

Master PMP - Cours et épreuves "Politiques, droit et économie de la régulation" (REG) – 2018/2019

Objectifs

Dans les dernières décennies la régulation est devenue la principale modalité d'action de l'Etat. Cette orientation vise à fournir les outils analytiques ainsi que les compétences pratiques et interdisciplinaires indispensables pour comprendre la montée en puissance de l'Etat régulateur et pour rendre compte de ses fondements et de ses effets, du point de vue de l'analyse politologique, juridique et économique.

Deux enjeux majeurs seront abordés de manière transversale. D'un côté, la régulation de l'économie fera l'objet d'une attention approfondie, qui concernera par exemple les dispositifs, les mécanismes et les moyens d'action pour réguler les marchés et la concurrence au niveau national et international. D'un autre côté, cette orientation examinera comment les activités considérées comme à risque sont régulées, dans des domaines tels que la protection de l'environnement ou la sécurité sanitaire.

La réflexion développée dans cette orientation permettra de comprendre les stratégies et les objectifs des pouvoirs publics et des régulateurs, les opportunités et les contraintes des opérateurs et des autres acteurs du marché. Elle permettra aussi de saisir les intérêts des usagers et des citoyens au sens large, par le biais d'une démarche qui implique la présence de plusieurs intervenants externes et une forte interaction avec les étudiants

Langue de cours

Français - Anglais

Semestre de cours

Semestre d'automne

Contenu (sous réserve de modifications)

Intitulé des cours	ECTS	Professeur	Lieu	Langue enseignement	
The politics of regulation	6	M. Maggetti	UNIL	E	Obligatoire
Transnational Private Regulation	3	Ch. Ewert	UNIL	E	Obligatoire
Informal International Lawmaking	3	A. Berman	UNIL	E	Obligatoire
Managing regulation in modern government	3	L. Allio	UNIL	E	Obligatoire
Regulatory Economics	3	C. Thöni	UNIL	E	Obligatoire
<i>Droit des marchés publics (SP 19 et SP 21)</i>	3	<i>E. Poltier</i>	<i>UNIL</i>	F	<i>Optionnel/ conseillé</i>
<i>Droit de la concurrence suisse et européenne</i>	6	<i>V. Martenet/ A Heinemann</i>	<i>UNIL</i>	F	<i>Optionnel/ conseillé</i>

Managing regulation in modern government SA 2018

Nom de l'enseignant : Lorenzo ALLIO – Université de Lausanne

Adresse e-mail : lallio@alliorodrigo.com

Année :

X 2^{ème} année

Type : X Cours

Semestre :

X Automne

Printemps

Nombre d'heures enseignées :

- par semestre : 26 heures.

Valeur en ECTS : 3

Thème

This course will address the origins and constitutive elements of the "Better Regulation agenda".

Objectif

Over the past decades, governments have embarked on reform programmes to improve the overall quality of decision-making and its outputs, most notably of legal acts. That is part of efforts to either boost nations' competitiveness; to improve public service delivery; to strive for sustainable development; to ensure greater trust in public government – or a mix thereof. Pioneered by OECD countries, this has now become a world-wide phenomenon.

The course seeks to lay the foundations to understand modern regulatory governance and public sector innovation, by providing students with

- understanding of "better regulation" both in developed countries and emerging economies;
- insights on administrative law, policies and tools to formulate, evaluate and redesign regulation; and
- notions of economic analysis of regulation.

Contenu

More specifically, this course will

- enquire the notion of regulatory "quality" and highlight the factors that have triggered such an international agenda;

- investigate the main institutional and procedural arrangements as well as the instruments constituting the "Better Regulation toolkit" – in particular, but not only, Regulatory Impact Assessment (RIA); retrospective legislative evaluation; public consultation; and administrative simplification;
- consider the field of risk regulation, covering issues such as the risk analysis framework as well as organisational and procedural arrangements, and presenting examples / case studies
- provide for international comparative analysis, with strong focus on the EU level (European Commission) along with OECD countries; and
- include practical, interactive sessions on how to conduct a RIA, with individual or group exercises.

The course will be delivered in English, over extended sessions of 8 hours each.

Provisional dates are:

- Friday 19 October 2018
- Thursday 1. November 2018
- Friday 2 November 2018
- Friday 16 November 2018

Bibliographie

A list of bibliographical references will be put at disposal of the students at the beginning of the semester.

Modalités prévues pour l'évaluation

Students will be evaluated on the basis of a document to submit in both printed and electronic (PDF) form.

Active participation in class will be considered positively in the overall appraisal of the student's performance.

Langue d'épreuve :

- X Français
- X Anglais
- X Italien

Forme Examen en session :

- X Document à rendre (Deg)

Les modalités des épreuves de rattrapage sont :

- X Travail personnel à rendre (R hors session)

The Politics of Regulation SA 2018

Nom de l'enseignant : Martino Maggetti – Université de Lausanne

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Année : X 2ème année

Type : X Cours

Semestre : X Automne

Nombre d'heures enseignées :

par semaine : 1heure 2heures 3 heures X 4 heures

Valeur en ECTS : 6 ECTS

Descriptif

Ce cours porte sur les politiques de régulation. Il met l'accent sur la régulation comme modalité fondamentale de gouvernance contemporaine par l'Etat, dans l'Etat, et au-delà de l'Etat. Pour ce faire, on examinera les explications de l'origine, de la diffusion, et des réformes réglementaires en perspective comparée. Différentes théories, approches et méthodes seront confrontées et discutées. Par la suite on se focalisera: sur les processus de privatisation, de libéralisation et de re-régulation; la délégation d'autorité publique et l'agencification ; les styles nationaux et sectoriels de régulation et les variétés de capitalisme ; le développement de l'Etat régulateur Européen et des réseaux internationaux ; la qualité de la régulation et l'évaluation de l'impact réglementaire ; l'importance croissante des normes transnationales ; et les formes privées et hybrides de régulation. Ce cours se déroulera de manière active et interactive, en alternant des présentations de l'enseignant et des participant-e-s, des discussions en groupe, des applications pratiques, et des interventions externes par des acteurs concernées par les politiques de régulation.

La bibliographie sera précisée lors de la première séance.

Modalités prévues pour l'évaluation

La validation consiste en un travail personnel à rendre dans la forme d'une étude de cas d'une ou plusieurs politiques de régulation.

Langue d'épreuve

X Français
X Anglais
X Italien

Examen en session

X Document à rendre (Deg)

Les modalités des épreuves de rattrapage sont

X Travail personnel à rendre (R)

Transnational Private Regulation SA 2018

Teaching Staff : Christian Ewert

E-mail : Christian.Ewert@uzh.ch

Année :

X 2^{ème} année

Type : X Cours-séminaire

Semestre :

X Automne

Nombre d'heures enseignées par semestre : 26 H

Valeur en ECTS : 3 ECTS

Subject

Introduction to transnational private regulation, its actors, their responsibilities, capacities, and interactions, and the relation between private regulation and society.

Objective

Students can use regulatory theory and concepts to explain and describe transnational private regulation. Students also know and can describe the most relevant private regulators and their regimes.

Course description

Contemporary regulation often involves non-state actors, such as companies, civil society organizations, or multi-stakeholder bodies that form complex regulatory networks and regimes. Attributed with capacities such as expertise and flexibility, they tackle complex and contested policy problems that nation states and international organizations are often unable or unwilling to solve. However, as private entities, those actors, networks, and regimes are detached from established political institutions, and have been criticized for lacking legitimacy and accountability. This course introduces to transnational private regulation in two ways. First, we will discuss which theories and concepts are useful to analyze, describe, and explain this form of regulation. We will complement this, second, with an exploration of concrete examples of private regulation, which will focus on the most relevant private regulators and schemes. For the learning assignment, the students are asked to carry out on their own research projects on this topic.

Literature To define.

Evaluation

Students are asked to carry out their own research projects and write a short report about them.

Exam Language

X English

First Try

X Document à rendre

Re try

X Travail personnel à rendre hors session (R)

Regulatory Economics SA 2018

Nom de l'enseignant : **Christian Thöni**

Adresse e-mail : christian.thoeni@unil.ch

Année :

X 2^{ème} année

Type : X Cours

Semestre :

X Automne

Nombre d'heures enseignées :

- par semestre : 26 Heures

Valeur en ECTS : 3

Descriptif

Subject

This course covers core topics of the economics of regulation (regulation of natural monopolies or network industries), as well as a broader range of topics on the role of government in steering economic activities.

Objective

The goal of this course is to understand the concept of market failures as a precondition for regulatory interventions. Students are familiar with the various sources of market failures and the regulatory interventions designed to correct them. Students know the problems associated with regulatory interventions, like e.g. rent seeking, regulatory capture.

Content

The course starts with an introduction into industrial organization and core concepts of game theory. We discuss the theoretical arguments in favor of free, unregulated markets as an institutional arrangement to guide allocative processes (welfare theorems), and investigate the limitations in the presence of market power, externalities, or asymmetric information. The main part of the course deals with regulatory interventions in network industries, natural monopolies, as well as competitive markets. The final part of the course expands the scope of the topic and focuses on new developments in governmental regulations such as nudges to correct for suboptimal behavior in individual choice. Finally we look at the controversy between proponents and opponents of regulatory interventions.

Literature

For the lack of a good textbook readings for this course consist of a number of scientific articles. The following articles are required reading. **More required reading will be announced in class.**

Armstrong, M., & Sappington, D. E. M. (2007). Recent Developments in the Theory of Regulation. In Handbook of Industrial Organization (Vol. 3, pp. 1557–1700). [http://doi.org/10.1016/S1573-448X\(06\)03027-5](http://doi.org/10.1016/S1573-448X(06)03027-5)

Glaeser, E. L., & Shleifer, A. (2003). The Rise of the Regulatory State. *Journal of Economic Literature*, 41(2), 401–425. <http://doi.org/10.1257/002205103765762725>

Evaluation

Description

Grading depends on the written exam (75%) and a presentation in class with handout (25%).

Exam Language

X English

First Try

X Ecrit de 2h sans documentation

Re try

X REcrit de 2h sans documentation

Informal International Law-Making SA 2018

Nom de l'enseignant : Dr. Ayelet Berman

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Année :

X 2^{ème} année

Type : X Cours

Semestre :

X Automne

Nombre d'heures enseignées :

- par semestre : 26 Heures

Valeur en ECTS : 3

Description**Subject**

The field of international law has undergone a transformation from formal to informal law: Cooperation is no longer only in formal intergovernmental organizations (e.g. United Nations) but increasingly in organizations which lack international legal personality (e.g. Basel Committee, Global Fund to Fight AIDS, Tuberculosis and Malaria). Actors are no longer only states but also non-state actors. There has also been a stagnation in international treaty-making and a shift towards the use of legally non-binding instruments (e.g. UN Guiding Principles for Business and Human Rights). The course will cover what is happening, why it is happening, and will assess the legal and political benefits and challenges.

Goal

1. Provide students with an understanding of the transformation of international law and the shift towards informal international law making.
2. Provide students with an understanding of the benefits and challenges of this development.
3. Provide the students with an understanding of the emerging legal responses to this development, especially regarding concerns over accountability and legitimacy.
4. Develop critical thinking skills.

Content**1. From Intergovernmental Organizations to Informal Organizations**

In the period following World War II, international cooperation was typically conducted in treaty-based intergovernmental organizations (IOs), such as the United Nations and the World Bank. In the past two decades, cooperation among governments is increasingly taking place in bodies that lack international legal personality, and as such are « informal », such as in trans-governmental regulatory networks (e.g. Basel Committee on Banking Supervision). Governments are also increasingly cooperating alongside private actors in public-private or multi-stakeholder partnerships (e.g. Global Fund to Fight AIDS, Tuberculosis and Malaria), and private actors too have been setting up private standard-setting bodies (e.g. Internet Corporation for Assigned Names (ICANN)). Such informal organizations exist in diverse policy fields, such as antitrust, finance, health, environment, and the Internet.

We will address questions such as: Why were intergovernmental organizations set up? What are the different kinds of 'new' informal organizations? Why are governments and private actors increasingly collaborating in informal organizations rather than in IOs?

2. From States to a Pluralization of Actors

Traditionally, international law has been set by states. But in the past two decades, non-state actors which lack international legal personality have been playing a significant role in the development and implementation of international law. Such actors include civil society organizations (e.g. Oxfam), NGOs, industry associations (e.g. International Council of Beverages Associations), private foundations (e.g. Bill and Melinda Gates Foundation) and multinational companies (e.g. Nike).

We will examine: Why has there been a rise in non-state actors? What kinds of non-state actors are participating in international law-making? Why do they participate? In what kinds of organizations do they participate? What are the benefits and the challenges of non-state actor participation in international law-making?

3. From Treaties to Informal Instruments

Traditionally, international agreements among states were primarily concluded through binding treaties. In the past two decades, we witness a stagnation in treaty making and a shift towards the use of legally non-binding instruments. Recommendations (e.g. OECD recommendation on public integrity), standards (e.g. ISO or Codex standards), guidelines (e.g. ICH guidelines on pharmaceuticals), accords (e.g. Basel Committee accords), indicators (e.g. World Bank 'Doing Business' indicators, the OECD PISA ranking) and so forth have become commonplace. Despite their informal, non-binding nature, such instruments often have significant effects on states, companies and citizens around the world. These instruments are also often implemented within domestic legal and regulatory systems, or receive binding effect through reference (e.g. WTO Agreements) .

We will ask: Why do we see a decline in treaties and a rise in informal law? What kinds of informal instruments have emerged? How are such instruments adopted and implemented within domestic legal systems? How effective are informal instruments? How and why are they complied with?

4. Accountability and Legitimacy

International organizations – both formal and informal -- perform functions of authority. They increasingly shape national regulation and policies, and affect the interests of states, companies and citizens around the globe in all aspects of life, be it environment, finance, health, telecommunication etc. Within domestic legal systems, rule making is controlled through domestic administrative and constitutional law. Their purpose is to prevent the abuse of power by the powerful, and to give voice and recourse to citizens that are affected by the government's rules and laws. In contrast, International law, or more specifically, the branch known as international institutional law, has traditionally not set out any rules for decision-making of global governance bodies. Moreover, there are not any global courts to which recourse can be brought against international bodies. Thus,

international organizations (both formal and informal) have traditionally worked within a legal and institutional void, giving rise to potential abuses of power. This void, often also referred to as the 'legitimacy', 'accountability' or 'democratic' deficit of international governance presents a significant challenge.

In addressing this issue, we will pose the following questions: What does legitimacy mean? What does accountability mean? Why are they important from a legal perspective? What is the impact of the rules issued by global bodies on states, companies and people around the world? How do global bodies shape national policies or rules? To whom have global bodies traditionally been accountable to – and whom should they be accountable to? What is the role of state consent in providing legitimacy – and is it sufficient? Who should be able to raise claims of accountability?

We will discuss these issues while touching upon several case studies such as the World Bank, the Basel Committee on Banking Supervision, and the International Conference on Harmonization.

5. Emerging Legal Approaches to the Accountability Challenges: Global Administrative Law

In response to the accountability and legitimacy challenges, new legal approaches have been emerging. The purpose of this class is to understand and assess these new approaches.

The Global Administrative Law approach – borrowing from principles of domestic administrative law -- expects international institutions to follow good administrative principles in their decision-making, in particular principles of impartiality, transparency, public participation, reason giving, and oversight and recourse.

In inquiring into this issue, we will address questions such as: What is the purpose of good administrative principles in rule-making? Can these administrative principles ensure the accountability of global bodies? What are the shortcomings? Do global bodies follow GAL principles in practice, and in the absence of a legal obligation – why do they do so? We will examine these questions through the lens of case studies.

6. Participation in International Rule-Making

In the past decade or so, many global institutions have introduced stakeholder participation reforms, allowing for more participation by previously excluded stakeholders, such as non-governmental organizations or developing countries. We will ask: What kind of stakeholder participation reforms have been introduced? Why have they been introduced? Have these reforms improved the democratic legitimacy of international institutions? Have they improved the voice of marginalized stakeholders? Can and do powerful stakeholders misuse their participation rights to capture the agenda?

7. Judicial Review and Monitoring

In this class, we explore the possibilities for legally reviewing the rules and policies of global bodies, and the scope of such review. We focus on review mechanisms at the international level and address questions such as: Why should global bodies be subject to review? What types of review mechanisms are available at the global level?

We will examine these questions and discuss cases such as the United Nations Ombudsman, the World Bank Inspection Panel, or the Court of Arbitration for Sport.

We will also examine the role of internal monitoring and peer review mechanisms.

8. Business, Global Supply Chains and Human Rights

Recent decades have witnessed the exponential growth of multinational companies. Many Fortune 500 companies have revenues equivalent and often larger than the GDP of many states. Globalization

has also introduced global supply chains with many contractors and suppliers involved across different jurisdictions. The growth of corporate power and global supply chains pose a challenge for the regulation and enforcement of human rights and labour standards. In response to several disasters, such as the Rana Plaza disaster in Bangladesh, international legal responses have emerged.

In this class, we examine the problem and assess the international legal frameworks, which have been developed to address these problems (most of which are informal), such as the UN Guiding Principles for Business and Human Rights, and the UN Global Compact.

Literature

1. From Intergovernmental Organizations to Informal Organizations

José E. Alvarez, "Introduction", in *INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS* (Oxford University Press, 2012) p.1-19.

Anne-Marie Slaughter, "Regulators: The New Diplomats", in *A NEW WORLD ORDER* (Princeton University Press, 2004) p. 36- 64

Kenneth W. Abbott and Duncan Snidal, *Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 *VANDERBILT JOURNAL OF TRANSNATIONAL LAW* 501 (2009) 501-545

Kevin Young, "The Basel Committee on Banking Supervision", in *HANDBOOK OF TRANSNATIONAL GOVERNANCE* (Thomas Hale and David Held, eds., 2011) 39-45

"The International Conference on Harmonization", in *HANDBOOK OF TRANSNATIONAL GOVERNANCE* (Thomas Hale and David Held, eds., 2011)

"Multi-stakeholder Initiatives" in *HANDBOOK OF TRANSNATIONAL GOVERNANCE* (Thomas Hale and David Held, eds., 2011) 155-15

Johanna Hanefeld, "Global Fund to Fight AIDS, Tuberculosis and Malaria", in *HANDBOOK OF TRANSNATIONAL GOVERNANCE* (Thomas Hale and David Held, eds., 2011) 161-166

Jonathan Koppell, "Internet Corporation for Assigned Names and Numbers", in *HANDBOOK OF TRANSNATIONAL GOVERNANCE* (Thomas Hale and David Held, eds., 2011)

2. From States to a Pluralization of Actors

Jan Aart Scholte, "Civil Society and NGOs", in *INTERNATIONAL ORGANIZATION AND GLOBAL GOVERNANCE* (Weiss and Wilkinson, eds.) (Taylor & Francis. 2013).

Tim Buethe & Walter Mattli, *International Standards and Standard Setting Bodies*, in *THE OXFORD HANDBOOK ON BUSINESS AND GOVERNMENT* (David Coen et al. eds., Oxford University Press, 2012)

3. From Treaties to Informal Instruments

Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, *INTERNATIONAL ORGANIZATION* (2000) p. 421-456

Joost Pauwelyn, et al., *When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking*, 25 EUROPEAN JOURNAL OF INTERNATIONAL LAW 733 (2012).

Joost Pauwelyn, et al., *Informal International Lawmaking: Framing the Concept and Research Questions*, in INFORMAL INTERNATIONAL LAW-MAKING (Joost Pauwelyn et al. eds., Oxford University Press)

Basel III Accord <http://www.bis.org/bcbs/basel3.htm>

BCBS report to G-20 on Implementation (2014) <http://www.bis.org/bcbs/publ/d299.htm>

Implementation of Basel III in the EU <http://www.eba.europa.eu/regulation-and-policy/implementing-basel-iii-europe>

Article 38(1) of the ICJ Statute

4. Accountability and Legitimacy

Ruth W. Grant, and Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AMERICAN POLITICAL SCIENCE REVIEW, 29-43 (2005).

Richard B. Stewart, *Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness*, 108 AMERICAN JOURNAL OF INTERNATIONAL LAW 211 (2014)

Dani Rodrik, "Put Globalization to Work for Democracies", in *The New York Times*, 17 September 2016

Barack Obama, "Final Speech to the United Nations as President", 20 September 2016

[The Internet is run by an unaccountable private company. This is a Problem](#), by Emily Taylor, The Guardian, 21 September 2015

5. Emerging Legal Approaches to the Accountability Challenges: Global Administrative Law

Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, *The Emergence of Global Administrative Law*, 68(3) LAW & CONTEMPORARY PROBLEMS 15 (2005) p. 27-55

Armin von Bogdandy et al., *Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities*, in THE EXERCISE OF PUBLIC AUTHORITY BY INTERNATIONAL INSTITUTIONS: ADVANCING INTERNATIONAL INSTITUTIONAL LAW (Armin von Bogdandy et al. eds., Springer 2010) *specific pages to be provided*

6. Participation in International Rule-Making

Ayelet Berman, 'Industry, Capture and Transnational Standard-Setting' in 111 American Journal of International Law (AJIL) Unbound (2017):112-118

Ayelet Berman, Tim Büthe, Martino Maggetti, Joost Pauwelyn, "Rethinking Stakeholder Participation in International Governance" (forthcoming)

7. Judicial Review and Monitoring

Boisson de Chazournes, '[The World Bank Inspection Panel](#)' in Alfredsson et al (eds), *International Human Rights Monitoring Mechanisms* (2009).

Devika Hovell, 'Due Process in the United Nations' (2016) 110 *AJIL* 1, pp. 1-29

Report of the Ombudsperson to the President of the Security Council of 2 February 2015, S/2015/80

Review of World Bank Decision-Making: the Inspection Panel: Resolution No. IBRD 93-10; Resolution No. IDA 93-6 ([the Resolutions](#))

8. Business, Global Supply Chains and Human Rights

UN Guiding Principles on Business and Human Rights

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[Report by Harvard expert Professor Ruggie to support development of FIFA's human rights policies](#) (14 April 2016)

Reinecke, J. and Donaghey, J. "The '[Accord for Fire and Building Safety in Bangladesh](#)' in response to the Rana Plaza disaster", *Global Governance of Labor Rights*, Edited by Axel Marx, Glenn Rayp, Laura Beke and Jan Wouters (Edward Elgar).

UN "Protect, Respect, Remedy" Framework

<https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>

[Ruggie, "For the Game. For the World", FIFA and Human Rights", Harvard Kennedy School, Corporate Responsibility Initiative Report # 68](#) (April 2016)

Sarfaty, Galit A. "Shining Light on Global Supply Chains." *Harvard International Law Journal*, 2015.

Evaluation

Exam Language

X English

First Try

X Document to submit: Research Paper

X Continuous assessment with registration*: Participation

Re Try

X Document to submit: Research Paper (RDeg)