

**Date of the seminar:**

Wednesday 11<sup>th</sup> May 2011 from 12h30 to 13h30  
(sandwiches included during the conference)

**Location of the seminar:**

Faculty of Law, Economics and Finance  
BRC 2.01 (2<sup>nd</sup> floor)  
148, avenue de la Faïencerie  
L-2511 Luxembourg

**Language:**

English

**Registrations:**

- Free seminar
- Maximum number of registrations: 40
- **Registrations** by email:  
[fdef-colloques@uni.lu](mailto:fdef-colloques@uni.lu) (Last name, first name, institution)

**Information:**

Tel: +352 46 66 44 6619  
Contact person: Mrs Armelle Arnould

Lunchtime Seminar

# Merging European and US Rulemaking Strategies

By Charles H. Koch, Jr.,  
William and Mary Law School, Williamsburg, VA

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**Merging European and US Rulemaking Strategies**  
**By Charles H. Koch, Jr.**

One of the founding scholars of modern US administrative law, Kenneth Davis, famously observed that notice and comment rulemaking is one of the greatest inventions of modern government. Maybe but Europeans have developed their own strategy for participation in rulemaking, “consultation.” Generally, whereas notice and comment rulemaking throws the rule open to general and often meandering public comment, consultation targets certain interested groups. It implies an affirmative, even aggressive, effort to solicit participation, especially from those directly concerned. It expects rulemakers to seek out and assist community involvement. Notice and comment is largely passive, perhaps consistent with the common law adjudicative process, and places responsibility on interested persons. It is thus biased in favor of those with resources and incentive to expend those resources to influence a rule. On the other hand, because consultation pivots on active rulemakers, it creates the danger of cooperation between the government bodies and certain interests. The instincts of the two systems is affected by the fact that in parliamentary systems what would be considered rulemaking in the US is part of the legislative process whereas in the US presidential system that process is a separate executive function, conceptualized less as part of the political process and more as objective, expert policymaking.

**Charles H. Koch, Jr.**

Professor Koch is the Dudley W. Woodbridge Professor of Law at the College of William and Mary. He specializes in administrative law, European Union law, federal courts, and comparative constitutional law.

Prior to joining the William and Mary faculty in 1979, he was a staff attorney in the Office of General Counsel of the Federal Trade Commission and a member of the faculty at the DePaul University College of Law. He has been a fellow at the Kennedy School of Government, Harvard University. Between 1989 and 1996, he was editor-in-chief of the *ADMINISTRATIVE LAW REVIEW*. He currently chairs the ABA Task Force on Global Administrative Law and the International Committee of the ABA administrative law section. He is a member of the Research Network of EU Administrative Law (Freiburg University, Germany). He has a B.A., University of Maryland; J.D., George Washington; LL.M. University of Chicago.

He is the author of the three volume set **ADMINISTRATIVE LAW AND PRACTICE THIRD**, two volumes in **FEDERAL PRACTICE AND PROCEDURE** (Wright and Koch) and founding author of a casebook, **ADMINISTRATIVE LAW: CASES AND MATERIALS** (6<sup>th</sup> ed.). He served as co-editor of **ADMINISTRATIVE LAW OF THE EUROPEAN UNION** (with George Bermann).