Outline

• Application of behavioural sciences in European Union policy-making

• Its most immediate implications for EU regulatory environment

• The extent to which it can be accommodated by existing administrative law regime
Emergence in the EU

- Behavioural insights formally applied in 2009 Consumer Rights Directive
- DG SANCO Framework Contract for the Provision of Behavioural Studies – Commission JRC

- Policy framings
  - ‘Alternative to regulation’, ‘new’

- Not yet clear how behavioural approach could be systematically applied in EU
## Interplay with existing regulatory environment

<table>
<thead>
<tr>
<th>EU’s limited formal competences (Treaty on the Functioning of the EU)</th>
<th>Its ever-expanding policy activities</th>
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<td>Building effective and visible EU government</td>
<td>‘Behind the scenes’ engineering of choice</td>
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<tr>
<td>Maintaining degree of EU uniformity</td>
<td>Heterogeneity of Member States</td>
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Nudge State and regulatory appraisal

- Regulatory Impact Assessment
  - ‘Operational detail’ not assessed
Nudge State and checks / balances

- Judicial review
  - Article 263 TFEU: European Court of Justice’s remit of review
  - Case law: only ‘measures having an equivalent effect’ to legislative restriction subject to review
Closing remarks

• The ‘behavioural turn’ does not occur in regulatory vacuum

• Important to consider behavioural approaches not just in their own terms but also in light of existing regulatory practices and assumptions

• Especially in contexts where there is perceived ‘legitimacy crisis’, e.g. the EU