CONCEPTUALIZATION OF AGENCIFICATION OF EU GOVERNANCE

Report from the TARN workshop, held at ARENA Centre for European Studies, University of Oslo, 1-2 February 2016

Rapporteur: Dr. Vigilenca Abazi
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Rapporteur: Dr. Vigjilenca Abazi

The first TARN workshop was held in Oslo on 1-2 February and brought together a wide variety of scholars of both legal and political science backgrounds to present and discuss the latest individual or collaborative research on EU agencies. The workshop included researchers who have conducted groundbreaking work on the questions of agencies as well as junior researchers who are conducting innovative research in this topic. The workshop was organized in a gender-balanced manner both for speakers and chairs and included scholars from numerous European countries.

The TARN workshop on ‘Conceptualization of Agencification of EU Governance’ is the first in a series of workshops and conferences that the TARN network will be organizing in the upcoming years. Hence, as the first workshop it was focused on the conceptual questions that are relevant for a broader understanding of agencies. In developing these questions, the workshop also included empirical papers that focused on specific agencies such as ESMA and ACER. Issues of oversight by the European Parliament as well as questions of accountability were also raised with papers offering rich empirical details. The two-day workshop was organized in four sessions, which this report reflects. Hence, this report provides the main ideas presented and discussions that took place for each session.

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1 Dr. Vigjilenca Abazi is a postdoctoral researcher at University of Maastricht and research coordinator of the Centre for European Research in Maastricht. This report was prepared on basis of the presented papers, notes and comments from the rapporteur and speakers.
First Session: Agencification and EU Administration

This session focused both on broader conceptual clarifications about agencification as well as more specific questions with regard to the role of the agencies in EU administration, particularly how transnational coordination works between national and supranational agencies and the salient role EU agencies have in regulating risk. This session was chaired by Morten Egeberg, Arena and University of Oslo.

The first paper entitled ‘The multi-level administration of the EU: transnational coordination through national and supranational bureaucracies’ was presented by Eva Ruffing, University of Hamburg. The speaker argued that Europeanization has a transformative effect on national administrations but that national administrations also shape the European executive centre. The analysis included a top-down and bottom-up approach that revealed that national agencies gain more de facto autonomy from their parent ministries and win policy influence and that the capacities of national agencies are important determinants for the functionality of European administrative arrangements.

The second presentation by Morten Egeberg, University of Oslo and Jarle Trondal, University of Agder, University of Oslo focused on the ‘Agencification of the European Union administration: Connecting the dots’. This presentation was highly salient for providing a broader conceptual understanding on the literature on agencification and incorporating a categorisation of agencies that elucidates their functionality in the EU administration but is also revealing about EU integration and the shifts that take place in EU administration.

The third presenter Esther Versluis, University of Maastricht brought in the conceptual debate of the previous papers a more empirical dimension on ‘Regulating complexity in the European Union – The role of the European Centre for Decease Prevention and Control in the H1N1 case’. Besides discussing the role of agencies in addressing complex policy problem in regulatory governance, the discussion was also focused on how complex policy problems are understood and analysed in different disciplines. This
provided for a highly interdisciplinary understanding of the notion of complexity.

The last paper on this session written by Elina Brutschin and Johannes Pollak, Institute for Advanced Studies, Vienna focused on the ‘Commission’s Power on the Rise: The role of ACER for the European Energy Security’. The main argument presented was that the agencification makes the Commission’s legislative proposals less prone to failure because it decreases the Commission’s uncertainty about member states’ preferences.

**Second Session: EU Agencies and the International & Transnational Perspectives**

The second session was chaired by Michelle Everson, Birkbeck College, London.

The first presentation by Olga Batura, University of Bremen and University of Lüneburg entitled ‘Only connect! International agency networks in the ICT sector’ addressed the patterns of international cooperation of transnational agencies. Moreover, the presentation focused on the emerging agencies’ networks with regard to the information and communications technologies by specifically addressing the role of the Body of European Regulators for Electronic Communications.

The second paper entitled ‘Prophets of integration”: EU agencies and their international roots’ expanded the debate beyond the EU and focused on the international aspect and background of EU agencies. Presented by Jaeopo Alberti, University of Pavia, the paper aimed at shedding light at a relation that is often ignored in the literature, i.e. agencification of the EU legal order and the international experiences of cooperation in technical and scientific matters. The main argument by the speaker is that some key features connect agencies at these two different layers (international and EU), such as the internal structure, the seat, the functional relation with national administrations and the main organization’s executive bodies.

The third presentation by Marloes van Rijsbergen, University of Utrecht provided more insights with regard to the important question of effectiveness of agencies by specifically looking at European Securities and
Market Authority. Her paper entitled ‘Reconciling legitimacy and effectiveness in the adoption process of EU agencies’ soft law acts: transparency as a prerequisite for stakeholder consultation’ demonstrated the importance of taking the principles of transparency and consultation into account for increasing the legitimacy and effectiveness in EU agencies’ soft rule-making procedures. To illustrate some of the dilemmas and difficulties in drawing these balances between transparency and effectiveness, van Rijsbergen focused on the European Securities and Market Authority.

The session concluded with a presentation by Machiel van der Heijden and Kutsal Yesilkagit, University of Leiden of their paper entitled ‘Beyond metaphors: Exploring networked patterns of transgovernmental relations’. This presentation assessed the applicability of a network perspective to studying policy harmonization in transgovernmental settings. More specifically with regard to EU agencies, it was argued by the authors that European agencies can effectively fulfil a role as network broker, connecting different parts of network to each other and facilitating transactions among actors who otherwise lack access to or trust in one another.

Third Session: Legitimacy and Administrative Power

The third session was chaired by Ellen Vos, Maastricht University.

The first paper by Marloes van Rijsbergen and Miroslava Scholten, University of Utrecht entitled ‘ESMA supervising: on the interaction between EU and national legal orders’ focused on the question of judicial control over inspection power of ESMA. The authors favour a legal framework for ESMA that would ensure an equal (at least minimum) level of legal protection for the parties under investigation and a common way of holding EU supervisors to account.

Subsequently, Merijn Chamon, University of Gent presented a paper on ‘The legitimacy of (empowering) EU agencies post-Short-selling’ that opened the discussion on agencies to more fundamental legal questions with regard to legitimacy. Upon providing a clear overview of the case law that is pertinent with regard to the (limits to) powers of EU agencies, Chamon
argued that the case of *Short-selling* does not provide answers to the constitutional vacuum in which agencies operate, and hence pointed to the need for a Treaty revision, introducing a legal basis for agencification.

The third paper by **Carlo Tovo, University of Bologna** addressed the issue of ‘EU agencies as complementary centres of administrative power. *A normative and jurisdictional perspective on the polarisation of EU executive*’. Tovo likewise argued that the dynamic unbalances underpinning the agencification process arise from the absence of an explicit legal basis for their establishment and empowerment and hence also called for a legal basis for the agencies. Tovo further pointed out that such legal basis should take into account the political-technical dichotomy and link the allocation of executive powers with the “institutional capacity” and autonomy to adopt technical rules for the agencies.

Lastly, the legal debate about the powers and constitutional basis of the agencies was continued by **Andreas Orator, WU Vienna University of Economics** with his paper on ‘Agencification by stealth: On the eroding constitutional bases to assess the establishment and empowerment of EU agencies’. Orator argued that the ongoing creation of new EU agencies and their ever expanding powers is a feature of the reform of the EU’s constitutional system “by stealth”, i.e. by means other than explicit treaty amendment.

**Fourth Session: Accountability of EU Agencies**

The concluding session focused on the essential questions of accountability as well as oversight specifically by the European Parliament. By addressing this aspect of agencification, the workshop aimed to provide a first look at all the major issues that are of concern in the context of agencification debate. This session was chaired by **Jarle Trondal, University of Agder and University of Oslo**.

The first paper in this session was presented by **Martino Maggetti, University of Lausanne** about ‘The dynamics of agencification in Europe: *The case of the institutionalization of the CESR*’. The discussion was focused on how soft rule-making capacity can be attributed to informal bodies for
instrumental reasons and how soft rules can emerge from arrangements that were not necessarily created with this purpose. The example of the Committee of European Securities Regulators was offered to illustrate these dynamics.

Åse Gornitzka, University of Oslo addressed furthermore ‘The effect of European Union agencies on the expertise-executive nexus in the European Commission’. The speaker aimed to develop two main theoretical arguments concerning a possible agencification effect: firstly, a ‘division of labour hypothesis’ where the proliferation and task expansion of EU agencies has ‘drained’ the Commission’s channels to specialized expertise, versus secondly, a ‘expertise duplication hypothesis’.

The paper by Nuria Font and Ixchel Duran, University of Barcelona on ‘The European Parliament oversight of EU agencies through written questions’ addressed in an empirical manner the question of oversight. Based on a significant sample of written questions by the European Parliament as a form of oversight, the authors argue that legislative oversight of agencies is driven by MEPs national party opposition status as well as by agency salience and size.

Johannes Pollak, Institute for Advanced Studies, Vienna and Michael Buess, University of Lucerne presented a paper entitled ‘Accountability regimes and the EU’s agency world’. The authors showed that whereas with regard to reporting duties at the EU level is seems that the examined agencies are well established; the accountability towards civil society and the public in general is underdeveloped. These two elements together – on the one hand the institutionalised accountability and on the other hand the public accountability – seems to provide for a complex accountability regime overall for EU agencies.

Various papers discussed during this workshop will soon appear as a TARN working paper and feed the further discussions that will be held in the framework of future TARN events.