



## **Compound Constitutions in Europe**

*Research Programme 2014-2018*

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*Compound Constitutions in Europe* is ACELG's research programme for the years 2014 to 2018. It builds on its previous research programme (2009-2013), which was recognized by the Board of the University of Amsterdam as a focal point of research of the Law Faculty and the University. Section one introduces the Amsterdam Centre for European Law and Governance. It highlights its distinctive approach to the study of EU law (methods), the societal and academic relevance of its research, and formulates its strategy to ensure the high quality of ACELG's research and its continuity beyond 2018. Section two turns to substantive matters. It sets out the overarching conceptual framework and identifies the research question. Section three further develops the individual research perspectives pursued by ACELG researchers.

### ***1. The Amsterdam Centre for European Law and Governance***

The Amsterdam Centre for European Law and Governance (ACELG) was established as a new Faculty Centre of Excellence in 2009. Since then it has been nationally and internationally recognized as a research centre that makes high level contributions to the academic and policy debate on legal and governance processes in Europe. ACELG focusses on mapping, understanding and critically reflecting upon the constitutional (legal, political and economic) evolution that has taken place, and is taking place, in the European Union, including in the context of the proximate constitutional orders of the EU Member States as well as that of public international law.

ACELG ensures the quality of its research by providing for a vibrant environment, in which about 30 [researchers](#), together accounting for more than 10 fte research time, are encouraged to pursue excellence, seek recognition in the scholarly discourse, both internationally and nationally, attract external research funding, and publish in the leading peer reviewed journals. In the past five years, members of ACELG have built the international profile of the centre, successfully competed for personal research grants, and influenced the academic and political debate in their field. The research group includes leading scholars with internationally recognised expertise in European constitutional law and European economic law. ACELG researchers actively contribute to national and international scholarly and policy debates that bridge disciplinary divides, including law, political science and economics. Particular emphasis is put on crosscutting issues between institutional, constitutional and

economic law and on joint initiatives in terms of agenda-setting. Younger ACELG scholars are actively encouraged to engage in scholarly and policy discourse.

*Methods: A distinctive approach to European law research*

As a centre for European law *and governance*, ACELG adopts a distinctive approach to the analysis of European law. While our primary focus is legal research into the processes of integration within the European Union and the counter-tendencies it triggers, ACELG engages in research that considers legal phenomena in the context of practices, broader constitutional developments and shifts in governance in Europe, as well as in the wider structures of global governance. ACELG's research thus combines an internal approach to legal studies with an external approach from the perspective of other disciplines and accordingly goes beyond analysing the core legal sources within the European legal order (the EU Treaties, secondary legislation and case law of the Court of Justice). Hence, both the object and the methods of ACELG's research are distinct in that they go beyond the traditional legal analysis.

Accordingly ACELG's scholarly work uses *a number of research methods*: analysis of positive law, gathering and assessment of empirical data, and normative evaluation and interpretation. ACELG seeks to build bridges to the work undertaken by other research communities and disciplines while offering our own distinct contribution. ACELG's self-conception as a research community, in which competing views are developed and tested is also reflected in this research programme, which aims to offer a programmatic framework while leaving room for methodological and substantive development on an individual level.

ACELG's chosen approach of encouraging its researchers to combine social science methods with legal analysis also become apparent in its cooperation networks. ACELG researchers prominently engage and cooperate with academics from the social sciences, in particular political science and public administration and economics both nationally (e.g. [Access Europe](#), [ACLE](#), the [Utrecht School of Governance](#), and within the [Royal Netherlands Academy for Arts and Sciences](#)) and internationally ([EUI](#), [CCP at UEA](#), [ReNEUAL](#) and others) and are further embedded in a number of international research networks. Some relate the EU perspective to the international context and cooperate with international law and other scholars (e.g. [ACIL](#) and [CLEER](#)).

*Societal and Academic Relevance and Scientific Quality*

ACELG seeks to engage with topical issues but also to contribute to the scholarly and more general *policy debates* on relevant and fundamental topics. Researchers disseminate theoretical knowledge to legal practice, national and EU regulators, as well as the broader public. ACELG's main focus in this regard remains informing policy makers and other stakeholders, both nationally and in Brussels. Interaction takes place not only directly, for example through small-scale expert roundtables and workshops and specific academic advice, as well as policy briefs and reports for policy makers in the national and EU context, but also indirectly, for example through targeted contributions to the public debate (for example, the [Meijers Committee](#), [Stewatch](#), and more). Insights from direct contact with different stakeholders, for example when ACELG researchers collect empirical data through interviews, immediately contribute to shaping the course of ACELG's scientific inquiries. The insights Besides the more targeted interaction with policy makers, ACELG also engages with the wider public by way of public conferences and debates (for example,

at Spui 21), ACELG's [own blog](#), open access academic contributions, as well as (occasional) media appearances. Furthermore, ACELG researchers sometimes undertake consultancy work for the private sector.

Research results are published not only in English and Dutch, but also periodically disseminated in other languages such as for example in German, French, Hungarian and Portuguese. ACELG further organizes and hosts regularly larger and smaller conferences and workshops and since 2011 an Annual Conference, which seeks to perform an agenda-setting function both nationally and internationally. ACELG applies the *performance criteria* defined by the Faculty of Law (i.e. every three years four or five academic publications in peer-reviewed journals per standard research component (0.4 fte)). It strongly encourages its researchers to go beyond them in practice and build a convincing publishing record in international leading, peer-reviewed journals and books with international publishers. It has a good track record in this regard, with for example, since its inception in 2009 four monographs published by researchers with Oxford University Press with several others now in the pipeline.

#### *External Funding*

Research within ACELG is also funded from external sources. Research grants and contracts have for example been awarded by the University of Amsterdam, the [Netherlands Organisation for Scientific Research \(NWO\)](#), national government institutions and European institutions. ACELG's success rate in this regard is good (two NWO personal research grants (Veni grants) awarded in consecutive years and a Rubicon grant young scholar with more applications in the pipe line) and growing as researchers widen their remit and focus to the European level (such as starter grants of the [European Research Council \(ERC\)](#) and Open Area Research Grants). In addition parts of the programme are embedded in international research networks (e.g. CLEER and ReNEUAL) and receive some extra funding in that context.

#### *Strategy and Outlook*

The ambition is of course to further consolidate ACELG's track record, both in terms of academic quality and attracting external funding. Indeed, ACELG seeks actively to develop new projects in an on-going fashion, drawing from the interactions of the various research interests and from the need to take a more integral approach to processes and practices of European integration.

Researchers are further strongly encouraged to apply for external funding and every year several researchers do so, in the national or EU context. They benefit from administrative and academic support within the Faculty and University, in particular from Amsterdam Research Institute for Legal Studies (ARILS) and Innovation Exchange Amsterdam (IXA). They also contribute actively in sharing their expertise and experiences within the Faculty more generally. Beyond this, ACELG itself also offers a strong research environment for academic exchange and support funding applications.

The research programme covers the period from 2014 to 2018. At that point ACELG will assess the progress it has made and the outcomes it has produced, and consider consolidation and possible new directions. The research group grew rapidly in the initial years and is now relatively stable with a solid embedment within the permanent positions funded by the Faculty and including core teaching tasks. The pool of

doctoral candidates is quite large and continues a modest but deliberate growth pattern, funded by a variety of sources both internal to the University and outside of it. This is also perceived to be stable and well grounded in terms of research culture within ACELG and more widely within the Faculty.

At the same time ACELG continues to attract scholars from the outside who either bring their own research funding (for example, personal NWO research grants, such as Rubicon or Veni) or are successful, after an initial funding seed period, in acquiring their own personal multi-annual research grants and permanent position within the Faculty. Indeed, externally funded researchers make a significant contribution to ACELG's research output and ACELG aims not only to initially attract them but to offer them a viable career path within the research group, not only by providing them with competitive framework conditions to make bids for new funding opportunities but also by integrating them into the faculty. Several researchers that have been successful in attracting funding in the past will be applying for follow-up funding under this research programme.

## ***2. Compound Constitutions in Europe***

The notion of *Compound Constitutions* refers to an understanding of the EU constitutional order as comprising several separate but complementary and interdependent constitutional components: the 'EU constitution', the constitutions of the Member States, and interlocking legal regimes at the international level, such as the European Convention of Human Rights, the United Nations Charter, and the framework of the World Trade Organization. Moreover, *Compound Constitutions* also refers to the functional differentiation between the EU's economic, political and social constitutions, as well as to their evolution and transformation over time, which translate into both integration and differentiation processes. The underlying core research question is: What are the shifts in authority and powers in this context and how should they be evaluated against a set of fundamental constitutional principles?

Research under this programme engages in particular the incremental and evolutionary nature of the EU's formal and substantive constitution, and its 'living' character. The processes of integration and differentiation occurring in the EU's economic, political and social constitutions, its legal and political orders, its Member States and the EU institutions as well as international regimes are what can be termed the living constitution as opposed to the written and formal constitution. Layered underneath the more rigid outer crust of formal constitutional legal instruments (Treaty texts, Court judgments developing and applying core legal principles) we find more complex layers of 'living' institutions and institutional and constitutional practices with varying degrees of 'hardness' (internal institutional rules, inter-institutional conventions, etc.).

In addition, the research programme aims at both identifying and analysing the relationship between the various (political, economic and social) constitutions and constitutionalisation and deconstitutionalisation processes in the EU exploring to what extent synergies, asymmetries or even dysfunctions between them can be identified. These synergies, asymmetries or dysfunctions are dealt with within the framework of specific projects, workshops and discussions that explore the reflexive relationship between the political or administrative and the economic from the point of view of precise themes, policies or principles (e.g. participation rights, health policy,

citizenship and regulatory agency designs, etc.). Crosscutting activities are one unique way in which this research programme will make innovative contributions to the debate in Europe and foster a dialogue among those legal scholars more focussed on economic and competition law and those legal scholars more focussed on general issues of administrative and constitutional law.

Various ‘levels’, types, actors and concepts intertwine in a shared or compound whole that is more indeterminate and complex than the sum of the separate parts. The underlying hypothesis of this research programme is that compound constitutions are emerging in which national and European actors *share* powers and coordinate action, but also exercise powers largely independently, and in which different legal and economic systems overlap and complement each other. The word ‘compound’ draws attention to this combination of several elements that may lead to convergence, inconsistencies and divergence.

This research programme seeks to critically analyse these developments within the EU constitutional order. It provides a common framework for the analysis of both the evolution of and the relationship between its different constitutional components within a rapidly expanding and deepening European Union that at times also triggers differentiation, dispersion, disaggregation and perhaps even disintegration. The overall aim of the research programme is to map the evolution of the living European constitution as well as to analyse the manner in which this institutional and legal map fits within a constitutional perspective on the rule of law, access to justice, accountability, democracy, the role of citizens and the balance between economic and social rights. It includes an assessment to what extent the existing constitutional constraints and safeguards are capable of holding to account the diffused rule-making power in Europe.

### ***3. Specific Research Perspectives***

#### *Institutional-Legal Mapping and Overarching Questions*

Ongoing research both maps and analyses distinct political, administrative and economic actors operating in the EU context. These include the European Commission, EU agencies, (comitology) committees, the European Parliament, the European Council, the Council, the European External Action Service, and the ECB, as well as networks of national agencies and courts, as well as national executives and parliaments.

Some overarching questions that guide the ongoing research include: What are the roles and practices of these actors? How significant are evolving internal rules as well as inter-institutional agreements, practices and conventions? Are the principles of legality, openness, participation, accountability, democratic representation and ‘good administration’ reflected in the normative changes occurring in the EU’s evolving constitutional order? How could these principles be adapted to match these normative changes, to ensure adequate legal guarantees? What are the ‘real world’ practices of accountability, participation and democratic representation and how are these evolving?

### *The Political Constitution*

At the more ‘political’ level mapping some emphasis will be put on the European Parliament as an imperfect repository of democratic legitimacy at the European level. A specific focus is on the concept of ‘representation’, as well as on the role of national parliaments. Is it engaging with new and less than fully visible actors at the European level and finding ways and means, often informal, to put and keep them under the spotlight? How is it developing its increased role in external relations?

Other questions addressed in the more ‘political’ context are: How do the national and European accountability forums fit together in a more composite framing of accountability? What are the implications for the evolving political constitution, European and national? What are the consequences of these changes for traditional concepts such as sovereignty and separation of powers? How does the EU’s strengthened position as an international actor influence these developments?

Furthermore, the role and practices of the Court of Justice, often a pivotal institutional and substantive ‘designer’ of the political and legal constitution, will be the subject of analysis in its interaction with national courts. Another focus is the distinctive role of the Member States as *de facto* EU actors is analysed. This research perspective aims at analysing the role of the Member States in reshaping the European legal and political order. It is a bottom-up approach to European law and governance, which explores how Member States’ ‘national interest’ is manifested in the legal and governance framework of specific EU policies. It critically evaluates existing EU legal and governance structures from the perspective of the EU-Member States’ interactions and the different treatments of the Member States’ interests under the EU framework. The wider implications of this formal and informal phenomenon will be drawn for the EU political constitution as a whole.

### *The Economic Constitution and Economic Regulation*

Throughout the years a large number of policy fields and decision-making structures have been ‘Europeanized’ as a spin-off from market integration, thereby gradually complementing the economic core of the European constitution with more ‘political’ elements. In some areas, Member States have claimed a stronger control of ongoing coordination. Accountability and legitimacy are themes central to a broad field of research, in particular in relation to the newer competences of the EU institutions. The legitimacy of (enforcement) policies and actions of the Union’s institutions in the realm of the traditional competences of the EU are often taken for granted. However, the legitimacy of such policies and the institutional and procedural framework in which they are developed need to be examined in their actual context. This is a realm where crucial developments under the Lisbon Treaty and in reaction to the economic crisis require new studies of the legitimacy of specific policies and a review of hierarchies of norms and policies.

Fundamental questions also arise in economic regulation on how the various institutional models of enforcement operate within this changing legal and political order. How are legitimacy and accountability affected, implemented and enforced in the different institutional models of market regulation? For example, how have the principles of legitimacy and accountability been applied in the various networks of regulators (such as for example the European Competition Network)? How can the continuous accountability of such networks be ensured in view to their increasing and possibly also justifiable independence and broad discretionary powers? Do the

accountability structures in market regulations provide an adequate and legitimate system?

In the context of the economic crisis, related questions are whether and how (social and economic) interests are taken into account in the definition and pursuit of regulatory and policy objectives. How are the economic and non-economic values and interests of today's citizens and society implemented in substantive regulatory rules as well as reflected in the way regulatory rules are enforced and regulatory institutions are administratively structured organized? How does this play in the context of risk regulation within the EU? Do the mechanisms and decision-making structures favour certain forms of participation over others and do they have consequences for the way in which different interests are represented? What is the role of the individual, whether economically active or not, in the European legal order? How do principles such as equality and solidarity relate to individual rights?

### *Crosscutting Policy Research*

In addition to the focus on the role of specific institutions and actors in the European constitutional order, cross-cutting research in particular policy sectors, such as for example European health policy, environmental policy, monetary policy, competition law, citizenship, trade, and security maps the dynamics between institutions and actors and how these shape in the long run the European constitutional order. This type of research encompasses both the political and economic constitutional order and is a specific example of how ACELG seeks to establish synergies between the research of the different European constitutional orders, so it becomes possible to understand the institutional dynamics and the living European constitutional order as a whole.

EU legislative, executive, and regulatory powers are incrementally changing formally and informally, and expanding into a growing number of domains. We see this quite clearly in the measures of economic governance adopted after the financial crisis which has produced a complex mix of supranational and more intergovernmental methods of governance. But it also applies even in a field supposedly on the fringes of EU governance and with a profoundly intergovernmental rhetoric - EU common foreign and security policy (CFSP). Experts more and more point to the fact that autonomous EU (political and administrative) actors are being created and empowered, so that a simple intergovernmental analysis no longer captures a more complex reality. In many cases a plurality of actors interacts in a plurality of different contexts and fora, including on the international plane. The latter raises the additional question of how the EU's increased role as an international actor influences shifts in authority and powers within the European legal order.