

BOOK REVIEW

L. RODRIGUE, *Les aspects juridiques de la régulation européenne des réseaux*, Bruylant, Bruxelles, 2012, ISBN: 978-2-8027-3454-3, 499 pages

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The book addresses one of the core issue of EU efforts towards the establishment of a unique market: the legal framework of essential (e.g. energy, telecommunications) networks regulation. The books analyses the interplay between the competences of EU institutions and Member States on networks regulation, thus revealing one of the most decentralised sector of our common market where cooperation among market players as well as among national regulatory authorities spontaneously blossomed.

The opening up of market sectors historically dominated by national legal public monopoly by means of the separation of the management of the non duplicable network and the provision of services through it cannot be achieved without a stronger European common regulation of the network itself. The inescapable interconnections among the national networks requires more and more a supranational approach grounded on the traditional EU law neutrality regarding the ownership models of such essential networks (art. 345 TFEU).

The book provides a coherent and comprehensive overview of the common issues undermining the overlapping of different regulatory levels and actors, finally pinpointing the opportunities offered by a strengthened uniform regulation at EU level. Decentralised regulatory systems increase operators' transaction costs and

public costs in exercising regulatory functions and hinder the efficiency of regulation itself as well as its understanding by the recipient market operators.

Firstly the Author investigates the several mechanisms of self-regulation or cooperative regulation put in place by the associations among economic operators acting in a particular market sector (e.g. electricity, natural gas, telecommunications, railways,). Those associations offer the chance for sharing best practices, defining common goals and strategies as well as establishing shared rules as soft law instruments.

The stronger examples of self-regulation mechanisms are those offered by networks (railway, energy, telecommunication) operators whose fundamental duty is neutrality and impartiality in granting equal access to networks to any service provider interested in exploiting the essential facility. Among them, the establishment of an energy stock exchange and the role played by the European Federation of Energy Traders (EFET) to that aim represents one of the most interesting experience so far.

Besides market operators' associations, several forms of cooperation have been experienced even by the relevant national regulatory authorities (e.g. European Regulators Group - ERG). Many of these initially informal attempts of coordination of national regulatory practices have been institutionalised afterwards and formally recognised by EU institutions and EU framework directives (i.e. telecommunications, energy, railways), often through the imposition of duties of cooperation legally enforceable on each national regulation authority. The mutual disclosure of documents and sometimes the joint running of regulatory procedures have been the milestones these forms of cooperation are built on.

New forms of institutional cooperation in regulation are more recently experienced in the radio spectrum regulation at EU level (see Decision n. 676/2002/CE) where the attempt in defining a common European policy aims to

achieve a stronger harmonization of national rules granting radio frequencies. Similar efforts with completely different outcomes are taking place as for internet regulation where technical standardization is lead by private associations of operators, displacing any public authorities intervention.

The book underlines the interplay between the regulatory functions of EU Commission and those left to national regulatory authorities along with the judicial review of the latter exerted by national courts. The principle of subsidiarity governs the allocation of competences between EU institutions and national authorities and brings about a stronger and stronger delegation of technical regulatory functions to European agencies established *ad hoc*.

The EU Commission is entrusted with both legislative and executive functions, thus acting as a regulator on both sides by means of hard law and soft law instruments. The definition of rules aiming at introducing or strengthening competition within the network industries markets by EU Commission (and sometimes EU Council) entails policy decisions whose enforcement is supervised and ensured both at European and national level. Bottom-up, the lobbying activities of technical committees and market operators influence the definition of common European rules. Top-down, such rules are implemented by the double and sometimes joint action of EU institutions and national regulatory authorities and judges. To that aim, EU Commission favours the active participation of national authorities in carrying out such regulatory tasks, in compliance with the fundamental principles of subsidiarity and proportionality.

The book outlines the importance and benefits of improving the ascendant effect of subsidiarity, thus expressing a clear preference towards EU institutions' interventions rather than national differentiations in carrying out such regulatory tasks (as regulatory experiences in the electric energy sector suggest). Firstly, regulatory activity at EU level can better benefit and rely on those mechanism of self- and co- regulation offered by agencies and market operators' associations

besides EU Commission fundamental role. Secondly, the geographical dimension, the opportunity of scale and scope economies as well as the supranational interconnections of industrial network regulation ask for a uniform approach, able to minimize the transactional costs brought about by national regulatory fragmentation. Moreover, such fragmentation jeopardizes not only the decisional process (creating rather than solving informational asymmetries) but even its comprehension and understanding by its own recipients.

Nonetheless, the flexibility undermining the principle of subsidiarity allows different approaches that best fit the industrial sector considered. The application of subsidiarity requires both a qualitative and quantitative assessment of the situation to be regulated, thus providing for the best solution, whether at EU or national level.