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Governance structures for nanotechnology in the EU

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Overview of presentation

- **Intro – Policy context**
- **Why should we care about the law**
- **What does the law look like – *de lege lata***
- ***De lege ferenda*: what does the governance structure look like**



Intro – Policy context

- R&D support for nano overwhelming
- ‘Legislation’ typically seen as R&D framework programmes
- Funds (Commission, National Science Foundation) calling for review of regulation – Parliaments lag behind



Why should we care about the law

- Altruistically: environment, human health
- Selfishly: need for stable research and investment environment
- *Cf.* biotech/GMOs
- Generally: tension regulatory/trade law (incl. ‘chilling effect’)



What does the law look like – *de lege lata*

- No specific, tailor made law
- \neq *no* law applies
- At the very least: product liability law, and ‘duty of care’, using the benchmark of the ‘*bonus pater familias*’



What does the law look like – *de lege lata ctd*

- EU: usual suspects:
- GMO legislation: Directive 2001/18 (deliberate release) ; Dir 90/219 (contained use)
- Dangerous substances/chemicals legislation - quid REACH?
- Liability Directive



What does the law look like – *de lege lata ctd*

- ! US and EU risk analysis procedures compared
- 4 steps, circular/mesh v linear
- ! Different professional groups for each step
- EU more prone to precaution?
- Quid re input of regulatory agencies



What should the law look like – *de lege ferenda* – in part. governance

- ‘Governance’ in EU context started of as a remedy, not an inspiration
- 2001 White Paper on governance is to a large degree about reconnecting the EU project to its citizens
- Better regulation part of that drive
- In a first phase, this paradoxically (better regulation?) led to the EU haemorrhaging policy docs, Communications etc



Governance *ctd*

- Increased participation of civil society, ia through the 'Aarhus' process (relevant Communication plus law)
- Classic problem of industry v NGO participation
- Even within industry however, challenge of having SMEs and academia on board and not just big industry
- Limitations of relatively small amount of Commission officials



Governance *ctd*

- Expert consultation and relevant policy doc
- Impact of precautionary principle here: maverick science etc
- Challenge of reigning in the MSs – cf GMO debacle and WTO rebuke
- Co- and self regulation mooted, but not a strong option at this stage



Conclusion

- ‘Converging’ technologies means no easy regulatory pigeon-holes
- Chilling effect both of lack of regulation, and of trade law,
- Must not be underestimated, but
- Neither must it lead to haste



Conclusion ctd.

- *The uniform, constant and uninterrupted effort of every man to better his condition, the principle from which public and national, as well as private opulence is originally derived, is frequently powerful enough to maintain the natural progress of things toward improvement, in spite both of the extravagance of government, and of the greatest errors of administration. Like the unknown principle of animal life, it frequently restores health and vigour to the constitution, in spite, not only of the disease, but of the absurd prescriptions of the doctor.*
 - Adam Smith, The Wealth of Nations, Book II Chapter III