



Run-away bureaucracy?

Exploring the role of National Regulatory Agencies in the EU

Maria Martens

Working Paper

No. 30, November 2005

Working Papers can be downloaded from the ARENA homepage:

<http://www.arena.uio.no>

Abstract

This paper reports a comparative study of the Environmental Regulatory Agencies in Norway, Denmark and Finland. Increasingly and relatively independently these agencies are taking part in transnational networks in the EU involving the European Commission. A strong informal penetration, fuelled by new and faster electronic technology, is taking place between the European Commission and the regulatory agencies, largely outside the control of the domestic politico-administrative leadership. This development may be questionable from a democratic point of view.

The three national agencies differ with regard to degree of independence from their parent ministry and degree of contact with the European Commission. These differences may be explained by various formal organizational features, but also by cultural factors rooted in the specific national administrations.

Maria Martens

ARENA – Centre for European Studies

P.O. Box 1143 Blindern, N-0317 Oslo

maria.martens@arena.uio.no

Reproduction of this text is subject to permission by the author.

© Arena 2005

[...] it is just the multifaceted interconnectedness of EU and national governance that produces the complexity and ambiguity of European integration and also provides for its ongoing dynamism (Kohler-Koch 2003:22)

1. Introduction

Since the 1980s, administrative reforms have transformed the way in which many Western governments are organized and operate. They have become less hierarchical, more fragmented and more decentralized (Christensen and Læg Reid 2001). One notable feature has been the clearer distinction between politics and administration, with administration perceived as a *craft* best performed at arm's length from political considerations (ibid: 96). A possible way of gaining political leeway has been through the decentralization of tasks to semi-independent, regulatory agencies outside the central administrative hierarchy. Hence, an 'agencification' of the administrative apparatus in most EU states has been taken place. A parallel development has been unfolding at the European level where an increasing number of different agencies have been founded, although with far more restricted tasks and less autonomy from the central institutions (Majone 1997).

The reason for writing about the role of national regulatory agencies in the European context is threefold. Firstly, regulatory agencies constitute an important part of the national political system in the member states, both in policy formulation and implementation. They 'matter' in political terms. Secondly, little has been written regarding the role of national agencies in European cooperation – the focus has rather been on the founding of agencies at the European level (see for example Dehousse 1997, Majone 1997, 2000, Kreher 1997, Yataganas 2001). Finally, the European Commission has shown increased interest in these organizations when administrative tasks are to be carried out; due to their relative independence from national ministries, these agencies may be well placed to work together with actors at the Community level and to take part in network structures across levels of governance (Egeberg 2003).

In this paper, the following main questions are asked:

1. To what extent do the agencies take part in administrative networks at the European level?
2. How independently are they operating from their parent ministries in these networks?
3. To what extent does the European Commission play a dominant role in these networks, and how can we explain the role of the Commission?
4. How can we evaluate these networks in terms of democratic governance?

As mentioned, there has been little study of national agencies in the European context. In my view, the emergence of profound and systematic cooperation between the European Commission and these entities could indicate new and interesting patterns of cooperation and conflict on the European scene. The EU refocuses the attention, energies, timing and initiatives of domestic governments (Olsen 2003). By weakening the principle of territorial organization in a political entity by imposing smaller functional entities as the main building blocks, cutting across both national borders and internal administrative levels, the focus of conflicts may be shifted from territorial lines and towards other lines of conflict. In that respect, this paper may contribute to our understanding of the dynamics and the change of dynamics between institutions at different levels of governance in the European cooperation.

A 'most similar cases' design

The Nordic countries may be an interesting ground for European studies,¹ not least because they are quite similar in relation to several geopolitical factors. All of the Nordic countries are parliamentary democracies with well developed

¹ Sweden and Iceland have been omitted from this analysis due to time and resource constraints.

administrative systems. They are all unitary states and are of roughly the same size (Jacobsson, Læg Reid and Pedersen 2004:5). In addition, all of the administrations in Nordic countries have been affected by the concepts of public management and decentralization. Regulatory agencies are not a new phenomenon in the Nordic countries, but the 1980s witnessed the introduction of more extensive 'management by objectives' or 'steering towards results' between ministries/departments and agencies. The basic rationale was that the relevant ministry should provide the agencies with clear and concise goals, but there should be only minimal interference in the agencies' pursuit of these goals. By the same token, there was a growing emphasis on efficiency and effectiveness in the politics of public administration, a policy objective which was also believed to be best served by giving agencies even greater autonomy towards the ministries and departments (Pierre 2001).

On the other hand, there are also organizational differences among the national administrations in the Nordic countries, for example concerning the formal relationship between the ministries and the outer layer of the central administration. Denmark has a monistic structure, with the regular agencies formally part of the ministerial structure. The name of the environmental agency is 'The Danish Environmental Ministry, the Environmental Agency.' However, the Danish agencies have their own leadership and staff, and they are physically located outside the ministries. In Norway the agencies are not formally a part of the ministries. However, they have a ministerial government where the outer layers are subordinate to the minister herself, who can be held responsible for all decisions made in the agencies. Finland has traditionally been associated with the 'east Nordic' model² where the agencies are formally independent of the central

² It has been traditional to distinguish between an east Nordic administrative model, which involves independent central agencies that report to the cabinet as a collective body rather than to individual ministers, and a west Nordic model under ministerial control, where each minister is responsible for everything that happens in his subordinate authorities. A distinction is drawn between the dualistic Swedish-Finnish model with strong cabinets and strong, relatively autonomous central agencies, and the monistic Danish-Norwegian model, with strong specialized ministers with integrated ministries, directorates and agencies responsible for specific policy areas,

ministries. Recently, however, increasing emphasis has been placed on accountability of the various ministers in the Finnish government (Jacobsson, Lægheid and Pedersen 2004:17).

A study of these three countries permits a comparative assessment of the role of national administrative arrangements, owing to the difference in their organizational nature. In the following, we apply a ‘most similar cases design,’ which involves choosing cases that are as similar as possible and then trying to isolate factors responsible for differences among them (Andersen 1997).³

In addition to the different administrative structures in the three Nordic countries under study, there are other important differences to be taken into account in comparing these three countries in relation to the EU. Norway is not a member of the EU, but is associated to the EU through the EEA agreement.⁴ Denmark is an older EU member country than Finland, and is also known as more EU skeptical. These factors may influence the role the agencies play at the European level and their degree of actual freedom from their parent ministries. I will come back to these factors when crafting the hypotheses and analyzing the empirical material. Before continuing the presentation of the study and the empirical findings from the different member states, I will define three important concepts in this paper: *regulation*, *agency* and *network*:

and weaker cabinets. In formal terms, the differences between the east and west Nordic models are considerable, although in practice they are probably not so extreme, once the various informal contacts are also taken into consideration (Jacobsson, Lægheid and Pedersen 2004:75).

³ As in a laboratory, this design allows to explore the causal relationship between different variables. However, it must be borne in mind that we are not in a real laboratory. We are studying the cases in their ‘real life context’ (Yin 1981) and that involves certain problems or at least certain challenges. One feature is that the phenomenon under study may be the result of a combination of different factors. It is not possible to measure partial causal effects or interaction effects within a case study. If we want to measure partial causal effects, we have to use some sort of statistical technique. Another challenge is that disturbing variables easily can be overlooked, and we may end up making erroneous inferences about the causal relationship between the variables under study (Andersen 1997).

⁴ The EEA agreement allows Norway access to the preliminary work and the implementation activities of the European Commission but not to the formal decision-making process in the Council.

Regulation:

According to Christensen and Lægreid (2005:3) 'Regulation' can be used in both a broad and a narrow sense. In a broad sense, regulation can be defined as all types of state intervention in the economy or the private sphere designed to steer these and to realize public goals. This paper uses a more narrow definition, where regulation means 'formulating authoritative sets of rules and setting up autonomous public agencies or other mechanisms for monitoring, scrutinizing, and promoting compliance with these rules' (Christensen and Lægreid 2005:3). These functions may be carried out by a single organization or delegated separately to specialized agencies. Thus, the regulatory function may involve a complex combination of vertical and horizontal inter-organizational specialization of the central administrative apparatus (ibid).

Agency:

In this paper the focus is on central regulatory agencies. Not all agencies are regulatory agencies: some are primarily responsible for managerial tasks, while others provide services or offer policy advice. Mixed or multi-functional roles were for a long time normal for many agencies in many countries (Christensen and Lægreid 2005:5). Agencies have been described variously as non-departmental public bodies, hybrids, quangos, fringe bodies, non-majority institutions, quasi-autonomous public organizations, and distributed public governance (Greve et al. 1999, cited in Christensen and Lægreid 2005:5). In this paper I use the definition provided by Pollitt and associates (Pollitt et al. 2004, Pollitt and Talbot 2004, cited in Christensen and Lægreid 2005:5) of an agency as a structurally disaggregated body, formally separated from the ministry, which carries out public tasks at a national level on a permanent basis, is staffed by public servants, is financed mainly by the state budget, and is subject to public legal procedures.

Networks:

The mere use of the term ‘network’ in the context of European governance conjures up notions of self-regulation and self-organization (Schoot and Jordan 2005:208). I do not reserve the term for a specific type of preferred steering arrangement, such as found for instance in the European Commission’s White Paper on governance (COM (2001) 428 final), which sees networks as an alternative coordinating mechanism to hierarchies and markets. Even though this paper does not entirely escape such connotations in its terminology, a main concern here is to explore the variety of networks that the regulatory agencies are engaged in: those would include networks that might be perceived to have a ‘head,’ or a ‘node’ as well as those that are diffuse and web-like and thus without overt hierarchical elements. I tentatively use two dimensions as an implicit classificatory heuristic: (1) types of actors involved and (2) content of networks. A core concern here is to come closer to what is dealt with within the networks that have been developed, and that is slightly more tricky than categorizing the connections according to the types of actors involved (Gornitzka 2005).

The structure of the paper is as follows: In the next part, I make some initial assumptions based on an organizational perspective. There follows a note on method and data, before I proceed to my empirical findings. Next, I analyze the material in relation to the initial assumptions. Finally, the findings are discussed with regard to the question of democratic governance.

2. An organizational starting point

Organizations are specific in time and place, with identifiable members and usually some kind of material presence. Organizations are designed, among other things, to perform functions related to governance (Stone Sweet, Fligstein and Sandholtz 2000). By ‘governance’ is meant the authority to make, interpret and

enforce rules in a given setting.⁵ Conceived in this way, political organizations are mechanisms of coordinating rule systems, on an ongoing basis, to the needs and purposes of those who live under them (ibid).

An organization-theory perspective assumes that civil servants employed in government institutions are 'bounded rational,' faced with information overload (Simon 1965). The vertical and horizontal specialization of public administration serves to systematically buffer the information and role expectations relevant for each civil servant, thereby simplifying preference formation and ultimately choice of decision-making behavior (Egeberg 1999). Hence, organizational specialization leads to local rationalities and local and routinized learning cycles among the incumbents (Olsen 2005:12). This theoretical perspective is generic, not a *sui generis* theory like administrative fusion as suggested by Wessels (1998). One advantage of applying a general or 'cosmopolitan' approach like organization theory is the possibility of drawing general inferences from case studies (Kohler-Koch 2003).

In studying the EU through organizational prisms, a feature of special interest is the division of tasks and responsibilities between the Council and the European Commission. The Council is perceived as the most important EU institution, primarily due to its decisive role in decision-making processes. The Commission, on the other hand, plays an important role in preparing, proposing and monitoring policy and legislation. Hence, there is a division of tasks between the two institutions. In addition, it may be argued that these institutions are organized according to two different basic and general principles in administrative life. The Commission organized in different Directorates general (DGs) may be seen as exhibiting functional and sectoral principles; conversely, the Council may

⁵ Wallace (2003:1) points out that 'governance' has become the catchword in both academic and practitioner discussions of how the EU currently operates. In the absence of a European government, *governance*, a fuzzier concept, has emerged as an apparently more malleable term for addressing the way in which the EU operates. One reason for the adoption of 'governance,' according to Wallace, is an antidote to traditional studies of 'government,' a term which implies a tidier and more ordered hierarchy of authority and more concentrated focus of politics than what is found in many contemporary societies.

be viewed as demonstrating a territorial principle of organization since the key decision-makers formally represent the constituent governments (Egeberg 2001)⁶. According to Esmark (2005:19), the Commission upholds ‘ [...] a technocratic discourse of optimal policy solutions from the perspective of the Union within the different policy areas. [...] the ‘territorial logic’ of negotiation within the Council structure is supplanted by the ‘functional logic’ of the policy areas of the different Commissioners and their administrations’. Officials are assumed to prepare dossiers, argue, negotiate, and co-ordinate with colleagues on the basis of their professional competences and legitimate their authority on neutral competences (Haas 1992). Their decision-making behavior is expected to be guided by considerations of scientific and professional correctness and the power of the better argument (Eriksen and Fossum 2000).

Studies show that national officials play different roles in these organizational contexts in the EU. National officials operating within the Commission’s working groups and committees seldom perceive themselves primarily as government representatives. Participation in comitology committees and Council working parties, on the other hand, more clearly evokes role conceptions related to nationality (Egeberg et al. 2003, Trondal and Veggeland 2003). These findings illustrate that patterns of cooperation and conflict are, at least to some extent, a function of the organizational structure of the EU institutions.

Returning to the national administrative apparatus, we see, as mentioned, a trend of administrative decentralization where more tasks and functions are “hived off” from ministerial departments and put into semi-autonomous agencies. Like the Commission at the European level, the regulatory agencies are expected to play an important role in preparing and monitoring policy and legislation.

⁶ There are several contending organizing principles within the European Commission and the Council of Ministers. Within the Commission a geographical principle runs parallel to the sectorial principle, while a sectorial principle of organization is present within the Council, supplementing the area principle. I will argue, however, that the dominant principles are those mentioned above.

In their comparative study of the Europeanization of the Nordic administrations, Jacobsson, Lægreid and Pedersen (2001:15) find that coordination activity related to EU matters is more widespread at the ministry level than at the agency level. Other studies reveal that government officials employed at the agency level are more likely to evoke a functional logic of the policy area than officials employed at the ministry level (Trondal and Veggeland 2003, Egeberg 2003) – in other words, that behavior is more guided by professional expertise and formal background of the actors.

Taken together, these observations indicate that the institutional configuration at EU level, with a division of tasks between the Council and the Commission, as well as the different organizational logics in these institutions, has a parallel in the organization of the national administrative apparatus. Thus we may anticipate a link between the European Commission and the national regulatory agencies due to the *institutional compatibility* across these levels of governance (Knill 2001). By connecting up national agencies in issue-specific networks, the European Commission would, in a sense, have the possibility to extend its organization down across the levels, without formally establishing its own offices (Egeberg 2005).

As to the environmental agencies in Denmark, Finland and Norway: they have all been affected by the new public management (NPM) idea and do enjoy a certain degree of independence from their parent ministry. This ‘agencification process’ may have as such provided a window of opportunity for a new and transnational role for the regulatory agencies. On the one hand, the national agencies constitute an integral part of the national bureaucracy as originally intended, however, due to their relative independence and the compatible organizational structures at the European level, they may also be well placed, in organizational terms, to be linked up to the Commission in issue-specific networks (Egeberg 2005).

As noted, there are differences with regard to how the agencies are organized in relation to their parent ministry. The Danish agency is formally

linked closest to the ministry, while the Finnish agency is formally the most independent and the Norwegian agency may be said to occupy a middle position. On the basis of these organizational differences, we may hypothesize that the Danish regulatory agency takes part in administrative networks at the European level on a less independent basis than the case in the two other countries, in the sense that the parent ministry is more in control. Here we should also take into account that Denmark is known as one of the most EU-skeptical member states, so the politico-administrative leadership may have a special interest in retaining some control when the regulatory agencies participate at the European level.

3. A note on methodology and data

My informants are middle- and upper-middle-level executive officers in the various environmental agencies. I chose to conduct qualitative interviews with open-ended questions, to enable broad reflections and extensive information from the actors involved. Given the explorative nature of this study, the opportunity to acquire as much information as possible from the relevant actors seemed most strategic. I had seven to eight interviews in each of the three environmental agencies. The interviews lasted between one and two hours. An important challenge in analyzing the data was the selection and weighing of the various observations. In fact, the level of convergence among responses in the three different agencies proved to be quite high. In addition, I consulted written sources like organizational charts, formal procedures with regard to EU-related work and reporting routines, as well as reports and other secondary sources about decision-making behavior in the Nordic administrations. Reference will be made to these where relevant.

4. Empirical findings

There are important similarities between the three Nordic environmental agencies with regard to their involvement in EU matters. In general, an increasing amount of time, energy and resources is spent on EU-related work (approximately 30–50

% of the executive officers' working hours are devoted to EU related work). The work is primarily linked to work within the Commission structure. The degree of contact with the Commission and colleagues in other European agencies has increased, and providing information and expertise to the Commission has gradually become a more important part of their daily work. The use of e-mail has meant greater contact both with colleagues in other national environmental agencies and with the European Commission.

The executive officers participate in various kinds of networks including the Commission, in addition to participation in working groups within the ordinary committee structure. These network activities are linked both to initial drafting of legal acts (the pre-pipeline phase) and to interpretation and implementation of legal acts nationally.

With regard to the last phase – interpretation and implementation – there exist several e-networks (so-called scope groups) in relation to the interpretation of specific legal acts. The networks consist of experts with responsibility for one or several specific EU directives in the member states. The Commission provides the technicalities for these networks, and generally takes the initiative with regard to the questions to be discussed within the networks. In addition, the Commission occasionally distributes e-questionnaires to these groups, where the executive officers are to answer in writing how they understand and implement specific directives nationally.

In addition to the scope groups, the national agencies participate in more formalized implementation networks. These are networks linked to broader areas, and the members meet physically on a regular basis. The most formalized network within the environmental field is IMPEL, primarily dealing with pollution. The IMPEL network was established in 1991 to improve implementation of European environmental law in the various member states, and it is composed of representatives from the national environmental agencies and the European Commission. The initiative to create the network surfaced at the national level, and the participation of the European Commission was not part of the original

plan; in fact, the national experts had expressed concerns about admitting the Commission. However, this skepticism gradually evaporated during the consolidating phase of the network, and the Commission has formally become an equal member of the network (Martens 2005). It is also clear that the Commission has certain resources that make it something more than an equal partner in the network, first and foremost funding. The Commission does not dictate what is to be done, but the money ties make it difficult for the national experts to initiate different projects without the Commission's acceptance. In addition, the IMPEL Secretariat is based at the Environment Directorate-General in Brussels, bringing the experts closer to the Commission and vice versa (ibid).

Another related network (CLEEN) is responsible for implementation of chemical legal acts. Like IMPEL, it is composed of representatives from the national environmental agencies. The Commission has indicated it will support the network financially, but the members have until now kept the Commission at a distance. Hence, the Commission acts mainly as an observer within the network, not as an equal member. A plausible explanation is that control of the chemical industry is considered a more sensitive issue nationally than pollution, because of the vital economic interests involved (especially in Germany and the UK). However, the CLEEN network will probably become a part of the EU system when the new chemical regulation, REACH⁷ has been adopted in the Council. The draft regulation establishes an implementation arrangement as a part of the European Environmental agency, and CLEEN will probably become this institution. The role of the Commission within such an arrangement is not settled.

⁷ A central feature of the REACH system is a duty on all companies that manufacture, import and use chemicals to use substances in such a way that human health and the environment are not adversely affected. This is to be achieved by assessing the risks arising from the manufacture, import or use of those chemicals and taking the necessary measures to manage and register any risks identified. Registration requires manufacturers and importers of substances to gather information on the substances they manufacture or import, and use the information for management of the potential risks of the substance (http://europa.eu.int/comm/environment/chemicals/pdf/011-expl_note.pdf).

Networks involved in the initiative phase preceding the negotiations within the Council apparatus are of a more exclusive character than the implementation networks mentioned above. According to my informants, the Commission carefully selects some of the national agencies to join these networks – on the basis of specific expertise, but also for tactical considerations. Some individuals may be important allies at a later stage in the negotiation process, and some may be used to convince colleagues in other member states to take a particular stand on the issue under discussion. These networks are perceived as more political and more exclusive than the implementation networks. The executive officers participating in these networks underline that they prefer to speak to the Commission on the phone, and say that any e-mails from the Commission are deleted immediately. They believe the Commission is doing the same.

The national ministries do not take part in any of the administrative networks mentioned above. In general, there are few guidelines or preceding coordination – internal or external – for executive officers dealing with EU matters. They feel they have a large degree of behavioral discretion at their disposal. Esmark (2005:18) describes the situation in Denmark this way: ‘In general, the initiative phase preceding the negotiations within the council apparatus and to some extent the implementation process following it can be regarded as transnational stages in the overall policy process of the EU institutions. In both instances, the Commission rather than the Council is obviously the central institution.’

As previously mentioned, direct contact between the European Commission and executive officers in the three environmental agencies has increased. However, contact among the executive officers themselves is even stronger and more regular than with the European Commission. Contact among Nordic colleagues is particularly strong. Quite often, working group meetings of the Nordic Council of Ministers structure are used to coordinate EU positions, and serve as a stepping stone for further contacts in the EU cooperation. This is in line with the observations made by Jacobsson, Læg Reid and Pedersen (2004:66),

who note that Nordic cooperation has increased within the EU framework. Contacts between the administrative units they studied were found to be twice as extensive in those parts of the administrations most involved in EU-related activity compared with the administration in general. In the next section we look at some of the differences between the three national regulatory agencies under study.

Denmark:

Danish executive officers are more often in contact with the European Commission in their daily work compared to their Norwegian and Finnish colleagues. They also participate more often in exclusive networks with the Commission in the pre-pipeline phase. When participating in the Commission structure and in the various transnational networks, they have few formal guidelines, and they feel they enjoy quite an extensive room for maneuvering. In Denmark, the Environmental Ministry participates only in political meetings in the Council structure. When personnel from the Agency participate in the Council structure, the procedures and mandates are approved by the ministry and often the Parliament, and this makes their decision-making behavior more formalistic and foreseeable than in the Commission structure.

The Danish executive officers consider themselves to be political actors to a larger extent than their Finnish and Norwegian colleagues. They see themselves as part of the political secretariat and link this to their integrated position in the administrative apparatus. Even without a written mandate, they feel they have the relevant information and are able to identify the political frameworks and anticipate the political interests they are expected to pursue.

Finland:

The Finnish executive officers are the most formalistic and legal-oriented in describing their decision-making behavior. When explaining the division of work between the Environmental Agency and the Environmental Ministry, they make

explicit reference to various legal acts. Some (rather few) areas like 'air pollution' and 'waste' are not delegated to the Environmental Agency at all, but taken care of by the Environmental Ministry. In those cases, the ministry has full responsibility in all relevant forums at the EU level.

In general there is a clear division of labor between the agency and the ministry in relation to participation in institutions at the EU level. The Environmental Ministry most often participates in the Council structure, while representatives from the agency participate in the Commission structure. The Finnish executive officers are most concerned about what is formally and legally correct, but also what is scientifically and professionally correct. Whereas the Norwegian and Danish executive officers say they represent their home countries, the Finnish officers say they participate in the Commission structure as experts. They claim that no one else knows the field the way they do; therefore, the leadership is in no position to provide them with valuable instructions. Jacobsson, Læg Reid and Pedersen (2001:13) describe the Finnish administration in these words: 'One trend observable in the Finnish administration is that EU work is only weakly linked to the political level and is dominated more by the administration and bureaucracy. Finnish EU activity is carried out within a pragmatic, closed and technocratic culture operating in a central administrative apparatus with a large degree of autonomy.' It is possible to claim that the Finnish executive officers are likely to perceive themselves as Weberian-type civil servants, abiding by the rules and established practices within their portfolios as well as independent and neutral experts.

Norway:

Norway is not a member of the European Union. However, through the EEA agreement, Norway has access to the preliminary work and the implementation activities of the European Commission.

The executive officers in the Norwegian environmental agency participate in the same committees, working groups and informal networks in the

Commission structure as their Finnish and Danish colleagues. However, the interviews reveal that the Norwegian executive officers feel less secure and less comfortable when traveling to Brussels than do their Finnish and Danish counterparts. In addition, they complain the most about lack of coordination internally and lack of political interest externally. Several of them feel that both the internal and external leadership ignore the political dimension of the EU work, making it difficult to maneuver in a complex EU landscape.

According to Veggeland (1999), bureaucrats may seek stronger political guidance and clearer instructions from above in order to avoid being encumbered with sensitive EU decisions, but there is still a danger that politicians will have problems providing these guidance and instructions. Paradoxically, there are in Norway more written routines in relation to participation in the committees of the Commission (guidelines for writing mandates and reports) than in Denmark or Finland. In addition, the Norwegian Ministry of the Environment participates in more meetings in the Commission structure than do the corresponding ministries in Denmark and Finland.

However, the need for clearer instructions from the politico-administrative leadership is more salient among the executive officers in Norway than in the other countries. A report from Statskonsult (1999), the Norwegian Agency for Public Management, is in line with these observations. It shows that that Norwegian government officials attending the expert committees of the Commission attend with ambiguous mandates, and have generally received few clear instructions or signals from the political leadership (ibid:44).

Part of the explanation may be found in Norway's formal affiliation to the EU. According to Jacobsson, Lægveid and Pedersen (2001:27) the country's EEA associate status means that Norwegian politicians are less involved in the EU decision-making process compared to their Nordic colleagues. According to Trondal and Larsson (2005:19), who have studied administrative developments in Norway and Sweden over the past ten years, the Norwegian central administration seems more sectorally de-coupled, de-politicized and fragmented

than territorially integrated, politicized and co-ordinated when handling EU dossiers.

5. The organizational explanation

We have seen that the internal organizational boundary between the ministries (departments) and the agencies matters. The different bureaucratic levels play different roles in the EU. The agencies are increasingly linked to the Commission structure, while the ministries are linked more closely to the Council structure.⁸ Hence, the different institutions at the European level activate different institutions in the national administrations systematically.

What about differences between the countries? How can they be explained? The starting point is the hypothesis that the Danish agency would enjoy less independence from the parent ministry than the agencies in Norway and Finland when participating in European cooperation. We expected the ministry to be more in control in Denmark than in the other two countries. However, it seems that the organizational factor explains the differing degrees of political awareness or sensitivity, more than degree of hierarchical control. Executive officers in the Danish agency are not especially controlled or supervised by the Environmental Ministry. The size of the ministry has to be taken into account when explaining this. Due to a reorganization of the administrative apparatus in 2001, it is small in comparison to the agency. The Danish executive officers underline that people in the ministry do not have time or resources to control their work. As such, the Danish executive officers in the agency operate quite independently from the parent ministry. However, due to their integrated position, they feel they are included in the political apparatus and that they can anticipate the will of their political superiors.

Differences in political culture also have to be taken into account. Bureaucratic organizations tend to develop added value 'beyond the technical

⁸ This is not the case in Norway, since the country is not an EU member and does not have access to the Council.

requirements of the task at hand' (Selznick 1957:17). Processes of infusion create a unique culture, identity, or soul to organizations. They develop a certain 'logic of appropriateness' (March and Olsen 1989) a 'social identity' (Herrmann, Risse and Brewer 2004). Social identities are distinct from other aspects of individual identity and self-concept in that they reflect *shared* representations of a collective self. Social identities are 'we' rather than 'I' identities. Social identity often refers to the question 'who is us?' 'what are we?'(ibid:6).

We have seen that a Weberian technocratic identity is most salient in the Finnish agency, where the executive officers are more formalistic and legally oriented than their colleagues in Denmark and Norway. In addition, their role perception is more linked to their professional platform and their specific technical skills, than to the role of a government representative. By contrast, the culture in the Danish agency is quite informal and less hierarchical, at the same time more tuned into the political dimension of the EU work. Thus, when trying to understand the differences between the countries, our theoretical starting point of stressing the formal relationship between the organizational units has to be supplemented by cultural elements; agencies have to be understood in their political-administrative context as well as in themselves (see Pollitt et al. 2004:23). In the next section, we will further expand this picture, in discussing the element of agency.

The Commission as a skilled actor

As stated earlier, there are compatible organizational principles in the Commission and the regulatory agencies, and these organizational features may explain the link between the institutions at the two levels of governance (Egeberg 2005). In addition, we see that the Commission acts as a leader in some of the networks, able to steer the work in certain directions. It is difficult to explain this phenomenon solely in terms of similar organizational features at the two levels of governance.

The concept of the 'skilled actor' seems relevant in this respect. Skilled actors are those who find ways to induce cooperation amongst disparate individuals or groups by helping them to form stable conceptions of roles and identity (Stone Sweet, Fligstein and Sandholtz 2000:11). We have seen that the Commission initiates e-networks/scope groups and provides technical and other resources like funding and secretarial assistance to networks aiming at improving national implementation of EU legal acts. In the pre-pipeline phase, the Commission has established coalitions among the different agencies being able to pursue certain political goals. The Commission's considerable resources – in terms of money, overview, information and creativity – can help us to understand its unique position.

However, we must recall that the Commission is not a unified actor. It is not a monolithic forceful power, steering the agencies in a planned, unified way. The role of the Commission varies. The institution is sometimes in great need of expertise and information, and quite often the executive officers of the national agencies are the only one to provide this information. According to von Bogdandy (2003:26) is it unimaginable that the Commission would rely solely on its internal expertise for a legislative initiative. Instead, the legitimacy and acceptance of its initiatives depend on the involvement of the relevant public and private actors. Several of my informants in the agencies mention that private consultants are expensive and the quality of the information private actors provide may vary considerably compared to the information the executive officers in the national agencies are able to offer the Commission. In sum, the European Commission occupies a special position in the administrative networks discussed here – but its cooperation with the national agencies seems largely an interactive and interdependent process and not a one-way street in which it imposes its will on the national administrations.

6. The question of democracy

The EU institutions open new arenas for direct and close interaction among the public administrations of the member-states and between the domestic public administrations and the community institutions (Egeberg, Schaefer and Trondal 2003). In this study, we have seen that a new way of differentiation and coupling of the national administrative units has emerged within a European context. Increasingly, the national regulatory agencies are playing a double-hatted role in European cooperation: on the one hand constituting an integral part of the national bureaucracy as originally intended, while on the other, taking part in transnational networks involving the European Commission.

In discussing this development in terms of the concept of democratic government, what is the appropriate starting point? Of the several possibilities with regard to such a multifaceted idea as ‘democracy,’ I have chosen to discuss the matter in relation to two different types of ideals which can all be linked to this complex concept: (i) ideals of sovereignty and accountability, and (ii) ideals of efficiency and measurable outcomes.

i. The ideals of sovereignty and accountability

‘Most OECD countries have been creating non-commercial bodies outside the core public service on an ad hoc basis, resulting in an administrative ‘zoo.’ This reduces the transparency of government for the citizen, and may compromise oversight and accountability within government.’ (OECD 2004:7).

Public administration is strongly linked to the concept of the nation state. Inspired not least by the American and the French Revolutions, principles of government that would reflect the sovereignty of the people were firmly established in nation-states throughout the Western world during the 19th century. As such, the democratic foundation for national administrations was a hierarchically-based political community, gaining its formal and social legitimacy through a majority in the populace. Subordination to decisions made by bureaucrats was thereby

deemed acceptable. The impartial bureaucrat, who administered state authority in the interest of the community, became a symbol of the nation state (Nedergaard 2001:30 quoting Weber 1971).

The ideal model of national administrations as coherent and unitary bodies certainly does not reflect the empirical realities in national politics, where fragmentation may be a more accurate description (see Tranøy and Østerud 2001). In the context of international politics, however, a more unilateral conflict structure organized by territorial criteria has suppressed other lines of conflict (Egeberg 2005). In most policy fields, divergence at the national levels tend to be less visible in international politics (Jachtenfuchs 2001). Thus, the model of unitary national administrations is often applied in studies of European politics.

However, the complexity of the institutional configuration of the EU makes it quite distinct from all other forms of cooperation at the international arena (Laffan 1998). In this paper I have stressed how the Council and the Commission activate different institutions within the national administrations. As such, interactions between the EU and its member states seem to follow the configuration at the EU level, where officials situated in the national ministries are primarily engaged in the territorially organized Council structure, while officials in the agencies interact with the functionally organized Commission structure. We have seen that a new way of differentiation and coupling of the national administrative units has emerged within the European cooperation. These couplings may challenge the image of a unified and integrated administrative apparatus, blurring the boundaries between what is national and what is European, between what is internal and what is external, challenging the notion of transparent and accountable government (Jacobsson, Læg Reid and Pedersen 2001:24).

We have also seen that the networks between the regulatory agencies and the European Commission are more or less inclusive. Some are open to all national governments in the EU, while others operate more in the dark, like the exclusive networks with the Commission in the pre-pipeline phase of the

decision-making process. According to Esmark (2005:18) ‘A development has taken place ‘in the shadow’ of national mandating. The national system of mandating is not geared towards the initial proposal-making phase based on transnational negotiations with the Commission acting as a ‘network manager.’” These ‘shadow networks’ make it difficult to individuate the real owners of competencies and responsibilities. Sverdrup (2003:17) puts it this way: ‘These developments challenge the traditional principle of sovereignty that has been a fundamental building brick in the European administrative order. The principle of institutional independence is gradually being stretched and it is gradually being replaced by an idea of administrative interdependence.’

ii. The ideal of efficiency and measurable outcomes

‘While ministers are indulging in the competitive rhetoric of the political theatre, and departmental policy advisers are packaging and repackaging their scripts, agencies are getting on with the job.’ (Pollitt et al. 2004:5).

The issue of efficiency has received increased attention in recent literature discussing democratic aspects of ‘multi-level governance’ and ‘networks’ in the European cooperation (see for example Dehousse 2002, Kohler-Koch 2002, Sørensen and Torfing 2004). One of the key issues is the balance between ensuring effective problem-solving capacity and having legitimate administrative structures subjected to political control. The first type of concern may be linked to the concept of ‘output democracy,’ where the focus is on the superior performance of the agency, relative to the result that would be likely if elected politicians or ministries were to perform the functions themselves (Thatcher and Stone Sweet 2001). Enhancing expertise is assumed to increase effectiveness (Pollitt et al. 2004:20). According to Majone (1993), markets are best served by an efficiency-oriented policy that is best provided by experts independent of political pressure. In network governance, negotiators have relatively flexible mandates from their constituencies – whereas, in more hierarchical systems, their

negotiating position is much more rigid due to ‘narrow coupling’ with their constituencies (Jachenfuchs 2001: 254).

With regard to the NPM approach and the decentralization of the administrative apparatus in most European countries during the 1980s and 1990s, the focus was primarily on the anticipated gains in efficiency. Securing expert autonomy from political interference was expected to result in easier and faster decision-making behavior at the lower level of the administrative hierarchy. Peters (2001:9) underlines that in many cases these reforms have had the paradoxical outcome of actually increasing the powers of non-political officials. The emphasis on external, measurable outcomes rather than hierarchical compliance may lessen the capacity of politicians to control bureaucrats.

As to the networks between the regulatory agencies and the European Commission discussed in this paper, they may be said to contribute to ensuring more *effective* implementation of the legal acts on the ground and to enhance a harmonized internal market. In the words of one of the executive officers interviewed, ‘*we have so many practical problems with the directives, so it is necessary that we have a word to say both when the laws are in process and when they are to be implemented.*’

Moravcsik (2002) defends the functioning of international institutions by conceptualizing them as agents that deliver certain services to the principals, who are democratically elected governments. Hence, both for the Commission and the member states the networks may be seen a workable solution to the familiar problem of how to ensure uniform implementation without transferring more direct power from the national to the supra-national level. In this respect it is possible to understand these arrangements through ‘inter-governmental lenses,’ as securing an important political goal for the member states – that of harmonizing the Internal Market. However, we have seen that this development may challenge notions of ‘sovereignty’ and ‘accountability’ which may be anticipated as crucial elements of democratic governance. Checkel and Zürn (2005:38) underline that whereas the effectiveness of international institutions may benefit from

socialization processes, citizen participation and control may be degraded. According to Held and McGrew (1993:262–64, cited in Hueglin 1999:25) we are witnessing ‘a re-articulation of political space in which the notions of sovereignty and democracy are being prised away from their traditional rootedness in the national community and the territorially bounded nation state.’

In relation to agencies at the European level, there is growing awareness in the EU of the need to ensure the autonomy of experts while also ensuring political and legal control through increased transparency, codes of conduct and principles of good administration (Dehousse 2002, Sverdrup 2003).⁹ In my opinion, this awareness may also find expression in relation to the role of national regulatory agencies at the European level.

7. Conclusions and further research

‘Public administration is in the midst of a balancing act where its institutional role is redefined and reorganized. It is part of a long-term process of reorganizing inter-institutional relations and re-defining democratic and constitutional ideals in a multi-level and multi-centered Europe’ (Olsen 2003: 523).

Organizational transformation implies reorganizing existing balances between dynamics by creating new temporary balances among them (Olsen 2005). We have seen that a new way of differentiation and coupling of the national administrative units has been emerging within the European context. Different institutions at the European level activate different institutions in the national administrations systematically. Fuelled by new and faster electronic technology, a strong informal penetration is taking place between the European Commission and the regulatory agencies – largely outside the control of the domestic politico-administrative leadership, limiting the capacity of hierarchical coordination. This development may be questionable from a democratic point of view.

⁹ This is explicitly outlined in COM (2002) 718 final: Communication from the Commission, which is the operating framework for the Regulatory Agencies.

My findings are in line with a ‘multi-level governance’ perspective in EU research, highlighting networks, policy communities and institutional couplings and alliances cutting across levels of governance, challenging the intergovernmental or state-centric interpretation of EU integration (see e.g. Kohler-Koch 1999, Hooghe and Marks 2001). According to Hooghe and Marks (2001), the empowerment of both supranational and sub-national actors means that national governments are losing their ‘gatekeeper’ role. Even if these assumptions are in line with some of the core arguments in this paper, I will argue that focus on different hierarchical levels within the national state administrations is lacking in the multi-level governance literature, which has tended to focus on actors at the sub-national level (regions) or in civil society (interest organizations, private companies etc.). My point is that the internal institutional configurations within the national administrations do matter, in addition to the institutional configuration at the European level. We have to examine the bureaucratic machinery of the nation-state in order to unravel the various institutional affiliations in which government officials are embedded, ultimately determining the relative primacy of different institutional dynamics penetrating them (Trondal 2001, Egeberg 2005). Organizational theory can serve as a useful tool for revealing these dynamics.

According to Toonen (2001:200, cited in Pierre 2001:): ‘We will see the development of different sorts of civil servants, some more managerial and some more strategically oriented, some more regulative and others more evaluative [...]. This development forces us to leave behind the notion of the politics-administration dichotomy and rethink the relationship, problems and conflicts of politics and administration.’

The EU refocuses the attention, energies, timing and initiatives of domestic governments (Olsen 2003), opening new arenas for interaction between public administrations and Community institutions (Egeberg, Schaefer and Trondal 2003). It is hoped that this paper can help to increase our understanding of the

dynamics and the change of dynamics between these institutions at various levels of governance in European cooperation.

References/literature

- Andersen, S. S. (1997): Case-studier og generalisering. Forskningsstrategi og design. Bergen: Fagbokforlaget.
- von Bogdandy, A. (2003): 'Links between National and Supra-national Institutions: A legal view of a new Communicative Universe' in B. Kohler-Koch (ed.): Linking EU and National Governance. Oxford: Oxford University Press.
- Christensen, T. and Lægreid P. (2001): New Public Management. The Transformation of ideas and Practice. Aldershot: Ashgate.
- Christensen, T. and Lægreid P. (2005): 'Agencification and regulatory reforms,' Paper prepared for the SCANCOR/SOG workshop on 'Automization of the State: From integrated administrative models to single purpose organizations.' Stanford University, California, April 1–2 2005.
- COM (2001) 428 final: 'European Governance. A White Paper.' (http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf).
- COM (2002) 718 final: Communication from the Commission. The operating framework for the Regulatory Agencies. (http://europa.eu.int/comm/governance/docs/comm_agence_en.pdf).
- Dehousse, R. (1997): 'Regulation by networks in the European Community: The role of European agencies,' Journal of European Public Policy, 4(2): 246–261.
- Egeberg, M. (1999): 'The Impact of Bureaucratic Structure on Policy Making,' Public Administration, 77 (1): 155–170
- Egeberg, M. (2001): 'How federal? The organisational dimension of integration in the EU (and elsewhere),' Journal of European Public Policy 8: 728–746.
- Egeberg, M. (2003): 'How bureaucratic structure matters: an organizational perspective,' in B.G. Peters & J. Pierre (eds.): Handbook of Public Administration. London: Sage.
- Egeberg, M. (2005). 'EU institutions and the transformation of European level politics. How to understand profound change (if it occurs?)' Comparative European Politics, 3: 102–117.
- Egeberg, M, G. Schaefer and J. Trondal (2003): "The many faces of EU committee governance", West European Politics, 26(3): 19–40.
- Eriksen, E.O. and J.E. Fossum (eds.) (2000): Democracy in the European Union. Integration through Deliberation? London: Routledge
- Esmark, A. (2005): 'Tracing the National Mandate – Modes of governance in the Europeanization of Danish Administration.' Paper prepared for CONNEX Conference: Institutional dynamics and the transformation of European politics. Oslo. 26.–27. May 2005.

- Flinders, M. (2004): 'Distributed Public Governance in the European Union.' *Journal of European Public Policy*, 11: 520–544.
- Gornitzka, Å. (2005): 'Networking Administration in areas of national sensitivity. The Commission and European higher education.' Paper prepared for CONNEX Conference: Institutional dynamics and the transformation of European politics. Oslo 26.–27. May 2005.
- Greve, C. et al. (1999): 'What is a Name? Defining Quangos from a Comparative Perspective.' *Governance*, 12 (2): 129–146.
- Haas, P. (1992) 'Epistemic Communities and International Policy Coordination,' *International Organization*, 46: 1–35
- Held, D. and A. McGrew (1993): 'Globalization and the Liberal Democratic State', *Government and Opposition* 28, 2: 261–88
- Heuglin T. (1999): 'Government, governance, governmentality: understanding the EU as a project of universalisms' in B. Kohler-Koch and R. Eising (eds): *The Transformation of Governance in the European Union*, London: Routledge.
- Herrmann K.; T. Risse and M. Brewer (eds) (2004): *Transnational identities: becoming European in the EU* Lanham, MD: Rowman & Littlefield
- Jachtenfuchs, M. (2001): 'The Governance Approach to European Integration,' *Journal of Common Market Studies*, 39 (2): 245–264.
- Jacobsson B.; Læg Reid P. and Pedersen O. (2001): 'Divergent Roads to Europe' LOS-senter Notat 0112. Bergen.
- Jacobsson B.; Læg Reid P. and Pedersen O. (2004): *Europeanization and Transnational States. Comparing Nordic central governments*. London/New York: Routledge
- Knill, C. (2001): *The Europeanization of national administrations. Patterns of institutional change and persistence*. Cambridge: Cambridge University Press.
- Kohler-Koch, B. (2003): 'Interdependent European Governance' in B. Kohler-Koch (ed.): *Linking EU and National Governance*. Oxford: Oxford University Press.
- Kreher, A. (1997): 'Agencies in the European Community – step towards administrative integration in Europe,' *Journal of European Public Policy*, 4(2): 225–245.
- Laffan, B. (1998): 'The European Union: A Distinctive Model of Internationalization,' *Journal of European Public Policy*, 5(2): 235–253.
- Majone, G. (1993): 'The European Community Between Social Policy and Social Regulation,' *Journal of Common Market Studies*, 32 (2): 153–70.
- Majone, G. (1997): 'The new European agencies: regulation by information,' *Journal of European Public Policy*, 4 (2): 262–275.
- March, J. and Olsen J.P. (1989): *Rediscovering Institutions*. New York: Free Press.
- Martens, M. (2005): 'Double-hatted agencies on the European scene? A case study of the IMPEL network' ARENA Working Paper 12/2005, University of Oslo.
- Moravcsik, A. (2002): 'In Defense of the "Democratic Deficit": Reassessing Legitimacy in the European Union,' *Journal of Common Market Studies* 40 (4): 603–24.
- Nedergaard, P. (2001): *Organiseringen av Den Europæiske Union*. Copenhagen: Handelshøjskolens Forlag.
- OECD (2002): *Distributed Public Governance: Agencies, Authorities and other Government Bodies*, GOV/PUBG. no. 15 Paris: OECD.
- OECD (2004): *Public Sector Modernisation: Changing Organisational Structures*, Policy Brief/OECD Observer. Paris: OECD

- Olsen, J.P. (2003): 'Towards a European administrative space?' *Journal of European Public Policy*, 10: 506–531.
- Olsen, J.P. (2005): 'Maybe it is time to rediscover bureaucracy?' ARENA Working Paper 10/2005. University of Oslo
- Pierre, J. (2001): 'Parallel paths? Administrative reform, public policy and politico-bureaucratic relationships in Sweden' pp. 132–141 in Peters B. G. and Pierre J. (eds.) *Politicians, Bureaucrats and Administrative Reform*. London: Routledge/ECPR Studies in European Political Science.
- Pollitt, C. et al. (2004). *Agencies. How Governments do Things Through Semi-Autonomous Organizations*. London: Palgrave.
- Pollitt, C. and C. Talbot, eds. (2004): *Unbundled Government*. London: Routledge.
- Schout, A. and Jordan A. (2005): 'Coordinated European Governance: Self-Organizing or Centrally Steered?' *Public Administration* 83(1):201–220
- Selznick P. (1957): *Leadership in Administration*. New York: Harper & Row.
- Simon, H. A. (1965): *Administrative Behavior*. New York: The Free Press.
- Statskonsult (1999): *Norsk deltakelse i EU-komiteer*. No.06/99. Oslo.
- Stone Sweet A.; Fligstein N. and Sandholtz W. (2000): 'The Institutionalization of European Space' pp. 1–28 in Stone Sweet A, Fligstein N. and Sandholtz W., *The Institutionalization of Europe*. Oxford: Oxford University Press
- Sverdrup, U. (2003): 'De-nationalizing public administration policy?.' Manuscript. ARENA, University of Oslo.
- Tranøy B. S. and Ø. Østerud (2001): *Den Fragmenterte staten : reformer, makt og styring. Makt- og demokratiutredningen 1998–2003*. Oslo: Gyldendal akademisk
- Trondal J. and T. Larsson (2005): 'After Hierarchy? The Differentiated Impact of the European Commission and the Council of Ministers on Domestic Executive Governance,' ARENA Working Paper 22/2005, University of Oslo.
- Trondal, J. and F. Veggeland (2003): 'Access, voice and loyalty: the representation of domestic civil servants in EU committees,' *Journal of European Public Policy*, 10(1): 59–77.
- Veggeland, F. (1999): 'Delegering, læring og politisk kontroll i EØS-arbeidet: Norsk deltakelse i EU-komiteer på veterinær- og næringsmiddelområdet,' *Internasjonal Politikk*, 58 (1): 81–112
- Wallace, H. (2003): 'Contrasting Images of European Governance' in B. Kohler-Koch (ed.): *Linking EU and National Governance*. Oxford: Oxford University Press.
- Wessels, W. (1998): 'Comitology: fusion in action. Politico-administrative trends in the EU system,' *Journal of European Public Policy*, 5 (2):209–234
- Yataganas, X. (2001): 'Delegation of regulatory authority in the European Union. The relevance of the American model of independent agencies' *Jean Monnet Working Paper* 3/01. New York University School of Law.
- Yin, R.K. (1981): 'The case study crisis: Some answers,' *Administrative Science Quarterly*, 26: 58–64.