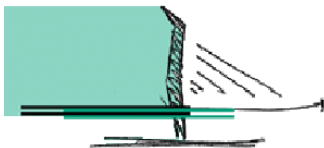


Regulating the European market for legal procedures: harmonisation or standardisation?

Lissabon, 3 May 2019

Ann-Sophie Vandenberghe

Vandenberghe@law.eur.nl



Subsidiarity principle

- (procedural) rule-making in Europe is essentially decentralized
- European (procedural) rule-making is the exception.
- So basically we have regulatory competition on a market for legal rules, but this market may need regulation in case of market failures.

Advantages/disadvantages centralize/decentralized rule-making

Decentralized (procedural) rule-making: legal diversity

- (+) Better rules, better satisfaction of local preferences
- (-) High legal information costs

Centralized (procedural) rule-making: legal uniformity

- (+) Low legal information costs
- (-) Destruction of regulatory diversity

European Payment Order Procedure

- Solution for which problem?
- Problem: high legal information costs caused by legal diversity
- Solution: establishment of a uniform European Payment Order Procedure
- Alternative regulatory approach:
 - Legal information costs are high because of market failures in the market for legal procedural rules
 - Solution: Information duties, standardisation

	Producers	Product	Information
Markets for goods	Firms	goods	Product information
Markets for legal systems	Rule-makers	Legal systems	Legal information

Market failures

- (1) Lack of national information-producers to provide information to non-citizens
- (2) Standardisation failures
- (3) Standard rules as non-provided public goods

Market failure 1: lack of incentives of national information-producers to provide information to non-citizens

- Producers of legal systems do not have incentives to provide information about their procedures when it does not result in more votes.

Appropriate EU action: create information duties of national law-makers

- An unregulated market for legal rules leads to an under-provision of information
- Remedy: information duties for national lawmakers
 - Describe all legal rules in detail
 - In English
 - In Electronic form

Market failure 2: standardization failure

- The fact that legal information costs are so high is mainly due to the chaotic organization of that information and the way it is published. Every legal system has its own structure, concepts and publication strategies. In short, there is a lack of international standardization with respect to classification systems, legal concepts and publication (and information technology) standards.
 - Compare with: miles (UK) *versus* km (Europe)

Appropriate EU action

- Provide a standard classification system and standard legal terminology

Market failure 3: Standard rules as non-provided public goods

- Obliging all states to carefully describe their existing rules in detail (see EU action 1) would require an enormous investment. These investments would be partly wasteful because most legal rules are similar in most countries.
 - Compare with: ‘yes’, ‘oui’, ‘ja’ are different ways to say the same thing.

Appropriate EU action: Drafting a European standard code (procedure)

- Standard code (procedure) describe the rules that apply in most countries
- The standard code (procedure) applies automatically in all EU countries unless a member state clearly and explicitly adopts a different rule.
- Standard code (procedure) reduce citizens' legal information costs and reduce legal production costs
 - Compare with: '112' is the standard emergency number throughout Europe