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The Accountability of Financial Regulators

A European and International Perspective

Pablo Iglesias-Rodríguez



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To Agnieszka, Débora, Noemí, Robertina, Rosa and Sofia

Preface

The financial crisis that started in the year 2007 evidenced important shortcomings in the accountability of Financial Regulation and Supervision Authorities (FRSAs) – the entities in charge of the regulation and oversight of the financial markets and institutions – of different jurisdictions towards political forums and stakeholders. These shortcomings contributed to financial instability and investors' losses, hitting hard the credibility and the legitimacy of FRSAs.

Till date, most studies on the accountability of FRSAs have been written by economists. Legal contributions on this topic were scarce and tended to focus on the analysis of specific jurisdictions rather than on comparative approaches. In addition, the question about the relationship between the accountability of FRSAs and the legitimacy of the financial regulatory framework was substantially neglected. This book aims to fill these gaps by providing a multilevel, comparative, interdisciplinary and practical analysis of the legal aspects pertaining the accountability of FRSAs in Spain, the United Kingdom (UK), the United States of America (USA), the European Union (EU) and of three international networks of FRSAs. This monograph incorporates the study of the post-crisis financial supervision architectures resulting from the Dodd-Frank Act in the US, the Regulations setting the European Supervision Authorities in the EU, and the Financial Services Act 2012 in the UK. The research also covers the reforms operated by the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) on their membership and governance structures in the period 2009–2013. The contents of the book reflect the laws in force as at January 1, 2013.

Most of this monograph was written as part of a post-doctoral project that I conducted at the Montesquieu Institute at Maastricht University from 2009–2012. The manuscript was finished in Florence and in Amsterdam in 2013. During the writing process, parts of this book were presented in conferences and workshops in Maastricht (The Netherlands), Oxford (UK), Leuven (Belgium), Herzliya (Israel), Tallinn (Estonia), and Florence (Italy) and benefited from feedback from their participants.

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Pablo Iglesias-Rodríguez
Amsterdam
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CHAPTER 1

The Accountability of Financial Regulation and Supervision Authorities: The Defining Elements

§1.01 INTRODUCTION

In recent decades, academics and policy-makers have become increasingly concerned with the independence and the accountability of Financial Regulation and Supervision Authorities (FRSAs).

In the academic sector, a relevant stream of literature that started to gain force in the early 1990s, has been suggesting the importance of subjecting FRSAs to strong independence and/or accountability arrangements in order to achieve core goals of financial regulation and supervision, such as the soundness of the financial markets and the stability of the financial system.¹ At the policy level, global networks of FRSAs, such as the International Organization of Securities Commissions (IOSCO), have, long since, included the accountability and the independence of FRSAs among the principles that should guide the latter's governance.² The financial crisis that started in the

1. See e.g., V. Grilli, D. Masciandaro and G. Tabellini, 'Political and Monetary Institutions and Public Financial Policies in the Industrial Countries' (1991) 6 *Economic Policy* 342, A. Alesina and L.H. Summers 'Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence' (1993) 25 *Journal of Money, Credit and Banking* 151, M. Quintyn and M.W. Taylor, *Regulatory and Supervisory Independence and Financial Stability* (IMF Working Paper 02/46, 2002), available at <http://www.imf.org/external/pubs/ft/wp/2002/wp0246.pdf>, E. Hüpkens, M. Quintyn and M. W. Taylor, *Accountability Arrangements for Financial Sector Regulators* (IMF Economic Issues 39, 2006) and M. Quintyn and M.W. Taylor, 'Robust Regulators and Their Political Masters: Independence and Accountability in Theory', in D. Masciandaro and M. Quintyn (Eds.), *Designing financial supervision institutions: independence, accountability and governance* (Cheltenham: Edward Elgar, 2007).

2. See e.g., IOSCO, *Objectives and Principles of Securities Regulation* (1998), p. 10.