

Workshop Public Law II

Ius Commune Conference 2011

Friday, 25 November (09.00 – 12.00)

Location: Huize Molenaar, Korte Nieuwstraat 6

Room: Suite
Participants

Theme Transnational Networks – National, European and International Perspectives

A joint workshop of the Ius Commune Public Law programmes:

- Constitutional Processes: The Interaction between the National and the European Dimension
- Judicial Protection and Law Enforcement: the Interaction between the National and European Dimension
- Integration, Differentiation and Flexibility: New Perspectives on EU Law and Policy
- Constitutional Processes in the Global Legal Order

1. *Introduction*

The fading away of national borders has led to a loss of sovereignty of national legal systems. The ability of states to regulate matters has declined. This is only partly compensated by regulation by European or international institutions that have a formal base on the basis of which they produce binding rules. Transnational networks are becoming increasingly important in order to fill this gap. These networks have already been extensively discussed in literature. In order to jointly provide a scientific and meaningful contribution with sufficient coherence to this discussion, a certain framing and limitation of the scope is necessary.

2. *Limitation of the research object*

Simply categorized one can distinguish between networks that are formally established by European law or an international treaty on the one hand, and informal networks that operate without an explicit basis in law on the other hand. The latter include collaborations that originate in an instruction of a legislative act (e.g. a EU Regulation), but which have no basis in law or powers attributed to it by EU or international law. Much has already been written and researched about the networks with a specific legal basis (e.g. European agencies). Our focus in this workshop lies on the informal networks without a legal basis or the competence to issue binding law. At the global level, these networks are often referred to as Transgovernmental Regulatory Networks (TRNs) and they often consist of national regulators. This has led to a complex web of interrelated national, EU and global transnational networks. The working method of these informal networks can be compared and contrasted with that of formal networks.

Furthermore, a distinction can be made between networks consisting of private actors (e.g. businesses, business organizations, NGOs) and networks in which for at least a significant part (also) government organizations work together. The first includes e.g. ISO, stewardships, etc. (“self-regulation”). In that regard, particularly questions of self-regulation are being dealt with, instead of government regulation in which the transnational character is less distinctive. However, our focus lies with the second category, on the networks of bodies with a public function.

3. *Substantive focus of the theme*

Within the many questions that are raised by the creation and actions of transnational networks within and outside the European Union, a substantive focus seems necessary. Suggested is that we focus on two (broad) topics. Both topics start from the observation that such networks, although they do not have a “democratic mandate” and do not produce legally binding decisions in the traditional sense, in practice can have a substantial influence and can strongly influence the actions of public and private actors. For example, this influence can be observed in the fact that because international, European and national authorities that are attributed with public authority adhere to the interpretation of international and European law that is proposed by the networks, the European and national legislator sometimes hardly have a choice to deviate from that what is agreed upon in international networks. Therefore, the supervision on the compliance with legal norms is factually shaped in the way that is agreed upon in the network. This leads to the following two topics:

- a. How do such networks relate to existing institutions? (Institutional balance, legitimacy, influence on legal protection, etc.)
- b. Are the actions of informal networks subject to any standard setting or is there a need for it? (principles of good governance (accountability, transparency), participation rights, consultation requirements, etc.)

Within both topics several sub-questions could be formulated from the perspective of international, European and national law, which can form a common framework for the content of the contributions, also with a view to the possibility of making overall and comprehensive analyses possible.

4. *Method*

The aforementioned issues should preferably be elaborated with regard to concrete examples of informal, transnational cooperation in different sectors (e.g. application of climate legislation, immigration policy or supervision of financial markets, to name some random examples).

The added value of the workshop is twofold. First, dimensions and questions of international, European and national law are brought together. Second, by comparing the examples more general insights can be developed. The objective is to incorporate these insights after the workshop into the submitted (sectoral) contributions and to write overarching contributions that analyze the matter as a whole, which can form the basis for a coherent book publication.

5. *Workshop Panels*

Friday 25 November: sectoral and horizontal approaches; lessons
09.00 – 12.00

Panel 3. Transnational networks and new technologies

Nanotechnology: **Tanja Ehnert and Ellen Vos** (UM)

Nanotech standards, CEN: **E. Kica and R.A. Wessel** (University Twente)

Panel 4. General developments and lessons

From informal to formal EU networks? The cases of energy and telecoms: **Saskia Lavrijssen** (UvA)

From informal to formal networks: the case of economic governance: **Mark Dawson** (UM)

Harmonization through Judicial Training Networks?: **Herman van Harten** (UU)