The Policy Influence of European Regulatory Networks

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Introduction

The European Union (EU) is a governance laboratory. In no other political system do new modes of governing and administration follow each up as quickly as within the EU. Compare this to the US, a state to which the EU is regularly compared to because it resembles some of its federal institutional features (Geradin; Pollack). The competences of the branches of government and the rules governing the political game are much more institutionalized in the US than in the EU because of the older age of the former. Students of European governance and comparative public administration and regulatory governance become dazzled by the speed of the institutional designs and redesigns that take place in the European administrative space. It is our observation that European scholarship on European and national regulatory agencies focuses much more on issues concerning institutional 'change' and classifying the "new" modes of governance and that American scholarship can devote time and resources to the study of "bureaucratic influence", "autonomy" and "political control". In other words, US scholarship on public administration and regulation have more opportunity to study the actual functioning of a relative stable political system whereas Europeans are in a position where they have 'to catch up' with the latest (plans for) institutional reform.

A substantial part of the literature on European governance is devoted to European agencies and the European networks of national regulatory authorities. From 1975 onwards, European agencies have come to populate the administrative space between the supranational institutions and the governments of the member states as additional forms of organizing the various phases of the EU policy process. Two decades later, we witnessed the proliferation of formal and informal networks of national authorities. The emergence of agencies and networks of agencies at the European administrative scene is related to other. The *Meroni* doctrine plays a role here, but also the reluctance of the Member States to see the growing of agencies with policymaking and regulatory competences alongside the Commission. Fearing that European agencies would suppress national agencies, member state governments have been reluctant towards their creation. The result was the search for alternatives and networks are seen as a second-best alternative for agencies. But as already said, the administrative space is in a continuous flux as new agencies are still being created, networks established and networks transformed into agencies (DLF).

The dynamic landscape of agencies and networks pushes a crucial issue to the background: their policy role in the European policy process. Agencies and the networks are created to contribute to the various stages and aspects of the European policy process. European agencies and regulatory networks of national authorities play different roles in the European policy process. As for the agencies, this variation stretches from agencies with only information-gathering, delivery of (technical) services, monitoring tasks to agencies that have the (de facto) competences to enact binding regulatory decisions. The same is true in the case of networks. On the one side there exist informal networks with large number of different types of public and private actors that operate outside the EU governance frame; at the other end there exist formal and specialized networkls created for harmonization and enforcement of European decisions. This variety is one reason why it is difficult to say something about the impact agencies and networks have on the outcomes of the European policy process. Why should one bother about the policy role of agencies and networks, and especially the latter, if they emerge and transform into agencies in relative short periods of time?

In this paper we aim to undertake exactly this enterprise. The paper examines the policy influence of regulatory networks on the European policy process. There are several reasons for why this is important. First, the regulatory networks have figured mostly as second-best, sub-optimal solutions to the Commission's lack of administrative capacity. IN the meanwhile they (have) fulfill(ed) important functions as producers of policy-relevant information to the Commission, Council and the European Parliament. Regulatory netwiorks enjoy far lesser policy competences than the agencies with regulatory competences, but it still remains an empirical question to what extent the networks have actually foot printed the outcomes of EU decision-making. Second, a study of the policy influence of European regulatory networks may shed an interesting light on the multi-level institutional balances between supranational and national political actors. ERNs are, as we will show, sites where actor transformations take place in fluid ways. At one stage, an ERN is composed of individual agencies with asymmetric resource dependencies; at another

stage an ERN becomes a unified actor (Scharpf) that can be viewed as an individual actor; and at yet another stage, the core body that constitutes the ERN, i.e. secretariat or agency that supports the board of the ERN, may act itself as a unified actor that internally subdivided vis-à-vis individual agencies that are member of the network that is coordinated and managed by the core network body.

In this paper we will examine the policy influence of the Committee of European Securities Regulators (CESR) on the implementation rules produced through the comitology process at Level 2 of the Lamfalussy system for EU financial market policymaking. CESR is an excellent case as it is a "agencified network" with substantive policy competences (advisory, harmonization) in the making of financial market policies and the regulation of the EU single market for financial services. CESR was created in 2002 and ceased to exist as of January 2011. It is subsumed under the European Securities Market Authority (ESMA) that as an agency pursues the tasks of CESR but with some extended competences on paper. CESR is governed by a board and has a supporting organization. The board consists of representatives of the national financial market authorities, the same is the case for its numerous expert working groups and task forces. In this paper we focus on CESR as a unified body when it submits its advice to the Commission for an implementing measure.

The paper is structured as follows. The first section describes the political institutional settings under which European networks are established and function. The next section describes in more detail the setting under which CESR operated between 2002 and 2010. The purpose of this description is to derive hypotheses regarding the politics of control and accountability of CESR. Section four describes the methodology employed and the data collected and analysed. Section five provides the analysis. The paper ends with a conclusion.

The policy influence of regulatory networks

Before the policy influence of a European regulatory network can be examined, this section describes in general and stylized terms the contours of the policy process that applies to the setting within which these networks operate. As a general observation, one can say that the relationship between the supranational institutions, member states, European networks of regulatory agencies relate to each other in complicated delegation and control relationship (Egeberg 2006; Eberlein & Newman 2008; Coen & Thatcher 2008). Attention to the policy role of networks is scant however and hitherto attention to transnational policymaking has been mostly devoted to European agencies (DeHousse 2007; Geradin xxx; Kelemen 2002; Groenleer 2010). While European agencies vary substantially from each other in terms of their structures, competences and institutional embedding, the delegation and accountability relationships between supranational institutions, member states, and networks of national regulatory agencies are somewhat more complicated. This is mainly due to the fact that there are far more differences between regulatory networks in terms of their creation, formal positions, competences and organizational forms. A reason for this variation is also the fact that regulatory networks within the EU's administrative space are considered as a second-best alternative or a pre-phase to agencification. In other words, the network landscape is much more in flux than the agency landscape, which makes it harder for researchers to generalize about 'the' policy influence of European regulatory networks (Levi-Faur 2010).

Given this difficulty, and leaving the different competences aside, it is possible to draw a very basic picture of the ways in which regulatory networks are involved in the European policy process (see Figure 1 in the Annex). We can identify three stages, each stage having a different institutional setting and actor constellation. The first stage is the "uploading" stage, the input side of the transnational EU policy process. This is the stage where national regulatory authorities prepare their positions for issues that will be discussed at the general or special working group meetings of their transnational network. This stage resembles the Commission-phase where expert representatives from the various member states gather for discussing policy initiatives of the Commission (Wessels xxxx). During the uploading phase, the institutional setting is primarily a national setting: the most important parameters are determined by the relationship that a NRA has with parliament, its parent minister and other relevant administrative actors. Before attending network meeting, NRAs determine their position vis-à-vis the policy issue on the agenda. NRAs also

decide their transnational strategies and tactics: what will be the position of other NRA? How much resources must be allocated to a particular policy issue? Will there be sub-working groups and should the NRA partake in them? The eventual position is co-determined by the domestic political agenda and the agenda of the domestic industry or market that will be affected by the regulations (see also Singer xxxx).

The second stage is the "throughput" stage where the regulatory network is involved in the process of policy preparation. The setting is supranational and is characterized by the institutional balance between the supranational institutions (Geradin & Petit xxxx). The main institutional parameters are determined by the role of the Commission within the network, the level of formalization of the network, such as the legal basis of the network and the organizational structure and competences and resources of the network organization. (Coen & Thacther 2008; DLF: agencified network or networked agencies). Another important difference is that the individual NRAs have become subsumed by the network body. The network body may be a secretariat located within a Commission DG and serving a board of commissioners; it may also more agency-like, having its own budget, staff and premises. Important also is the formal role of the network: is it information gathering and dissemination among members or is there also a policy advisory role towads the Commission? At this transnational level actor transformation take place. At the input side of the regulatory policymaking process the individual NRAs engage in a deliberative/competitive mode debate/negotiate the technical issues (Sabel & Zeitlin; Krapohl) but their network speaks with one mouth; the individual NRAs cease to exist and the network body assumes its role as a single actor that acts.

The final stage is the downloading stage. During the downloading stage, the networks fulfil functions with regard to the harmonization and enforcement of Community law. This, as already stated, differs between regulatory networks depending on their formal competences. The main activity of regulatory networks as regards their harmonization task is to produce commonly agreed upon set of rules, guidelines or standards to practically implement the (open norms of) Community law in their own fields. Networks that have such a function do this by producing non-binding rules. Enforcement activities or agreements to engage in this form also be part of the downloading stage. Based upon Community law and upon the non-binding rules developed earlier, NRAs may engage in cross-border enforcement activities whenever for e1mple regulated market parties have developed cross-border activities. The institutional setting here differs from the preceding two in that the most important actors here are the network body and the individual NRAs. The network body has an important task in overseeing the implementation of the soft-law its members jointly develop and agree upon. Next it has a coordinating task as regards the enforcement activities that involve two or more member NRAs. In a sense there thus exists a form of principal-agency relationship between the network body and the inidividual NRAs that in this last stage have 'returned' to their national domain.

Although reality is much more complicated than pictured here, we can draw some insights about the policy role(s) European regulatory networks play in the transnational policy process. Two are central, we believe. The first is that each stage provides a different institutional setting with different games and rules. Second, at each stage the network changes its guise: individual NRAs at the uploading stage form an composite/aggregate body during the throughput stage and network body and individual NRAs emerge as quasi-principals and agents during the downloading stage (cf. Scharpf 1997). Networks *are* the agencies and at the same time, depending on the policy stage, they are separate entities. In the first phase, the network is the venue where the various national regulatory agencies deliberate and/or negotiate about the course of action. During the second stage, the network acts as a separate actor on behalf of the national agencies and delivers input to the Commission on behalf of the national agencies. In the final stage, the network acts as an overseer and coordinator of the agencies. The network thus takes on different guises and operates in different settings.This means, by conclusion, that the European regulatory networks as such play different policy roles during the various stages and that the determinants of the outcome of the policy process also differ per stage.

ERNs belong to both spheres: the network is located closer to the EU and the agencies are part of the national machinery of government and therewith closer to the member states. The fact that ERNs are the agencies and the agencies make up the ERNs is the linkage

between two formally "incompatible" spheres. Let us look closer at these two spheres. We will employ the principal-agency language to explicate the differences between them.

The case of CESR and financial market regulation policymaking

This paper will examine the policy influence of one regulatory network: the Committee of European Securities Regulators (CESR). Levi-Faur identifies CESR as an "agencified network". It was established in 2001 and was transformed into an agency as of January 2010. The European Securities Markets Authority (ESMA) has overtaken the role and functions of the CESR and is operating as an agency within a broader and also at the same time transformed banking and accounting regulatory system, i.e. the European Systemic Risks regulatory system. One reason we focus on CESR is that it no longer exists. It is herewith a well-defined and un-censored case of the past.

The Lamfalussy System

Since 2001, securities regulation is embedded within the so-called Lamfalussy process. The Lamfalussy process (or system) is proposed by the Committee of Wise Men (chaired by Baron Lamfalussy) with the goal of simplifying and fastening the legislative process for Community law in the area of financial markets. The traditional process of Community legislation, it was stated, was too slow for the rapid changes that occurred in the field of financial markets. Also Community laws were often too technical and specific for an area that witnessed rapid changes and that required more flexible laws with framework principles. To improve Community legislation, the Committee of Wise Men proposed a four level system. The Lamfalussy system looks briefly as follows:

> *Level 1*: the drafting and production of Community law that only contain framework principles drafted by the European Institutions according to established legislative procedures
> *Level 2*: the drafting of implementing measures to finetune level 1 framework legislation to actual developments within the area of financial markets. The EC is assisted by two newly created bodies: the comitology committee European Securities Committee (ESC) and CESR, the network of national financial market regulators of the Member States.
> *Level 3*: a framework for strengthened cooperation between the national regulators in the coordination and enforcement of Community law in Member States. CESR's main goals are the formulation of guidelines and standards to be implemented by the national regulators and the development of a monitoring system to supervise the harmonization process.
> *Level 4*: the enforcement of Community law within the Member States with the EC acting as the guardian of Community law.

CESR's advisory role at level 2

The process of delegation at level 2 involves the delegation of advisory competences by the European Commission (EC) after consultation of the European Securities Committee (ESC) to the Committee of European Securities Regulators (CESR). Figure 2 (see Annex) shows the chain of delegation. The European Commission sets in motion the drafting of a directive or a regulation at Level 2 with the drafting of a mandate to CESR. For the mandate, the EC first consults with the ESC and informs European Parliament's Economic and Monetary Affairs Committee (EMAC) about the mandate.[1] Then the (provisional) mandate is opened up for comments and notices from market and other interested parties. CESR invites market and other actors to give their comments on the mandate in order to be informed about the views and expectations of interested parties about the coming consultation paper and eventually CESR's technical advice. The actual writing of the technical advice is delegated to an expert group within CESR. On the basis of Article 5.X of the CESR Charter, CESR may establish expert and other type of groups for preparing work at Level 2 and Level 3. On the basis of this delegation, CESR delivers a non-binding technical advice to the Commission for adopting implementing measures for a Level 1 directive. The expert groups are chaired by and consist of representatives of the national

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[1] Given the time constraints, Level 2 procedures start parallel to the work at Level 1 on framework legislation. The mandate to CESR is in practice a provisional mandate that is formalized after the implementing measures at level 2 are

regulatory authorities that are members of CESR. The expert group is assisted by a consultative working group, that is established in line with Article 5 of the CESR Charter and that consists of representatives of market parties and other interested parties, i.e. industry, consultants, and academic experts. Further, the expert group is encouraged to hold public hearings, either on location or through Internet, virtually for each (interim) report that is drafted along the process, in order to ensure as much transparency and openness as possible during the level 2 process. The process from the mandate to the draft of a final technical advice consumes about twelve months (IIMG 1st, 2nd reports).

How should we classify this in terms of delegation? Considering the role of the EC within the Lamfalussy process, in particular at level 2, Visscher et al classify the delegation process at level 2 in the first place as "dual agency", by which they mean a situation of multiple principals-single agent, whereby the Council and European Parliament act as the principals of their agent the European Commission to whom EP and Council delegate powers to draft implementing measures, which may take the form of either a regulation or a directive, at level 2. Then, the Commission is considered the principal vis-à-vis two agents: the ESC and CESR. Both ESC and CESR are established by a Commission decision. According to Visscher et al, these acts of delegation from the Commission to ESC and CESR deems ESC and CESR as the agents of an "intermediate agent", i.e. the EC, which in effect deems ESC and CESR as "sub-agents" of Council and EP. However, by qualifying ESC as an agent of the EC Visscher et al overlook an important task of the ESC at level 2. Upon the ESC, which is established as a comitology committee, is conferred advisory powers with which the ESC can assist the EC with providing policy advice for issues at but not only level 1. At the same time, however, ESC is also endowed with the powers of a "regulatory committee" in concordance with Council Decision 1999/468/EC that classifies the various implementing powers the Commission may confer upon comitology committees. In its capacity of regulatory committee (cf. Article 5, Council Decision 1999/468/EC), the ESC is entitled to vote on any draft measure that the Commission submits to it. The measures of the EC are adopted when the ESC approves of them by qualified majority. If a qualified majority fails then the Commission must refers the measures to the Council. So, different to the assessment of Visscher et al (2008) of ESC as a mere agent of the EC, we may argue that ESC, in its capacity of regulatory committee that has to approve the mandate of CESR, is actually, at least, more of a principal to CESR next to the EC than an subservient agent to the EC. Without the formal approval of the ESC, the EC may not delegate advisory competences upon the CESR.

During the second step of delegation, CESR delegates the task of preparing the technical advice to an expert group. The Committee consists of senior representatives, one for each of the competent authorities in the securities field within the Member States of the EU (Art.1 Charter). The chair of CESR is elected from among the members of the Committee for a period of two years (Art. 2 Charter). The chair acts as the head (secretary general) of the secretariat of CESR that consists of four policy units that are headed by a director and a staff support unit for IT and administrative issues (organization chart on CESR website). In a sense, CESR can *de facto* be regarded as a network agency in the field of securities markets regulation that coordinates the work of the Member States' national regulatory authorities (Lavrijssen & Hancher 2010). For fulfilling its main tasks – advise to the EC and the coordination of the supervision and enforcement of securities legislation in the EU – CESR may establish expert groups that are chaired by a member of the Committee or another high level representative of one of the competent regulatory authorities. The expert groups are established on the basis of a mandate and general terms of reference. The expert group is disbanded upon completion of the mandated work (Art. 5.3 Charter). Finally, the decisions of the Committee are non-binding and are decided either by consensus or a qualified majority (Art. 6 and subparagraphs of the Charter). The draft implementing measures that are submitted to the EC are subject to qualified majority – provided that consensus can not be reached. Dissenting opinions are identified and elaborated if there is need for.

This brings us to the following two observations as regards the delegation of advisory authority to CESR at level 2. First, ESC is a comitology committee that is composed of high-level bureaucratic representatives of national ministries responsible for securities markets – an aggregate actor of national finance bureaucracies. CESR is an aggregate actor, too, but one of national independent competent authorities with regulatory powers in the field of securities markets. At the first chain of level 2 delegation, then, what

happens is that the EC, whose preference we may assume to be that of further integration of the financial services markets within the EU, proposes to the ESC, that acts in its capacity as a regulatory committee and whose preferences we may assume to be a function of the individual preferences of the Member State central governmental executives for financial markets regulation, a draft mandate to be lend to CESR for drafting a technical advice on implementing measures to the EC. This implies that the mandate of the EC to the aggregate body of national competent regulatory authorities CESR is filtered by the preferences of the Member State central governmental executives. This resembles the re-creation of 'ministry-agency' relationship at the supranational level.

Second, internally, the members of the Committee delegate by consensus mandates to the expert groups that are tasked with the preparation of the technical advices. The appointment of the chair and members of the expert groups is not explicitly regulated by the Charter. In order to assist the expert (or other) groups, the Committee also decides on the establishment of the consultative working groups. The adoption of the technical advice on the implementing measures is subject to the decision procedures of the Committee: by consensus or qualified majority. When decision-making by CESR on the final technical advice is juxtaposed to decision-making by ESC on the implementing measures proposed by the EC – provided that the EC has followed CESR's advice as full as possible – we find that the Lamfalussy-process entails a weighing of the aggregate and negotiated preferences of central governmental executive represented by ESC against the aggregated and negotiated preferences of the Member States' national regulatory authorities.
ESC has a substantial say on the mandate of the CESR and therewith on the substance of the final advice that CESR submits to the EC. When deciding on the draft implementing regulation or directive that the EC will submit to ESC under the regulatory procedure, the EC is dependent upon the policy position that is conveyed within CESR's final advice. The mandate, however, is not the only monitoring device to which CESR and eventually the EC is subject. The contents of the technical advice and therewith the draft implementing measures proposed by the EC are further subject to elaborate consultation process, i.e. the EU equivalent of the US notice and comment procedure. CESR and its expert groups are subject to consultation procedures that it has adopted in CESR's "Public Statement of Consultation Practices", which is itself adopted after a consultation process. The consultation process starts with the mandate of CESR, that after approval by ESC is put forward for consultation by interested parties. The EP's Economic and Monetary Affairs Committee is informed as well. The public statement on consultation practices states that CESR will target the full range of interested parties; publish the mandates and its consultation papers as widely as possible; produce intermediary reports and papers, as well as facts and figures relevant for the consultation process; and provide reasoned responses and explanation on all questions and comments that it receives from interested parties on all of its published documents.

Given this particular institutional setting and the spread of the specific competences among the three main actors – EC, CESR and ESC – we may distill the following expectations.
- CESR authors the technical advice. The specific conditions and limits of the advice are set by he (provisional) mandate but the mandate does not impose upon CESR restraints that directly opt-out or favor certain substantive choices. Given the fact that the text of the technical advice is often the sole document upon which the Commission bases its first working draft, CESR has a first mover's advantage. The position of the technical advice is difficult to predict, as the technical advice is the result of a compromise/consensus between NRAs that have actually taken part in the drafting of it. Not every NRA has had a seat within the expert group. At the same time, however, the technical advice has to be approved of by the general board meeting where all NRAs are present. The positions and preferences of each NRA differs depending on the domestic political setting and the size of the national financial market.
- The Commission authors a new draft implementing rule on the basis of the CESR technical advice. This draft will be submitted to the ESC and be treated by comitology procedures. The Commission has to respond to the CESR technical advice but is free at the same time to take or refine its own position. There are reasons to assume that the initial preferences of the Commission align with the initial preferences of CESR and the NRAs. The NRAs are the Commission's most important vehicle for implementing and harmonizing the implementing rules within the member states. At this point, the preferences of CESR meet those of the

Commission. However, as already stated above, the position professed by the technical advice may be compromise between the preferences of the NRAs that participates in its drafting. Given the fact that there are differences between the member states financial markets are reflected in the interests of the NRAs, the position taken within the technical advice may well reflect the position of NRAs with more pro-stringent or more pro-leniency preferences. For harmonization, the Commission shall prefer a position somewhere between the outer positions.

- ESC plays a formal role at the beginning and ending of the level 2 policy process. At the beginning, the ESC sets the boundaries for CESR's technical advice as ESC has to be consulted and has to approve of the mandate to the CESR. The weight of ESC increases towards the end of the policy process when the draft of the Commission enters the comitology process. There the Commission draft is discussed and possibly amendment before its formalization into an implementing directive or regulation is approved. The ESC is herewith an 'obstruction player' as it may bring to fore various views and proposals to alter the preambles and provisions of the draft implementing rule. The ESC may very well has such preferences as it represents the interests of the various (ministries of finance of the) member states. While the Commission may be 'naturally' inclined towards a middle position for the sake of prosper harmonization, the ESC have a natural inclination towards flexible conditions for harmonization, especially when the position within the draft is too stringent or too lenient from the perspective of the NRAs national market.

The hypotheses we derive from this is that

- *CESR, EC and ESC will have substantially different position as regards the financial market regulations that are formed within the level 2 process, whereby*
  - *the position of CESR is closer to that of the Commission than to that of ESC*
  - *the position of the Commission is inbetween those of the CESR and the ESC*
  - *the ESC is potentially the strongest actor in this process, such that the position within the official implementing rule is closer to that of the CESR and the EC*

Research design

Case selection: Market Abuse Directive

In this paper we estimate the policy influence of CESR's Level 2 advice to the European Commission for the implementation measures of the Directive on Insider Dealing and Market Manipulation (Market Abuse Directive). This was the first directive to be enacted under the Lamfalussy procedure. The Market Abuse Directive (2003/6/EC) is a framework directive that is developed and enacted as a Level 1 rule. It was adopted on 28 January 2003. The Lamafalussy procedure prescribes that level 1 rules should be further specified by more detailed implementing rules at level 2. This was applied to the MAD. CESR received in March 2002 a *provisional request*[2] from the Commission to deliver a technical advice (TA) on possible implementing measures on the future of directive on insider dealing and market manipulation. In the provisional request, i.e. the mandate, the Commission more specifically asked the CESR to deliver advice on articles 1, 6(1), 6(5) and 8 of the proposal for the market abuse directive. CESR delivers its technical advice on level 2 implementing measures for the proposed Market Abuse Directive in December 2002 (CESR/02.089d). On the basis of the CESR TA, the Commission drafted three implementing measures, addressing article 1, 6(1) and 6(5), and 8, respectively. The three draft proposals were progressed through the regulatory comitology procedure involving the European Securities Committee. On 22 December 2003, three implementing measures

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[2] Provisional because the (level 2) work on the technical advice occurred at the same time as the (level 1) legislative work on the framework directive. This was done to speed up the legislative process. Level 2 work on implementing measures thus did not to need be stalled by the level 1 proceedings.

were adopted.[3] Following this technical advice, CESR obtained on 31 January 2003 a second provisional mandate for a second technical advice for the Market Abuse Directive. The second mandate asked for CESR's advice on MAD's Article 1(1), 1(2) and 6(3), 6(4) and 6(9). CESR delivered this second technical advice on 1 September 2003. The implementing measure based on this technical advice was enacted on 29 April 2004 (Commission Directive 2004/72/EC). The research question that is examined here is *to what extent have the technical advices of CESR inlfluenced the four level 2 implementing measures?*

Measurement of influence

We will answer this question through the use of a quantitative text analysis instrument. The instrument we apply is *Wordfish* and is developed by Slapin and Proksch (2008a, 2008b) for the estimation of party positions from the political party programs of political parties.[4] We will use the same technique for estimating the position of policy documents (Klüver 2009). Simply put, the basic procedure is that *Wordfish* calculates the word frequencies in the text and estimates the policy position of the document on an already selected/known policy dimensions. The idea behind this method is that specific words have a discriminatory capacity. For example, the words 'climate change' will expectedly be more often used in policy texts of pro-green parties or actors than in the texts of pro-business actors; vice versa for 'administrative burdens'. If there is a significant difference in the positions of the documents, *Wordfish* can single these out. In the case of CESR's influence on the implementing measures we will with the help of this technique calculate the positions of technical advice and the implementing measures (two directives and one regulation).

The model is the following: [5]

$$y_{ij} \sim \text{Poisson}(\lambda_{ij})$$

$$\lambda_{ij} = \exp(\alpha_i + \psi_j + \beta_j * \omega_i)$$

where
y_{ij} :   the count of word *j* in text *i*
α :   set of text effects that control for the length of documents
ψ :   set of word effects that controls for the fact that some words are generally used more frequently than others
β :   estimate of a word-specific weight capturing the importance of word *j* in discriminating between policy positions
ω :   the estimate of text *i*'s policy position

The right-hand side of the equation is estimated by an expectation maximization algorithm (Slapin & Proksch 2008). The model is identified by setting α_1 and the mean of al policy positions of the actors to 0 and the standard deviation to 1. Confidence intervals are obtained using a parametric bootstrap.

The texts and text selections

In order to estimate the policy position of the various texts, we need to prepare the texts for analysis and to select the relevant parts within the texts. As for the preparation of the texts, we employed *jfreq* to create a text matrix (document-word matrix) without stopwords, bulletpoints, names and so on. The selection of the relevant text parts is a

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[3] Commission Directive 2003/124/EC of 22.12.2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation; Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest; and Commission Regulation 2273-2003-EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments
[4] The quantitative estimation of party positions gained a stiumulus fronm the work of the Comparative Manifestos Project and the *Wordscores* algorithm for computer-based content analysis (Budge et al 1987, 2001). *Wordfish* is the most recent innovation in quantitative text analysis.
[5] The scaling approach is extensively described in Slapin and Proksch (2008)

more important activity. The technical advice, the draft and final versions of the implementing measures consist of two different lexicons that cannot be compared directly (Klüver 2009): continuous policy texts (explanatory memorandum, preamble) and provisions (recommendations in technical advice and articles in draft measures). What also makes a direct comparison difficult is the fact that the (draft) implementing measures address three different parts of the technical advice. This is shown graphically below (see Figure 3 in annex). For the sake of comparability I first turned each text into two different text documents: texts containing only the continuous text and texts containing the provisions. Second, I merged the texts with similar type of texts for three different documents at each stage following the technical advice. We then estimated the policy positions of the following text documents: TA-----12-13-14/2003-----22-23-24/2003…Final-----124-125-2273/2003, version with continuous text and version with provision. The second technical advice resulted into a single implementing measure and did not need to be merged.

Analysis

Tables 1 and 2 gives the position estimates (ω) for the level 2 documents, both provision and non-provision. In the left-hand column of both tables are listed the level 2 documents in the policy processes leading up to the implementation rules enacted by the Commission. The technical advices in both processes are the 'first moves' made by CESR. The following documents,12-13-14/2003 and 38/2003 respectively, represent the Commission's first take on the technical advice of CESR. They represent the Commission's most intrinsic own position – of course we cannot tell how much informal signals the Commission has received from interested parties or how much the Commission anticipates the position of the ESC. The third documents, 22-23-24/2003 and 48/2003 respectively, are the official first working documents that the Commission submits to the comitology process. These documents are drafted on the basis of the 'unofficial' version of the Directorate General and after the closing of an unofficial round of consultations with interested parties. The following three steps, the revisions and final drafts, represent the various stages in the comitology process. During three (or four) consecutive sessions, the European Securities Committee has discussed and amended the drafts for the implementation measures. The final step is the official implementation measure itself: the first technical advice resulted into two directives and one regulation, the second technical advice resulted into a single directive. It should be mentioned that the steps, in particular those pertaining to the comitology process, are reconstructed on the basis of documents that were available and accessible to us at the Internet. In Table 2, for example, we see that revision 2 is followed by revision 4; we don't know whether there is actually a revision 3. As for the views of interested parties: when we could not find the documents that contained the comments of interested parties on the Internet, we consulted the CESR/ESMA secretariat, and received the answer that the majority of the stakeholders' comments (<100) were lost due to a crash of their server.[6]

Table 1 Estimations of policy positions Level 2/TA1 documents

	Provision	Non-provision
	ω	ω
Technical advice 1	2.217	-1.756
12-13-14/2003	0.079	1.294
22-23-24 (draft)	-0.336	1.057
22-23-24 (rev.1)	-0.428	-0.016
22-23-24 (rev.2)	-0.513	-0.115
22-23-24 (final)	-0.513	-0.179
124-125-2273	-0.506	-0.284
N (words)	714	739
Iterations	24	76
Log-likelihood	77786.24	44555.42
Difference in ω	$1.71 * 10^{-4}$	$1.93 * 10^{-3}$

Table 2 Estimations of policy positions Level 2/TA2 documents

	Provision	Non-provision

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[6] E-mail from xxxxx

	ω	ω
Technical advice 2	2.251	1.673
38/2003	-0.123	1.230
48/2003 (draft)	-0.348	-0.585
48/2003 (rev.1)	-0.408	-0.617
48/2003 (rev. 2)	-0.410	-0.590
48/2003 (rev. 4)	-0.478	-0.563
2004/72	-0.485	-0.548
N (words)	429	403
Iterations	16	28
Log-likelihood	24075.965	14670.645
Difference in ω	$3.89 * 10^{-4}$	$1.88 * 10^{-4}$

Inspection of the two tables yields the following observations.[7] The first observation is that in both cases and both types of wordsets (provisions and nonprovisions) CESR's technical advices are outliers. The second observation is that the Commission occupies an inbetween position between the CESR and ESC. In all four analyses, the Commission moves away substantially from the technical advice of the CESR. In all but one instance, the nonprovision analysis for CESR's first technical advice, the calculation indicates that ω shifts towards 0. The third observation is a slight but observable change in ω from the unofficial Commission draft to the official Commission draft with which the comitology procedure is started. The fourth observation is that the shift in ω between the documents is very small during the comitology procedure. The same is true for the final step in this policy process: the change in ω from the document approved by the ESC and the official text of the implementation rule is as good as negligent. A final observation is that although the analyses of text parts containing provisions and parts containing continuous texts (non-provisions) display a similar pattern of shifts in overall terms, the patterns of shifts observed with the nonprovision texts is somewhat more volatile than the text documents containing provisions.

These observations allow - for the time being – the following inferences. The first inference is that the influence of CESR's technical advices on the final implementing measures in both cases under study is weak. In three out of the four findings – except the nonprovision analysis for CESR's first technical advice (Table 1, right-hand column) - the distance between the estimated positions of CESR's technical advice and the estimated position of the implementing measures is the highest in absolute terms. At the same time we also infer that the absolute distance between drafts that are discussed in comitology and the official texts of the implementing measures lie very close to each other. This implies that our quantitative text analysis suggests that the final implementing rules are significantly more shaped during the comitology process than by the technical advice of the CESR. The second inference is that there is apparently a difference between the wordings of the provision-containing parts of the texts and the text parts that contain the preambles and explanatory notes. This is especially the case for the first three non-provision text documents in both policy trajectories. This may hint at an 'interpretation game' or a 'framing game' between CESR and the Commission.

Conclusion

European regulatory networks are innovative but transient phenomena within the European administrative space. But if we do not study the role they play(ed) and the influence they exert(ed) on EU policy processes, policymakers and citizens will remain uninformed about the potential capacity of various governance forms to shape the policies that affect themselves. This is one of the main motives to e1mine the policy influence of CESR, a now historical network in the heart of European internal market.

The study's findings show that the formal institutional setting is a pretty good starting point to asses the relative weight of CESR. CESR has an important first mover's advantage as it is the actor that substantively kicks off the deliberations for an implementing

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[7] Caveat: at the time of writing this paper, there was no time to establish the confidence intervals for the estimated positions. The confidence intervals can be obtained by a parametric bootstrap, which on the PC that is used for this analysis takes 8 and 16 hours, depending on the number of words.

directive, but it is the institutionally induced preferences of the EC and ESC that override the institutionally and domestically induced preferences of CESR.

Further research has to show how the uploading phase – here the phase where NRAs (aim to) partake in the formulation of a technical advice – and the downloading phase – here level 3 of the Lamfalussy procedure – predetermine, respectively shape afterwards the outcomes of the policy process.

List of references

Can be obtained from the author.

Figure 1 The policy process of European financial market regulatory policy-making

European Parliament   Council

European Commission

European Securities Committee

CESR Level 2

CESR Level 3

Financial Market Authority

Ministry of Finance

Ministry of Finance

National parliament

National parliament

Financial market authority
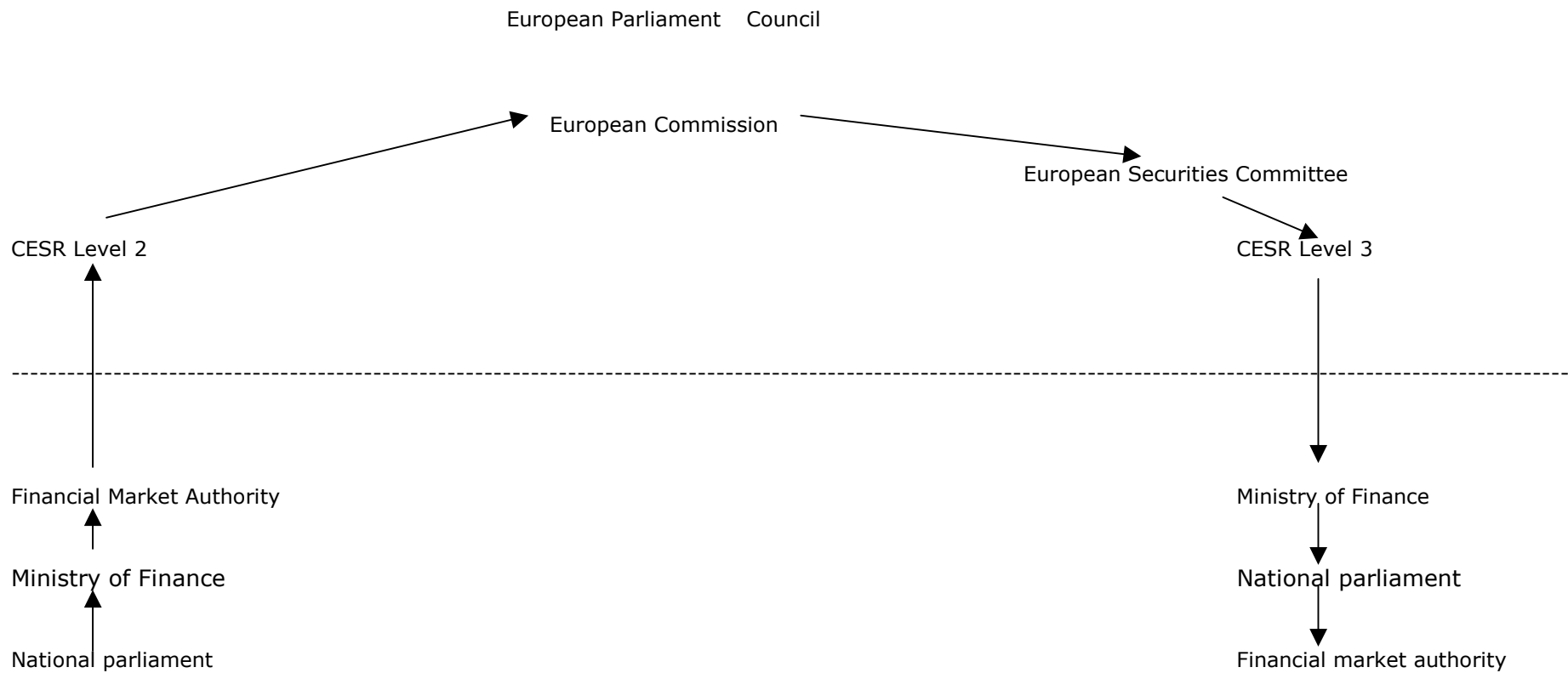
Figure 2 Chain of delegation at Lamfalussy level 2

EC:
Consultation of ESC ——————————→ EC: EC mandate to CESR for technical——————————→ CESR: CESR mandate to
internal
on mandate to CESR   advice   working group

EC:
Informs EMAC

CESR:
Call for evidence on mandate

CESR expert group:
Consultative panel
Public hearings
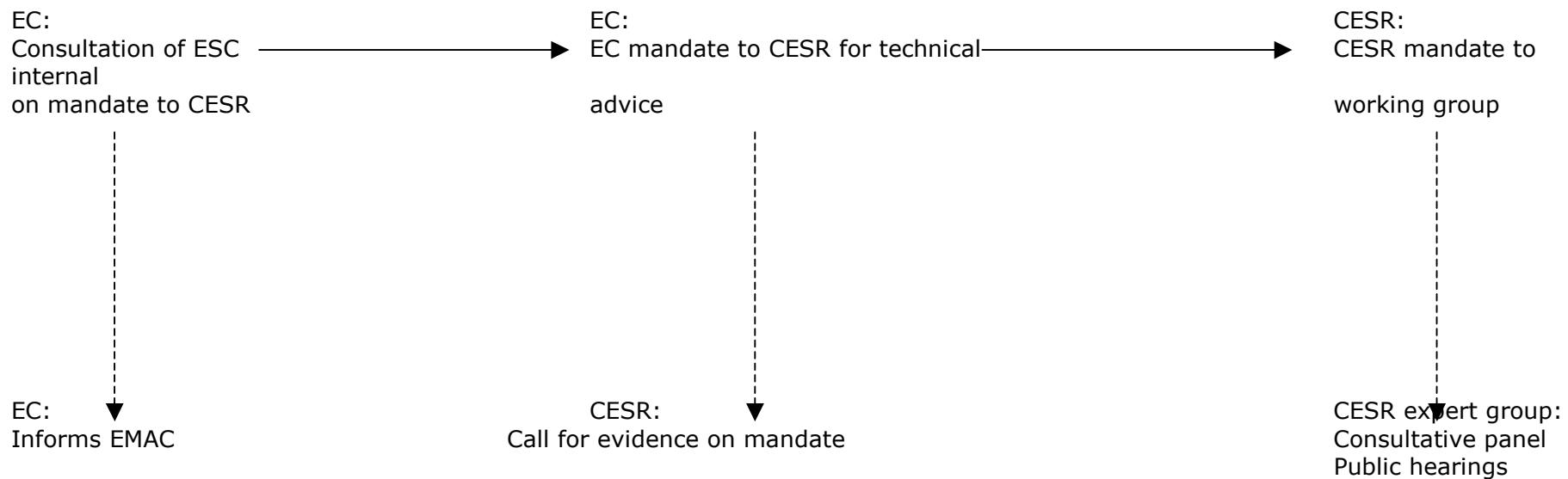
Figure 3 The flow of documents during the two MAD level 2 policy process

Technical advice 1

CESR	DG internal draft	EC official draft	Revision 1	Revision 2	Final	Implementing measure
	12/2003	ESC 22/2003	ESC 22/2003	ESC 22/2003	ESC 22/2003	124/2003/EC
Technical advice 1	13/2003	ESC 23/2003	ESC 23/2003	ESC 23/2003	ESC 23/2003	125/2003/EC
	14/2003	ESC 23/2003	ESC 23/2003	ESC 23/2003	ESC 23/2003	2273/2003/EC

Technical advice 2

CESR	DG internal draft	EC offical draft	Revision 1	Revision 2	Revision 4	Implementing measure
Technical advice 2	38/2003	ESC 48/2003	ESC 48/2003	ESC 48/2003	ESC 48/2003	2004/72