Controlling EU Agencies: The Rule of Law in a Multi-jurisdictional Legal Order

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After more than 40 years since EU agencies' appearance in the EU legal order, their accountability is still a Gordian knot.

On the one hand, EU agencies are still hybrid bodies, with a scant recognition in primary law, without an explicit legal basis for their establishment and clear rules as for the acts that they can adopt, the procedures for doing so and the limits of the powers that can be conferred to them. On the other hand, despite this shaky legal framework, EU agencies have been established in basically every field of EU law, gaining more and more powers. As correctly pointed out in this book, 'conceiving of a functioning Union without agencies is close to impossible' (p. 2).

The mismatch between their limited legal legitimacy and their relevance in the EU decision-making process inevitably makes quite a delicate exercise finding out the best way to hold them accountable. Moreover, the method(s) of control should be able, at the same time, to ensure the necessary checks and balances, while respecting their independence and the added value that EU agencies – despite the legal *lacunae* mentioned above (or, perhaps, exactly thanks to them…) – have been able to bring to the EU regulatory activities over the last decades.

This book marks a new attempt in finding a solution to these issues through an approach that can be summarized according to two main lines.

First and foremost, this book proposes to bring together different concepts and methods for controlling EU agencies, to discuss connections and interplays among them, and theorize a comprehensive system of controls. Second, these methods of control have been selected taking as pole star the principle of the rule of law. To our knowledge, this is the first time that the connection between these two topics is proposed and discussed extensively.[1]

The result of the book is an agenda for further research: this work admittedly does not enucleate a precise method for holding EU agencies' accountable, neither offers an ultimate secret recipe for balancing independence and accountability – which sounds appropriate, given the legal doubts that still embrace these bodies, as well as their heterogeneity.

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1 See, for a study linking accountability and rule of law at EU level (though without focusing on EU agencies), Van Gerven, 'Political Accountability and the Rule of Law' (2011) 12 ERA Forum, p. 255–265; for a similar approach, yet at international level, see Jeremy M. Farrall, 'Rule of Accountability or Rule of Law? Regulating the UN Security Council's Accountability Deficits' (2014) 19 Journal of Conflict and Security Law 3, p. 389–408. The same editor of this book had anticipated this approach in a shorter publication: see Miroslava Scholten, 'Shared Tasks, but Separated Controls: Building the System of Control for Shared Administration in an EU Multi-Jurisdictional Setting' (2020) 10 *European Journal of Risk Regulation*, p. 538–553.

Therefore, the final output of the book are three main lessons that should be considered for future research in the field: *i)* to evaluate carefully what is called 'the expertise mismatch' between EU agencies and the national and EU authorities that are in charge of their control; *ii)* to take into account, while envisaging the best possible system of control, the so-called 'building blocks of control' and their interconnection, namely the fact that the systems of control should be defined taking into account, *inter alia*, their general or agency-specific nature; their *ex ante* or *ex post* dimension; their capability to tackle the *de jure* or *de facto* powers of the agency; *iii)* to consider which kind of actor (political, judicial, social) and at which level (European, national, both) should be in charge of controlling the agency.

At least from a purely legal perspective, some of these outputs confirm ideas that already emerged in other studies on agencification. For instance, the lack of expertise is typical in any delegation and is debated since a long time at EU level; and the same applies for the difficulty in defining who should control agencies, which reminds the debates on the multi-principal dimension of the delegation of powers to EU agencies. However, the theoretical underpinnings discussed in this book give a new framework of reference to these elements, bringing their analysis a step further.

The book is opened by an introductory chapter and is then divided into two parts.

In the introduction, a set of concepts and methods of control aimed at promoting the rule of law is presented and classified (Chapter 1, by the editors and B. Strauss). These concepts include accountability, liability, protection of fundamental rights, transparency, and judicial control (in particular, the principle of effective judicial protection, the notion of judicial deference, the use of tort law). The relationship between agencification and the rule of law is discussed in chapter 2 (by M. Catanzariti and A. H. Türk), which opens Part 1 but, *de facto*, can be seen as a further introduction to the general topic of the book.

From a methodological perspective, the concepts of control proposed for the discussion are manyfold and intriguing; moreover, the taxonomy offered by Catanzariti and Türk of the role performed by EU agencies in the mixed-and-ever-more-mixing administration of the EU tackles a crucial phenomenon, to which virtually any field of EU law is exposed and whose boundaries (and consequences) are difficult to catch.

Given the 'primacy' of this work in connecting the rule of law and EU agencies' accountability, it would have been interesting to discuss which interpretation of 'rule of law' should be taken as a benchmark for the analysis. As it is well-known, this principle is rather elusive, having different implications at legal, political, even social level, as well as multiple meanings, depending on the scientific and geographical background taken as reference.[2] Furthermore,

it has always been interpreted for, and often also within, a national context: yet, the EU is not a State ('and neither it wants to become a State, at least for the time being').[3] While there is no doubt that the EU 'is founded on the values of respect for [...] the rule of law' (Art. 2 TEU), some reflections might have been dedicated to the extent to which the 'national' interpretations of this principle could be applied to the EU.

Moreover, some other concepts and methods of control might have been connected to the promotion of the rule of law (also for the sake of expanding the political methods of controlling EU agencies, which are dealt with in several pages of the book, yet without having an autonomous chapter). For instance, 'rule of law' implies also a democratic and pluralistic process for enacting laws, a prohibition of arbitrariness of the executive powers and the promotion of legal certainty.[4] Thus, it might have been interesting to reflect also on how these implications of the rule of law interact with EU agencies' accountability. How could the legislative actors efficiently control EU agencies, taking advantage of their knowledge and expertise?[5] What are the consequences at EU agency level of a national government allegedly violating the rule of law, e.g. illegally pressuring the national independent authority constituting the European agency? To what extent the incapacity of the legislator to adopt legislative measures that give a detailed regulation of the matter (e.g. in technical fields such as banking, finance, energy, antitrust) fosters legal uncertainty and, consequently, hinders EU agencies' accountability?[6]

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2 *Ex multis*, Gianluigi Palombella, Neil Walker (eds), *Relocating the Rule of Law* (Hart 2008). In Chapter 6, p. 102, P. Craig briefly discuss this point, observing that 'this is not the place for exegesis as to these rival conceptions [of the rule of law]', and subsequently enucleates in a nutshell the notion of 'rule of law' that, in his assumption, has been chosen by the editors. Thus, the notion of "rule of law" used in the volume would have perhaps deserved a deeper discussion in the introductive chapters.

3 Please allow this reviewer to quote an extract of the last interview given by former AG G. Tesauro only few weeks before passing away: see, for a preliminary publication, on *Associazione Italiana Studiosi di Diritto dell'Unione europea*, https://www.aisdue.eu/web/wp-content/uploads/2021/07/Sintesi-intervista-Tesauro-1.pdf , p. 2.

4 See Communication from the Commission to the European Parliament and the Council, *A new EU Framework to strengthen the Rule of Law*, COM(2014)158 final, p. 5.

5 In addition to the theoretical debates on the relationship between independent authorities and democracy, a study on the adoption of delegated and implementing acts (where the Parliament and the Council have to rely on and to control the work of both agencies and Commission and, consequently, could either take advantage of this interplay or being overcome) could have given interesting outputs in this regard.

6 As highlighted in Part 2 of this book, EU agencies' accountability is often hindered by the plethora of guidelines and recommendations that they adopt for EU citizens and companies. Even though a certain degree of soft law is intrinsic (and, perhaps, advantageous) in any legal order, it has to be admitted that the current amount of soft law is due to the incapacity of the legislator to adopt legislative measures that gives a detailed regulation of the matter. EU agencies translate into soft acts the general principles stated by the legislator, with obvious risks of wrong implementation and conflicting interpretations. Therefore, at least looked through the lens of legal certainty, the shortages in EU agencies' accountability originate elsewhere and the tools for tackling them have to be searched well beyond these bodies.

In any case, the further topics that could be targeted in future studies do not undermine the foundations of the book and, conversely, confirm the fruitfulness of its basic assumption, namely to look to EU agencies' accountability through the prism of the rule of law. This is done specifically in Part 1, where a selection of legal and political scholars discusses one by one the concepts and methods of control classified in the introductory chapter.

In particular, Chapter 3 (by B. Kleizen and K. Verhoest) focuses on the notion of agencies' autonomy, which is classified according to the categories of formal, managerial, and de facto autonomy; it pleads for discussing in the first place why agencies need a certain level of autonomy (and by whom, this review suggests), to better determine the needed amount of control, which should indeed be defined case-by-case. Chapter 4 (by G. J. Brandsma and C. Moser) tackles the core concept of accountability, which is meant – as it is convincingly argued in the prologue – *à la européenne*, namely as a *mechanism* that enables one or more bodies to hold another entity accountable. The different mechanisms of control are thence discussed, focusing particularly on the issues arising from the multilevel EU administration. Chapter 5 (by S. Prechal and R. Widdershoven) deals with a topic that could be seen as the main side-issue of the book, namely judicial protection in composite procedures. Starting from the *Berlusconi and Fininvest* case, the Authors convincingly point out the main questions arising by this case, discussing the problems of applicable law (will EU Courts apply national law for assessing the legality of a national preparatory act?) and of the interplays between national and EU Courts (what if a national Court decides not to refer the matter to the CJEU? What if the same decision can be contested by some parties at EU level, and by others at national level? May this lead to unequal access to justice?).[7] The analysis is conducted rigorously and it is definitely worth reading; future research could however also take into account the added value that EU agencies' Boards of Appeal could bring in scrutinizing the legitimacy of preparatory acts and soft law in general.

The debate on judicial control over agencies is brought forward in Chapter 6 (by P. Craig), which offers an intriguing overview of the notion of judicial deference. This concept is crucial for assessing in concrete terms the impact of judicial control over any kind of administration since it is inversely proportional to the intensity of review and directly proportional to the administration's autonomy. Indeed, a (too) deferent judge will perform a weak control, no matter how easy the access to justice is for the applicants; thus, it will undermine the system of controls, while enhancing the autonomy of the controlled entity. This chapter strikes the balance among these conflicting concepts, taking also into account the relation between judicial deference and the rule of law. Even though specific

7 Case C-219/17, *Berlusconi and Fininvest* [2018] ECLI:EU:C:2018:1023.

case-law on EU agencies (one may think, for instance, to the long-standing debates involving EUIPO, ECHA, EASA) could have played a bigger role in the analysis, the contribution offers an interesting theoretical framework for general reference.

Judicial accountability is further tackled in Chapter 7 (by E. de Jong), which focuses, originally, on the use of non-contractual liability for controlling EU agencies, arguing that judicial restraint in accepting these actions should be taken positively. The risk of defensive behaviours by the agencies, the lack of technical expertise among judges, and the difficulties in allocating the responsibilities between the European and national level are the arguments supporting a limited use of tort law (p. 129-131). The thesis is intriguing, yet perhaps still too general: tort law always plays an extremely limited role in controlling EU bodies, even when they act manifestly wrong: *Tercas docet*, just to mention a recent case not involving agencies.[8] The persisting lack of a legal provision in the treaties covering agencies non-contractual liability and the use of Boards of Appeal for delivering specialized judicial protection on the damages caused by agencies could lead future research towards more agency-specific conclusions.[9]

The discussion on the judicial methods of controls is closed by Chapter 8 (by F. Meyer) on the protection of fundamental rights in the multi-level governance of the EU and on how it could be implemented for controlling EU agencies. Two main challenges are pointed out: first and foremost, the new modes of mixed EU administration, which calls for reconsideration as to how fundamental rights are to be preserved and implemented (p. 145-147); second, yet logically connected to the former, the need to identify new fundamental rights adapted to this context and to progressively adjust classical ones (p. 147-148). Tackling the first issue, the chapter reaches the interim conclusion (for a deeper discussion of this point, see Chapter 5) of developing joint or cumulative responsibilities between EU and the Member States, yet through the different path of a 'fundamental rights centred' analysis that highlights the different context and purpose in which fundamental rights have developed. As for the second issue, this contribution highlights how the current, mixed, administration has led to the production of *ad hoc* procedural rights, data protection mecha-

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8 Case C-425/19 P *European Commission v Italian Republic and Others (Tercas)* [2021] ECLI:EU:C:2021:154.

9 Moreover, it is worth recalling that the Lisbon Treaty has fully recognized agencies (at least) within the provisions covering judicial protection, explicitly mentioning agencies in each action before the Court of justice apart from Art. 340 TFEU. Of course, non-contractual liability does apply to EU agencies; yet, only thanks to the establishing regulation of each of them and still without a clear legal basis in primary law. Against this scenario, the contribution could have tackled the implications of this peculiar legal framework and, most importantly, how to amend it: should agencies fall within the general clause valid for any institution and, thus, shall the damage caused by the agency be made good by the Union as a whole (see Art. 340(2) TFEU)? Or, conversely, should they receive the 'special status' that Art. 340(3) TFEU deserves for the ECB, so as to further preserve their independence?

nisms, internal accountability methods (which, however, should not bring to a 'piecemeal development and à la carte fitting of procedural safeguards', p. 147), and points out that classical rights such as good administration need further specification to enucleate new standards for the multilevel settings.

Finally, Chapter 9 (by A. Buijze) deals with transparency, which is an important tool in itself to control the executive, as well as a precondition for many other controlling mechanisms to work (p. 157). Convincingly, the Author argues that 'asking for more transparency is meaningless [...]. One must define what kind of transparency is required' (p. 158); consequently, after having introduced the general concept, this chapter discusses the added value that transparency can bring to the most important functions performed by EU agencies.

In Part 2, the book tests in practice the theoretical framework outlined above, using seven agencies as a case study: EASO, EFSA, EFCA, EUROJUST, EASA, ESMA, and SRB. These bodies have been chosen, according to the methodological remarks offered by the editors, 'on the basis of what types of function they have, which has implications for the types of decisions they can produce, which in turn relates to the necessity for specific types of control' (p. 11). Yet, a deeper discussion of the selection criteria would have been needed: the book does neither offer an original taxonomy of EU agencies' function, nor discusses the several ones offered in the legal and political scholarship, nor specifies which agency has been chosen for which function.[10] Moreover, not all the issues discussed in Part 1 in theoretical terms are subsequently analysed in their practical implications: judicial deference, tort law, to a lesser extent fundamental rights do not always find a specific and extended discussion within the seven cases analysed in Part 2.

However, leaving the methodology behind and assessing the selection made by the book as for its outputs, i.e. the agencies selected, the choice is satisfying: the seven agencies represent an interesting mix as for the powers, the internal structure, the seniority. True, some protagonists awaited from Part 1 are missing (FRONTEX, as for tort law, given the role of its civil servants in sea operations; ECHA or EUIPO as for judicial deference); yet, the main stars in the field of judicial review of composite procedures are present (ESMA and the SRB), together with important agencies such as EFSA, EUROJUST, EASA, and the body

10 See, for an overview of the different taxonomies Merijn Chamon, *EU Agencies. Legal and Political Limits to the Transformation of EU Administration* (Oxford University Press 2016) p. 22; for the limits of such an exercise, Jacopo Alberti, *Le agenzie dell'Unione europea* (Giuffré 2018) p. 185-190; Some information regarding this could be extrapolated by matching a classification offered in Chapter 2 (which however does not involve all the agencies established so far, but only the seven agencies discussed in Part 2, without allocating each agency to a single, specific, function) with the choices made in each Chapter of Part 2 as to the function of the agency to which the Authors decide to focus. However, not every Chapter focuses only on one specific function.

that will probably become the new laboratory for testing ever-mixed administrative proceedings (EASO). Moreover, readers will also find an agency that usually receives very little attention in legal and political scholarship, which conversely presents interesting features (EFCA).

In particular, Chapter 10 (by F. Nicolosi and D. Fernandez-Rojo) deals with EASO, an agency established in 2010 in the field of asylum, which initially attracted only the attention of EU migration and external relation scholars. Nowadays, this body is gaining the interest of a broader audience, since it has been creating an extremely interesting form of mixed administration, assisting national asylum authorities and tribunals in assessing the application for international protection. Moreover, a proposal for expanding even more its role and mandate is currently under negotiation. This chapter interestingly deals with these issues and briefly discusses the idea to establish, within the new EASO, a Fundamental Rights Officer, similar to that recently created within FRONTEX. Chapter 12 (by F. Cacciatore and M. Eliantonio) shifts the focus to EFCA while keeping the attention on the judicial spectrum of the accountability mechanisms. The contribution interestingly analyses the inspection-related powers of this quite underexplored agency (that could nevertheless become a model for other inspection-focused agencies, such as the brand-new ELA) and the mechanisms put in place to control it. The study highlights the personal, financial, institutional, and public (i.e. from any stakeholders) accountability of the agency, yet rising particular awareness on the (gaps in the) judicial methods of control, related in particular to the participation of EFCA coordinators in national joint inspections.

Chapter 13 (by T. Huisjes and S. Tosza) deals with EUROJUST, a body that, particularly after the amendment of its statute in 2019, has increased its methods of control, adding new rules on data protection, increasing transparency, and democratic oversight. These issues are extensively debated in this contribution, which in conclusion warns on an increase of accountability mechanisms at EU level and hints, conversely, on the need to increase transparency at national level. In a similar vein, Chapter 11 (by S. Gabbi, M. Wood and B. Strauss) discusses the several methods of accountability of EFSA, opening some new and different scenarios, arguing in particular that 'the mechanisms 'controlling' EFSA are not merely its internal committees, legal commitments and requirements for transparency, but also the broader environment in which it operates and to which it has to respond' (p. 213). This conclusion holds particularly true for those agencies, like EFSA, whose main function is risk management and scientific assessments and whose main outputs are technical evaluations of certain products. In these cases, political and judicial control should be extremely cautious, since both levels do not possess the necessary technical and scientific expertise. Paradoxically enough, a bigger role can be played by the academic and professional environments in which these agencies operate, that conversely do possess the necessary competences and before which each agency is interested in having a credible and authoritative position. Nevertheless, internal

mechanisms of review may well enhance the scientific assessment of the agency and enhance the individuals' rights protection. From this perspective, the possibility to establish within EFSA a Board of Appeal, as well as the reviewability of preliminary acts adopted by the agency, would have deserved a deeper discussion (also by linking the two topics: a preliminary review made by an internal Board is indeed definitely more acceptable than the one made by an external Court).

The final chapters deal with the most powerful agencies and, therefore, those having the most complex frameworks of accountability. Chapter 14 (by L. Mustert and M. Scholten) focuses on EASA and, in particular, on the functions that it exercises in the realm of shared regulatory and enforcement powers. Instead of tackling the issues from the perspective of the methods of control (i.e. judicial, political, etc.), as the other chapters do, this contribution first presents and discusses the outputs of EASA shared rule-making and enforcement activities (namely, the acts adopted to these purposes by the agency); subsequently, it highlights how the mechanisms of control have been arranged. In particular, this study presents the existing challenges of the review of soft and/or technical acts before EU judicial and quasi-judicial authorities; the issues related to transparency and the participation of EU institutions and stakeholders to the rule-making activities of the agency (offering specifically an interesting insight on the so-called Annual Activity reports); the performance-based mechanisms of control, together with the possible sanctions that can be enacted towards the main internal offices of the agency. Chapter 15 (by M. van Rijsbergen and M. Simoncini) shifts the focus to ESMA, offering an (unfortunately not updated to the latest legislative amendment, yet still very interesting) examination on the direct and indirect enforcement function performed by the agency, as well as of the mechanisms of control currently in place (with a particularly detailed section on judicial accountability). Two of the main challenges to which this chapter draws the attention: the 'national dimension' of ESMA, that is a pan EU regulator, still made by a bundle of national authorities, whose weight in the decision-making of the agency is convincingly illustrated, and the standard of judicial review, with regard to which the Authors do not take an ultimate position, lacking sufficient case-law, but which deserve a careful evaluation in future studies. Finally, Chapter 16 (by J. Timmermans and M. Chamon) discusses another body that operates in the financial and banking sector, namely the SRB. The contribution focuses only on the direct enforcement powers of the SRB and, thus, on the procedure whereby the agency is competent to resolve the so-called 'significant banks'. The chapter convincingly illustrates the main features of the SRM institutional framework and, subsequently, it discusses the judicial (mainly at EU level, but with an interesting insight on the national one: see p. 302) and political accountability of the agency. In particular, it pleads for broadening the jurisdiction of SRB's internal Board of Appeal and for reducing the Commission's powers in the procedure (for instance, by making only optional endorsement to the resolution scheme adopted by the

agency to make clearer the allocation of responsibilities among the several actors involved).

At first sight, EU agencies and the rule of law could well be seen as contrasting elements.

The rule of law is, in its essence, a principle according to which 'the provisions of European law produced by the institutions and by the governments of the Member States, through the institutions, must be consistent with the "basic constitutional charter, the Treaty"'.[11] From this perspective, EU agencies are intrinsically contraposed to the rule of law. For example, they are created and still live between the lines of the treaties, they push them to rule in policy sectors that are not fully foreseen therein, according to procedures only to some extent provided for in primary law, and they enable the Member States to experiment new methods of regulation and solution of common problems. For these reasons, EU agencies create complex decision-making processes, which stand in between the European and the national context, which need atypical acts to be performed and which generate, in turn, problems of control, at any (political, judicial, administrative, financial) level.

However, after more careful analysis, connecting these two topics is a very thought-provoking approach, which seems able to open new perspectives in the studies of EU agencies' accountability.

On the one hand, the rule of law brings forward the classic method for studying accountability, because it sheds new light on several mechanisms of control and their interplay. For instance, looking through the lens of the rule of law, new elements arise in the concept of judicial control: judicial deference, the protection of fundamental rights, and the principle of effective judicial protection.

On the other hand, the rule of law has also a greater potential: revealing the root cause of EU agencies' accountability and hinting future research towards different directions. Debating EU agencies through the prism of the rule of law means immediately facing the fact that EU agencies have *not* been created in a way that is fully consistent with the treaties. Thence, the rule of law calls for a solution to the shaky legal legitimacy of EU agencies that changes the legal and political reality, recognising that there's little room left for tackling their accountability through *ad hoc* interventions such as alert warning system, data protection supervisor, fundamental rights officer, internal ombudsman or other means of specific control. These tools have enabled a better adaptation of EU agencies to the EU legal framework, taking up some of the slack. Yet, the rule of law calls for reversing the paradigm and *adapting the legal framework*

11 Stelio Mangiameli, 'Article 2 TEU', Hermann-Josef Blanke, Stelio Mangiameli(eds.), *The Treaty on European Union (TEU) – A Commentary* (Springer Heidelberg 2013), p. 131.

to agencies.[12] In a word, it hints at solving the Gordian knot of EU agencies' accountability with the sword of a deep reconsideration of the EU institutional architecture, fully recognising EU agencies' position and granting them an explicit legal basis in the treaties[13] and re-thinking the role of the European Commission and the EU Councils, to avoid any overlap between the several branches of EU political executive and between the latter and the EU agencies.[14]

Personal reflections, neither developed nor endorsed by this book; yet inspired by it, thanks to the innovative idea on which it is based. Therefore, this publication constitutes an interesting reading, also for those scholars not specifically interested in the field of accountability.

*Jacopo Alberti**

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12 Conversely, adapting EU agencies to the EU legal framework has created legal and political mismatches: a good example thereof is given in this book by A. Buijze, who points out at p. 173 that, in order to comply with the *Meroni* doctrine, the EU legislator has hampered a transparent allocation of competences, since it has merely divided from who is *de facto* in charge of rule-making (the agency) and who does so *de jure* (the Commission and/or the Council).

13 On the relevance of an explicit legal basis in the treaties is worth recalling the analysis of T. Huisjes and S. Tosza, who point out that "judicial accountability over EUROJUST's forum choices could (*perhaps ironically*) be made possible by increasing the *de jure* power of [this agency]" (p. 249; italics added), something that can be quite easily done with EUROJUST, given that the amendment of Art. 85 TFEU made by the Lisbon Treaty has given the legal basis for granting those powers. Paradoxically enough, giving a legal basis to powers *de facto* already exercised by agencies sounds *ironic*. The Authors subsequently affirm that "is difficult to extrapolate [from EUROJUST] useful accountability tools that could be an inspiration for other agencies of a different nature" (p. 251). Yet EUROJUST, and the analysis thereof proposed in this book, can perhaps offer to other agencies a deeper lesson, making clear that a real solution to accountability problems should be found extending the legal mandate of agencies and limiting the circumvention to agencies' limits such as the (ab)use of soft law; and, therefore, that future research could be dedicated first and foremost on how to amend primary law. After all, that it is not by chance that the idea to enhance the *de jure* powers of an agency has emerged particularly with EUROJUST: this agency, together with EUROPOL and EDA, stands among the very few ones having, at least, a formal legal basis in the treaties.

14 Notably in this regard, at p. 308 J. Timmermans and M. Chamon struggle in defining whether the Commission's role in the resolution procedure should be strengthened or reduced, convincingly arguing that such a decision depends, finally, on how one conceives EU administration: with a European Commission as primary executive, or with the current fragmentation of political powers among the latter, the Councils and national governments.

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