

*Towards a Constitutional Responsibility Approach for
Securing Good Regulation and Enforcement in the
Shared European Legal Order*

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*RENFORCE CoCoT Conversation Trust as a Constitutional Precondition for Good Regulation
and Enforcement in Europe, 14 October 2022*

Overarching CoCoT Question

How can the law be better used as a means to shape regulation and enforcement in the shared (inter)national and European legal order, in such a way that it contributes to a **European society that enjoys peace, guarantees the protection of core values and the well-being of its citizens?**

⇒ Article 3(1) TEU goals leading benchmarks

⇒ Flesh out its conceptual, constitutional and theoretical foundations

Focus Working Paper: taking a constitutional perspective on regulation and enforcement in Europe requires a closer consideration of:

- (i) how the institutional framework and its different – (inter) national and EU – layers and actors can be understood in relation to one another from a regulation and enforcement perspective (thin approach);*
- (ii) and how it should it be organised and behave vis-à-vis one another so as to secure good regulation and enforcement in Europe (thick approach)*

Our thesis: existing EU constitutional theories largely fall short in providing answers to the above questions....

- Focus is mostly on *legal status/authority conflicts before courts; supremacy, fundamental rights, constitutional identity, rule of law, Kompetenz-Kompetenz...*

➔ Constitutional pluralism/hierarchy debate and judicial dialogue focus

➔ *Descriptive shortcomings* as they fail to consider actors other than courts and role of other branches of government and regulation and enforcement arrangements, including those not provided for in the Treaties

➔ *Normative shortcomings* as the focus is on power-balancing Member States - EU rather than on putting Article 3(1) goals and citizens central and their role and interests in legitimising regulation and enforcement in Europe

What we propose: shift focus towards the development of a **constitutional responsibility approach**...

- Important building blocks of this, reinforced since the Treaty of Lisbon...

➔ *Behavioural principles* such as sincere cooperation, but also openness, transparency, effectiveness, equality, solidarity, coherency and consistency, participation, consultation (should) guide the conduct of EU and national authorities....

➔ *Political dimension of pacta sunt servanda*; status of EU-membership entails obligations but also opportunities and responsibilities, at all levels of government and beyond (cf *Integrationsverantwortung*)...

➔ *Realising the Economy of Wellbeing*; focus on the promotion and mainstreaming of security, EU core values and people's wellbeing

Trust as a precondition for constitutional responsibility

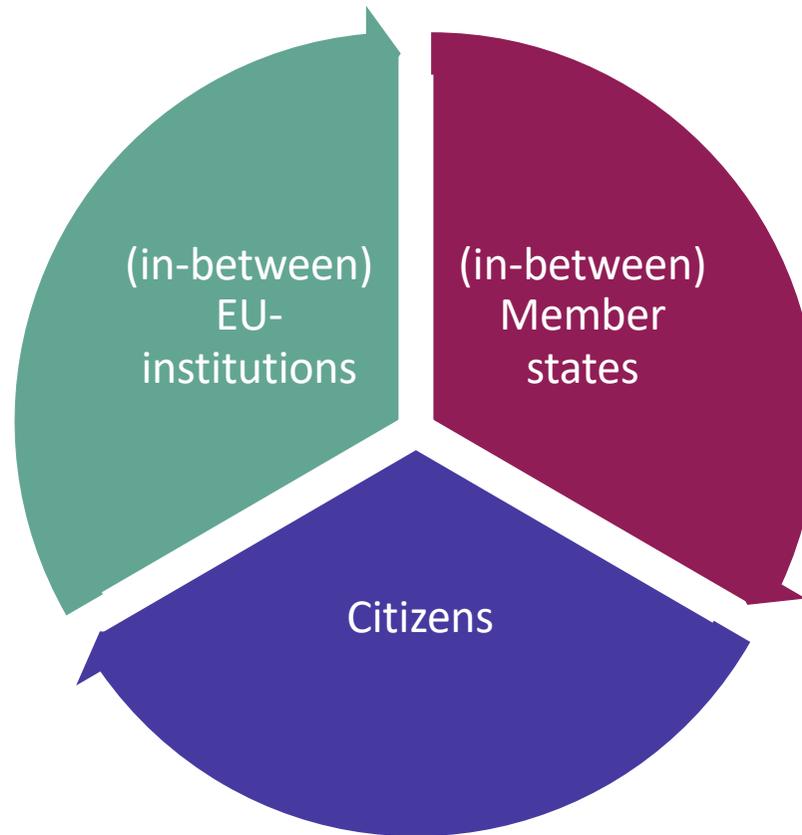
➔ Horizontal/mutual trust; in-between EU institutions and in-between Member States

➔ Vertical: between EU-institutions and Member States

But fundamentally so:

➔ citizen's trust in EU and national institutions delivering on Article 3(1) goals...

CONSTITUTIONAL RESPONSIBILITY



TRUST AS A PRECONDITION

Framing the more specific presentations of this Conversation

- What does it mean to take a constitutional approach to regulation and enforcement in Europe, and what should such an approach prescribe to secure good regulation and enforcement? What is the **relevance and meaning of trust** in that regard?
- How/Why is trust key for securing good regulation/enforcement **in certain policy fields**? How does it relate to the notions of effectiveness and legitimacy?
- **How is/can trust (be) conceptualised** in these fields and based on **what sources**?
- To **what EU/(inter)national legal principles** does it connect or in what legal principles does the concept of trust translate?
- How has trust been researched in these fields, based on what **methodology**?
- What are the **biggest challenges or hurdles that need addressing to secure trust** and therewith a solid basis for good regulation and enforcement?