

6 Representation and network governance in Europe

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Introduction

In this chapter, a broad definition of democratic representation is adopted to make sense of the shift from 'government to governance' (Rhodes 1996). In this view, democratic representation occurs when representatives are authorized to act, promote the interests of the represented, and are held accountable for their actions (Pitkin 1972). This comprehensive conceptualization includes new, non-electoral forms of representation that are 'increasingly important to expanding and deepening democracy' (Urbinati and Warren 2008: 389), such as those at work in governance networks. To begin with, the concept of representative government embodies a number of principles that, following Manin, are assumed to be invariable over time: the appointment of those who govern through regular elections, the relative autonomy of decision-making from the wishes of the electorate, the liberty to express political opinions, and public scrutiny of political decisions (Manin 1996). These principles are traditionally embodied by democratic, representative institutions such as parliaments and collegial-governmental cabinets. Nevertheless, political representation faces a crucial challenge in modern times. Democratic, representative institutions are said to become less and less important following 'denationalization', a phenomenon epitomized by the reallocation of sovereignty and policy-making capacity from nation states to less representative supranational institutions (Føllesdal and Hix 2006), which goes along with a concomitant process of delegating decision-making capacity to unelected actors (Vibert 2007).

As a consequence, the role of elected politicians in policy-making is becoming less relevant, while the influence of 'technocratic' actors (Papadopoulos 2003) and non-majoritarian bodies that are not electorally responsive to citizens increases (Coen and Thatcher 2005; Majone 1996a; Thatcher and Stone Sweet 2002). A prominent example of 'sideward denationalization' is offered by the cross-sectoral establishment of independent regulatory agencies (IRAs), which are increasingly widespread in European Member States and beyond (Gilardi 2008; Jordana *et al.* 2011; Levi-Faur 2005; Majone 1996b). At the domestic level, IRAs do not rely on any explicit claim of representativeness and act as a separate power consistent with a Madisonian model of democracy (Maggetti

2010). However, they have to comply with the accountability requirements of democratic institutions through ministerial hearings, reports to parliamentary committees, and so on (Mulgan 2003; Schillemans 2008; Strom *et al.* 2003; Verschuere *et al.* 2006). This institutional complexity was complicated further by the creation of European networks of IRAs in the early 2000s (Eberlein and Newman 2008; Eberlein and Grande 2005). European regulatory networks (ERNs) were established following two parallel developments (Coen and Thatcher 2008b): On the one hand, domestic IRAs decided to create transnational groups to exchange information and coordinate operations at the international level; on the other hand, the European Commission promoted networks as a second best solution to favour the harmonization of European regulation and disseminate pro-competition rules due to Member States' unwillingness to dismiss their national regulatory authorities.

This process implied another step away from democratic institutions, one that can be conceptualized as a 'double delegation' – upward from national regulatory authorities and downward from the European Commission (Coen and Thatcher 2005). In this setting, patterns of representation are particularly intricate. Which form of representation is at work? Is any legitimate type of non-electoral representation possible in this context? Whom are the network members actually representing? These questions are crucial to understanding the nature of regulatory networks, and more broadly, to understanding the functioning of the 'new governance' architecture of the European Union (EU) (Donnelly 2010; Héritier 2003; Héritier and Eckert 2008). In that regard, three main expectations about patterns of representation can be derived from different theories of European integration: according to an intergovernmental perspective (Moravcsik 1995; Rittberger and Schimmelfennig 2006), IRAs participating in ERNs represent national actors and interests; from a supranational viewpoint (Quaglia 2007; Stone Sweet and Sandholtz 1997), ERNs are expected to endorse European policies and represent the views of EU institutions; alternatively, in line with the literature on multilevel governance (Hooghe and Marks 2001; Hooghe and Marks 2003), there are theoretical arguments that posit the idea that ERNs could become a powerful, hybrid layer of governance that is increasingly autonomous both from national actors and European institutions. In that case, network members would not represent other actors in ERNs, but would instead create a transnational community of regulators with a distinctive decision-making capacity and goals. To explore these questions, this chapter proposes a study of IRAs' patterns of representation in the most institutionalized ERN, the Committee of European Securities Regulators (CESR).

After the introductory section, the first part of this chapter presents the main features of network governance in Europe. The second section illustrates theoretical expectations about representation claims in networks. The following two sections focus on the empirical study of the patterns of representation in the CESR by using official documents and semi-directive interviews, with special attention given to the context of the financial crisis as a critical juncture that

allowed supranational actors to partially reshape the European financial supervisory system. Conclusions follow.

European regulatory networks

Recent research has focused on transnational networks as the cornerstone of a 'new world order', wherein different political actors interact to respond to the challenges of interdependence in boundary-less issues such as human rights, the environment, finance, trade, and organized crime (Slaughter 2004a; Slaughter 2004b). According to this argument, global governance is crucially shaped by the transnational activity of regulators, judges, and legislators who are exchanging information, coordinating policies, enforcing laws, and regulating markets in an informal, specialized, decentralized, and network-based way. In this context, the EU is considered a particularly advanced networked polity that functions as a regulatory state (Majone 1994; Moran 2002), coordinates policies through informal instruments of 'soft law' (Christiansen and Piattoni 2003; Eberlein 2003), and advances its integration through an experimental architecture based on autonomy granted to lower-level entities and learning platforms that promote reporting, peer review, and deliberative procedures (Radaelli 2000; Sabel and Zeitlin 2010). In particular, EU scholars emphasize that European institutions encourage informal network governance for functional and instrumental reasons; that is, to enhance consensus-building capacity, harmonization, and convergence in areas that are resilient to 'hard' integration and Europeanization (Djelic and Sahlin-Andersson 2006; Donnelly 2010; Héritier 2003; Héritier and Eckert 2008; Radaelli 2003). Accordingly, networks account for a horizontal level of governance, which is expected to become more and more important over time because political power is increasingly fragmented and dispersed (Hooghe and Marks 2001, 2003). Nation states and their bureaucracies are said to lose centrality, while other actors – independent regulators, 'civil society', business representatives, experts, and so on – are becoming more relevant (Bache *et al.* 2005; Piattoni 2010). What is more, networks are seen as catalysts of diffusion processes (Gilardi 2010, 2012) that offer channels for cooperation and the exchange of information, foster innovative policies, and disseminate 'best practices' among Member States and beyond (Dolowitz and Marsh 2000; Radaelli 2000).

There are five main ERNs, and they are charged with the regulation of finance, energy, telecoms, competition, and broadcasting: the CESR; the Council of European Energy Regulators/European Regulators' Group for Electricity and Gas (CEER/ERGEG); the Independent Regulators Group/European Regulators Group (IRG/ERG); the European Competition Network (ECN); and the European Platform of Regulatory Authorities (EPRA). The first two have recently acquired the legal status of European agencies, thus becoming more institutionalized and resourceful, but they still rely on national regulatory authorities for implementation and are organized in a network-based way (Levi-Faur 2011). Concretely, these transnational groups federate the regulatory authorities of EU Member States, as well as of that of some non-Member States such as Iceland,

Norway, and Switzerland. The EU Commission is usually represented at ERN meetings, too. The ERNs' organizational model normally comprises a secretariat; a management board, which is ultimately responsible for decision making; and a number of permanent committees and ad hoc working groups, whose members convene on a regular basis. Committees and working groups frequently involve academic experts and business representatives, and are in charge of preparatory meetings and day-to-day meta-regulatory functions such as reporting, rule setting, and peer-review assessments.

ERNs were promoted by national regulatory authorities, and by European institutions, in order to favour the harmonization of European regulation, provide technical advice, and improve cooperation and information exchanges among national regulatory authorities (Coen and Thatcher 2008a; Kohler-Koch 2002; Yesilkagit 2011). They are in charge of producing and disseminating non-binding standards, guidelines, and recommendations. The goal of these soft rules is to promote 'best practices', achieve coordination among regulatory authorities, and ensure the consistent application of harmonized, pro-competition rules across Europe. ERNs have an official, defined, stable, durable, resourceful, and horizontal structure, and also possess the competency to make decisions that involve the use of soft power to ensure implementation. Therefore, ERNs are a prototypical case for the study of network governance. They are sophisticated, networked organizations disposing from their own resources, and have separate administrative entities set up specifically to manage and coordinate their networks (Provan and Kenis 2008). What is more, ERNs federate representative, relatively homogeneous, and mutually interdependent actors with similar beliefs about the core properties of the policy at stake (Maggetti and Gilardi 2011).

Representation patterns in networks

In this context, patterns of representation are very intricate. If we follow the classical argument of Pitkin anticipated in the introduction, political representation occurs when political actors 'speak, advocate, symbolize, and act' on the behalf of others in a political arena (Pitkin 1972). In the case of ERNs, the question is: 'Whom do network members stand for?' A paradox arises, as regulators formally represent their countries at transnational level and yet, for the vast majority of cases, they are formally independent from their government. At the same time, network members are also expected to represent European actors as they interact in European networks under the shadow of the European Commission. A straightforward way to deal with these issues is to conceive of representation as 'a process that involves the making of claims to be representative' (Saward 2005: 184). This conceptualization is helpful when examining representation patterns in governance arenas wherein even the most advanced theories of parliamentary representation – such as Mansbridge's gyroscopic view of legislators (Mansbridge 2011) – can hardly apply. Therefore, for the sake of the present discussion, we will limit the scope of our analysis to claims of representativeness that are expressed by network-level actors. Indeed, examining the viewpoints of

insiders is important to make sense of 'post-parliamentary' governance arenas such as ERNs, which are hardly accessible and quite opaque regarding governance settings and decision-making processes (Papadopoulos 2008).

Three main expectations regarding patterns of representation can be derived from theories of European integration. First, following an intergovernmental position, national governments are the most influential actors in the process of European integration. The liberal variant of this approach emphasizes the fact that integration is the result of a series of repeated games in which national governments bargain to pursue their interests. In this view, European institutions are Member States' agents (with limited supranational capacity) (Moravcsik 1995; Rittberger and Schimmelfennig 2006). When studying European regulatory networks, there is a difference with this model; that is, domestic preferences are aggregated (at the domestic level) and articulated (at the European level) not by governments, but by independent regulatory agencies. As IRAs are formally independent from their political principal, they do not necessarily reflect the preferences of their governments. But, from a liberal, intergovernmental perspective, the logic at work is expected to be quite the same: interactive decision-making processes at the level of European networks are expected to follow the interests of prevailing domestic groups. Therefore, individual network members are expected to express the claim of representing their national regulatory authority and/or of their national interest groups.

Second, according to a supranational approach, integration mainly follows the functional dynamics facilitated by European actors (Quaglia 2007; Stone Sweet and Sandholtz 1997). The first step of this argument is that cooperation in specific economic policy sectors leads to greater economic integration in Europe, and then to wider political integration through so-called functional spillovers from one policy area to another. The second step is that supranational actors are interested in pushing the integration process forward to extend their powers over the EU polity. The application of this theory to European regulatory networks would imply that networks function as arenas promoting a progressive Europeanization of their individual members (that is, representatives of independent regulatory agencies), who are independent from domestic governments and therefore footloose with respect to national interests. As a consequence, network members are expected to express the claim of representing European institutions and/or European interest groups.

A third perspective is also pertinent, corresponding to a 'new' variety of the multilevel governance theory. The core idea is that power and authority are increasingly dispersed in Europe, and that sovereignty has moved away from national governments, not just to the supranational level, but also to other intermediary layers that gain progressive autonomy (Hooghe and Marks 2001, 2003). Earlier theories of multilevel governance situated these additional levels of governance mainly on a territorial scale (for example, with regions and cities). Newer theories suggest instead that the existing gap between the need for EU rules and the persistence of national-level competencies leaves room for the emergence of functional-transnational spaces that are partially self-ruling

(Eberlein and Grande 2005) and populated by transnational groups of actors (Djelic and Quack 2010). These actors are public officials, sectorial experts, business lobbyists, and so on, acting as a cohesive epistemic community sharing similar policy beliefs (Haas 1992). According to this expectation, one would suppose that network members would make claims of primarily representing the network itself and/or sector-specific, transnational interests. The arguments underlying these three expectations are not necessarily mutually exclusive, but the predicted phenomena can hardly occur at the same time.

The case of the Committee of European Securities Regulators

The case of the CESR was chosen to illustrate the patterns of representation in transnational networks. The CESR is a network of the 'harder' type in terms of competencies, powers, and formalization of its structure (Coen and Thatcher 2008b), thus representing a case in which members should consider the network level to be very important and relevant to policy (Maggetti and Gilardi 2011). Moreover, it perfectly exemplifies the problem of double delegation because it was set up by the European Commission, whereas some other networks were self-initiated, at least at their inception. The CESR holds a leading role in the Lamfalussy process, which is the implementation of the new system of regulation of European financial markets (Baker *et al.* 2005; Chaher 2005; De Visscher *et al.* 2007; Lütz 2004). The life span, evolution, and termination of this network can be summarized with the help of publicly available official documentation. In 1999, the European Commission adopted the Financial Services Action Plan, which triggered the formal establishment of the CESR in 2001. The Market Participants Consultative Panel was created in 2002. This panel met regularly to exercise peer pressure on CESR members. The participants in this panel included representatives of the private sector, such as banks and other financial institutions. In 2004, the so-called Himalaya report was published under the impulsion of CESR. This document discussed the tools considered necessary to improve financial supervision in Europe. A crucial point is that the level of market integration varied from case to case, and that there were still significant differences in the competencies of the national regulators. In 2007, the Lamfalussy process was evaluated. Suggestions on how to give CESR a more direct role included simplified procedures, better allocation of roles to the different participants, consideration of the customer's view, and more systematic collection of evidence. In 2008–9, following the financial turmoil, proposals for transforming the CESR in the de Larosière report included upgrading and reforming the network. These reform proposals were endorsed by the European Commission and discussed by the European Parliament (EP). In 2010, the restructuring of CESR began to enable a smooth transition to the European authority, named the European Securities and Markets Authority (ESMA). ESMA became operational in 2011. Its mission is to protect investors, promote a stable and well-functioning market, and foster harmonization and convergence.

CESR (then ESMA) is in charge of improving coordination among securities regulators, acting as an advisory group to assist the EU Commission, and ensuring consistent and timely implementation of community legislation in the Member States. Each EU Member State is represented by the head of the national regulatory authority in the field of securities. The Director General of the DG Market participates as the representative of the European Commission. The securities authorities of Norway and Iceland are also represented. To accomplish these tasks, the CESR develops standards that consist of sector-specific corporate governance measures to promote harmonized, pro-competition rules in the securities markets of Member (and some non-Member) States (Maggetti and Gilardi 2011). They seek to improve transparency and investor protection while eliminating market barriers and reducing costs for investors and fund management companies. The standards and guidelines are not mandatory because they do not have Community law status, which means that CESR members introduce them in their day-to-day regulatory practices on a voluntary basis. However, the review panel of the CESR assesses the overall process of implementation and offers recommendations about specific problems in the implementation process encountered by individual members. It encourages self-assessment procedures in order to obtain a first picture of the practice of supervision in a given area. Most importantly, it exercises group pressure through peer reviews carried out by other members on implementation in all concerned jurisdictions, and sets up so-called benchmarks that are used to evaluate compliance, not unlike the open method of coordination (Radaelli 2004; Schäfer 2004).

The most important soft rules developed by this network are the following: the standard for investor protection (2002) provides harmonized business rules for retail investors in standards and rules of general application, customer information, 'know your customer' and duty of care standards, customer agreements, dealing requirements (including the 'best execution' standards), and individual discretionary portfolio management. Standard 1, on financial information (2003), represents a contribution to the task of developing and implementing a common approach to the enforcement of International Financial Reporting Standards in Europe. It provides for principles by which harmonization of institutional oversight systems in Europe may be achieved. Standard 2, on financial information (2004–5), aims to contribute to the consistent enforcement of International Accounting Standards Board standards within Europe. It was implemented in 2005 by providing a formalized structure and a number of common principles to national supervisors. Finally, the Undertaking for Collective Investment in Transferable Securities Directives (UCITS) guidelines (2006) aims to simplify the notification procedure of UCITS; that is, the use of passports for facilitating the cross-border activities of investment funds. In particular, these guidelines offer a common approach to domestic authorities to bring greater simplicity, transparency, and certainty to the notification process.

The empirical analysis of representation patterns in the CESR

According to the Commission decision of 6 June 2001, 'Establishing the Committee of European Securities Regulators', article 3:

The Committee shall be composed of high-level representatives from the national public authorities competent in the field of securities. Each Member State shall designate a high-level representative from its competent authority to participate in the meetings of the Committee. The Commission shall be present at meetings of the Committee and shall designate a high-level representative to participate in all its debates. The Committee shall elect a chairperson from among its members. The Committee may invite experts and observers to attend its meetings.

IRAs are primarily represented at CESR meetings, along with Commission representatives and sectorial experts. But for whom are individual network members actually standing? To study network-related issues, including patterns of representation, we conducted a survey targeting all network members. After the second wave of questionnaires, however, we noted that the response rate was not satisfactory (about 35 per cent of the sample), and that the quality of answers was uneven. When we compared this result with a similar inquiry conducted in parallel with members of parliaments in European countries, we observed that both the response rate and the quality of answers were higher in the latter case. This difference between elected and unelected actors could be interpreted as a first sign of lower pressure for public accountability in the case of actors representing non-majoritarian regulators in transnational networks. They are appointed by national regulatory authorities that are formally independent from elected politicians and insulated from the electoral cycle; at the same time they are interacting in a hybrid transnational space situated at the interface between the national and the European level. In this context, a process of autonomization is likely to happen, an *esprit de corps* develops, and outsiders are kept at a distance to reinforce internal cohesion and avoid controversy (Boyt *et al.* 2005; Schmitter and Streeck 1985).

As a second step, we conducted six very focused semi-directive interviews with key CESR players to complete our analysis of official documents by examining actual representation patterns. The main goal was to collect claims of representativeness made by network members. The first set of questions concerned the wide-ranging aims of participant actors when interacting in CESR meetings. It emerged quite clearly that the initial goals of members at the time of network creation were primarily directed toward the protection of national interests (Interviews 1, 5, and 6). Above all, according to our interviews, CESR members unequivocally represented their national regulatory authorities in plenary sessions and network working groups when attending network meetings. They took policy decisions, approved draft guidelines, and wrote official documents at a

network level, acting as representatives of their national regulatory authorities (Interview 4). To be precise, according to a former CESR senior manager, participants in a network meeting are senior officials mandated by national regulatory authorities, and their participation in the network is considered very important by their domestic counterparts (Interview 2). Since the vast majority of national regulatory authorities of European Member States correspond to independent regulatory agencies, their autonomy from elected politicians is always emphasized, and very much valued, by all respondents. Conversely, any claim of directly representing their governments has been disregarded.

However – and this is another key point – it seems that over time, network members no longer acted merely as the 'agent' of their 'principal'. Instead, following an endogenous dynamic, the CESR progressively acquired powers and autonomy that went far beyond the initial aims of the network. The prelude of the above-mentioned Commission decision of 2001 described the role of the CESR as to 'serve as an independent body for reflection, debate, and advice for the Commission in the securities field', and to 'contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective cooperation between national supervisory authorities, carrying out peer reviews, and promoting best practice'. It also stated: 'The Committee of European Securities Regulators should organise its own operational arrangements and maintain close operational links with the Commission and the European Securities Committee'. Nevertheless, the network developed considerable meta-regulatory functions that were not limited to technical advice and coordination, which were concurrent with Commission's powers. In that regard, a former CESR executive noted that every member wanted to contribute to the evolution of the network. A team spirit has emerged, to the point that CESR has been very influential in developing the rules, which has displeased some governments and led them to question the legitimacy of the network (Interview 1).

The CESR developed soft rules that gained influence at the domestic level and were consistently adopted by Member States. In this way, the network evolved into a genuine 'new governance' arena, able to shape regulatory policy regarding European financial markets by making the most of its hybrid position at the interface between the national and European levels. Network members were able to play a sort of 'two-level game' that placed the network in a prominent position in this policy area. As a respondent remarked, this new role was regarded quite suspiciously by European institutions, and by the governments of some important Member States, which feared a loss of democratic control over the network (Interview 1). With regard to European institutions, the criticisms of CESR's evolution came from members of the EP in particular, who decried the weak accountability schemes for this powerful European regulatory network (Interview 1). At this point, the network as a whole became (or at least was perceived as) self-referential, and developed the role of an active political player in European governance. The network started acting as a cohesive policy community representing, above all, the sector-specific viewpoints of increasingly transnationalized financial regulators (Interviews 1 and 4).

The rising discontent, combined with the Commission's long-term goal of promoting EU-level 'agencification', triggered the CESR's transformation into a European agency with increased resources, powers, and competencies. It also had a new name: ESMA (European Securities and Markets Authority). This agency, operational since 2011, is much more formally accountable to the EP than the CESR; it has to appear regularly before the committee in charge of formal hearings (ECON). ESMA is also more formally accountable to the Council of the EU and the European Commission, through periodic reports of its activities and a publicly available annual report. ESMA's establishment is part of a wider reform of financial market supervision that also introduces European supervisory authorities for banking, insurance, occupational pensions, and the creation of a European Systemic Risk Board (ESRB). This package of supervision follows the famous report on the problems of the European financial supervision system in the context of the financial crisis from 2008 by the de Larosière group (de Larosière *et al.* 2009), and the concomitant EU Commission's announcement of a new regulatory framework in May 2009 (Fischer-Appelt 2011; Kull 2011). Following our interviews, this process of agencification is seen mostly as a positive development by network members, as previously informal 'accountability relations' are being formalized and written into the law (Interview 1). This improves the democratic accountability of the transnational group of financial regulators formerly known as the CESR to the EU parliament and Member States' governments.

At this point, ESMA members are expected to represent European interests more directly. To fully understand the process of agencification, it is important to note that the financial crisis constituted the crucial window of opportunity for European actors to establish the ESMA. This point was explicitly acknowledged by all interviewees, but it was most forcefully put forward by a former CESR executive, who said that the crisis has made the transformation of CESR into ESMA acceptable (Interview 1). This is because members realized that 'supervisory arbitration' was detrimental to investors and market confidence. However, when actual decisions about the new agency were forthcoming, Member States came back, as they were not willing to delegate excessive powers to European institutions in a sector considered the lifeblood of advanced industrialized democracies (Mügge 2006). Therefore, the goals of the initial proposal – a more powerful pan-European regulator of financial markets – were reduced and, in practice, ESMA is still working as a networked organization federating national regulatory authorities. Actors involved in the process interpreted this final evolutionary step as the return of intergovernmentalism. In that regard, a former CESR member confirmed that the ESMA was granted much less authority and independence than the authors of the de Larosière report expected (Interview 3).

To sum up, the first step toward this network was taken following a process of double delegation – from national regulatory authorities and from European institutions, respectively. CESR members then began interacting with the goal of protecting national interests. In this context, individual network members represented their national regulatory authorities, which mainly consisted of independent

regulatory agencies supporting domestic interest groups. In the second step, the network developed new functions endogenously, acquired progressive autonomy, and started developing its own goals. At this point network members were (also) representing the viewpoints of an increasingly integrated transnational community of financial regulators. In the third step, the financial crisis provided a window of opportunity for European institutions to develop an ambitious project for the reform of the architecture of financial market supervision, which Europeanized the hybrid level of governance that emerged from actors' interactions within CESR. Eventually, however, in a last step, Member States were able to reduce the scope of the reform in order to maintain their domestic influence on European financial regulation. Therefore, existing evidence supports a dynamic view of representation patterns at the network level. When we come back to our hypotheses, we observe that CESR started to work as an intergovernmental arena. Then, over time, it became more and more active and acquired increased autonomy from both the national level and from EU institutions, as expected by multilevel governance theory. Eventually, the financial crisis was a critical juncture that allowed European institutions to Europeanize financial supervision to a certain extent, but Member States were able to retain their domestic powers of supervision and partially reduce supranational ambitions.

The financial crisis

The opening and closing of the 'window of opportunity' provided by the financial crisis deserves special attention to aid understanding of the nature of this form of institutional change. The financial crisis, which originated from the so-called US subprime mortgage crisis, put the spotlight on the failure of devices designed to supervise the financial system and on the 'crisis of knowledge and ideas' it produced, casting doubts on the capacity of the regulatory framework to prevent systemic crises (Hutter *et al.* 2008). The management of the crisis involved a series of massive public intervention measures to prevent the system's collapse. Governments promoted a colossal public rescue of the big financial players in many countries by offering huge amounts of cash and even by partial nationalization of companies of 'national interest' – reinvigorating a 'dirty word, designating a bad old past' (Miller 2008: 7) – through a spectacular violation of international accounting standards. In the immediate aftermath of the crisis, the solution to the problem was politically and societally framed in terms of 'more regulation' (Hofmann 2008; Lodge 2008). In this context, the de Larosière report suggested the creation of a European Systemic Risk Board (ESRB) to collate and analyse issues and information relating to systemic risk and financial stability, and a new 'European System of Financial Supervisors' to provide central coordination for regulators (de Larosière *et al.* 2009). Correspondingly, the establishment of a new independent authority with regulatory powers was proposed at a European level, an authority that would have consisted of 'a standard setter and overseer in the area of supervision, [that] would be involved, alongside central banks, in macro-prudential analysis' (Turner 2009).

Afterward, however, ESMA was established with reduced institutional breadth and enforcement powers, at least in terms of the initial proposals (Moloney 2011; Sasso and Kost De Sevres 2012). This, as our interviews have illustrated, was due to the pressure exerted by Member States in the European Council of Ministers. At the end of the day, policy makers treated the crisis as an epiphenomenon, and the window of opportunity for reform was quite volatile. European actors successfully used it to push the integration of financial market regulation forward. But the momentum for reform weakened over time, and the architecture of European financial supervision experienced a 'gradual transformation', rather than a radical shift, following this critical juncture (Streeck and Thelen 2005).

Conclusion

This chapter aimed at untangling patterns of representation in a particularly intricate case, that of ERNs. These groups, federating IRAs, endorse crucial regulatory functions, and yet they are located very far from democratic representative institutions. They were created following a process of 'double delegation' from national regulatory authorities and from European institutions. On the one hand, domestic IRAs decided to establish transnational groups to exchange information and coordinate their operations at the international level. On the other hand, the European Commission promoted networks as a second best solution to favour the harmonization of European regulation in the single market given Member States' unwillingness to dismiss their national regulatory authorities. There is a paradox of representation in this context, as regulators should represent their countries at transnational level, but they are formally independent from their government. At the same time, network members are expected to also represent European actors because they work 'at arm's length' from the European Commission. The case of the CESR is selected for the empirical analysis of the patterns of representation in European regulatory networks as an example of a particularly relevant network that exemplifies the problem raised by the process of double delegation.

Evidence, based on a small number of very focused interviews, shows that individual network members claim to represent mainly their national regulatory authority. Representation in networks is understood in a way that is largely consistent with the encompassing conceptualization of Pitkin (1972); that is, to be authorized to act, to promote the interests of the represented, and to be held accountable for their actions. This finding confirms that the concept of democratic representation may be broadened to include new non-electoral forms of representation (Urbainati and Warren 2008). Our analysis also points to an evolutionary view of representation. Members started their participation in networks by supporting domestic interests. Then, over time, they have brought into being a new, distinctive, and quite autonomous level of governance wherein members represented, above all, the viewpoints of a self-referential transnational community of financial regulators. The financial crisis provided a 'window of opportunity' for European institutions that feared this uncontrolled development to

institutionalize a multilevel system, a process that remains unfinished. In the last step, following pressures from Member States, national regulatory authorities were able to retain their prerogatives, thus reducing the ambitions of the newly created European agency. This last development implied the normalization of the CESR, now ESMA, as a less autonomous and more accountable governance arena. Whether this is good or bad for the democratic quality of representation remains an open question.

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7 The European Commission and political representation

A new inter-institutional perspective

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Introduction

Focusing on the European Commission when talking about political representation in the European Union (EU) seems a *contradictio in terminis*. The Commission is not directly elected and does not clearly represent a particular constituency. In this book the Commission is mentioned neither among the 'actors of representation', such as political parties, civil society organizations and citizens, nor among the 'levels of representation', which focus on forms of electoral territorial representation (EU Council, European Parliament (EP), Committee of the Regions). There are two ways to bring the European Commission into the political representation equation. The first one relates to the inter-institutional relationship between the Commission and those institutions that are the expression of electoral territorial representation. The second one requires the reconceptualization of 'political representation' to take account of the multiple meanings and dimensions of representation in the political process and in democratic design.

The first strategy is the more traditional option. Most scholarly debate on political representation in the EU has not attributed any 'representative value' to the Commission as such, but has focused on the Commission's relation, in terms of delegation, degrees of independence and accountability, with the 'representative institutions' that are the EU Council and the EP. The advantage of this approach is that it allows for normative suggestions regarding (inter-) institutional (re-)design. However, it only offers a very partial picture of the multiple dimensions of representation at work in the political structure of the Union. This focus on electoral or territorial representation is in no way unique to the EU's debate. Although 'representative democracy' is the predominant frame of reference for modern democracies, the complex and multi-dimensional nature of representative processes remains surprisingly understudied and under-theorized. Hanna Pitkin's *The Concept of Representation* (1972) provided an important and influential contribution to identifying multiple aspects of representation in the political process, but ultimately equated democratic representation with electoral representation and remained therefore mainly a conceptual clarification rather than a revolutionary rethinking of democratic design. Political theory's turn to