

Contents

List of contributors XI

Chapter I

Proceduralization of EU Agencies: Theory and Practice

Martina Conticelli and Maurizia De Bellis

1. The agencification of the EU executive power: discretion, delegation and procedures 1
2. Investigating the procedures of the EU Agencies: theoretical issues 7
3. Proceduralisation of EU Agencies in practice: extension and goals 10
4. This volume and its contributions 13

Part I

Rule-making and Regulation in Public Utilities and Aviation Safety

Chapter II

The Evolution of the BEREC Governance: Cooperation Forum or Agency-Like Body?

Maria Luce Mariniello

1. Introduction 21
2. Analytical framework 24
3. The BEREC governance system 27
 - 3.1. The ERG heritage 27
 - 3.2. The BEREC institutionalization 30
 - 3.3. The normative quality of the BEREC legal acts 32

4. Allocation of the EU executive power to the BEREC: the case of net neutrality rules	35
5. BEREC agencification in the third “framework review”	41
6. Conclusions	45

Chapter III

Ensuring Public Participation in ACER’s Rule-making: the Case of EU Network Codes

Charikleia Vlachou

1. Introduction	47
2. Public participation in the development of EU network codes	54
2.1. Extensive public consultation requirements set on ACER	54
2.2. Commissions practice potentially bypassing stakeholders’ involvement	60
3. Public participation in the implementation of EU network codes	63
3.1. Differentiated requirements across sectors	63
3.2. “Institutionalised” participation through Electricity European Stakeholders’ Committees	66
4. Conclusions	71

Chapter IV

The Rulemaking Function of the European Aviation Safety Agency (EASA)

Marta Simoncini

1. Introduction	72
2. Rulemaking functions	75
2.1. The regulatory impact of soft law instruments	78
3. The nature of rules	79
4. The key principles of rulemaking	81
4.1. The working methodology	83
5. The rulemaking procedure	85
6. The limits of rulemaking. The control of discretion	66
7. The limits of rulemaking. The justiciability conundrum	91
8. EASA as a rulemaking agency	93

Part II

Accountability and Legitimacy in Banking and Financial Regulation

Chapter V

Procedural Accountability through Formal and Informal Dialogue: the Case of the Single Supervisory Mechanism (SSM)

Giuseppe Sciascia

1. Introduction	99
2. Accountability of «financial governance» institutions: a review	104
3. An overview of the supervisory functions within the SSM	107
4. Three examples of legitimation through participation	112
4.1. The Supervisory Dialogue	114
4.2. On-site inspections	116
4.3. Sanctioning proceedings	120
5. Conclusions	122

Chapter VI

The Orderly Resolution of Failing Banks: Administrative Guarantees in the Proceedings before the Single Resolution Board

Claudia Figliolia

1. Introduction	125
2. Administrative procedures in the Single Resolution Mechanism	126
2.1. The planning stage	128
2.2. The “stricto sensu” resolution procedure	130
3. Procedural guarantees in the resolution proceedings: some peculiarities	132
3.1. Public participation	132
3.2. A comparison between two models: public participation in supervision and resolution	139
3.3. Transparency and secrecy	140
4. Judicial and non-judicial guarantees	142
5. Concluding remarks	147

Chapter VII

Towards a “Procedural Legitimation” of EU Agencies? The Reform of the European Supervisory Authorities as a Case Study

Andrea Magliari

1. Introduction	151
2. The main novelties envisaged by the Commission proposal	155
2.1. The «proceduralisation» of soft regulatory powers	155
2.2. Administrative supervision over national authorities	157
2.3. Supervisory powers in single case decision-making	159
3. Some considerations on the evolution of the European Supervisory Authorities: towards a new model of EU Agency?	164
4. Testing ESAs’ legitimation in the light of the ESMA-Short selling case	167
5. Beyond a “Meroni legitimation”. In search of a new legitimation paradigm of EU Agencies under the Lisbon Treaty	171

Part III

Cross-cutting Issues: Soft Law and Boards of Appeal

Chapter VIII

European Union Soft Law by Agencies: an Analysis of the Legitimacy of their Procedural Frameworks

Penelope Rocca and Mariolina Eliantonio

1. Introduction	177
2. Definitions	181
3. Soft law of the agencies and the hypotheses	185
3.1. Different kinds of soft law issued by each agency	185
3.2. Research hypotheses	186
4. Analysis of the procedural frameworks for soft law issuance and evaluation of legitimacy	187

4.1. Assessment of different levels of proceduralisation	187
4.2. First group	189
4.3. Second group	193
4.4. Third group	195
4.5. Fourth group	196
4.6. Discussion	198
5. Conclusion	201

Chapter IX

**A new era for EU Agencies' Boards of Appeal?
A Preliminary Assessment of the Recent Reform
of CJEU's Statute and its Implication on
EU Administrative Adjudication**

Jacopo Alberti

1. Introduction	204
2. The status quo: the peculiar 'functional continuity' of each Board of Appeal with its agency	206
3. A brief contextualisation of the recent reform: its genesis	214
3.1. A part of some bigger (yet postponed) debates?	216
3.2. A quantitative assessment of the reform	218
4. The new Article 58a CJEU Statute: a preliminary assessment	223
4.1. General remarks: some ambiguous purposes, some missed opportunities	223
4.2. The concept of independence	224
4.3. The list of Boards and its future amendments	226
4.4. Something old, something new. A comparison between the filter mechanism and the review procedure	228
5. Towards a new era for Boards of Appeal?	230

Chapter X

The Transformation of the European Administration

Giacinto della Cananea

1. Introduction	233
2. Variations on a Given Theme: "Verfassungsrecht vergeht, Verwaltungsrecht besteht"	234
3. The New Deal and the Transformation of the American State	236

4. The Debate About the EU After the Failure of the Constitutional Treaty	240
5. Beyond Lisbon: the Constitutionalization of the European Administration	244
6. Making Powers Accountable: From Judicial Review to the Regulation of Procedures	247