences cannot be deemed to constitute a material disadvantage. Otherwise, it will be impossible to “take into account” cultural aspects.

With regard to the institutional details that make the fourth focus of culture-related impact assessment feasible in the first place, Evangelia Psychogiopoulou was among the first to come to the following convincing conclusion in her profound empirical study on the integration of cultural considerations into EU law and policies:

---

<sup>55</sup> European Commission (2009), para. 3.1, my emphasis – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

<sup>56</sup> Cf. J. B. Graber (2008) – [HTM](#) (EN); S. von Schorlemer (2007) – [PDF](#) (DE).

<sup>57</sup> O. Quintin (2007), p. 41 – [PDF](#) (FR).

<sup>58</sup> A. v. Bogdandy (2008), p. 243 – [PDF](#) (EN).

<sup>59</sup> Commission of the European Communities (2002), para. 1.2. – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

“[V]arious methodological instruments, apt to ensure that cultural matters are considered throughout policy design and implementation, can be envisaged. Appointing key officials responsible for a cultural mainstreaming strategy, providing training for the development of cultural sensitive policies, establishing networks of cultural diversity experts across policy sectors and introducing ‘cultural impact assessments’ could substantially strengthen the cultural mainstreaming performance of the Community.”<sup>60</sup>

This adumbrates a number of highly significant and important specific steps. Of particular importance in order to secure both culture as a cross-sectional task and the involvement of a cross-sectional department – the complementarity of the two organisational models is ideal – is the sensitisation of all officials competent for impact assessment to cultural concerns. Given the uncertainties that even academic researchers face regarding the question of how Art. 167.4 TFEU, and particularly its concept of culture, can be imbued with life, EU officials can hardly be blamed for persisting in economic routines and missing out on culture completely. For this reason, it is incumbent on the directorates general competent for culture in the broad sense of Art. 167.4 TFEU to provide their employees with particularly intensive training in the use of the instruments of impact assessment. Conversely, culture-related courses and course modules should be incorporated into the training programmes of employees of all other departments. If the Impact Assessment Board (IAB) with its powerful controlling function is, as has been empirically shown, significant for the functioning of impact assessment, in future at least one of its employees will have to be particularly qualified in cultural politics.

Finally, an indispensable cornerstone for the functioning of the culture-related impact assessment in practical terms will be readily-comprehensible special guidelines issued by the directorates general competent for culture. Ideally, civil society actors should be involved even in the compilation of such guidelines in order to ensure that a broad range of potential effects and suitable indicators is covered. Slightly more extensive effect matrices than those used by international cultural statistics agencies are perfectly suitable for use as a basis.

Figure 1: Indicators Matrix<sup>61</sup>

Functions Areas	Maintenance	Creation	(Re-)production	Dissemination	Trade	Social participation
Artistic and archaeological heritage						
Archives						
Libraries						
Books and the press						
Fine arts						
Architecture						
Performing arts						
Audiovisual and interactive media						
Religion						
Cultural identity						
Tourism						

### III. The Role of the Member States

The European states, particularly the EU Member States, are not on the sidelines of the development of culture-related impact assessment. Rather, they are called upon to participate in its structuring.

<sup>60</sup> E. Psychogiopoulou (2008), p. 348; cf. Commission européenne (2011), para. 3.1 – [PDF \(FR\)](#), [PDF \(DE\)](#).

<sup>61</sup> Cf. for instance UNESCO Institute for Statistics (2009), p. 85 – [PDF \(EN\)](#), [PDF \(FR\)](#).

A fundamental characteristic of the European Union as an association of states is its status as a functional unity in which Member States and the Union are organisationally separated in the course of the realisation of the treaties. The fact that treaties in the EU area must be implemented in as even and contradiction-free a manner as possible means that the Union is dependent on close cooperation, particularly in the implementation of its laws by the Member States. This is the core thought behind the precept of loyal cooperation (loyalty to the Union), which also claims validity in the horizontal relationship between the Member States. In the Treaty of Lisbon, the effective execution of EU law by the Member States is – as is only consistent – declared to be a matter of common interest (Art. 197 TFEU), so that the defence of interference in the internal affairs of a Member State is excluded where the execution of EU law is concerned.

With regard to impact assessment, as long as 10 years ago the report of the “Mandelkern Group on Better Regulation” – the starting shot for the introduction of impact assessment in the European Union – called for mutual learning between the EU’s institutions and between these institutions and the Member States. To this end, the report suggested that the EU demand the introduction by Member States of an effective system of impact assessment for national regulation by 2003 and the regular transmission of the IA report relevant to the implementation of EU law.<sup>62</sup> After the early phase in which the European Commission rightly concentrated on the successful reform of its own legislative and administrative system, it is now turning more and more assertively towards the Member States. It is demanding that they supplement the Commission’s impact assessments through impact assessments on the national level.<sup>63</sup> The OECD, too, actively supports the reform of legislation in its member states with regard to impact assessment.

In years to come, the dynamic of reciprocal interactive learning within the association of European constitutions and administrations – underpinned legally by the principle of loyalty to the Union – will put Member States under increasing pressure to act.<sup>64</sup> There are many indications that on the European level, it will be possible to considerably strengthen the participative experience of European citizens and associations with sustainable effect and to actually improve the quality of their legislation. At such time, if not earlier, the Member States should undertake similar efforts to do justice to their role as masters of the treaties. This applies particularly to political areas that intersect with areas of sovereign Member-State cultural authority. If the Member States wish to assert the prevalence of their cultural-political competence and expertise, they must establish methods that allow the effects of state actions on culture to be illustrated to a standard that is acceptable on the European level in terms of contents and that is correspondingly robust, particularly with regard to civil-society participation.<sup>65</sup> This could in turn exert pressure on the EU to learn.

Certainly, the open coordination method should be used by the EU in order to facilitate the exchange of best-practice examples of culture-related impact assessment between the EU, Member States, regions and even third-party states.<sup>66</sup>

---

<sup>62</sup> Cf. Mandelkern Group on Better Regulation (2001), p. i et seq. – [PDF](#) (EN).

<sup>63</sup> Cf. European Commission (2010), para. 3.2 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

<sup>64</sup> Cf. J. Kersten (2011), pp. 590 et seq.

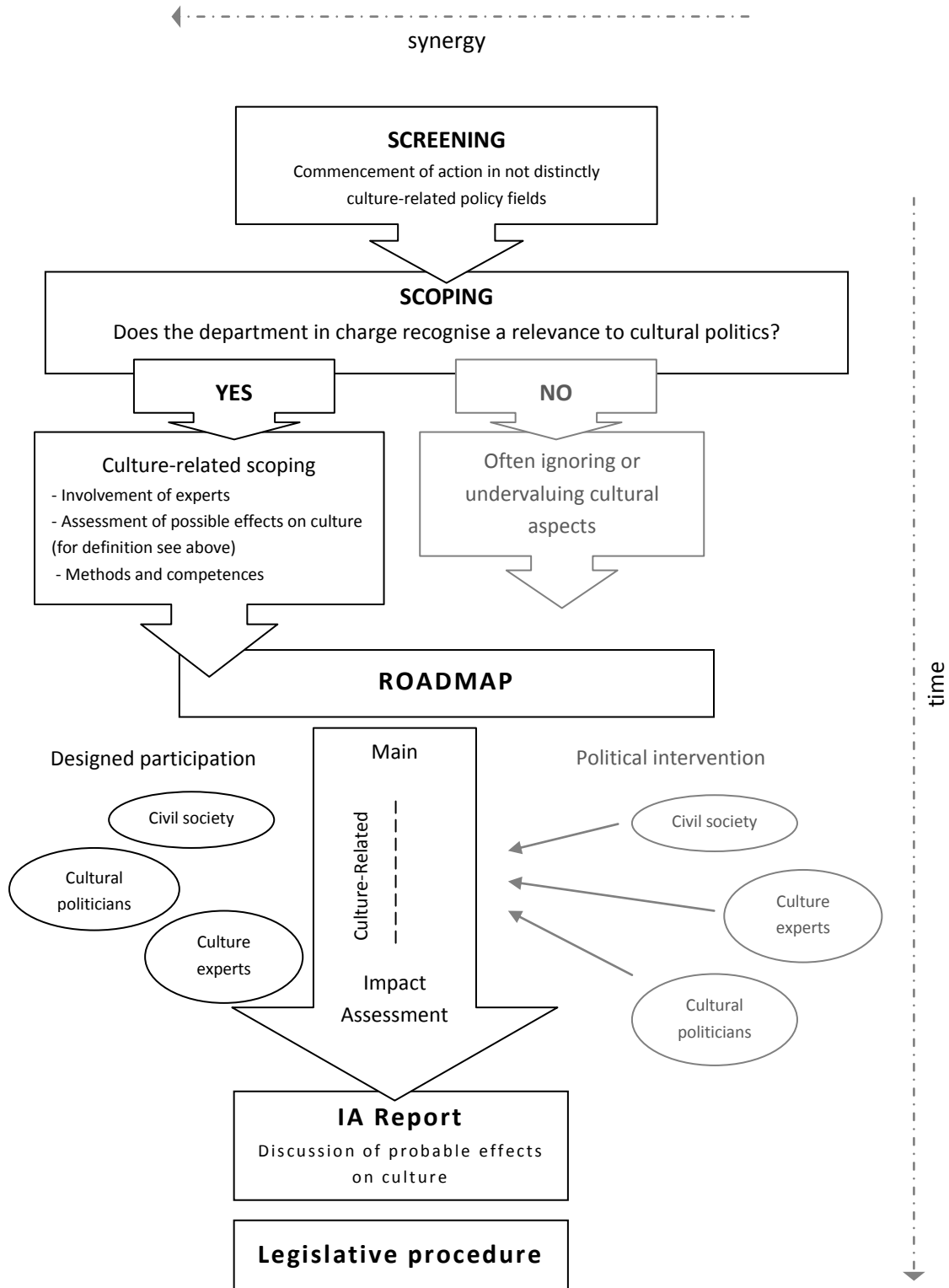
<sup>65</sup> In the same vein: E. Psychogiopoulou, p. 349.

<sup>66</sup> Cf. Commission of the European Communities (2007), pp. 12 et seq. – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).

#### IV. A Vision for Culture-Related Impact Assessment

The vision that emerges in the intermediate area between the normative background and the practices and instruments discussed can be illustrated, in summarised fashion, in the following graphic.

Figure 2: CRIA Flow Chart





There is a fundamental decision to be realised by the EU: does it want to be a Community of, among other things, cultures and culture? The question is not “whether”, but “how”.

## **E. Conclusion**

The legitimacy of standards in pluralistic societies stands and falls with their ability to be rationally comprehended by citizens. It makes obvious sense to begin the project of rationalising the legislation of the European Union, united in diversity, by institutionalising positivist methods in the policy-making process. With this in mind, it likewise made sense to concentrate on questions that are easily amenable to positivist methods and that are subject to as slight an influence as possible from local matters (identities) or matters that cannot be expressed mathematically (beliefs). Meanwhile, the prior understanding of the European polity expressed in the preamble to the TEU depicts the contracting parties

*“drawing inspiration from the cultural, religious and humanist inheritance of Europe ... desiring to deepen the solidarity between their peoples while respecting their history, their culture and their traditions ...”*

The realities of united Europe and human reason are larger, more diverse and more complex than is hitherto realised in the European Union’s political practice, which developed from the European Economic Community. In addition, the financial crisis has disavowed the economic good sense that was deployed in practice. Incidentally, the evidence of typically Western reason is itself bound to cultural contexts,<sup>67</sup> so that it should have a genuine interest of its own in the cultural environment embeddings it. Neglecting fundamental areas of the European societal realities for which culture stands leads to political acceptance problems and governance deficits. Notably transnational solidarity requires more than economic motives. Cultural aspects must be taken into account at an early stage in the political process. Art. 167.4 TFEU is to be termed as the ‘Culture-Related Impact Assessment Clause’. Culture can be named and as such is amenable to transparency. Where naming it is difficult, it at least – and more than ever in times of economic fragility – represents a means of politically expedient self-reassurance for the European polity.<sup>68</sup>

The time is ripe to advance the rationality of European politics a little further. This article presents a pragmatic proposal.

---

<sup>67</sup> J. Ratzinger (2005), p. 55.

<sup>68</sup> Cf. U. Haltern (2011).

## References

- Bitter, Stephan: Loyalty in the European Union. A review, in: German Law Journal, Vol. 3 (2002) – [HTM](#) (EN).
- Bogdandy, Armin von: The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity – Elements of a Beautiful Friendship, in: The European Journal of International Law, Vol. 19 (2008) No. 2, pp. 241-275 – [PDF](#) (EN).
- Bond, Alan u.a.: Dealing with the cultural heritage aspect of environmental impact assessment in Europe, in: Impact Assessment and Project Appraisal, Vol. 22 (2004), pp. 37-45.
- Commission européenne, Document de travail des services de la commission, Rapport 2010 du comité d'analyses d'impact, SEC (2011) 126, Bruxelles 2011 – [PDF](#) (FR), [PDF](#) (DE).
- Commission of the European Communities: Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee. New Prospects for Community Cultural Action. COM (1992) 149 final, Brussels 1992 – [HTM](#) (EN), [PDF](#) (DE).
- Commission of the European Communities: 1st Report on the Consideration of Cultural Aspects in European Community Action, Brussels 1996 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).
- Commission of the European Communities: Communication from the Commission on impact assessment, COM (2002) 276 final, Brussels 2002 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).
- Commission of the European Communities: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world, COM (2007) 242 final, Brussels 2007 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).
- Commission of the European Communities: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Second strategic review of Better Regulation in the European Union, COM (2008) 32 final, Brussels 2008 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).
- Craufurd Smith, Rachael: The Development of Cultural Policy by the European Community, in: Rachael Craufurd Smith (ed.), Culture and European Union Law, Oxford 2004, pp. 19-78.
- Craufurd Smith, Rachael: From heritage conservation to European identity: Article 151 EC and the multi-faceted nature of Community cultural policy, in: European Law Review, Vol. 32 (2007), pp. 48-69.
- Cunningham, Collette B.: In Defense of Member State Culture: The Unrealized Potential of Article 151(4) of the EC Treaty and the Consequences für EC Cultural Policy, in: Cornell International Law Journal, Vol. 34 (2001), pp. 119-163.
- Danwitz, Thomas von: B.II. Rechtsetzung und Rechtsangleichung, in: Dausen, Manfred A. (ed.), Handbuch des EU-Wirtschaftsrechts, München 2010.
- European Commission: Impact Assessment Guidelines, SEC (2009) 92, Brussels 2009 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).
- European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic und Social Committee and the Committee of the Regions, Smart Regulation in the European Union, COM (2010) 543 final, Brussels 2010 – [PDF](#) (EN), [PDF](#) (FR), [PDF](#) (DE).
- European Forum for Arts and Heritage (EFAH): Cultural Aspects in European Community Action: Article 128 (4) of the Maastricht Treaty – a Response to the Communication from the Commission to the European Parliament, the Council and the Committee of Regions, Brussels 1996 – [HTM](#) (EN).
- European Parliament: Resolution on the Commission communication entitled 'New prospects for Community cultural action', O. J. C 42, 15.02.1993, pp. 173 et seq.
- European Parliament: Resolution on the first report of the Commission on the consideration of cultural aspects in European Community action, O. J. C 55, 24.02.1997, pp. 37 et seq. – [HTM](#) (EN), [HTM](#) (FR), [HTM](#) (DE).
- Fisher, Rod: Briefing paper on the implementation of Article 151.4 of the EC treaty (European Parliament's Committee on Culture and Education), Brussels 2007 – [PDF](#) (EN), [PDF](#) (FR).
- Forrest, Alan: A New Start for Cultural Action in the European Community: Genesis and Implications of Article 128 of the Treaty on European Union, in: The European Journal of Cultural Policy, Vol. 1 (1994), pp. 11-20.
- German Federal Constitutional Court, 2 BvE 2/08, judgement of 30.6.2009 – [HTM](#) (EN), [HTM](#) (DE).

- Gordon, Christopher: Great expectations - the European Union and cultural policy: fact or fiction? in: *International Journal of Cultural Policy*, Vol. 16 (2010), pp. 101-120.
- Graber, Christoph Beat: Substantive Rights and Obligations Under the UNESCO Convention on Cultural Diversity, in: Hildegard Schneider; Peter van den Bossche (ed.), *Protection of Cultural Diversity from a European and International Perspective*, Antwerp, 2008 – [HTM](#) (EN).
- Häberle, Peter: Verfassungslehre als Kulturwissenschaft, Berlin 1998 (DE, cit.); Per una dottrina della costituzione come scienza della cultura, Roma 2001 (IT); Teoría de la Constitución como ciencia de la cultura, Madrid 2001 (ES).
- Halter, Ulrich: Politik als Kultur der Selbstvergewisserung? Zur Suche nach Eigenem und Fremdem in Europa, in: *Europarecht*, Vol. 46 (2011), pp. 512-540.
- Kearns, Paul: Culture and EU Law: The Exploration of an Interface, in: Rachael Craufurd Smith (ed.), *Culture and European Union Law*, Oxford 2004, pp. 385-405.
- Kersten, Jens: Was kann das Verfassungsrecht vom Verwaltungsrecht lernen?, in: *Deutsches Verwaltungsblatt*, Heft 10/ 2011, pp. 585-652.
- Mandelkern Group on Better Regulation, Final Report, Brussels 2001 – [PDF](#) (EN).
- Psychogiopoulou, Evangelia: The integration of cultural considerations in EU law and policies, Leiden and Boston 2008.
- Quintin, Odile: Risques pour la diversité culturelle Priorités pour la Commission européenne jusqu'à 2010, in: Deutsche UNESCO-Kommission (ed.), *Kulturelle Vielfalt - Unser gemeinsamer Reichtum / Cultural Diversity - Our Common Wealth. Das Essener/RUHR.2010 Bellini Handbuch zu Perspektiven Kultureller Vielfalt / The Essen/RUHR.2010 Bellini Manual On Prospects of Cultural Diversity*, Bonn 2007, pp. 41-47 – [PDF](#) (FR).
- Ratzinger, Joseph: Was die Welt zusammenhält. Vorpolitische moralische Grundlagen eines freiheitlichen Staates, in: Habermas, Jürgen; Ratzinger, Joseph: *Dialektik der Säkularisierung. Über Vernunft und Religion*, Freiburg 2005.
- Ress, Georg; Ukrow, Jörg: Art. 167 AEUV, in: Grabitz, Eberhard; Hilf, Meinhard; Nettesheim, Martin (ed.), *Das Recht der Europäischen Union*, 44. Ergänzungslieferung, München 2011.
- Sparr, Jürgen: Art. 151 EGV, in: Schwarze, Jürgen (ed.), *EU-Kommentar*, Baden-Baden 2008.
- Schorlemer, Sabine von: Kulturpolitik im Völkerrecht verankert, in: Deutsche UNESCO-Kommission (ed.), *Übereinkommen über Schutz und Förderung der Vielfalt kultureller Ausdrucksformen. Magna Charta der Internationalen Kulturpolitik*, Bonn 2007, pp. 40-61 – [PDF](#) (DE).
- UNESCO Institute for Statistics: *The 2009 UNESCO Framework for Cultural Statistics (FCS)*, Montreal 2009 – [PDF](#) (EN), [PDF](#) (FR).
- Wiesand, Andreas Joh.: *Kunst ohne Grenzen? Kulturelle Identität und Freizügigkeit in Europa. Eine Einführung in Gegenwart, Probleme und Entwicklungschancen europäischer Kulturpolitik*, Köln 1987.