The Future of Law and Economics

A seminar for PhD students of Paris X, Maastricht University, Erasmus School of Law and the European Doctorate in Law & Economics (EDLE)

On 3-4 March 2011, the third seminar will be organized, this time at the METRO Institute of Maastricht University. The title of the seminar is “The Future of Law and Economics”, symbolizing the fact that the PhD candidates constitute the future of law and economics and realizing that much of the research they undertake is in fact path-breaking and innovative.

Location: B0.118 (ground floor, main entrance), Bouillonstraat 1-3, Maastricht

Registration is required. Please contact: breijer@frg.eur.nl
List of presenters

Erasmus University Rotterdam/Bologna University/Hamburg University (EDLE)

Meltem Bayramli
*R&D, Patent Portfolios and Cross-Licensing*

Vaia Karapanou
*Pain and suffering damages based on QALYs: Incorporating insights from cognitive psychology*

Alejandra Martinez Gandara
*Case study in Eco-labels: The US-Mexico conflicts with Dolphin-Safe Tuna*

Malgorzata Sadowska
*Energy Liberalization in Antitrust Straitjacket: A Plant Too Far?*

Alexander Vasa
*Institutional Emergence of the CDM*

Franziska Weber
*European Integration Assessed in the Light of the ‘Rules vs. Standards Debate’*

Maastricht University

Jing Liu
*On the Establishment of Compensation Mechanisms for Ecological Damage*
Sarah Schoenmaekers
*The Regulation of Architects in Belgium and the Netherlands*

Laura Tilindyte
*Enforcing Health and Safety Regulation in England and Wales*

**University Paris Ouest Nanterre La Défense**

Marina Dodlova
*The Optimal Size of Bureaucracy: Theory and Evidence*

Massimiliano Gambardella
*The Scope of Open Licences in Cultural Contents*

**University Paris II**

Aurélien Portuese
*Principle of Proportionality As Principle of Economic Efficiency*
Discussants (senior researchers)

Erasmus University Rotterdam (RILE)
Prof. Dr. Michael G. Faure
Prof. Dr. Klaus Heine
Dr. Alessio Pacces
Dr. Ann-Sophie Vandenberghe
Prof. Guangdong Xu

Maastricht University
Dr. Kristel De Smedt
Prof. Dr. Michael G. Faure
Prof. Dr. Anselm Kamperman Sanders
Dr. Niels Philipsen
Dr. Stefan Weishaar

Bologna University
Prof. Dr. Luigi Franzoni

Hamburg University
Prof. Dr. Patrick Leyens

Hogeschool-Universiteit Brussel & Catholic University Leuven
Prof. Dr. Sandra Rousseau

University Paris Ouest Nanterre La Défense
Prof. Dr. Eric Brousseau (canceled)

University of Paris II
Prof. Dr. Bruno Deffains (participation uncertain)
Participants:

*Erasmus University Rotterdam*
Deniz Akün
Pieter Desmet
Elena Fagotto
Cicek Gurkan
Weiqiang Hu
Mitja Kovač
Olga Skripova
Claudio Tagliapietra

*Maastricht University*
Arkady Kudryavtsev
Prof. Dr. Marjan Peeters
Zamira Xhaferri

*University of Paris II*
Edwige Marion
Programme Seminar “The Future of Law and Economics”

Thursday 3 March 2011

10.00 – 10.15 Opening by Prof. Michael Faure
10.15 – 11.00 Vaia Karapanou
   Pain and suffering damages based on QALYs: Incorporating insights from cognitive psychology
   Discussant: Stefan Weishaar
   Chair: Michael Faure
11.00 – 11.45 Marina Dodlova
   The Optimal Size of Bureaucracy: Theory and Evidence
   Discussant: Alessio Pacces
   Chair: Michael Faure

11.45 – 12.00 Coffee break

12.00 – 12.45 Laura Tilindyte
   Enforcing Health and Safety Regulations in England and Wales
   Discussant: Sandra Rousseau
   Chair: Niels Philipsen

12.45 – 13.45 Lunch break at Restaurant Napoli (Markt, Maastricht)

13.45 – 14.30 Aurélien Portuese
   Principle of Proportionality As Principle of Economic Efficiency
   Discussant: Luigi Franzoni
   Chair: Klaus Heine
14.30 – 15.15  **Sarah Schoenmaekers**  
*The Regulation of Architects in Belgium and the Netherlands. A comparative analysis*  
Discussant: Ann-Sophie Vandenbergh  
Chair: Klaus Heine

15.15 – 15.30  Coffee break

15.30 – 16.15  **Franziska Weber**  
*European integration assessed in the light of the ‘rules vs. standards debate’*  
Discussant: Patrick Leyens  
Chair: Michael Faure

16.15 – 17.00  **Alejandra Martinez Gandara**  
*Case study in Eco-labels: The US-Mexico conflicts with Dolphin-Safe Tuna*  
Discussant: Kristel De Smedt  
Chair: Michael Faure

17.00 – 17.45  **Meltem Bayramli**  
*R&D, Patent Portfolios and Cross-Licensing*  
Discussant: Anselm Kamperman Sanders  
Chair: Michael Faure

17.45 – 18.00  Closing remarks day 1

Followed by  Dinner at Jean Labrouche (Tongersestraat 9, Maastricht)
Friday 4 March 2011

09.00 – 09.15  Introduction by Michael Faure

09.15 – 10.00  Malgorzata Sadowska

*Energy Liberalization in Antitrust Straitjacket: A Plant Too Far?*

Discussant: Niels Philipsen
Chair: Patrick Leyens

10.00 – 10.45  Jing Liu

*On the Establishment of Compensation Mechanisms for Ecological Damage*

Discussant: Guangdong Xu
Chair: Patrick Leyens

10.45 – 11.15  Coffee break

11.15 – 12.00  Massimiliano Gambardella

*The Scope of Open Licences in Cultural Contents*

Discussant: Michael Faure
Chair: Ann-Sophie Vandenberghhe

12.00 – 12.45  Alexander Vasa

*Institutional Emergence of the CDM*

Discussant: Klaus Heine
Chair: Ann-Sophie Vandenberghhe

12.45 – 13.00  Closing remarks

13.00 – 14.00  Lunch at Restaurant Yong Kee (Boschstraat 58, Maastricht)
Abstracts

**R&D, Patent Portfolios and Cross-Licensing**
*Meltem Bayramli*

This paper investigates the relationship between firms’ R&D and patenting decision in the existence of litigation. The technologies where firms are investing have overlapping elements and firms are assumed to be able to go to court and sue the other for infringement. However, it is observed that this does not happen and firms cross-license their patent portfolios taking into account the threat of litigation. The model shows with the option of cross-licensing, firms actually invest more in R&D even though the technologies patented infringe with each other. In addition, we observe firms obtain more patents as the risk of infringement increases and this increase is even higher when the technology overlap is more. Previous literature has shown (Hunt, 2006), when technology overlap is high and cost of obtaining patents is low firms can invest less in R&D and more in patents. The model shows, the option for cross-licensing does not totally solve this problem. Nevertheless, implementing a patent policy that is more in favor for infringement decreases the extent of this negative externality. Another option for firms to eliminate uncertainties due to complex technology innovation is merger. In this case, we observe the puzzling result in the sense that high R&D levels in the case of merger may not be reflected in welfare when cost of obtaining patents is high. In addition, in any case cross-licensing provides a higher level of welfare, especially when the infringement probability is high.

**The Optimal Size of Bureaucracy: Theory and Evidence**
*Marina Dodlova*

This paper studies an optimal size of bureaucracy subject to various political regimes and political institutions’ performance. We review such reasons of enlarging bureaucracy as patronage, welfare state requirements and rent-seeking behavior. The results help to understand why regimes of higher accountability have larger government bureaucracies. Further, using a panel data on government administration employment from the International Labor Office “Laborsta” we find some evidence for a non-monotonic relationship between the level of political accountability and the size of government, which could be explained by the dominance of different incentive mechanisms between politicians and bureaucrats.
The Scope of Open Licences in Cultural Contents
Massimiliano Gambardella

This paper aims to explore the impact of ex-ante legal status of licensor on ex-post open licence choice. It first describes the emergents open licences in Open Cultural Contents production, the so-called Creative Commons Licenses. It introduces the two open models of diffusion and production, followed by creators. This paper presents an empirical analysis of the impact of legal status of creators on open licence choice using an original database created from the Internet Archive. The results show the existence of two models that the licensor have to balance when he decided the licence. The results also show that the For Profit agents need to use a more open licence to benefit from the intrinsic motivations of community.

Pain and suffering damages based on QALYs: Incorporating insights from cognitive psychology
Vaia Karapanou

In a previous paper it was shown that tort law can benefit from the use of Quality Adjusted Life Years (QALYs) in assessing pain and suffering damages for personal injuries. In the current paper is it suggested that QALYs are able to incorporate potential hedonic adaptation to adverse health conditions. According to insights from psychology and results from empirical studies, people may adapt to adverse conditions, such as lasting injuries and impairments, and their life satisfaction may return to a large extent to its pre injury levels. If one takes seriously under consideration the idea that pain and suffering damages should reflect the actual losses incurred by the victim, then it makes no sense to compensate the victim for a lasting loss in enjoyment of life if the loss is only temporary.

Following this line of reasoning, a debate is taking place in the United States regarding the question whether adaptation should be included in the assessment of pain and suffering damages and if yes, how. The question is also relevant in Europe to the extent that pain and suffering damages in Europe seek to compensate also for the loss of enjoyment of life.

A QALY expresses the value of living one year in a certain health condition. Health Economics literature enables assessing the impact of different health conditions on the quality of life. By subsequently monetizing QALYs, this impact is expressed in monetary terms, which provides a non-arbitrary basis for pain and suffering damages. This paper suggests that QALYs are able to deal with adaptation, by using information provided by actual patients, long enough after the occurrence of the relevant medical condition.
By way of illustration of the proposed approach, pain and suffering damages actually awarded in several European countries are compared with the amounts that would result from applying a conservative estimation of the monetary value of a QALY incorporating potential adaptation for specific types of personal injuries.

**On the Establishment of Compensation Mechanisms for Ecological Damage**

*Jing Liu*

Regulation and liability rules are satisfactory in neither the prevention nor the compensation of ecological damage. This chapter examines the potential of individual compensation instruments in fulfilling those two functions. Economic analysis shows to what extent the specific instruments can overcome the inefficiency of liability rules and how they can reduce the three types of social costs according to Calabresi’s theory. The following instruments are chosen: liability insurance, first-party insurance and direct insurance, risk-sharing agreement, environmental funds, other security mechanisms and the use of capital market. After the individual discussion, the chapter makes a comparison among those instruments and tries to give a proposal providing the efficient prevention and compensation of ecological damage.

**Case study in Eco-labels: The US-Mexico conflicts with Dolphin-Safe Tuna**

*Alejandra Martinez Gandara*

The ‘dolphin-safe’ eco-label is one of the most effective eco-labels in the market. It had a huge rate of adoption both by producers and consumers. The US government reinforced the eco-label by giving it legal sanction and by imposing measures such as the embargo on Mexican tuna. After 20 years Mexican tuna is still prohibited in the US. Mexico, once again, challenged the US ‘dolphin-safe’ eco-labelling policy before the WTO. This article aims to point out the magnitude of the pending WTO ruling. By following the case since its origins, it is shown that what once was an environmental conflict has now transformed into a complex commercial one.

**Principle of Proportionality As Principle of Economic Efficiency**

*Aurélien Portuese*

The principle of proportionality is at the cornerstone of EU law, and precisely of the case-law of the European Court of Justice (ECJ). Inspired by the different legal traditions of the Member States, the
ECJ has developed the principle of proportionality to such an extent that the understanding of the judicial stance of the ECJ with respect to this principle shall illustrate the broader EU judicial reasoning. In the law and economics literature, the general principles of law are commonly opposed to legal rules in terms of efficiency. On the one hand, the legal formalistic approach consists in apprehending the law as principled whereby principles of law do not and should not encompass an efficiency rationale and should be self-sufficient. On the other hand, the legal nihilism denying the existence or relevance of the general principles of law favour legal rules that are said to incorporate an efficiency rationale. I intend to analyse the efficiency rationale of probably the most important general principles of EU law – the proportionality principle.

In this paper, I shall assert that not only does the EU proportionality principle encapsulates an efficiency rationale, but most importantly, it has been interpreted by the ECJ as such – hence I propose the representation of the principle of proportionality as a principle of economic efficiency.

After having introduced the principle of proportionality (I), I shall decipher the proportionality principle both from a law and economics perspective and from a comparative perspective (II). Then, I shall delve into the jurisprudence of the ECJ so that the judicial reasoning of the Court as this reasoning proves the relevance of the proposed representation (III). Finally, I conclude in light of the findings of this paper in line with the overcoming dividing line between moral principles/efficient legal rules (IV).

**Energy Liberalization in Antitrust Straitjacket: A Plant Too Far?**

*Małgorzata Sadowska*

The European Commission has launched a number of antitrust investigations against the major energy incumbents in the aftermath of the energy sector inquiry. Most of them have already been settled under Article 9 of the EC Regulation 1/2003 and the undertakings offered far-reaching, sometimes structural, commitments. This article studies the 2008 investigation into price manipulation in the German electricity wholesale market. In spite of no convincing evidence and flaws in the assessment, the Commission was able to negotiate from E.ON substantial capacity divestments.

The Commission is straightforward about using antitrust rules to open up energy markets. Sector inquiries, commitment procedure and structural remedies allow for a quick intervention, flexible problem-solving and bring about decisive changes in the energy market setting. However, harnessing antitrust for the purpose of energy liberalization policy has an adverse impact on competition enforcement itself. First, it leads to a number of ‘weak’ cases, based on far-fetched arguments. Second, it results in remedies which are not tailored to the abuse at issue, but are in line with a wider objective of energy market liberalization, and as an outcome of negotiations, further swayed by the firm’s own interest in the ultimate shape of the commitment package.
The Regulation of Architects in Belgium and the Netherlands

Sarah Schoenmaekers

Introduction

The profession of architect embraces a myriad of skills, abilities and know-how, and is a multi-layered proficiency. Architects do not only create a design for certain construction activities, but also provide a broad selection of services such as preparing and monitoring construction activities, applying for planning permission, land surveying, the issuing of planning permission applications, holding feasibility studies, guiding clients, integrating technical, social and economic problems that arise in connection with building works, etc.

Due to their multiple tasks, architects risks to be held liable quite often. Furthermore, they have to adhere to public regulations which are generally created to safeguard quality. Even though Belgium and the Netherlands are two small neighbouring countries, their public regulations and their liability system are quite different. I aim to determine whether the Dutch or the Belgian combination of regulations and contract law provisions is most cost-efficient from an economic point of view.

The Architect in Belgium: legal framework

In Belgium architects hold a monopoly since their intervention is mandatory for the design of plans and the supervision of building works. The Architects’ Act indicates that to be able to use the title, one needs to hold a particular Belgian diploma which requires five years of study. The architectural specialisation within civil engineering education leads to the title of ‘civil engineer-architect’ while completion of the education at an academy leads to the title of ‘architect’. Persons with qualifications obtained elsewhere in the EU are allowed to use the title in accordance with the Directive. The profession can also be practised by certain legal persons, engineers, military officers and third country nationals who are however not allowed to use the title since they do not fulfil the diploma requirements. Registration with the Architects’ Order is mandatory to practise and entails that one has to adhere to the Order’s Deontological Code. The profession of architect is incompatible with that of building contractor since it is said that the one who constructs the building should be independent from the one who supervises the construction.

Architects are liable for faults in the design and supervision and have in principle an obligation of means. After the reception of the building works by the building master, architects and building contractors are not liable anymore. However, their liability is extended for ten years for serious defects which are generally related to the stability of the building. Nor the liability period or the extent of the liability can be limited and architects are obliged by law to buy professional liability insurance.
Furthermore, architects are often held liable *in solidum* with builders, which entails that if the building contractor is responsible for a certain defect in the construction while also the architect is held liable for incorrect supervision, the building master can choose who to turn to to claim damage compensation.

**The Architect in the Netherlands: legal framework**

In the Netherlands, the Architects’ Title Act stipulates that to use the title, one must be registered with the Stichting Bureau Architetenregister. The Stichting is not a professional Order so that architects do not have to respect any deontological rules. However, professionals are free to register with the Bond der Nederlandse architecten (BNA) of which membership is only open to architects holding two years of professional experience. Registration requires the completion of a five-year university education leading to the title ‘construction engineer’ or a four year part-time Masters training at an Academy. The title of architect can also be used by certain legal persons and by those who can rely on the EU Directive. Since anyone can *practise* the profession, it is not protected. However, the Dutch Building Decree and the Housing Act contain detailed requirements which buildings and designs need to satisfy.

Architects can in principle be held liable for every culpable failure in the performance of their obligations. They generally have an obligation of means. Architects can benefit from a large amount of contractual freedom and standard terms, such as the New Rules, can be made applicable to a contract if parties so agree. According to the NR, architects can be held liable for five years after reception of the building works. They can limit the liability period but can also limit the extent of their liability. In the Netherlands there is no incompatibility of the professions of architect and builder. In *solidum* convictions are not used to solve liability issues and there is no mandatory insurance obligation except for BNA members.

**The Architect in Belgium and the Netherlands: an economic analysis**

Since activities carried out by an architect can cause harm, architects need incentives to take good care. In this regard, the classic economic analysis of law starts from the assumption that, by exposing the costs of their actions to liability rules, parties will be motivated to take optimal care to prevent accidents. However, for liability rules to work effectively, there must be a victim and an identifiable injurer who is able to pay damage compensation. This is not always the case, which means that other possibilities have to be resorted to, such as regulation, either by the government or by self-regulating organizations. However, when a building contains a certain default, the building master always has the possibility to turn to the architect who is – next to the entrepreneur and other building partners – immediately identifiable as a possible injurer. After all, the building master has concluded a contract with these professionals. Even third parties will probably not have to make much effort to become acquainted with the identity of the architect: there might be publicity on the building site, they can ask neighbours or the building master who will probably not hesitate to refer the injured parties to the architect to escape any responsibility himself. Nevertheless, due to the problem of information asymmetry, the building master is generally not in the position to determine
the level of quality that should be provided, or the respective responsibilities of the engaged building partners. It follows that regulation is still needed to cure this market failure.

Standard economic theory has predicted that, in a perfect market, an unregulated outcome is optimal. It follows that there is a certain tension between, on the one hand, the need for a certain level of regulation in the professions and, on the other, competition law. According to the public interest theory, four conditions need to be fulfilled in order to obtain a general equilibrium in an economy with perfect competition: there are many small and identical producers who cannot significantly influence the price level, and who sell homogeneous products in their respective markets; there is perfect information in such an economy, so that all market participants are informed about all (equilibrium) prices and the characteristics of goods; there are no external effects; the products are private goods. Since the advice and service provided by an architect is generally so specific that another client in slightly different circumstances may not be able to use it, architectural services can, in principle, not be qualified as public goods. However Member States and professional associations often impose requirements upon architects before they can enter the profession.

In Belgium, architects even possess a monopoly in the construction market with regard to designing and supervising buildings. In this regard it should be noted that the architectural profession is - certainly within the traditional construction process in which the architect’s clients are generally one-time consumers – characterized by a high level of information asymmetry. This can lead to adverse selection: consumers cannot evaluate the properties of the supplied services, and professionals are inclined to provide low quality services which are then bought by the consumers.

Furthermore, a moral hazard problem arises: clients are not able to determine whether the architect is working in their best interests, and are not able to sanction the architect’s attitude. It follows that a problem of market failure is present within the architectural services market so that some degree of regulation will always be necessary. This is strengthened by the fact that negative externalities can appear every time the quality of the service rendered by the architect is not high, and damages are caused.

However, even though market failure, consumer protection and a high quality of the building environment seem to be valid reasons for entry regulation, the Dutch situation demonstrates that other ex ante tools such as the Dutch Building Decree can also protect the quality of buildings without the negative effects relating to the restriction of competition. It follows that it can be argued that, according to the public interest theory, the licensing system in Belgium goes too far in terms of curing market failure, since it seems that less restrictive measures -and thus more proportionate tools – are able to obtain the same effect: a high quality building environment. The same might be said of the prohibition of Belgian architects when it comes to practising the profession of entrepreneur. A less extreme option when it comes to dealing with the monopoly problem, next to its abolishment, can be found in the extension of the monopoly to other experts, who also have relevant knowledge and know-how. This might even be the case for certain entrepreneurs. Furthermore, even though the prohibition of architects associating with entrepreneurs in Belgium might be justified in terms of the public interest, since the architect should be able to work in total independence, it might be questioned whether this restriction, which does not exist in the Netherlands, is proportional and thus efficient to cure market failure. Such restrictions prevent one
company from offering a total service package in which a building is designed and constructed by professionals who consider themselves as partners rather than adversaries. Such cooperation can lead to higher levels of efficiency, since there are fewer negotiation and transaction costs, while the professionals involved are more likely to cooperate from the beginning and seek joint solutions in the event of a problem with the design or the construction work appearing. Defects can be detected more easily by mutual monitoring. It follows that, from an efficiency point of view, the Dutch system should be preferred.

With regard to the architectural profession, a combination of *ex ante* regulation and liability rules seems optimal. Since bad quality services provided by architects can cause harm to the building master and third parties, *ex ante* regulation is needed to determine the desired level of professional qualifications and the desired level of quality. However, if professionals who do fulfil these requirements cannot be sued, liability rules are also needed. Since a liability regime will not provide for sufficient incentives if the architect is not able to pay for the damage caused, his insurance coverage is important. A potential danger of liability insurance is the presence of a moral hazard problem if only the insurer pays for the damage caused. This problem can be solved by an appropriate adaptation of the premium and/or by exposing the insured partially to the risk. In this regard compulsory liability insurance is often advanced as a means to protect the innocent victim. A trade-off exists between its benefits and costs for both architects and their clients. Compulsory insurance might remedy problems of underdeterrence and undercompensation, since the prospective costs can be internalized if the insurer cures the moral hazard problem, for example, by setting appropriate policy conditions and asking for an adequate premium. Since the damage caused by a fault in the design or the supervision of the building works is generally quite high, mandatory liability insurance might be more in the interests of society (and thus more efficient when it comes to compensating damage) than liability rules without mandatory insurance. If the architect is not able to make an accurate assessment of the risk he is exposed to, compulsory liability insurance might be a solution to safeguard his own assets and those of his client in the event of insolvency.

In Belgium, all registered architects are obliged by law to buy professional liability insurance. In this way the problem of underdeterrence caused by insolvency can be cured, so that the victim can be protected against possible bankruptcy of his architect. It follows that compulsory liability insurance internalizes these negative external effects. However, since architects in Belgium are the only professionals in the building industry who are obliged to buy insurance, while they are often held liable *in solidum* with the entrepreneur, it appears that the risk is shifted to those with the deepest pockets. This might also have an effect on the premium to be paid by the architect, who, in turn, can include it in the price their clients have to pay for their services.

In the Netherlands, there is no insurance obligation, except for members of the BNA (more than 3,000 architects, that is approximately one-third of all architects). Standard terms generally also provide for mandatory insurance, with the result that the majority of architects are covered by insurance. Even though it might be argued that the Belgian system is not cost-efficient, since architects who are not risk-averse have to pay the premium as well, while there will always be a moral hazard problem, it should be noted that this conclusion should be considered in the light of the number of architects who risk insolvency. Empirical research is needed to determine the number of architects belonging to this category. If the risk of underdeterrence is considerable, the Dutch
system might also be inefficient. In any case, other possibilities with regard to providing compensation, such as a bank guarantee, should also be considered.

An economic analysis of the private law principles might reveal some interesting insights to determine whether the Dutch or the Belgian private law system is more cost-efficient on this point. In this regard it should be noted that even though the limitation of the architectural liability by means of a private company with limited liability, which is possible in Belgium and the Netherlands, is cheaper than the limitation of liability by contractual clauses, and might be beneficial for architects, it is not desirable from a societal point of view, since the architect can ‘hide’ behind a legal person to safeguard his personal assets. In this way, only the capital of the company is at risk whenever a professional fault occurs, while the professional’s personal wealth is exempt from any claims. This again brings about problems of underdeterrence of architects and undercompensation of victims, and is thus not efficient when it comes to compensating for possible damage.

Conclusion

The regulation of the architectural title should be preferred over the regulation of the profession, since the latter can be replaced by other mechanisms to guarantee quality. Even though a professional monopoly might be justified to protect quality, it is not proportional, and is likely to benefit only the professionals themselves. Since the Belgian system is not proportionate when it comes to entry regulations to the profession, it can be concluded that on this point, the Dutch system is more cost-efficient than the Belgian one.

Furthermore, the Belgian mandatory insurance and the in solidum convictions, often cause that the risk is shifted to the architect. The incompatibility of the professions of architect and builder brings about more costs than benefits so that also in this regard the Dutch system is more cost-efficient.

Since architects in Belgium cannot contractually limit their liability, while they are often held liable in solidum, hold a monopoly and cannot limit their liability, the intensity of the contract law provisions is not linked to the intensity of regulation.

Enforcing Health and Safety Regulation in England and Wales

Laura Tilindyte

Regulation and enforcement of Occupational Health and Safety (OHS) has been a subject-matter of a vivid academic debate which to a great extent focused on compliance versus deterrence-based techniques to ensure compliance. In the UK, regulatory enforcement has been an area of great interest, particularly in the light of the Better Regulation initiatives which increasingly emphasize the role of providing more advice and guidance to businesses and the importance of rebalancing enforcement resources towards a more proactive and targeted approach. Moreover, the introduction of a new sanctioning regime including administrative/civil sanctions for regulatory breaches is highly topical as well. This paper looks at the realities of OHS enforcement in England and Wales.
while taking a careful look at the work of the British OHS ‘watchdog’, the Health and Safety Executive (HSE). It addresses the role of proactive and reactive inspection conducted by the HSE, post-detection discretion as well as sanctions for non-compliance including criminal prosecution. In search for cost-effective techniques to ensure compliance, the paper analyses the full range of enforcement instruments employed by the HSE and sheds light on their potential to induce compliance with health and safety laws.

**Institutional Emergence of the CDM**

*Alexander Vasa*

The Clean Development Mechanism (CDM) is an innovative concept in international environment law. It is based on the economic concept of minimizing aggregate abatement costs of achieving a pre-specified greenhouse gas reduction target. This paper traces the emergence of the CDM from an idea in the textbook of economists into the legal agenda of policy-makers. It illustrates how economic concepts are reflected in the resulting law text which governs the climate regime today.

**European Integration Assessed in the Light of the ‘Rules vs. Standards Debate’**

*Franziska Weber*

The interplay of various legal systems in the European Union has long triggered a debate on the tension between uniformity and diversity of Member States’ laws. This debate takes place among European legal scholars and is also paralleled by economic scholars, e.g. in the ambit of the ‘theory of federalism’. This paper takes an innovative perspective on the discrepancy between ‘centralized’ and ‘decentralized’ law-making in the EU by assessing it with the help of the rules vs. standards debate. When should the EU legislator grant the national legislator leeway in the formulation of new laws and when should all be fixed *ex ante* at European level? The literature on the ‘optimal shape of legal norms’ shall be revisited in the light of law-making in the EU, centrally dealing with the question how much discretion shall be given to the national legislator; and under which circumstances.

This paper enhances the established decisive factors for the choice of a rule or a standard in a national setting (complexity, volatility, judges’ specialization and frequency of application) by two new crucial factors (switching costs and the benefit of uniformity in terms of information costs) in order to assess law-making policies at EU level.