Ius Commune Conference 2023

Workshop: Liability and Insurance
Self-Regulation and Soft Law as Grounds for Liability?

Friday, 12 May (09.00 – 12.00)

Room 1

Participants

Responsibilities laid down in soft law can gradually evolve from non-legal to (semi-)legal norms by the hands of judges. For example, the due diligence duties of corporations to address negative environmental and human rights impacts used to be (mostly) a matter of (international) soft law. Today, judicial practice increasingly translates these soft law standards into legally binding norms. Although the desirability of its binding legal force, in particular on private actors, remains an open question, it is clear that soft law plays a role in judicial decision making. For example, judges use soft law to establish the meaning of open norms. They may incorporate soft law standards in the duty of care in order to establish 'consent' on the existence of a certain 'code of conduct' that corporations should abide by. In other cases, judges rely on private regulations, such as internal guidelines or codes of conduct that express what is considered as reasonably careful conduct within an (group of) organizations, when deciding on the 'carefulness' of and liability for certain conduct. It could even be the case that – intentionally or otherwise – standardized approaches are used in dealing with certain types of (insurance-)cases. In all these examples, judges apply rules that have not been enacted by the legislative or executive branches of government.

This workshop aims to explore these questions on both a theoretical and a practical level. Part I of the workshop will focus on the more theoretical questions, where the use and reach of soft law will be discussed in both the legal and procedural context. The question is raised whether it is desirable to continue down this road, or should legislators and judges be more reluctant in counting on soft law when designing or applying tort law standards? In Part II of the workshop, several case-studies will be presented to explore where and when this development is (not) beneficial on a practical level, and whether the need exists to formulate guidelines on when (not) to use soft law in judicial decision making in order to provide legal certainty for the parties involved.

Chairs:
Dr. Anneloes Kuiper (Utrecht University)
Dr. Christopher Borucki (KU Leuven)

09.00 – 09.05 *Opening Remarks*

Part I

09.05 – 09.25 **Coen Hoekstra** (VU Amsterdam)
The Use of Soft Law Standards in Dutch Tort Law

09.25 – 09.45 **Anne Janssen** (Utrecht University)
The Self-Representing Litigant: A Justification for Soft (Procedural) Law?

09.45 – 10.05 **Dr. Francesco Zappatore** (University of Foggia)
Tort Law and the "Desirability" of Open Norms

10.05 – 10.20 **Discussion**

10.20 – 10.35 **Coffee break**

Part II

10.35 – 10.55 **Hilda Yunita Sabrie, Faizal Kurniawan & Yohanes Sogar Simamora** (Universitas Airlangga)
Liability of the Insurance Company Consortium in Paying Claim for Compensation Due to Aircraft Accident in Indonesia

10.55 – 11.15 **Dr. Andrea Parziale** (Maastricht University)
Regulating Off-Label Uses of Medicines: From Soft Law to Civil Liability, and Beyond

11.15 – 11.35 **Dr. Luigi Buonanno** (Bocconi University)
Hard law and national doctrines about civil liability: the case of online platforms

11.35 – 11.50 **Discussion**

11.50 – 12.00 **Françoise Auvray** (KU Leuven)
Closing Remarks