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Self-Regulation as a Regulatory Strategy – A Comparative Law Perspective: Table of findings

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Summary

This last report approaches the comparison among the data provided by the preceding national reports. It will stress the reciprocal difference and correspondences through concise presentations and open questions following the four main fields of research: constitutional aspects of self-regulation, delegability of legislative and administrative powers, limits to delegation, nature of regulatory body and its consequence, judicial review and liability of private regulators. In the comparison tables, the answers to the aforementioned questions will be presented, facilitating the analysis of each national system in relation to the others.

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I. Constitutional Aspects of Self-Regulation

I.1 Constitutional Aspects Concerning the Use of Self-Regulation in Law Making, Monitoring and Enforcement

- Which countries explicitly prohibit the use of self-regulation?
- Is prohibition general or sector specific? If it is sector specific, what are the sectors and the rationales?
- Which countries explicitly permit or promote self-regulation?
- Is permission general or sector specific?

Notes:

- The questions concern (1) not only Constitutional explicit provisions, but also (2) principles that are derived from the Constitutions and have been articulated by Constitutional Courts or equivalents. Since I have the impression that there are not many explicit provisions an effort should be made to identify constitutional principles of self-regulation articulated by the Courts either developing general principles such as private autonomy or freedom of association or within specific sectors such as press, commercial speech and advertising, professional associations etc.
 - Answers can also be multiple, if conceptually compatible. For example, self-regulation can be prohibited in certain sectors but promoted in other sectors.
1. Reasons for general prohibition may be based on:
 - a) Protection of fundamental rights or
 - b) Competition law. Competition law at European treaty level forbids the use of self-regulation when in contrast with competition law.
 - c) There can also be other rationales.
 2. Reasons for general promotion may be based on increasing direct democracy (The example of herding cooperatives in Finland – The indigenous people in the Northern part of Finland have been delegated the right to organise their reindeer herding activities as they will. A statute delegating this right, however, ensures that every man possessing reindeers have the right to participate to the activities of the community and have the right to benefits that this self-organisation brings.)

Table 1.1. Promotion of Self-Regulation at Constitutional level

Explicit, general pro-motion of self-regulation?	Implicit general promotion of self-regulation?
Portugal	Finland (property, freedom of association) Italia (FOA, freedom of contract) Romania (FOA, FOC, private autonomy.) UK (Private Autonomy, FOC) UK constitution is essentially neutral on the subject of self-regulation but that this neutrality of itself has enabled it to flourish and the recognition of certain principles can be said implicitly to promote the use of self-regulation]

	<p>NL (PA, primacy of private law, self-regulation test in Drafting Guidelines)</p> <p>SP (Art. 9.2 SC domain of freedom and autonomy of individuals to participate in political, economic, cultural and social life, by their own or in group, then art. 22 SC of FOA)</p>
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Summary: *Generally, there is no explicit promotion of self-regulation in the Constitutions. The right to self-regulation is implicitly articulated in the Constitutional articles reflecting principles, such as, private autonomy, freedom of association, or primacy of private law.*

Only the Portuguese Constitution explicitly promotes private participation in regulation. In the UK, perhaps because of the absence of a fixed documentary constitution, the self-regulatory approach has flourished across sectors and has been recognised at the legislative, executive and judicial levels.

Table 1.2. Sector Promotion of self-regulation at Constitutional level

	Explicit Sector specific promotion of self-regulation?	Implicit Sector specific promotion of self-regulation? ¹
Professional orders	<p>Spain</p> <p>FIN</p> <p>NL (yes, but by the rather specific Article 134 bodies)</p>	<p>Romania</p> <p>Italy (art. 35)</p> <p>France?</p>
Media	<p>Spain</p> <p>Italy</p> <p>UK</p> <p>FIN</p>	<p>Romania</p> <p>NL</p> <p>Spain (freedom of expression and to issue information)</p> <p>Italy (art. 21)</p>
Advertising		<p>NL</p> <p>Spain (Freedom to conduct a business)</p> <p>Italy (art. 21)</p>
Financial Markets		<p>Italy (art. 41, art. 42; art. 47)</p> <p>Spain (Freedom to conduct a business)</p>
Stock EX		<p>Spain (Freedom to conduct a business)</p>

¹ UK: The point I was trying to get across in the report is that in terms of constitutional norms, England and Wales is neutral and cannot be said to promote or prohibit either implicitly or explicitly the use of self-regulation in any specific sector. I concede above that one can say that self-regulation is implicitly promoted generally but only in the loose sense that the structural conditions which led to its existence (a neutral constitution) continue.

		Italy (art. 41, art. 42; art. 47)
Sports		Italy (art. 32; art. 18; art. 117, par. 3)
Other	Spain (universities, trade unions) NL (trade unions, labour law) FIN (trade unions) Italy (trade unions: art. 39)	Spain (art. 51 SC on consumer protection)

Table 1.3. Prohibition at Constitutional level

Explicit general prohibition of self-regulation?	Implicit general prohibition of self-regulation?
	NL (rule of law) Romania (organic laws) Finland (rule of law. Applies: not in relation to pure self-regulation, but in relation to delegated self-regulation) France (rule of law) Spain (hierarchy of sources of law and principle of legality in certain domains, i.e. restriction of rights) Italy (rule of law; respect of fundamental rights)

Table 1.4. Sector Prohibitions at Constitutional level

	Explicit Sector specific prohibition of self-regulation?	Implicit Sector specific prohibition of self-regulation?
Prof. or- ders	NL (although materially self-regulation was retained, the bodies were made public)	
Media		
Advertis- ing		
Financial markets		
Stock EX		
Sports		
Other	NL (e.g. criminal, tax) Finland (criminal)	Spain (Art. 25 SC criminal and administrative sanctions)

	<p>Spain (limits to military association)</p> <p>Italy (criminal: art. 17 – 18; limits to military association: art. 18, par. 2; tax)</p>	
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Questions: If self-regulation is sector-promotion specific (as in professional activity or in the press/media sector), what are the normative Constitutional grounds (Freedom of association, freedom of speech, others)?²

Summary: *It seems that there are few explicit or indeed implicit prohibitions in the Constitutions on the use of self-regulation. Constitutional principles such as the rule of law or obligation to legislate in the area of fundamental rights or organic laws, refer to the prohibition to delegate legislative and administrative powers, but not to the right to self-regulate or self-organise. Of course, also prohibition to delegate regulatory power is a de facto prohibition of exclusive right to self-regulate in certain areas, but does not prohibit the concurrent public and private actions. (In this framework the private regulatory actions can be organised in the limits of private law simultaneously with the public approach.)*

I.2 Constitutional limitations on the use of self-regulation concerning dispute resolution and enforcement

Note: these questions concern the constitutional implications concerning the possibility of using ADR or other forms of dispute resolution mechanisms, such as arbitration or mediation. Explicit Provisions or Constitutional principles may condition the use of these dispute resolution mechanisms.

It is unclear whether legal systems conceive legislative attribution of dispute resolution powers to private bodies as delegation that would imply the existence of an original power of public institutions or whether such legislation should simply be considered as the expression of private autonomy in the field of dispute resolutions. An effort should be made to indicate whether the legal system operates under the principle of public monopoly of judicial enforcement or whether the two coexist³. A second question concerns the rationale to legislate on dispute resolution, i.e. whether it is based on private autonomy or there are other principles⁴.

² Italy: freedom of association (art. 18 Const.); freedom of speech (art. 21 Const.). Also relevant are art. 39 Const. (“labour union organisation is free”); art. 41, par. 1 Const. (“private economic initiative is free”) and, more in general, art. 2 Const. (“the Republic recognizes and guarantees the inviolable rights of man, both as an individual and as a member of the social groups in which one’s personality finds expression”).

³ In the Netherlands they coexist, but we might have to do some more research into to what extent the constitutionally entrenched prevalence of judicial enforcement poses limits on the use of ADR.

⁴ Italy: There are not constitutional provisions concerning the possibility of using ADR or other forms of dispute resolution mechanisms. However, according to the prevailing doctrine, they are not against constitutional precepts (art. 102: “*Judicial functions are exclusively exercised by ordinary courts regulated by norms about the organization of the judiciary. There may not exist extraordinary or special judges*”; art. 24: “*Everyone may bring cases before a court of law in order to protect their rights under civil and administrative law. Defense is an inviolable right at every stage and instance of legal proceedings*”) because they find their basis in the agreement of the parties, who deny ordinary courts. I thus think that Italian legal system operates under the principle of public monopoly of judicial enforcement: ADR are in fact considered as the expression of private autonomy; arbiters have private nature and as such, cannot have enforcement powers.

Table 2.1. Explicit prohibitions and promotions of dispute resolution at the Constitutional level

Explicit, general prohibition	Explicit sector specific prohibition	Explicit, general promotion	Explicit sector specific promotion
NL (Art. 17 of the Constitution stipulates that in any case citizens may not be deprived of access to a judge so that is a limit to ADR) Spain (Art. 117.3 SC exclusivity of judges to exercise judiciary powers)	NL (the element of binding ADR is excluded from the governmental power to declare a collective labour agreement generally binding)		Spain (Art. 125 very marginal mention to the participation of citizens in the judiciary function)

Table 2.2. Implicit prohibitions and promotions of dispute resolution at the Constitutional level

Implicit general prohibition of self-regulation?	Implicit Sector specific prohibition of self-regulation?	Implicit general promotion of self-regulation?	Sector specific promotion of self-regulation?
		Finland (The existence of Ombudsmen in the Constitution. But in Finland ombudsman is not private, but public authority – So, disputable whether promotes self-regulation. Above all, it promotes conciliatory, soft measures, to dispute resolution.) Spain (Similarly to Finland, art. 54 of the SC establishes the Ombudsmen as a non-judiciary protection of rights. Also public nature)	

II. Delegability of Power from Public to Private Actors

The purpose of this Chapter is to verify whether there are limits to rule-making power's delegability from public to private actors. These limits can derive from Constitutional provisions or from rules that each legal system defines at sub-Constitutional level. It is useful to distinguish between delegation of legislative power and delegation of administrative power. It is also relevant to distinguish between delegation to public actors and to private actors⁵.

Further attention should be paid to the possibility that, instead of delegating rule-making power, delegation concerns monitoring compliance with rule or delegating conflict-resolution power to private dispute-resolution bodies.

II.1 Delegability of Legislative and Administrative Powers to Public Entities.

(For example, consider delegation of administrative power to independent regulatory authorities.)

Table 1. Delegability from public to public (lower level)

Delegability of legislative power to administration is admissible	Delegability of adm. power is admissible	Delegability of monitoring power is admissible	Delegability of dispute resolution power is admissible
NL (yes if there is an explicit statutory authorisation) France Spain (art. 82 SC) UK Romania (not organic) Finland (Constitutional right – Not possible to delegate legislation that concerns area of fundamental rights.)	FIN (Const. Also lower level regulatory powers than Acts and Decrees can be delegated. Not considered as legislation.) NL France Spain (art. 97 SC) UK Romania Italia	FIN (Const.) NL France Spain (art. 97 SC) UK Romania Italia	FIN (Sector sp. legislation) NL (yes as long as this does not exclude the courts altogether) France Spain UK Italy

⁵ [UK: I am rather concerned that this approach is based on the assumption that all rule-making power is vested in the state which rather makes a nonsense of the idea of self-regulation as far as the UK is concerned. The fundamental point is that it is private actors who have delegated power to the state. In some instances it is relevant to talk about those powers being returned to private actors (where legislation is in place distributing that rule making power) but often it is simply the case that rule-making power has never been taken away from private actors.]

II.2 Delegability of Legislative Powers to Private

II.2.1 Delegating regulatory, monitoring compliance and dispute resolution powers from public to private actors

Here by private actors it is meant private regulators, i.e. bodies that have legal personality and some type of governance structure. I am not considering delegation to individual firms as it happens in many regulated markets.

Besides delegation of regulatory power, this Chapter also looks at delegation of monitoring compliance (especially when no delegation of legislative or administrative powers has taken place) and delegation of dispute resolution powers. This latter question is aimed at identifying the possibility that systems of mandatory mediation or mandatory alternative dispute resolution, ADR, can be introduced.

As mentioned in the previous Chapter concerning at the Constitutional level, it is unclear whether legal systems conceive legislative attribution of power to private bodies to mean delegation in the areas of law-making, monitoring and dispute resolution or if such legislation should simply be considered as the expression of private autonomy. Delegation implies the existence of an original power of public institutions. The domain of private autonomy is related to original regulatory power that private actors can exercise. Only the power that is originally attributed to public actors can be delegated.

The following questions presuppose that in all the areas, law-making, monitoring and enforcement the power of private regulators is delegated. This does not imply that it concerns only those countries that endorse the principle of public monopoly. The focus should be on those areas where there is delegation either because explicit legislation exists that refers directly or indirectly to delegation or because it can be interpreted as a delegation.

Table 2.1. Delegation to private actors

Delegability of legislative power to private actors is admissible	Delegability of adm. power to private actors is admissible	Delegability of monitoring power admissible	Delegability of dispute resolution power is possible
Prohibited in all countries? Spain: Prohibited	Finland (Const.) NL (but this will turn them into GALA b-type bodies) France (Const.) Spain UK Romania Italia	Finland (Const.) NL (but this will turn them into GALA b-type bodies) France (Const.) Spain UK Romania Italia	Finland (Sector legislation, not exclusive) NL (but this will turn them into GALA b-type bodies) UK France? (Court decisions?) Romania? Spain (art. 9.2 SC) Italy (delegation is not considered as delegation of public powers. It is a question of a limit to private autonomy and not a delegation)

Summary: *The French, Finnish and Romanians have explicit but rather general Constitutional limitations that prohibit the delegation of legislative powers to either private or public. The Dutch and the Italians have only implicit limitations to delegate legislative powers in the Constitution and in the delegating Acts. The Finnish, the French have also explicit Constitutional provisions concerning the delegability of administrative powers to either private or public.*

Questions:

- Is there no difference between delegability of administrative powers to private or to public? In Finland there is a difference – Delegation is easier to public than to private. In Netherlands 1) delegation will still mostly occur to public parties, because the statutory provision authorising delegation points to a specific authority, and 2) an authority may have a private legal form but still ‘behave’ in a very public way, e.g. the AFM.
- When there is a divergence between delegability to public and to private, what are the reasons? On which legal principles are these reasons based upon? (Examples could be: the lack of direct or indirect democratic legitimacy or the conflict of interest.)⁶

II.2.2 On the meanings of delegation and the difference with co-regulatory procedure and *ex post* recognition

II.2.2.1. Provisions concerning delegation

Delegation may be considered only one of the possible devices to empower a private regulator. Do legal systems have ways to empower a private regulator other than formal delegation? For example, has the *ex post* recognition through approval of regulatory activity performed by private regulators been used at national level?⁷

Ex post recognition is a case in which the private regulator has acted in the belief that no approval was needed for the regulation to affect the members. Then the public authority wants to give wider effects to those rules and recognise them *ex post*, giving them effects beyond the members.

A distinction should be made clear between *ex post* recognition and *ex post* approval.

Ex post approvals are cases in which the private regulator drafts the regulation and then the public regulator or another public authority approves it *ex post*. Here there is no formal *ex ante* delegation, but there is *ex post* control, which can either be on the merits or simply on legality. If the regulation enacted by the private regulator can only enter into force once it has been approved, it does not belong to the domain of *ex post* recognition.

Do legal systems make a difference between *ex ante* delegation and *ex post* approval? Are these distinctions simply procedural, or do they affect the extent of private regulatory power and the ability to review it by the judges?

⁶ Italy: I agree, there is difference (legal principles on which this difference is based upon: lack of democratic legitimacy; conflict of interest; risk of violation of administrative procedure Act: due process principle).

⁷ In Italy there can be found some forms of *ex post* recognition through approval of regulatory activity performed by private regulators. Italian self-regulatory advertising system can be considered, for example, as a typical case of purely private self-regulation, *ex post* recognized by State (by Legislative Decree). It was born, in fact, in order to compensate the lack of public law rules and aiming at creating an autonomous, separate system.

In the Netherlands the government has the power to declare collective (labour) agreements generally binding *ex post*.

The following questions aim at distinguishing between *ex ante* delegation and *ex post* approval in a framework in which it was clear that private regulator was acting on the expectation that public regulator would have to approve the regulation to enter into force.

Since I have the impression (correct me if I am wrong) that no general rules on these matter exist⁸, I would rather have your answers on a sector by sector structure. But it is useful to have a table in which it is clarified which countries have general statutes and which ones have chosen a sector specific approach.

Table 2.2.1. Provisions concerning delegation

General Statute concerning delegation to private actors	Sector by sector statutory provisions concerning delegation	
NL (yes, but only very general rules concerning delegation of administrative power)	Professional orders	Spain, Finland, Romania, France, Italy NL (for example Act on Advocacy and Notaries Act)
	Media	NL (Media Act) Italy
	Advertising	Italy
	Financial Markets	UK Finland – but the delegation is not considered as delegation of public powers. (Controversial – It is more a limitation of private autonomy and not a delegation.) NL Italy
	Stock EX	UK Finland – but the delegation is not considered as delegation of public powers. (Issue is controversial – It is a question of a limit to private autonomy and not a delegation.) NL

⁸ NL: the GALA does give some general rules about delegation of administrative power but these are hardly relevant in this context. there always also has to be sector-specific legislation enabling delegation, see Article 10:15 GALA

	Sports	Spain, Portugal Italy
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Summary: Generally, in all countries discussed, the scopes of delegated regulatory powers are specified in delegating Acts. The Netherlands has the most detailed generally binding provisions concerning delegated regulatory powers. Some the other countries, such as Finland and France, have derived the general limits of delegation from the Constitutional provisions.

II.2.2.2. Different types of regulatory coordination mechanisms

Table 2.2.2.a. Professional orders

Only Delegation <i>ex ante</i>	Delegation <i>ex ante</i> and formal approval <i>ex post</i>		Only approval <i>ex post</i>	
	<i>ex post</i> on the merits	<i>ex post</i> on the legality	<i>ex post</i> on the merits	<i>ex post</i> on the legality
Italy (delegation <i>ex ante</i> through statutes; regulations and deontology rules implement and integrate ordinary legislation).	Finland NL: in specific legislation e.g. Article 30 of the Act on Advocacy. Review for non-conformity with the public interest.	Finland Spain NL: ministerial review. Regulation can only come into force once approved. (e.g. regulation by the Notaries' Professional Organization and KNMG) Review for non-conformity with the law and the public interest.	UK	UK

Table 2.2.2.b. Media

Only Delegation <i>ex ante</i>	Delegation <i>ex ante</i> and approval <i>ex post</i>		Only approval <i>ex post</i>	
	<i>ex post</i> on the merits	<i>ex post</i> on the legality	<i>ex post</i> on the merits	<i>ex post</i> on the legality

Finland (implicit – not delegation through statute but a constitutional right, freedom of speech guarantees the right to self-determine the content)				
Netherlands				
Spain (depending on the issue i.e. broadcasting contents, no need for <i>ex post</i> approval)				

Table 2.2.2.c. Sports

Only Delegation <i>ex ante</i>	Delegation <i>ex ante</i> and approval <i>ex post</i>		Only approval <i>ex post</i>	
	<i>ex post</i> on the merits	<i>ex post</i> on the legality	<i>ex post</i> on the merits	<i>ex post</i> on the legality
Finland (implicit – not delegation through statute but a constitutional right)				
Spain (again, depending on the issue i.e. organisation of the sports modality, no need for <i>ex post</i> approval)				
Italy (explicit, through statutes)				

Table 2.2.2.d. Financial markets

Only Delegation <i>ex ante</i>	Delegation <i>ex ante</i> and approval <i>ex post</i>		Only approval <i>ex post</i>	
	<i>ex post</i> on the merits	<i>ex post</i> on the legality	<i>ex post</i> on the merits	<i>ex post</i> on the legality
Netherlands	Finland	Finland		
Italy (both explicit, through statute and implicit, as a constitutional right)				

Table 2.2.2.e. Stock EX

Only Delegation <i>ex ante</i>	Delegation <i>ex ante</i> and approval <i>ex post</i>	Only approval <i>ex post</i>

	<i>ex post</i> on the merits	<i>ex post</i> on the legality	<i>ex post</i> on the merits	<i>ex post</i> on the legality
Netherlands Spain (No need for <i>ex post</i> approval on behavioural standards)	Finland	Finland		

Table 2.2.2.f. Advertising

Only Delegation <i>ex ante</i>	Delegation <i>ex ante</i> and approval <i>ex post</i>		Only approval <i>ex post</i>	
	<i>ex post</i> on the merits	<i>ex post</i> on the legality	<i>ex post</i> on the merits	<i>ex post</i> on the legality
Finland (implicit – not delegation through statute but a constitutional right) Italy (explicit, through statute : Legislative Decree No. 74/1992)				

Summary: *At current state it is impossible to draw conclusions concerning the nature of delegation and how the public authority coordinates the private power. It is assumed that the ex ante delegation at the sector level is the primary source of delegation among the countries examined.*

II.3 The limits to Delegation to Private Actors

Delegation to private regulators is often limited or made conditional upon certain factors. The following questions are aimed at identifying what these limits are and how they affect the activity of private regulators and to what extent they are subject to judicial review.

These limits concern the extent of the delegable power, but also the possible modes to exercise it.

II.3.1 Limits to delegation based on activity

II.3.1.1. Procedural and substantive limits

This Chapter is aimed at verifying which activities are allowed for the private regulators and which are not. The following questions aim to specify additional limits that constraint the activities of private actors, i.e. whether individual legal systems pose special limitations on private regulators that would not concern public regulators.

Regulatory activities can be subjected to procedural and substantive limits. In the area of *procedural* limitation, a significant trend concerns the application of public law principles to private regulators: i.e. transparency, access, impartiality, due process, etc. Are such limits required and are they defined in a general statute concerning delegation of regulatory power or only in specific sectors?

Substantive limits to regulation can be posed when the public authority evaluates whether delegation is possible and to what extent. A particular example is provided by competition law. As we have seen in relation to the Constitutional provisions, competition law can limit self-regulation. The question becomes, within this specific framework, do the additional limitations coming from competition law limit the delegability of regulatory powers to private actors? At least at the European level this question has been raised in relation to article 81. However, in the national systems the answers are unclear. (See Chapter 3.1.4 for further explanation and examples.)

Table 3.1.1. Procedural and substantive limits

No limits to activity	Limits based on competition principles other than those identifiable from the Treaty provisions 81-82 EC	Procedural limits (I.e. transparency, access, impartiality, due process, etc.)	Substantive limits
	Italy (the issue is crucial in the case of self-regulation of professional orders)	Portugal Finland France Spain NL (GALA principles applicable to b-type authorities when exercising public authority) UK	NL (hierarchy of norms) Finland Italy (Criminal law Competition law Fundamental rights)

3.1.2. Procedural limits**Table 3.1.2. Procedural limits**

Transparency	Access	Participation	Standing	Others
Finland Netherlands Spain Italy (i.e. in sport sector)	Finland (access to information) Netherlands Italy (access to information/documents)	Spain (requirement of democratic participation and representation) Italy (i.e. in labour law: the condition required by art. 39 Const. is that union constitutions and by-laws be inspired by the principle of democracy; in sport sector : by virtue of art. 16, Legislative Decree No. 242/99, National sport Federations have to observe “the principle of inside democracy”) Finland (in some sectors)	Finland	Finland (Generally, if there is a delegation – all the public law principles apply to the specific delegated activity.) Italy (principle of “inside democracy”; of equal treatment, more in general, all principles concerning public administration: for example: art. 97-98 Const.) NL (We have a statute on transparency/accessability of documents that is applicable to public bodies (so also GALA b-type)) UK (where subject to judicial review, private regulators will be subject to the full range of public law principles developed at common law – rationality, legality, procedural impropriety etc. – but may, depending on their status, escape the requirement of acting in accordance with the Convention on Human Rights imposed by the HRA 1998).

3.1.3. Limits associated to the legal form of the regulator

Limits can be imposed as to the legal form of the regulator or its scope. For example, delegability of regulatory power can be limited only to certain legal forms (only associations and foundations but not company). Limitations can also be drawn in relation to the for-profit or non-profit nature of the organization. (The legal forms of stock exchanges and the debate concerning the opportunity to adopt for-profit forms a good illustration. Analogously the question can be referred to professional associations.) Are there limits on the choice of legal form based on the delegation of regulatory power that these bodies generally enjoy?

Limitations can also refer to the governance structure of a specific form. For example, some legal system may condition delegability to the adoption of a democratic form of association to ensure that private regulators have sufficient legitimacy. They may also condition it to open membership. Examples of these types of interference at the European level can be found in the Agreement between Commission and standardising bodies of 2003 where the governance of standardising bodies, its openness to stakeholders in particular was specifically taken into account and obligations were posed on those bodies.

The following table characterises which limits are faced when delegation takes place. Multiple answers are possible. It is important that you indicate the sectors where these limits operate especially, if they are different across sectors. For example, the non-profit / for-profit distinction may be relevant in financial markets, but not in other fields. Furthermore, the aim of increasing direct participation may be achieved by promoting / imposing the use of the associational model, but this goal may very relevant for some sectors and not for others.

Table 3.1.3. Limits associated to the legal form of the regulator

	Limits to legal form (Only one or a limited number of legal forms are allowed. In this case indicate which forms are allowed. Include not only legal person but also contractual arrangements)	Limit – based on the non-profit/for-profit distinction (For example, only no for-profit form allowed)	Limits to the governance structure (For example, who can be member of the entity, democratic eligibility, board composition etc.?)
Sports	Spain (Professional Leagues must be companies) Italy (federation)		Spain (democratic organisation for Sports Federations)
Financial markets	Italy (company, but there are also pure self-regulatory associations)		
Stock EX	Finland (company)		Finland

	Spain (companies)		
Advertising		Italy (non-profit organisation)	Italy (there is a Supervisory Committee, a purely private self-regulatory body, made up of members selected among experts)
Media			
Professional orders	Finland (association) NL: Association or Article 134 body Spain (corporate bodies of public law) Italy (association)		Finland Spain: (Democratic functioning of Professional Orders) Italy

3.1.4. Substantive limits

To define content limits in case of delegation of authority we can identify several hypotheses related to limits that the private regulator can face; either because the regulatory power should remain with the legislator or because competition law principles require that content (prices, for example) have to be determined by the market.

Examples:

1. In general the power cannot be delegated to the self-regulatory body to regulate crimes.
2. The power to set tariffs can not be delegated, because it would be against competition law. It is for the market to determine professional tariff.
3. It is my understanding that in many of the legal systems, in France, Portugal, Italy, Finland and UK, (at least some of) the fundamental rights have to be observed in both cases: pure self-regulation and delegated self-regulation.

This table aims to catch what are the limits to delegability of regulatory power to private actors.

Table 3.1.4. Substantive limits to regulatory activity by private delegated regulators

Criminal law	Competition law	Fundamental rights	Others
Finland NL UK Romania France Spain	NL (professions: regulation should not obstruct competition, unless the regulation is necessary for the sector to function prop-	France Romania (generic) Finland NL (delegation to private actors should not be a	

<p>Portugal Italy</p>	<p>erly. Wouters- case test). Spain (in Pro- fessional Orders about the ser- vices tariffs) Italy</p>	<p>licence to vio- late fundamental rights) Spain Italy</p>	
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III. Nature of the Regulatory Body/Activity and Its Consequences to Select Applicable Law and to Subject Regulations to Judicial Review

III.1 Different Criteria to Determine the Public or Private Nature

There are 3 different scenarios to determine whether an actor is public or private:

1. Criteria based on the public/private nature of the regulatory body,
2. criteria based on the regulatory activity, or
3. criteria based on a combination of the two abovementioned.

The first criteria are based exclusively on the formal nature public/private of the entity. The second criteria are based on the nature of the entity's activities. Which legal systems apply exclusively the criterion of the formal nature and which apply the activity of an entity to identify the legal regime?

Table 1. Nature or Activity?

Nature of the body determines its private or public character	Nature of the activity determines its private or public character	Both
		Finland Spain Portugal France NL Italy UK Romania

Summary: *In many countries there are specific criteria, formal requisites for entities, when it is determined whether an entity is private entity or public entity, but these criteria are not used or considered to be sufficient in determining the nature of the regulatory body and attach to it the legal consequences. The impression is that, in many countries, it is the activity the determinant feature, but the differences to qualify the activities are quite significant. So, further qualifications are needed to understand the differences because all the legal systems are located in the same box.*

III.2 Activity

Which particular features of the activity are considered to qualify a regulator private or public. The aim of this question is for example to distinguish between the notion of *service public* in France, that of *pubblica funzione* or *pubblico interesse* in Italy and *public interest* in UK.

Table 2.1. The concept of *public utility*⁹ to qualify for the public law status

Does an entity, that is characterised having <i>public utility</i> functions automatically have public law status? YES	NO
France Portugal Spain Romania	Finland UK? NL (but there is the ‘public authority’ criterion) Spain Italy

Table 2.2. What aspects does the *public utility* include?

Non-profit	State ap- proved	Regulatory functions	Public interest activities and goals	Certain con- tinuity of public inter- est opera- tions	Others
France	France Romania Spain	Spain	France Spain Italy	Romania Italy	

This table should allow the identification of the different features that regulatory activities must have to have a public law status. The definitional easy case is provided by France where, if an activity can be characterized as *service public*, then the regulator would acquire the public law status. Then of course the problem is what service public means. Other legal systems have more complex elements that can not be captured by a single label as it is the case for the UK.

There are different examples of legal systems in which a particular type of organization has developed: the English translations are, for example: *associations of public utilities* or *associations of public law character*. This is the case in Finland, Spain, to some extent also in France and Portugal. (See further in the Table 4. for the attempt to describe the relevant factors.)

⁹ [UK: “Public utility” is not a phrase that I have ever seen used in the UK or indeed in English. It would, if used, be likely to be confused with the idea of ‘utilities’ i.e. water, gas and electricity. The English courts are concerned mainly with the concept of public authority in relation to the Human Rights Act and judicial review]

In these cases, the legislator (public authority) has regulated by statute the public law status of these private regulators and regulated the content of the activity, some procedural features (transparency, access etc.) or some governance features. While these cases do not represent the majority even in those legal orders that have regulated them they certainly constitute important examples of the expansion of legislatively defined private regulators with public status.

III.3 Financing of the Regulator

An additional criterion which is generally complementary is financing. The public or private law status of the regulator may change if the financial resources for the activity are supplied by a public authority or comes from memberships or from fines that the regulator imposes on the regulatees. Financing is generally on one criterion, but many legal systems take it into account. (I have the impression that, for example, public financing of private regulator does not affect the definition of service public in France, but it does have an effect in Netherlands and Italy.)

Table 3. Financing

Public Financing of private regulators	The sole criterion to define the public law status	One criterion to define the public law status complementary with that of activity	One criterion which is part of the activity	Others
		Italy Spain (with Sports Federation, for instance)	Netherlands (i.e. part of the test to determine whether there is an exercise of public authority)	

III.4 Activity and Nature of the body combined

The next table describes the criteria based on a combination of the public/private nature of the body and the function of the activity (for example, whether the regulatory power is exercised predominantly in the public interest).

NL: Public powers (e.g. the power to impose fines) that have been awarded to a body by statute.

Finland: The same applies as in the case of NL. Thus, the point 3 does not bring extra information to the point 1).

Table 4. Potential combinations of the nature and activity

1) Source of the Body is of public origin: (Statute, or created by public administration)	2) Activity of the body is of general <i>public interest</i>	3) The body exercises powers that a private legal entity cannot exercise.	4) Public Control (e.g. participation of the public authority in to the governance or appointment of boards)	5) Constant public funding	The criteria of private entity with public law status
					UK - all of these criteria would be considered and weighed, though courts would never assert that any one feature or even combination of features would of itself be determinative
Criteriono nominalistico	Criteriono finalistico		Criteriono del controllo	Criteriono del controllo	1+2 or 4+5= Italia (<i>pubblica funzione</i>)
Established under public law		Harnessed with public authority	Public financing; Participation/appointment of governance; control over how public money is spent	NL (see 4)	1 or 3+4= Netherlands
A delegating act exists		Exercises public powers	(Implicitly – This is something that is expected to be ensured by the delegating authority)		1+2= Finland (<i>public law character</i>)

X Origin is public	X Main activity	X Public powers (Private cannot possess)			1+2 or 1+3 or 2+3= France <i>(public service)</i>
	Main activities	Features incompatible with private nature	Administrative review and other public intervention		2+3 or 2+3+4 or 2+3+5= public function Spain
					Romania?

III.5 Consequences Attached to the Private or Public Status of the Regulator that has a Private Legal Form (association, foundation, company, consortium, others)

III.5.1 Applicable law

With regard to private regulators that have public status, is the distinction concerning applicable law based on the alternative between private and administrative law or is the distinction based, more generally, on *droit public et droit privé*?

Table 5.1

droit public et droit privé	private and administrative law	Other distinction
FIN Portugal Spain	Italy France NL (based on the important distinction between GALA judicial regime and ordinary judicial regime; but we are not 100% clear on the difference between the two dichotomies) Spain UK	

III.5.2 For which aspects is this difference particularly relevant?

The level of discretion can be measured in different ways. One is to look at statute that regulate the private regulators and see how specific provisions are. Another way to measure discretion is to correlate inversely discretion with judicial review. The narrower is the judicial review the higher is the discretion.

In private law, generally the level of discretion is not defined by the law of the organisation, but it is more a judicially defined criterion. The judges self-determine how far they can review or interfere with the life of the organisations and its activity.

One of the problems that we currently are facing is that the notion of discretion in organizations is generally defined according to activity, which is different from regulatory activity. (For example, the level of discretion that directors have according to company laws is defined in relation to the right of property of shareholders and their ability to protect themselves.) The position of regulatees in relation to a private regulator, that has chosen the legal form of a company, is very different from that of shareholder and therefore the notion of discretion and the power of judges should be determined differently.

Table 5.2.1. What is the level of discretion of the regulator?

(For example, if the applicable law is public law, or administrative law, is the level of discretion is higher than that in private law?)

Discretion of the regulator is higher in public or administrative law than in private law	Discretion is lower in public law or administrative law	Discretion is higher in private law	Discretion is lower in private law	No difference
NL	Spain	UK Italy		

NL: We did answer the question, but I do admit that the piece of text above the tables (“One of the problems that we currently are facing is that the notion of discretion in organizations is generally defined according to activity, which is different from regulatory activity. (For example, the level of discretion that directors have according to company laws is defined in relation to the right of property of shareholders and their ability to protect themselves.) The position of regulatees in relation to a private regulator, that has chosen the legal form of a company, is very different from that of shareholder and therefore the notion of discretion and the power of judges should be determined differently.”) is not very clear to me. A confusing factor here might be that ‘discretion’, just like ‘delegation’ has a distinct public law connotation in many legal systems

The applicability of public law or administrative law can also have effects on third parties (i.e. the possibility that rules are applied to non-members) and, thus, also create rights for 3rd parties.

Table 5.2.2.

The public status recognition allows <i>application of rules also to third parties</i>	Allow for participatory rights for 3rd parties for transparency purposes (e.g. access to the decisions of arbitration boards access to documentation)	The public law status recognition allow for consumers without membership to seek for judicial review (or allow for firms without membership to seek for judicial review).	Others	The application to non-members / rights to non-members is always conditioned upon the acquisition of public status.
Finland (in some cases. In the case of professional orders, only the members) NL (depending on whether the basis of those rules is in public or private law) France UK Spain Italy	Finland NL Spain Italy	Finland UK NL (if there is a concrete decision of an administrative authority and the consumer can be considered an addressee or interested third party. Otherwise tort proceedings) France Italy		Finland NL

III.6 The public law status of a private regulator

The public law status of a private regulator can concern all the aspects, or it can only refer to some features. In some cases to a private regulator is attached public law status only for certain activity it performs and not for others.

A frequent case is that the public law status refers to the activity and not to the governance of an entity. So, for example, while private law of company, associations and foundations govern the life of the organisation, administrative law governs their public activities. (Notice that in the case of a purely private regulator private law governs both aspects and in the case of a public regulator administrative law governs both aspects.)

Although, it should be said that in some countries relevant modifications have occurred predominantly through judicial interpretation, so that some principles of administrative law concerning the activity of public regulators have been applied to private regulators.

Are there legal systems that do not allow for partial public law status and therefore impose that a regulator is either under the domain of private law or that of administrative law?

Table 6.1. The applicable regime for self-regulators that have a public law status

The private regulator with public law status is completely under the public law regime	The private regulator with public law status is completely under the private law regime	The private regulator is under a mixed regime
		Finland NL (governance remains private, but public prevails when exercising public tasks) France Romania Spain Italy UK

Are there possible combinations between private and administrative law? Two aspects are considered: the regulatory activity and the governance of the regulator, i.e. the internal power structure of the entity. (If there is a board, what the board decides? How can membership be acquired? Etc.)

Table 6.2. Applicable law to private regulators with total or partial public law status

Only administrative law	Administrative law applied to activity and private law applied to the organisation	Only Some aspects of adm. law to the activity and private law to the organisation	Some aspects of adm. law to the activity and some aspects of adm. law to the organisation.	Only private law

Portugal	NL		Finland France Italy UK Spain	
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IV. Judicial Review

The term *judicial review* is used to distinguish the activity generally performed by judges when reviewing activity performed by public regulators (or private regulators to which a particular public law status is attached) from those judicial acts that are attached to private bodies that operate as regulators due to their private status (within private law framework). A typical difference might be that between trade associations and professional associations. The former are generally private regulators not subject to judicial review, the latter, instead, are subject to judicial review. In both cases judges review the activities of regulators, but their power differs quite significantly because the functions of their intervention are different.

However, the applicability of judicial review varies significantly within Member States and between them. Even the meaning of judicial review even in relation to public regulators is quite different in the examined legal systems.

The aim of the questions is to verify whether some type of judicial review is applied to the different types of regulators (private and public). Furthermore, if there are differences between the judicial reviews attached to different regulators, what are the differences concerning the powers of the judges (in relation to private bodies, such as foundations, associations and companies that happen to perform regulatory activities towards their members)?

IV.1 The Judicial Review (in Relation to Private Regulators)

Table 1.1. When is judicial review granted?

Only for public regulators	for public regulators private regulators with some kind of public law status	Only for purely private regulators ¹⁰
	Finland Romania NL France Italy Portugal Spain UK	

Table 1.2. When judicial review is granted towards private regulators with public law status, what can the judge review? Is the review power identical to that exercisable in relation to public regulators or are there differences?

Same reviewing as public	Different reviewing	What are the differences?
Finland Romania	Finland	

¹⁰ NL: Do we need this column; the situation seems rather bizarre?

France		
NL		
Spain		
Italy		
UK		

Table 1.3. What can be voided and on what grounds?

A judge can void a regulation enacted by a private regulator with some public law status. (For example, a judge can void a code of conduct enacted by a professional association.)	A judge can void a decision based on regulation without avoiding the regulation itself. (For example, a sanction associated to the violation of a rule in a code of conduct.)	On what grounds can judge void a regulation or a decision? Legality and/or expediency (appropriateness)?
NL (Civil court in tort proceedings. Secondary legislation can be annulled). Spain Italy UK	Finland NL (judicial review) France Romania Spain Portugal Italy UK	Finland: Legality and expediency NL (non-conformity with statutory legislation or principles of proper administration) Spain (on the grounds of legality and incompatibility with the regulatory framework) Italy: Legality UK: Error of law, procedural impropriety, irrationality, abuse of power, breach of Human Rights Act 1998.

IV.2 Review Possibilities of Purely Private Regulation

In legal systems, where judicial review is not granted towards purely private regulators, what are the review powers of the judge? Notice that the questions concern only *purely private regulators* and not those that have a public law status of some sort.

1. Can the judge review the merits¹¹ of the private regulation? For example, in a dispute arising in a trade association among member-firms can the judge revise the decision that impose a certain yearly tariff?

¹¹ In principle, judicial review of administrative decisions is limited to declaring and enforcing the law. Courts have no jurisdiction to review the merits of an administrative decision. But in practice, it is often difficult for a reviewing court to draw a clear distinction between the merits and the legality of a particular decision.

2. Can the judge review the decision that imposes on all members the respect of a code of conduct which has only been approved at the meeting with majority vote?
3. Does the power of the judge change in relation to the legal form of the private regulator, because it corresponds to different branches of the law? That is, does the judicial power vary if the applicable law is company law, the law of associations or the law of foundations?

Table 2.1. The review powers of judges concerning purely private regulators

Only legality	Legality and merits
UK Spain	NL (civil court : 1) company law and contract: liability for illegality of internal rules and contracts. 2) tort: illegality or liability based on breach of general duty of care e.g. abuse of powers) Italy (as to merit, there are some examples in Italian civil code: see the power of judges to void vexatious contractual clauses, “clausole vessatorie” [art. 1469 bis]) Finland

Table 2.2.

The powers of review vary across legal forms	The powers of review do not vary across legal forms	If they vary how, briefly explain how?
Finland	NL (although liability for abuse of powers of regulator will more easily be accepted if the regulator is a foundation or company (because of the lack of democracy) than if it is an association,	

(In UK) in the vast majority of cases, the courts do respect the limits of their jurisdiction which the constitution sets, and which require a careful distinction to be made between merits and legality. Let me give just one example. At present, it is the policy of the British Government that persons of homosexual orientation may not serve in the armed forces. This policy was challenged by way of judicial review. Delivering the leading judgment in the Divisional Court - which was later upheld by the Court of Appeal - Simon Brown L.J. felt that the arguments were finely balanced. Indeed, he went so far as to say that, in his view, those who sought to condemn the policy had the stronger case. However, he accepted that, for the reasons I have outlined, it was not for a court of supervisory jurisdiction to evaluate the merits of the policy. Remarking that the judges "owe a duty ... to remain within their constitutional bounds", Simon Brown L.J. acknowledged that the court could enquire only into the legality of the policy, which, in the end, was upheld.

	<p>UK</p> <p>Spain</p> <p>Italy</p>	
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Table 2.3.

Judges can extend the scope of application of self-regulatory rules (e.g. to all of the members of the self-regulation, even if only some have agreed to the code)	Judges cannot extend the scope of application of self-regulatory rules
<p>Finland (but only in limited cases in interpreting good practice of professionals)</p> <p>UK</p> <p>NL</p> <p>France?</p> <p>Spain (it could be the case in relation to the stock exchange interpreting the concept of “actors intervening in the market”)</p> <p>Italy</p>	

V. Liability of Private Regulators

In this context the liability question is separated from judicial review. The main aim is to verify which kind of liability these regulators face, how different that is from that of public regulators and from that of purely private regulators.

We assume for liability purpose that there is distinction between:

1. Public regulators,
2. private regulators with some public law status or in the public interest, and
3. purely private regulators.

For the purpose of liability of private regulators we distinguish between:

1. Liability for law making,
2. monitoring, and
3. dispute resolution.

For each type we distinguish between:

1. non-feasance (i.e. failure to act), and
2. misfeasance (incorrect action).

V.1 Liability for Failure to Regulate for Purely Private Regulators

V.1.1 Is liability for failure to regulate recognised for private regulators?

Is the liability for failure to regulate of private regulators *with public law status* different from that of public regulators and from that of purely private regulators?

Table 1.1. There is a liability for failure to regulate for self-regulators?

For public regulators	For purely private regulators	For private regulator with a public law status
Finland (But only, if there is an incorrect decision or non-decision, because of failure to regulate. The decision can be contested and, thus, indirectly also the regulation.)	Italy (if there is an obligation to regulate in the by-law)	Finland (similar obligations and liabilities as public authorities)
France	Finland (if there is an obligation to regulate in the bylaw –e.g. Stock Exchange)	France
Romania	NL (theoretically: if the articles stipulate a duty to enact bylaws)	Romania
UK	Spain (it could be if the entity is obliged to do so)	UK
Italy (theoretically but there is no case law)		NL (similar obligations and liabilities as public authorities)
NL (theoretically.		Spain (as for public regulators)
		Italy (theoretically but there is no case law)

<p>1) judicial review: decision not to regulate by an administrative body</p> <p>2) tort: body committed itself (e.g. through a policy document or letter) to enact regulation but fails to do so. (Has been accepted for legislation: Supreme Court decision 19 February 1993, <i>NJ</i> 1995, 701)</p> <p>Spain (liability <i>in omittendo</i>)</p>		
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V.1.2 Liability regime for purely private regulators concerning failure to regulate

What is the liability regime?

1. Intention, Fault, or strict liability?
2. Causation?
3. What are the available Remedies when liability is recognised?

**Table 1.2. Liability regime for purely private regulators concerning failure to regulate.
(Specify whether it is contractual liability or civil liability)**

Liability standards applied to purely private regulators	Intentional torts	Gross negligence	Fault	Strict Liability
		NL (theoretically: breach of duty of care; internal rules are perceived as being <i>sui generis</i> and not <i>contractual</i>)	Finland (tort law liability – applicable, if there is an obligation to regulate by law, e.g. stock exchange) Spain (general regime of fault, art. 1902 SCC, unless established otherwise) Italy (theoretically tort law liability is applicable)	Italy (Contractual liability) Finland (Contractual) France (Contractual) UK (Contractual)

V.1.3 Damages available for failure to regulate in *pure self-regulation*.

Notice that this might depend on the type of regulatory activity. For example, recoverability of economic losses may vary of the regulator regulates financial markets or if he regulates consumer safety. Mention if there are variations and in which specific sector.

Table 1.3. Damages for pure self-regulator' liability

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Finland NL Spain Italy UK	Finland NL Spain Italy UK	Finland (Contractual relationship – And possibly in gross negligence) NL Italy UK	Finland (some cases) NL Spain Italy (only in some case: for example, protection against unfair competition) UK	Italy: restitutio in integrum (if materially and juridically possible)

V.2 Liability for Failure to Regulate for Private Regulators with Public Status.

(Answer if different for private regulators with public status)

Table 2.1. Liability for self-regulators with public status

There is a liability for failure to regulate
Finland (same liability as public law regulator – see table 1.1.)
NL (same liability as public law regulator – see table 1.1.)
Spain (as for public regulators)
Italy (same liability as public law regulator)
UK

Table 2.2. Liability regime for self-regulators with public status when there is a breach of the obligation to regulate

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		Finland? NL (theoretically: tort: breach of duty of care; internal rules are perceived as being <i>sui generis</i> and not contractual)	Finland? Italy	Spain Italy UK

Table 2.3. Damages and/or injunctions available for failure to regulate

Damages – physical harm	Damages – to Damage property	Damages – Economic loss	Injunction	Others
Finland NL Spain Italy	Finland NL Spain Italy	Finland NL Spain Italy	NL Spain (only exceptionally since administrative law assures public acts be executable) UK	

V.3 Liability for Defective Regulation

In the case of defective regulation there is a regulation enacted by the regulator, but it violates some of the rules that should have been complied with such as impartiality, fairness, transparency etc.

Table 3.1. Liability for defective regulation

For public regulators	For private regulators	For private regulator with a public law status
Italy Finland (See table 1.1. – Only in relation to some decision made based on defective regulation.) NL: ministerial review (they either do not come into force or are declared unlawful afterwards) Tort Spain UK	Italy Finland (Potentially, if there is responsibility to regulate in a certain manner, which is set in a statute – e.g. stock exchange) NL: avoidance (if not in conformity with internal rules) Tort Spain UK (Potentially, if the contract establishing the regulatory regime explicitly or implicitly makes such provision)	Italy Finland (similar as public regulators, see table 1.1.) NL: tort Spain UK

Table 3.2. Damages available for defective regulation in *pure* self-regulation?

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Finland (for contractual partners) Spain Italy NL (tort) UK (for contractual partners)	Finland (for contractual partners) Spain Italy NL (tort) UK (for contractual partners)	Finland (for contractual partners) Spain Italy NL UK (for contractual partners)	NL (tort) UK (for contractual partners)	

Table 3.3. Liability regime for *purely* private regulators in defective regulation

(Please specify whether the liability regime is contractual or extra-contractual)

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		NL	<p>Finland (Extra-contractual, if there has been obligation to regulate (a limitation of private autonomy) as in stock exchange.)</p> <p>Spain (general regime of fault, art. 1902 SCC, unless established otherwise)</p>	<p>Italy (contractual liability)</p> <p>Finland (contractual)</p> <p>UK (contractual)</p>

V.4 Liability for Defective Regulation for Private Regulators with Public law Status

(Answer, if different for private regulators with public status.)

Table 4.1.

There is a liability for defective regulation of private regulators with public status
Finland (see table 1.1. – only in relation to decisions)
UK

Table 4.2. Damages available for defective regulation in the case of *self-regulators with public status*

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Finland	Finland	Finland	UK	
Spain	Spain	Italy		
Italy	Italy	UK		
UK	UK			

Table 4.3. Liability regime for private regulators with public law status in defective regulation

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		Finland?	Finland?	Spain
			Italy	Italy
			UK	

V.5 Liability for Failure to Monitor

Is Liability for failure to monitor recognised for private regulators? Is the liability for failure to monitor of private regulators with public law status different from that of public regulators and from that of purely private regulators?

Table 5.1. Is there liability of private regulator for failure to monitor or to supervise regulatees?

For public regulators	For private regulators	For private regulator with a public law status
Finland NL Spain (liability <i>in vigilando</i>) Italy (for example, in the financial sector) UK (where negligence shown)	Finland NL (theoretically because most if not all supervisory bodies are public) Italy (theoretically, but there is no case law) UK (where negligence shown)	Finland NL Spain (as for public regulators) Italy (theoretically, but there is no case law) UK (where negligence shown)

The following tables, 5.2. and 5.3., refer only to purely private regulators.

Table 5.2. Damages available for failure to monitor or supervise regulatees.

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Finland (contract, but, if there is a responsibility to regulate based on the limitation of private autonomy, i.e. stock exchange, also extra-contractual) NL Spain Italy UK	Finland (contract, and see previous answer) NL Spain Italy UK	Finland (contract) NL Italy UK	NL Spain UK	

Table 5.3. Liability regime for *purely* private regulators in failure to monitor or supervise regulatees

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		NL (breach of duty of care be the relationship based on contract or tort)	Finland Spain (if not established otherwise) Italy UK	Finland (if contractual) Italy (contractual)

V.6 Liability for Failure to Monitor or Supervise for Private Regulators with Public Status

(Answer, if different for private regulators with public status.)

Table 6.1.

There is liability for failure to monitor for private regulators with public status
Finland (see table 1.1. The same reasoning applies)
NL
Italy
UK (where negligence shown)

Table 6.2. Damages available for failure to monitor for private regulators with public status

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Finland	Finland	Finland	NL	
NL	NL	NL	UK	
Spain	Spain	Italy		
Italy	Italy	UK		
UK	UK			

Table 6.3. Liability regime for private regulators with public status in failure to monitor

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		Finland? NL (breach of duty of care be the relationship based on contract or tort)	Finland? Italy UK	Spain Italy

V.7 Liability for Failure to Enforce

Is there Liability for failure to solve disputes for private regulators? This Chapter concerns the case of private arbitrators or private entities that should solve dispute and that fails to do so either intentionally or negligently. This claim can be framed as denial to justice, especially in those cases in which the decision of the case is postponed in such a way that the final judgement becomes useless.

Is the liability for failure to solve disputes of private regulators with public law status different from that of public regulators and from that of purely private regulators? What is the liability regime? 1) Intention- Fault- strict liability 2) Causation 3) Remedies.

Table 7.1. Is there liability for failure to solve disputes concerning regulators that have enforcement power and conflict resolution power?

For public regulators	For private regulators	For private regulator with a public law status
Finland NL: judicial review: if there is a decision not to enforce. Tort: in cases in which there is no such decision. Spain Italy (theoritically)	Finland? NL (theoretically: most supervisory bodies are public - tort - contract - if body is an association: proceedings against the board if it fails to monitor a member that does not follow the by-laws, resolutions or third party agreements to which the non-obeying member is held) Spain Italy (theoritically)	Finland (lawyers' association) NL (tort) Spain Italy (theoritically)

Table 7.2 Liability standards for failure to solve disputes for *purely* private regulators?

(Specify whether the liability standard is contractual or extra-contractual)

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		NL: breach of duty of care	Spain (if not established otherwise) Italy	Finland (contractual – if such obligation is agreed upon) Italy (contractual)

				tual – if such obligation is agreed upon)
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Table 7.3. Damages available for failure to solve disputes for *purely* private regulators?

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Finland (contract) NL Spain Italy	Finland (contract) NL Spain Italy	Finland (contract) NL Italy	Finland (if such powers are given through contract – However, no cases come to my mind) NL (tort) Spain	

V.8 Liability for Failure to Solve Disputes for Private Regulators with Public Status

(Answer, if different for private regulators with public status)

Table 8.1.

There is a liability for private regulator with a public law status for failing to solve disputes
Finland NL Italy (theoretical)

Table 8.2. Liability standard for private regulators with public status when they fail to solve disputes?

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
		Finland? NL (breach duty of care)	Finland? Italy (theoretically)	Spain Italy (theoretically and contractual – if such obligation is agreed upon)

Table 8.3 Damages available for failure to solve disputes for private regulators with public status?

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
NL Spain Italy	NL Spain Italy	NL Italy	NL (tort) Spain (only exceptionally since administrative law assures public acts be executable)	

V.9 Liability for Defective Enforcement

This is the case in which the regulator breaches its obligations, when it is using its enforcement and conflict dispute resolution power. Typically these obligations concern the procedure that should be used by the regulator when operating as a judge or arbitrator.

Is the liability for failure to solve disputes of private regulators with public law status different from that of public regulators and from that of purely private regulators

What is the liability regime? 1) Intention- Fault- strict liability 2) Remedies.

Table 9.1. Is there liability for defective enforcement for private regulation?

For public regulators	For private regulators	For private regulator with a public law status
Finland? Spain (liability in omnittendo) Italy (theoretically)	Spain Italy (theoretically)	Finland? Spain (as for public regulators) Italy (theoretically)

Table 9.2 Liability standard for *purely private* regulator that has made defective enforcement? (Please specify the contractual or extra-contractual nature of the liability)

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
			Spain (general regime of art. 1902 SCC, if not established otherwise) Italy (theoretically)	Italy (theoretically)

Table 9.3. Damages available for defective enforcement for *purely private* regulators

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Spain Italy	Spain Italy	Italy	Spain	

V.10 Liability for Defective Enforcement of Private Regulators with Public Status

(Answer, if different for private regulators with public status)

Table 10.1. Liability for defective enforcement?

Private regulator with a public law status has a liability for defective enforcement
Finland
Spain
Italy

Table 10.2. Liability standard for defective enforcement for self-regulators that have public status (Please specify the contractual or extra-contractual nature of the liability)

Liability standards	Intentional torts	Gross negligence	Fault	Strict Liability
			Italy	Spain Italy (contractual)

Table 10.3. Damages available for defective enforcement for self-regulators that have public status?

Damages – physical harm	Damages – Damage to property	Damages – Economic loss	Injunction	Others
Spain Italy	Spain Italy	Italy	Spain (only exceptionally since administrative law assures public acts be executable)	

VI. Sectors

VI.1 Professional Associations (lawyers)

Professional Associations – lawyers associations

1. Which legal form does the self-regulator have? Is the choice of the legal form imposed by law or the result of a free choice? Indicate which one it is and next put an M, if it is mandatorily imposed by a statute or an administrative act.

Table 1. Legal form

Company	Association	Foundation	Cooperative	Consortium	Others
	France Finland (M) Romania Spain UK Italy				NL(Article 134 body (public)) Spain: Corporate body (M)

Table 2. What is the nature of the regulator: public/private ?

Administrative body	Private regulator with public law status	A combination of the two i.e administrative for the activity and private for the internal rules of organisation	Purely private
Portugal (representative) Italy (representative) Netherlands Romania (representative)	France UK Finland Spain		

Note: the difference between the second and the third may be hard to draw because in many situations the public law status refers to the activity and leaves the private law dimension for the organisation. If you do not feel comfortable with choosing one or the other just indicate both.

Summary: *Professional lawyers' associations operate in a public domain in Portugal, Italy, Spain and Romania. The public law status is the strongest in Portugal and the Netherlands, while in Italy, Spain, and Romania the associations have private law status in some of their activities.*

In France, UK and Finland the private law status dominates, although associations also have public law status in some of their activities.

Other professional associations, than lawyers' associations, can operate as private regulators with public law status attached to some of their activities, or as purely private self-regulators in Netherlands, UK, France and Finland.

Table 3. In case there is a combination of administrative law and private law aspect please indicate the different kinds of combination

Only administrative law	Administrative law for activity and private law for organisation	Administrative principles (such as participation) and private law	Only private law	others
NL	Finland (generally – but not only adm. law to the activities and not only private law to organisation.) Spain (not always organisation is merely private) UK			

Table 4. Financing

All public	Partly public and partly private	All private
	Italy	Finland NL (contribution of members [compulsory membership] but some public financing for disciplinary proceedings) Spain (although it is provided the possibility to received some sort of public funding) UK

Table 5. Judicial review

Allowed	Not allowed	avoidance	injunctions
Finland (in relation to activities that are public) NL (ministerial review and judicial review for decisions of bodies of the Professional Organizations)			

<p>Spain (public functions)</p> <p>Italy (in relation to activities that are public; as to deontological rules, the prevailing doctrine argue that they find their basis in the professional order’s autonomy and as such, not subjected to judicial review)</p> <p>UK</p>			
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Table 6. Liability for failure or for defective regulation

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
<p>Finland (for public activities, same as public authorities have – Public authorities are not so easily found liable as private actors.)</p> <p>NL: negligence (duty of care)</p> <p>Spain (Strict liability)</p> <p>Italy</p> <p>UK (negligence)</p>	<p>Finland (For public activities of lawyers’ association, the damages recoverable are the same as public authorities have, PI, PH, economic losses)</p> <p>NL (PI PH EL)</p> <p>Spain (PI + PH)</p> <p>Italy</p> <p>UK (PH and economic losses)</p>	<p>WHAT COUNTRY? Both possible if regulation is tortuous</p>

Table 7. Liability for failure or for defective supervision

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
<p>Finland (for public activities, same as public authorities have – Public authorities are not so easily found liable as private actors.)</p>	<p>Finland (For public activities of lawyers’ association, the damages recoverable are the same as public authorities have, PI, PH, economic losses)</p> <p>NL: PI PH EL</p>	<p>What country? No</p>

NL negligence (duty of care) Spain (idem Table 6)	Spain (idem Table 6)	
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VI.2 Media

1. Which legal form does the self-regulator have? Is the choice of the legal form imposed by law or the result of a free choice? Indicate which one it is and next put an m if it is mandatory imposed by a statute or an administrative act.

Table 1. Legal Form

Company	Association	Foundation	Cooperative	Consortium	Others
UK (Press Complaints Commission)	Finland UK France? Netherlands (for journalists)				Spain (IAA)

Table 2. What is the nature of the regulator public/private ?

Administrative body	Private regulator with public law status	A combination of the two i.e administrative for the activity and private for the internal rules of organisation	Purely private
Netherlands (broadcasting) Spain France Romania Portugal Italy Finland (broadcasting)	UK		Finland (for journalists) Netherlands (for journalists)

Note: the difference between the second and the third may be hard to draw because in many situations the public law status refers to the activity and leaves the private law dimension for the organisation. If you do not feel comfortable with choosing one or the other just indicate both.

Summary: *The media regulation is predominantly public activity. However, also in this area there are private initiatives coming from the European remit.*

Questions:

Does the media signify both, regulation of broadcasting and the press? In Finland the regulation is organised in a very different manner between the two. The Netherlands are much like

Finland in this respect. Similarly in the UK where the press is subject to pure self-regulation but broadcast media are almost entirely regulated on by statutory bodies.

Table 3. In case there is a combination of administrative law and private law aspect please indicate the different kinds of combination

Only administrative law	Administrative law for activity and private law for organisation	Administrative principles such as participation and private law	Only private law	others
Netherlands (broadcasting) Spain (although some patrimonial transactions are dealt with under private law)			Finland (journalists)	Netherlands (for journalists)

Table 4. Financing

All public	Partly public and partly private	All private
Netherlands (broadcasting) UK (for broadcast media, though much is recouped by broadcast licences)	Spain	Finland (for self-regulation of journalists) Netherlands (for journalists) UK (for press)

Table 5. Judicial review

Allowed	Not allowed	avoidance	injunctions
Netherlands (broadcasting) Spain UK	Finland (for journalists) Netherlands (for journalists)		

Table 6. Liability for failure or for defective regulation

Liability standards	Damages	Injunction

(intentional, negligence, strict liability)	Personal injury (P.I.) Property harms (P.H.) Economic losses	Positive/Negative
Spain (Strict liability)	Spain (PI + PH)	

In the case of Finland, no liability for self-regulation of journalists.

Table 7. Liability for failure or for defective supervision

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
Finland (for ombudsman, the same as public all authorities have – Public authorities are not so easily found liable as private actors.) Netherlands (broadcasting) Spain (strict liability)	Spain (PI+PH)	

VI.3 Advertising

1. Which legal form does the self-regulator have? Is the choice of the legal form imposed by law or the result of a free choice? Indicate which one it is and next put an M, if it is mandatorily imposed by a statute or an administrative act.

Table 1. Legal Form

Company	Association	Foundation	Cooperative	Consortium	Others
UK	Finland Netherlands France Spain Italy				

Table 2. What is the nature of the regulator public/private ?

Administrative body	Private regulator with public law status	A combination of the two i.e administrative for the activity and private for the internal rules of organisation	Purely private
Spain Romania Portugal Italy (for the Antitrust authority) (Finland – Monitoring and non-binding ‘regulations’ or ‘interpretations’ by Ombudsman, which are tried in the market court, if the regulatee does not abide by the interpretation voluntarily.)	UK		Netherlands Finland France <i>Also purely private regulation present:</i> Romania Italy (Jury, Supervisory committee) Spain

Note: the difference between the second and the third may be hard to draw because in many situations the public law status refers to the activity and leaves the private law dimension for the organisation. If you do not feel comfortable with choosing one or the other just indicate both.

Summary: *Advertising is sector that is characterised as predominantly private activity without significant recourse to public in Netherlands, Finland and France. This does not, however, signify that there is no public control.*

The other countries have public or regulator with public law status, that comprehensively sets standards, monitors and enforces advertising activity. Nevertheless, also these countries have number private initiatives in place.

Questions:

In Finland there is a public Consumer Ombudsman that monitors that the advertising sector complies with the law. However, it does not have regulatory powers: it has negotiative powers towards the advertising industry, because the CO can bring the case (non-compliance to the law concerning unfair advertising etc.) before a court. Thus, the advertising sector is not a sector that is un-regulated or not monitored or enforced, even though there is not a public regulator with all these powers present. Is this the case with NL and France?

Yes, as set out in the Netherlands report the threat if public regulation is always present, bringing the self-regulation in this area close to being mandatory.

Table 3. In case there is a combination of administrative law and private law aspect please indicate the different kinds of combination

Only administrative law	Administrative law for activity and private law for organisation	Administrative principles such as participation and private law	Only private law	Others
Finland (for monitoring, as the ombudsman is a public entity) Italy (for Anti-trust authority)			Finland (for purely private associations that regulate and monitor) Netherlands Spain Italy (for purely private self-regulatory bodies)	

Table 4. Financing

All public	Partly public and partly private	All private
Finland (for monitoring, as the ombudsman is a public entity) Italy (for Anti-trust authority)		Finland (for purely private associations that regulate and monitor) Netherlands Spain (although they may re-

		<p>ceived some sort of public funding such as State aids)</p> <p>Italy (for purely private self-regulatory bodies)</p> <p>UK</p>
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Table 5. Judicial Review

Allowed	Not allowed	avoidance	injunctions
<p>Finland (theoretically for Ombudsman that monitors, but no case law)</p> <p>Italy (for Anti-trust authority’s act)</p> <p>UK</p>	<p>Finland (for purely private associations that regulate and monitor)</p> <p>Netherlands</p> <p>Spain</p> <p>Italy (for purely private self-regulatory bodies: for example, for Jury’s ruling)</p>		

Table 6. Liability for failure or defective regulation

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
<p>Netherlands (theoretical)</p> <p>Spain (general regime of fault, art 1902)</p> <p>Italy (but no case law)</p>	<p>Spain (PI+PH)</p> <p>Italy (but no case law)</p>	

In Finland, for purely private associations that regulate and monitor, the liability is hard to establish in relation to 3rd parties. No case law.

Table 7. Liability for failure or defective supervision

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative

<p>Finland (Ombudsman - Public authorities are not so easily found liable as private actors. No case law.)</p> <p>Netherlands (appellant can claim in a civil law court that a decision by the self-regulatory tribunal constitutes a tortious act)</p> <p>Spain (Idem Table 6)</p> <p>Italy (but no case law)</p>	<p>Finland (PI, PH, EL)</p> <p>Spain (Idem Table 6)</p> <p>Italy (but no case law)</p>	
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In Finland, for purely private associations that regulate and monitor, the liability is hard to establish in relation to 3rd parties. No case law.

VI.4 Financial Markets

1. Which legal form does the self-regulator have? Is the choice of the legal form imposed by law or the result of a free choice? Indicate which one it is and next put an m if it is mandatorily imposed by a statute or an administrative act.

Table 1. Legal Form

Company	Association	Foundation	Cooperative	Consortium	Others
Italy	Italy	Netherlands			Spain (IAA, see Media sector)

Table 2. What is the nature of the regulator public/private ?

Administrative body	Private regulator with public law status	A combination of the two i.e administrative for the activity and private for the internal rules of organisation	Purely private
Spain Romania Portugal Italy (the Bank of Italy; the Financial Markets and Stock Exchange Commission – CONSOB) Finland (<i>Financial Supervisory Authority</i> is a public entity) France UK	Netherlands		Finland (There are also purely private initiatives in banking that complement the public regulation) Italy (there are also some purely private self-regulatory associations, such as the Italian Banking association and the Banking Ombudsman)

Summary: *In the financial market the regulation is predominantly public. Only Netherlands has a private regulator with a public law status. However, in all of the countries, there has to be also some purely private initiatives present (which are only supervised by the public authorities) that supplement the public regulation, for example, in the field of inter-bank money transactions. In addition, there are some European Union's initiatives present for B2C trade, e.g. codes of practice for home loan lending.*

Questions:

Should we replace this table with the table concerning a regulation of banking in relation to B2C trade? I think the concept: financial markets includes e.g. stock exchange, money markets etc.

For example, many aspects of the inter-bank money market have to be organised through self-regulation or co-regulation (ECB), because of the integration of the markets in the European and international scale.

Table 3. In case there is a combination of administrative law and private law aspect please indicate the different kinds of combination

Only administrative law	Administrative law for activity and private law for organisation	Administrative principles such as participation and private law	Only private law	others
Finland (What comes to the FSA) Italy (for Bank of Italy, CONSOB and the other regulators, such as ISVAP in the insurance sector)	Netherlands (but organisation also largely determined by statute)		Finland (some regulatory initiatives are purely private) Italy (for purely private self-regulatory associations, such as the Italian Banking association and the Banking Ombudsman)	

Table 4. Financing

All public	Partly public and partly private	All private
Finland (What comes to the FSA) Italy (for CONSOB) UK	Netherlands (if obligatory fees paid by the regulates are considered private)	Finland (some regulatory initiatives are purely private and thus also financed by private) Italy (for purely private self-regulatory associations; the Bank of Italy is not financed from the State budget, taking its resources directly from its operations; the <i>ISVAP</i> has full financial autonomy, being financed from contributions the law imposes on insurance firms)

Table 5. Judicial review

Allowed	Not allowed	avoidance	injunctions
Finland (What comes to the FSA as it is a public authority. No case law.) Netherlands Italy UK			

Table 6. Liability for failure or defective regulation

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
Finland (Public authorities are not so easily found liable as private actors.) Netherlands (theoretical) Italy (but no case law)	Finland (PI, PH, EL) Italy (but no case law)	

Table 7. Liability for failure or defective supervision

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
Finland (Public authorities are not so easily found liable as private actors.) Netherlands Italy (but no case law)	Finland (PI, PH, EL) Italy (but no case law)	

VI.5 Stock Exchange

1. Which legal form does the self-regulator have? Is the choice of the legal form imposed by law or the result of a free choice? Indicate which one it is and next put an m if it is mandatorily imposed by a statute or an administrative act.

Table1 Legal Form

Company	Association	Foundation	Cooperative	Consortium	Others
Finland Spain		Netherlands			

Table 2. What is the nature of the regulator public/private?

Administrative body	Private regulator with public law status	A combination of the two i.e administrative for the activity and private for the internal rules of organisation	Purely private
Finland (The monitoring is public – a ministry monitors)	Italy UK Netherlands	Spain	Portugal Finland

Questions:

I do not know why the others have not been included. Maybe they are co-regulatory? Also there was not much discussion on SE during the workshop?

Those that do not have their country in the table, please provide them.

Table 3. In case there is a combination of administrative law and private law aspect please indicate the different kinds of combination

Only administrative law	Administrative law for activity and private law for organisation	Administrative principles such as participation and private law	Only private law	others
	Netherlands (but organisation also largely determined by statute – same body as financial markets)		Finland	

	Spain			
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Table 4. Financing

All public	Partly public and partly private	All private
	Netherlands (if obligatory fees paid by the regulates are considered private)	Finland Spain

Table 5. Judicial review

Allowed	Not allowed	avoidance	injunctions
Netherlands Spain	Finland		

Table 6. Liability for failure or defective regulation

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
Finland (Contractual strict liability, otherwise fault) Netherlands (theoretical) Spain (strict liability)	Finland (PI, PH, EL, if contractual relationship) Spain (PI+PH)	

Table 7. Liability for failure or for defective supervision

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
Finland (Contractual liability is strict liability, if not limited (usually is limited). Otherwise, towards 3 rd parties it is fault, if there was a responsibility to supervise.)	Finland (PI, PH, EL, if contractual, otherwise only PI, PH, if not gross negligence. If gross negligence there is a possibility to EL, too.) Spain (PI+PH)	

Netherlands		
Spain (strict liability)		

VI.6 Sport

1. Which legal form does the self-regulator have? Is the choice of the legal form imposed by law or the result of a free choice? Indicate which one it is and next put an m if it is mandatorily imposed by a statute or an administrative act.

Table 1. Legal Form

Company	Association	Foundation	Cooperative	Consortium	Others
UK (Bodies such as the Football Association are in fact formally private companies limited by guarantee)	Finland France UK NL Spain (association of legal configuration) Italy				

Table 2. What is the nature of the regulator public/private?

Administrative body	Private regulator with public law status	A combination of the two i.e administrative for the activity and private for the internal rules of organisation	Purely private
Spain Italy (for the National Olympic Committee)	France Italy (for the National Sport Federations) Portugal Spain		Finland Netherlands UK Romania

Summary: *There are two very different outlooks on sports. In countries such as Spain, France, Italy and Portugal the public law dominates the organisation of sports, while in Finland, Netherlands, UK and Romania the public regulator has not seen direct public regulatory intervention as necessary. The public influence is seen either completely unnecessary or the steering is more subtle through financing and contracting as, for example, in Finland.*

Table 3. In case there is a combination of administrative law and private law aspect please indicate the different kinds of combination

Only administra-	Administrative	Administrative	Only private law	others
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private law	law for activity and private law for organisation	principles such as participation and private law		
	Spain Italy (administrative law for some activities carried out in the public interest; private law for organisation)		Finland	

Table 4. Financing

All public	Partly public and partly private	All private
	Finland NL: private: contribution of members and profit resulting from vents (competition) and other revenues (club bar and restaurant) Public: governmental subsidies Spain (important public proportion) Italy	

Table 5. Judicial review

Allowed	Not allowed	avoidance	injunctions
Spain Italy (for acts adopted by the national federations in the public interest) UK	Finland NL	NL (civil court)	NL (civil court)

Table 6. Liability for failure or defective regulation

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.)	Injunction Positive/Negative
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	Economic losses	
Finland (strict, if contractual)	NL: PI PH EL	NL: both
NL negligence (duty of care)	Spain (PI+PH)	
Spain (strict liability)	Italy (no case law)	
Italy (no case law)		

Table 7. Liability for failure or for defective supervision

Liability standards (intentional, negligence, strict liability)	Damages Personal injury (P.I.) Property harms (P.H.) Economic losses	Injunction Positive/Negative
Finland (strict, if contractual)	NL: PI PH EL	NL: both
NL negligence (duty of care)	Spain (idem Table 6)	
Spain (idem Table 6)	Italy (no case law)	
Italy (no case law)		