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## SUMMARY

Behavioural Approaches: A multidisciplinary venture at the Erasmus School of Law

People think, decide, and act, and institutions and corporations do so as well, be it in a slightly more complex way. By thinking, deciding, and acting, we display behaviour. In private law, behaviour is relevant in more than one respect.

Sometimes legislatures have preconceived ideas about behaviour and how private parties will respond to legislative intervention. To give one example, a legislature may enact specific legislation, submitting directors of corporations to fault-based liability in the event of insolvency of the corporation, assuming that this will give directors the incentive to take appropriate care in running the corporation's affairs. But will they do so in practice? Are there any behavioural side effects such as overzealous risk avoidance or an increase in directors' salary demands? Likewise, courts may entertain implicit or even explicit conceptions of behaviour. A court may consider that the owner of premises is under a duty of care to warn explicitly against dangers that are not readily noticeable to visitors. Applying such a rule, however, may need consideration regarding how individuals actually think about and perceive danger, and even how they interpret warning signs.

In the research group, we conduct research into the thinking, deciding, and acting of individuals and groups, and into the relationship with private law, notably the areas of contract, tort, property, corporate law, and civil procedure. We concentrate on issues of compliance and enforcement, as well as of individual and group behaviour.

Obviously, the methodology of our research efforts is interdisciplinary by nature. In our research team, we have legal scholars specialising in contracts, torts, property, corporate law, and civil procedure, joined by scholars specialised in Law and Economics, socio-legal studies, empirical legal studies, and psychology.

### Main facts 2008-2010

In the period from 2008 to 2010, the research programme history can be summarised as follows:

- the research programme '[Behavioural Approaches to Contract and Tort: Relevance for Policymaking](#)' (BACT) started in 2008;
- Professors Michael Faure and Willem van Boom jointly head the research programme;
- the research programme grew from 11 (3.88 fte research capacity) researchers in 2008 to 21 (4.6 fte) in 2009 and 23 (5.25 fte) in 2010;
- the programme involved 10 PhD students in 2008, 15 in 2009, and 21 in 2010;
- eight international and multidisciplinary conferences were organised by members of the research team;
- six professors were added to our research team: Professor Ogus in 2008, Professors Buskens, Klick, and Wagner in 2009 and Professors Heine and Rachlinski in 2010;
- seven PhD theses were defended;
- researchers in the programme produced 248 scientific publications. Over time, the distribution of publications among the three research domains was better balanced;
- the number of scientific publications published in English increased considerably: from 51% in 2008 and 52% in 2009 to 64% in 2010;
- the programme was rated 'excellent' in the Dutch Research Assessment Exercise 2009 (average score 4.75 out of 5.0).

## 1. PROGRAMME DESCRIPTION

### 1.1 The programme

*'Behavioural Approaches to Contract and Tort: Relevance for Policymaking'* is a multidisciplinary research programme at the Erasmus School of Law (Rotterdam, the Netherlands).

People think, decide, and act, and institutions and corporations do so as well, be it in a slightly more complex way. By thinking, deciding, and acting, we display behaviour. In private law, behaviour is relevant in more than one respect.

Sometimes legislatures have preconceived ideas about behaviour and how private parties will respond to legislative intervention. To give one example, a legislature may enact specific legislation, submitting directors of corporations to fault-based liability in the event of insolvency of the corporation, assuming that this will give directors the incentive to take appropriate care in running the corporation's affairs. But will they do so in practice? Are there any behavioural side effects such as overzealous risk avoidance or an increase in directors' salary demands? Likewise, courts may entertain implicit or even explicit conceptions of behaviour. A court may consider that the owner of premises is under a duty of care to warn explicitly against dangers that are not readily noticeable to visitors. Applying such a rule, however, may need consideration regarding how individuals actually think about and perceive danger, and even how they interpret warning signs.

In the research group 'Behavioural approaches to contract and tort', we conduct research into the thinking, deciding, and acting of individuals and groups, and into the relationship with private law, notably the areas of contract, tort, property, corporate law, and civil procedure. We concentrate on issues of compliance and enforcement, as well as of individual and group behaviour.

Obviously, the methodology of our research efforts is interdisciplinary by nature. In our research team, we have legal scholars specialising in contracts, torts, property, corporate law, and civil procedure, joined by scholars specialised in Law and Economics, socio-legal studies, empirical legal studies, and psychology.

### 1.2 Research focus

Within the research programme, there are three main domains of focus:

- a. Individual behaviour in exchanging resources and engaging in harmful activities;
- b. Enforcement;
- c. Behaviour of aggregations of individuals (group behaviour).

### a. Individual behaviour in exchanging resources and engaging in harmful activities

In theory, rational individuals who have all the necessary information are capable of making appropriate choices when concluding contracts (purchasing, borrowing, investing) or performing activities that may result in harm to society (production, consumption, work, leisure). Economists hold that efficient outcomes (maximisation of the welfare of society) may be reached if rational individuals possess all the relevant information and base their decisions upon it. In contrast, if individuals are not rational or do not possess all the necessary information welfare losses may occur. Neo-classical Law and Economics discusses the ability of legal rules to rectify information asymmetries. Behavioural Law and Economics focuses on the welfare losses that are caused by irrational (or less than rational) behaviour and provides suggestions for legal rules that can prevent this irrational behaviour. In this perspective, the general research questions that need to be answered in specific areas of individual behaviour are the following:

- Which legal rules may correct information asymmetries in exchanging resources?
- Which legal rules may be needed to overcome welfare losses caused by irrational behaviour?
- How may optimal legal rules be produced: who should produce these rules– for example, private vs. public law; at what level should the rules be enacted – centralised vs. decentralised production of rules?

In addition to the theoretical approach, the first step in the programme also has an empirical focus. It consists of two components: (a) surveying and summarising the relevant empirical studies undertaken by social science research and (b) exploring the content of private law rules to test the behavioural presumptions on which they may be based.

As far as contract and tort law are more specifically concerned, a number of rules and doctrines aimed at the making of informed choices will be analysed in order to answer the following research questions:

- What presumptions about human behaviour underpin rules of contract law aimed at the making of informed choices?
- Is there empirical evidence supporting these presumptions?
- Which legal rules enhancing informed choice making contribute to efficiency?
- How does compulsory sharing of information rectify information asymmetry?
- What kind of information obligations are needed to correct irrational behaviour of individuals?
- How can we judge what information is 'relevant': there may be either too little or too much information. In this respect, the question arises as to what ways the insights from cognitive psychology can be used to learn what information (or regulatory) strategies can be deemed successful to make private legal solutions work.

## b. Enforcement

The key research question here is whether – and if so, to what extent – one should rely on private parties and/or on public bodies for enforcement, given the behavioural assumptions about private individuals and public representatives of society in the specific circumstances considered for investigation. With reference to individual or organisational behaviour that forms the subject matter of investigation, the following should be evaluated: public vs. private enforcement, optimal combinations of the two, and alternative techniques (e.g. gate-keeping, self-regulation). Moreover, the more fundamental issue of what private law remedies are actually available and imaginable may need to be considered as well.

Standards for evaluation in view of the goals of enforcement can be manifold, and they depend on the level of analysis. Generally speaking, the following standards present themselves:

- efficacy with respect to the identified policy goal;
- economic efficiency;
- non-economic policy goals or other theoretical paradigms.

More specific research questions in this perspective are:

- Is individual/corporate behaviour best regulated by the incidental private initiative of a tort or contract claim, by frequent supervision by regulatory agencies, or by some ‘third way’ alternative (e.g. self-regulation)?
- Currently, organisations are subject to more regulation than ever before. In some jurisdictions, duties of disclosure as well as duties to obtain information, to warn against inherent dangers, or to abstain from misleading statements are no longer the prerogative of private enforcement by individuals but rather the domain of enforcement agencies. As a consequence, there is an ongoing transition from private law to public law (and vice versa) in the field of financial services, competition law, consumer contracts, food safety and product safety agencies, and occupational health & safety agencies. What are the consequences of this transition for the domain of private law?
- What triggers private parties to enforce private law rules, and what triggers public officials to enforce (public) law? By comparing the motivations of private individuals to enforce the law (compensation? revenge? self -vindication?) and comparing these with the motivations of public officials, we may be able to show the implications for optimal balance between private and public enforcement.
- Indeed, the previous raises more general questions as to the (optimal mix of) enforcement instruments, and merits the question as to why one particular instrument (e.g. criminal law) may be more (cost) effective in a particular context than another. The relationship and cooperation between the various enforcement instruments and actors also deserve specific attention.

### c. Behaviour of aggregations of individuals (group behaviour)

In this section, the study of contract and tort is extended from individuals to the conduct of organisations. We understand organisations to be a broad concept, encapsulating commercial business enterprises (varying from large multinationals to small and medium-sized enterprises), corporations, legal persons, and aggregations of individuals ranging from non-profit organisations, consumer/investor associations, self-regulatory organisations, to government agencies and so forth.

Naturally, we do not focus exclusively on how organisations think and decide in the shadow of the law; we also examine whether private law rules have any bearing on organisational behaviour. Specific aspects of both internal organisation (disciplined, for example, by corporate law) and external interaction with other members of society (e.g. in the field of consumer/investor protection, as well as environmental law) will be included in the study of the impact of law on private and public organisations.

In short, organisations are created by contract, conclude contracts in their turn, and engage in tortious activities. As a consequence, the general research questions for this part depend on the level of analysis. Hence, these questions are:

- Do organisations respond to rules in contract and tort in a manner different from that of individuals?
- Under what conditions should policymakers stimulate setting up organisational structures?
- In which direction, in which form, and to what extent should private law intervene to correct the behaviour of organisations?

In many areas of law, these questions are of current interest. As far as internal organisation is concerned, possible topics are:

- corporate contract and its discipline by company law;
- vicarious liability and regulation of internal monitoring;
- organisation and accountability of self-regulatory organisations vs. regulatory authorities.

Regarding the interaction of organisations with society, subjects of investigation in this perspective may include:

- mass torts;
- consumer credit;
- commercial (B2B) contracts and their implications for intellectual property and antitrust;
- consumer protection in B2C contracts;
- corporate fraud, with a special view to the placement/trading of securities;
- corporate social responsibility vs. environmental/safety regulation.

In this perspective, the programme focuses on how corporate behaviour is affected by contract and tort law. The connection between empirical evidence of behavioural influences of contract and tort law and the law itself is explored. Several questions can be raised in this respect, such as:

- Is there firm evidence that corporate tortfeasors change their behaviour after being held liable for damages? Under what conditions is this change in behaviour most likely to occur? Should private law remedies be adjusted in order to provide more efficacious incentives for compliance?
- How do businesses respond to large-scale claiming? What innovative systems of managing these risks do they design? Does self-regulation help businesses in this respect, or should the legislature provide for more uniformity or more effective remedies?

Additionally, the question also arises as to what role contract and tort law can, and in fact does, play in inducing corporations towards compliance. Again questions can be asked regarding the role of self-regulation within corporations and the role of corporate governance structures in organisational behaviour.

## 2. MAIN POINTS 2008-2010

### 2.1 Staff and available research time

	2008	2009	2010
<b>Full Professor</b>			
Prof. M.G. Faure	0.50	0.20	0.20
Prof. W.H. van Boom	0.40	0.40	0.40
Prof. R.J. Van den Bergh	0.40	0.40	0.40
Prof. S.D. Lindenbergh	0.30	0.40	0.40
Prof. E.G.C. Rassin	0.20	=	=
Prof. N.J.H. Huls	=	0.32	0.32
Prof. J. Klick	=	0.01	0.08
Prof. C.J. Loonstra	=	0.16	0.16
Prof. A.I. Ogus	=	0.08	0.08
Prof. V.W. Buskens	=	0.02	0.08
Prof. G. Wagner	=	0.01	0.08
Prof. K.H. Heine	=	=	0.40
Prof. J. Rachlinski	=	=	0.08
<b>Associate Professor</b>			
Dr. A. Arcuri	=	0.12	0.20
Dr. L.T. Visscher	0.40	0.40	0.32
Dr. R. Westrik	=	0.08	0.08
Dr. A. M. Paccas	0.40	0.40	0.40
Dr. R.W.M. Giard	=	0.08	0.08
Dr. A.R. Houweling	=	0.13	0.40
<b>Assistant Professor</b>			
Dr. P.D.N. Camesasca	0.08	0.08	0.08
Dr. J.H. Even	=	0.08	0.13
Dr. M.L. Tuil	0.40	0.40	0.40
Dr. A.M.I.B. Vandenberghe	=	0.40	0.40
Dr. G.W. van der Voet	=	0.08	0.08
Dr. P. Klik	0.40	=	=
Dr. A.R. Houweling	=	0.27	=
Dr. A. Arcuri	0.40	0.08	=
<b>Total</b>	<b>3.88</b>	<b>4.60</b>	<b>5.25</b>

	2008	2009	2010	Remarks
<b>PhD student</b>				
W. Dijkshoorn	0.75	0.75	0.75	
E. Fagotto (EDLE)	=	0.19	0.75	
C.I. Garcia Porras	=	0.53	0.75	
K. Grabovets (EDLE)	=	=	0.19	
P. Hanke (EDLE)	=	=		Erasmus Mundus
B.D. Hengstmengel	=	0.75	0.31	Until 01-06-10
W. Hu (EDLE)	=	0.75	0.75	
V. Karapanou (EDLE)	0.75	0.75	0.75	
S. Keske (EDLE)	0.75	0.38	=	PhD defence 15-12-2009
M. van Kogelenberg	0.60	0.60	0.75	
P. Kruit	=	0.75	0.60	
C. Leger (EDLE)	=	=		Erasmus Mundus
H.A. Luth (EDLE)	0.75	0.60	0.09	PhD defence 27-05-2010
N. Meir (EDLE)	=	0.19	0.31	Until 01-06-2010
S. Mittlaender Leme de Souza (EDLE)	=	=	0.19	
H. Nabilou (EDLE)	=	=		Erasmus Mundus
S. Oded (EDLE)	0.75	0.75	0.75	
S.B. Pape	0.75	0.75	0.75	
E.V. van der Schee	=	=	0.75	
V. Singh Chahar (EDLE)	=	=		Erasmus Mundus
K. Svatikova (EDLE)	0.75	0.75	0.66	PhD defence 15-04-2011
J. Visser	0.75	=	=	PhD defence 18-06-2009
Y. Waterman			=	PhD defence 13-11-2009
F. Weber (EDLE)	0.75	0.75	0.75	

## 2.2 Ongoing PhD projects

PhD student	Topic/Title
W. Dijkshoorn	The concept of damage in public and private law
E. Fagotto (EDLE)	Risk and Food: Rethinking food regulatory regimes in Europe
C.I. Garcia Porras	What European consumer law should learn from consumer psychology
K. Grabovets (EDLE)	Tort Law and Organisational Design
P. Hanke (EDLE)	Law and Economics of State Aid
W. Hu (EDLE)	Regulatory compliance (permit) defense
V. Karapanou (EDLE)	A Law and Economic analysis of damages for nonpecuniary losses in cases of personal injuries and fatal accidents



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M. van Kogelenberg	The right to performance in comparative and economic perspective
P. Kruit	Specialisation in adjudication in labour disputes
C. Leger (EDLE)	Securities Regulation – Comparative European Policies
S. Mittlaender Leme de Souza (EDLE)	Why Do People Follow the Law, Especially the Private Law? Towards a brain-based model of law abiding decisions and behaviour
H. Nabilou (EDLE)	Market Failure and Systemic Risk Regulation in Financial Markets: A Game Theory Perspective
S. Oded (EDLE)	Internal enforcement as a welfare-enhancing enforcement measure
S.B. Pape	Effective product safety warnings: The interaction between law and psychology
E. van der Schee	Preventive effects of (employers') liability; an empirical approach
V. Singh Chahar (EDLE)	Addressing Agency Problems in Constitutional Law Using Insights from Corporate Governance
K. Svatikova (EDLE)	Economic criteria for criminalization: Why do we use criminal law?
F. Weber (EDLE)	Towards an optimal mix of public and private enforcement in consumer law

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Other EDLE PhD students	Topic/Title
D. Akun	Changing Structure of Banking Industry and Regulatory Issues
S. Amaral Garcia	Damages in Medical Malpractice Cases
B. Assi	Regulation of Conflicts of Interests in the Provision of Investment Services
M. Bayramli	Strategic Patenting: Accumulation of Patents and Impacts
R. Castro Bernieri (PhD defence 17-9-2010)	Ex-Post Liability Rules in Modern Patent Law
F. Bilgel	The Law and Economics of Organ Procurement
P. Bertoli	Competitive Analysis of the Allocative Mechanisms of the Medical Malpractice Risk in the Italian Public Health System

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S. Clò (PhD defence 17-9-2010)	Economic Analysis of the European Climate Policy: the European Emissions Trading Scheme
C. Desogus (PhD defence: 7-5-2010)	Competition and Innovation in the EU Regulation of Pharmaceuticals: The Case of Parallel Trade
L. Escresa Guillermo	Extrinsic and Intrinsic Motivation: The Shifting Map of Legal Remedies
F. Fagan	Temporary versus Permanent Legislation
C. Gurkan	The Role of Banks for Corporate Governance
H. Jabotinsky	The Structure of Financial Supervision: Consolidation or Competition for Financial Regulators?
D. Krsmanovic	Law and Economics of Corporate Lobbying
J. Ma	A Comparative Perspective on Merger Policies of Antitrust Law
A. Martinez Gandara	The Impact of Firms' Corporate Social Responsibility Measures on its Environmental Performance
M. Marzetti	The Elusive Rationale of Trade Mark Dilution
V. Ostrovskis	Multilateral Trading Facilities and Their Impact on European Financial Markets
P. Peng	Essays on Loyalty Rebates and Exclusive Dealing
S. Rajput	Maximum Retail Price – Analyzing its anti-competitive effects
T. Ramos Erickson	Legal/Political Institutions & Urban Poverty
A. Renda	Law and Economics in the RIA World
M. Sadowska	Regulatory Antitrust - The Use and Abuse of Competition Rules in the Energy Sector
O. Skripova	Economic Effects of Imposing Liability on Underwriters
C. Tagliapietra	Legal Institutions and the Economic Governance of the Commons: A case study in Italy 1200-1800
A. Vasa	Legal and Economic Efficiency of Contracts in the Carbon Markets
F. Wesselhoeft	Multiparty Contracts & Non Recourse Finance (Project Finance) Law and Economics

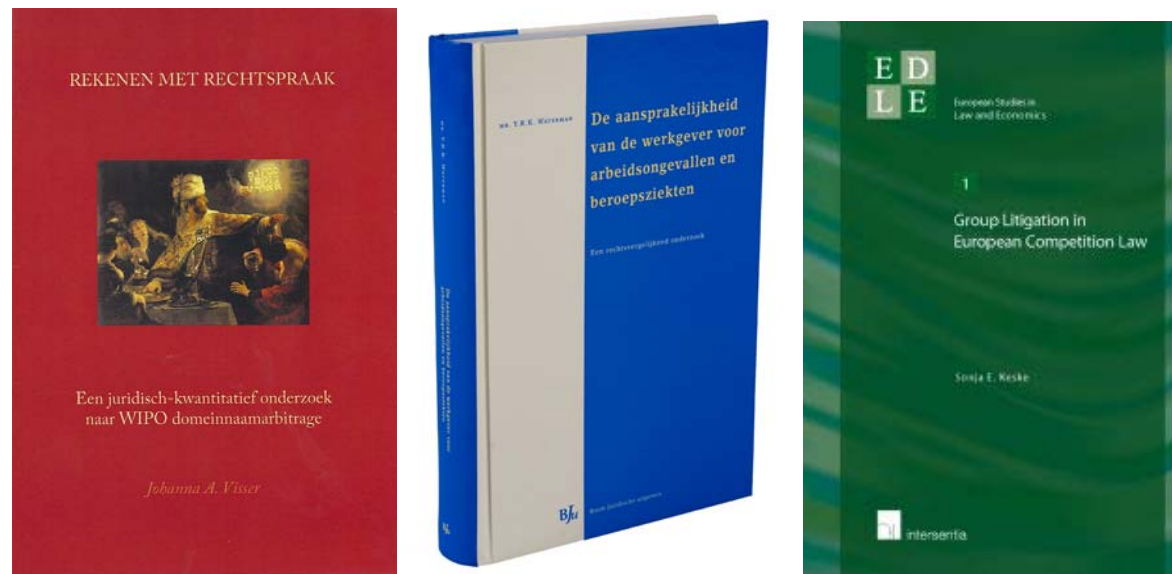
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## 2.3 PhD Defences

**2008**

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**2009**



Johanna Visser (June 18) 'Rekenen met rechtspraak'

Yvonne Waterman (November 13) 'Werkgeversaansprakelijkheid'

Sonja Keske (EDLE) (December 15) 'Group Litigation in European Competition Law'

**2010**

Claudia Desogus (EDLE) (May 7) 'Competition and Innovation in the EU Regulation of Pharmaceuticals: The Case of Parallel Trade'

Hanneke Luth (EDLE) (May 27) 'Behavioural Economics in consumer policy – The economic analysis of standard terms in consumer contracts revisited'

Rosa Castro Bernieri (EDLE) (September 17) 'Ex post Liability Rules in Modern Patent Law'

Stefano Clò (EDLE) (September 17) 'Economic Analysis of the European Climate Policy: the European Emissions Trading Scheme'

## 2.4 Professorial appointments

From 2008 to 2010, the following professorial appointments were made. All appointments will provide an invaluable resource to help us accomplish the comparative, empirical, and multidisciplinary goals of Erasmus School of Law research.

**2008**

**2009**

**2010**



**Anthony Ogus**

**Gerhard  
Wagner**

**Vincent  
Buskens**

**Jonathan  
Klick**

**Klaus  
Heine**

**Jeffrey  
Rachlinski**

### **Chair of Fundamentals of Private Law**

[Anthony Ogus](#) and [Gerhard Wagner](#)

In 2008, Professor Ogus was appointed the first professor in the Erasmus Chair of Fundamentals of Private Law (2008-2011). This most recent event in Professor Ogus's long and successful career was preceded by his professorship at the University of Manchester (1987-2008) and his research professorship at Maastricht University (1995-2008). Professor Ogus has shown himself to be both a versatile lawyer and an inquisitive traveller. He has held visiting academic posts worldwide and has written on many diverse topics. Much of his work focuses on the economic analysis of law, and more particularly, on issues of regulation and the enforcement of regulation. Professor Ogus has a distinct professional and personal interest in the comparison of different legal cultures and of cultures as such, respectively.

With the appointment in 2008 of Professor Anthony Ogus to the Erasmus Chair of Fundamentals of Private Law, Erasmus School of Law set out to strengthen its focus on an international and interdisciplinary study of private law. The chair helps to bring research to a higher level both in comparative law and in the interdisciplinary study of private law.

In 2009, we were fortunate to appoint Professor Gerhard Wagner (1962), professor of German and European Private Law, Civil Procedure and Comparative Law at the University of Bonn, as the second Erasmus Chair of Fundamentals of Private Law at Erasmus School of Law.

Professor Wagner has extensive experience in the broad field of private law and civil procedure, and in his research, he combines substantive private law, Law and Economics, and comparative law. This approach has resulted in groundbreaking, policy-oriented publications.

In recent years, Erasmus School of Law has invested a great deal in the internationalisation of its

research activities. This has resulted in a repositioning of research activities and in the creation of a stimulating research environment that attracts scholars with international and interdisciplinary interests and experience.

### **Chair of Empirical Legal Studies**

[Vincent Buskens](#), [Jonathan Klick](#), and [Jeffrey Rachlinski](#).

In the autumn of 2009, Vincent Buskens (1968), associate professor of sociology at Utrecht University, was appointed part-time Erasmus Chair of Empirical Legal Studies at Erasmus School of Law. Buskens is both a mathematician and an empirical sociologist, and he specialises in research on decision making in business contracts and trust issues in cooperation networks. Professor Buskens has joined the research team to pursue new lines of empirical research into consumer behaviour and regulation of B2C markets. Professor Buskens has ample methodological and statistical expertise in the social sciences.

Also appointed in 2009 was Jonathan Klick (1975), Professor of Law at the University of Pennsylvania Law School, the part-time Erasmus Chair of Empirical Legal Studies at Erasmus School of Law. Professor Klick is both a lawyer and an economist, and he specialises in empirical Law and Economics. As is the case with Professor Buskens, Professor Klick will develop new focus areas of empirical research. He has a special interest in areas such as corporate governance and tort law.

In 2010, Jeffrey Rachlinski (1966), Professor of Law at Cornell Law School (Ithaca, NY, USA), was appointed part-time Erasmus Chair of Empirical Legal Studies at Erasmus School of Law. Professor Rachlinski is both a lawyer and a psychologist, and he specialises in empirical legal studies. Professor Rachlinski has joined our team to pursue new strands of empirical research into areas such as judicial decision-making processes and litigation strategies. Professor Rachlinski has ample experience in the methodology of empirical Law and Economics, and thus he will provide invaluable input that will help Erasmus School of Law research to accomplish its empirical objectives.

### **Chair of Law and Economics**

Klaus Heine

In 2010, Klaus Heine (1970) was appointed Chair of Law and Economics at Erasmus School of Law in Rotterdam. Professor Heine, who was previously associate professor in the Department of Human and Economic Sciences, University for Health Sciences, Medical Informatics and Technology (UMIT, Vienna, Austria), received his education as an economist at Philipps-University, Marburg, Germany. Professor Heine has since had extensive experience in the areas of European integration, economic policy, and institutional economics. Moreover, he specializes in the Law and Economics of corporate governance and in theory of the firm. In January 2010, Heine joined the Rotterdam Institute of Law and Economics ([www.rile.nl](http://www.rile.nl)), and is currently participating in this research programme.

## 2.5 Visiting staff

In 2009, we started up a visiting staff programme to attract foreign scholars who could contribute to the research programme. In 2010, the following researchers became associated with BACT:

Visiting staff	
Dr. R.J.J. Eshuis	Researcher at WODC; expert in the empirical legal study of civil procedure
Dr. P. Mascini	Researcher at the EUR faculty of Social Sciences; researcher in the field of sociology of policymaking
Dr. N. Jungmann	Lector at Hogeschool Utrecht; researcher in the field of consumer debt resolution; starting 1 August 2010

## 2.6 Associated fellows

The research programme also offers scholars the opportunity to visit our research group for a short research stay. We offer an exciting environment for multidisciplinary legal research, and we enjoy the exchange of thoughts and ideas with academics having research interests similar to our own. In 2010, we accommodated the following visitors.

Visiting guest researchers	
Dr. Hila Nevo	Erasmus Mundus visiting scholar
Dr. Bogdan Kryvolapov	Associate law professor in the department of international law at the Institute of International relations at Kiev National Shevchenko University
Dr. Jef De Mot	Researcher at University of Ghent, Centre for Advanced Studies in Law and Economics

## 2.7 Visiting Fellows Programme

BACT offers scholars the opportunity to visit our research group for a short research stay. We offer an exciting environment for multidisciplinary legal research, and we enjoy the exchange of thoughts and ideas with academics having research interests similar to our own.

In the past, we accommodated the following visitors:

- Matthias Vandebogaerde, PhD student Leuven University (Rotterdam Institute of Private Law Visiting Scholar 2009);
- Geraint Howells, Professor of Commercial Law at the University of Manchester (Erasmus School of Law Visiting Professor 2010).

In the past, the following academics were each an 'Erasmus School of Law Distinguished International Visitor':

- Eva Kocher, School of Law, Europa-Universität Viadrina Frankfurt (Oder), Germany (2009);
- David Milman, School of Law, Lancaster University, England (2009);
- Richard A. Nagareda, School of Law Vanderbilt U. Nashville, Tennessee, United States of America (2009);
- Astrid Stadler, School of Law, University of Konstanz, Germany (2009);
- Jenny Steele, York Law School, University of York, England (2009).

## 2.8 Inaugural lectures

2008

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2009

### *Politicians and the Paradoxes of Paternalism*

**Anthony Ogus** delivered his inaugural lecture on Thursday May 14 on the topic 'Politicians and the Paradoxes of Paternalism'. Legal paternalism occurs when the law forces individuals to avoid certain risks, or without coercion nudges them away from such risks, on the ground that otherwise they will make unwise decisions. Although the questions as to when and how such approaches should be taken are of fundamental importance in a society in which there are increasing risks to health and livelihood resulting from technological developments and greater freedom of choice, they appear not to be openly addressed in policymaking circles. Professor Ogus attempted to explain this neglect and to outline a theoretical framework for determining when and how legal paternalism might be considered appropriate.



### *The impact of behavioural Law and Economics on accident law*

On June 12, **Michael Faure**, Professor of Comparative Private Law and Economics, gave his inaugural address. The lecture dealt with the consequences of the behavioural law and economics literature for the economic analysis of tort and insurance. There is currently an overwhelming amount of literature, both empirical and experimental, claiming that individuals do not respond as assumed by the rational actor model. Much of the economic analysis of tort and insurance is, however, based on the assumption that individuals will respond rationally to incentives provided by varying liability rules and insurance possibilities. The question therefore arises as to what extent the outcome of this behavioural literature changes some of the outcomes of the traditional economic analysis of liability rules and insurance. The question was also addressed as to whether this literature leads to particular policy recommendations, for instance, concerning the introduction of compulsory insurance for particular domains.





2010



*The Empirical Revolution in Law and Economics*

This lecture described the movement of Law and Economics from an almost exclusively theoretical and intuitive field of research to a predominantly empirical one. This movement is documented with descriptive data from the journals that focus on Law and Economics. **Professor Klick** then discussed possible reasons for the trend, and speculated as to whether it will continue and, more important, how empirical work is likely to change in the future. Along the way, he offered thoughts on various issues, such as why the empirical movement has not yet caught on in European Law and Economics, how empirical Law and Economics differs from the related empirical legal studies movement, and why the most prominent literature in empirical Law and Economics – that on legal origins/law and finance – actually represents bad law and bad econometrics.

*Inside the Judicial Mind: How Judges Make Decisions*

On November 9, **Jeffrey Rachlinski** held his inaugural lecture as Erasmus Chair of Empirical Legal Studies. Under the title '*Inside the Judicial Mind: How Judges Make Decisions*', Rachlinski asked whether judges apply law to facts in a mechanical and deliberative way, as the formalists suggest they do, or rely instead on hunches and gut feelings, as the realists maintain. Debate has raged for decades, but researchers have offered little hard evidence in support of either model. Using empirical studies of judicial reasoning, Rachlinski demonstrated that judges respond to cases both with intuition and deductive reasoning. Taking into consideration both intuition and deliberation provides a more accurate account of judicial behaviour than do models that advance one or the other process as the sole determinant of judicial decision making. The model also suggests that an excessive reliance on intuition is a common source of judicial error.



*Formal and informal institutions to handle trust relations*

On November 11, **Vincent Buskens** held his inaugural lecture as Erasmus Chair of Empirical Legal Studies, arguing the case for interdisciplinary and empirical legal research ‘between Hobbes’ Leviathan and Smith’s Invisible Hand’. We lend money to a friend or an expensive tool to a neighbour without bothering to write down explicitly when we expect the money or tool to be returned. When we ask a gardener to remodel our garden, we require an explicit contract detailing the costs for different parts of the job. And if we buy or sell a house, a very detailed contract and a notary are involved to make sure that the deal runs according to the relevant rules and regulations. All three situations refer to trust situations, but they are managed with very different informal or formal institutions. One important question concerns why these different trust problems or transactions are managed in different ways. Apparently, we more easily trust that a neighbour will not act as opportunistically towards us as a gardener might. A second question regards whether the arrangements chosen are efficient. Further questions include: Are there transactions in which contracting is more or less extensive than necessary to discipline actors in the related trust problems? Is the explicit involvement of the government in certain transactions necessary and sufficient?



Buskens argued that the answers to these questions are not straightforward and depend on many aspects of the transaction. Research on trust problems has shown that the need for contracts and regulations depends on social, economic, and legal aspects of the transaction. Using this past research, he then illustrated some of the main determinants of trust in transactions and how this affects the need for contracting and regulation. In addition, he showed how complementary empirical research designs expand our knowledge as to how transactions can be handled efficiently. Based on these research examples for trust situations, Buskens demonstrated why legal scholars need to incorporate an interdisciplinary approach to understand the effects of changes in regulation. In addition, he provided a menu of empirical methods to obtain empirical evidence for theoretically derived relations between the regulation and the efficiency of transactions.

## 2.9 Conferences

### 2008

#### *Changing Perspectives on Corporate Law and Economic*

During this conference, organised by Alessio Paces on November 6, we hosted the reception of three generations of scholars in Corporate Law and Economics. The speakers compared their views based on different geographical experiences and cultural backgrounds. The topics covered several issues in the Law and Economics of Corporate Governance, from an American as well as a European perspective: namely, harmonisation vs. regulatory competition, the law's impact on going public and M&A, enforcement, and the political economy of corporate governance.

### 2009

#### *New Trends in Financing Civil Litigation in Europe*

On April 24, Mark Tuil and Louis Visscher organised a conference on the topic of 'New Trends in Financing Civil Litigation in Europe'. The conference aimed at analysing different possible solutions to the problem of financing civil litigation from a legal, empirical, and Law and Economics point of view. The legal analysis focused on the question of which financing techniques are legally available and how they are embedded in the existing legal frameworks. The empirical analysis investigated to what extent the theoretically available instruments are actually applied in practice. The Law and Economics analysis focused on the strengths and weaknesses of the distinguished instruments from the point of view of maximising social welfare. In this manner, the conference brought together international legal, empirical, and Law and Economics scholars.

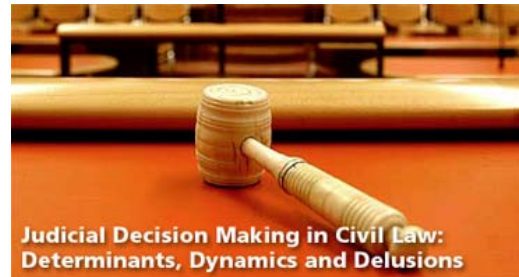
#### *Gedrag van verzekeraars (Insurer Behaviour)*

On December 4, Siewert Lindenbergh and Henriët Vos organised the seminar Gedrag van verzekeraars (Behaviour of Insurers). The seminar was dedicated to the way insurers operate with regard to the insured or to parties claiming benefits. The code of conduct for insurers stipulates that they handle such claims promptly and adequately. The relevant law (title 7.17 of the Dutch Civil Code) deals extensively with insurance contracts but contains almost no relevant rules regarding the handling of claims. This begs the question of how should insurers handle claims. Speakers at the seminar were Willem van Boom (EUR; RIPL), Han Wansink (EUR; Insurance Law Institute), Niels Frenk (VU Amsterdam), Chris van Dijk (Lawyer at Kennedy Van der Laan, Amsterdam), and Lodewijk Smeehuijzen (VU Amsterdam).

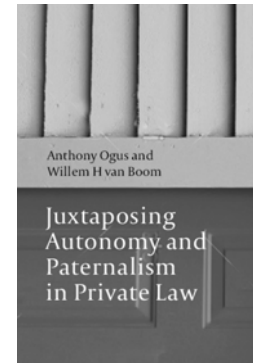
#### *Dealing with the Masses*

On December 11, Willem van Boom and Jenny Steele (York Law School, UK) organised a research workshop on legal and logistical issues of representation and distribution in mass claim procedures. Topics included not only the obvious, such as class action mechanisms, but also apparently unrelated areas such as liquidation of insolvent companies and collective action in labour disputes. On closer inspection, however, these apparent disparate domains proved to have much in common. In dealing with the masses, the law always has to weigh the need for quick and efficient administration against fundamental individual access to justice. It needs to install instruments for accountability, as well as attain procedural and substantive fairness.

This workshop brought together renowned legal scholars and practitioners with the aim of gaining a closer understanding of how the masses are to be dealt with fairly and efficiently.



2010



### *Juxtaposing Autonomy and Paternalism in Private Law*

On February 26, the conference 'Juxtaposing Autonomy and Paternalism in Private Law' took place at the ESL, organised together with the Erasmus Law Review. For the spring 2010 issue of the Erasmus Law Review, it was intended to collect the papers presented and discussed at this seminar. The aim was to bring together a number of outstanding papers on the 'autonomy vs. paternalism' debate. Obviously, the issue is not the final word on the 'autonomy vs. paternalism' debate. What we hope, however, is that it added to the discussion, thus creating new insights into the private law systems of Europe.

Presentations were held by Gerhard Wagner (Bonn/Rotterdam, 'Mandatory Contract Law'); Simon Deakin (Cambridge, 'Contracts and Capabilities: An Evolutionary Perspective on the Autonomy-Paternalism'); Daniel Schwarcz (Minnesota, 'Paternalism and Emotion in Insurance Markets'); Nick Huls (Rotterdam, 'Paternalism and autonomy in the regulation of consumer credit contracts and bankruptcy'); Oren Bar-Gill (New York, 'Informing Consumers About Themselves'); Ann-Sophie VandenBerghe (Rotterdam, 'Requiring evidence of true consent: paternalism without choice restriction'); Laurens Winkel (Rotterdam, 'Forms of imposed legal protection in legal history, especially in Roman law'); and Stephen Waddams (Toronto, 'Autonomy and paternalism from a common law perspective'). With their introductory and closing remarks, Willem van Boom and Anthony Ogus, respectively, opened and closed the conference.

### *Party Autonomy in Property Law*

Initiated and organised by Roel Westrik, together with Jeroen van der Weide (Leiden School of Law), the conference 'Party Autonomy in Property Law' was held at the ESL on May 27 and 28. Splendid lectures by prominent speakers, a mainly specialised audience, a friendly and international atmosphere (no fewer than 22 universities throughout Europe and even Japan and Africa were represented) and a subject that is known to be highly controversial, resulted in inspired and animated discussions. The conference met its objective perfectly: to analyse and comment on the

question of whether party autonomy or, more specifically, a choice of law possibility in matters of Property Law should be recommended or required.

Speakers at the conference included: Prof. U. Drobnig, Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg; Prof. A. Flessner, Humboldt-Universität, Berlin; P.M.M. van der Grinten LL.M., Ministry of Justice, The Hague; Prof. J. von Hein, Universität Trier; Prof. V. Sagaert, Katholieke Universiteit Leuven; Prof. R. Stevens, University College London; Prof. T.H.D. Struycken, University of Utrecht; Prof. P.M. Veder, University of Utrecht; Prof. H.L.E. Verhagen, Radboud University Nijmegen; Dr. J.A. van der Weide, Leiden Law School; Dr. R.M. Wibier, University of Tilburg.

#### *Judicial Decision Making in Civil Law: Determinants, Dynamics and Delusions*

On November 9, 2010, Raimond Giard organised the seminar 'Judicial Decision Making in Civil Law: Determinants, Dynamics and Delusions' on the occasion of the inaugural lecture by Jeffrey Rachlinski, Erasmus Chair of Empirical Legal Studies. Speakers included Ivo Giesen (Utrecht; 'Attribution, causation and prevention'); Jan Smits (Maastricht; 'The judge between facts and norms: on the psychology of norm selection'); Femke ten Velden and Carsten de Dreu (University of Amsterdam; 'Judicial Judgement and Decision Making: A motivated information processing in groups perspective'); and Raimond Giard (Rotterdam; 'Facts, framing and fallacies in tort negligence').

#### *Empirical and Interdisciplinary Behavioural Approaches to Legal Issues*

On November 11, preceding the inaugural lecture by Professor Buskens, a workshop entitled 'Empirical and Interdisciplinary Behavioural Approaches to Legal Issues' was held. Although economic, sociological, or psychological theories can help to derive theoretical predictions about the effectiveness and efficiency of certain regulations, as long as empirical evidence for the theory is lacking, it would be premature to act on such a theory. Some of the empirical tools that can be used to obtain such empirical evidence are demonstrated in this seminar. Experimental evidence can shed more light on the causal mechanisms that link changing rules to outcomes such as satisfaction of actors. In the first talk, Kirsten Rohde (associate Professor of Behavioural Economics, Erasmus School of Economics) provided evidence on how procedural justice affects the extent to which actors value equality in outcomes. Surveys can be used to obtain opinions of a large number of people on a specific topic. Ferry Koster (associate Professor, Department of Sociology, Erasmus University Rotterdam) illustrated the use of surveys. From a large-scale European study, he presented results that help to understand the opinions European citizens have about new formal institutions in Europe. Finally, Jeffrey Rachlinski (Erasmus School of Law, Cornell Law School) showed how judicial decision making can depend on subtle changes in the context of a legal case by letting judges evaluate hypothetical descriptions of parts of a legal case. Although we all realise that we do not need Thomas Hobbes' Leviathan determining every human decision to live peacefully together, we also know that if we leave everything to Adam Smith's invisible hand, not all human decisions will be optimal. In this workshop, we hoped to show insights into how legal scholars using interdisciplinary insights and different empirical tools could contribute to a more effective use of rules and regulations.

## 2.10 Research Seminars

In 2008, we introduced a monthly seminar series as a platform for cooperation and discussion, and to increase mutual understanding. The goal of the seminars is not only to provide junior and senior scholars a platform for their research and have it critically tested by their peers; external experts with a specific expertise in the research domain of the programme are also invited to give presentations. By involving these external experts, the seminars can also contribute to the visibility of the programme. The seminars provide scholars with the possibility of receiving critical feedback on their work in progress, and hence they stimulate the academic quality of the research output. Both senior and junior scholars present their work in the seminars in order to stimulate the junior researchers to prepare their work for publication in international journals.

External experts included:

- Werner Raub, Professor of Theoretical Sociology in the Department of Sociology/ICS - Utrecht University  
(‘Empirical Evidence on Contacts and Contracts: Survey Research, a Vignette Study, and a Lab Experiment’)
- Peter Mascini – assistant Professor of Sociology in the Department of Sociology – EUR  
(‘Responsive Regulation at the Dutch Food and Consumer Product Safety Authority: An Empirical Assessment of Assumptions Underlying the Theory’)
- Hans van Oosterhout, Professor of Corporate Governance and Responsibility at Rotterdam School of Management – EUR  
(‘Contingencies of Corporate Control: A Meta-Analysis of Blockholder Effectiveness in 23 European Countries’)
- Julie De Coninck, postdoctoral fellow at KU Leuven, and Bart Du Laing, Ghent University  
(‘Comparative Law, Behavioural Economics and Contemporary Evolutionary Functionalism’)

## 2.11 EDLE

The Rotterdam Institute of Law and Economics (RILE), whose researchers are involved in our programme, participates in the PhD programme ‘*European Doctorate in Law and Economics*’ (EDLE). EDLE is the academic response to the increasing importance of the economic analysis of law in Europe. The programme is offered by the Universities of Bologna, Hamburg, and Rotterdam (RILE) in association with the Indira Gandhi Institute of Development Research, Mumbai (India). PhD students receive the unique opportunity to study Law and Economics in three different countries. The programme prepares economists and lawyers of high promise for an academic career in a research field of growing importance or for responsible positions in government, research organisations, and international consulting firms. The European Commission sponsors the EDLE as an excellence programme under the prestigious Erasmus Mundus scheme. Professor Faure is the Managing Director of the programme.



An initiative of EDLE is the series ‘*European Studies in Law and Economics*’, published with Intersentia. The series is devoted to further the understanding of Law and Economics in Europe. The volumes published in this series are all subject to peer review, and present an interdisciplinary perspective on the effects of laws on people’s behaviour and on the economic system. The comprehensive topics address a wide audience, including policy makers, legislators, economists, lawyers and judges.

The editorial board of the series consists of Professor Michael Faure, Professor Luigi A. Franzoni (University of Bologna), and Junior Professor Patrick C. Leyens (University of Hamburg).

## 2.12 Awards, distinctions and other evidence of reputation

### BACT Research Programme rated 'excellent' in Dutch RAE 2009

On 2 July 2010, it was announced that the research programme was rated 'excellent' in the Dutch Research Assessment Exercise 2009. The Dutch RAE is a national assessment of the quality of research programmes undertaken by Dutch law faculties. The evaluation committee responsible for the assessment granted BACT an overall score of 4.75 on a scale of 5.00. It praised BACT for both the quality and the number of publications generated by the research group. In particular, the committee praised the programme for its ambitions in pushing the boundaries of legal research into the multidisciplinary and international legal arena. Moreover, the committee commended the programme for its promising prospects and sustainability.

#### 5.2.5. Eindoordeel: 4,75

1. Kwaliteit	5	4	3	2	1
1.1 Wetenschappelijke publicaties	X				
1.2 Vakpublicaties		X			
1.3 Overige resultaten		X			
1.4 Bijdrage aan theorievorming en doctrine		X			
1.5 Onderlinge samenhang van programma	X				
1.6 Originaliteit, inhoudelijk en qua aanpak	X				
1.7 Samenwerking, internationalisering		X			
<b>2 Productiviteit</b>					
2.1 Aantal wetenschappelijke publicaties	X				
2.2 Aantal vakpublicaties	X				
2.3 Aantal overige resultaten					
2.4 Aantal dissertaties	X				
<b>3 Relevantie</b>					
3.1 In relatie tot de wetenschap	X				
3.2 In relatie tot de samenleving		X			
3.3 In relatie tot de rechtspraak		X			
<b>4 Vitaliteit/haalbaarheid</b>					
4.1 In relatie tot de opzet van het programma	X				
4.2 In relatie tot personeel en financiën	X				
4.3 In relatie tot de leiding	X				

Uit: *Kwaliteit en diversiteit. Rechtswetenschappelijk onderzoek in Nederland*,  
Rapport van de Evaluatiecommissie Rechtswetenschappelijk Onderzoek 2009 (p. 92-93)



### **Honorary doctorate Guido Calabresi**

On 7 November 2008, the Erasmus University Rotterdam conferred the title of Doctor *honoris causa* upon Guido Calabresi, Judge of the US Court of Appeals for the Second Circuit, Sterling Professor Emeritus, and former Dean of Yale Law School. In awarding this doctorate, the Erasmus School of Law wanted to honour Guido Calabresi for his extraordinary intellectual achievements in the field of Law and Economics. We feel that Calabresi, by accepting the doctorate, has also signalled his respect for the line of Law and Economics research originating from the Erasmus School of Law.

### **2009: Additional Erasmus University Board Research Grant**

In February 2009, the Erasmus University Board granted additional funding of some € 1.5 million for a period of three years to the BACT research programme. The Programme Directors have attracted new staff to help achieve the goals set in the funding conditions. We feel that by awarding this grant, the Board has acknowledged the quality of the programme.

### **Prize for best paper**

On 16 June 2009, Vania Karapanou and Louis Visscher won a prize for best paper at the 13th Meeting of the Latin American and Caribbean Law and Economics Association (ALACDE) in Barcelona. Vania presented their paper 'The Magnitude of Pain and Suffering Damages from a Law and Economics and Health Economics Point of View', in which the concept of Quality Adjusted Life Years from the domain of Health Economics was used to enable a better assessment of pain and suffering damages in personal injury cases.

### 3. PUBLICATIONS

#### 3.1 Highlights

In each of the [three domains of focus](#) within the research programme, each year we selected publications as being prototypical of the way our research group has developed and of the type of publications we aimed at. For an overview of all scientific publications in the period from 2008 to 2010, see [Table I-III](#).

In the first domain ('individual behaviour'), we selected the following publications as worth highlighting:

- Boom, W.H. van, Giesen, I., Verheij, A.J. (Eds.) (2008), *Gedrag en privaatrecht. Over gedragspresumpties en gedragseffecten bij privaatrechtelijke leerstukken*, Den Haag: Boom Juridische uitgevers, 616 pp.
- Sanne B. Pape (2009), "[“May Contain” Labelling: Adequate Consumer Warning or Unnecessarily Defensive Manufacturer Behaviour?](#)", *Journal of Consumer Policy*, volume 32(2), p. 165-188.
- Faure, M.G. (2009), *The Impact of Behavioural Law and Economics on Accident Law*, The Hague: Boom Juridische Uitgevers.
- Lindenbergh, S.D. (2009), '[Vier kinderen en hun lotgevallen in het aansprakelijkheidsrecht](#)', *Nederlands Juristenblad (NJB)*, 2075, p. 2670-2682.
- Rense, C. & Buskens, V.W. (2010), '[Co-evolution of Conventions and Networks: An Experimental Study](#)', *Social Networks*, 2010 (32), p. 4-15.
- Giard, R.W.M. (2010), '[When is the practice of pathology malpractice?](#)', *Journal of Clinical Pathology*, 63, p. 957-961.
- Heine, K. & Janal, R. (2010), 'Suretyships and Consumer Protection in the European Union through the Glasses of Law and Economics', in: Ciachi, A. & Weatherill, St. (Eds.), *Regulating Unfair Banking Practices in Europe*, Oxford: Oxford University Press 2010, p. 5-26.
- Luth, H.A. (2010), *Behavioural Economics in Consumer Policy; The Economic Analysis of Standard Terms in Consumer Contracts Revisited*, Intersentia: Morsel/Antwerp 2010, 342 pp.
- Ogus, A. (2010), '[The Paradoxes of Legal Paternalism and How to Resolve Them?](#)', *Legal Studies*, 2010, 30, p. 61-73.
- Vandenberghe, A.S. (2010), '[The Role of Information Deficiencies in Contract Enforcement](#)', *Erasmus Law Review*, 3 (1), 2010, p. 71-91.

In the second domain ('enforcement'), we selected the following publications as worth highlighting:

- Faure, M.G., Ogus, A.I., Philipsen, N. (2008), '[Enforcement Practices for Breaches of Consumer Protection Legislation](#)', *Loyola Consumer Law Review*, 20(4), p. 361-401.
- Bergh, R.J. Van den & Visscher, L.T. (2008), '[The Preventive Function of Collective Actions for Damages in Consumer Law](#)', *Erasmus Law Review*, Volume 1, Issue 2, p. 5-30.
- Willem H. van Boom (2009), '[Inherent Risk and Organisational Design in European Tort Law](#)', *Zeitschrift für Vergleichende Rechtswissenschaft*, 108, p. 118-133.
- Bergh, R.J. Van den & Keske, S.E. (2009), 'Rechtsökonomische Aspekte der Sammelklage', in: Mathias Casper c.s. (Eds.), *Auf dem Weg zu einer europäischen Sammelklage?*, Munich: Sellier European Law Publishers, p. 17-40.
- R.Westrik (2009), '[Kredietcrisis en insolventierecht](#)', *Maandblad voor Vermogensrecht*, Volume 19, Issue 7/8, p. 181-186.
- Arcuri, A. & Dari-Mattiacci, G. (2010), '[Centralization versus Decentralization as a Risk-Return Trade-Off](#)', *The Journal of Law and Economics*, 2010, 53, p. 359-378.

- Boom, W.H. van (2010), '[Comparative Notes on Injunction and Wrongful Risk-Taking](#)', *Maastricht Journal of European and Comparative Law*, 17(1), p. 10-31.
- Karapanou, V. & Visscher, L.T. (2010), '[Towards a Better Assessment of Pain and Suffering Damages](#)', *Journal of European Tort Law*, 2010, 1, p. 48-74.
- Wagner, G. (2010), '[Legal Origin, Civil Procedure, and the Quality of Contract Enforcement](#)', *Journal of Institutional and Theoretical Economics (JITE)*, 166, p. 171-177.

Finally, in the third domain ('group behaviour'), we selected the following publications as worth highlighting:

- Boom, W.H. van, Faure, M.G., Huls, N.J.H., Philipsen, N.J. (2009), [Handelspraktijken, reclame en zelfregulering - Pilotstudy Maatschappelijke Reguleringsinstrumenten \(WODC Rapport 1535\)](#), Den Haag: Boom Juridische Uitgevers, xii + 135 pp.
- Huls, N.J.H., Jungmann, N. (2009), 'Debt counselling in the shadow of the Court: the Dutch experience', in: Niemi, J., Ramsay, I. & Whitford, W.C. (Eds.), *Consumer Credit, Debt and Bankruptcy. Comparative and International Perspectives*, Oxford: Hart Publishing, p. 419-439.
- Kogelenberg, M. van (2009), '[Article III.3:302 DCFR on the Right to Enforced Performance of Non-monetary Obligations: An Improvement - Albeit Imperfect - Compared with Article 9:102 PECL](#)', *European Review of Private Law*, 4, p. 599-617.
- Keske, S., Renda, A. & Bergh, R.J. Van den, 'Financing and group litigation', in: Tuil, M. and Visscher, L.T. (Eds.), *New Trends in Financing Civil Litigation in Europe: A Legal, Empirical and Economic Analysis*, Cheltenham: Edward Elgar Publishing 2010, p. 57-92.
- Paccès, A.M. (2010), '[Consequences of Uncertainty for Regulation: Law and Economics of the Financial Crisis](#)', *European Company and Financial Law Review*, volume 7, issue 4, p. 479-511.

### 3.2 Scientific publications in numbers and figures

Research Output	2008	2009	2010
Individual	13,66	22,33	40
Enforcement	50,66	28,33	52
Group	5,66	9,33	22
Other		4	
<b>Total</b>	<b>70</b>	<b>64</b>	<b>114</b>

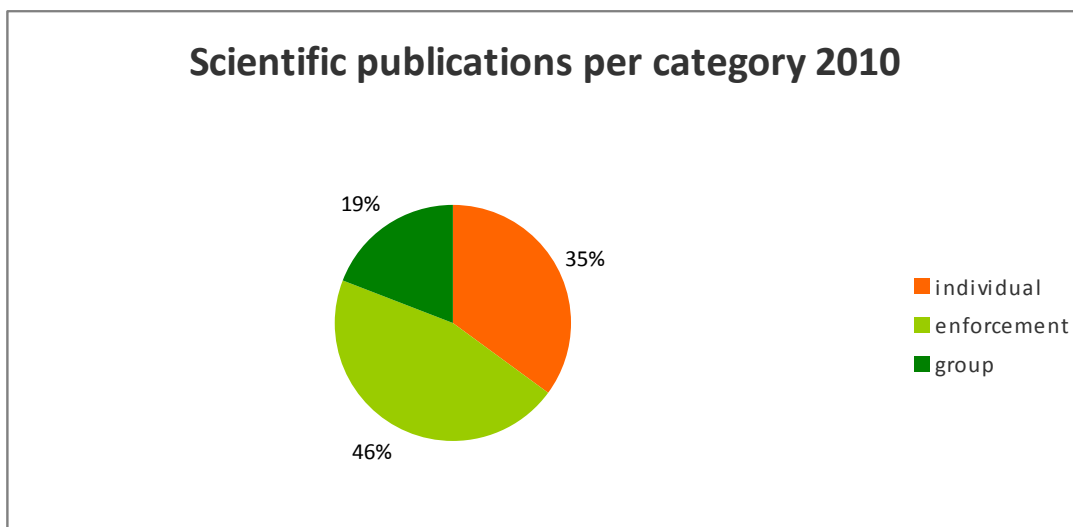
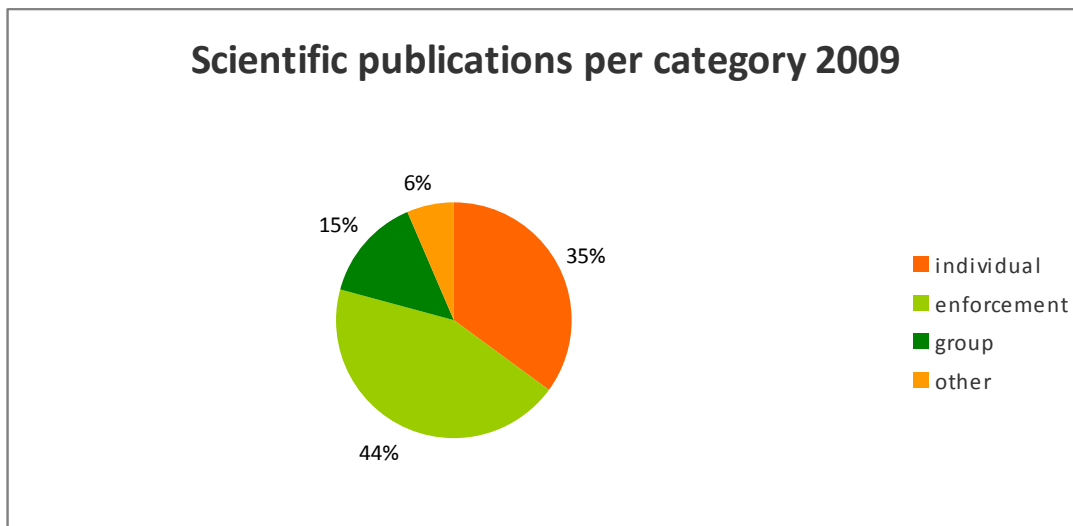
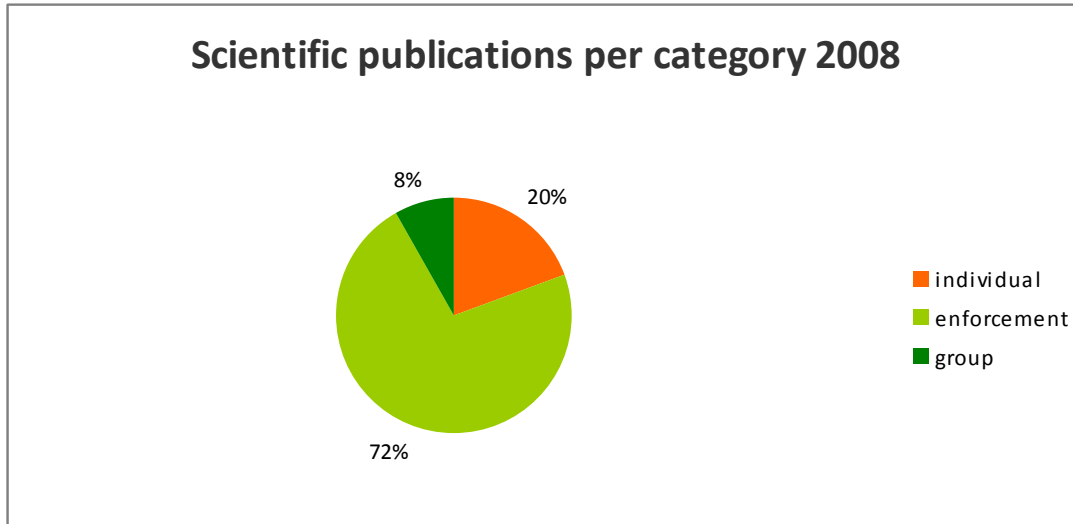
In English	2008	2009	2010
Individual	7	14,33	26
Enforcement	24	10,33	31
Group	6	6,33	16
Other		2	
<b>Total</b>	<b>37</b>	<b>33</b>	<b>73</b>

In refereed journal <sup>1</sup>	2008 <sup>2</sup>	2009	2010
Publication in journal with referee-system	--	4	18
Other publication	--	60	96

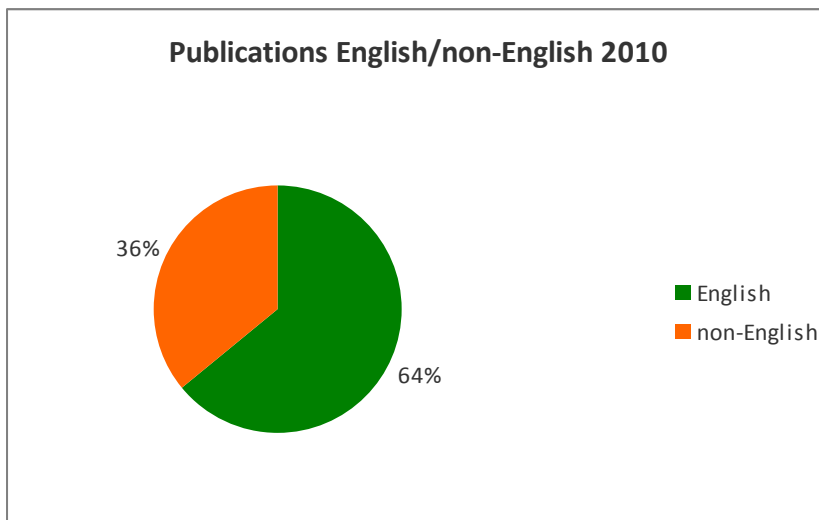
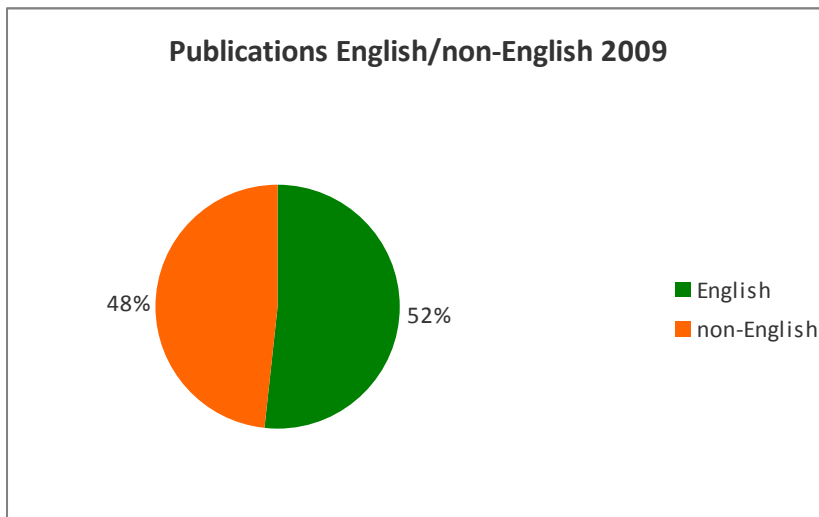
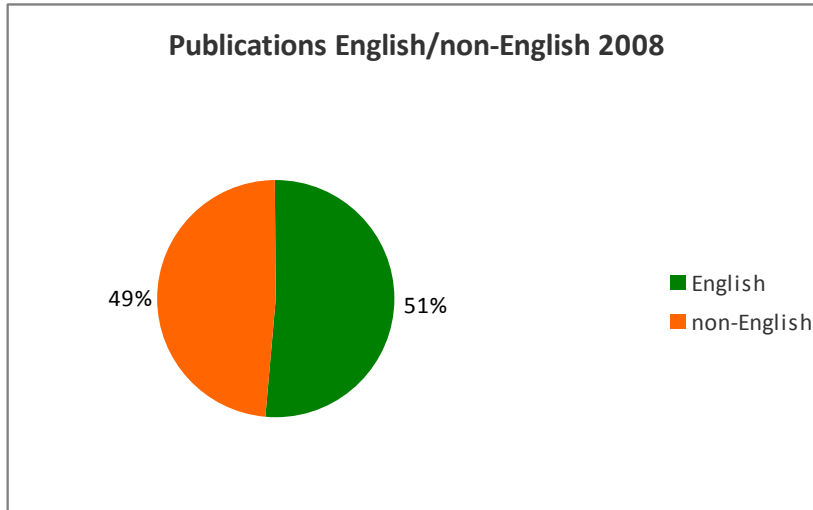
<sup>1</sup> By 'refereed', we mean refereed in accordance with that particular journal.

<sup>2</sup> For 2008, these data were less accurately measured and were therefore not suitable for a comparison.

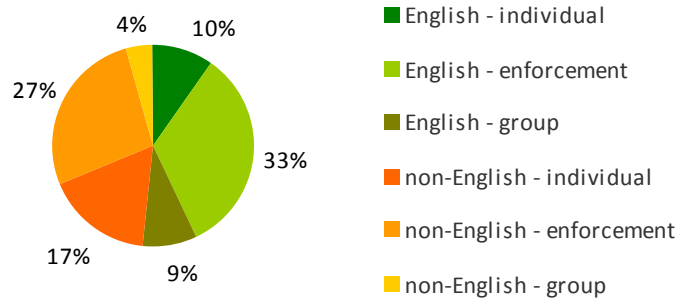
Over time, the distribution of publications among the three research domains was better balanced, as shown by the following charts:



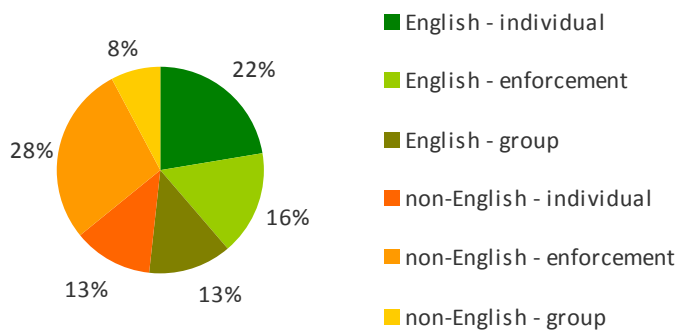
The number of publications written in English also increased considerably:



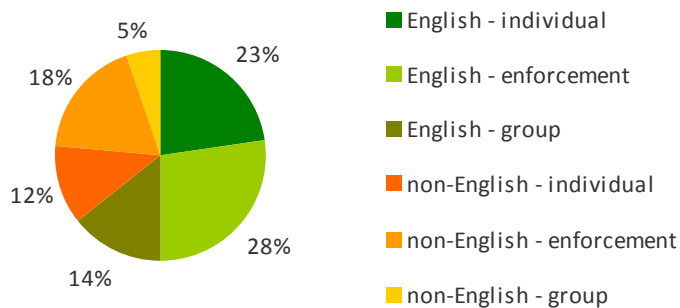
**Publications English/non-English per category  
 2008**



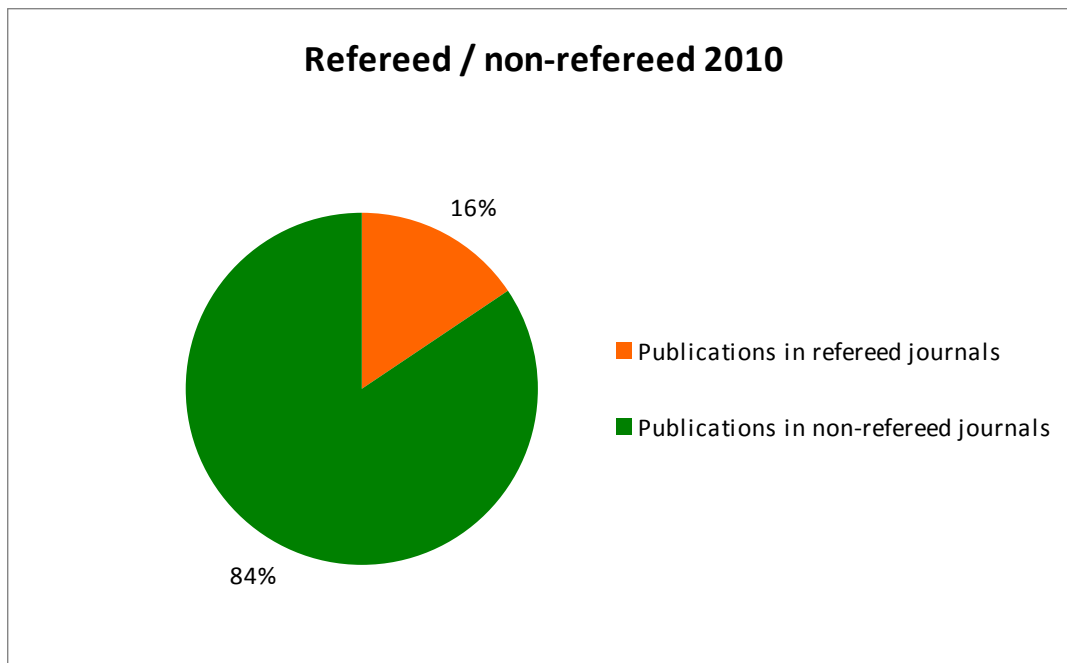
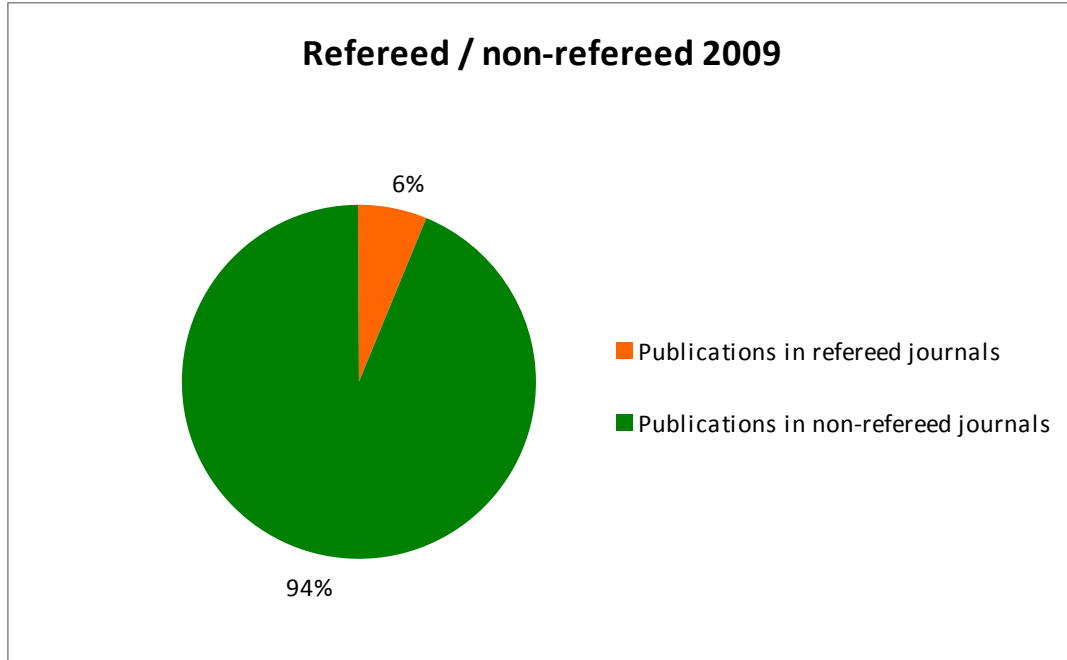
**Publications English/non-English per category  
 2009**



**Publications English/non-English per category  
 2010**



To conclude, the number of publications in refereed journals<sup>3</sup> also increased, as shown by the following charts (for 2008, these data were less accurately measured and were therefore not suitable for a comparison):



<sup>3</sup> By 'refereed', we mean refereed in accordance with that particular journal.

### 3.3 Books

From 2008 to 2010 we published a considerable number of high profile books with international publishers of high repute:

#### 2008

Faure, M.G. & Song, Y. (Eds.), *China and International Environmental Liability. Legal Remedies for Transboundary Pollution (New Horizons in Environmental Law)*, Cheltenham: Edward Elgar Publishing 2008, xx + 360 pp.

Faure, M.G. & Stephen, F. (Eds.), *Essays in the Law and Economics of Regulation. In Honour of Anthony Ogus*, Antwerpen: Intersentia 2008, xx + 359 pp.

Faure, M.G. & Peeters, M. (Eds.), *Climate change and European emissions trading. Lessons for theory and practice*, Cheltenham: Edward Elgar Publishing 2008, 424 pp.

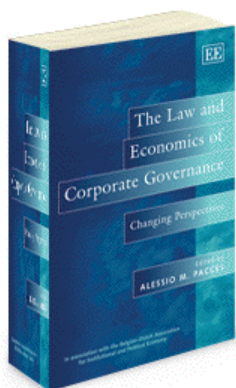
#### 2009

Faure, M.G. (Ed.), *Tort Law and Economics* (Vol. 1 of the Encyclopedia of Law and Economics, 2nd ed.), Cheltenham: Edward Elgar Publishing 2009, 576 pp.

Faure, M.G. & Heine, G., *Oumeng Wei Baohu Shengtai Dongxing. Oumeng Geguo Hanjing Xingshi Zhifa Baogao* (Chinese translation of Criminal Enforcement of Environmental Law in the European Union), China: CCTP 2009, 243 pp.

Huls, N., Adams, M. & Bomhoff, J. (Eds.), *The legitimacy of highest courts' rulings: judicial deliberations and beyond*, Den Haag: TMC Asser Press 2009.

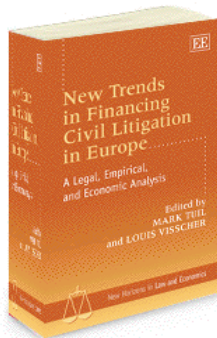
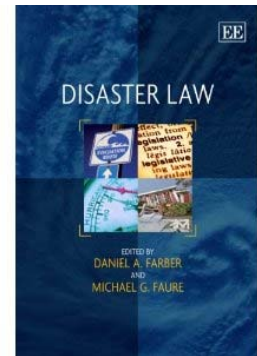
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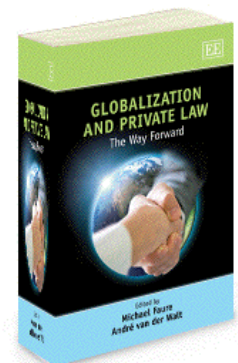


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### 3.4 Miscellaneous

We continuously seek opportunities to expound the practical implementation of the results of our research. We give the following examples of our commitment to policy relevance.

#### EC White Paper

Two scholars who are active in the programme have worked on an EU project concerning the private enforcement of competition law. On 3 April 2008, the European Commission published for public consultation a White Paper and a Commission Staff Working Paper on Damages Actions for Breach of the EC competition rules. The White Paper suggests specific policy choices and measures that would help give all victims of infringements of EC competition law access to effective redress

mechanisms so that they could be fully compensated for the harm suffered. The Commission's White paper is based on an impact assessment that was carried out by a group of researchers, comprising members of the Behavioural Approaches Program (Roger Van den Bergh, Sonja Keske) and researchers of the Centre for European Policy Studies and the University LUISS Guido Carli in Rome.

#### **'Trade Practices, Advertising, and Self-Regulation: Pilot Study on Societal Instruments of Regulation'**

September 2009 saw the publication of a study commissioned by the Research and Documentation Centre of the Dutch Ministry of Justice (WODC). The study was co-authored by Willem van Boom, Michael Faure, Nick Huls, and Niels Philipsen (Maastricht University). This pilot study aims at providing an insight into the various ways in which non-legislative instruments of regulation work, how they are instituted, how they are enforced and complied with, and to what extent they can serve as an alternative to the legislative instruments commonly used by policymakers. To be more precise, this study focuses on one specific form: self-regulation through codes of conduct in Dutch business with regard to consumer trade practices and advertising. By focusing in this manner on a type of self-regulation, this unadorned study sets forth a basic surveillance of the field of regulation and self-regulation of B2C marketing, trade practices, and advertising of goods and services. The authors addressed three specific areas in which this dynamic state can currently be witnessed: namely, in the area of codes of conduct with regard to advertising for alcoholic beverages, telemarketing, and consumer credit.

*Boom, W.H. van, Faure, M.G., Huls, N. & Philipsen, N., 'Handelspraktijken, reclame en zelfregulering', Den Haag: Boom Juridische Uitgevers 2009.*

#### **Research contract 'Strooischade' (dispersed mass damage; 2009)**

This research contract granted by the Dutch Ministry of Economic Affairs consists of a joint research project by The Hague Law Office of Pels Rijcken Drooglever Fortuijn and Professor Van Boom on the factual necessity of introducing mass claim mechanisms to combat widely dispersed mass damage by means of consumer and competition law enforcement mechanism.

#### 4. EDUCATING AND NURTURING RESEARCH TALENT

Within the research programme, we nurture talent by creating a stimulating environment for intellectual development. The Erasmus School of Law sets favourable conditions by offering PhD positions and tenure track positions. In 2008, we attracted both upcoming and well-established talents. Scouting talent among students has been made possible by the successful European Master in Law and Economics programme. Moreover, the set-up of the master in private law (and the upcoming new Master in Liability and Insurance Law) also gives ample opportunity to identify and nurture new talent. For example, with the master thesis projects initiated by Professors Lindenbergh and Van Boom, outstanding private law master students are offered the opportunity to co-author a book having academic stature. In 2008, this resulted in 'Autonomie en paternalisme in het privaatrecht', in 2009, in 'Waar gehakt wordt ...' and in 2010, in 'Rake remedies'.



In terms of specific research education needs, we aim to find the right course for the right person. Some of our PhD students participate in the [research school Ius Commune](#) while a considerable number of PhD students are part of the educational programme of the European Doctorate in Law and Economics ([EDLE](#), see also [Chapter 2.11](#)).

## 5. OUTLOOK

The outstanding results of the Dutch Research Assessment Exercise 2009 (in which all research programmes undertaken in Dutch law schools are assessed; see also [Chapter 2.12](#)) are rewarding, and indeed challenge us to pursue our research programme even further. What we strive for in 2011 is essentially as follows:

- We expect to organise a number of academic gatherings both for the benefit of our own BACT researchers and for a broader audience:
  - We will organise BACT seminars for researchers to present papers at their early stage of fruition;
  - On the occasion of the farewell lecture of Professor Ogus, we will hold a seminar on ‘comparative legal culture’ (May 20, 2011);
  - Professor Van Boom will co-organise the 1st Dutch Conference on Civilology (Rotterdam, June 24, 2011) together with Utrecht University and the WODC (Ministry of Justice Research and Documentation Centre).
- We aim to increase further the number of peer-reviewed international publications in high profile (legal) journals.
- We aim at to strengthen the empirical research methods applied in the research programme, both by undertaking specific empirical research and building cooperation with other key players in this area, and by training our staff further.
- We aim to publish a number of books, including:
  - ‘Mass Justice: Challenges of Representation and Distribution’ (Jenny Steele & Willem van Boom (Eds.); Edward Elgar Publishing 2011);
  - ‘Juxtaposing Autonomy and Paternalism in Private Law’ (Anthony Ogus & Willem van Boom (Eds.); Hart Publishing 2011);
  - ‘Inside the Judicial Mind: How Judges Make Decisions’ (Raimond Giard (Ed.); Eleven International Publishing 2011);
  - ‘A comparative study on non-competition clauses and employment law in the EU’ (Ruben Houweling & Cees Loonstra; Eleven International Publishing 2011);
  - ‘Liability for climate Change Damage’ (Michael Faure & Marjan Peeters (Eds.); Edward Elgar Publishing 2011);
  - ‘Competition and Regulation in China, Europe and the US’ (Michael Faure & Zhang Xinzhu (Eds.); Edward Elgar Publishing 2011);
  - ‘Legal Origins’ (Michael Faure & Jan Smits (Eds.); Intersentia Publishing 2011);
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