



Advanced Economics of Regulation

Syllabus 2019/2020 [FINAL VERSION, 31-1-2020]

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Course description

1. The content of this course

This course aims to provide students with specialized knowledge in topical fields of economic and social regulation. Students are supposed to be already familiar with the methodology of economic analysis of regulation in order to bring the discussion to a more advanced level. This course prepares the students to use their skills both scientifically and in policymaking. The topics of the course include *inter alia* regulation of liberal professions, work-related risks, environmental harm and (in the form of papers written and presented by students) public utilities, while it also examines general topics in the economics of regulation like private (and self-) regulation and Cost Benefit Analysis.

In addition to the classes taught by Prof. Niels Philipsen, the course supports guest lectures by experts in specific fields. Prof. Michael Faure will teach two classes on the economics of environmental law, a field in which he has been active both academically and as a legal practitioner during his entire career. Furthermore, Prof. Roger Van den Bergh will give a guest lecture on the economics of federalism, a topic on which he has published several ground-breaking articles. Finally, Renny Reyes, a legal consultant and policy advisor who is also in the final stages of her EDLE PhD research, will present on Cost Benefit Analysis.

2. The goals of this course and learning objectives

This course builds on the earlier EMLE course 'Economic Analysis of Public Law' (particularly the version of the course taught in Rotterdam), by applying the concepts students learned in that course to specific domains of law. Moreover, it adds to the earlier EMLE course in that we will also discuss in more detail private and self-regulation, smart mixes of regulation (including mixes of regulation and liability rules) and economics of federalism.

Building on the course description of the above-mentioned earlier EMLE course, the first goal of this course is hence to demonstrate how economic theory can contribute to the understanding and the design of (public and private) regulation. At the end of the course students should be able to understand the various economic theories that describe behaviour of public and private actors and to be able to apply those theories in various contexts.



The second objective of the course is to help students develop analytical and writing skills in order to be able to implement economic theories in their research and future work. This will allow them to analyse, for instance, regulatory frameworks in their own country in light of the theories and examples studied in this course.

The third aim of the course is to help students develop a critical view on different aspects of policy and research. On the side of research, students should be able to identify problems in theories, e.g. its assumptions, and its application, allowing them to critically evaluate the value of different arguments. On the policy level, students should be able to critically analyse different national legislations, international agreements, or private regulation.

3. Requirements and materials

A list of mandatory readings for each class is presented below. Students are expected to read these materials before the class, to be able to participate in the group discussions.

In addition, a list of additional reading materials is provided for students who would like to study a particular topic in more detail. This list contains some classic papers and/or relevant policy papers, depending on the topic.

All non-copyrighted mandatory materials will be uploaded to Google Drive. Moreover, the lecture slides (when available) will be uploaded to Google drive. In most cases, in order to encourage student participation in class, the slides will only be uploaded *after* the lecture.

4. Methods of assessment

Your final grade in this course is composed of two parts: The first part is based on a paper and group presentation and constitutes 25% of your grade. For that purpose, students will be divided into groups of 3-5 students and each group will have to write on a specific topic. Examples include:

- Telecommunications
- Healthcare
- Transport (e.g. railroads, airlines)
- Energy markets (e.g. electricity, gas)
- Financial services
- Specific professional services (e.g. pharmaceutical services, architectural services)

Students need to prepare a paper (5,000 – 6,000 words) and presentation analysing one of the regulated industries or professions based on the economic theories and concepts discussed during the course. In addition, and to the extent it is relevant for the topic at hand, students are invited to discuss how regulation may conflict with competition law enforcement, similar to the example that we will discuss in class of the regulation of liberal professions. The deadline for registering paper topics is Wednesday 19 February (but earlier is better, of course) and the deadline for submitting the papers is Monday 2 March, 23:59.



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The last two classes will be devoted to short presentations (15-20 minutes) of the papers by the groups. Please note that every student needs to participate in the presentation. Timing the presentation well is essential. The grade will depend on the level and accuracy of the analysis (50%), structure (including presentation and discussion of RQ) (20%), use of literature (10%), language/layout (10%), and presentation (10%). This will be explained in more detail in the lectures of 19/20 February.

The second part of the final grade will be based on the student's performance in the written exam. The written exam will consist of three open questions (closed books) and will constitute 75% of your final grade. The exam will take place on **Wednesday 11 March**. Prior to the exam you will receive an explanation of the structure of the exam and examples of the types of questions that will be asked.

Course structure

The course consists of nine lectures and two classes with presentations by students. Below an overview is provided of the lecture topics, names of the lecturers, the required reading and some additional (optional) reading materials.

As indicated above, the slides used during the lectures will be provided to the students mostly after the class. This applies in particular for the classes prepared by Niels Philipsen. Guest lecturers may decide to provide lecture slides before the lecture or (in the specific case of Prof. Michael Faure) may not use slides at all.



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Lecture 1: Introduction

Prof. Niels J. Philipsen

Wednesday 15 January, 11.00 – 12.45 (L0-10)

- Introduction to the course: structure and overview
- Repetition: The public interest approach to regulation
- Repetition: The private interest approach to regulation
- Private versus public regulation
- Smart mixes of regulation: An introduction

Reading:

- Philipsen, Niels J., "The Role of Private Actors in Preventing Work-Related Risks: A Law and Economics Perspective", *European Public Law*, Vol. 24, 2018, pp. 539–554. *[For this class students only need to read pp. 541-548]*
- Erp, Judith (van), Michael G. Faure, Jing Liu, Markos Karavias, André Nollkaemper and Niels J. Philipsen, "Introduction: The concept of smart mixes for transboundary environmental harm", in Erp, Judith (van), Michael G. Faure, André Nollkaemper and Niels J. Philipsen, *Smart Mixes in Relation to Transboundary Environmental Harm*, Cambridge: Cambridge University Press, 2019, pp. 3-24.

Optional reading:

- Coase, Ronald C., "The Problem of Social Cost", *Journal of Law and Economics*, Vol. 3, 1960, pp. 1-44.
- Mueller, Dennis C., *Public Choice III*, Cambridge University Press, 2003, Chapters 2 and 3.
- Shavell, Steven, "Liability for Harm versus Regulation of Safety", *Journal of Legal Studies*, Vol. 13, 1984, pp. 357-374.
- Hertog, Johan (den), "Economic Theories of Regulation", in: Van den Bergh, Roger and Alessio Paccas, *Regulation and Economics*, Edward Elgar, 2012, pp. 25-95.
- Maks, J.A. Hans and Niels J. Philipsen, "An Economic Analysis of the Regulation of Professions" in Crals, Evy and Lode Vereeck, *Regulation of Architects in Belgium and The Netherlands*, Lannoo Campus, 2005, pp. 11-45. Available at SSRN: <https://ssrn.com/abstract=1631685>.



Lecture 2: Federalism

Prof. Roger Van den Bergh

Thursday 16 January, 11.00 – 12.45 (L0-12)

- The Choice for the Optimal Legal Area
- Bottom-Up Approach to Centralization
- Criteria for Centralization
- Economics of Federalism applied to the EU

Reading:

- Van den Bergh, Roger, "Farewell Utopia? Why the European Union Should Take the Economics of Federalism Seriously", *Maastricht Journal of European and Comparative Law*, Vol. 23, pp. 937-964.

Optional reading:

- Inman, Robert P. and Daniel L. Rubinfeld, "Rethinking Federalism", *Journal of Economic Regulation*, Vol. 11 (4), 1997, pp. 43-64.
- Kerber, Wolfgang, "Market Integration and Legal Federalism in the EU", in Ruffert, M. (ed.), *European Economy and People's Mobility*, Stuttgart: Mohr Siebeck, 2016, pp. 143-162. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2796585.



Lecture 3: Regulation of the Liberal Professions I

Prof. Niels J. Philipsen

Thursday 30 January, 15.00 – 16.45 (T3-06)

- Regulation of the Liberal Professions: The Political Debate
- Example I: Regulation of Legal Services

Reading:

- Philipsen, Niels J., "Regulation of Liberal Professions and Competition Policy: Developments in the EU and China", *Journal of Competition Law and Economics*, Vol. 6 (2), 2010, pp. 203-231

Optional reading:

- Akerlof, George, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism", *Quarterly Journal of Economics*, Vol. 84(3) (1970), pp. 488-500.
- Shapiro, Carl, "Investment, Moral Hazard, and Occupational Licensing", *Review of Economic Studies*, Vol. 53 (5), 1986, pp. 843-862.

- Maks, J.A. Hans and Niels J. Philipsen, "An Economic Analysis of the Regulation of Professions" in Crals, Evy and Lode Vereeck, *Regulation of Architects in Belgium and The Netherlands*, Lannoo Campus, 2005, pp. 11-45. Available at SSRN: <https://ssrn.com/abstract=1631685>.
- Paterson, Iain, Marcel Fink, Anthony Ogus et al, *Economic Impact of Regulation in the Field of Liberal Professions in Different Member States*, Study for the European Commission, Vienna: IHS (Institut für Höhere Studien), 2003, available at: https://ec.europa.eu/competition/sectors/professional_services/studies/executive_en.pdf
- Stephen, Frank H., James H. Love and Neil Rickman, "Regulation of the Legal Profession", in Van den Bergh, Roger and Alessio Paccas, *Regulation and Economics*, Edward Elgar, 2012.



Lecture 4: Regulation of the Liberal Professions II

Prof. Niels J. Philipsen

Friday 31 January, 9.00 – 10.45 (T3-24)

- Example II: Pharmacists
- Example III: Auditors

Reading:

- Philipsen, Niels J., "Regulation of Pharmacists: A Comparative Law and Economics Analysis", *European Journal of Comparative Economics*, Vol. 10, No. 2, 2013, pp. 225-241.
- Philipsen, N.J., "Background Note", in OECD (2009), *Competition and Regulation in Auditing and Related Professions*, DAF/COMP(2009)19, OECD: Directorate for Financial and Enterprise Affairs, Paris, 18 May 2010, 15-59. Available at: http://www.oecd.org/LongAbstract/0,3425,en_33873108_33844437_44284187_119814_1_1_1,00.html.

Optional reading:

- Akerlof, George, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism", *Quarterly Journal of Economics*, Vol. 84(3) (1970), pp. 488-500.
- Shapiro, Carl, "Investment, Moral Hazard, and Occupational Licensing", *Review of Economic Studies*, Vol. 53 (5), 1986, pp. 843-862.
- Volkerink, Bjørn, Patrick de Bas, Nicolai van Gorp and Niels J. Philipsen, *Study of Regulatory Restrictions in the Field of Pharmacies*, study for the European Commission / DG MARKT, 22 June 2007, Rotterdam: ECORYS (with METRO, Maastricht University).



Lecture 5: Regulation of Environmental Harm I

Prof. Michael G. Faure

Thursday 6 February, 15.00 – 16.45 (Y2-18)

- Environmental Harm and Efficiency
 - Pollution as an Externality
 - The Coase Theorem and Environmental Harm
 - The Need for Legal and Policy Instruments
- Environmental Standard-Setting
 - Types of Environmental Standards
 - Cost-Benefit Analysis and Guidelines of Standard Setting

Reading:

- Faure, Michael G. and Roy A. Partain, *Environmental Law and Economics: Theory and Practice*, Cambridge University Press, 2019, Chapters 2 and 4 (pp. 10-36 and 63-78).

Optional reading:

- Oates, W.E., 'The environment and the economy: environmental policy at the crossroad', in Quigley, J. and Rubinfeld, D. (eds.), *American Domestic Priorities: An Economic Appraisal*, Berkeley, CA, University of California Press, 1985, 311-345.
- Oates, W.E., Portney, B.R. and McGartland, A.M., 'The net benefits of incentive-based regulation: a case study of environmental standard-setting', *American Economic Review*, 1989, Vol. 79, 1233-1244.



Lecture 6: Regulation of Environmental Harm II

Prof. Michael G. Faure

Friday 7 February, 09.00 – 10.45 (Y2-18)

- Liability Rules versus Regulation (Shavell criteria)
- Environmental Regulation and Private Interest Theory
- Environmental Self-Regulation and Private Regulation
- Enforcement of Environmental Law
- Combination of Instruments

Reading:

- Faure, Michael G. and Roy A. Partain, *Environmental Law and Economics: Theory and Practice*, Cambridge University Press, 2019, Chapter 9 (pp. 182-210).

Optional reading:

- Erp, Judith (van), Michael G. Faure, Jing Liu, Markos Karavias, André Nollkaemper and Niels J. Philipsen, "Introduction: The concept of smart mixes for transboundary environmental harm", in Erp, Judith (van), Michael G. Faure, André Nollkaemper and Niels J. Philipsen, *Smart Mixes in Relation to Transboundary Environmental Harm*, Cambridge: Cambridge University Press, 2019, pp. 3-24.
- Shavell, Steven, "Liability for Harm versus Regulation of Safety", *Journal of Legal Studies*, Vol. 13, 1984, pp. 357-374.
- Faure, M., 'Limits and challenges of the criminal justice system in addressing environmental crime', *Revue Internationale de Droit Pénal*, 2016, Vol. 87(1), 11-36.
- Faure, M., 'A law and economics approach to environmental crime', in Bergin, T. ad Orlando, E. (eds.), *Forging a socio-legal approach to environmental harms. Gobar perspectives*, Oxon, Routledge, 2017, 78-105



Lecture 7: Cost Benefit Analysis

Renny Reyes

Wednesday 12 February, 09.00 – 10.45 (Y2-20)

- Rationales and Objectives of Regulatory Assessment
- Tools for Regulatory Assessment
 - CBA: Quantification and decision making, distributional issues, and costs under risk and uncertainty
 - RIA: Identification and assessment of problems, and proposal of regulatory or non-regulatory solutions

Reading:

- Adler, Mathew D., and Eric A. Posner, "Rethinking cost-benefit analysis", *Yale Law Journal*, Vol. 109, no.2, 1999. [*Students only need to read pp. 165-177!*]
- Radaelli, Claudio and Fabrizio De Francesco, "Regulatory impact assessment" in Martin and Lodge, *The Oxford Handbook of Regulation*, 2010, pp. 279-301.

Optional reading:

- Arcuri, Alessandra, "Risk Regulation", in Van den Bergh, Roger and Alessio Paccas, *Regulation and Economics*, Edward Elgar, 2012.



Lecture 8: Regulation of Work-Related Risks I

Prof. Niels J. Philipsen

Wednesday 19 February, 15.00-16.45 (C1-1)

- The role of employers in regulating work-related risks
- The role of employees in regulating work-related risks
- The role of insurers in regulating work-related risks
- Application to industrial accidents

Reading:

- Philipsen, Niels J., "The Role of Private Actors in Preventing Work-Related Risks: A Law and Economics Perspective", *European Public Law*, Vol. 24, 2018, pp. 539–554.

Optional reading:

- To be communicated in class.



Lecture 9: Regulation of Work-Related Risks II / Exam preparations

Prof. Niels J. Philipsen

Thursday 20 February, 15.00-16.45 (Y2-18)

- Application to occupational diseases
- Work-related risks: insurance vs no-fault compensation schemes

- Discussion of progress papers and presentations
- Discussion of how to prepare for the exam

Reading:

- Faure, Michael G., "Compensation for Occupational Diseases and the Importance of Prevention: A Law and Economics Perspective", *European Journal of Social Security*, Vol. 9, 2007, pp. 127-168.

Optional reading:

- To be communicated in class.



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Classes 10-11

Student presentations (co-ordinated by Prof. Niels J. Philipsen)

Wednesday 4 March, 15.00 – 16.45

Thursday 5 March, 9.00 – 10.45

Classes 10 and 11 will be devoted to group presentations in class. More information about the paper topics is provided on page 2 of this syllabus, and further explanation will be provided in class.

Furthermore, the teacher will use this time to explain the structure of the exam, what students can expect from it, and how they can prepare for the exam (to the extent that these issues have not yet been discussed in earlier meetings).