

**Regulatory Tools and the EU  
Institutional Architecture for the  
Financial Sector:  
The “New Regulatory Tools”**

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# Constitutional and Institutional Framework

- Principle of conferral
  - legal basis constraint
- Institutional balance
  - *Meroni* constraint
- Democratic legitimacy
  - Process constraints

# Regulatory tools

- Technical standards
  - Draft regulatory technical standards
  - Draft implementing technical standards
- Guidelines and recommendations
- European supervisory handbook
- Others
  - Systemic risk tools
  - Peer review
  - Regulation through information management and reporting
  - Methodological tools
  - Warnings
  - Advice
  - Opinions

# Technical standards

- Enhancement of efficiency of the regulation of financial services (expertise argument)
- But: extensive conferral requires assessment of TS on the basis of constitutional principles
  - Essential elements considerations
    - political choices? (Case C-355/10)
  - *Meroni* considerations
    - Policy choices?
  - Process considerations

# Technical Standards

- Concerns: DRTS
  - Legal basis concerns (para. 44 of C-217/04)
  - Institutional balance and process concerns
    - political prerogative (COM) v efficiency (agency)
    - Divergence of formal (COM) and actual responsibility (agency)
    - P: who decides on the Union interest?
    - Executive polyarchy v uniform executive

# Technical standards

- Concerns: DITS
  - Conferral concerns (Article 291(1))?
  - Institutional balance and process concerns
    - Distinction Article 290/291 TFEU?
      - Overlapping circles or mutually exclusive zones
      - Intensity of judicial review
      - Political importance (political/technical)?
      - Process-oriented: general/abstract – concrete
      - Competence-oriented: Union – MS
    - Political prerogative (COM) v efficiency (agency)
    - Divergence of formal (COM) and actual responsibility (agency)
    - P: who decides on the Union interest?
    - Executive polyarchy v institutional integration (elimination of comitology and ‘deliberation’)

# Guidelines and Recommendations

- 'Article 16 guidelines and other guidelines
  - Different conditions and effects
- Practical Importance
  - wide range of different functions
  - Material distinction between implementation guidelines and TS
- Issues
  - Comply or explain effect in Article 16
  - Indirect effect of guidelines in Articles 17 and 19?
    - Conferral concerns?
    - Institutional balance concerns?
    - Process concerns?

# European Supervisory Handbook

- Enhancement of supervisory efficiency
- Issues
  - Indirect effects
  - Institutional balance concerns
    - Technical expertise v political prerogative
      - Practice – handbook – guideline – TS – Union legislation



# Conclusion

- Democratic legitimacy concerns
  - Output-oriented system
  - Limited input
  - Institutional balance and Process
    - Sufficient consultation and participation?
    - Fragmentation of the Union's executive
      - Representation of Union interest?
      - Political prerogative of the Commission?
    - Accountability
      - Conflicts of interests
      - multiple actors and weak fora