Workshop # 1 – Testing the Quality of Legislation

The first workshop, moderated by Helen Xanthaki, gave the floor to Patricia Popelier, Andrea Renda and Ulrich Karpen. Patricia Popelier focused on the new EU Better Regulation Package and the related Interinstitutional Agreement, which have mainly served to refine and retune the previous documents. From a legitimacy perspective, she called for a more legal approach to working towards better regulation. She provided several concrete approaches, such as seeking a dialogue throughout the consultation process not only on the basis of individual replies but also by actively engaging the national parliaments. Andrea Renda highlighted the issues surrounding the cost-benefit analysis preceding EU legislation, arguing that it lends itself well to rules with limited impact, but that the EU has lost some perspective on the scope of rulemaking for which it is a useful instrument. This is problematic because parliaments can find it exceedingly difficult to review impact assessment based on such a cost-benefit analysis. Finally, Ulrich Karpen stressed the importance of good legislative drafting, and particularly of the organisation of courses on legislative drafting.

Workshop #2 – Standing in Regulatory Litigation: The Case of Interest Groups

The second workshop, moderated by Sofia Ranchordás of Leiden Law School, addressed standing from a range of perspectives. Ymre Schuurmans, Professor of Constitutional and

Administrative Law at Leiden Law School, discussed the Dutch legal system which focuses on individual litigation and makes interest group litigation against rules and regulations practically impossible. Her study of jurisprudence and newspaper articles shows that test case litigation by interest groups forms a loophole for overcoming legal barriers to collective action. Next, Jonathan Nash, Professor of Law at Emory University School of Law, provided an U.S. perspective on private control over regulatory dockets through standing to compel agency action. He spoke of the default in which the U.S. federal law generally does not allow a legal challenge to agency inaction and provided an alternative which provides private parties with standing to bring a court action to compel an agency to add an item to its agenda, provided statutory criteria are met. Finally, Felix Uhlmann, Professor of Constitutional Law, Administrative Law and Legislation at the University of Zurich, provided an interesting overview of legal standing in Europe, by comparing Switzerland, Germany, France and the European Union and drawing some general conclusions from this comparison.

Workshop #3 – Participation in Rulemaking, Experts, Consultations and Citizen Narratives

The third workshop provided for a lively debate, chaired by Ingrid Leijten and with contributions from Darren Halpin, Raphael Kies and Sofia Ranchordás. Darren Halpin explored the submission of written and oral evidence before parliamentary committees in Australia, raising three questions in particular. First: how can we maximise the potential of involving citizens and interest groups in rulemaking? Second: how should one view the quantity versus quality of their contributions? And third, how can we engage non-usual suspects in this process? Raphael Kies reflected on several initiatives intended to engage citizens in the EU decision-making process, which have yielded promising results but have

been expensive and have not been institutionalised. Looking forward, he proposed seven 'golden rules' to improve the potential for engaging citizens in the EU decision-making process. Sofia Ranchordás, also with a view to the EU decision-making process, made the case for providing more room for citizen narratives in consultations on new EU legislation. These consultations, she argued, appear to be written largely by experts for experts, but could benefit greatly from the (subjective) experiences of EU citizens in addition to other evidence.

Workshop #4 – Notice-and-Comment and Judicial Review

The final workshop was moderated by Michiel Tjepkema of Leiden Law School and addressed a range of issues involving notice-and-comment and judicial review. Kristin Hickman, Professor at the University of Minnesota, discussed the judicial review of post-promulgation of notice-and-comment. Before agencies adopt regulations, a notice of the proposed rulemaking and an opportunity for public comment is required. U.S. law provides for an exception to this rule in case of a good cause. Courts seem to disagree on the proper course of action in cases where the required good cause is lacking, but the regulation was adopted without having followed a prior notice-and-comment procedure. Next, Francesca Bignami, Professor at George Washington University Law School, provided a comparative perspective on judicial review of regulations. She concluded that the U.S. and Europe have come up with different answers to the moral puzzle on why courts should be able to review regulatory policy making. She argued that In the US, courts serve to defend procedural democracy, through review of procedural safeguards such as the notice and comment procedure. In Europe, on the other hand, the philosophical approach leans towards a role for courts to protect fundamental economic rights. Finally, Mariana Mota-Prado, Associate Professor at the University of Toronto, discussed the difference in the relationship between courts and agencies in Brazil versus the U.S. A lot of (developing) countries have copied the

system of regulatory agencies from the U.S, but their interaction with the courts differs and changes the way in which Brazilian agencies are operating. Brazil has witnessed massive individual litigation. In most sectors the majority of the litigators are consumers suing companies. These companies – in order to save money on the law suits – turn to the agencies to change the regulations.