

Shared Regulation and Enforcement in Europe (RENFORCE)

Summary

1. Positioning

As a rule, legal steering is an indispensable condition for achieving policy goals. This requires proper interaction and coordination between regulation (policy formulation, legislation and regulations) and enforcement, yet this aspect is often not given enough attention. As a result, various links in the policy cycle do not function optimally, and the interaction between these links exhibits flaws. The policy cycle in the EU context runs a greater risk of encountering these types of problems, because the institutional design of the European integration process is predicated on the idea of shared sovereignty and shared administration between the EU and the Member States. The EU and the Member States are bound to one another in **vertical processes** of effect and cooperation, which work both 'top-down' and 'bottom-up'. Besides this process of mutual effect, the communal European areas and the transnational dimension of EU policy necessitate increasing **horizontal cooperation** between the national actors to accomplish the Union objectives. The processes are standardised through several basic institutional/procedural principles which, as **core values**, constitute both the basis for and limits on regulation and enforcement of European policy.

Thus, the complexity of EU regulation and enforcement relates to the shared exercise of powers, the layered structure within the EU, the institutional processes of effect and cooperation between a multiplicity of public and private actors, and the applicable core values for the basis for and the limits on regulation and enforcement. All of these are variables which co-determine the structure of regulation and enforcement of European policy objectives.

2. Research questions and objectives

The primary question to be looked at in this research programme is: *How can the optimal mix of shared regulation and enforcement of European policy be developed, both from the perspective of effectuation and from the perspective of core values? What are the guiding principles, essential prerequisites and components here, keeping in mind the interaction between the European and national dimensions and the external influences on these?*

The goal is to develop a theory for shaping the regulation and enforcement of European policy as described. For this to be achieved, in-depth research in different substantive fields must be conducted into the aforementioned variables, which are relevant in choosing the regulatory and enforcement style. The choice of these fields will be determined by such factors as the degree of Europeanisation, the variety of regulatory and enforcement regimes, and the feasibility and ability to make generalisations from the research. Partly

given the expertise within the University, the obvious areas to be selected include the internal market, the EMU, market regulation and competition, social policy, serious organised (and other) crime and terrorism, consumer protection and intellectual property. The primary research question and the objective require different types of legal and social-science research, which will be based on the following sub-issues:

1. *Layered regulation and enforcement.* What is the relationship between Europeanisation and the autonomy of national regulations and enforcement, and how does this change the duties/mandate of the national public actors; what are the consequences for their original powers, duties and purpose, and how is this to be assessed?
2. *The relationship between policy objective – regulation – enforcement.* In light of the core values, at which level and with which intensity (European, national, international, horizontal) should standards be set and enforcement realised, and based on which criteria should this be determined; which enforcement standards are the most appropriate for effectuating regulation; to what extent should enforcement standards be harmonised and/or made uniform?
3. *The regulatory and enforcement arrangements.* Which ‘hard’ and ‘soft’ regulatory instruments are the most suitable for attaining the objectives formulated, partly from the viewpoint of effectiveness and lawfulness; what constitutes the right mix between public and private regulation and enforcement within the specific regulatory area, and which institutional design requires this; which factors are relevant to the choice for vertical or horizontal regulatory and enforcement mechanisms; which characteristics do these mechanisms display, and to what extent do they influence the effectiveness and lawfulness of the enforcement; which interaction occurs at the national, European, international and transnational levels?
4. *The regulatory and enforcement chain.* What does this look like, and how should/can national bodies provide input into and exert influence on the formation of European regulation (‘bottom-up’); what impact do networks have within this regulatory chain (horizontal axis); how should European substantive and enforcement standards be transposed into the national legal systems; which adjustments of the national legal systems do harmonisation and uniformity necessitate; which techniques/instruments may be furnished to European institutions?
5. *The actors.* Which actors should be involved in regulatory and enforcement processes; what is the role of individual citizens in this respect; how can the base of support for European rules be expanded; have sufficient democratic, legal safeguards (legitimacy, accountability) been built in; which factors determine the type of enforcement actors chosen; to what degree are European enforcement authorities necessary to effectuate policy, and how should their responsibilities and the exercise of their powers be imbedded into the national enforcement systems?

6. *The core values.* How should the core values set standards for the basis for and limits on regulation and enforcement, in terms of the level and nature of the regulation and legal protection, the actors involved, and their duties and powers; how will or must the potentially conflicting core values be balanced against one another, in particular, effectiveness/feasibility versus lawfulness?

As mentioned, examining and analysing diverse regulatory and enforcement regimes in various policy areas is not a goal in and of itself, but should, in the long run, make an important contribution to devising a theory for accomplishing an optimal mix of shared regulation and enforcement of European policy. This assumes developing a theory specifically with respect to:

- (i) the conceptualisation, shaping and application of the core values in diverse regulatory and enforcement regimes;
- (ii) the conceptualisation, shaping and application of effectuation of regulation and enforcement, and the role of the law in this connection;
- (iii) the balancing of the core values and effectuation in different policy areas, in order to figure out the optimal mix of shared regulation and enforcement.

3. Institutional embedding and cooperation

The intended results can only be realised within a strongly institutional framework within the Law Department, which builds on what may be called the 'Utrecht research approach' to EU law, which concentrates on the relationship and interaction between the EU and the Member States and the Dutch legal system in particular. The multi-dimensional issues, focus and specification of the core research areas as set forth in this memorandum will not only capitalise on this reputation and the already existing expertise, but will also be a clear step towards expanding and innovating the Utrecht research line.

Within the core research areas, the internal cooperation with the Economics, USG, and Criminology Departments and the University Focus and Mass Programme 'Origins and Impact of Institutions' will be further developed as well. Moreover, the cooperation with sister faculties, research bodies and academics will be reinforced where possible, and policymakers, stakeholders and societal organisations will be involved in preparing and conducting the research.