

# ECJ JUDICIAL CONTROL ON EU AGENCIES

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# EU AGENCIES

- **Concept of EU agencies**
- **Few agencies with binding decision-making powers:**
  - EUIPO, CVPO, EMA, ECHA ...
  - European Securities and Markets Authority (ESMA)
  - European Banking Agency (EBA)
  - Insurance and Occupational Pensions Authority (EIOPA)
  - Single Resolution Board (SRB)

# EU AGENCIES

- **Judicial review mechanisms** to the agencies acts legally binding on natural or legal persons
- **Court of Justice competences**
  - Action for annulment (Art. 263 TFEU)
  - Action for failure to act (Art. 265 TFEU)
  - Preliminary rulings of validity and interpretation (Art. 277 TFEU)
  - Action for damages and non-contractual liability (Article 340 TFEU)

# ACTIVE LOCUS STANDI OF EU AGENCIES BEFORE THE LISBON TREATY (I)

- Article 230 EC: no reference to the acts of agencies
- Lacuna resolved by the ECJ and the EU legislator filling the gap:
  1. by broadening the scope of *Les Verts* case law: *Sogelma* case
  2. by imputing agencies' decisions to the Commission: *Thomae v. Commission* and *Elitaliana v. Eulex Kosovo*
  3. by providing for a review mechanism in the agency's establishing regulations
  4. by amending the Treaties

# ACTIVE LOCUS STANDI OF EU AGENCIES BEFORE THE LISBON TREATY (II)

## 3. Filling the gap by providing for a review mechanism in the agency's establishing regulations

Three methods:

3.1. Appeal before the Commission

3.2. Appeal directly before the Court: creates interpretation problems and not understandable after the new Art. 263 TFEU  
Completely superfluous in ESAs Regulations

3.3. Legality review by agencies internal organs: The BoAs (next slide)

# THE BoAS

- **Agencies with internal boards of appeal:** EUIPO, CPVO, EASA, ECHA, ACER, the ESAs (the three ESAs have a single joint Board of Appeal) and the Single Resolution Board (SRB Appeal Panel)
- **Some characteristics:**
  - BoAs are not administrative courts, but administrative review bodies working as quasi-judicial bodies
  - Procedure before the BoAs similar to the action of annulment before ECJ
  - The Boards of Appeal allow a review of a decision by experts in a timeframe which judicial authorities could not match

# EU AGENCIES JUDICIAL CONTROL AFTER THE LISBON TREATY (I)

- Paragraphs 1 and 5 of **Article 263 TFEU**:

*“The Court of Justice of the European Union shall (...) shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.*

*(...)*

*Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.”*

# EU AGENCIES JUDICIAL CONTROL AFTER THE LISBON TREATY (II)

- **Article 263 TFEU** raises several questions:
  - Parties entitled to bring proceedings:
    - ✓ Privileged or non-privileged applicants
    - ✓ Natural and legal persons have the same limits of direct and individual concerns to challenge general acts of EU agencies which are not addressed to them
  - Type of acts which may be challenged:
    - ✓ Acts producing legal effects vis-à-vis third parties
    - ✓ The challenge of reviewing the soft law generated by EU agencies



# ACTIVE LOCUS STANDI OF EU AGENCIES

- Article 263 is silent on the active locus standi of these agencies
- In *Rubinum* case, the General Court rejected the EFSA request to intervene in a procedure against the Commission
- EU agencies could not claim active locus standi under Articles 263 as semi-privileged parties without a basis for agencification in the Treaty

# SOME QUESTIONS TO DISCUSS

- Reform of the General Court and BoAs of agencies:
  - Advantages of the technical expertise of BoAs
  - Limited technical expertise of the ECJ
- Actions for annulment against the Single Resolution Board pending before the General Court
  - About 100 cases are pending before the General Court related to the Banco Popular resolution
  - A few cases on contributions to the Single Resolution Fund