



Multidisciplinary Research Workshop – 13 March 2014

“Mapping Mutual Trust”

Understanding and Informing the Role of Mutual Trust in EU Law

Supported by the Max Weber Program at the European University Institute and Dr Evelien Brouwer's Veni-grant awarded by the Netherlands Organisation for Scientific Research's (NWO)

- Programme -

10h00 – 10h15: Introduction - Max Weber Fellow Damien Gerard (EUI)

Part I – The Nature and Role of Trust: an Interdisciplinary Dialogue

10h15 – 11h15: **The nature, potential and limits of trust**

A dialogue between Prof. Diego Gambetta (EUI) and Max Weber Fellow Megan Andrew (EUI), followed by Q&A

11h15 – 11h30: Coffee break

11h30 – 12h15: **The role of “trust” in the history of ideas**

Comments by Prof. Ann Thomson (EUI) and Max Weber Fellow Franz Fillafer (EUI), followed by Q&A

12h15 – 12h45: **Operationalizing trust in the EU governance system**

Comments by Prof. Ioannis Lianos (UCL, London)

12h45 – 13h15: Roundtable

13h15 – 14h30: Lunch

Part II – Mutual Trust in EU Law

14h30 – 15h00: **Mapping mutual trust in the Area of Freedom, Security and Justice: case-law of the European Courts** - Dr Evelien Brouwer (VUA, Amsterdam)

15h00 – 15h30: **Overcoming the operational limits of mutual trust** - Madalina Moraru (EUI Centre for Judicial Cooperation)

15h30 – 16h00: Q&A, followed by coffee break

16h00 – 18h00: **Defining mutual trust as an EU law “principle”**

Comments by Prof. Valsamis Mitsilegas (Queen Mary), Prof. Jukka Snell (Turku) and Dr Eva Storskrubb (Uppsala), and roundtable

18h00 – 18h15: Conclusions by Max Weber Fellow Damien Gerard (EUI)

- Workshop Presentation -

While mutual trust has been brought up with increased frequency in the European political/legal debate over recent years, the literature has repeatedly pointed to a lack of conceptualization of mutual trust as a significant lacuna. That lacuna reflects a difficulty, that of circumscribing a notion that appears to defy easy categorization. As a result, discussions of mutual trust in the current EU context tend to refrain from defining trust and rather focus on its apparent manifestations. The lack of conceptualization of mutual trust is problematic because it prevents a systematic discussion of the significance and limits of that notion, whereas the Union is keen to incorporate within its regulatory mechanisms a conclusive presumption of mutual trust between Member States and mutual trust has been hailed by the EU Court of Justice as nothing other than a '*raison d'être of the European Union*' (Case C-411/10, *N.S.*, para. 83). It is also problematic for the practical implementation of EU law inasmuch as it leaves national courts without clear guidance as to how to balance mutual trust against other interests at stake.

This research workshop therefore intends to engage in a process of 'mapping mutual trust' in order to allow for a possible rationalization of that notion in the current EU context. There is indeed a very significant body of social sciences literature on the notion of (mutual) trust. In the field of sociology, for example, Luhmann is known for having formalized trust as a method to reduce of complexity, enabling increased possibilities for experience and action yet conditioned on learning mechanisms and reliant on safeguards, including legal regulations (*Trust and Power*, 1979). A striking feature encountered in other socio-political accounts lies in the ubiquitous connection – and mutually reinforcing relation – established between trust and cooperation. From there, trust has been formalized as a key enabling factor of network interactions, equally critical to network performance and sustainability (e.g., Provan and Kennis, 2007). Economists have also sought to conceptualize trust as a risk analysis (e.g., Williamson, 1993), while international relations scholars have conceived of trust as a necessary condition for cooperation between States (e.g., Kydd, 2005).

While their historical pedigree is much longer, conceptions of mutual trust appear also to have played a role in many early modern schemes of the socio-political order from the sixteenth century onward: they cut across a variety of conceptual environments, from the foundations of contract law and the practices of credit, lending and liability over arguments in favour of altruism/supererogation and modes of social conduct (*dissimulazione onesta*). The nexus between self-interest and mutual trust forms the centrepiece of the theory of moral sentiments as it developed in the eighteenth century; it gradually came to permeate the political economy, the study of natural religion, and the study of law. With the advent of nineteenth-century sociology trust-based societal relationships and the management of social expectations became significant areas of study in their own right; during the twentieth century, theories of democratic representation focused on the psychosocial prerequisites of interpersonal trust and its incorporation into symbolic orders of the political.

Learning from discourses on trust developed by other social sciences, the workshop then hopes to inform the meaning and reach of the notion of mutual trust as relied upon in the

field of EU law. After drawing the contours of mutual trust in the Area of Freedom, Security and Justice, with a particular emphasis on the case law of the European courts (CJEU and ECtHR), the significance of that notion will be explored both from a regulatory and a judicial perspective. During a plenary session, specialists in EU criminal and civil justice, as well as in internal market law, will then share their views on the role and the practical applicability of mutual trust as a legal and constitutional principle for the Union.