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ENFORCEMENT IN EUROPE



**Actore**  
Jean Monnet Centre of Excellence  
University of Antwerp

## **INDEPENDENCE IN THE PUBLIC SECTOR: CONCEPTS AND USES**

**Friday 16 November 2018 (13.30-17.00)**

**Location: Utrecht (Janskerkhof 2-3, room 118)**

*“When we tell a judge or a jury or Congress what we saw, or found, or heard, they are not hearing it from a Republican or a Democrat. They are hearing it from an entity that is separate and apart in American life. The FBI must be an “other” in this country or we are lost.”*

— James B. Comey, *A Higher Loyalty*

Independence and autonomy has and will likely always be a contested topic in law and public administration. It touches on some of the fundamental building blocks of modern democracies, including the primacy of democratic decision-making, the separation of powers, maintaining trust in the non-partisan and legitimate execution of public functions, etc. The above quote, drawn from former FBI Director James Comey’s recent book on the FBI’s actions before and during the advent of the Trump administration, illustrates one extreme in the normative debate on independence and autonomy, advocating an independent role for agencies and courts as a form of credible commitment and to maintain public trust. On the other side of the spectrum there are those who argue that accountability, control and the primacy of democracy should be ensured, implying that disaggregation leads to undemocratic decision-making and agency drift.

Beyond this normative debate, there is also a more instrumental debate that explores whether the formal degrees of independence and autonomy we attribute to organizations will manifest in practice, or whether other factors such as political control, organizational size, etc. might be of relevance to that organization’s independence in practice. Finally, a third debate investigates the nature of independence and autonomy, and deals for instance with the differences between independence and autonomy, the dimensions of such concepts, how it is understood by public officials in various institutions – courts, supervisors, regulators - and more.

The goal of this seminar is to bring various perspectives from these different debates together. By including speakers from public administration and various fields of law, we hope to foster knowledge-sharing on aspects of independence and autonomy that are emphasized more in some fields than in others. Consequently, we aim to improve participants’ understanding of both the conceptual breadth of independence and autonomy and its applications across the public sector.

The afternoon will start with several presentations on the conceptual nature of independence and autonomy, the potential differences between both concepts, and the normative implications of establishing or abolishing the independence and/or autonomy of organizations in the public sector.

The second session of the day will take a more empirical turn, exploring how theoretical notions of independence and autonomy operate in practice.

This workshop is organized thanks to the support from the Montaigne centre (Utrecht University), RENFORCE (Utrecht University) and ACTORE (University of Antwerp).

## **The programme**

**13.30 – Welcome by the Chair** (Dr. Ton van den Brink (RENFORCE, Utrecht))

### **Part I. Conceptualizing independence and autonomy**

13.40 – Prof. Koen Verhoest (ACTORE, PA&M, UAntwerp)

Topic: Dimensions of autonomy and recent evolutions in studies of organizational autonomy (Maggetti & Verhoest, 2014)

Professor Koen Verhoest holds a research professorship (ZAPBOF) in Comparative Public Administration and Globalization at the Department of Political Science (Research Unit on Public Administration and Management), University of Antwerp.

His main research interest concerns the organizational aspects of public tasks/regulation and their governance in multi-level and multi-actor contexts, including the autonomy, control and coordination of (regulatory and other) agencies, the governance of liberalized markets, and the governance of (public private) partnerships and other forms of collaboration. His 2004 conceptual review of the various dimensions of autonomy has become leading in the field. His subsequent contributions have dealt, among others, with the conceptual nature of autonomy and its determinants.

14.00 – Prof. Frans van Dijk (Montaigne Centre, Utrecht)

Independence of the judiciary and its relationship with other forms of independence in the public sector: are principles of judicial independence applicable beyond the judiciary?

Frans van Dijk holds a professorship on the empirical analysis of legal systems at the Montaigne Centre of Utrecht University since February 2018 and is also advisor to the Netherlands Council of the Judiciary. He has led several projects of the European Network of Councils of the Judiciary on independence, accountability and quality of the judiciary. His research is focused on the characteristics and performance of legal systems from the perspective of the intrinsic value of the rule of law (do national and international legal safeguards actually preserve the rule of law?) and from the perspective of promoting a peaceful and affluent society (do legal systems reduce conflict and promote productive social and economic interaction?).

14.20 – Dr. Miroslava Scholten (RENFORCE, Utrecht)

Independence of agencies (regulators and supervisors) from a legal perspective

Mira is an Associate Professor of EU law and a member of the Utrecht Centre for Regulation and Enforcement in Europe (RENFORCE). She teaches bachelor and master courses and gives occasionally guest lectures on different aspects of EU (institutional) law and politics. In her research, she focuses on EU institutional and comparative constitutional and administrative law, including EU agencies, accountability and the new trend of enhancing EU direct enforcement power. Mira received a prestigious Veni grant of the Netherlands Organisation for Scientific Research (NWO) in 2016 to execute research project 'Shared enforcement but separated controls in the EU - how to make it work for democracy and the rule of law?' Mira is a co-promoter in two PhD projects and is a member of the scientific board of Osservatorio AIR, an Italian research-policy centre funded by Italian national independent agencies.

14.40 – discussion

15.00 – coffee break

## Part II. How organizations function independently in practice

15.15 - Prof. dr. Esther van Zimmeren (ACTORE, Faculty of Law, UAntwerp)

Topic: Stretching principles of autonomy and independence within the context of the European Patent Organization

Prof. dr. Esther van Zimmeren is Research Professor in “Intellectual Property Law & Governance” at the Faculty of Law of the University of Antwerp (UAntwerp). She has expertise in European, International and comparative intellectual property law, innovation law and policy, competition law, multilevel governance and institutional design. Many of her research projects and publications are interdisciplinary: she has worked with geneticists, economists, physicists, philosophers, artists and social scientists and currently she has collaborations with political scientists, urban developers and economists. Her contribution focuses on a case study investigating the autonomy and independence of the European Patent Organization (EPO). The EPO is not an EU agency, it is an intergovernmental organization with 38 member states. However, due to several scandals, problems with employees and governance challenges, the EPO is facing (internal and external) institutional pressures related to its autonomy and independence. It is important to get a better understanding of these problems in the light of the Unitary patent package (adopted in 2012 – entry into force depends on ratifications), an EU initiative that will lead to substantial reforms of the European patent system with a key role for the EPO.

15.35 – Jolijn de Roover, MSc (ACTORE, PA&M, UAntwerp)

Topic: does regulatory reform of financial decrees translate into changes in perceived autonomy in local government? A study of municipality behavior in Flanders

Jolijn de Roover is a PhD candidate at the research group Public Administration & Management of the University of Antwerp. She is interested in the workings of local autonomy in practice, in particular how changes in formal financial autonomy as well as the capabilities of local actors shape the perceived autonomy of public servants in municipalities. Specifically, she explores whether increased formal financial autonomy translates into higher levels of perceived autonomy for civil servants in local governments and/or whether the limitations of local non-governmental actors simultaneously form a constraint on municipalities’ perception of autonomy.

15.55 – Bjorn Kleizen, LL.M, MSc (ACTORE, PA&M, UAntwerp)

Topic: the impact of structural reforms on the autonomy and the attention devoted signals from politicians/ministries in Flanders and Norway: evidence of inadvertent and overlooked influences?

Bjorn Kleizen, LL.M, MSc, is a PhD candidate at the research group Public Administration & Management of the University of Antwerp. Using as a point of departure that public sector reform is becoming an increasingly frequent occurrence, his research attempts to map the inadvertent side-effects of repeated (in some cases continuous) reform. Such effects may come from unexpected corners, such as senior public managers perceiving high degrees of control from politicians, or civil servants feeling that their bargaining position *vis-à-vis* political superiors is reduced. Bjorn Kleizen therefore argues that the study of autonomy should not remain limited to formal and legal aspects, but should be seen as an inherently dynamic process, and should include the organizational and psychological factors that determine public servants’ perceptions and attitudes in practice.

16.15 – Discussion

16.45 – Drinks