

# BOOK REVIEW

MARTA SIMONCINI, ADMINISTRATIVE REGULATION  
BEYOND THE NON-DELEGATION DOCTRINE: A STUDY ON  
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### 1. Introduction

Marta Simoncini's Book aims to contribute to the constitutional conceptualization of the administrative powers at European level. Her innovative reading and interpretation of the *Meroni* Doctrine constitutes the space in which the Author has the opportunity to question the foundation of administrative powers, opening a discussion on the EU administrative identity itself.

The incoherence of the dominant interpretation of the *Meroni* Doctrine<sup>1</sup> is analysed through the study of two different

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<sup>1</sup> On this topic, P. Van Cleynenbreugel, *Meroni circumvented? Article 114 TFEU and EU regulatory agencies*, Maastricht J. Eur. E Comp. L. 70 (2014); V. Randazzo, *Comment to Case C-217/04*, Common Mkt. L. Rev., 155 (2007); M. Chamon, *The empowerment of agencies under the Meroni doctrine and article 114 TFEU: comment on United Kingdom v Parliament and Council (Short-selling) and the proposed Single*

patterns: on the one side the reinforcement of EU agencies' quasi-regulatory power; on the other, the emergence of hybrid administrations that are located in between agencies and independent administrations<sup>2</sup>. The last wave of agencification has amplified the divergence between theory and reality: powerful agencies such as the European Aviation Safety Agency (EASA) and the European Supervisory Authorities (ESAs), "in fact, cover a range of administrative powers that clearly reverse the idea of purely advisory bodies and show the as yet legally hidden regulatory content of their competence".

The real understanding of the juridical nature of the agencies' powers represents – in the Author's view – "a conceptual premise" (88) in order to understand their conformity to the non-delegation principle and the functional division of powers in EU legal framework. A reconsideration of substantive role of agencies in the EU policy requires an analysis of the actual legal nature and scope of these new public powers. The volume is part of the study on discretionary power at European level<sup>3</sup>,

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*Resolution Mechanism*, Eur. L. Rev. 380 (2014); Id, *EU Agencies: Does the Meroni Doctrine Make Sense?*,<sup>17</sup> Maastricht J. Eur. E Comp. L. 280-305 (2010) C.F. Bergström, *Shaping the new system for delegation of powers to EU agencies: United Kingdom v. European Parliament and Council (Short selling)*, Common Mkt. L. Rev. (2014).

<sup>2</sup> Other books and articles on EU Agencification: E. Chiti, *Le agenzie europee. Unità e decentramento nelle amministrazioni comunitarie* (2002); M. Busuioc, *European agencies and their boards: promises and pitfalls of accountability beyond design*, in *Journal of European Public Policy* (2012); M. Thatcher, *The creation of European regulatory agencies and its limits: a comparative analysis of European delegation*, in *Journal of European Public Policy* (2011); R. Schütze, *Principles of European Union Law* (2016); E. Chiti, *European Agencies' Rulemaking: Powers, Procedures and Assessment*, in *European Law Journal* (2013); E. Chiti, *Le trasformazioni delle agenzie europee*, 1 Riv. trim. dir. pubbl. 57 (2010); Id, *L'accountability delle reti di autorità amministrative dell'unione europea*, 01 Riv. it. dir. pubbl. comunit., 29 (2012).

<sup>3</sup> On this topic see: J. Mendes, *Law and Administrative Discretion in the EU: Value for Comparative Perspectives*, in S. Rose-Ackerman and P. Lindseth (eds.), *Comparative Administrative Law* (2017); Id, *Bounded Discretion in EU Law: A Limited Judicial Paradigm in a Changing EU*, Mod. L. Rev. (2017); R. Caranta, *On Discretion*, in S. Prechal and V. Van Roermund (eds.), *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, 185 (2008); H.C.H. Hofmann, C.G. Rowe, A.H. Turk, *Administrative Law and Policy of the European Union*, 499 (2011); P. Craig, *EU administrative Law*, 404 (2012); J-P. Schneider, *A Common Framework*

giving space to a theme – that of administrative discretion – which has remained underdeveloped and not conceptualized in the current scientific panorama. This was due to the fact that the doctrinal and jurisprudential analysis of administrative power was either traced back to the concept of political discretion within the competence of the legislator or hidden behind the technicality of the evaluations.

In the first Chapter the Author critically evaluates the non-delegation doctrine as interpreted by the Court of Justice in *Meroni* and *Romano*<sup>4</sup> Judgements, proposing an innovative reading of this jurisprudence that fills that gap represented by the failure to identify the nature of the public powers exercised by agencies. The second Chapter focuses on the legal taxonomy of agencies' power, questioning the quasi-regulatory competence that they actually exercise and how they contribute to sector-specific regulations. Finally, the third and fourth Chapters, instead, analyse the "nature" and the "sustainability" (12-13) of the power exercised by EU agencies going beyond the dichotomy between technical and political discretion developed by the European Jurisprudence. This analysis is part of the more general issue of the development of European administrative law and the recognition of a supranational public authority. In this sense, the Author considers procedural guarantees and the system of judicial protection as instruments aimed at guaranteeing control over administrative discretion.

## 2. Legality and reality: case studies

The *evolution* of the agencification process has to be compared with the *staticity* of that legitimacy parameter represented by the non-delegation principle, intended "as a constitutional principle that positions agencies in the EU institutional framework" (p. 49)

The progressive empowerment of European agencies with new and more incisive tasks has increased the gap between theory and reality. The *Meroni* doctrine has become a too short blanket

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for *Decentralized EU Agencies and the Meroni Doctrine*, 61 Admin. L. Rev. 29, 38 (2009).

<sup>4</sup> CJEU, 4 May 1981, Case 98/80, *Giuseppe Romano v Institut national d'assurance maladie-invalidité*.

unsuitable to constitutionally justify the evolution of the institutional reality.

Although the *Meroni* jurisprudence referred to a case of delegation of powers by the High Authority to private law agencies under the European Coal and Steel Community, it still represents a principle aimed at preserving the constitutional and democratic legitimacy of the exercise of administrative powers by European agencies and has continued to govern the legislative conferral of administrative powers to agencies under EU law. However, in the sixty years of validity of this doctrine, the reality of the agencification phenomenon has changed: in a system of multilevel governance, agencies have become the centre of connection between national and supranational interests, gaining ever greater and more incisive powers of intervention in the internal market.

From the last wave of agencification process<sup>5</sup>, the intensity of agencies' regulatory powers has increased, questioning the very traditional collocation of these organisations in the European institutional scenario. The attribution of new powers to EU agencies and the increase of their autonomy, challenge the traditional role played by these bodies within the framework of European powers. The cases of the EASA and ESAs' competences are the privileged scenario where the Author ascertains these trends. Their role in the rule-making process, the stronger standardisation practices and the selected regulatory powers attributed to those agencies reveals how the 'agency model' goes beyond the traditional advisory and assistance functions, providing a new face to the participation of agencies in the regulation of specific sectors.

The qualification of this model as a tool for technical cooperation with the Member States and the European institutions is being exceeded: the EASA has substituted the Joint Aviation Authorities cooperation (JAAs), and the ESAs have replaced the system of committees operating in the regulation of the financial system, creating an innovative system of governance and proactively participating in the regulation of the relevant area of

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<sup>5</sup> For an in-depth analysis on the agencification process see C. Tovo, *Le agenzie decentrate dell'Unione Europea*, (2016).

their expertise<sup>6</sup>. These agencies have been granted increasingly strong powers: the drafting of opinions, recommendations and reports that assist the European Commission in formulating supranational policies, the adoption of soft-law acts with a significant regulatory impact and the adoption of binding decisions vis-à-vis national authorities or directly vis-à-vis economic operators.

From the first point of view, EASA contributes to the definition of safety rules in the air transport sector through the preparation of opinions assisting the Commission in the exercise of its power of legislative initiative and the adoption of delegated acts. As the Author points out, the exercise of this power is more than just an advisory support and has a substantial impact on the content of the acts. Even more penetrating from this point of view are the participatory powers of the ESAs in the formal rule-making: They provide the set of rules by drafting the binding technical standard formally adopted by the EU Commission in the form of regulatory technical standard (pursuant to Art 291 TFEU) and of implementing technical standards (pursuant to Art. 290 TFEU).

From the second point of view, also the standardisation practices have increased the relevance of the agency contribution to the regulatory function. In both institutional experiences, agencies exercise soft law powers having a relevant regulatory impact through – for instance in the case of ESAs – the “comply or explain” formula. Finally, for what concerns the adjudication powers, these agencies can issue measures directly affecting market operators: the conferral of certification competences on the EASA by centralising in an agency the supervisory powers over market access requirements and the (mainly) subsidiary powers of intervention of the ESAs to ensure the implementation of European law by the competent national authorities.

These attributions demonstrate that agencies have, to date, genuine administrative powers through which they actively

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<sup>6</sup> The three ESAs – European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA), European Securities and Markets Authority (ESMA) – together with the European Systemic Risk Board (ESRB) constitute the European System of Financial Supervision (ESFS).

contribute to the regulation of the areas of their competence and to the achievement of European objectives, making them the authentic “centre of regulation” (74). This has led to a fracture with the principle of non-delegation enshrined in case law. In fact, according to the *Meroni* Judgement only “clearly defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegating authority”<sup>7</sup> can be delegated by institutions to EU agencies. These powers should be exercised only if accompanied by accountability formulas; i.e. supervision by the delegating institution and judicial review.

The concept of “non-discretionary powers” included in the above-mentioned judgment has been interpreted restrictively by the legal doctrine, significantly reducing the scope of application of the delegation. As a result, any delegation of regulatory powers to agencies would contradict the principle of institutional balance. Therefore, according to the traditional interpretation of the *Meroni* doctrine, while discretion in the European legal order is relegated to institutional policy making, administration was considered as a mere technical competence, “neutral to the balance of interests”; it follows that delegation theories are “developed as a methodology aimed at responding to complex technical issues with specialised skills” (15).

In the light of this interpretation «the emerging methods of administrative quasi-regulation by EU agencies question the constitutional foundation of EU agencies’ competences» (178). The Author shows how the absence of a specific legal basis at constitutional level has made a progressive development of the agencification phenomenon in terms of ‘compromise’: their organizational autonomy, the attribution of highly specialised technical competences, the political contingencies and functional needs have allowed the development of this model beyond the letter of the law.

The Author identifies the *Meroni* doctrine as the dominant Kuhnian paradigm for verifying the compatibility of the agencies’ powers with European law. However, as has been illustrated, the reality of the current agencification phenomenon makes this

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<sup>7</sup> CJEU, 13 June 1958, Case 10/56, *Meroni & Co., Industrie Metallurgiche, S.A.S., v High Authority of the European Coal and Steel Community*, 173.

paradigm – as traditionally interpreted – no longer suitable to explain the anomalies and strains derived from the new face of agencies. In the absence of alternative paradigms, the non-binding nature of the agencies' powers and the avoidance of direct conflict of competence with the Commission have represented the "theoretical justifications" for the exercise of these penetrating competences.

### **3. An innovative reading of *Meroni* Doctrine: Administrative discretion beyond technical and political powers.**

Assessment of the sustainability of the agencies' powers in relation to the *Meroni* doctrine calls for a twofold reflection: the first relates to the abstract possibility of agencies being able to participate actively in the exercise of regulatory functions within the European institutional framework; the second concerns the way in which such participation can be achieved. Thus, it is necessary to ascertain, on the one hand, the legal qualification of the administrative powers of agencies ("if-condition") and, on the other, those balancing and accountability mechanisms which limit their exercise ("how-condition"). The first one will be analysed in this paragraph, while the next paragraph will be devoted to the second.

The traditional reading of the *Meroni* doctrine has held back doctrine and jurisprudence from questioning administrative discretion at European level, contributing to the creation of a gap that today – in the face of evolution of the agencification phenomenon – can no longer be hidden behind the abstract distinction between technical and political power. If, on the one hand, the *Meroni* doctrine has not prevented the attribution of quasi-regulatory powers to agencies, on the other hand, it "has nonetheless trapped agencification in an unfortunate compromise between legality and reality" (178). In this context, the Author, not denying the role of the *Meroni* doctrine as the dominant paradigm, proposes an innovative interpretation of the non-delegation principle that represents a significant contribution towards the shift of the paradigm for the exercise of agencies' powers.

The "dark side" (29) of the *Meroni* doctrine is revealed by the Author through a careful interpretation of the aforementioned sentence: through the reference to the prohibition of delegation of

“discretionary powers”, the Court of Justice has intended that type of discretion “directly related to priority-settings and policy choices” (31) which, implying margins of political evaluation, could not be validly transferred to bodies that do not find their legal basis in the Treaties. Consequently, all those administrative powers that do not provide for priority-settings and do not involve political choices are excluded from the prohibition of delegation.

It follows that reference can no longer be made to the technical nature of the agencies’ powers in order to bring them in line with the “*Meroni Doctrine*”; the constitutional foundation of the powers (also discretionary) of the agencies must be sought elsewhere. Once the powers of agencies can no longer be covered by the «false myth» (106) of their neutrality with respect to public and private interests, the Author wonders whether and under what conditions the revealed discretionary nature of these powers is consistent with the constitutional framework and the principle of non-delegation. On the basis of the *Meroni* doctrine, it is the shifting of political choices and related responsibilities from the institutions in favour of other bodies that is contrary to the principle of “non-delegation”; but administrative discretion no longer confuses itself with political discretion. Thanks to the analysis contained in this volume, it finds autonomous theoretical dignity and autonomous practical recognition in the European legal order. In that respect the concept of “clearly defined executive powers” does not necessarily cover the content of the exercised powers but only outlines its boundaries; so administrative discretion may fit into it.

In the subsequent ESMA judgment<sup>8</sup>, the Court of Justice, in establishing the legitimacy of ESMA’s exercise of its short-selling powers in relation to the principle of non-delegation, did not take the opportunity to clarify the legal nature of the administrative powers within the European legal order, emphasising the technical qualification of the powers subject to review. Indeed, in this case, the Court avoids considering the argument used by the Parliament that short-selling measures are not “determined by political considerations, but by complex professional analyses”,

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<sup>8</sup> CJEU, 22 January 2014, Case C-270/12, *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union*.

but states that the number of substantive and procedural conditions limiting the adoption of ESMA's decisions are such as to rule out the possibility that they may be highly discretionary in nature.

However, since the ESMA judgment<sup>9</sup>, the Court of Justice has – by widening the scope of the *Meroni* doctrine – introduced new legitimation mechanisms for the exercise of public authority by European agencies<sup>10</sup>: among others, the quantity and quality of the procedural limits and conditions governing the agencies' administrative decision-making.<sup>11</sup> On the basis of this ruling, the legitimacy of the powers of agencies must also be assessed in the light of the substantive and procedural conditions underlying the exercise of public authority. It follows that «as a result, two paradigms of legitimation for EU agencies seem to co-exist: the delegation paradigm, based on the long-standing *Meroni* doctrine, and an emerging procedural paradigm of legitimation. Within the conditions that can potentially limit the agencies' powers, procedural regulations shaping their rule-making activity, enacting fundamental values such as participation, transparency and openness, can be particularly effective in strengthening the legitimacy of the financial agencies»<sup>12</sup>.

Conclusively, the volume enters into the scientific panorama introducing the administrative discretionary power of the executive apparatus through a reinterpretation of the *Meroni* Doctrine that goes beyond the traditional opposition between technical powers (falling within the agencies' sphere of competence) and political powers (reserved for the competent EU institutions). Through a deep analysis of the legislation and of the applicative reality, the Author goes beyond this dichotomy by

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<sup>9</sup> See *ex multis*: A. Dariusz, *The ESMA Doctrine: A Constitutional Revolution and the Economics of Delegation*, *European Law Review*, XXXIX(6): 812-834 (2014); C. Merijn, *The Empowerment of Agencies under the Meroni Doctrine and Article 114 TFEU: Comment on United Kingdom v Parliament and Council (Short-selling) and the Proposed Single Resolution Mechanism*, *European L. Rev.*, XXXIX(3): 380-403 (2014).

<sup>10</sup> E. Vos and M. Everson, *European Agencies: What About the Institutional Balance?* Maastricht Faculty of Law, Working Paper No. 4 (2014).

<sup>11</sup> On that topic see: M. De Bellis, *Procedural rule-making of European Supervisory Agencies (ESAs). An effective tool for legitimacy?* TARN Working Paper 12 (2017).

<sup>12</sup> M. De Bellis, *Procedural rule-making of European Supervisory Agencies (ESAs). An effective tool for legitimacy?* cit at 11.

identifying autonomous spaces of discretionary evaluation in the exercise of administrative powers by agencies. The exercise of adjudication and standardisation powers implies a balancing of interests and opportunity judgements that is carried out within the limits of the priorities and values established by the framework legislation. Technical judgements are often accompanied by administrative choices. Therefore, from a functional and organisational point of view, agencies present themselves in the EU constitutional order as autonomous administrative entities with particular technical expertise that complete the framework of European executive powers, supplementing the executive activity of the Commission and assisting the national authorities in achieving European policy objectives.

Once the agencies' exercise of discretionary powers is recognised as being in conformity with the *Meroni* doctrine, the analysis shifts to the instruments of accountability and institutional control aimed at ensuring the sustainability of the agency model in the EU legal order. (p. 107)

#### **4. The control over the discretionary**

The recognition of autonomous administrative powers on EU agencies implies the identification of the correspondent boundaries of such powers. In fact, only checks and balances structure the accountability of administrative bodies reconnecting the administrative powers to the unitary exercise of executive function. Only in a system inspired by legality and the rule of law, where there are adequate guarantees of accountability, could European agencies legitimately exercise discretionary powers in line with the democratic principle that inspires the EU legal order.

As part of the European administrative system, agencies must comply with the principles of independence, transparency, efficiency, participation and judicial control that inspire the European legal order; that is, guaranteeing the close relationship of interdependence between the administrative apparatus and the rights of individuals that characterises the democratic legal systems.

For these reasons, in the fourth part of the volume, the Author dwells on the concrete ways in which agencies exercise their powers, highlighting the limits of the current mechanisms of “discretion control”. The analysis consists of three levels of investigation: first, the Author focuses on the organisational aspects and “political accountability”, secondly, on the functional aspects related to the “proceduralisation” of the agencies’ powers and the related procedural guarantees, and finally, on the judicial review of the agencies’ decisions.

The analysis reveals a fragmented and uncertain implementation of legal guarantees applicable to European agencies, which makes controlling of the exercise of administrative powers by European agencies uncertain.

As far as organisational aspects<sup>13</sup> are concerned, the principle of autonomy is not structured in such a way as to improve “coherence in administrative decision-making and the pursuit of the identified European public interest” (174). “Insofar as autonomy is required as a condition for the operation of EU administration, the political accountability framework should be strengthened accordingly. Conversely the current regime demonstrates little awareness of the political relevance of the technical tasks exercised by EU agencies”. In this context, the reinterpretation of the *Meroni* doctrine in a key that does not hide but enhances the discretionary aspects of the EU agencies’ power could open the way to deepening the instruments of connection between the objectives (the result of political discretion) and their implementation (also through margins of discretion).

On the other hand, with regard to functional aspects, the Author points out that the absence of uniform rules at legislative level and the fact that procedural rules are often left to the decision-making power of individual agencies, distances administrative action from the democratic principle. In fact, by giving the power to agencies to decide how to reach decisions, it means giving them the priority of interests, compromising both the impartiality of decisions and the fundamental principle that limits the exercise of administrative discretion within the

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<sup>13</sup> C. Franchini, *Le fasi e i caratteri del processo evolutivo dell'organizzazione amministrativa europea*, Riv. it. dir. pubbl. com., fasc.2, 375 (2017).

framework of the criteria and values established at the legislative level (151).

The introduction of a general law on administrative procedure<sup>14</sup> implementing those key principles laid down in the Treaties and in the Charter of Fundamental Rights would certainly make it possible to convey the exercise of administrative discretion while ensuring the legality of administrative action. Therefore, also from a functional point of view, the recognition and theorisation of an autonomous concept of administrative power at European level makes it necessary to adapt the existing legislative instruments to the dimension assumed by the discretionary activity of administrations at European level.

Lastly, with reference to the judicial protection the Authors noted that constitutional recognition of the judicial review of the acts of bodies, offices and agencies intended to produce legal effects vis-à-vis third parties does not ensure the full justiciability of all EU agencies' action. In that respect, the quasi-regulatory nature of the most EU agencies' powers makes judicial review particularly problematic, because the attribution of legal force does not causally follow the adoption of the act. When agencies acts are just a part of a broader procedure, their "preparatory nature" limits the justiciability of such decisions. A further problematic profile is represented by the justiciability of the acts of

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<sup>14</sup> On the contribution of doctrine towards the codification of a European administrative procedure see: G. della Cananea, D.U. Galetta e a. (eds), *Codice ReNEUAL del procedimento amministrativo dell'Unione Europea*, (2016); G. della Cananea, *From Judges to Legislators? The Codification of EC Administrative procedures in the Field of State Aid*, RIDPC, 967 ss. (1995); C. Harlow, *At risk: National Administrative Procedure within the European Union*, IJPL, 1, 56 ss. (2015); D.U. Galetta, *Attività e procedimento nel diritto amministrativo europeo, anche alla luce della Risoluzione del Parlamento europeo sulla disciplina del procedimento per istituzioni, organi e organismi dell'Unione europea*, Riv. it. dir. pubbl. com., 395 ss., (2017); J. Ziller, *Risoluzione del Parlamento europeo per un'amministrazione europea aperta, efficace e indipendente*, RIDPC, 5, 947 ss (2016); Id., *Is a law of administrative procedure for the Union institutions necessary?*, in RIDPC, 3, pp. 699 ss., (2011); Id., *European Added Value of a Law of Administrative Procedure* cit.; B. Mattarella, *The concrete options for a law on administrative procedure bearing on direct EU administration?*, RIDPC, 3, 537 ss. (2012); D.U. Galetta - H.C.H. Hofmann - O. Mir Puigpelat - J. Ziller, *Context and legal elements of a proposal for a Regulation on the administrative procedure of the European Union's institutions, bodies, offices and agencies*, RIDPC, 1, 313 ss. (2016).

standardisation, the non-binding nature of which can make direct legal action more difficult.

Legislation is the most appropriate source to guarantee and ensure a system of procedural rights and remedies that support the conferral of incisive powers on European agencies; «from a cooperation role, they would be able to acquire stronger regulatory tasks and may ultimately come close to the status of independent regulators in the internal market» (187).

Generally speaking, the agencies' action must be governed by a composite administrative regime including organisational, procedural and judicial guarantees aimed at strengthening the bottom-up legitimacy of EU agencies. The control mechanisms of agency governance are characterised by a high degree of uncertainty, fragmentation and inconsistency; there is no crystal-clear accountability framework (186). This undermines the conformity of the agencies' action with the *Meroni* Doctrine in that it subordinates the constitutional compatibility of the delegation of powers with the principle of legality and democracy to the existence of a broad structure of accountability and control.

Therefore, even though – in the reinterpretation given by the Author – the abstract compatibility of the conferral of discretionary administrative powers on agencies has been recognised with the principle of non-delegation; nevertheless, to date, the general system of accountability that supports the agencification phenomenon does not seem suitable and adequate to circumscribe and convey the exercise of significant regulatory powers attributed to them.

##### **5. The implication on the constitutional side: the autonomous dignity of administrative power in EU constitutionalism**

The reinterpretation of the *Meroni* Doctrine suggested by the Author contributes to the debate on the modern EU administrative constitutionalism. In fact, once the existence of autonomous centres of discretionary power within agencies has been uncovered, it becomes possible to question the traditional re-conduction of the agencification phenomenon to the 'rational-

instrumental' paradigm according to Fisher's well-known distinction<sup>15</sup>.

In fact, case law and doctrine have constantly minimised the discretionary nature of the agencies' powers by enhancing the technical-specialist nature of their competences, as well as by enhancing the formulas for monitoring the agencies' activities by the Commission and the non-binding nature of their powers. The traditional interpretation of the *Meroni* doctrine, limiting the recognition of spaces of discretion on the part of agencies, has prevented the above-mentioned paradigm from being questioned, determining an uncertain system of agencies' governance which is difficult to justify on a constitutional level.

On the contrary, the deepening of the powers of agencies in terms of authentic and substantial discretionary powers, even if characterised by elements of high technical expertise, offers the possibility of elaborating the application of a model of "deliberative constitutionalism" more pragmatically concerned with effective problem-solving.

Moreover, the recognition of agencies as an autonomous model of administration in the governance of internal market has important constitutional implications, helping to redefine the interpretation of the principle of institutional balance<sup>16</sup>. In fact, upon implementation of the traditional interpretation of the *Meroni* doctrine, this principle was referred to the enumeration of

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<sup>15</sup> The Author dwells on E. Fisher, *Risk Regulation and Administrative Constitutionalism* (2007).

<sup>16</sup> E. Chiti, *Le trasformazioni delle agenzie europee*, Riv. trim. dir. Pubbl., 57 (2010): "la ragion d'essere della limitazione operata dalla Corte di giustizia (sentenza *Meroni*) alla possibilità di delega, individuata nel principio dell'equilibrio istituzionale, ha subito, nella stessa giurisprudenza del giudice europeo, una profonda ridefinizione: da principio, per così dire, statico, volto a delimitare ed a tutelare la posizione di ciascuna istituzione politica europea, a criterio di relazione, che consente l'inventiva istituzionale di un'autorità comunitaria a condizione che quest'ultima tenga nel giusto conto il ruolo delle altre, valutando gli effetti della propria azione sulla sfera dei poteri pubblici contitolari delle funzioni comunitarie. Una ridefinizione che induce a chiedersi se il rigido confinamento dei compiti attribuibili ad un'agenzia europea entro i limiti dei poteri strettamente esecutivi, privi di alcuna discrezionalità, corrisponda ancora al principio di equilibrio istituzionale o non richieda piuttosto un aggiornamento".

powers of attribution<sup>17</sup>. However, agencies are given administrative powers, which, since they are genuinely executive in nature, cannot innovate existing legislation. It follows that the principle of institutional balance “can be effectively construed on the recognition of the hierarchy in EU legal sources”<sup>18</sup>.

In conclusion, Simoncini’s book represents a fundamental landmark in the study of administrative power at European level<sup>19</sup>. Through analysis of the evolutionary agencies’ powers this text marks a decisive step in the study and deepening of the constitutional balance of European powers by finally giving a role and an autonomous place of prominence (autonomous dignity) to administrative power in this delicate balance.

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<sup>17</sup> In jurisprudence: case law described the principles as a “structural normative” principle regulating the horizontal relations between the institutions of the Union (Conclusion AG Trstenjak, 30 giugno 2009, case C-101/08, *Audiolux e alt.*, 105). As interpreted in the *Chernobyl* judgment first and in the *Verugdenhil* judgment afterwards, the institutional balance has become a principle that introduces elements of flexibility within the Union’s competences on the basis of the achievement of “European” ends (respectively: CJEU, 22 May 1990, C-70/88, *European Parliament v Council of the European Communities*; CJEU, 13 March 1992, C-282/90, *Industrie en Handelsonderneming Vreugdenhil BV v Commission of the European Communities*.)

<sup>18</sup> On this topic, *ex multis*, E. Chiti, *Decentralized implementation: European Agencies*, in T. Tridimas – R. Schutze (eds), *Oxford Principles of European Union Law*, (2016); compare also to H.C.H Hofmann, *European administration: nature and development of a legal and political space*, in C. Harlow – P. Leino – G. della Cananea (eds), *Research Handbook on EU Administrative Law*, 27 ss. (2017); The Author recognised that the creation of European agencies allows “shifting regulatory approaches from traditional hierarchic administrative organisations and unilateral forms of act towards more fluid and less transparent governance structures”.

<sup>19</sup> On this topic see also G. della Cananea, *The European Administration: imperium and dominium*, in C. Harlow – P. Leino – G. della Cananea (eds), cit. at 18, 52-63.