

Sant'Anna Regulation Studies (SRS) – “Colloquia on Law & Regulation”

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First Colloquium

Regulating Uncertainty Through Participation. An Interdisciplinary Dialogue

Sant’Anna School of Advanced Studies
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Given the fast pace of technological developments, climate crisis and social demands, the digital and green transitions require the European Union (EU) legal order to adapt to **ever-changing scenarios**. At the policy level, this factual uncertainty translates into dynamic policy objectives that undergo modifications over time. The Digital Decade Policy Programme 2030 envisages adaptable digital targets to technical, economic and societal changes. Similarly, the European Green Deal (EGD) regulatory project outlines objectives subject to continuous monitoring and revision over the years. These dynamic policy objectives are thus embedded in various strategies, such as the European AI Strategy, the European Data Strategy, the EU Biodiversity Strategy for 2030 and the new EU Strategy on Adaptation to Climate Change.

Considering the ever-changing nature of these policy goals, both EU and domestic laws acknowledge the importance of monitoring tools, as well as **open, flexible, and experimental regulatory mechanisms**. Indeed, the latest regulatory frameworks provide co-regulation spaces for EU and national public authorities, increasingly engaging with private actors in regulating and implementing solutions to the uncertainty. For instance, in the context of artificial intelligence and data regulations, participation aims to coherently and effectively implement the digital targets by considering digital advancement and weaknesses in concrete cases. To account for the particularities of individual cases and provide the so-called “tailored regulations”, the digital targets require an ongoing dialogue between regulators, regulated firms, stakeholders and other third-parties interested in the specific case. Similarly, the achievement of the EGD objectives is shaped through a multilevel dialogue, by which local authorities, civil society organisations, business community, investors, stakeholders and the general public are involved to discuss different courses of action and review progress. In particular, the procedure for adopting national restoration plans would need to ensure the consideration of the needs of local communities and stakeholders, under a fair and cross-society approach.

This **public-private participation**, at both European and national levels, presents a wide-ranging spectrum of **advantages and risks**. For instance, it enhances democratic legitimacy and greater acceptance of solutions often characterised by high technicality. However, the individuals partaking in such processes may not be representative of society as a whole, leading to a misrepresentation of interests and possibly to regulatory capture. The advantages and risks have been studied in the EU since the 1990s in relation to the “better regulation” phenomenon, as well as to the establishment of an EU composite administrative system. Nonetheless, **participation may be further analysed and discussed by paying specific attention to the continuum between the formulation phase of the policy and its implementation in concrete cases**. This continuum may also be undergoing a process of developing openness, flexibility and adaptation characteristics, as a result of uncertainty and the related experimental solutions. What is the role of participation in this continuum? Does it affect the line of demarcation between phases, from the policy level to the implementation? What are the advantages and risks of increased participation in this continuum?

This seminar will delve into the complexities of participation in regulating factual uncertainty. Recently, there have been interesting cases showing the channels through which the results of participatory implementation can ascend towards the revision of rules and policy objectives. For

instance, in “AGCM v. Google - *Ostacoli alla Portabilità dei Dati*” participation was at the core of continuously drafting and monitoring commitment-based solutions that can feed back at the EU level. Other examples of inter-administrative and public-private cooperation will be discussed in the seminar, such as the ARERA decision of 24 October 2023 concerning dynamic coordination between TSOs and DSOs for the management of electric power distribution networks.

The primary intent of this seminar, which stems from genuine reflections by doctoral students, is to foster an environment of informality and open dialogue, transcending disciplinary boundaries. Keeping an informal atmosphere, participants are invited to engage in friendly exchanges, to favour diverse perspectives and facilitate a deeper understanding of the complex issues surrounding the regulation of uncertainty.