



Call for participation

Workshop

THE CRISES OF DEMOCRACY AND THE ROLE OF ECONOMIC LAW

In cooperation with the Max Planck Institute for Innovation and Competition in Munich, the Association Internationale de Droit Economique (AIDE) invites you to participate in a workshop that will be held at the premises of the Max Planck Institute on 11 June 2018 to discuss the role of economic law as regards the current crises of democracy.

The crises of democracy and the link with the economy

The topic of the workshop is both provocative and challenging. On the one hand, the existence of crises of democracy is not without doubt. Of course, it is possible to bemoan the weakening of the rule of law in some Member States of the EU (i.e., Poland and Hungary), to regret the exit of the United Kingdom from the EU, to criticize the politics of US President Donald Trump and to worry about the surge of populist and nationalist movements in many countries, including, in particular, countries within Europe. But it is also to be noted that such developments came about by democratic choices. On the other hand, the question also remains whether one can really establish a robust link between these democratic crises and economic law.

Yet to start a debate on this topic is needed for two reasons:

First, it does not suffice to simply look at the respect of electoral rules. The abovementioned political problems are real; they endanger the very foundations of modern and democratic societies. Hence, it is important to understand the notion of 'economic crisis' in a substantive manner, namely, with regard to the foundational and confirmative role democracies play in our modern societies. In principle, our societies build on the democratic system because it is believed that the choice of citizens will lead to better government and that the citizens are capable of making a political choice that reflects their interests and ultimately promotes the public interest of their countries. It is exactly this logic that we no longer can take for granted today.

Second, it is not possible to artificially disconnect the political from the economic sphere. On the one hand, the economic conditions of a country constitute a key factor influencing the political choice of the individual. Accordingly, a crisis of democracy can also result from an economic crisis. For instance, the economic crisis in Greece can also be qualified as a democratic one. The financial crises and the measures imposed on this country by foreign, European and international actors have disempowered the Greek sovereign. This country now finds itself at least partially controlled by Brussels, Frankfurt, Berlin and Washington.

The economic causes that led to the Brexit vote and the election of President Trump are however less obvious. Beginning in the 1980s, the United Kingdom and the US, which have always been among the most stable democracies, were first to move to a policy of neoliberal economics. But while promoting economic efficiency, large parts of their populations were excluded from economic progress. Large numbers of citizens belonging to this group strongly supported the departure of the UK from the EU and the turn of the US to nationalism. For the new political movements the role of the economy is not so apparent. In contrast to Reagan and Thatcher, who supported politics of a kind of 'Economy First', pro-Brexit politicians and President Trump seem to put the economy second. Their economic policy finds itself reduced to a simple instrument of promoting the interest of the 'nation', simultaneously responding to the feelings of those who find themselves outside of economic progress and feel threatened by 'uncontrolled globalization'. But by completely ignoring and denying the common benefits that accrue from free trade, this kind of politics will certainly not improve the economic conditions of the socially deprived.

In other countries, the economic causes of the crisis of democracy are less evident. Within the EU, Germany, the Netherlands, Austria and the Nordic countries are in an economic situation which is very different from the one of Greece and other Mediterranean countries. Although these countries have never been more prosperous than today, they still experience an enormous surge of populist movement on the far right. There are certainly various reasons for this development; but it would also be wrong to exclude economic causes. Indeed, also in these richer countries, there are many citizens that are excluded from economic progress. These countries, to which Member States with a socialist past can be added, have gone through often severe economic reform, reducing the level of social protection and liberalising the labour market. Moreover, economic globalisation and the radical, but yet uncertain effects of digitisation on the labour market in particular create a feeling of instability, loss of control over one's life and even despair. This perception is seemingly confirmed and strengthened by the alleged loss of control of the State over immigration. It is therefore not surprising that many are nowadays longing for returning to the cradle of their nation.

Thus, the crises affecting democracy vary from country to country, which justifies the use of the term 'crises' in the plural. Yet certain common factors can explain why these crises appeared more or less at the same time.

The concept of the workshop

In the light of this preliminary analysis, AIDE, as an association bringing together experts of different branches of economic law, takes the initiative to discuss the **responsibilities of economic law** as well as **possible reforms** with the objective to overcome the current crises of democracy.

In organising this workshop, AIDE also creates a new format for scholarly, open and lively debate, which will hopefully stimulate the exchange of new and even provocative ideas.

For this debate, AIDE proposes to apply the '**Chatham House rule**' (see <http://www.continuityforum.org/content/news/2005/14/chatham-house-rule-explained>). This rule, which was developed to allow for a free and open exchange of opinions in diplomatic circles, is also applied in scholarly debates today. In substance, it guarantees a certain degree of confidentiality regarding the ideas expressed. The ideas, that will be exchanged, will not be considered secrets as such. Quite to the contrary, the objective is to develop and disseminate fresh ideas as a contribution to the solution of complex and difficult issues, while however guaranteeing that these ideas will not be attributed to the person who brought them up or to this person's organisation.

As regards participation and participants' contribution to the workshop, the following principles apply:

- (1) This call is not only addressed to **lawyers**, but also to representatives of other disciplines, such as **political sciences, economics, sociology, communication studies, philosophy** and even **psychology** (in particular, social psychology).
- (2) This invitation is further addressed to **university researcher of all different levels starting at the one of doctoral students**. AIDE especially encourages **younger researchers** to participate.
- (3) Participation is open to everybody, based on prior registration, and **does not depend on giving a talk at the workshop**.
- (4) Those who want to contribute more actively to the workshop are invited to propose an **oral presentation on a topic of their choice** of up to **10 minutes**. For further instruction read further below.
- (5) The workshop will be held in two languages; participants can freely choose between **French and English**. No translation will be provided. Hence, it is assumed that participants will be able to understand both languages.
- (6) Along the lines of the Chatham House rule, we **do not request the speakers to contribute a written paper for publication**. If some speakers however wish to publish a paper based on their oral contribution to the workshop, they are invited to submit it to the **Revue Internationale de Droit Economique (RIDE)**, AIDE's law journal, which will publish the paper under the condition of acceptance by its Scientific Committee (Comité scientifique). In principle, RIDE only publishes articles in French. Yet an article in English can equally be published if approved and according to the rules set by the Scientific Directors (directeurs scientifiques) of the journal. It is also possible to publish an article that builds on a previous publication.
- (7) The workshop will be organized around general themes and is conceived as the starting point of a **series of workshops** dealing with the crises of democracy. Hence, this workshop is therefore envisaged as an inaugural and introductory one on 'The Crises of Democracy and the Role of Economic Law'.

Some preliminary ideas for launching the workshop discussions

In the following, some ideas will be presented in a way which could already reflect the agenda for the workshop. Participants who want to make an oral contribution can build on these ideas as a point of departure or take inspiration therefrom for defining their topics. But participants may also propose any other topic that can enrich the debate.

- **Theoretical framework: Democracy and economic law**

There are multiple interactions between democracy and economic law. The elected legislature adopts the rules of economic law. At the same time, the 'ideal' economic law that promotes the well-being of society at large and of each individual is in need of political support by the citizens. Does economic law take sufficient account of the need to guarantee the support that is needed for the functioning of the market economy?

- **The values of economic law**

Can economic efficiency (as coined, in particular, by the Chicago School of economics) still be considered a value – or even *the* value – to be pursued by economic law? Is there a need to balance economic efficiency with other concerns and values, such as economic freedom, the protection of equal opportunities or social protection?

Is there a need to focus more on the public interest within the ambit of economic law? What is the role of constitutional values, such as, in particular, the fundamental rights, in economic law? As regards the digital sector, which role should be attributed to the freedom of information and the protection of privacy as well as data protection?

- **The crisis of democracy as an crisis of economic law**

To the extent that that economic law contributes to the crises of democracy, it will also be justified to talk about a crisis of economic law. Which are the branches of economic law that contribute to the crisis of democracy? What about the law on financial transactions, tax law, social law, the law on public services, media law? What are the reforms needed to overcome the crisis?

- **The future of economic law, including the law applicable to the digital sector**

The economy is experiencing a constant and quick transformation, most importantly because of the digital development. Unfortunately, this transformation does not only produce benefits. In particular, the speed of the digital transformation and its potential negative effects as regards, for instance, the labour markets have the potential of frightening the citizens and, thereby, may give rise to another kind of crisis of democracy. Certainly, economic law has to play a key role in accompanying such change especially in the digital sector. What is the specific link between the law applicable to the digital sector and democracy? What is the impact of new business models on democracy and how should the law react to them?

- **The international dimension**

The crisis of democracy seems to spread out across the world. However, the forms it takes largely depend on the political system in place. In democratic systems, the crises finds an expression in democratic decisions that seem to conflict with the public interest (e.g., Brexit). In semi-democratic systems, a return to autocratic government by strong men can be observed (e.g., Russia and Turkey). In non-democratic systems, democracy loses its attractiveness as a vision for the future, and it is even possible to note a return to totalitarianism (e.g., China). Today, with the appearance of nationalist tendencies everywhere in the world, increasingly explicit economic nationalism, such as in the US, lead to the adoption of unilateral protectionist measures that endanger the functioning of the established system of international free trade. This economic nationalism runs counter to the logic of globalisation, which finds its strongest incentive and expression in the digital transformation, a transformation that will of course prove to be irreversible.

How can economic law respond to this phenomenon of economic nationalism? How can we rescue the multilateral system of free trade? How shall we react to this development in the framework of bilateral trade agreements that are still negotiated, such as between the EU and Japan?

One of the key factors for the crisis of our democracy in Europe is immigration. This immigration, especially from Africa, also has economic reasons. What is the appropriate approach to future

relations with developing countries to reduce the economic incentives for migration and, in a broader sense, to reduce poverty on a more global scale?

Registration

Everybody who wishes to participate in the workshop, including those who want to make an oral presentation, are requested to **register by e-mail** to be sent to Ms Delia Zirilli (Delia.Zirilli@ip.mpg.de) by **28 May 2018**. Since the number of participants is limited due to facility constraints, everybody is requested to **register as soon as possible**. Hence, this invitation does not give rise to a right to participation.

As part of the **selection process for the oral presentations**, those who want to make an **oral presentation** are invited to propose their topic of their choice by sending a **summary of not more than two pages** to both Josef Drexl (Josef.Drexl@ip.mpg.de) and Mor Bakhoun (Mor.Bakhoun@ip.mpg.de) by **10 April 2018**. The result of the selection process will be communicated by the end of April. The number of presentations will be very limited. They are only meant to stimulate the debate among participants.

Those participants who are selected for an **oral presentation** can request **reimbursement of their travelling expenses** in the framework of the rules applicable at the Max Planck Institute under the condition that they are members of AIDE. If the latter is not yet the case, it will suffice to present a membership application after being selected as a speaker.