

Soft law and its implications for institutional balance in the EC

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Abstract

The EU avails itself increasingly of soft law instruments, in certain situations to the detriment of legislation. The general assumption underlying this more diversified use of legal instruments is that this contributes to the legitimacy, effectiveness and transparency of Community action and, as such, to good governance. This assumption raises doubts, however, from various perspectives. This contribution focuses on one such perspective, i.e. that of the horizontal division of powers or institutional balance between the EU institutions; to what extent does the use of soft law by one institution entail an unacceptable bypassing of the competences of the other institutions in the decision-making process? In dealing with this question, the author among other things looks into the concept and classification of EC soft law, the competence to adopt soft law and the limits that can be placed upon this competence, the meaning of 'legitimacy' and of 'institutional balance', the existing guarantees for protecting the institutional balance in this regard and changes that may be required.

Keywords

EC law, EC/EU institutions, soft law, horizontal division of powers, institutional balance, legitimacy

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