

RENFORCE Mission Statement

Europe in transition: the need for EU regulatory and enforcement policies to meet societal objectives

The need to develop a sustainable and social market economy, to deal with migration effectively and in a legitimate way, to develop a performing market of technology and digitalisation of services, to guarantee security and suppression of transnational crimes in the area of freedom, security and justice, to guarantee and strengthen the position of Europe in the global arena and the respect of fundamental rights and core values in these and other domains are all key issues in Europe. The EU is the main forum within which to develop, implement and enforce policies to deal with such shared and cross-border problems. This has culminated in a broadening and deepening of EU competences over time. These competences are not limited to the EU as a regulatory power, but include also the enforcement of these norms, meaning all norm-setting activities and monitoring, investigation and sanctioning aimed at compliance with EU policies.

Although the regulatory and enforcement power of the EU is highly shared with and embedded in the member states, the EU has, at the same time, become a contested polity itself. Member states and large groups of citizens consider the EU as a too intrusive and burdensome regulatory power, which lacks sufficient democratic legitimacy and effectiveness, and which does not meet the needs of European societies in their economic, social and political dimensions.

EU countries are widely divided when it comes to policy strategies. Divides between north and south, west and east arise depending on policies at issue: such as finalizing the banking union, stimulating economic growth, guaranteeing environmental sustainability, designing migration policies, Europeanising security at the EU borders and in Member States. The UK Brexit, the Italian populists in power and the nationalist governments in some eastern European countries intensify these divides.

Despite such turbulent developments, many EU member states and large groups of citizens consider effective regulation and enforcement of policies at the EU level necessary in order to meet societal objectives at the international, European, national and even local levels. Moreover, they expect the EU will uphold and enforce the key values of rule of law and fundamental rights. In particular, national governments' actions in Poland and Hungary restricting judicial independence and limiting fundamental rights protection put the EU's responsibilities in the limelight.

EU Member states and their citizens also recognise the importance of the EU in setting common policy agendas. With the increasing US unilateralism, the EU has to (re-)define its new regulatory and enforcement role in many policy fields. Regulation and enforcement arrangements will need to address both internal challenges in the social market economy and in the area of freedom, security

and justice and external challenges at the global level. Yet, the EU will have to “share” its regulatory and enforcement policies both with the national dimension internally and the global dimension externally.

In the light of such a context, the added value of the RENFORCE research programme lays in its mission to:

- examine the *legitimacy* and *effectiveness* of regulation and enforcement in Europe (including decision-making thereon), based on in-depth understanding of the specificities of and diversity between different policy areas and regulatory and enforcement arrangements.
- enrich the *conceptual* and *theoretical* foundations of shared regulation and enforcement in Europe, adding legal insights to regulatory governance, institutional design and European and multi-level governance studies.

RENFORCE research focus and approach

The fundamental **research question** that RENFORCE aims to answer is:

How can public tasks and public policy objectives in the social market economy and in the area of freedom, security and justice be better realized in the shared European, national and international legal order, by regulation and enforcement arrangements that safeguard core values and which ensure policy effectiveness?

If Member States aim for example to ensure the protection of consumers, workers and migrants, to put into place a sound banking supervision system, or to ensure the exchange of information in relation to criminal and terrorist activities, such policy goals raise many questions as to how they can be best accomplished. In particular, what would be the role of the EU, in combination (or not) with international, national and subnational institutions and possibly private actors to ensure the best possible way of realising them. The result is often a mix of EU and national regulation and enforcement measures, which features are often a product of a combination of institutional, procedural and substantive variables, which vary from one policy area to another.

The fight against EU fraud presents a perfect example of the research focus. While fraud affecting the EU budget is assumed to be very significant, a common European approach has proven to be a cumbersome path. Member States had great difficulty in finding a common regulatory approach on the tackling of VAT-fraud in the internal market. National prosecutors' tools to fight large-scale cross-border financial crime are restricted by national borders. The just approved European Public Prosecutor's Office (EPPO) is a likely “game-changer” to recover the taxpayer's money. The EPPO will be able to investigate and

prosecute criminal cases like corruption and fraud with EU funds across the borders of 20 participating member states, but it does not replace national prosecutors and laws. Rather, it will work together with them. Importantly, this new multi-level and multi-actor system will need to ensure not only policy effectiveness but also rule of law standards and protection of fundamental rights. Yet, the EPPO features a complex institutional structure raising concerns about its effective operation and accountability. RENFORCE researchers scrutinize how policy effectiveness and core values, such as the rule of law as well as political and judicial accountability, are being balanced and how this could be improved.

The RENFORCE programme takes five core substantive EU domains as its focal point and two institutional trends - one regulatory, one on enforcement - that transcend specific policy domains. The following policy domains have been selected on the basis of their importance as policy areas and the important questions they trigger in relation to regulation and enforcement:

- Social market economy
- EU values in international trade
- Digitalization & technological innovation in Europe
- Migration and asylum
- Transnational criminality and security in the AFSJ

The institutional trends seek to identify the common ground between the different policy domains and will therefore take a cross-policy, comparative approach. They are:

- Differentiated EU legislation, focussing on how EU legislation accommodates legal differentiation and the tension between unity and diversity.
- Europeanization of enforcement, focussing on the influence of the EU on the national enforcement landscape (indirect enforcement), transnational enforcement cooperation, direct enforcement by EU authorities and their mutual relationships.

RENFORCE multidimensional research methodology

To ensure consistency in the overall programme and in order to answer the overall research question, in their methodological approach RENFORCE researchers take into account four aspects of regulation and enforcement in these different domains and in relation to the institutional trends:

1. What are the *core values* of regulation and enforcement in the EU and how are conflicting values balanced?

2. How does shared regulation and enforcement contribute to the effectiveness of goal achievement in the *policy cycle*, so from its very initiation to its application?
3. What *actors* (EU-national-international-subnational, public-private) are involved in regulation and enforcement?
4. How do the EU and the national and international legal orders interact and connect, and what are the implications thereof for organizing effective regulation and enforcement respecting core values?

Researching how such regulatory and enforcement arrangements in these different policy domains are given shape requires different methods:

1) *sectoral research* pursued by lawyers from very different legal fields is necessary to assess how (shifts to) regulation and enforcement at the EU level and national and subnational autonomy are and should be balanced. Such research is equally necessary to explain and understand how regulation and enforcement relate and interconnect, e.g. when the EU has provided for a legislative framework but implementation and enforcement are fully or partially in the hands of the Member States.

2) based on a deep understanding of the specificities of the regulatory area concerned and the differences between policy domains in content, contexts, and underlying values, sectoral studies need to be complemented by a *legal comparative approach* to see how variables work in different policy domains and what can be learnt from their mutual interaction.

3) in order to consider the inherently dynamic nature of regulation and enforcement there is also a need to go beyond a legal approach by *making use of empirical research findings and/or methods, as well as of insights from other scientific disciplines*, including criminology, political science, (legal) history, sociology, economics and ethics. This dynamic nature is caused by internal factors – such as the need to address shortcomings in regulation and enforcement – and external factors – such as technological and economic developments as well as political and societal changes – alike. To this end, RENFORCE members have built strong multidisciplinary connections, engaging with scholars from other disciplines within and beyond UU programs such as Institutions of the Open Society (IOS) and its newly established Hubs on Societal Entrepreneurship, Gender and Diversity, Sustainability and Economic Development, Future of Work and Security of Open Societies. RENFORCE hosts also a group of social science and criminology researchers.

4) A *conceptual and theoretical approach* is also followed, with a view to assessing regulatory and enforcement effects and the determination of what provides an optimal/smart(er) mix. Thus, our research agenda goes beyond the state of the art of positive law and theoretical research on the relationship between the EU and the national legal and political orders.

RENFORCE added value and ambition

RENFORCE contributes to the ongoing societal and academic debates on better EU regulation and enforcement by analysing and assessing the shared regulation and enforcement arrangements that have been established and are developing across different policy domains, while considering at the same time important, cross-cutting regulatory and enforcement trends in the EU. It does so by initiating its own research projects, but also by conducting research on behalf of a huge variety of stakeholders (see e.g. its recent contribution to the WRR-report on European Variations: <https://www.wrr.nl/publicaties/rapporten/2018/09/04/europese-variaties>).

The research ties also in with political debates as to how to shape the EU as a sustainable forum for future integration and how differentiated this integration can and should be.

RENFORCE will thus continue to ensure a high degree of responsiveness to current and emerging societal questions, as it has done so far in the fields of financial market regulation and migration. This will continue to ensure not only a high societal relevance of the research output, as well as a high chance to obtain funding from European and national funding bodies. RENFORCE has already shown to be successful in obtaining grants from a variety of funding bodies and in doing so aligning its own research agenda with that of external parties. It is keen to continue along this line and to further investigate in this win-win strategy, inter alia by actively supporting talented scholars in their drafting of project proposals.

RENFORCE researchers are all academic experts in their fields with a wide and established network of academic, public and private partners. These include national ministries and courts, EU institutions, the Council of Europe and the UN. Particular strength of the RENFORCE method is the multidimensional approach allowing researchers from different disciplines – from private and public law and beyond – to work together and thus unravel the complexity of undertaken issues. While this methodology is a necessity to achieve the goals of RENFORCE, the uniqueness in its diversity and high intellectual level of the team enables tackling topical research issues in all necessary aspects.