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Regulating Regulators: Rethinking Administrative Accountability in the EU and US

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Abstract

The United States and European Union take different approaches to maintain accountability in their respective regulatory agencies. The US utilizes a centralized system established in the Administrative Procedure Act, with centralized legislative supervision and accessible standing to challenge agency actions. The EU, bound by shared sovereignty and the Meroni doctrine, works under fragmented oversight and limits standing. These differences, rooted in the constitutional configuration of each polity, generate opposite inefficiencies: in the EU, the constitutional need to share power across different levels and institutions promotes functional sluggishness; contrastingly, in the US, the broad standing granted to challenge administrative acts in the courts leads to regulatory ossification, the process of continuously exposing agencies to constant litigation, which is all the more detrimental in a country where the judiciary is becoming increasingly politicized. Each system can learn from the other—streamlining EU oversight and refining US right to sue—to better balance efficiency and legitimacy, eventually enhancing democratic governance amid global challenges.

Keywords: democratic accountability, regulatory agencies, administrative oversight, right to sue, constitutional foundations, delegation of powers, Meroni doctrine, nondelegation doctrine, regulatory ossification, governance efficiency, Chevron deference

1. Context & Introduction

Halfway through the tumultuous 2020s, trust in democratic governance has eroded.[1] One of the cornerstones upholding good democratic governance is accountability—there is no point in creating and trusting democratic institutions if they cannot be held accountable.

This is particularly true when dealing with regulatory agencies. Despite being essential to democratic governance for their quick, technical, and specialized rules, regulatory agencies are unelected, and thus holding them accountable is more complex and ultimately a true indicator of a system's democratic strength. Nevertheless, even among

[1] Pew Research Center, *Public Trust in Government: 1958–2024* (24 June 2024) https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/ accessed 11 November 2025.

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the world's foremost democratic polities—the European Union (EU) and United States (US)—no uniform approach to hold these entities accountable has developed; in fact, the approaches of these two jurisdictions highly contrast with each other.

On one end of the spectrum is the US, governed by the Administrative Procedures Act, where administrative oversight is carried out uniformly by Congress and standing to challenge agencies' actions is broadly attainable. At the other end lies the EU, which utilizes a fragmented approach across multiple institutional and territorial levels for oversight, and offers narrower, less attainable standing. Each approach, rooted in underlying constitutional foundations, promotes distinct bureaucratic inefficiencies that could ironically be remedied by adopting elements of the alternative model: a higher degree of agency discretion in the EU, and a more constrained right to sue in the US.

2. Regulating Regulators

To start, it is necessary to break down each country's framework for regulatory oversight.

2.1 Similarities in Regulatory Oversight

Considering both systems are built on principles of democratic governance, one can correctly expect to see similarities in their respective approaches.

For starters, regulators in these two polities are required to report to democratic authorities. In the US administrative framework, agencies face extensive oversight by way of internal watchdogs' (Inspectors General), mandatory reports to Congress, and Congressional hearings by committees made specifically to scrutinize agency actions.[2] In these hearings and inspections, Congress can become dissatisfied with an agency's rule and, as a result, strike it down or withdraw funding from the agency. [3]

Correspondingly, agencies in the EU also face these duties of disclosure by being required to submit annual reports to the European Commission, European Council, and European Parliament (EP).[4] Agency heads can also personally be called to report before the EP to answer and account for their actions, ultimately showing that the EP plays a similar role to that of the US Congress.[5] Furthermore, as representative institutions in their respective political systems, agency oversight by Congress and the EP indirectly make agencies answer to the people.

2.2 Differences in Regulatory Oversight

That being said, despite both systems trying to achieve administrative accountability, differences are present, particularly when looking at the general structure of each evaluation system. The US is more uniform and centralized. The Administrative Procedure Act (APA) imposes uniform transparency standards and justification

[2] Inspector General Act 1978, s 2 ('Purpose and establishment of Offices of Inspector General').
[3] Congressional Review Act, 5 USC §§ 801–808.
[4] Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights [2007] OJ L 53/1, arts 4(1)(e), 4(1)(g), 4(2).
[5] European Parliament, *EU Agencies, Common Approach and Parliamentary Scrutiny* (EPRS 2018) 64–65.

duties across all federal agencies, with Congress acting as the sole overseeing body.[6]

Conversely, the EU has an administrative structure made up of several agencies made ad hoc and that thus have distinct mandates.[7] This structure leads to heterogeneous reporting and oversight arrangements across EU agencies. To illustrate, the aforementioned EP consultation requirements are only formally mandated for some, not all agencies. The EU Agency for Fundamental Rights is one such example.[8] By the same token, looking to the structure of the agencies themselves, while some managerial boards are made up of Member State representatives, others are not.[9] This wide array of agency structure and operation in the EU shows a heavy contrast with the US and its one-size-fits-all approach, which is more tailored towards ensuring consistency.

2.3 Differences in Right to Sue

Lastly, while both frameworks demonstrate the right to sue agency decisions, they diverge in how this right is carried out in practice, with judicial intervention being easier in the US. Under the APA, any person affected adversely by an agency action has standing to sue.[10] Once the standing is attained, due to the abolition of Chevron deference in *Loper Bright Enterprises v. Raimondo*, the courts have complete discretion to review agency acts, no longer deferring to the agency's interpretation when their rules are considered ambiguous.[11] On the other hand, the right to sue in the EU, while available, is harder to attain; it is not individuals that typically bring forth complaints against agency actions. Rather, it is Member States or EU institutions that are the complainants, with individuals only gaining standing in limited cases.

2.4 Overview

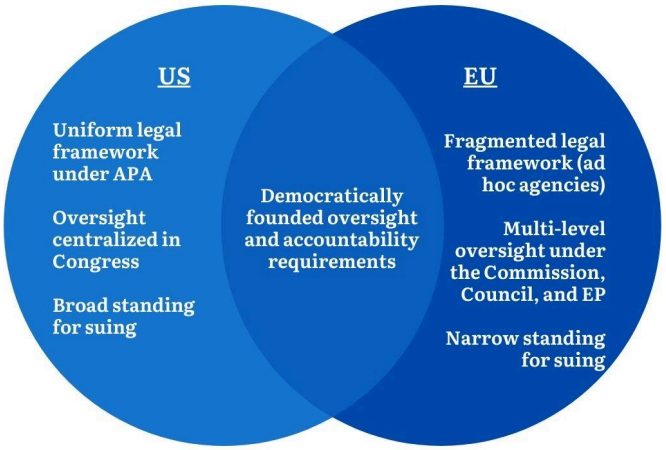

Fig. A. General comparison of both systems
Source: Multiple
Visual created by Ignacio Hitt via Canva

In sum, while both the EU and US embed agency transparency and subsequent accountability as essential steps towards achieving democratic governance, the American approach, being more centralized under the

[6] Administrative Procedure Act 1946, 5 U.S.C. §§ 556–557 (Decisions and Review)
[7] European Court of Auditors, *Future of EU Agencies – Potential for more flexibility and enhanced performance* (Special Report 22, 2020) p 5.
[8] Council Regulation (EC) No 168/2007 on establishing a European Union Agency for Fundamental Rights [2007] OJ L 53/1, art 4(1)(e),(g), art 4(2).
[9] Council Regulation (EC) No 168/2007 on establishing a European Union Agency for Fundamental Right, [2007] OJ L 53/1,art 12(1)(a) & (b).
[10] 5 U.S.C. § 702 (Right of review) ('A person ... suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to right to sue thereof.')
[11] *Loper Bright Enterprises v Raimondo* 603 US ___ (2024).

APA, enforces these obligations at a wider and more uniform level than the EU's fragmented and narrower framework.

3. Constitutional Roots of Differences

With the foundational differences of the two systems established, it is possible and necessary to analyze the underlying constitutional reasons for said discrepancies, and how these lead to shortcomings in governance efficiency.

3.1 Shared Sovereignty in the EU

Regarding oversight frameworks, the EU's constitutional setup is the root for its comparatively stricter view on the delegation of powers. In its early stages, the EU was a fragile organization; it had to act with extreme caution so as to keep the constituents satisfied and avoid disrupting the delicate union.[12] When looking at the constitutional setup in Brussels, one will notice a lack of an equivalent for the American APA. The reason for this is that giving quasi-autonomous, "foreign" agencies significant control over state activities would raise concerns of sovereignty and institutional overreach.[13] The *Meroni* doctrine, the principle EU agencies are subject to when making rules, dictates that supranational agencies are forbidden from receiving broad discretionary powers through delegation.[14] This forbiddance illustrates the constitutional foundation for the EU's comparatively weak agency powers, a constitutional setup of shared sovereignty leading to fragmented oversight in order to preserve equilibrium.

3.2 Separation-of-Powers in the US

Whereas in the EU agencies' rules need to satisfy Meroni requirements, the EP, and the Member States, in the US, they must solely fall within the boundaries of the nondelegation doctrine. This nondelegation doctrine, at first glance, seems very similar to its *Meroni* counterpart over in Brussels, for it similarly seeks to ensure that no broad rulemaking power is given to agency-like bodies, to ensure that this power is kept in elected representatives.[15] That said, the difference between the two comes to light when looking at the constitutional foundations of each system. The US, thanks to its constitutionally defined boundaries between the different government authorities, has historically shown trust in the delegations made by Congress to agencies, and controls for agency rules ex post through the three branches of government.[16] In contrast, the EU, constitutionally bound to sharing sovereignty across multiple levels, lacks the centralized congressional trust that a single sovereign state like the US can afford its agencies. Excessive delegation and ex post control would likely distort the institutional equilibrium and national consent that the EU needs to function.

[12] Ernst B Haas, *The Uniting of Europe: Political, Social, and Economic Forces, 1950–1957* (Stanford University Press 1958).
[13] Christian Freudlsperger, 'Opening Pandora's Box? Joint Sovereignty and the Rise of EU Agencies with Operational Tasks' (2022) 64 *Government and Opposition* 297–319.
[14] Case 9/56 and 10/56 *Meroni & Co v High Authority* (1958) ECR-133.
[15] Edward Grodin, 'An Internationally Intelligible Principle: Comparing the Nondelegation Doctrine in the United States and European Union' (2015) 7 *Perspectives on Federalism* 56–84.
[16] U.S. Congressional Research Service, *Congress's Authority to Influence and Control Executive Agencies* (Report R45442, 2023) p 2.

3.3 EU Oversight Inefficiencies

Evidently, the EU model of fragmented oversight leads to a large shortcoming in governance efficiency, as diffusing and subsequently restricting delegation prevents agencies from being able to establish meaningful rules that help the day-to-day life of the EU citizen. One such shortcoming was the EU's approval process for the COVID-19 vaccines. The European Medicines Agency (EMA), which is in charge of evaluating pharmaceutical products such as the vaccine for COVID-19, was harshly criticized for approving the vaccines at a much slower rate than national regulators, such as the US Food and Drug Administration. This delayed approval stemmed from the fact that the EMA holds less discretionary power than American agencies in the same regulatory field, for it can only issue opinions that then have to be approved by the Commission. This extra step–rooted in the EU's constitutional reluctance to provide agencies with more discretionary decision-making authority–shows that its administrative accountability approach can lead to bureaucratic bottlenecks. In times of continental crisis like COVID-19 when a quicker, supranational response is required, these bottlenecks can be especially detrimental.

3.4 EU Narrow Right to Sue Rationale

This same constitutional rationale can also be used to explain the underlying motives behind the differences in right to sue between the EU and the US. As previously mentioned, the standing for right to sue in the EU is more narrow, i.e., private parties can challenge agency acts before EU courts exceptionally, not regularly, where they have to prove the independence of the act and that it affects them directly.[17] There is a constitutional basis for this; given the EU is a treaty-based supranational organization, it is the Member States that have to consent for the EU to function, not necessarily the people. As a result, the right to sue provided by the Court of Justice of the European Union tends to defer complaints over agency actions to national judicial authorities unless absolutely necessary. This approach is based once again on safeguarding Member States' autonomy, for it is this autonomy that preserves their—the constituents'—consent, giving them more power to review agency actions. This is not to say that the right to sue agency rules in the EU is obsolete. While it is more narrow, the *European Securities and Markets Authority (ESMA)* case established that any independent act by an EU agency having "direct effect" on private parties can be immediately reviewed.[17]

3.5 US Broad Right to Sue Shortcomings

In contrast, the US has a much broader approach, seeing the right to sue as a constitutional right. The specific rule in the APA states that right to sue is available to any "person aggrieved" by agency acts.[18] This starkly differs from the EU approach, as being able to prove one is an aggrieved person is much simpler than the independent act plus direct effect formula of *ESMA*.

Comparatively, the American constitutional setup requires consent from a larger pool of constituents, the

[17] Case C-270/12 *United Kingdom v European Parliament and Council* [2014] ECR I-0000.

[18] 5 U.S.C. § 702 (Right of review)

people, so the standing has to be broadened to ensure that the people can effectively challenge administrative acts. As a result, the requirements to challenge a rule are significantly fewer. That said, the effectiveness in practice is a facade, as this broader standing leads to American agencies being constantly exposed to litigation. This leads to regulatory ossification, where agencies such as the Environmental Protection Agency over-document or downright avoid fulfilling their rulemaking duties for fear of the costs that will come with complaints.[19] This inefficiency has become even more pronounced as of recent, for the American judiciary has become increasingly politicized—a by-product of judicial appointments made by officials who exploit the ever-growing polarization in the country. The abolition of Chevron deference in *Loper* is a testament to this, as courts no longer have to defer to the reasonable interpretation an agency provides to its own rules. Consequently, this politicization leads agency rules to be struck or modified based on political whims rather than their substantive merits.[20] By comparison, this is not a problem in the EU, where overlitigation is mitigated through the more narrow standing and the judiciary is less politicized due to lesser degrees of polarization and a more methodical approach to judicial appointments.[21]

Ultimately, the constitutional DNA of each system explains the underlying reason for the differences seen in their approach to regulatory accountability. The EU, a polity constituted by consenting Member States, prioritizes stability, thus leading to more players overseeing agency acts and less open access for the right to sue agencies. Nevertheless, the former multi-player approach is particularly detrimental in cases that require a faster, larger-scale response from agencies. Conversely, the US, grounded in a strict adherence to the separation-of-powers framework, and constituted by consenting citizens, adopts a more centralized approach to agency oversight via Congress, and grants a broad standing for the right to sue to satisfy the citizens. This latter approach leads to regulatory ossification, which is especially prevalent today in times of polarization and subsequent politicization of the judiciary.

4. Lessons to be Learned

The constitutionally-rooted inefficiencies that each system contains, while detrimental to effective governance, are not without solution; in fact, there are lessons that the two regulatory regimes in question could take from one another to help mitigate them.

4.1 EU Americanizes

[19] Stephen M Johnson, 'Ossification's Demise?: An Empirical Analysis of EPA Rulemaking from 2001–2005' (2008) *Environmental Law* (forthcoming) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1154170 accessed 11 November 2025. https://digitalcommons.law.mercer.edu/fac_pubs/112 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1154170

[20] Jason Webb Yackee & Susan Webb Yackee, 'Procedural Constraints and Regulatory Ossification in the US States' (2024) 19 Regulation & Governance <https://onlinelibrary.wiley.com/doi/10.1111/rego.12627>

[21] Research and Documentation Directorate, *Procedures for the Appointment and Designation of Judges in the Member States and the Role Played by the Executive or Legislature in Those Procedures* (2020)

The EU's multi-player, fragmented oversight approach leads to slower agency actions, which is especially unfavorable in times of large-scale crisis. To help alleviate this, the EU can learn from the US approach by uniting several of the fragments that make up its current oversight model into a centralized, streamlined process in exceptional circumstances. This could be achieved by creating an emergency exception for agencies like the aforementioned EMA, allowing them to make binding decisions in times of crisis that apply immediately and are only subject to review when it comes to their prolongation. This framework would be similar to how the procedure outlined in the Stafford Act works in the US, which allows agencies to impose binding rules during federally declared emergencies.[22] This solution would allow agencies to respond quicker all while preserving the multi-level structure embedded in the EU's constitutional DNA by introducing the crisis requirement.

4.2 American Europeanization

On the other hand, the US faces the problem of its broad right to sue mechanism, leading to regulatory ossification. The EU model provides a solution to this issue, as its procedural and technical thresholds for right to sue provide an apolitical way to ensure that only claims of substantive value are actually brought before judicial authorities. The US should thus adopt the EU's approach of right to sue of agency acts, switching from "any aggrieved person" to individuals directly and uniquely affected by agency measures. This would help mitigate the costs that come with ossification and politicization.

In sum, both of these democratic entities have the tough task of balancing efficiency and legitimacy in their governance, and they can learn a lot from each other in order to better achieve this delicate balance.

5. Summary & Conclusion

All in all, both the US and the EU have administrative systems that exhibit similarities and differences when it comes to regulatory accountability. The differences largely lie in their respective approach to oversight and right to sue agencies, and stem from their constitutional framework. Said differences lead to one jurisdiction being able to govern more effectively than its counterpart in the given area. The EU, with a fragmented approach to oversight and narrower standing for right to sue, suffers from slow crisis response but successfully avoids regulatory ossification. For the US, the opposite is true. Despite their differences however, both polities align in their larger goal of wanting to achieve effective democratic governance through the balancing of efficiency and legitimacy, and they can thus take lessons from one another to work towards this goal.

[22] Robert T. Stafford Disaster Relief and Emergency Assistance Act 1988, 42 U.S.C. §§ 5121–5207,

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