

# A Miscellaneous Network: The History of FIDE 1961-94

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## ABSTRACT

The article provides new insights into the nature, functioning, and academic output of the *Fédération internationale pour le droit européen*. It concludes that the federation provided a space for contestation inside the transnational field of European law. While the congresses under the auspices of the federation did constitute a setting for legal mobilisation, diffusing knowledge on European law, and networking among judges, academics, private practice lawyers, and business representatives, these practices were subjected to the organisational and ideologically diverse character of the federation and changing institutional affiliations. Neither organisationally nor ideologically did the federation and the ‘Euro-law associations’ constitute a cohesive network in an ideological confrontation with sceptical national actors, despite the close affiliation between the federation and the Commission’s Legal Service in the 1960s, the European Court of Justice in the 1970s, and banks and corporations in the 1980s.

## I. INTRODUCTION

There is a legendary entity in the historiography of European law. Wrapped in grand words, it has been described as instrumental in the ‘extensive coordination’ behind the development of European law,<sup>1</sup> or even as the brokering network behind the constitutionalisation of the European legal order.<sup>2</sup> This entity is the *Fédération internationale pour le droit européen* (FIDE). It was established in 1961, in the foundational period of European law, when the European Court of Justice (ECJ) proclaimed the

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1 Karen Alter, ‘Jurist Advocacy Movements in Europe: The Role of Euro-Law Associations in European Integration (1953-1975)’ in Karen Alter, *The European Court’s Political Power* (OUP 2009) 63.

2 Antoine Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (CUP 2015) 88-89, 104; Antoine Vauchez, ‘The Making of the European Union’s Constitutional Foundations: The Brokering Role of Legal Entrepreneurs and Networks’ in Wolfram Kaiser, Brigitte Leucht, and Michael Gehler (eds), *Transnational Networks in Regional Integration. Governing Europe 1945-83* (Palgrave Macmillan 2010) 120.

doctrines of direct effect<sup>3</sup> and primacy<sup>4</sup> in an attempt to distance European law from traditional international law and align it with constitutional law.<sup>5</sup> Despite FIDE's grand reputation, the literature on the federation, its functioning, and academic output is scarce, making it hard to evaluate whether its reputation is deserved.

A few scholars have carried out analyses of FIDE that have broken new ground by going beyond the predominant focus on courts, litigants, and governments in European legal historiography. Adopting an approach inspired by Bourdieu<sup>6</sup> these scholars have pointed to the contestation in the legal field and the constructed nature of political outcomes, which are contingent on the balance of interests and power among actors in the field.<sup>7</sup> The political scientist Antoine Vauchez has argued that FIDE and the 'FIDE entrepreneurs' aimed to be the Community's private army and that the federation furnished 'the legal arsenal that would ensure the firepower needed for pan-European combat' in colloquia and journals.<sup>8</sup> In the same vein, the political scientist Karen Alter has argued that the 'Euro-law associations' coordinated and encouraged individual actions to propel the development of European law in the constitutional direction, for instance by initiating test cases and acting as the ECJ's kitchen cabinet.<sup>9</sup> Criticising Alter and Vauchez's conflation of FIDE and the national associations with the broader transnational network of European law, the historian Morten Rasmussen has provided an analysis of the activities and institutional affiliations of FIDE, primarily based on empirical material from the early 1960s. He has argued that FIDE congresses legitimised ECJ case law, broke new ground in controversial fields, and functioned as 'shop windows' for the Legal Service of the Commission, but he has rejected the idea of FIDE as instrumental in aligning the institutional actors behind the attempted constitutionalisation of European law. Instead, he attributed this role to the Legal Service of the Commission, based on

3 Case 26/62 *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.

4 Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 585.

5 Today, as in the past, the terms 'constitutional' and 'constitutionalisation' are defined in various ways. This article builds on a loose definition of a 'constitutional' reading, gathering interpretations that build on the claims that European law should be constructed with the tools of state constitutional law, not public international law, that the European and national legal orders should be integrated into a single legal system, and that European law should prevail in case of a conflict between European law and national law.

6 The sociologist Pierre Bourdieu developed a sociological approach to law and the juridical field, where he pointed to an ongoing competition for monopoly on the right to determine the law: the meaning of the law is determined in a confrontation between various agents in the field, and the authentic writer of the law is therefore not the legislator, but the entire set of social agents. These social agents are motivated by specific interests and constraints associated with their positions within various social fields. See Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 *Hastings Law Journal* 209; Pierre Bourdieu, *The Logic of Practice* (Stanford UP 1990); Pierre Bourdieu and Loic Wacquant, *An Invitation to Reflexive Sociology* (Chicago UP 1992).

7 Alter, 'Jurist Advocacy Movements in Europe' (n 1) 64.

8 Vauchez, *Brokering Europe* (n 2) 89. See also Vauchez, 'The Making of the European Union's Constitutional Foundations' (n 2); Antoine Vauchez, 'The Force of a Weak Field: Law and Lawyers in the Government of the European Union (For a Renewed Research Agenda)' (2008) 2 *International Political Sociology* 128; Antoine Vauchez and Stephanie Lee Mudge, 'Building Europe on a Weak Field: Law Economics, and Scholarly Avatars in Transnational Politics' (2012) 118 *American Journal of Sociology* 449.

9 Alter, 'Jurist Advocacy Movements in Europe' (n 1).

archival documentation. According to Rasmussen, the influence of the national European law associations was further limited at the national level because of the heavy scepticism toward the attempted constitutionalisation of European law in the member states' legal establishments.<sup>10</sup>

Alter, Vauchez, and Rasmussen have contributed immensely to the history of European law by pointing to the importance of elite networks. Their accounts are, however, marked by a primary concern with the 1960s, a lack of access to empirical material from FIDE's Steering Committee, and their abstinence from using FIDE congress reports as source materials, despite the fact that the reports testify to the main activities of FIDE.<sup>11</sup> Furthermore, they all assume that FIDE and the 'Euro-law associations' constituted an ideologically cohesive network that positioned itself in opposition to sceptical national observers of European law in the Bourdieuan battlefield of European law.

By using the reports from FIDE congresses, primarily consisting of national reports and community reports on the congress topics from 1961 to 1994,<sup>12</sup> as well as new archival documentation from the federation<sup>13</sup> and private collections, this article provides new insights on the nature, functioning, and academic output of FIDE with special attention to the debates on the nature of European law.<sup>14</sup> It dispels claims by

- 10 Morten Rasmussen, 'Establishing a Constitutional Practice: The Role of the European Law Associations' in Wolfram Kaiser and Jan-Henrik Meyer (eds), *Societal Actors in European Integration: Polity-Building and Policy-Making 1958-1992* (Palgrave Macmillan 2013).
- 11 Also noteworthy is the study of FIDE included in Julie Bailleux's analysis of the development of European law as a discipline in France. In her analysis, she supported Rasmussen's claim (2012 and 2013) that Michel Gaudet of the Legal Service informally led FIDE. She did not, however, document the actual functioning of FIDE (Julie Bailleux, *Penser l'Europe par le droit: L'invention du droit communautaire en France (1945-1990)* (Daloz 2014)). Alexandre Bernier has, furthermore, contributed with a study on the French association of European law (*Association des Juristes Européens*), where he argued that the association had a limited impact on the reception of European law in France. In addition, Bernier pointed to the decentralised character of FIDE (Alexandre Bernier, 'Constructing and Legitimizing: Transnational Jurist Networks and the Making of a Constitutional Practice of European Law, 1950-70' (2012) 21 *Contemporary European History* 399). Finally, the legal scholar Francesca Bignami has analysed the FIDE congress in 1965 and argued that there was internal disagreement on the direct effect of directives at the congress (Francesca Bignami, 'Comparative Law and the Rise of the European Court of Justice' (Biennial Conference of the European Union Studies Association, Boston, March 2011) – cited with the permission of the author).
- 12 The results in this article are based on a systematic search for debates on the nature of European law and criticism of the ECJ's jurisprudence in the congress reports. This study does not pretend to constitute an all-encompassing analysis of the FIDE reports, which are extremely rich and constitute a vast resource.
- 13 As FIDE has never had a permanent secretariat, the archives of the national associations are the main sources of FIDE-material. Cooperation between FIDE under Danish presidency and the FIDE president at the time, Ulla Neergaard, on the one hand, and the present author and Morten Rasmussen, on the other hand, has led to the collection of minutes from FIDE's Steering Committee meetings located in the archives of the national associations (minutes from twelve meetings from 1973 to 1993). Unfortunately, there are no minutes from Steering Committee meetings prior to 1973 in the archives of the national associations. In addition, Ole Lando and the Danish Association of European Law have made their archives available, thus adding a valuable layer to the sources already collected, such as the archive of the French Association of European Law collected by Alexandre Bernier and the private archive of Gaudet, collected by Morten Rasmussen. The entire collection now constitutes the most complete set of sources on FIDE and the national associations of European law available.
- 14 In 1993, the Maastricht Treaty diluted the legal unity of the Community by introducing two new pillars of intergovernmental cooperation, which marks an endpoint to the scope of this exploration. Due to the

Alter and Vauchez on the instrumental role of FIDE in the making of a ‘constitutional practice’<sup>15</sup> of European law, and it corrects the assumption of Vauchez, Alter, and Rasmussen that FIDE is an ideologically coherent entity aligned with the Legal Service and the ECJ in a legal-political confrontation with sceptical national actors. Instead, the analysis shows that FIDE provided a space for contestation inside the transnational field of European law. While FIDE congresses did constitute a setting for legal mobilisation, diffusing knowledge on European law, and networking among judges, academics, private practice lawyers, and business representatives, these practices were subjected to the organisational and ideologically dispersed character of FIDE and changing institutional affiliations.

## II. THE DREAM OF BUILDING AN ACADEMIC DISCIPLINE OF EUROPEAN LAW

Arguably, the actor who had the greatest influence on the development of nascent European law was Michel Gaudet, first a jurist of the Legal Service of the High Authority and from 1958 to 1969 Director of the Legal Service of the Commission. In 1962, he pushed the ECJ decisively in a constitutional direction, using a teleological approach to outline a constitutional legal order.<sup>16</sup> As is evident in the creation of the doctrines of direct effect and primacy in *Van Gend en Loos* and *Costa v ENEL*, the ECJ followed his advice. In the European legal community, these rulings have obtained legendary significance as the very foundation of the constitutional revolution in European law.<sup>17</sup>

Gaudet had already championed a constitutional approach to European law in the mid-1950s, but the ECJ refrained from adopting it.<sup>18</sup> Realising that the fulfilment of his constitutional vision required mobilising pro-European jurists beyond the few actors who shared his vision, such as Walter Hallstein,<sup>19</sup> Pierre Pescatore,<sup>20</sup> and Nicola Catalano,<sup>21</sup> Gaudet strategically turned to academia for support.

Grounded in a Westphalian reading of international affairs that recognised states as the only subjects in international law, scholars from the discipline of international law were not, however, keen on endorsing a constitutional approach to European law.<sup>22</sup> When the High Authority invited the most authoritative international legal

existence of significant sources from the FIDE congress in 1994 that describe the development of FIDE in the 1980s and early 1990s, 1994 is included in the analysis.

- 15 I prefer the term ‘constitutional practice’ to terms such as ‘constitutionalisation’, as the widely accepted claim that the ECJ actually constitutionalised the treaties is debatable.
- 16 For a description of Gaudet’s memorandum before the *Van Gend en Loos* case in 1962, see Morten Rasmussen, ‘Revolutionizing European law: A history of the *Van Gend en Loos* judgment’ (2014) 12 *International Journal of Constitutional Law* 136, 151-53.
- 17 See, for instance, Joseph HH Weiler, ‘The Transformation of Europe’ (1991) 100 *Yale Law Journal* 2403; Karen Alter, *Establishing the Supremacy of European Law* (OUP 2001).
- 18 Anne Boerger and Morten Rasmussen, ‘Transforming European Law: The Establishment of the Constitutional Discourse’ (2014) 10 *European Constitutional Law Review* 199.
- 19 President of the EC Commission 1958-67.
- 20 Judge at the ECJ 1967-85.
- 21 Judge at the ECJ 1958-62. Gaudet, Catalano, and Pescatore had all been a part of the so-called ‘*groupe de rédaction*’ during the negotiations on the Treaties of Rome, during which they managed to insert a system of judicial review into the legal structure of the Communities.
- 22 Vauchez, *Brokering Europe* (n 2) 77-78.

scholars of the time, as part of an international conference in Stresa in 1957 on the European Coal and Steel Community (ECSC), in order for them to legitimate supranationality as the foundation of a new, autonomous international legal order, it backfired: they rejected the supranationality claim, and the legal system of the ECSC was defined as classic international law, although of a special kind.<sup>23</sup> Reacting to this failure, Gaudet envisioned the foundation of a transnational, academic discipline dedicated to European law to do the job. A constitutive element would be a transnational federation gathering national associations of European law. As an indispensable tool not just for providing academic legitimation, but for introducing European law into the national legal professions as well, the federation would have a great effect on the implementation of European law in the member states and, thus, on realising the Common Market.<sup>24</sup>

### III. THE ESTABLISHMENT OF NATIONAL ASSOCIATIONS OF EUROPEAN LAW AND FIDE

The seeds of FIDE were, however, planted without Gaudet's assistance. Still in the excitement following the construction of the ECSC, a French association of European law was officially founded in 1954: the *Association des Juristes Européens* (AJE). The founding father was André Philip, the influential jurist, economist, politician, and member of the European Movement, who enjoyed the support of a small circle of likeminded jurists from the Court of Appeal in Paris, such as Maurice Rolland, who co-founded the association with him along with other colleagues from the European Movement.<sup>25</sup> Philips thought it important to fortify the European construct on the basis of European law. Therefore, the association aimed at organising jurists partial to the European idea, studying problems of public and private law, and providing the EC any legal aid it needed.

The federalist hope that the ECSC would develop into a political community was destroyed when the European Defence Community Treaty, along with its blueprint for a future European Political Community, was rejected in the French National Assembly in August 1954. In this atmosphere of disappointment, recruiting new members was difficult, and until 1958 the AJE remained a modest association with few members.<sup>26</sup> With the optimism following the establishment of EURATOM and the European Economic Community (EEC), the AJE grew nonetheless. As most of the practitioners, lawyers, and politicians of the enlarged AJE shared common experiences in the French Resistance, they all believed in making law 'the cement of the European construction', remembering the 'Hitlerisation of justice'.<sup>27</sup>

23 For a detailed account of the Stresa conference, see chapter three in Bailleux, *Penser l'Europe par le droit* (n 11).

24 In this way Gaudet explained the motivation behind the efforts to create FIDE to Jean Rey, Commissioner in the Hallstein Commission 1958-67 and President of the Commission 1967-70 (Gaudet to Rey, 21 January 1961, FJM, Archive of Michel Gaudet, Foundation Jean Monnet pour l'Europe, Lausanne (AMG), Chronos 1961).

25 Bernier, 'Constructing and Legitimizing' (n 11) 401-02.

26 *ibid.*

27 *ibid.*

In line with Gaudet's vision, Rolland hoped to transform the AJE into the French section of a Europe-wide association of European law as soon as relations were established with similar groups in the other member states.<sup>28</sup> To this end, the AJE brought prominent European jurists together at international conferences that successfully motivated the establishment of new national associations.<sup>29</sup> In 1958, the *Associazione Italiana dei Giuristi Europei* (AIGE) was thus founded by eleven Rome-based jurists, primarily lawyers, who formally sought to establish an association similar to the AJE under Gaudet's watch.<sup>30</sup> The AIGE was able to attract the first president of the ECJ, Judge Massimo Pilotti (ECJ President 1952-58), to preside over the association from its foundation.<sup>31</sup> In Belgium, the *Association Belge pour le Droit Européen* was likewise established in 1958, by, among others, Walter Ganshof van der Meersch, advocate general at the Belgian Court of Cassation and later judge at the European Court of Human Rights (1973-86), and Louis Hendrickx, judge at the Brussels Court of Appeal.<sup>32</sup> The creation of the *Association Luxembourgeoise des Juristes Européens* followed in December 1959 under the leadership of Arthur Calteux, a *Conseiller* at Luxembourg's Supreme Court and Vice-President of the European Union of Federalists. Pescatore, at the time an official in the Ministry of Foreign Affairs who had played a prominent role in the negotiations of the Treaties of Rome, was among its members.<sup>33</sup> In the Netherlands, the Dutch *Nederlandse Vereniging voor Europees Recht* (NVER) was created in 1960 by 37 jurists, primarily practitioners, including the president of the ECJ, Andreas Donner (President of the ECJ 1958-64, ECJ judge 1964-79), the former Dutch ECJ judge Jos Serrarens (ECJ Judge 1952-58), and the Director General for Competition in the EEC, Pieter Verloren van Themaat (ECJ Advocate General 1981-86).<sup>34</sup> Most of the members knew each other from an informal working group that had existed since 1954 and was initiated by the law professors C.H.F. Polak and F.M. von Asbeck.<sup>35</sup> In 1959, the group became a part of the newly established Europa Institute directed by the ubiquitous Ivo Samkalden, Dutch Minister of Justice from 1956 to 1958 for the Labour Party, Professor of International Law, politician, and outspoken federalist<sup>36</sup> with a close relationship to Gaudet.<sup>37</sup>

28 This aim was written into the AJE statutes (Bailleux, *Penser l'Europe par le droit* (n 11) 277).

29 Rasmussen, *Establishing a Constitutional Practice* (n 10) 176.

30 *Costituzione di Associazione Repubblica Italiana*, 27 November 1958. Archive of the AIGE (AAIGE). Bailleux has argued that Gaudet was involved in the process, as there is a note in Gaudet's archive documenting the foundation of AIGE in precise terms, Bailleux, *Penser l'Europe par le droit* (n 11) 277.

31 *ibid.*

32 Bailleux, *Penser l'Europe par le droit* (n 11) 278; Rasmussen, 'Establishing a Constitutional Practice' (n 10) 191.

33 Rasmussen, 'Establishing a Constitutional Practice' (n 10) 177.

34 I thank Karin van Leeuwen for pointing these facts out.

35 Karin van Leeuwen, 'Blazing a Trail. The Netherlands and European Law, 1950-1983' (Conference Setting the Agenda for Historical Research on European Law. Actors, Institutions, Policies and Member States, Florence, December 2015) 14-15

36 Interview with Laurens-Jan Brinkhorst, 6 December 2013.

37 Gaudet and Samkalden had, for instance, cooperated on plans for a transnational journal of European law in the early 1960s. See Julie Bailleux, 'Michel Gaudet, a law entrepreneur: the role of the Legal Service of the European executives in the invention of EC Law and of the *Common Market Law Review*' (2013) 50 *CML Rev* 359 and a forthcoming article by the present author: 'The History of the *Common Market Law*



The stumbling block was Germany. As the core of pro-European bureaucracy in Germany, the Foreign Ministry had long pushed for the establishment of a German association of European law. It therefore prompted the German Ministry of Justice to pursue this cause.<sup>38</sup> Accordingly, at a conference in Paris in November 1960 held by the AJE, a representative from the German Ministry of Justice, Erich Bülow, and the German ambassador in France promised to establish a German association of European law, as a representative from the Legal Service reported to Gaudet.<sup>39</sup> When the efforts failed to bear fruit, Gaudet became impatient. The Belgian association was coordinating with the other four associations in planning a conference to be held in the autumn of 1961 where the European federation could be established, but a German association was a prerequisite for it to be authoritative and efficient. Therefore, Gaudet asked the President of the Commission, Walter Hallstein, to pull some strings in the German Foreign and Justice Ministries and, at a meeting in March 1961, Gaudet also discussed the matter with the German law professor Ernst Steindorff and prompted him to establish the association.<sup>40</sup> Pressured by the Foreign and Justice Ministries as well as Gaudet, Steindorff founded the *Wissenschaftliche Gesellschaft für Europarecht* (WGE) with 10 fellow academics as a sub-group of the German Association for Comparative Law, among them Hans-Peter Ipsen, Ernst Mestmäcker, Konrad Zweigert, and Bodo Börner, on 26 April 1961 at the Max Planck Institute for Comparative and International Private Law in Hamburg. The aims of this association were to study legal problems connected to the Common Market and to join a federation of European associations of European law once erected.<sup>41</sup> By limiting access to the association, the founders cultivated exclusivity: while academics who worked with European law and officials from ministries and the Community could become members upon invitation from two existing members, judges and lawyers were not welcome.<sup>42</sup> The Foreign Ministry was most likely the hidden hand behind this initiative, continuing to regulate the image of the association by intervening with regard to particular individuals' membership. For example, Hans-Peter Ipsen, Professor of Law at the University of Hamburg, had a burdensome past, having joined the Nazi party in 1937 and serving as commissioner of the 'colonial' universities of Antwerp and Brussels.<sup>43</sup> Therefore, the Foreign Ministry wanted

Review 1963-1993: Carving out an Academic Space for European Law' *European Law Journal* (forthcoming).

38 Letter from Hans Peter Ipsen to Walter Strauss, 30 May 1961, Archive of Walter Strauss, Institut für Zeitgeschichte, München (AWS), 328.

39 Vermerk. Betr: Organisation der Schiedsgerichtsbarkeit; hier: Tagung der Vereinigung Europäischer Juristen in Paris, Archive of the Legal Service of the Commission (ALSC), 347.69 (y) Association des juristes européens.

40 Bailleux, *Penser l'Europe par le Droit* (n 11) 279-80.

41 Referat IV 4, Aufzeichnung in Stichworten für Herrn Staatssekretär betr. Wissenschaftliche Gesellschaft für Europarecht, AWS, 328 and Mitgliederverzeichnis, 1 November 1964, AWS, 328.

42 *ibid.*

43 For an evaluation of Ipsen's affiliation with the Nazi regime, see Christian Joerges, 'Europe as a Grossraum. Shifting Legal Conceptualisations of the Integration Project' in Christian Joerges and Navraj Singh Ghaleig (eds), *Darker Legacies of Law in Europe. The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Hart Publishing 2003) 183; Anna Katharina Mangold,

Ipsen excluded from the Steering Committee of the WGE, and they advised against him speaking in front of international colleagues, especially the Belgians, who would find his presence offensive.<sup>44</sup> Taking the ministry's advice, Reiner Schmidt, a professor at the University of Hamburg, became president of the association and led a steering committee consisting of law professor Bodo Börner from the University of Cologne, Carl Friedrich Ophüls, the German ambassador in Brussels, and Walter Roemer, a department head at the Ministry of Justice.<sup>45</sup>

Initiated by the AJE, and in some cases with Gaudet as the midwife, six associations with different characters had been established. Most of these associations resembled professional legal societies and consisted of practitioners. The WGE, which consisted of scholars, was the sole association with an exclusively academic character, only with strong links to government ministries that in Germany sought to control aspects of the association. All of the associations were, however, based on ideological adherence to European integration and a belief in the promise of law in the integration process. On this basis, they were able to unite into a federation.

#### IV. THE FOUNDING CONGRESS IN 1961

At a congress in Brussels during 12-14 October 1961 organised by the Belgian association in cooperation with Interuniversity Center for Comparative Law, FIDE was finally established. Rolland became president, Louis-Edmond Pettiti, also French, became secretary-general, and Börner, Hendrickx, Samkalden, Calteux and Carlo Bozzi were vice-presidents. Together, these seven constituted the Bureau of FIDE, which did not include any members from the ECJ, despite several current and former ECJ judges participating in the national associations. Moreover, a Steering Committee (the *Comité Directeur*) composed of 34 members oversaw the work of the Bureau, which it would also appoint in the future.<sup>46</sup> Lastly, there was a plan to establish a permanent secretariat.<sup>47</sup> These organs were to pursue the aims of FIDE: firstly, to promote the objectives of the member associations, including joint events and exchange of information; secondly, to organise lawyers interested in European law; thirdly, to study the legal problems of European law; and, lastly, to raise awareness of these problems.<sup>48</sup> In practice, FIDE organised a number of events, such as

*Gemeinschaftsrecht und deutsches Recht: die Europäisierung der deutschen Rechtsordnung in historisch-empirischer Sicht* (Mohr Siebeck 2011) 250.

44 Referat IV 4, Aufzeichnung in Stichworten für Herrn Staatssekretär betr. Wissenschaftliche Gesellschaft für Europarecht, AWS, 328.

45 Rasmussen, 'Establishing a Constitutional Practice' (n 10) 178.

46 *ibid.* See also the general resolution in the congress report: *Rapport au Colloque international de droit européen organisé par l'Association belge pour le droit européen, Bruxelles, 12-14 Octobre 1961* (Bryant 1962) (hereafter FIDE congress report 1961).

47 *Compte-rendu de la réunion du bureau de la Fédération internationale pour le droit européen*, 13 January 1962 in Paris, Eric Stein papers, Bentley Historical Library, Ann Arbor, Michigan (ESP), Box 12 Pettiti; letter from Pescatore to Lando, 9 November 1971, Archive of Dansk Forening for Europarete (ADFE).

48 Statuts de la FIDE, AAIGE. These statutes were printed in 1994 in connection with the congress in Rome in 1994, but the aims most likely deviated little from the original aims. A note on the aims of FIDE written by Gaudet in the 1960s supports this interpretation (Gaudet, Note concernant la federation internationale pour le droit européen, undated, ALSC, 347.96 (100) Fédération internationale pour le Droit européen).



the founding congress, where national reports on topics chosen by the Bureau were discussed and common resolutions adopted.<sup>49</sup>

The founding event paved the way for future congresses by focussing on three topics: corporate mergers, anti-trust laws, and sales with free promotional gifts, which were discussed on the basis of national reports in a grand exercise in comparative law.<sup>50</sup> The focus on topics in competition law reflected the ties between FIDE and the German Commissioner for Competition, Hans von der Groeben, and his director-general, Verloren van Themaat, who were formally responsible for relations between the European law associations and the Commission.<sup>51</sup> However, it principally reflected the recent publication of a draft for the famous Regulation 17 on the application of articles 85 and 86 of the EEC Treaty, the two central articles on competition law.<sup>52</sup> A general resolution was adopted on the basis of this congress about the need for awareness of European law, university courses on European law, and the establishment of chairs in European law.<sup>53</sup>

The 182 participants came from diverse backgrounds: 35% were from national courts; 18% were private practice lawyers; 14% were academics; 9% were from the Commission; 6% were from national firms, 4% were national officials (mostly from ministries), 3% were judges and other ECJ personnel; and 2% were from national banks.<sup>54</sup> To a large degree, the distribution of participants reflected the institutional links of the Belgian association in charge of organising the event. The president, Hendrickx, and most of the leadership had relations to the *Cour d'appel* in Brussels, and they were, therefore, able to attract a great number of participants with links to this particular court. Of the seven judges from the ECJ, only Andreas Donner and President Charles Hammes were present.<sup>55</sup>

With a clear organisational structure, an appointed leadership, six national associations as the foundation, a successful first international congress, and cooperation with the Commission in development, the federation aspired to be the grand actor in the mobilisation of lawyers for the rule of law in Europe and the penetration of European law into the national legal professions that Gaudet had envisioned. While satisfied with this progress that he and his likeminded associates had dreamt of for years, Gaudet was already planning the next steps: the federation should grow and gather more judges, practicing lawyers, and professors, and then work on the programme and improve its methods and organisation in order to fulfil its role in the development of a new European legal system. Even though FIDE was formally a

49 Gaudet, Note concernant la fédération internationale pour le droit européen, undated, ALSC, 347.96 (100) Fédération internationale pour le Droit européen.

50 FIDE congress report 1961.

51 Rasmussen, 'Establishing a Constitutional Practice' (n 10) 178; FIDE congress report 1961.

52 I thank Michel Waelbroeck for pointing this out.

53 'Résolution Générale', FIDE congress report 1961.

54 The participant analysis is based on a participant list from the congress in the archive of Michel Waelbroeck. Apart from the categories mentioned above, 9% were students, legal counsellors at unspecified firms or institutions, other occupations, or without a title in the participant list (Programme, Colloque international de droit Européen, Bruxelles, 12-14 octobre 1961, Archive of Michel Waelbroeck (AMW)). In the collected material there are only participant lists for the congresses in 1961, 1973 (in Ole Lando's private archive), and 1994 (in AIGE's archive).

55 Along with the advocate generals Maurice Lagrange and Karl Roemer.

private federation, Gaudet pledged to do his best to help, as he wrote to his friend Eric Stein.<sup>56</sup>

## V. CONGRESSES IN THE 1960S

In December 1962, the Legal Service was officially charged with handling the relationship to FIDE. Gaudet had already met with Hendrickx in January 1962, when they decided that FIDE could draft reports on various aspects of European law for the Commission's internal use. In return, the Commission would fund not only FIDE's basic running costs, but also subsidise the national associations and FIDE working groups contributing to Commission reports.<sup>57</sup> Not much is known about the writing of the actual reports or their use by the Commission, although it is certain that a commission to study EEC competition law was set up in early 1962. It was active for 5-6 years and functioned as a sounding board for the Commission in preparing new regulations in the field of competition law.<sup>58</sup> Nevertheless, it is clear that a very close relationship and coordinated expectations between FIDE and the Legal Service developed.

At the second congress in the Hague in 1963, where Samkalden presided, FIDE dived right into the principal discussion of how to define European law by focussing on the problem of directly applicable provisions in international treaties and their application in the Treaties of Rome – a topic that not only concerned Gaudet greatly, but was also a principal question in European law after the ECJ's ruling in the *Van Gend en Loos* case.<sup>59</sup> This case was initiated in the Netherlands, where a much-debated constitutional reform in the 1950s had established the primacy of self-executing provisions of international law. With this impetus, Dutch companies and competition experts driven by parochial, trade-oriented questions explored the possible direct effect of provisions in the EEC Treaty.<sup>60</sup> Concerned with the uniform application of European law in the member states and the development of the European legal order, the NVER had an interest in the question as well, and in 1961 the association established a working group to identify the self-executing elements of the EEC Treaty, laying the ground for the 1963 FIDE congress.<sup>61</sup>

From 1961 to 1963, several events advanced the development of European law. In 1962, the Dutch Supreme Court stated that the ECJ alone was competent to decide what parts of the EEC Treaty were self-executing and, consequently, had primacy over Dutch law, a case where the NVER secretary-general, C.R.C. Wijkerheld Bisdom, represented Bosch, and where two of the five judges were NVER members.<sup>62</sup> Famously, in 1963 a dispute about import tax led the Dutch customs court to

56 Bailleux, *Penser l'Europe par le droit* (n 11) 282-83 (citing a letter from Gaudet to Stein 30 May 1961).

57 Rasmussen, 'Establishing a Constitutional Practice' (n 10) 179.

58 I thank Michel Waelbroeck for pointing this out. Waelbroeck was one of the members of the Commission.

59 The consequences of infringements of Community law were also discussed (*Deuxième colloque international de droit Européen organisé par l'Association Néerlandaise pour le Droit Européen, La Haye 24-26 Octobre 1963* (N.V. Uitgeversmaatschappij WEJ Tjeenk Willink, Zwolle, 1966) (hereafter FIDE congress report 1963)).

60 van Leeuwen, 'Blazing a Trail' (n 35) 6-11.

61 Vauchez, *Brokering Europe* (n 2) 120. See, also, FIDE congress report 1963, 65-90.

62 Rasmussen, 'Establishing a Constitutional Practice' (n 10) 182-3.

send a preliminary reference to the ECJ on the possible self-executing nature of article 12 in the EEC Treaty banning the member states from creating new tariffs or increasing existing ones. This case had been initiated by the company Van Gend en Loos and the tax-law expert P.N. Droog before the creation of the NVER working group, but when the preliminary reference had been sent, Droog brought in the NVER lawyers L.F.D. Ter Kuile and Hans Stibbe to reinforce his team.<sup>63</sup> To Gaudet and the Legal Service, the preliminary reference was a golden opportunity that allowed them to push for a constitutional and federal vision of European law by recommending the ECJ grant direct effect and primacy to European law<sup>64</sup> — an initiative that the ECJ partly followed by cautiously granting direct effect to treaty articles containing a negative obligation on member states not to act.

This controversial development coincided uncannily with the topic of the 1963 FIDE congress in that the national reports pointed to the great differences in the reception of international law, with monist states incorporating international treaties directly into domestic law (the Netherlands, France, Luxembourg, and Belgium), while parliament had to transform international treaties to internal law in dualist member states (Germany and Italy). On this comparative basis, a momentous discussion among, for instance, former ECJ judge Nicola Catalano, future ECJ judge Pescatore, Ter Kuile, the Belgian legal scholar Michel Waelbroeck, Ophüls, and Ipsen led to the adoption of a resolution generally supporting the principles of direct effect and primacy of European law.<sup>65</sup> Able to draw on the legitimisation of primacy by FIDE and other transnational actors,<sup>66</sup> the ECJ established the primacy doctrine in the *Costa v ENEL* ruling a year later.

Some of the participants at the congress, such as Waelbroeck, were, however, very sceptical about radically distinguishing between European law and international law, as advocated by Ophüls, Ipsen, and Paul Leleux from the Legal Service, among others. To Waelbroeck, European law was part of international law, and the relationship between European law and member states' domestic law was not fundamentally different from the relationship between international law and domestic laws in general. He was, therefore, worried that the Commission was pursuing a political agenda.<sup>67</sup>

The next congress in Paris in 1965 under Rolland's presidency, which focussed on measures to introduce community law into the national legal systems and harmonise company laws, was characterised by differing opinions on the scope of direct effect. The national reports on the first topic concurred that regulations took effect immediately in national legal systems, and the rulings in *Van Gend en Loos* and *Costa*

63 I thank Karin van Leeuwen for pointing this out on the basis of her research. It corrects the misunderstanding that *Van Gend en Loos* was initiated by the NVER lawyers Ter Kuile and Stibbe as a test case to propel the development of the European legal order, a claim that was first set forth by Vauchez, 'The Making of the European Union's Constitutional Foundations' (n 2) 117, and followed by Alter, 'Jurist Advocacy Movement' (n 1) 73-74, and Rasmussen, 'Establishing a Constitutional Practice' (n 10) 183.

64 Rasmussen, 'Establishing a Constitutional Practice' (n 10) 182-83.

65 FIDE congress report 1963, 287-88.

66 European law journals such as *Common Market Law Review* provided legitimisation of the special nature of European law even before the *Costa v ENEL* ruling. See the forthcoming article by the present author, 'The History of the *Common Market Law Review* 1963-1993' (n 37).

67 I thank Michel Waelbroeck for pointing this out.

*v ENEL* were generally welcomed, but the majority of the speakers at the congress insisted that directives had to be transformed into domestic law by a national implementation act.<sup>68</sup> At a time when the Empty Chair Crisis was clearly demonstrating a lack of political inclination towards a federal Europe, many delegates at the FIDE congress shied away from legal activism and instead relied on the wording of the treaty, where it was clearly stated that regulations had direct effect, while directives were binding as to the result, but left the implementation up to the national authorities.<sup>69</sup> Another group rejected this literal interpretation and held that directives could produce 'vertical' direct effect (ie, they could be invoked as a defence by an individual in his or her relations with the state), but not horizontal direct effect (ie, they could not be invoked in relations between individuals).<sup>70</sup> In opposition to the two previous congresses, no resolution was adopted. However, a special FIDE commission with Ophüls and ECJ judge Andreas Donner, among others, was established,<sup>71</sup> and it found that directives could in fact have direct effect based on the principle of effectiveness (*effet utile*) of European law. Beginning with *Grad*, a series of three ECJ cases from 1970 to 1974 dealt with the question.<sup>72</sup> Before the first case, the Legal Service stated to the ECJ in an internal memorandum that the issue was extremely controversial in legal scholarship. But because of the FIDE commission report, it could also refer to a gradual shift in academic opinion, and in the three cases the ECJ established the direct effect of directives based on the principle of effectiveness, repeating the argument from the FIDE commission report,<sup>73</sup> and in effect blurring the distinction between categories of legal acts in the European legal system. The national legal and political establishments in some member states, however, countered this development vociferously. In Britain, a committee in the House of Lords reacted sharply to the 'legal uncertainty' created by the ECJ's approach and proposed that the EC Council should routinely state explicitly whether a directive could produce direct effect or not in new Community legislation. In France, the *Conseil d'État* openly rebelled against the ECJ's jurisprudence in the *Cohn-Bendit* case in 1978,<sup>74</sup> where the court held that directives according to article 189 of the EEC Treaty had no direct effect. After this case, the Legal Service withdrew from its strategy of equating directives and regulations and began distinguishing between them; the former were only binding on states and could thus not produce horizontal direct effect for citizens. Drawing on this interpretation, the ECJ in 1979 retracted

68 Bignami, 'Comparative law' (n 11) 22-3, and Troisième Colloque de droit Européen organisé par l'association des Juristes Européens. Paris les 25, 26, 27 novembre 1965 (hereafter FIDE congress report 1965).

69 EEC Treaty, article 189.

70 See, for instance, the national Belgian report 'Mécanismes juridiques assurant la mise en oeuvre de la législation communautaire par les autorités législatives ou exécutives nationales' by Cyr Cambier, Michel Waelbroeck, Jean-victor Louis, and Herwig Desmedt, FIDE congress report 1965.

71 Dumon, Rigaux, and Goffin from Belgium, Ophüls and Bulow from Germany, Labbé from France, Donner, Erades, and Ter Kuile from the Netherlands, and Lapace from Greece (Bignami, 'Comparative law' (n 11) 22).

72 Case 9/70 *Franz Grad v Finanzamt Traunstein* [1970] ECR 825; Case 33-70 *SpA SACE v Finance Minister of the Italian Republic* [1970] ECR 1213; and Case 41/71 *Yvonne van Duyn v Home Office* [1974] ECR 1337.

73 Bignami, 'Comparative law' (n 11) 23.

74 *Conseil d'État Minister of Interior v Daniel Cohn-Bendit* [1978] CMLR 545

and confirmed that certain directives could produce direct effect, but only for member states, not citizens.<sup>75</sup> Thus, the ECJ accepted the limits to the alternative enforcement system in place since the *Van Gend en Loos* ruling in 1964. This peace offering did not, however, satisfy Gaullist circles in France, who continued to fight the ECJ's stance on directives until a change in the political leadership in France came and gave new momentum to European integration with the Single European Act.<sup>76</sup>

Reviewing the effect of the FIDE report, the conflictual aftermath of the rulings on the direct effect of directives provides an interpretive framework: what might seem like a story about the importance of FIDE as the academic backbone in the development of European law (because of the Commission and the ECJ's reliance on the special committee's recommendation) was also a tale of backfire when the Commission and the ECJ ignored transnational academic opposition, which reflected firm national resistance, and pushed the limits of judicial creativity.

Organisationally speaking, FIDE did not develop as planned. The plans to establish a secretariat in Brussels stalled,<sup>77</sup> and the leadership provided by the Bureau faded.<sup>78</sup> As a consequence, FIDE had a very loose framework consisting of, firstly, a rotating presidency that handled administration of FIDE but was primarily engaged in planning, conducting and suggesting themes for the next congress,<sup>79</sup> and, secondly, the Steering Committee, which included varying members from the national associations to decide all major issues, such as the final decision on congress themes. Divergent views on the committee, however, meant that the conditions for strengthening the federation organisationally or initiating new FIDE activities were poor.<sup>80</sup> Apart from the congresses, practically no activities took place under the auspices of FIDE, and the federation did not develop organisationally. Much depended on the national association in charge of the next congress, which suggested themes<sup>81</sup>

75 Case 148/78 *Criminal proceedings against Tullio Ratti* [1979] ECR 825. See, also, Case 152/84 *M. H. Marshall v Southampton and South-West Hampshire Area Health Authority (Teaching)* [1986] ECR 723.

76 Morten Rasmussen, 'The Battle of European Law Enforcement' (Conference Setting the Agenda for Historical Research on European Law. Actors, Institutions, Policies and Member States, Florence, December 2015) 8-19.

77 Letter from Pescatore to Lando, 9 November 1971, ADFE.

78 There are very few sources on the functioning of the Bureau. Minutes from a Bureau meeting in January 1962 point to the initial leadership role of the Bureau (Compte-rendu de la réunion du bureau de la Fédération internationale pour le droit européen, 13 January 1962 in Paris, ESP, Box 12 Pettiti). Subsequently, the Bureau is only mentioned a few times in the collected material, which indicates a greatly diminished role from the mid-1960s onwards, when the Steering Committee became the leading organ. The Bureau continued to exist, but it retained few functions, including membership approval. In 1971, it admitted British, Irish, Norwegian, and Danish associations of European law as members of FIDE, when the United Kingdom, Ireland, Norway (expectedly), and Denmark had acceded to the Community planned for January 1973 (Déclaration du Bureau de la F.I.D.E. relative à l'élargissement de la Communauté européenne, September 1971, AWS, 328)

79 Pescatore to Lando, 9 November 1971, ADFE; Minutes, Steering Committee meetings, Archive of FIDE (AFIDE).

80 Minutes, Steering Committee meetings, AFIDE.

81 These themes were often adjusted or redefined at the Steering Committee meetings (Minutes, Steering Committee meetings, AFIDE). The private archive of Walter Strauss indicates the same pattern around the Berlin congress in 1970. See the discussion on themes for the FIDE congress in Berlin 1970 (in Niederschrift über die Mitgliederversammlung der Wissenschaftlichen Gesellschaft für Europarecht – Geschäftssitzung der Fachgruppe für Europarecht der Gesellschaft für Rechtsvergleichung am 29. September 1967 um 15.30 Uhr in Berlin, AWS, 328) and compare with the actual topics (FIDE congress report 1970).

and drew on its particular ties to the Community institutions, national institutions, and business partners in preparing and financing the congress. The congresses, thus, came to vary greatly according to the preferences and abilities of the host association.<sup>82</sup> The congress in Rome in 1968 is an example. Reflecting the close ties between the AIGE and Italian industry,<sup>83</sup> the congress centred on international corporate mergers<sup>84</sup> and, unlike previous congresses, it did not attract actors primarily interested in the nature of European law.

## VI. CONGRESSES IN THE 1970S

The ties between FIDE and the Legal Service loosened considerably when Gaudet's stint as director stopped in 1969. His successor, Walter Much, did not nurture academic connections<sup>85</sup> and had no great interest in FIDE.<sup>86</sup> The ECJ was indirectly the main institutional link, then, as there were usually one or more judges or advocate generals from the ECJ present at the Steering Committee meetings.<sup>87</sup> In line with a general campaign for stronger ties between the ECJ and national legal elites under Robert Lecourt's<sup>88</sup> ECJ presidency,<sup>89</sup> the participation of ECJ judges allowed knowledge of European law to diffuse, which might have affected national enforcement. At the same time, the interplay between elites from academia, courts, institutions, banks, and industry offered networking opportunities with potential future employers or colleagues in national settings for the ECJ judges.

Some judges, such as Pierre Pescatore<sup>90</sup> and Thijmen Koopmans,<sup>91</sup> were heavily committed to FIDE with ambitions of setting the agenda. Through participation in their respective national associations, they each became FIDE president when their association held the presidency, and they enjoyed considerable esteem and authority at the Steering Committee meetings. Other ECJ judges were far less committed, and ECJ judges primarily participated in the Steering Committee meetings when their national association held the FIDE presidency. Compared to legal scholars and lawyers, such as Börner from the WGE, Leon Goffin from the Belgian association, and Paul François Ryziger and Lise Funck-Brentano from the AJE, who participated in the Steering Committee for decades, the individual participation of ECJ judges was sporadic for most,<sup>92</sup> and it did not constitute a long-term strategic involvement in FIDE by the ECJ.<sup>93</sup>

82 Minutes, Steering Committee meetings, AFIDE.

83 This relation is, for instance, detectable in the list of Italian participants from the FIDE congress in 1961 (Programme, Colloque international de droit Européen, Bruxelles, 12-14 octobre 1961, AMW).

84 Quatrième colloque de droit européen, Roma, 1968.

85 Interview with Claus-Dieter Ehlermann, 29 June 2016.

86 The available material leaves no trace of an interest in FIDE by Much. This supports Ehlermann's observation.

87 At least at the meetings to which there are minutes in the collected sources.

88 ECJ judge 1962-67 and ECJ president 1967-76

89 Prominent national judges were, for instance, invited to dinner in Luxembourg as part of the recruitment campaign, which was to mobilise national judges in the enforcement of European law (Invitation lists, kindly made accessible by Karen Alter).

90 ECJ judge 1967-85.

91 ECJ judge 1979-90.

92 Minutes, Steering Committee meetings, AFIDE.

93 Minutes, Steering Committee meetings, AFIDE.



A rift between promoters of a radical interpretation of European law and more moderate voices marked the congresses in the 1970s, as it had in relation to the question of direct effect of directives in the 1960s. This was apparent, for instance, at the congress in Berlin in 1970, which was organised by the WGE with Börner as FIDE president. The theme, ‘Cooperation between the legal order of the Community and the national legal order in the sector of agriculture, competition, and regarding energy’, touched substantial law, but the question of whether fundamental rights in national constitutions could potentially limit the primacy of European law lurked ominously under the surface. The status of fundamental rights aroused strong feelings and had been on the agenda of the German legal establishment ever since the establishment of the ECSC, but especially since the advent of the primacy doctrine in *Costa v ENEL*. Since the Community itself had no robust rights regime comparable to the European Convention of Human Rights (ECHR) or national constitutions, and since the ECJ had refused to be bound by national constitutional traditions,<sup>94</sup> the European legal order clashed with the strong tradition of inviolable rights protection that had been cultivated in Germany following the Second World War. In the late 1960s, a debate about a potentially necessary structural congruence between the European and German legal orders regarding fundamental rights gained prominence in relation to the standing disagreement between constitutionalists and those who equated European law with traditional international law.<sup>95</sup> In the *Stauder v. Ulm* ruling in 1969, the ECJ had tried to satisfy the advocates of the German position by stating that the general principles of Community law, which it had a duty to protect, included safeguarding fundamental individual rights.<sup>96</sup> The German Minister of Justice, Gerhard Jahn, responded in the FIDE congress report from 1970. While recognising the steps taken by the ECJ, he posed the central dilemma between ‘*Gemeinschaftsrecht nur nach Massgabe der nationalen Grundrechte*’ (‘Community law according to the standard of national fundamental laws’) and ‘*Grundrechte nur nach Massgabe des Gemeinschaftsrechts*’ (‘fundamental laws according to the standard of Community law’) and argued that the tradition of basic rights should not be disregarded.<sup>97</sup> Furthermore, the German reporter on competition, Professor of Law at the University of Kiel, Wolfgang Harms, disagreed that *Stauder v. Ulm* had solved the issue. Promoting the structural congruence position, Harms argued in strong terms that the supremacy of European law was limited by national

94 Case 1/58 *Stork v High Authority* [1959] ECR 17; Joined cases 36-58, 37-58, 38-59, and 40-59 *Präsident Ruhrkohlen-Verkaufsgesellschaft and others v ECSC High Authority* [1969] ECR 423, 438.

95 The argument was that the legitimacy of the European legal order should only be recognised insofar as there was structural congruence between the European and the German legal orders. See Bill Davies, ‘Pushing Back: What Happens When Member States Resist the European Court of Justice? A Multi-Modal Approach to the History of European Law’ (2012) 21 *Contemporary European History* 417, 418-19 and 423. See also, Bill Davies, ‘Resistance to European Law and Constitutional Identity in Germany: Herbert Kraus and *Solange* in its Intellectual Context’, (2015) 21 *European Law Journal* 434.

96 Case 29/69 *Stauder v Ulm* [1969] ECR 419.

97 Gerhard Jahn, ‘Eröffnungsansprache’, *Gemeinschaftsrecht und Nationale Rechte. Das Zusammenwirken der Europäischen Rechtsordnung mit den nationalen Rechtsordnungen. V. Internationaler Kongress für Europarecht am 23.-26. September 1970 in Berlin veranstaltet von der Fédération Internationale pour de Droit Européen*, E/1, 4-5 (Carl Heymanns Verlag, 1971) (hereafter FIDE congress report 1970). See also the German national report on agriculture by Paul Otto Schmitz, a senior civil servant from the German Ministry of Food, Agriculture, and Forestry.

fundamental rights until the protection of fundamental rights at the Community level had been implemented.<sup>98</sup> Generally, the topic had been discussed passionately at the congress without agreement, as a report by Ganshof Van der Meersch testified.<sup>99</sup> Three months later the progressive ‘1967 ECJ’ led by Lecourt<sup>100</sup> stated that while the ECJ was inspired by the constitutional traditions common to the member states in its protection of fundamental rights, the primacy of European law was unbounded even by basic principles in national constitutions, as in the case of the *Internationale Handelsgesellschaft*.<sup>101</sup> The ECJ thus contradicted the views of prominent German actors and an undecided legal community, which was recapitulated at the FIDE 1970 congress. A landmark reaction followed four years later from the German Federal Constitutional Court (FCC): in the so-called *Solange I* ruling in 1974,<sup>102</sup> the FCC ruled that German courts could review Community legislation in order to ensure that it did not conflict with German fundamental rights, as long as the Community did not have codified fundamental rights. Having opposed the ECJ directly, the FCC thus delivered a major blow to the integrity of the ECJ and to the most radical version of its primacy doctrine.

Three years later in Luxembourg the FIDE congress was void of such criticism, reflecting the influence the ECJ had on this particular event, which was practically an ECJ congress. The congress was co-financed by the Commission, the Luxemburg government, and the *Internationale Universität für vergleichende Wissenschaften* in Luxembourg, and it took place at the Court of Justice.<sup>103</sup> Of the 318 participants, six ECJ judges and two advocate generals attended, including ECJ president Lecourt, who gave one of the opening speeches, the ECJ judge and President of the Dutch association of European law Andreas Donner,<sup>104</sup> who headed a commission, Hans Kutscher,<sup>105</sup> the advocates general Karl Roemer<sup>106</sup> and Jean-Pierre Warner,<sup>107</sup> and, most importantly, Pescatore, who presided over the congress.<sup>108</sup> As a federalist and a

98 See Wolfgang Harms, ‘Deutscher Bericht’, Kommission II (Wettbewerb), FIDE congress report 1970, II/3 13.

99 WJ Ganshof Van der Meersch, ‘Rapport sur les travaux de la Commission ‘Agriculture’ du Congrès’, FIDE congress report 1970, I/8, 2-3.

100 For an analysis of the ‘1967 ECJ’, see Bill Davies and Morten Rasmussen, ‘From International Law to a European Rechtsgemeinschaft: Towards a New History of European Law, 1950-1979’ in Johnny Laursen (ed), *Institutions and Dynamics of the European Community, 1973-83* (Nomos/Bloomsbury 2014).

101 Case 11/70, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125. The occasion was a preliminary reference sent by the administrative court in Frankfurt am Main.

102 BVerfGE 37, 271 *Solange* decision 29 May 1974, 2 CMLR 540.

103 Participant list, Congrès F.I.D.E. Programme definitive, VIe Congrès international de droit européen (Luxembourg 24-26 1973), Archive of Ole Lando (AOL).

104 ECJ president 1958-64 and ECJ judge 1964-79.

105 ECJ judge 1970-76 and ECJ president 1976-80.

106 ECJ advocate general 1953-73.

107 ECJ advocate general 1973-81.

108 Participant list, Congrès F.I.D.E. Programme definitive, VIe Congrès international de droit européen (Luxembourg 24-26 1973), Archive of Ole Lando (AOL). All in all, sixteen persons from the ECJ participated (5%). Besides, the interest of judges and lawyers from national courts in attending FIDE congresses had fallen, while the interest among academics had risen. Academics (27%), private practice lawyers (23%), and national officials (12%) constituted the most heavily represented participant

believer in the constitutional nature of European law,<sup>109</sup> Pescatore was in the habit of using various vehicles to promote his views both on the bench and in academia. He has therefore been described as ‘the most influential jurist the Court can boast’ and as the ECJ’s ‘stormtrooper in terms of supranationalism’.<sup>110</sup> Pescatore doubtlessly viewed FIDE as a vehicle.<sup>111</sup> When the Community and FIDE enlarged, the topic was the general status of European case law after twenty years of experience with Community law, treated in three subtopics: the general problems of integration, the creation of a European economic order, and thirdly free movement within the Community and social questions.<sup>112</sup> The national reports described various approaches and practices towards integration in the member states, but the general reports, the opening speeches, and the Community reports (a new feature) generally supported the ECJ as an organ with decisive influence on the integration process.<sup>113</sup> In particular, this was expressed in Lecourt’s and Pescatore’s contributions. Referring to their previous work and constituting narratives of integration-through-law,<sup>114</sup> they pointed to the centrality of law in the Community and the ability of law and judges to drive economic integration forward, but rejected the accusation of the ECJ acting as a ‘*gouvernement des juges*’.<sup>115</sup> Pescatore, however, emphasised that the development of the European legal order by the ECJ had happened in cooperation with national judges who referred questions to the ECJ using the preliminary reference system. In this way, the principles of direct effect, primacy, protection of human rights, and respect for the international commitments of the Community had been established by the ECJ.<sup>116</sup>

Feeding right into the principal debate of the 1970s, the topic of the next congress (Brussels, 1975, presided by Léon Goffin) was the individual and European law, with

- occupations, whereas only 9% came from national courts. In addition, there were participants from the Commission (9%), national firms (2%), as well as politicians (3%), and unknown/others (11%).
- 109 Vera Fritz, ‘Pierre Pescatore: an activist of European integration through law (1919 – 2010)’ (Conference Setting the Agenda for Historical Research on European Law. Actors, Institutions, Policies and Member States, Florence, December 2015) 1, 8, 10.
- 110 Fritz quoting Pescatore’s co-judges in the ECJ Federico Mancini and Josse Mertens de Wilmars’ référendaire Ivan Verougstraete. *ibid.*, 10.
- 111 Pescatore was one of the most active judges contributing with reports to seven congresses. See FIDE reports from Hague 1963, Paris 1965, Berlin 1970, Luxembourg 1975, London 1980, and Paris 1986.
- 112 *La jurisprudence Européenne après vingt ans d’expérience communautaire. Vie Congrès international de droit européen du 24 au 26 Mai 1973 à Luxembourg* (Carl Heymanns Verlag, 1976) (hereafter FIDE congress report 1973).
- 113 See, for instance, Jean Boulouis, ‘Rapport général’, FIDE congress report 1973.
- 114 In the words of Vauchez, Lecourt had already in 1964 delivered a presentation that was arguably the first systematic conceptualisation of the Court’s contribution to the dynamics of what would today be referred to as ‘integration through-law’ in front of the AJE (Vauchez, *Brokering Europe* (n 2) 142). In the 1960s and the 1970s, this narrative was continuously developed and promoted, for instance in Pescatore’s book ‘Le droit de l’intégration’ from 1972. The integration-through-law narrative had its academic breakthrough with the Integration through Law project directed by Mauro Cappelletti and carried out at the European University Institute in the end of the 1970s and beginning of the 1980s (see an article by the present author: ‘The History of the Integration through Law Project. Creating the Academic Expression of a Constitutional Legal Vision for Europe’ *German Law Journal* (forthcoming)).
- 115 Robert Lecourt, ‘Allocution inaugurale’ and Pierre Pescatore, ‘Rôle et chance du droit et des juges dans la construction de l’Europe’, FIDE congress report 1973.
- 116 Pescatore, ‘Rôle et chance du droit et des juges dans la construction de l’Europe’ (n 115) 18-19.

fundamental rights as one of the three subtopics.<sup>117</sup> As described earlier, the question of fundamental rights in connection to the primacy of European law had been a heated issue in the field for years, but the recent *Solange* ruling reinvigorated it. The congress thus provided Pescatore with the chance to criticise the German Constitutional Court's ruling. With rhetorical elegance, Pescatore claimed that the *Solange* ruling had been criticised heavily in the legal establishment.<sup>118</sup> He then described how the ECJ through the *Stauder*, *Internationale Handelsgesellschaft*, and *Nold* cases had developed a system of protection of fundamental rights at the Community level by drawing inspiration from the constitutional traditions in the member states and the international obligations signed by the member states, such as the ECHR. In his conclusion, he argued that the cause of human rights was '*provincialisme juridique*' and a way to challenge European integration. The defence of democracy and human rights was thus simply a thin veil for nationalism, according to Pescatore.<sup>119</sup> While the general rapporteur C.A. Colliard from the Université de Paris I and the Belgian Minister of Justice H. Vanderpoorten supported Pescatore's standpoint,<sup>120</sup> other voices were critical. Evert Alkema, a legal scholar from Groningen University, presented a report written by a working party of the NVER with Professor of European Law Henry Schermers as chairman. The report found that the ECJ's abstinence from recognising the ECHR as binding on the EC had invited reactions like the FCC's in *Solange*, which granted national fundamental rights absolute precedence over secondary Community law, and the authors did not find the ECJ's reserved attitude encouraging.<sup>121</sup> In a very indirect fashion, the German reporters on fundamental rights likewise commented on *Solange*: their 107 pages on the national legal protection of fundamental rights was an effusive appraisal of the German system. The protection of human freedom in Germany should be the model of rights protection in the Community, so the reporters recommended, without mentioning the *Solange* ruling at all.<sup>122</sup>

At the Copenhagen congress in 1978, which dealt with equal treatment of public and private undertakings and due process in administrative procedures, the debate about rights and primacy was left aside, but otherwise the topic remained a theme at FIDE congresses throughout the 1970s. In this respect, the congresses reflected the gap between radical and moderate interpretations of European law, which existed

117 The other two subtopics were first, Community and member states' economic policies and the rights of companies, and second, citizen participation in decision-making at the Community level.

118 However, Pescatore only provided references to work of the pro-integrationists Hans-Peter Ipsen and Meinhard Hilf (Pierre Pescatore, 'Rapport communautaire, La protection des droits fondamentaux par le pouvoir judiciaire' in *Die Einzelperson und das Europäische Recht*. FIDE VI (hereafter FIDE congress report 1975), II/2, 29.

119 *ibid.*, II/3, 27.

120 Colliard stated that the lack of fundamental rights in the Treaty posed a number of problems, but these should not be exaggerated. On a personal level, he admired the approach of the ECJ (CA Colliard, 'Rapport général', FIDE congress report 1975, II/1, 2). Vanderpoorten found it comforting that the ECJ would take the common constitutional traditions of the member states into account in safeguarding the rights of the individual (H Vanderpoorten, *Allocation d'ouverture*, FIDE congress report 1975, I/3, 2).

121 E A Alkema, 'The judicial protection of fundamental rights in the Netherlands', FIDE congress report 1975, II/11, 28-29.

122 Ernst-Werner Fuss and Rainer Arnold, 'Der Gerichtliche Schutz der Grundrechte', FIDE congress report 1975, II/6, 84-85.

inside the transnational field of European law, and they exhibited the critique that would later initiate an approximation of the ECHR at the European level in order to satisfy the FCC and the legal establishment in Germany: in a 1977 Joint Declaration, the political institutions of the EC bound themselves to the principles of the ECHR, and in the *Rutili* (1975)<sup>123</sup> and *Hauer* (1979)<sup>124</sup> cases, the ECJ cited individual articles of the ECHR.<sup>125</sup> On the basis of this development, the FCC made peace with *Solange II* in 1986, when it stated that it would not review Community legislation as long as effective protection of fundamental rights was guaranteed at the European level, but that it could overrule the ECJ if protection of these rights required it.<sup>126</sup>

## VII. CONGRESSES 1980-94

Whereas the Community had struggled under difficult global economic and monetary conditions in the 1970s and had fought to maintain its *raison d'être*, the 1980s were characterised by action towards the completion of the Common Market with the Single European Act (SEA) in 1986 and renewed optimism. The initiative did not only come from the Community institutions themselves, but also from big business leaders. Discontent with the lack of actual free trade, they championed the removal of non-tariff barriers.<sup>127</sup>

In-house counsel from large businesses, such as St. Gobain, Olivetti, Philips, and Eni S.p.A, as well as major national banks had always been present at FIDE congresses, but from the late 1970s onwards, banks and corporations increasingly contributed financially to the congresses along with Community institutions,<sup>128</sup> which discussed issues related to free trade among other topics throughout the 1980s and the early 1990s. This partly reflected the general development of the Community, partly the organisers needed such issues to attract corporate sponsors to finance the congresses.<sup>129</sup> In addition, principles of European law were explored, such as the principles of equal treatment in economic law (at The Hague in 1984 along with the topic of Europe and the media) and subsidiarity (in Rome in 1994 along with the topics of social politics in the Community and the implications of deregulation and privatisation for competition law), while the basic nature of European law was generally left aside. When the congresses did touch upon the subject, as at the 1986 Paris

123 Case 36-75 *Roland Rutili v Ministre de l'intérieur* [1975] ECR 1219.

124 Case 44-79 *Liselotte Hauer v Land Rheinland-Pfalz* [1979] ECR 3727.

125 Davies, 'Pushing Back' (n 95) 457.

126 BVerfGE 73, 339 *Solange II* decision 22 October 1986, 3 CMLR 225.

127 For an analysis of the business leaders' impact, see Maria Cowles, 'Setting the Agenda for a New Europe: The ERT and EC 1992' (1995) 33 *Journal of Common Market Studies* 501.

128 For instance, in 1978 in Copenhagen, five Danish banks, five foundations, and a private company sponsored the congress (8e Congrès International pour le Droit Européen, Copenhagen, June 22-24 1978). In Dublin in 1982, Irish banks and 'commercial organisations' contributed 3,000 pounds out of a total budget of 26,800 pounds. The Commission also provided a grant (Minutes, Steering Committee meeting, 24 June Dublin, AFIDE); in Paris in 1986, the Banque de France, Barclays Bank, Crédit Agricole, Fédération Française des Sociétés d'Assurances, and the Foreign Ministry sponsored the congress. (FIDE, Rapports, 12e Congrès, Paris, 1986). The ECJ furthermore provided translators for some congresses (see, for instance, Minutes, Steering Committee meeting, 8 November 1991, AFIDE).

129 At a Steering Committee meeting in 1984, when the topics for the 1986 Paris congress were discussed, Paul-François Ryziger from the AJE explicitly pointed out that FIDE needed economic topics to attract sponsors (Minutes, Steering Committee meeting, 19 September 1984, AFIDE).



congress that focussed on general principles common to the laws of the member states as a source of Community law (along with community aids, national aids, and antidumping measures, as well as the freedom to provide services and the right of establishment, in particular regarding insurance companies and banks), it did not stir much debate.

In 1987, the efforts to advance the Community bore fruit when the SEA entered into force. This leap forward was central at the congresses, where topics such as public procurement, fiscal harmonisation, the control of market concentration, the free movement of persons, deregulation, and privatisation were on the programme in the early 1990s.

By now, the number of participants had more than doubled since the first congress. In Rome in 1994, 468 participated, compared to 182 in 1961.<sup>130</sup> Bearing the interval and the progress of the EC in mind (as well as its appeal to a much broader scope of people), the number of participants in Rome was, however, not overwhelming. The congresses were still exclusive parties, not least due to high congress fees.<sup>131</sup>

A rising proportion of the participants were from the courts in Luxembourg, following the pattern of the 1970s. In 1994, 79 of the participants (17%) came from the Court of First Instance<sup>132</sup> and the ECJ,<sup>133</sup> making it the second largest group at the congress (24% were academics and 16% were lawyers in private practice).<sup>134</sup> Obviously, the events were a great chance for judges to network with academics, lawyers, politicians, and representatives from banks and other corporations. FIDE was also a space for informal discussions and initiatives about the development of European law. If such an informal activity was to have a considerable effect, the participation of national judges was a prerequisite, but from 1961 to 1994 the number and proportion of national court lawyers and judges at the FIDE congresses decreased sharply from 63 (35%) in 1961 to 28 (9%) in 1973 and only 6 (1%) in 1994. The actors who were indispensable in the actual constitutionalisation of European law, namely those who could secure national legal recognition of the case law and principles of the ECJ in their own courtrooms, were practically absent at the congresses in the early 1990s. The head of the Legal Service, Claus-Dieter Ehlermann, participated only at a few congresses. Like Gaudet, he pursued synchronisation between practice and academia with great energy,<sup>135</sup> but he did not attribute

130 List of Participants, XVI Congrès international de la FIDE, Rome, 12-15 Octobre 1994, AAIGE.

131 Armin von Bogdandy, 'A Bird's Eye View on the Science of European Law: Structures, Debates and Development Prospects of Basic Research on the Law of the European Union in a German Perspective' (2000) 6 *European Law Journal* 208, 212.

132 The Court of First Instance was established in 1989 and ruled on certain categories of cases in the first instance. In 2009 the name was changed to the General Court with the entry into force of the Lisbon Treaty.

133 Of the 79, 17 judges from the Court of First Instance (including the president José Luis Da Cruz Vilaça) and 10 judges from the ECJ (including the president, Gil Carlos Rodríguez Iglesias) participated (List of Participants, XVI Congrès international de la FIDE, Rome, 12-15 Octobre 1994, AAIGE).

134 List of Participants, XVI Congrès international de la FIDE, Rome, 12-15 Octobre 1994, AAIGE.

135 Ehlermann was Director of the Legal Service from 1977-87, and during these years he was, for instance, an editor of the *Common Market Law Review* (1975-89) and heavily engaged in the Integration through Law project in the late 1970s and early 1980s. See two forthcoming articles by the present author: 'The History of the *Common Market Law Review* 1963-1993' (n 37) and 'The History of the Integration through Law Project.' (n 114).



much importance to FIDE congresses operationally or politically. Ehlermann considered other academic channels, such as meetings with the editors of European law journals, much more valuable.<sup>136</sup>

A coherent and long-term strategic plan for FIDE might have enhanced the political impact of the federation, but the loose framework with rotating presidencies, including the commensurate rotating right to propose themes for the congresses, hindered such planning. The majority of the Steering Committee members rejected the idea of creating a permanent secretariat or administration, which could have been a first step in a long-term strategic direction: when Bernard van de Walle de Ghelcke from the Belgian association proposed revisiting the original idea of a permanent secretariat in 1992, it was immediately rejected.<sup>137</sup> The creation of a homepage to modestly modernise the institution would not occur until years later, providing members of the national associations the opportunity to download reports from the congresses. Beyond this exclusive group, reports from congresses were hard to access.<sup>138</sup>

### VIII. NATIONAL ASSOCIATIONS

Even though FIDE emanated from the national associations, their activities were not coordinated transnationally. To a large extent, the national associations were independent cells with limited knowledge of their counterparts' activities in the other member states.<sup>139</sup> Moreover, the various associations' character differed greatly, as

136 Interview with Claus-Dieter Ehlermann, 29 June 2016; interview with Claus-Dieter Ehlermann by Sigfrido Ramirez 16 September 2016 (carried out in cooperation with the present author). In another interview, Ernst Steindorff, the founder of the WGE, reinforced Ehlerman's view. As he did not consider FIDE and the congresses very relevant, he had already stopped attending the congresses in 1960s (Interview with Ernst Steindorff, 20 June 2014). A document in the archive of the Legal Service, which Morten Rasmussen referenced in arguing that FIDE had become an important 'shop-window' for Community law (Rasmussen, 'Establishing a Constitutional Practice' (n 10) 180), seems to contradict the interviews. In the document, George Close, a Briton formerly employed in the British Ministry of Transport with close ties to the British committee organising the 1980 FIDE congress in London, attempted to persuade the President of the Commission, Roy Jenkins, to provide a grant to the congress by giving a flattering impression of the importance of FIDE as a 'shop-window for the Legal Service' that diffused knowledge, formulated policy, and was good for public relations. The importance of the document concerning the general ties between the Legal Service and FIDE should, however, be evaluated in context. First of all, Close was invited to join the committee by an old friend of his, Professor of European Law John Mitchell – the Legal Service did not seek the cooperation. Secondly, the document and Close's flattery were an attempt to secure financial support for the FIDE congress in 1980 that Close had already promised his allies in the organising committee, but which the Secretariat General of the Commission would not grant as a result of a general stop to congress subsidies. The document thus represents a tie between a particular member of the Legal Service and the British association of European law and the pickle he had put himself into by promising a grant in advance, but not a general tie between the Legal Service in the 1970s and FIDE (Letter from Mitchell to Close, 8 February 1978; Close, Note for the attention of Mr. G. Avery, Chef de Cabinet adjoint. Cabinet of the President in ALSC, 347.96 (100) Fédération internationale pour le droit Européen).

137 Minutes, Steering Committee meeting, 24-25 September 1992, AFIDE.

138 In the 1960s and 1970s, the FIDE reports were published by publishing houses such as Brylant and Carl Heymans Verlag as formal contributions to the printed academic debate, but from 1978 the national associations usually published the reports themselves in pamphlet bands, indicating a less ambitious aim with the reports beyond the congresses.

139 Actors from national associations repeatedly suggested circulating information on the activities of the national associations transnationally, but seemingly without effect. See Lord Wilberforce, 'Opening Speech

the history of the AJE, WGE, and AIGE shows. The AJE built up an organisational structure, expanded its membership base, published a bulletin several times a year, and continuously held conferences and seminars on European law in the 1960s, 1970s, and 1980s, which indeed played a role in legitimising European law in certain legal environments in France. However, the Eurosceptic Gaullist Fifth Republic and the long-standing hostility of the French *Conseil d'État* in the 1960s limited the general impact of the AJE. In the mid-1970s, the *Cour de Cassation* accepted the primacy of European law, but in the 1980s the so-called Aurillac amendment in the French National Assembly recommended French courts should refuse the application of European law in France,<sup>140</sup> and only in 1989 did the *Conseil d'État* accept the primacy of European law, though on the basis of French constitutional law rather than the ECJ's claim of ultimate authority over national constitution.<sup>141</sup> In Germany, the WGE with its academic character also built up a firm organisation with a solid power base in the German administrative and political elite. Nonetheless, it was difficult for the constitutive elements of a German academic discipline of European law to progress in the first decades against legal scholars sceptical of the 'special' nature of European law and an unreceptive German judiciary, which had been excluded from the WGE. The journal *Europarecht* dedicated to European law is a good example. It was established in 1965 by the WGE, but in the 1960s and 1970s, the journal was far from self-sustaining and in danger of having to close.<sup>142</sup> The AIGE in Italy was very vulnerable organisationally, and the association was practically dormant already in the 1960s,<sup>143</sup> with a corresponding lack of representation in FIDE.<sup>144</sup> In the mid-1970s new forces revitalised the undertaking with recurrent seminars and European law courses,<sup>145</sup> but with limited reach. Not until the late 1980s and 1990s, when the impact of the SEA kicked in at the national level, did European law expand as an academic field in the member states.<sup>146</sup>

At the European level, the associations possibly had a greater impact. The request for a preliminary reference to the ECJ in the landmark case *Cassis de Dijon*<sup>147</sup> might originated in a conversation at a WGE-meeting between a member of the Commission and the lawyer Gert Meier,<sup>148</sup> and such procedures were generally discussed informally in either national associations or FIDE settings.<sup>149</sup> As the history of the *Van Gend en Loos* case has however revealed, historical scrutiny of specific cases remains necessary when estimating the role of the European law associations in presumed test cases.

by the Rt. Hon. Lord Wilberforce', FIDE congress report 1980 and Minutes, Steering Committee meeting, 24-25 September 1992, AFIDE.

140 The amendment was rejected in the Senate, but it exhibited the Gaullist resistance to European law.

141 See, generally, Bernier, 'Constructing and Legitimizing' (n 11).

142 Letter from C.H. Beck'sche Verlagsbuchhandlung to WGE, 25 July 1972, AWS, 237; Letter from Börner to C.H. Beck'sche Verlagsbuchhandlung, 12 February 1973, AWS, 237.

143 Interview with Paolo de Caterini, 30 March 2016.

144 See, for instance, minutes, Steering Committee meeting 10 April 1973, AFIDE.

145 As documented in the archive of the AIGE.

146 See, on the German case, chapter three in Mangold, *Gemeinschaftsrecht* (n 43).

147 Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR I-649.

148 Alter, 'Jurist Advocacy Movement' (n 1) 75.

149 I thank Michel Waelbroeck for pointing this out.

## IX. CONCLUSION

Adding empirical detail to the history of FIDE during 1961-94 reveals its variegated character. FIDE provided an important transnational setting for legal mobilisation, diffusing knowledge on European law, and networking among judges, academics, private practice lawyers, and in-house corporate lawyers. However, neither organisationally nor ideologically did FIDE and the 'Euro-law associations' constitute a cohesive network in the ideological confrontation with sceptical national actors; FIDE was itself an arena of contestation.

The narrative behind this conclusion shows phases marked by shifting institutional links, but contestation was a part of FIDE congresses even from the outset. In the 1960s, close ties to the agenda-setting Legal Service put the nature of European law on the programme of several FIDE congresses, and direct effect and primacy were endorsed by FIDE. There are, however, no indications that FIDE was instrumental in the alignments of the actors with respect to the attempted constitutionalisation of the treaties by the ECJ in 1963 and 1964,<sup>150</sup> and the disagreement on the potential direct effect of directives in 1965 in Paris revealed the ideological clashes in FIDE. The leaderships of the Bureau and the Legal Service waned in the 1970s, and the federation's framework became looser, with much depending on the national association in charge of organising the next congress, its preferences regarding topics, and its institutional and commercial links. In line with the general campaign for stronger ties between the ECJ and national legal elites under Robert Lecourt's ECJ-presidency, the ECJ implicitly became the main institutional link of FIDE, as ECJ judges increasingly became involved in their national association and national FIDE-presidencies; most particularly Pescatore, who promoted an 'Integration through Law' narrative situating law in general, and the ECJ in particular, as a driver of economic integration. In addition, Pescatore defended the ECJ's path in the heated 1970s debate on fundamental rights, which aroused strong and divergent feelings at FIDE congresses. Following the general development of the Community and the stronger affiliations with banks and corporations, which began to contribute to the congresses financially, FIDE congresses primarily centred on free trade topics in the 1980s. The political, operational capacity of FIDE became more limited, and whereas the congresses still offered a remarkable setting for networking, national judges were absent. As crucial actors in the enforcement of Community law in the member states, the lack of judges negatively affected FIDE at the national level.

On the background of this narrative, a Bourdieuan approach toward exploring the history of European law can be evaluated. Indeed, the approach has indicated contestation in the legal field, but when applied without access to archival material or a thorough analysis of the output produced in the scholarly field, a Bourdieuan approach may lead to questionable concepts, such as 'FIDE-entrepreneurs', incorrect assumptions about test cases, and misleading postulations about FIDE and the 'Euro-law associations' constituting an ideologically cohesive transnational network

150 This argument has already been put forth by Morten Rasmussen (Rasmussen, 'Establishing a Constitutional Practice' (n 10) 179-180). The present analysis supports Rasmussen's argument.

in opposition to sceptical national observers of European law. When applied to vast archival material, the Bourdieuan approach is, however, a valuable tool in conceptualising the academic field of European law as a complex battlefield with fluid alliances transgressing the borders between the national and transnational levels.