

The background of the slide is the European Union flag, featuring a circle of twelve gold stars on a light blue field. The flag is slightly blurred and has a wavy texture.

# **Nudging in the EU**

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# 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

EU's limited formal competences (Treaty on the Functioning of the EU)

Its ever-expanding policy activities

Building effective and visible EU government

'Behind the scenes' engineering of choice

Maintaining degree of EU uniformity

Heterogeneity of Member States

# Nudge State and regulatory appraisal

- Regulatory Impact Assessment
  - ‘Operational detail’ not assessed
  - Non-legislative instruments only assessed where they set out commitments for future legislative action (European Commission, *Impact Assessment Guidelines* SEC (2009) 92)

# Nudge State and checks / balances

- Judicial review
  - Article 263 TFEU: European Court of Justice's remit of review
  - Behaviourally informed strategies are 'anomalous administrative acts' (Alberto Alemanno and Alessandro Spina, 'Nudging Legally' (2014) *International Journal of Constitutional Law*, forthcoming)
  - 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