



III-1.7: Les 100 mots de la régulation (Regulation in 100 words), by Marie-Anne Frison-Roche

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MAIN INFORMATION

In *Les 100 mots de la régulation* (“Regulation in 100 Words”), Marie-Anne Frison-Roche clearly and pedagogically identifies and defines the vocabulary of regulation by making sure, from the introduction, to firmly distinguish between regulation and rule making. Regulation is the maintenance of various balances between principles, rules, and economic and social realities. Rule making is the translation of a collective will emanating from lawmakers or judges, be they national, European, or international.

CONTEXT AND SUMMARY

These regulatory preoccupations can be found in areas such as telecommunications, energy, finance, the protection of personal data, healthcare, or transportation. All of these industries are examined through the lens of regulation. Nonetheless, the book is not repetitive, because each industry has its own particular identity.

In most cases, regulation is the search for a balance between free and open competition, and the need to safeguard liberties or the protection of personal data. But in other cases, regulation can be defined separately from the rules of competition and the relationships between economic actors. This is the case of financial regulation, whose goals are to ensure proper market function and sanction abuses in order to protect investors. The goal is for all investors to benefit from equitable and transparent access to all markets, whatever their degree of familiarity with these markets. To this effect, financial regulators must make sure to guarantee the sincerity, transparency, clarity, and exactitude of information published by corporations, funds, local governments, or individuals who issue securities in order to obtain funding from private individuals or institutions on negotiation platforms. Sometimes, financial regulators even hinder free and open competition when it leads to market fragmentation and opaque transactions, to the detriment of exhaustive and transparent information furnished to regulators, investors, and issuers. This is the debate that took place over the MiFID Directive that will be adopted in the second semester of 2011.

Beyond its judicious and precise choice of words to illustrate regulation by defining its contours and content, the exceptional interest of this synthesis is the talent with which Marie-Anne Frison-Roche provides a panorama of regulation that is as broad as could possibly be, since it goes from the most general—regulation’s philosophical issues—to the most specific, such as the explanation of certain barbaric acronyms. Thereby, we are escorted from “Humanity’s Common Goods,”—a political notion referring to culture, healthcare, or rare resources that the political community (not always international) decides everyone must have access to without necessarily having the financial capacity to pay for them—to the ARCEP, the *Autorité de régulation des communications électroniques et des postes*, or the French telecommunications and postal regulatory authority, or the ARJEL, the *Autorité de régulation des jeux en ligne*, the French online gambling regulator, without forgetting the CRE, the *Commission de régulation de l’énergie*, the French energy regulator.

You will learn in a few words everything that there is to know about the Competition Authority, Prudential Supervision, and the regulation of piracy on the internet. You will also learn all about Securities Regulation, even though recent reforms modernizing the French Financial Market's sanction powers—such as the creation of the ability of the Sanctions Commission to appeal decisions—and the creation of a transversal agency to protect individual investors (a sort of consumer agency) have not yet been integrated into this edition.

What I found was most unique about this book in comparison with the abundance of other publications on the subject were the developments on the philosophy of regulation, in particular under the heading entitled “Philosophy,” on Page 104 in the French Edition. According to Marie-Anne Frison-Roche, regulation “is an answer to a certain conception of the State, of common goods, of the benefits ascribed to competition and to the balance to be maintained (or not) between competition and other principles...” This idea makes regulation part of a philosophy of economic liberalism, even though it cannot be fully described by economics alone, for law and politics are also necessary to understand and define regulation and its fundamentals.

Let us also salute the pertinence of the author's judgement on the notion of “*Confidence*” (page 39 of the French edition), which is the regulator's holy grail: regulators cannot demand confidence, but rather have to try their hardest to help confidence to return. “Goods traded on a market have no corporality and their value only depends on the confidence that purchasers place in them.” This is an eternal value that we have inherited from antique wisdom and which continues to be a source of inspiration for financial regulators of the 21st century.

The author does not forget to point out that regulators remain liable for their decisions despite their independence, and therefore must be held accountable. They are, of course, held accountable before the government, which is the reason they have to publish annual reports and participate in many Parliamentary hearings. But, they are also accountable before the industries they regulate, and regulators have to convince the industry of the pertinence of their regulatory decisions. Therefore, industry has a form of power in deciding whether or not to join in the effort of co-regulation. This reminder of regulatory liability is welcome, especially after the formidable shake-up represented by the 2008 financial crisis—look at the worrisome conclusions of the bipartisan Senate committee's report published in April 2011, which especially holds regulators responsible. We must keep the principle of accountability in mind when dealing (or not dealing) with the current sovereign debt crisis.

BRIEF COMMENTARY

My only regret in the vast fresco of Regulation in 100 Words is that Marie-Anne Frison-Roche did not mention the multiplication of regulatory authorities, their responsibilities, the possibility of overlapping jurisdiction, and their occasional lack of coordination. Therefore, she does not call for greater rationalization. This subject could have been addressed under a number of entries such as “perimeter” or “regulatory architecture”. The debate must be held on the national and European level, since regulation is going to be applied to more and more industries in the future, such as agricultural commodities. The European Union does not impede upon national regulators' powers: on the contrary, it is necessary in order to standardize various countries' interpretations of the same rules, and to serve as an arbiter between the different possible interpretations. The European Union is therefore necessary and welcome, and I point this out in my capacity as a national regulator!

