

# Review of: M. Simoncini, *Administrative Regulation Beyond the Non-Delegation Doctrine: A Study on EU Agencies*, Oxford: Hart Publishing 2018 (232 p.)

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The book deserves attention for its well-informed and up-to-date treatment of the central notion of the duty of care, and for its general overview of European civil service law. With an impressive number of cases analysed, it can also be used as a reference book.

**Oliver Mader**  
*Rechtsanwalt*

**Administrative Regulation Beyond the Non-Delegation Doctrine: A Study on EU Agencies**, by Marta Simoncini, (Oxford: Hart Publishing, 2018), 232pp., hardback, £65, ISBN: 9781509911745.

The book under review is the final output of a post-doctoral research project by the author. It presents a study on EU agencies and focuses mainly on the European Aviation Safety Agency and the European Supervisory Authorities in the financial sector as these are rightly identified as exemplary of a new phase in EU agencification. The book first sets out the development of the non-delegation doctrine and subsequently highlights the “quasi-regulatory” powers of the agencies under review to show how the aforementioned non-delegation doctrine is put under pressure. In a third part the idea of (administrative) discretion is explored to identify a category of (delegable) powers in order to transcend the simplistic dichotomy that qualifies decisions as either political or technical. In a fourth part the autonomy of the agencies is looked into, as well as the procedural framework for their decision-making and the administrative and judicial review in place.

The book presents an up-to-date picture of this rapidly developing area of law and builds on the relevant and most recent legal scholarship in the field. In this light it is also European scholarship at its best since it draws from doctrine written in English, French, Italian (and some sources in German). While not as genuinely innovative as suggested (e.g. pp.7, 8), the book’s main thesis is that the dominant interpretation of the *Meroni* doctrine ((9/56) EU:C:1958:7) has resulted in a misleading dichotomy between political and technical decisions and that recognizing a (third) type of “administrative” discretion would allow for a Kuhnian paradigm shift (pp.178–180).

For the uninitiated reader, however, the book might be quite dense as it deals with a plethora of relevant issues in “only” 190 pages. In this regard, it would have been useful for a number of issues to have been developed in more depth (resulting in a more voluminous work or, alternatively, focusing on fewer issues). For instance, some of the decisions by the agencies’ Boards of Appeal have not been discussed or analysed elsewhere but the book only briefly touches upon them (pp.160–162) just as the study’s extremely interesting finding that the EU agencies have gone beyond adopting “post-law” (cf. the work on soft law by L. Senden) measures and instead have adopted soft law that substitutes hard law on which the institutions were still negotiating (pp.85–86). Other topics that would have merited further elaboration are the comparative analysis where the book looks into the notion of administrative discretion in three different national legal systems (pp.94–99) and the standard of judicial review applied by the Court of Justice (pp.169–173). This especially since all these issues touch on the main thesis of the book. Further elaborating these issues would have helped in further identifying this species of “administrative discretion” (the study’s central notion but so far unknown in EU law) and refining our understanding of discretion. Other issues discussed in the book seem less relevant to its main thesis but are nonetheless discussed. While they are interesting and the book contributes also to legal doctrine on those topics (e.g. standardisation bodies, the single supervisory mechanism, the autonomy of EU agencies’ Boards), they could have been omitted to make space for the more directly relevant issues. Since they are also discussed concisely, they add to the questions that the book raises. For instance, when it is argued that *Meroni* is not relevant to standardisation bodies

since the latter are only “regulated by EU law” but have not been “delegated powers under EU law” (pp.117–118), one wonders where the difference between these two exactly lies, especially since later on it is also noted that “powers [are] allocated to EU agencies” which are “regulated by EU law” (p.154). At a more fundamental level, the institutional balance, *Meroni*, democracy and legality are all invoked, at different points, as relevant to scrutinise agency empowerments, but their respective roles are not developed. For instance, the suggestion that the 1958 *Meroni* case aims to protect the democratic principle (p.106) is unconventional, but the book is nowhere very explicit on how all these principles interrelate precisely. Finally, the publisher appears to have refrained from submitting the manuscript to a full proofreading by a native speaker. This is a pity. The monograph sets forth an interesting argument but its laboured wording detracts from its clarity and may put off some readers from delving into the argument and into the rich references on which the book relies throughout.

**Merijn Chamon**  
*University of Maastricht*

**The Horizontal Effect of Fundamental Rights in the European Union: A Constitutional Analysis**, by Eleni Frantziou, (Oxford: Oxford University Press, 2019), 256pp., hardback, £80, ISBN: 9780198837152.

In a societal context where the distinction between *private* and *public* exercise of power becomes blurred, and where a multitude of private interactions increasingly affect the equal enjoyment of fundamental rights of a wide range of subjects, “horizontal” is warranted re-conceptualisation in its purpose and parameters. Denoting the application of rights disputes between private parties, the doctrine of horizontality questions the traditional application of fundamental rights against the state. An investigation of its function and criteria is particularly compelling, and at once extremely challenging, in the context of the EU: a hybrid supranational constitutional order and a public sphere historically privileging market actors (pp.170–71, 175). Horizontality is becoming a pressing doctrine, particularly as cases brought to the CJEU concern less and less market-focused issues, and more frequently touch upon socially relevant issues (p.81). In light of the Court’s narrow-sighted interpretation of *horizontal*, how can the latter be re-conceptualised and justified? Which criteria should guide its determination and why? These questions are at the heart of Dr Eleni Frantziou’s insightful and forward-thinking book on *The Horizontal Effect of Fundamental Rights in the European Union*.

The book represents an urgent contribution to the body of literature addressing the horizontal effect of fundamental rights in EU law. Especially following the entry into force of the Lisbon Treaty, scholars have cast their attention on the horizontal effect of the EU Charter and fundamental rights more in general: the focus has been on the status and extent of application of the Charter in horizontal situations (K. Lenaerts, “Exploring the Limits of the EU Charter of Fundamental Rights” (2012) 8 *European Constitutional Law Review* 375; D. Leczykiewicz, “Horizontal Application of the Charter of Fundamental Rights” (2013) 38 *E.L. Rev.* 479); the scope of the horizontal effect of fundamental rights as general principles (E. Spaventa, “The Horizontal Application of Fundamental Rights as General Principles of Union Law” in Anthony Arnall et al (eds), *A Constitutional Order of States: Essays in Honour of Alan Dashwood* (Oxford: Hart Publishing, 2011); T. Tridimas, “Fundamental Rights, General Principles of EU Law, and the Charter” (2014) 16 *Cambridge Yearbook of European Legal Studies* 361); broader issues of constitutionalisation of EU private law (N. Ferreira, *Fundamental Rights and Private Law in Europe: The Case of Tort Law and Children* (Oxford: Routledge, 2010); O.O. Cherednychenko and N. Reich, “The Constitutionalization of European Private Law: Gateways, Constraints, and Challenges” (2016) 23 *European Review of Private*