Marta Cantero Gamito and Hans-Wolfgang Micklitz, *The Role of the EU in Transnational Legal Ordering Standards, Contracts and Codes,* Edward Elgar Publishing 2020, ISBN 9781788118408, 352 pp. Hardback available for £105

While it may not be very common to review a book about (transnational) private law in a journal devoted to European administrative law, the phenomenon of standardization creates a welcome convergence of private and public law scholarship. The edited volume by Marta Cantero Gambito (Colegio Universitario des Estudios Financieros, Madrid) and Hans-Wolfgang Micklitz (European University Institute) is certainly also relevant and educative from an administrative law perspective. Indeed, many of its chapters studying various economic sectors illustrate the interaction between private and public law. The book further features contributions by scholars at various stages of their career – from PhD researchers to well-established scholars – many of whom have a connection to the European University Institute (EUI).

Quite in line with its title, the book is an enquiry into the role of the EU in the transnational regulation by means of standards, contracts and codes. Specifically, the edited volume examines this question through the perspective of transnational private law theory,[1] combined with that of the external dimension of European Regulatory Private Law.[2] It offers insights into the global reach of EU laws and norms, depicting the regulatory capacity of standards beyond the internal market. As the editors explain, standards – which they define as 'a rule or practice within a specialized community' – are a multi-faceted legal phenomenon, and can take the form of technical standards, standard contract terms or codes of conduct (p. xi). In this sense, the private law focus of the publication leads to a broader scope of the definition than what would traditionally be applied in administrative law.

The book's aim is not to question the validity and legitimacy of private standards,[3] but rather to 'identify communalities in the substance of transnational legal ordering with a view to illustrating its inward normativity and its outward capacity for regulatory and policy diffusion' (p. 3). This approach makes the edited volume not only highly valuable for administrative lawyers wanting to understand the *de facto* effects of standards better, but also suitable to gain a more comprehensive insight into how private law and private actors help to spread standards extraterritorially. For public lawyers, the benefit of this volume

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1 See eg F Cafaggi, 'Transnational private regulation: regulating global private regulators' in S Cassese (ed), *Research Handbook on Global Administrative Law* (Edward Elgar Publishing 2016) 212-241.

2 See eg M Cremona and H-W Micklitz, *Private Law in the External Relations of the EU* (Oxoford University Press 2016).

3 M Eliantonio and C Cauffman, *The Legitimacy of Standardisation as a Regulatory Technique A Cross-disciplinary and Multi-level Analysis* (Edward Elgar 2020) and P Delimatsis, *The law, economics and politics of international standardization* (Cambridge University Press 2015).

lies in it providing a deeper understanding of the normativity of standards through mechanisms other than the implementation into law.

Without a doubt, this book demonstrates the significant role played by private actors in creating the extraterritorial reach of EU law. All of the case studies discussed clearly show the regulatory power exercised via private standards, contracts, and codes throughout various sectors. These sectors include: health (van Gestel and van Lochem);[4] food (Verbruggen, Paz de la Cuesta);[5] IT and internet governance (Spindler, Busch);[6] what could be described as markets transactions in the sense of energy trading (de Almeida);[7] securitization (Juutilainen);[8] banking (Pijl);[9] and finance (Marcacci).[10]

One can take the chapter by Paul Verbruggen as example: his analysis of food safety standards and certification mechanisms illustrates how EU food law – as well as the Product Liability Directive – provide a point of departure for the adoption of private standards and stimulate their adoption. In areas such as food hygiene, traceability, and pesticide residues, private standards and certification schemes are developed by the key players in the market, and serve to ensure compliance with the legislative requirements. As Verbruggen argues, the role of the EU and the Member States does not only lie in encouraging private standardization, but increasingly also in trying to strengthen the legitimacy through 'constitutionalization', for instance by requiring more participatory openness. This, in turn, leads to the development of meta-standards such as those set by the Global Food Safety Initiative (GFSI).

While the mechanisms explained by Verbruggen are not foreign to those who have researched standards from an administrative law perspective, other chapters provide examples of private regulation that are less familiar to public lawyers. For instance the IT related chapters – Spindler's on internet and e-commerce standardization and Busch's on the regulation of the platform economy – show transnational private regulation via standard terms and conditions, standard license contracts, and platforms like Uber or Airbnb standardizing the contracts that their users can enter into with each other. The chapter by Busch very clearly sets out how these platforms not only act as intermediaries between the commercial users and customers, but actually regulate the contractual agreements and other user behavior, such as feedback mechanisms. Busch argues that any regulation of the platform economy through the EU needs to

4 M Cantero Gamito and H-W Micklitz, *The Role of the EU in Transnational Legal Ordering Standards, Contracts and Codes* (Edward Elgar Publishing 2020) ch 2.
5 ibid, chs 3 and 11.
6 ibid, chs 5 and 6.
7 ibid, ch 8.
8 ibid, ch 9.
9 ibid, ch 12.
10 ibid, ch 10.

take into account platforms as part of the regulatory chain. He envisages the regulation of platforms as a meta-regulation, and advocates for a 'New Approach' style regulation comprising essential requirements in legislation and harmonized standards for digital services.

Next to the sector-specific contributions, the book contains two chapters which address the toolbox of transnational private regulation in a broader perspective. Barbara Warwas, in her chapter devoted to dispute settlement in international trade law,[11] shows how arbitration serves as a mechanisms for enforcing standards. The chapter argues that the EU has been promoting alternative dispute resolution mechanisms and through that advancing consumer protection. The chapter also puts forward the argument that, in trade deals, the EU resorts to establishing arbitration bodies, which consequently fosters the standardization of consumer dispute resolution clauses in EU consumer contract law. The EU thus actively promotes a model of arbitration that is – at least in theory – in accordance with the EU's high consumer protection standards. Interestingly, Warwas contends that, by using arbitration, the EU is thereby depriving Member States' national courts from reviewing disputes arising out of private contractual relationships entered into following EU trade deals (like the CETA). Moreover, the EU is promoting a preferred model of review mechanism. Mataija's chapter[12] takes the TBT Agreement as an example of how WTO law is fostering the development of global standards by private actors by promoting the reliance of WTO member states on such international standards when adopting regulatory measures. However, the author also reasons that this is only true in so far as the standards in question conform to certain governance criteria which form a precondition for recognition of the WTO standards.

Overall, the selection of chapters described above shows that the book makes a rich contribution to the debate surrounding the regulatory capacity of standards in the EU and beyond. This rich and diverse analysis in the respective chapter forms, at the same time, my point of criticism. While I may be influenced by my own public law perspective in saying so, the varied definitions and concepts on what constitutes a standard and what constitutes transnational regulation in the chapters makes it difficult to: on the one hand, establish a connection between the individual chapters and; on the other hand, to extract the key message from the book. Nevertheless, the book certainly delivers on its promise, given that its aim was explorative.

This is not to say that the book does not address the connection between its chapters. Cantero Gamito establishes, in her introductory chapter, a tentative typology of the role of the EU in transnational legal ordering as presented in the chapters (p. 15). This typology distinguishes between: (i) chapters discussing

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11 ibid, ch 4.
12 ibid, ch 7.

the framework established by the EU institutions concerning private governance;[13] (ii) chapters where contractual frameworks created through epistemic communities established in the EU influence governance of the respective sector in the world;[14] (iii) chapters mostly dealing with regulated markets where EU regulatory contract rules are used as template outside the EU and;[15] finally, (vi) chapters where it is shown that the EU uses private procedures to achieve its own objectives outside the EU.[16] This already demonstrates that the term 'EU' does not necessarily refer to the EU as organization or its institutions in the context of the book. This term takes instead a broader view which also includes EU private actors such as companies, standard-setting organisations or epistemic communities within the internal market. In this regard, the volume does not provide for a more thorough analysis concerning potential differences in the roles of these actors in transnational ordering, or for a more nuanced perspective on the legal questions raised by the different scenarios discussed. Finally, it is unclear if the typology can be generalized beyond the book chapters.

One common chord struck in many of the chapters is a call for recognizing the importance of private actors in regulatory structures in the EU and beyond; this is often combined with identifying or calling for some form of baseline rules on how the private regulatory power should be exercised in terms of the procedural and institutional design of the standard-setting process. However, the introductory chapter by Cantero Gambito raises questions regarding the degree of constitutionalisation of private rulemaking which is desirable, given the potential impact on the efficiency of procedures (p. 22).

The chapter of van Gestel and van Lochem is a good example of one exploring a constitutionalisation of private governance. The authors use the example of medical device regulation and the PIP breast implant scandal to reveal the complicated relationship between public and private law in the context of the New Approach. This is certainly a key contribution for the readers of the Review of European Administrative Law, and an interesting example of a more normative reflection on transnational private ordering. They argue that the transmission belt theory concerning the transfer of democratic legitimacy in delegated rulemaking does not fully caption the realities and complexities of standardization. Problems are identified especially in the context of the enforcement of standards. van Gestel and van Lochem thus advocate for a clearer articulation of the legal responsibilities in the setting of harmonized European standards and their enforcement, and propose three different models with varying degrees of constitutionalisation of private rule-making. The envisioned potential ap-

13 ibid, chs 2, 3 and 4.
14 ibid, chs 5, 6 and 7.
15 ibid, chs 8, 9 and 10.
16 ibid, chs 11 and 12.

proaches to a 'renewed New Approach' (p.45) are: (a) the agency model, where private standards become mandatory and require Commission approval – bringing with it also increasing juridification of the standard-setting procedures – and enforcement, as well as judicial review; (b) a public-private partnership model (PPP), where more freedom to show compliance with the essential requirements via self-regulation rather than harmonized European standards will be facilitated, and; (c) a disentanglement, without public involvement in the standardization and certification.

In this regard, the concluding contribution by Rodrigo Vallejo stands out, as he places the preceding chapters into the context of the European regulatory private law (ERPL) and adds a normative perspective to the external dimension. He subsumes the examples of proceduralisation from the chapters in the edited volume as well as other literature in the field under an emerging 'private administrative law'. He further explores whether the three models put forward by van Gestel and van Lochem would lend themselves to generalization beyond the New Approach.

In conclusion, and as was hopefully made clear throughout this review, every critical point I raised relates to wanting to know more about this interesting field. They are not discussed to downplay the great value of this book for a broad audience, but rather to encourage the authors and editors to continue their work, going beyond the explorative chapters in this book. While Cantero Gambito and the respective sector-specific chapters show how the EU aims to export its own rules through private standards, codes and contracts, the epilogue contributed by Hans-Wolfgang Micklitz opens up a broader debate concerning what motivates the EU's regulatory export, and whether it should be the EU to export its values. It is these question that I hope the book contributors will continue to work on. Furthermore, as also argued in Micklitz's epilogue, the book fills an important gap between the literature on EU external relations and the literature on transitional (private) law as well as global administrative law. Lastly, the book is certainly a very recommended read: for public and private law researchers with an interest in standardization on EU and global level; for scholars that work in the blurring borderline of public law and private regulation; and to practitioners working in the respective fields covered in the book chapters who may find it is of value to them.

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