

## HABILITATION THESIS REVIEWER'S REPORT

### Masaryk University

#### Applicant

JUDr. Vojtěch Vomáčka, Ph.D., LL.M.

#### Habilitation thesis

Legal Dissonance Of Strengthening Harmonisation In EU Public Construction Law

#### Reviewer

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Utrecht University; School of Law; Department of International and European Law

- **Review**

### 1. Introduction: Topicality, research scope and methodology

The habilitation thesis “Legal Dissonance Of Strengthening Harmonisation In EU Public Construction Law” discusses in a comprehensive way a significant and rather under-explored legal topic which raises environmental but also broader considerations in relation to construction industry. The starting point of the author is the finding that “although the EU has no mandate in the field of spatial planning and construction permits, European legislation can and does considerably influence planning and permitting processes” (p. 20). Consequently, harmonization of spatial planning is being done in an incomplete or fragmented way based on incoherent EU requirements within or beyond EU Environmental law.

In this vein, the habilitation thesis by Vojtěch Vomáčka addresses the spatial planning and construction permitting from a holistic perspective to map the regulatory gaps and the limited synchronization/alignment of the different EU requirements in relation to “every intensive construction activity and every land-use plan that provides a framework for such activity” (p. 18). To this end, the author conducts his research in a rather dense and diverse policy and legislative landscape adopting a three-fold focus: i. the EU Environmental law requirements, ii. the EU Aarhus acquis and iii. the requirements of other EU policies. This original approach facilitates a systematic analysis of a diverse range of policy and legislative instruments, as well as a substantial volume of case law. In addition to this, through a “progressive approach” the author effectively unpacks the EU policy and legislative evolution which marks successes and pitfalls in regulating spatial decisions (i.e. land-use plans or building permits) while carrying out an in-depth analysis of the developments in crucial environmental and non-environmental fields.

The research scope as well as the methodology are clearly defined demonstrating a thorough understanding of the subject matter and a focused approach to the legal analysis (pp. 31-33). In addition to this, there is a clear delimitation of what is not included in the thesis and why (p. 19-20) ensuring coherence and transparency of the research.

## 2. Structure

The organization and structure of the chapters are truly skilful, providing a clear roadmap for navigating through complex ideas and arguments. The author uses relevant and logical subsections which make the text accessible yet coherent and clear. Each section flows seamlessly into the next, maintaining a logical progression that guides the reader through the research with ease. The use of interim conclusions and takeouts for each chapter constitutes a brilliant idea which ensures that the content is presented in a structured and consistent manner, enhancing the reader's comprehension and facilitating engagement with the legal sources and the main research questions.

More specifically, the first part of the thesis provides an analysis of early harmonization efforts in public construction law and the initial environmental requirements. It sets the scene for subsequent sections of the thesis. Emphasis is placed on the motives behind these early attempts to harmonize public construction law at the European level as well as the examination of first- and second-generation EU environmental requirements which aims to unpack their impact on spatial planning and construction permitting. Key aspects of this part revolve around the public participation requirements relevant to public construction law prior to the ratification of the Aarhus Convention. This discussion creates the context for comparisons between pre-Aarhus and post-Aarhus requirements in various EU Directives.

The second part of the thesis delves into the incorporation of the Aarhus Convention into EU law and its alignment with current EU legislation aiming at facilitating the understanding of the different regimes of requirements within the public construction law. This part scrutinizes the EU Aarhus acquis with focus on the rich CJEU case law. In this vein, it explores the scope of public participation in decision-making and access to justice in environmental matters, elucidating the typical requirements of EU legislation implementing Articles 6 and 7 of the Aarhus Convention. Additionally, the degree of discretion afforded to Member States regarding aspects of judicial review is examined, illustrating the precise impact of EU law on access to justice in environmental matters at the national level. Special emphasis is placed on specific aspects of judicial review addressed by the CJEU, particularly those relevant to public construction law, to gauge the minimum standard that should be harmonized in the event of EU action.

The third part of the thesis is very diverse and dense as it critically discusses a wide range of environmental requirements and their implications for spatial planning and construction permitting (EIA, SEA, Natura 2000 Directives, Industrial emissions, water protection, prevention of industrial hazards, air quality protection, noise pollution, waste management) focusing on the scope of primary EU environmental requirements impacting public construction law and their evolution over time. In this vein, the analysis also seeks to identify synergies among basic requirements to streamline processes and reduce administrative burdens. Furthermore, central questions revolve around the content of relevant public participation requirements, drawing primarily from CJEU case law. The overarching aim is to assess whether EU environmental law facilitates the merging and optimization of processes, indicating whether the EU legislator acknowledges challenges posed by fragmented legislation and endeavors to promote more efficient spatial planning and building permitting practices.

The fourth part of the thesis delves into the examination of current planning and construction requirements originating from EU policies beyond environmental considerations. Primarily, it scrutinizes the ramifications of Cohesion Policy and Urban Agenda development, maritime spatial planning, the evolution of TEN-T and TEN-E networks, building materials requirements, building energy efficiency, and the promotion of renewable energy. Aiming to complete the picture, the author addresses these non-environmental policies focusing on i. identifying and assessing planning and construction requirements stemming from them and ii. exploring

whether these planning and construction requirements originating from non-environmental policies dictate conditions for public participation and whether they reference relevant provisions of “traditional” environmental directives.

### **3. Language, style, format**

Neat, well-designed, and readable text lay-out accompanied by proper and sufficient referencing, proves author’s integrity and professionalism of academic writing. Additionally, adherence to appropriate language and tone, in line with style conventions expected in a habilitation thesis, demonstrates a high level of scholarly rigor and attention to detail. Correct grammar, spelling, and punctuation in English contribute to the clarity and coherence of legal argumentation, enabling the author to effectively convey complex ideas and arguments. Moreover, clear definitions and proficient use of terminology not only enhances the overall quality of the text but also makes it accessible and comprehensible to a broader audience, ensuring that the research findings and insights can be effectively communicated and understood.

### **4. Research, argumentation, use of sources, conclusions**

Firstly, the collected materials (legal instruments, case law and literature) are deemed highly relevant, up-to-date, and comprehensive, indicating a thorough and diligent approach to research reflecting the author’s commitment academic autonomy and integrity. Furthermore, the thesis demonstrates a very good use of relevant sources to substantiate statements and arguments, underscoring the rigor and credibility of the research methodology.

The legal reasoning presented throughout the thesis is characterized by its persuasiveness and coherence, reflecting a nuanced understanding of complex legal issues. This is particularly significant for parts 4 and 5 where the author analyses a wide array of different legal instruments in conjunction with the Aarhus-driven questions. More specifically, noteworthy is the originality and creativity evident in the legal analysis in Part 5 where the author addresses heterogeneous and less explored policy fields aspiring to offer innovative and systematic insights as to their regulatory impact on public construction law.

Moreover, the conclusion logically follows from the argumentation presented previously in the habilitation thesis, providing a well-rounded and compelling culmination to the debate.

Overall, the habilitation thesis by Vojtěch Vomáčka stands as a commendable contribution to the field, distinguished by its academic ingenuity and analytical depth.

### **5. Critical remarks**

- The introduction of chapter 4 could have been included as an additional section in part 2 “Early Harmonization attempts of public construction law” to demonstrate more coherently the progress/evolution in relation to EU requirements before moving to the Aarhus Intermezzo.
- More emphasis on the latest developments under the EU Green Deal which are not extensively covered
- It would have been helpful to have a short definition of the “Public construction law” already in the abstract since it is the core-concept of the habilitation thesis and its content is not self-evident.
- The section: “1.2 BACKGROUND/RATIONALE FOR THE THESIS AND STATE OF KNOWLEDGE” is very dense and it would have been useful to have sub-sections to navigate through the diverse pillars of this thesis in line with the outline of the thesis.

- **Reviewer's questions for the habilitation thesis defence**

1. In Parts 4 and 5 the lenses of the analysis are not so clear. What is the overarching research focus? The Aarhus-related issues? Or a systematic assessment of the EU requirements in relation to spatial planning and construction permitting under the different policy and legal developments?

2. Given that “the lack of spatial planning standards may seem to be a gap in the development of the EU and a missed opportunity for the Member States” (p. 3), what is the way forward? What policy or legislative initiatives/interventions could tackle this fragmented legal landscape and, thereby, lead to a more effective and coherent harmonization scheme? Where are the missing pieces? In the EU environmental law requirements or in the requirements established in the non-environmental EU policies?

### **Conclusion**

The habilitation thesis entitled “Legal Dissonance of Strengthening Harmonisation In EU Public Construction Law” by Vojtěch Vomáčka **fulfils** requirements expected of a habilitation thesis in the field of Administrative Law and Environmental Law.

Date:

3.5.2024

Signature:

