The converging institutional architecture of EU market supervision

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1. From rhetorical divergence…

1.1. A (de)centralisation paradox

- decentralised supervision in EU competition law *versus* more centralised supervision in EU financial regulation

Reg. 1/2003: decentralised supervision of Art 101 and 102 TFEU ⟺ Reg. 1092-1095/2010: more centralised EU financial supervision

centralisation and decentralisation rhetoric underlying the institutional organisation of EU market supervision reflects a movement towards a converging supranational market supervision architecture

- two differently structured constitutional mandates

art 103(2) TFEU: constitutionally mandated supervision ⟺ art 114 TFEU: constitutionally delegated supervision

EU Treaty principles governing shared competences structure both mandates

1.2. Addressing rhetorical divergence

a. A functional-inductive inquiry

- functional approach
  - four *institutional proxies*
- inductive approach
  - two main case studies
    - EU competition law supervision
    - EU financial market supervision
- approaches provide inroads into constitutional transformations inquiry

b. A constitutional transformations inquiry

- three constitutional 'grounds of change'
  - scope of legal basis
  - supranational cooperation rights
  - complete EU judicial review

c. Towards common constitutional principles?

- applied in three control sectors

2. … to constitutional convergence

2.1. Institutional convergence

- constitutionally mandated and delegated supervision compared

EU competition law supervision ⟺ EU financial market supervision

similarly structured *elements* underlying both regimes

ELEMENTS OF INSTITUTIONAL HETERONOMY	CONSTITUTIONALLY MANDATED EU COMPETITION LAW SUPERVISION	CONSTITUTIONALLY DELEGATED EU FINANCIAL MARKET LAW SUPERVISION
UNITY OF POLICYMAKING	*DE IURE*: ART 3(1)(B) TFEU	*DE FACTO*: ART 114 TFEU
COOPERATIVE INCENTIVES	ECN	ESFS
COMPLEMENTARY SYSTEMIC SUPERVISION	COMMISSION ENFORCEMENT POWERS	ESA SUPPLEMENTARY ENFORCEMENT POWERS
HIERARCHICAL QUASI-DUALITY	COMMISSION PRIMUS SUPER PARES	ESA PRIMUS SUPER PARES

2.2. Constitutional settlement?

a. Operationalisation of 'competence' principles

- conferred EU competences and powers
- Member State institutional autonomy

b. Identification of reconfigured constitutional principles

CONSTITUTIONAL PRINCIPLES	OPEN-TEXTURED PRINCIPLES	COOPERATION-STRUCTURED PRINCIPLES
CONFERRAL	SUPRANATIONAL COMPETENCE DEVELOPMENT	NATIONAL INSTITUTIONAL ADAPTATION FOCUS
SUBSIDIARITY	OPEN-ENDED INTERVENTION	SECOND-RESORT SUPRANATIONALISM
PROPORTIONALITY	REACTIVE INTERVENTION	PROACTIVE COMMANDEERING
SINCERE COOPERATION	COOPERATION DUTIES	COOPERATIVE CONFLICT, CONTROL AND ADAPTATION RIGHTS
NATIONAL INSTITUTIONAL AUTONOMY	UNDEFINED PRE-EMPTION SCOPE	INSTITUTIONAL OBSTACLE PRE-EMPTION

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