

ACELG Annual conference

## **Expertise, participation, and EU law: a constitutional perspective**

Friday, 8 November 2019

Amsterdam Law School, building REC A, Nieuwe Achtergracht 166, Amsterdam

Expertise has long played a constitutive role in the European Union (EU). From the technocratic ideology of early day neofunctionalism, to agencification and, more recently, the management of the financial crisis, technical expertise has been key in compensating the disputed democratic credentials of the Union with technical legitimacy.

Justifying politically divisive and socially contested measures through technical and allegedly neutral arguments has however proven to result in a fragile equilibrium. Such fragility has surfaced time and again in periodic outbursts of contestation, such as those occurred recently in relation to the controversial reauthorization of the pesticide glyphosate. In particular, heavy reliance on expert justification has proved to entail a triple risk: of excluding the variety of values and world views concerned, of obscuring latent conflicts between diverging interests, and of ultimately resulting in politically and legally unaccountable exercises of discretion.

Expert authority itself is currently facing a double challenge posed, on the one hand, by populist, post-factual narratives and, on the other hand, by a deeper, increasing discomfort with the idealized image of expertise as an unbiased source of knowledge, insulated from interests and policy preferences. The convergence between these pressures and the prolonged legitimacy crisis affecting the European project calls for a renewed effort to understand the role of expertise in the EU.

The 2016 ACELG conference reflected on the rule of law in the technological age. This year, we take a different, constitutional, angle on the interaction between *nomos* and *techné*. In so doing, we ask ourselves how to develop a constitutional framework capable of accounting for the shifts in authority (and control) taking place between experts, citizens, politics, and law when technically complex matters are at stake.

How is expert advice to inform the balancing of conflicting interests that forms the core of every democratic deliberation? How are non-scientific concerns to be mediated in the adoption of technically complex decisions? How are legal rules shaping the involvement of experts in decision-making, and how are courts reviewing their enforcement?

With a view to furthering the constitutional dimension of EU expert governance, we address these questions from a specifically European perspective, trying to understand how the justificatory power of expertise has been deployed throughout European integration, what possible avenues are available to broaden the range of expert and lay voices to be heard when complex matters are at stake and, critically, what role the law is to play in shaping expert-based exercises of power and holding them to account.

## PROGRAMME

### 8 November 2019

10.15 – 10.30	Registration & coffee/tea
10.30 – 10.45	Opening: Christina Eckes (ACELG) & Introduction: Marta Morvillo (ACELG)
10.45 – 11.45	<b>Panel 1 – Expertise and the internal market: risk, objectivity, and ideology</b>  Chair/Discussant: Maria Weimer (ACELG)  - Alessandra Arcuri (Erasmus University Rotterdam) - Cathrine Holst (University of Oslo)
11.45 – 12.00	Coffee/tea break
12.00 – 13.00	<b>Panel 2 – Opening the stage: avenues for contestation and citizens' participation</b>  Chair/Discussant: Laurens Ankersmit (ACELG)  - Päivi Leino Sandberg (University of Helsinki) - Filipe Brito Bastos (ACELG)
13.00 – 14.00	Lunch
14.00 – 15.00	<b>Panel 3 – Beyond technical discretion: legal accountability of expert-based decision making</b>  Chair/Discussant: Joana Mendes (University of Luxembourg)  - Marta Morvillo and Maria Weimer (ACELG) - Wendy Wagner (University of Texas)
15.00 – 15.30	Coffee/tea break
15.30 – 17.00	<b>Keynote – Developing a constitutional language for EU expert governance</b>  Stijn Smismans (Cardiff University) Chair: Christina Eckes (ACELG)
17.00	Drinks

*This event has received funding from the European Union Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No. 748463, as part of the project CONPLEX (The Constitutional Place of Expertise).*