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Corporate governance codes and collective labour agreements. Two examples of ‘reflexive law’ compared.

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Abstract

Reflexive law has become popular. Actors in society such as corporations and trade unions are involved in the process of rule-making in diverse areas. States and governments involve those actors, because it is presumed that these actors are better able to regulate themselves, for the sake of effectivity. Sometimes, governments use minimum rules within which these actors have to operate.

The corporate governance code is a relatively new instrument. Originally from the UK it spread in the 1990's all over Europe and other parts of the world. Famous is its main method of implementation, ‘comply or explain’, in many nations embedded in law. Now that we have some experience with this new instrument, is it possible to make conclusions about its effectiveness? I will compare this instrument with one of the oldest examples of ‘reflexive law’, the collective labour agreement. Also here, governments are involved, especially in the decision to impose this agreement on a complete sector of the economy: to make it generally binding. Also here, non-state parties are involved in the implementation of the agreement.

Both examples of reflexive law are, however, very different in their idea, their effectiveness and their method of implementation. A comparative research is therefore warranted. I will focus on two questions. Can public interests be effectively safeguarded by both these instruments, and if so, under what conditions. In what way is the

effectiveness of the two instruments affected by increasing globalization and the activities of the EU (annual accounts directive 2006/46/EC; case law *Laval*, *Rüffert* of the ECJ). I will focus on the situation in the Netherlands and a small number of public interests.

Keywords: Reflexive law, corporate governance code, collective labour agreements, comply or explain, declaration of general binding.