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Challenges of Direct European Supervision of Financial Markets

SUMMARY: The response of the European Union to the financial crises included the establishment of bodies dedicated to macro-prudential as well as microprudential supervision called European System of Financial Supervisors. As result of the reform regulatory powers have been delegated to sector-specific European Supervisory Authorities in charge of microprudential supervision. The delegation could contravene the Lisbon primary law, especially the related case law followed by the Court of Justice of the European Union as the so-called Meroni doctrine restricts the delegation of concrete binding decision-making powers on European agencies like ESAs. However their power to issue individual decisions, addressed to financial institutions, could be considered as required tool in crisis management which makes it obvious that the primary EU law on European agencies needs to be clarified and broadened.[1]

KEYWORDS: Internal Market; Financial crisis; European Supervisory Authorities; EU Agencies; Meroni doctrine
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EUROPEAN CRISIS MANAGEMENT AND THE INSTITUTIONAL RESPONSE OF THE EUROPEAN UNION BY THE ESTABLISHMENT OF THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISORS

"The internal market is less popular than ever, yet it is more needed than ever".[2] The still present crisis was the result of financial and monetary imbalances, inappropriate regulation, weak supervision, poor macroprudential oversight and different market failures. These have been the major statements of the de Larosiére Report, which was written in order to give advice on the future of European financial regulation and supervision.[3] Regarding the regulatory, supervisory and crisis management failures it has been made clear that cross-border activities of several market players and the integrated financial market as such can no longer be regulated and supervised on national level. Due to free flow of capital the Internal Market as well as the single Member States were exposed to financial infection originated from the United States. Additionally, the Report notes, that "EU supervisory arrangements placed too much emphasis on the supervision of individual firms, and too little on the macro-prudential side, thus, effective macro-prudential supervision must encompass all sectors of finance and not be confined to single market players".[4] The cross-border element of EU financial markets made the situation even worse. Especially for "the larger financial institutions the Member States had to react quickly and pragmatically to avoid a banking failure". These actions and steps "given the speed of

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events, for obvious reasons were not fully coordinated and led sometimes to negative spill-over effects on other Member States".[5] As a result, it is obvious that the "too big to" approach could also be applied in context of European Internal Market. The precise causes will presumably be subject of further evaluation, however the European Union has responded relative quickly to the crisis with the establishment of a supervisory network called European System of Financial Supervisors (ESFS) following the recommendations of the Report. The ESFS consist of the European System Risk Board (ESRB) which conducts the macroprudential financial supervision and of the European Supervisory Authorities (ESAs, Authorities) being in charge of microprudential supervision.

The lack of systematic risk oversight has been identified as one of main crisis causes in the Report, therefore, the institutional response of the European Union included the establishment of a body exclusively dedicated to macroprudential supervision called European System Risk Board. Due to its soft law legal status without legally-binding powers and interconnectedness with European Central Bank (ECB), however, the ESRB – in view of Ferran and Alexander – "finds a way around perceived limits on the powers that can be delegated to regulatory agencies in the current legal order, and sidesteps some of the acute political sensitivities about the centralisation of supervisory responsibilities".[6] Therefore this article will focus primarily on the issues related to the legal status of the ESAs and will not address the functionality and legal status of the ESRB.

On the level of microprudential supervision the EU has followed the tendency called mushrooming of agencies[7] by the establishing of European Supervisory Authorities. The crisis made it obvious that the fragmented European financial supervision with former 3L3 Committees mainly responsible for enhancing coordination and cooperation between national supervisory bodies, however without real powers, was not able to face the challenges of the crisis. The institutional and instrumental approach outlined in main recommendations of the de Larosiére Report required that key competences be transferred to the new European Authorities.[8] Their regulatory capacity also includes the power to issue individual decisions addressed to financial institutions in emergency situations. However, (regulatory) agencies are still considered as unique bodies under the Lisbon primary law as not being mentioned in the Treaties. Additionally the Meroni doctrine of the Court of Justice of the European Union (ECJ, Court) strictly limits the delegation of powers to this type of bodies.[9]

This article is intended to elaborate the regulatory powers of the ESAs by issuing legally binding acts in light of *Meroni* doctrine, and competing the models of different scholars. Consequently, this issue refers to future function of financial supervision on EU level, as well as the potential gaping holes concerning the place of agencies in the institutional structure of the European Union.

THE MERONI DOCTRINE VERSUS SUBSTANTIAL POWERS TO SUPERVISE FINANCIAL MARKET ON EU LEVEL

The institutional package launched in response to the financial crisis did not change the basic allocation of competences concerning the financial supervision between the competent bodies of national and supranational level. The national competent authorities (NCAs) are responsible for the day-to-day supervision just as before. However the ESAs could get involved in the supervision under extraordinary circumstances. The provisions of the regulations[10] (Regulations), which has established

the ESAs, contain mostly similar rules as it was generally intended that these bodies would function under similar legal regime. There are no general rules governing the creation and operation of (regulatory) agencies; however, different scholars identified their consistent patterns.[11] The ESAs can be categorised as such, because they have relative autonomy, own legal personality, permanent mandate, have also been created as independent bodies by the Union law in order to conduct specific tasks.[12] These tasks are as follows: to contribute to the establishment of high-quality common regulatory and supervisory standards and practices; to contribute to the consistent application of legally binding Union acts; preventing regulatory arbitrage, mediating and settling disagreements between (national) competent authorities; and ensuring effective and consistent supervision of financial institutions, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations.[13] Additionally the ESAs monitor and assess market developments, undertake economic analyses of markets to inform the discharge of the Authority's functions. Furthermore, they contribute to the consistent and coherent functioning of colleges of supervisors, conduct consumer protection tasks, and closely cooperate with the ESRB.[14]

As for the powers to achieve the abovementioned tasks the ESAs can draft legally binding regulatory and implementing technical standards.[15] In extraordinary circumstances the Authorities are also entitled to take legally binding individual decisions addressed to NCAs as well as to certain market players. This could potentially lead to concerns that the Authorities have also been empowered to issue individual decisions addressed to financial institutions in emergency situations. As a result, they could have a direct role in market supervision on the same level as Member States.

The Court of Justice has stated in the Meroni judgement, that regulatory powers conferred upon Community agencies must not involve a "discretionary power, implying a wide margin of discretion which may according to the use which is made of it, make possible the execution of actual economic policy".[16] In Romano the Court added, that the delegation of legislative powers were also precluded, especially of taking own policy choices.[17] Legal scholars also refer to taking clear policy decisions as restriction of delegation, which could influence the institutional balance of the Union.[18] The legal basis of this concern on the allocation of powers between national and supranational level – using the concept of ECJ interpreted by *Siekmann* – is that "the Member States have empowered the Community to act this way (e.g. direct supervision) as far as the competent bodies of the Community law are being mentioned in the Treaties, thus having the required democratic legitimacy".[19] However, (regulatory) agencies are considered as non-treaty bodies, because they are neither mentioned in the Treaties nor in Lisbon primary law. The national-level authorities are still primarily in charge of EU law's implementation, even if this decentralised structure could lead to several deficiencies, while agencies remained unique non-treaty bodies due to lack of specific primary law provisions for their establishment and functioning. As *Vetter* mentions „the use of former Article 308 EC Treaty, that required unanimity and allowed only consultation right for the European Parliament, has recently been taken over by policy-specific provisions, which guarantee the legal basis for concrete decisions of agencies as well as for the realisation of their mission in general".[20] It was intended long ago to secure sector-neutral legal basis for the establishement of EU agencies in EU primary law, however, it had not been included in draft Treaty establishing a Constitution for the EU. The subject of this article could demonstrate, that there is a clear

demand to regulate this issue to some extent, since Article 114 as legal basis for the establishment of ESAs is considered to be one of the most controversial steps taken by EU legislator in the institutional package of ESFS.[21]

Swift adoptation of common rules on agencies cannot be expected due to their diverse nature and unwillingness to shift the institutional status quo, even if the Commission has already drafted an inter-institutional agreement and proposed a communication[22] in this regard. The Communication concerned noted that the lack of required regulation makes the system of (regulatory) agencies „untransparent, and raise doubts about their accountability and legitimacy". Taking into consideration the mushrooming tendency, the Europeanisation of powers and related constitutional considerations, this article advocates the institutionalisation of (regulatory) agencies in primary law.

Meanwhile, there is still a lack of common approach regarding, whether the related judgements of ECJ and statements of scholars could be applied uniformly as so-called Meroni doctrine. In my view the fact that the original judgement of 1950s has been cited twice even in recent years[23] is testify to the doctrine-based approach – providing it still has a substanial impact on EU's recent institutional structure.[24] In light of the abovementioned concern it is yet to be decided, whether the Authorities as non-treaty bodies could be empowered to directly conduct supervision of the financial market on the level of the Member States, even if these are exceptional tools. According to *Zwart* the economic regulatory agencies, which are required to be independent from the executive branch, must have wide margin of discretionary as well as formal rule-making power concerning their own market sector.[25] Due to these requirements of the case-law, the ESAs' power of issuing legally binding acts by drafting technichal standards and taking individual decisions, should be further evaluated.

LEGALLY BINDING ACTS ISSUED BY THE EUROPEAN SUPERVISORY AUTHORITIES

According to the Preamble to the Regulations there is a clear demand to "introduce an effective instrument to establish harmonised regulatory technical standards in financial services to ensure, also through a single rulebook, a level playing field and adequate protection of depositors, investors and consumers across the Union" – or in certain matters, by drafting implementing technical standards.[26] The areas where the ESAs may draft technical standards are always defined by Union law, which never involve policy choices.[27] Finally, the Commission has been empowered to endorse those standards by means of delegated acts in order to give them binding legal effect, therefore, the required democratic legitimacy can be ensured while respecting the institutional balance. Consequently the ESAs Regulations meet the requirements of the doctrine concerned, formally that of Romano judgement in this case.

Adopting individual, legally binding decisions as such can only be used in extraordinary circumstances, such as breach of Union law, emergency situations and dispute resolution between NCAs in cross-border situations.[28] Generally the power of ESAs to adopt individual decisions is highly dependant on certain preconditions. Taking individual decisions consists of a two-staged process and can only be applied as an *ultima ratio* tool, as a binding decision of the Authorities directly obliges the national authorities to take concrete steps. If the NCA does not comply and the underlying acts are directly applicable to individual institutions of Member States, the ESAs may address them, requiring the necessary action to comply with its obligations, including the cessation of any practice. Furthermore during the legislative phase of the establishment of ESFS the issue of institutional balance has also been raised regarding the power to declare an emergency

situation. Both the ESRB and the ESAs wanted to be assigned this task, however in the end, the Council has been empowered to decide on the declaration. Additionally the location of power has "particular political sensitivity – as *Ferran* and *Alexander* noted – because the declaration of an emergency situation acts as a trigger for the ESAs in exceptional circumstances to intervene more directly in the supervision of financial market activity".[29] As some kind of safeguard mechanism the Authorities shall also ensure that no such individual decision impinges in any way on the fiscal responsibilities of Member States, a matter which is to be decided by the legitimate Council in case of a dispute between the Member State and the Authority.[30]

In my view no "discretionary power, implying a wide margin of discretion" has been conferred to the Authorities by transferring power to take individual decisions addressed to financial institutions, as this measure could rather be considered as an *ultima ratio* tool, which can only be used in exceptional situations based on preliminary decisions taken by other legitimate bodies of the Union.

Nevertheless some authors have expressed their doubts in relation to the delegation of such powers, which does not specifically refer to the Meroni doctrine, but rather generally focuses on the lack of required democratic legitimacy. The decision on individual acts, formally taken by members of the Board of Supervisors (BoS), could illustrate the democratic deficit implied in decision-making mechanisms of such agencies. The BoS, as the main internal body of the Authority, shall be composed of the non-voting Chairperson of the Authority, one non-voting representative of the Commission, one non-voting representative of the ECB, one non-voting representative of the ESRB, one non-voting representative of each of the other two European Supervisory Authorities and the head of the NCAs, who shall be voting members. In Siekmann's view the individual decisions, addressed to financial institutions of a certain Member State yet taken by heads of national authorities from a different Member States, could be considered as illegitimate due to the lack of required legitimacy in cross-border context.[31] His concept is primarily based on independence, ensured for voting BoS members, which precludes their accountability towards other Member States.[32] Presumably the legislator of the Union has taken the regulation of the ECB as model to be followed concerning the independence of decision-makers, however, these guarantees concerning the ECB have been laid down in primary law, unlike in case of financial supervision on the EU level.[33] This aspect of institutional gaps in decision-making and decisions, formally taken by agencies, practically by representatives of different Member States, makes it obvious that it is necessary to clarify and broaden the primary law on European agencies. In light of most recent events on announcing non-economic requirements imposed by supranational organisations originally based on economic cooperation it also reveals the importance of democratic deficit.

FLEXIBLE INTERPRETATION OF MERONI DOCTRINE

Nevertheless it is subject of legal debates whether the *Meroni* still poses a serious obstacle to the creation of further agencies at the European level.

In view of some scholars the *Meroni* cannot be applied to contemporary EU agencies, and consequently to the ESAs, due to reinterpretation of institutional balance by the Court and to the Europeanisation of powers concept – that the delegation of implementing powers stems from Member States instead of EU institutions.[34]

Some authors have also added that Meroni might allow a more flexible approach by use of mechanisms which could compensate for the shifted institutional balance due to delegation of powers. *Griller* and *Orator* concluded, that the rationale of doctrine could be preserved by the overall result of steering and control, if this amounts to an adequate level of input-oriented legitimacy (democratic exercise of public authortity) and output-oriented legitimacy (efficency-based approach with reliance on expertise of the independent agencies) and institutional balance.[35] The mechanisms concerned include securing the prerogatives of the Legislature while safeguarding the Commission's prerogatives in implementing Union legislation, securing legal remedies against acts issued by agencies and general political accountability by enforcing budgetary discipline or influencing the appointment of directors and of other decision-makers by combining elements revealed by legal literature.[36] This chapter will elaborate whether the flexible *Meroni* model could be applied in case of ESAs.

As for the prerogatives of the Legislature and input-oriented legitimation the Authorities were certainly set up under the ordinary legislative procedure ensuring extensive participation of the European Parliament. However, the specific Treaty provision used in the legislative phase of establishment is a subject of debate among legal scholars.[37] Additionally the European Parliament has repeatedly called for a reinforced parliamentary supervision of European agencies[38] – this has not yet been enacted, however certain confirmation prerogatives and declaration power have been ensured for the European Parliament and for the Council as evaluated below.

Regarding the Commission's prerogatives and institutional balance in phase of issuing legally binding acts by the Authorities the Commission is generally in charge of endorsing technical standards drafted by ESAs. During the drafting procedure the Authority shall conduct open public consultations and request the opinion of the sector-specific Stakeholder Groups. Meanwhile the Commission shall not change the content of the draft technical standards prepared by the Authority without prior coordination with the Authority. However the Commission may adopt both types of standards if the Authority does not submit the draft standard within the time limits laid down in the Regulations.[39] Due to the different legal basis of delegation the European Parliament and the Council have different roles in adopting the two types of technical standards.

Regulatory standards are endorsed by the Commission due to the delegation of power of the European Parliament and of the Council according to Article 290 of the Treaty on the Functioning of the EU (TFEU), and their delegation could therefore be revoked. Additionally the European Parliament and the Council may submit objections to regulatory standards, initiate consultation between the responsible commissioner, together with the Chairperson of the Authority to present and explain their differences in case of non-endorsement or amendment of draft regulatory technical standards by the Commission.[40] In case of implementing technical standards the European Parliament and the Council do not have these kinds of prerogatives, because Article 291 TFEU as the legal basis of implementing standards primarily appoints Member States to control the Commission's exercise of implementing powers.

As for issuing legally binding, individual decisions in the case of a breach of Union law, emergency situations and dispute resolution between NCAs, the ESAs could act much more independently in principle, while the cooperation with other Union bodies remains less substantial. However the European Parliament, the Council, the Commission or the sector-specif-

ic Stakeholder Group can also initiate the investigation of the alleged breach or non-application of Union law.[41] Action in emergency situations is determined by the fact that the Council has been empowered to declare it, though the ESRB and the ESAs wanted to be assigned in this respect as mentioned above.[42] Nevertheless issuing legally binding, individual decisions by ESAs does not prejudice the power of the Commission pursuant to Article 258 TFEU on initiating infringement procedure. Generally the Commission's prerogatives as well as those of other Union institutions and bodies are guaranteed to some extent, however the steering and control mechnism of the EU and the relationship between legislative and executive levels cannot be compared with that of Member States in this regard.

In relation to the third option of compensation mechanisms, legal remedies are guaranteed relatively widely against the legally binding acts issued by ESAs. Any natural or legal person, including competent authorities, may appeal against individual decisions or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.[43] Consequently appeals are considered as a tool targeted to protect subjective rights. The Board of Appeal as a joint body of the three Authorities decides on the matter, for which members shall be independent and impartial.[44] Furthermore proceedings may be brought before the ECJ, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority. Apart from the Authority Member States and the Union institutions, natural or legal persons may also institute proceedings before the Court of Justice of the European Union against decisions of the Authority.[45] In this regard the amendment to Treaties due to Lisbon primary law has broadened the protection through legal remedies, as it has been added "the Court shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties".[46] Therefore, an effective level of legal protection is guaranteed through legal remedies – as *Saurer* noted – although there is still a lack of common regulation on general legal protection against acts issued by agencies.[47]

As for the political accountability the budget of the Authorities can be influenced by bodies which achieve a sufficient level of legitimation. The revenues of the Authorities shall consist of obligatory contributions from the national authorities, of subsidies from the Union, entered in the General Budget of the European Union (Commission Section), and of fees paid to the Authorities. According to the calculation of the Commission the contribution of Member States will amount to 60% and Union funding 40% of the total ESA budget, which shows that the European Union as well as Member States can significantly influence the budget of ESAs.[48] Siekmann has, however, added that the phrase "subsidy" could be considered as an indicator, which made it obvious – in his view – that the democratic deficit of agencies cannot be fully compensated by budgetary tools of Union institutions and bodies.[49]

The Chairperson as main representative of the Authority and its Executive Director as its operative leader are appointed and can be removed by the BoS depending on confirmation by the European Parliament.[50] The composition of the Management Board, which is in charge of preparation of BoS decisions, operative tasks and personnel policy is similarly reliant on the appointments taken by the BoS.[51] Consequently some influence is ensured for the input-oriented European Parliament without full political accountability of BoS members due to the abovementioned institutional gap on decision-making of the

Authorities. Alternatively the establishment of sector-specific Stakeholder Groups as an input-oriented basis of legitimation, which shall be consulted while drafting technical standards, could not fill in the institutional gap concerned, as the members of the Groups are also appointed by the BoS.[52]

As for my conclusion concerning the flexible Meroni model the steering and control powers conferred to the Union bodies and to Member States in relation to Authorities could amount to an adequate level of legitimacy and preserve the required institutional balance. In my view the Lisbon primary law cannot be considered as absolutely restrictive concerning the delegation of powers due to the position of the Commission, while the protection of rights through legal remedies has also been broadened in relation to acts issued by agencies. Certainly the structure of the Union concerning the institutional balance and required legitimacy cannot be compared with that of sovereign Member States. Thus, the restriction of delegation of concrete binding decision-making powers should be further assessed, taking into consideration the concrete acts issued by the Authorities.

CONCLUSION

The institutional response of the Union by the establishment of ESFS revealed the boundries of transferring powers to EU agencies again. The reoccurance of this dilemma could be expected as the basic structure of the Union has not been changed substantially due to the Lisbon Treaty, however the EU in the era of mushrooming agencies cannot be considered as a mere law-making community anymore. Even if integration has slowed down, there are some questions that must be answered on the current level of integration, including that of delegation of powers to European (regulatory) agencies, in order to restructure then maintain the well-functioning internal market.

However, the Vice President of the ESRB has also noted that the ESFS as such and the Authorities should not be seen as an absolute solution for the European financial crisis, not even with the strengthened powers conferred to Authorities. In his view creating the market structure, which can facilitate to obey the sector-specific code of conduct by market players, could be as important as the establishment of the supervisory network itself.[53] As for the potential future tendency of allocation of powers it could be seen as an indicator that the European Securities and Markets Authority has been made responsible for registration and ongoing supervision of credit rating agencies from July 2011.[54]

Additionally these market deficiencies and delegation of regulatory powers to agencies are not confined to financial sector and financial supervision. For instance the European Aviation Safety Agency may amend, suspend or revoke airworthiness and environmental certifications.[55]

The current constellation of the institutional gap is also based on the discrepancy that the dynamics of financial markets are hard to reconcile with the restrictions on delegation of substantial powers to sector-specific agencies, even if the *Meroni* doctrine could be interpreted in a more flexible way. Considering the critics of scholars over ESFS led me to the conclusion that the institutional response in form of ESAs could be quick enough, however transparency, accountablity and legitimacy need to be guaranteed in principle, while there is a clear demand to reconsider the EU law's implementation in this form. Consequently it is generally required – in my view – to lay down the basic rules on European (regulatory) agencies in the Treaties, which is not just in the interest of the financial sector but in the sector-neutral interest of the whole European Union.

Notes

[1] „The paper was prepared in the framework of the project entitled "Independent steps in the area of science" (ELTE SROP–4.2.2/B–10/12010–0030)."

[2] Monti. M. (2010): A New Strategy for the Single Market – At the Service of Europe's Economy and Society, Online: http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf

[3] Report of the High Level Group of Financial Supervision in the EU, chaired by Jacques de Larosiére (de Larosiére Report); Online: http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf

[4] de Larosiére Report; p. 39

[5] de Larosiére Report; p. 13

[6] Ferran, E. – Alexander, K. (2010): Can Soft Law Bodies be Effective? – The Special Case of the European Systematic Risk Board, In: European Law Review, Issue 6, p. 765

[7] Griller, S. – Orator, A. (2010): Everything under Control? – The „Way forward" for European Agencies in the Footsteps of the Meroni doctrine, In: European Law Review, Issue 1, p. 4

[8] De Larosiére Report; p. 57

[9] Communication of the European Commission: European Agencies – The way forward; COM(2008)323 p. 2

[10] European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council; European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council; European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (ESAs Regulations)

[11] See furthermore: Fischer-Appelt, D. (1999): Agenturen der Europäischen Gemeinschaften, Duncker & Humboldt Verlag, p. 38; 44

[12] See furthermore: Lehmann, M. – Manger-Nestler, C. (2011): Das neue Europäische Finanzaufsichtssytem, In: Zeitschrift für Bankrecht und Bankwirtschaft, Heft 1, p. 7; Lefternov, A. (2011): How Feasible Is the Proposal for Establishing a New European System of Financial Supervisors? In: Legal Issues of Economic Integration, Vol 38, No 1, p. 40

[13] Art 8(1) ESAs Regulations

[14] Art 8-9 ESAs Regulations

[15] Art 10–16 ESAs Regulations

[16] Judgment of the Court of 13 June 1958. – Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community. – Case 9–56.

[17] Judgment of the Court (First Chamber) of 14 May 1981. – Giuseppe Romano v Institut national d'assurance maladie-invalidité – Case 98/80.

[18] Callies – Ruffert (2007): EUV/EGV, 3. Aufl, Art. 7 Rn 39

[19] See furthermore: Siekmann, H. (2010): Das neue Europäische Finanzaufsichtssystem, Institute for Monetary and Financial Stability, Johann Wolfgang Goethe-Universität, Frankfurt am Main, Working Papers, No. 40, pp. 69–88

[20] Vetter, R. (2005): Die Kompetenzen der Gemeinschaft zur Gründung von unabhängigen

europäischen Agenturen, In: Die Öffentliche Verwaltung (DÖV), Heft 17, p. 722

[21] See furthermore: Fahey E. (2011): Does the Emperor Have Financial Crisis Clothes? Reflections on the Legal Basis of the European Banking Authority, In: The Modern Law Review, Vol. 74, Issue 4, pp. 581–595; Lefternov, A. (2011) pp. 41-46; Siekmann, H. (2010) pp. 66–68

[22] Communication of the European Commission; COM(2008)323 pp. 1–10

[23] Judgment of the Court of 12 July 2005 – The Queen on the application of Alliance for Natural Health v Secretary of State for Health – Joined Cases C-154–155/04; Judgment of the Court of 26 May 2005 – Carmine Salvatore Tralli v European Central Bank – C-301/02

[24] Griller, S. – Orator, A. (2010) pp. 16–19

[25] See furthermore: Zwart, T. (2009): La poursuite de pére Meroni ou pourquoi les agences pourraient jouer un role plus en vue dans l'Union européenne. In: Dutheil de la Rochére, J. (red.): L` exécution du droit de l`Union, entre mécanismes communautaires et droits nationaux, Bruylant, pp. 159–175

[26] Point 22 Preamble to ESAs Regulations

[27] Art 10–16; 10(1); 15(1) ESAs Regulations

[28] Art 17–19 ESAs Regulations

[29] Ferran, E. – Alexander, K. (2010) p. 769

[30] Art 38 ESAs Regulations

[31] Art 40(1) b) ESAs Regulations; Siekmann, H. (2010) pp. 83–84

[32] See furthermore: Siekmann, H. (2010) pp. 79–99

[33] Art 130 Treaty on Functioning of the European Union (TFEU)

[34] Yataganas X. (2001): Delegation of Regulatory Authority in the European Union – The Relevance of the American Model of Independent Agencies, Jean Monnet Working Paper 3/01, p. 40; Lefternov, A. (2011) p. 51

[35] Griller, S. – Orator, A. (2010) pp. 21–27

[36] See furthermore: Görisch, C. (2009): Demokratische Verwaltung durch Unionsagenturen, Mohr Siebech GmbH, p. 378; Siekmann, H. (2010) pp. 75–76; Griller, S. – Orator, A. (2010) pp. 27–31

[37] See furthermore: Fahey E. (2011) pp. 581-595; Lefternov, A. (2011) pp. 41–46; Siekmann, H. (2010) pp. 66–68

[38] European Parliament: Report on the strategy for the future settlement of the institutional aspects of Regulatory Agencies, (2008/2103(INI)) Online: http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2008-0354&language=EN

[39] Art 12–13; 15 ESAs Regulations

[40] Art 14 ESAs Regulations

[41] Art 17 ESAs Regulations

[42] Art 18 ESAs Regulations

[43] Art 60 ESAs Regulations

[44] Art 59 ESAs Regulations

[45] Art 61 ESAs Regulations

[46] Art 263 TFEU

[47] See furthermore: Saurer, J. (2010): Individual-

rechtschutz gegen das Handeln der Europäischen Agenturen, In: Europarecht (EuR), Heft 1, p. 66

[48] COM(2009)501 final, Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority, pp. 70–72; COM(2009)502 final, Proposal for a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority, pp. 73-75

[49] Siekmann, H. (2010) p. 84

[50] Art 48; 51 ESAs Regulations

[51] Art 45 ESAs Regulations

[52] Art 37 ESAs Regulations

[53] Opinion of Mervyn King, Vice-President of the ESRB on the mission of the ESRB and of European Supervisory Authorities, Online: http://www.jogi-forum.hu/hirek/25269

[54] Amendment No 513/2011 to the Regulation (EU) No 1060/2009 of the European Parliament and of the Council on credit rating agencies

[55] Art 15 of the Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing the European Aviation Safety Agency

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