

EU AGENCIES IN CRISIS: INSTITUTIONS OF AN UNFINISHED POLITY

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OVERVIEW

1. Agencies as institutions of crisis
2. Agencies as a part of an evolving polity (crisis of categorisation)
3. Incomplete constitutionalisation ('crisis of delegation')
4. Political abdication, accountability (mandate) overload and reputational risk
5. The (failed) promise of 'Good Governance'
6. An agency of political wills...and 3 elements of knowledge (Majone/Liza Herzog)



CRISIS OVERCOMES OPPOSITION (PARLIAMENT & COMMISSION)

- ESFS: EBA, ESMA & EIOPA (ESTB/ECB)
- De Larosière group (traditional concept of market failure), European regulation must be strengthened to improve an ‘inadequate mix’ of regulatory and supervisory skills and to create a co-ordinated early-warning system ‘to identify macro-systemic risks of a contagion of correlated horizontal shocks.’



Comitology = ‘Obscurantism’ (limits/risk model)

NEW PUBLIC MANAGEMENT: NO LEGITIMATION NEEDED?

- The Lamfalussy group (prior to crisis): Unwieldy EU regulation and discrepancies in national implementation were seen as regulatory failings because they led to differential treatment of financial instruments, both ‘violating the pre-requisite of the neutrality of financial supervision’ in the EU market, and delaying adaption of European financial services ‘to the pace of global financial market change.’
- Autonomous regulatory models gain normative legitimacy as postulation of a concept of *pareto*-efficiency mediates against concerns that executive power should never be endowed with too broad a mandate. Discretionary powers may be delegated to independent agencies where they have no redistributive consequences, or the subject-matter of regulation is value-neutral in terms of general welfare losses (Majone 1994).

CRISIS OF CATEGORISATION (NO REGULATORY FUNCTION?) – POLITY IN FLUX

- Egeberg & Trondal (2016): agencies are intergovernmental, transnational, or supranational in character, whereby images may overlap, but trend away from ‘Community Method’ to executive control.
- Everson, Monda & Vos: (2014): ‘in-betweeners’ building integrated post-national executive (member states & EU).
- Busuioc & Groenleer (2014): substitute for Commission since latter too bureaucratic, too politicised and composed only of generalists (as integrative tool).



ESMA: INCOMPLETE CONSTITUTIONALISATION AND THE PROBLEM OF DELEGATION



Experts and laypersons; sectarian knowledge and majoritarian process?
(Direct powers, hierarchy of norms, delegation, *Meroni 2.0*)

POLITICAL ABDICATION?

- Systemic risk – no clear definition, but ‘waiting is not an option,’ such that ‘policies have moved ahead of academic research’ (Arnold et al 2012). Executive discretion as learning process, but.....
- ‘[A] central bank is not an appropriate institution for macro-prudential supervision because central bankers are not legitimate politically to make decisions that involve important trade-offs between political and economic objectives [...] [S]uch decisions should be left with finance ministries and other elected officials’ (Ferran & Alexander 2010:).
- Frontex? Technocratisation of political disagreement.



Expertise as immaculate conception?

(MANDATE) ACCOUNTABILITY OVERLOAD

- Governance usefully designates ‘a distinctive method/mechanism for resolving conflicts and solving problems that reflects some profound characteristics of the exercise of authority that are emerging in almost all contemporary societies and economies’ (Schmitter 2001).
- Commission White Paper (2001): administrative legal instruments (transparency, accountability etc...). Bolster ‘Community Method’, denying complex reality of discretionary delegation.



REPUTATIONAL RISK

- For private companies, and more especially financial companies, the ‘intangible’, or non-accountable commodity of reputation is priceless: ‘damage to an institution’s reputation (and the resulting loss of consumer trust and confidence) can have very tangible consequences – a stock price decline, a run on the bank, a spike in policy surrenders, an outflow of assets under management, a drop in new sales, a ratings downgrade, an evaporation of available credit, regulatory investigations, shareholder litigation, etc’ (Stansfield 2006).
- Public institutions? (Coercion and Accountability)

AN AGENCY OF WILLS: EXOGENEOUS AND ENDOGENOUS LIMITS TO AGENCIFICATION?



Politicised administration – APA backlash?

'KNOWLEDGE': NEW LEGITIMATION

- Brexit lesson – agencies as embedded 'political economy' (Polaynian Countermovement)
- Lisa Herzog: 3 knowledges
 - Discovery (Hayek/Joerges)
 - Epistemic/expertise
 - (Political) Deliberation
- Matter of where you place agencies in the constitutional structure