

The legal framework for self-regulation in the Netherlands

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Abstract

The debate on the viability of self-regulation as a mode of regulation is split and is conducted at two different levels. The insights from sophisticated regulation theory do not transpose easily to the practical concerns of those considering self-regulation as an alternative to legislation. And yet in this era of 'Better Regulation', self-regulation is increasingly called for by stakeholders and sometimes also by public authorities. This article aims to bring theory and practice one step closer together by analysing how in one concrete European legal system, that of the Netherlands, self-regulatory mechanisms are received. From an investigation into topics such as the relevance of fundamental rights, the public/private nature of self-regulatory bodies and the scope of liability for self-regulation, the persisting formal division between public law regulation (unilateral and therefore bound by constitutional norms) and self-regulation (assumed to be bilateral and therefore positioned in the realm of private law) emerges. Furthermore, the growing popularity of public law mechanisms at the expense of (pure) self-regulatory mechanisms can be observed. This is partly because in the current legal structure the voluntary nature of many self-regulatory arrangements is not always protected or acknowledged.

Keywords

self-regulation; co-regulation; Dutch law; regulatory bodies

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