

SILENCE AND NOISE AS INTERPRETATION CRITERIA FOR EUROPEAN UNION COMPETENCES

EU competence

The European Union and the Member States are related by **COMPETENCE**, which can be **exclusive, shared** or of **coordination**, ordered from higher to lesser legislative intervention of the EU. Their scope and limits are defined in the Treaties according to the **principles of conferral** or attributed powers, **subsidiarity** and **proportionality**.

Shared competences is the most controversial: as the EU and the MS share the legislative development of a competence, the limits are unclear. Instead, this relationship is articulated in terms of SILENCE and NOISE, and serves as an argument to **expand related competences**.

Silence from the Member States, and Noise from the EU institutions.



Example of EU Hard and Soft Law on PPP

Noise or 'Competence Creep'

The **Treaty of Lisbon** intended to resolve the problem with better and more extensive regulation of the use and limits of competence, and Protocol No 2 to the Treaty of Functioning of the European Union on the principles of subsidiarity and proportionality. But **the problem remains unresolved**. Literature has proposed the theory of Competence Creep to describe it, which has been defined as follows:

'the perception that the dictates of the principle of conferral tend to be obscured by an open-handed reading of the matter in practice'
Weatherill, 2012

the perception by MS and ultimately by citizens that there is a loss of competence on national level and consequentially, a loss of sovereign powers
Prechal, 2010

'[N]either the principle of attributed powers nor the principle of subsidiarity has acted as effective constraints on the scope of Union competence'.
Wyatt, 2011

My Thesis analyses the expansion of EU competence on **Public-Private Partnerships (PPP)**. It focuses on the instruments:
Hard Law and Soft Law.

References:

- Prechal, S. (2010) 'General Principles of Law and Competence Creep', *Rev. of Eur. Admin. Law*, Vol. 3, Nr. 1, pp. 5-22.
- Weatherill, S. (2012) 'The Constitutional Context of (Ever-Wider) Policy-Making'. In Jones, E. et al. (eds.) *The Oxford Handbook of the European Union*, Oxford, Oxford University Press, pp. 570-582.
- Wyatt, D. (2011) 'Is the European Union an Organisation of Limited Powers?'. In Spaventa, E. et al. (eds.) *A Constitutional Order of States?*, Oxford, Hart Publishing, pp. 3-23.

