

Comparative Research Project on Self-Regulation

Legal and political academics are paying growing attention to the circumstance that the European Community (EC) is increasingly promoting self-regulation and different kinds of mixed strategies, that involve private actors to different stages of regulation, as regulatory strategies when implementing its policies. This vast development of new self-regulatory strategies beyond 'new approach to standardisation' marks a new orientation in the shaping and management of the EC policies. However, self-regulation as a tool for European integration is still at its infancy and it remains to be seen whether the promotion of different self-regulatory strategies will remain in the European Commission's agenda.

This comparative research project was initiated, because it was seen that, in the European context, steering through self-regulatory strategies is highly problematic and in need for systematic legal research at the empirical and theoretical level. The EC often disregards the deep differences among the various national traditions of regulation. The promotion of self-regulation do not have the same impact from one country to the other. In order to make self-regulatory strategies effective, more information is needed on the underlying legal framework, to which self-regulation is attached to, when implemented at a national level. Understanding and evaluating the European dimension implies the research on existing national structures and procedures, because they ultimately determine the shape and character of European self-regulation.

This project aimed at identifying the self-regulatory strategies and legal framework applicable to self-regulation in different national systems operating independently or under the influence of EC institutions and policies. At initial stage the project did not demonstrate certain hypothesis, but started mapping similarities and divergences at national levels. Eight countries were studied: France, Finland, Italy, Netherlands, Portugal, Spain, Romania and UK, resulting to eight national reports. Within each national report, traditional, current and emerging sectors of self-regulation were examined. The traditional sectors chosen were self-regulation of sports and professions. The current sectors examined were media, advertising and financial markets and, finally, self-regulation in the Internet was taken as a new sector.

The research project condensed to three dimensions of self-regulation that are discussed throughout the reports and sectors examined. Firstly, the Constitutional law dimension was examined, because, in majority of the countries, Constitutional law envisages a number of legal provisions affecting the recourse to self-regulation, e.g. facilitates and prohibits the use of self-regulation in certain sectors or affects the organisation of the self-regulation. The second dimension concerned the determination of the nature of the self-regulatory body, as well as, the nature of its activity. The recognition of a public or private nature of the self-regulatory body, or the activity that such body carries out, was seen important in verifying the application of a public, private or mixed law regime to a such body's activities. It was demonstrated that the counties have divergent tests for identifying the applicable law regime of a self-regulator, often incorporating both test of nature and activity. Furthermore, within one county, a self-regulator can fall either under private law or public law regime, depending on the result of the test. It should also be noted that analysis throughout sectors sometimes produces heterogeneous tests. The third and final dimension is closely related to the second dimension. It examined the way in which national law disciplines the liability of regulatory bodies. It was found that the liability of monitoring and implementing activities of self-regulators has been tested in many courts while the standard setting activities were not. Thus, neither private nor public liability of self-regulators are coherently or indisputably solved in the countries examined.

This comparative research project has enlightened the self-regulatory strategies – their similarities and divergences, possibilities and limitations – across different European countries. However, a considerable amount of research work remains to be done at national levels, as well as, in the European dimension. We need to understand the national self-regulatory strategies, as well as, the European strategies, at in-depth level across the sectors, in order to produce efficient implementation of EC policies through self-regulatory structures. This project was a successful initial attempt to do so.