



Oxford EU Law Discussion Group

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THE PATH OF TECHNICAL STANDARDS AND LEGAL METRICS

Indicators and technical standards have gained significant track as tools of legal engineering. Citizens, legal operators (e.g. judges, officials, etc.) and attorneys are now confronted on regular basis with the need to interpret, apply or, to very least, refer to legal metrics and standards to decide a controversy or, simply, to undertake a legal course of action. This talk intends to analyse recent developments and examine the extent to which these devices are becoming part of legal systems, and in particular, of the European legal order. To illustrate this, we analyse the decision of the Court of Justice of the European Union in the *James Elliot Construction* case pronounced 27 October 2016. In its decision, the Court has for the first time affirmed its jurisdiction to interpret harmonised technical standards on preliminary reference. We argue that the decision marks an important breakthrough in the evolution of EU law by recognising harmonised technical standards as part of Union law. This opening offers new possibilities for litigating technical standards and assuring the centrality of the rule of law in the achievement of the internal market. It also invites to reflect on the extent to which other types of standards and metrics may be subject to the jurisdiction of the Court. The talk will conclude on two fronts. First, it will highlight the implications of the James Elliot decision in relation to the Meroni doctrine, the potential conflicts between the principle of free access to the acts of the Union and the protection of intellectual property, and the impact that greater litigation over harmonised technical standards may have on the caseload of the Court. Second, it will illustrate how legal metrics and technical standards are transforming legal reasoning by introducing a mathematical turn in law.