



***Building Executive Power at the
European Level***
On the role of EU-level agencies

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*Working Paper
No. 10, June 2009*

ARENA Working Paper (online) | ISSN 1890- 7741

Working papers can be downloaded from the ARENA homepage:
<http://www.arena.uio.no>

Abstract

Establishing separate *executive* bodies of a confederation or of a nascent federation of states seems in many respects to be the 'hard case' of institution-building. This article argues that 'agencification' at the EU level is basically about increasing the potential for more uniform implementation of EU policies across member states. The aim of this article is explorative by (i) assessing the current organisation and capacities of EU-level agencies, (ii) explaining why EU-level agencies emerge, and (iii) empirically exploring the actual role of EU-level agencies in their relationship to national administrations. The article argues that the recent booming of EU-level agencies is strongly embedded within and conditioned by existing institutional structures. Empirically, the article presents fresh survey data showing that EU-level agencies are involved in the formulation of implementation guidelines and even in the handling of individual cases within national agencies. Hence, EU-level agencies may be capable of significant task expansion beyond their formal mandates.

Introduction

Establishing separate *executive* bodies (outside the council of ministers) of a confederation or of a nascent federation of states seems in many respects to be the 'hard case' of institution-building. The reason for this may be that it creates capacity for action and execution and not just for talk and formal decision-making, and that action of separate executive bodies might be perceived as particularly threatening by constituent governments less eager to transfer power upwards. It seems to have been easier to form (parliamentary) assemblies and courts of justice. Not only in the history of European-level cooperation executive bodies have obviously been the 'hard case', but also as regards the way other regions of the world organise their common activities. If we take a quick glance on how federal states were forged, the same pattern is discernible: in the United States of America the Congress and the Court were both well established in Washington before a federal executive attained adequate capacity to act on a broader scale (Skowronek 1982). Such administrative capacity didn't emerge automatically as a response to functional needs but had to be extorted from already established institutional structures, in particular from the constituent states. In Germany in 1871 the body of the constituent states ('Bundesrat') was thought to be both the second legislative chamber *and* the federal government (Gunlicks 2003: 341). A new and separate executive centre at the federal level emerged only gradually during the following years.

As regards European-level cooperation international governmental organisations (IGOs) had been in place for about a hundred years before a separate executive body in the form of the High Authority of the European Coal and Steel Community was born. At this time international courts of justice were already known from the Hague system and (parliamentary) assemblies had been constituted within the United Nations, NATO and the Council of Europe¹. In its early history the successor of the High Authority, the European Commission (Commission) faced challenges of an almost existential character, for example during the 'empty chair' crisis in 1965 (Loth 2007). This crisis could be seen as member-state reactions (notably from France) towards prospects for a strengthening of executive powers of the Commission. Although the history of EU-level agencies has not been as dramatic as the history of the Commission, it nevertheless brings similar tensions to the fore

¹Although the Assembly of the European Coal and Steel Community was not quite an innovation at the time of its erection, it has, as an EU institution, over time developed into what in comparative terms could be seen as a rather unique institution and a 'hard case'. No other 'international parliament' is directly elected and has achieved legislative power to the same extent.

since such 'agencification' in many cases is basically about transferring action capacity from the constituent states to a new centre at the supranational level (Curtin and Egeberg 2008; Trondal and Jeppesen 2008).

There are two quite general research questions that can be raised in relation to the building of institutions such as these: 1) Under what circumstances will an institution that is thought to challenge the existing power structure be established? 2) If established, under what conditions will such institutions be able to *actually* transform politics and policies? This article will, however, have more of an explorative character. Thus, subsequent to a section on data and method, this article unpacks key organisational characteristics and resources of EU-level agencies. Next, the article suggests an institutional approach to explain agency formation. This approach is presented as complementary to existing functionalist approaches, the logic of contingent events, and the logic of fashionable ideas. Given the nature of the phenomenon (as outlined above) we assume that EU-level agencies tend to come about through power struggles and compromises conditioned by existing institutional orders rather than 'popping up' more or less automatically as a pure codification of functional needs. If this assumption is correct, we expect to find EU-level agencies strongly embedded within existing institutional structures.

Although a study shows that EU-level agencies that are endowed with formal decision-making power seem to be heavily controlled by national governments through various formal procedures (Christensen and Nielsen 2008), we present a small-N elite survey which illustrates that the picture may be more complicated when it comes to actual behaviour: EU-level agencies seem in general to involve themselves in much more than information-gathering; they seem to take actively part not only as far as the formulation of *implementation guidelines* is concerned but also as regards national regulatory agencies handling of *individual cases*. Such task expansion is in line with several case studies on individual EU-level agencies that we will return to in the last section of this article.

But first of all we will explore what we think is underlying the politics of agencification at the EU level; namely the fact that *how we organise implementation processes might affect the actual application of EU legislation*. Thus, the existence of EU-level agencies might have the potential for increasing implementation uniformity across member states, or, to put it otherwise, to reduce the room for national adaptation of EU policies. In addition, such bodies provide more administrative capacity for, on a routine basis, feeding supranational concerns into the decision process also at the policy formulation stage. Interestingly, the huge and growing number of studies on implementation of EU policies has so far focused on various *national* factors,

like administrative culture and capacity, veto players and political party constellations as independent variables. More attention has also been devoted to law transposition than to law application (for reviews of the literature, see Sverdrup 2007 and Treib 2008). Thus, whether administrative capacity at the EU level or the way implementation structures are organised across levels of governance matter, seem to have been neglected.

I. Implementation structures and policy implications

In a multi-level system the implementation of common policies adopted at the central level might be organised in different ways; each way creating more or less leeway for lower-level adaptation. An arrangement in which the implementation of common policies takes place *indirectly* through lower-level governments is probably the form that allows the most varied law application across territories. This kind of 'administrative sovereignty' enjoyed by the lower level was at the outset the intended form in the Federal Republic of Germany as well as in the EU (Gunlicks 2003; Hofmann and Türk 2006). Studies do indeed underpin that the implementation of EU policies has, to a considerable degree, been affected by national politics and administrative traditions and capabilities (Sverdrup 2007; Treib 2008).

If administrative structures at the lower level are run by the central level rather than by the lower level itself, inputs from political bodies (parliaments, ministries, etc.) at the lower level are not, at least not on a regular basis, inserted into the implementation process. Thus, the scope for lower-level policy adaptation according to 'local' needs is severely circumscribed when implementation is *direct*. Administrative structures at the lower level owned by the central level may, however, be of two kinds: either they may be set up according to a 'prefect model' meaning that administrative structures within a lower-level territory is hierarchically coordinated at this level, or they may be composed of specialised, sectoral agencies with none or few horizontal linkages among them at the lower level. As could be expected, the first variant ('territorial specialisation') seems to be more sensitive to broader 'local' concerns than the second variant ('sectoral specialisation') (Egeberg 2003), however, not as sensitive as 'indirect administration'. The reason why some variation in implementation practices across territories might be observed even when the central level run (mutually disconnected) sectoral agencies at the lower level is that bureaucracies, like other organisations, usually make *some* adjustments to the environments within which they exist (Wilson 1989). The arrangement that is most conducive to uniform application of common legislation across the whole territory assigns law application to bodies at the central level. This is particularly so if these central bodies themselves also are

specialised according to sector or function. If they, on the contrary, are organised by territory, meaning that their internal structure reflects the territorial composition of the system, this might increase their ability to see the need for some 'local' policy adaptation at the lower level (Egeberg 2003).

In addition to the various relatively 'pure' forms of implementation structure outlined above, we may in real life find various hybrid or in-between arrangements. For example, in the EU, where the central level does not possess its own agencies at the national level, one could interpret efforts by the EU to harmonise structural elements of certain national administrations (e.g. in communication and transport) as a means to achieve more uniform implementation practices across member states. Also, and probably far more important, the emergence of 'partnerships' between the Commission and national regulatory agencies, partly circumventing ministerial departments, might be interpreted in the same vein. Thus, national agencies may operate in a 'double-hatted' manner, serving both as parts of national administrations *and* as parts of a Union administration (Egeberg 2006; Egeberg and Trondal 2009). In Germany, where the federal government, like the Commission, in principle has to rely on lower-level governments for the implementation of common policies, a parallel development of 'double-hatted' *Land* agencies, serving *Land* ministries as well as the federal government, has been observed (Gunlicks 2003). As in the EU, agencies organised at arm's length from ministerial departments at the lower level is probably a prerequisite for such a development to take place. Finally, a third hybrid form, which is the main topic of this article, is the establishment of EU-level agencies that might find themselves firmly embedded in networks of national agencies; seemingly a political compromise between direct implementation (from the central level) and indirect implementation (via national administrations). In Table 1 we have systematised the policy implications of various implementation structures.

Table 1: Expected policy implications of various implementation structures

Implementation structures	Scope for 'local' adaptation of policy content across lower-level territories					
	<i>Broad</i>			<i>Narrow</i>		
	1	2	3	4	5	6
Indirect implementation	X					
Indirect/direct implementation (double hatted agencies)		X				
Direct implementation ('prefect model')			X			
Direct implementation (sectorial agencies lower level)				X		
Direct implementation (central bodies spec. by territory)					X	
Direct implementation (central bodies spec. otherwise)						X

II. Data and method

This study benefits from three sources of data. First, to assess the organisational structure and capacities of EU-level agencies a 'survey' of the web-sites of 35 EU-level agencies have been conducted. This survey was completed in 2008 and includes information such as when the agencies were created, their geographical location, types of tasks, whether they have formal decision-making powers, the budget and staff sizes, the recruitment procedures and size and composition of the management boards. However, some agencies – particularly the newly established ones – lack information on certain variables on their web-sites. Second, we use existing literature that aims at explaining the formation of EU-level agencies. Third, the organisational overview provided by this 'survey' is supplemented with questionnaire data that unpack some aspects of the actual relationship between EU-level agencies and national agencies. This second survey was conducted among directors general in Norwegian national agencies who were asked to report on their experiences with EU-level agencies. The goal of this survey was to analyse how EU-level agencies actually work and how these agencies relate to and redirect the activities of domestic agencies. Each

informant was asked about the content of his or her agency's relationship to EU-level agencies, as well as about the corresponding relationships to the Commission and EU-related networks of 'sister agencies' in other countries. Questions were also posed about the role of EU-level agencies' management boards and about power relations within agency networks. The survey was administered as a postal questionnaire in 2008. The population of national agency leaders totalled 48 whilst 40 answered the questionnaire, giving us a response rate of 83 percent. The high response rate may be partly due to the fact that the Ministry of Government Administration administered the survey as part of the preparatory work of a ministerial study group. The questions analysed in this article are, however, all formulated by the authors. In order to avoid strategic answering the respondents were kept anonymous.

Even small-N surveys merit attention because research on EU-level agencies rarely offers statistical data concerning their actual involvement in national administrative processes. One caveat is necessary though with respect to our questionnaire study: since Norway is not a member of the EU, Norwegian agency leaders can not be claimed to be representative for the whole population of national agency leaders within the EU. Non-membership means that Norwegian politicians and officials are not taking part in formal decision-making processes within EU institutions. However, due to being a partner of the European Economic Area (EEA) and Schengen agreements, Norway is obliged to implement most internal market and border control legislation stemming from the EU. Norwegian officials are allowed to participate in a vast number of management boards of EU-level agencies, although without voting rights. At present Norway is formally represented in the management boards of 16 EU level agencies (46 percent). Studies covering how several policy fields work in an EU multilevel system of governance show that the role of the Norwegian administration is not in practice significantly different from that of EU member state administrations (Egeberg 2006; Martens 2008a). This is far from surprising given that most EU legislation is to be implemented in Norway: it follows that Norwegian executive bodies in charge of implementation have to relate to EU-level bodies much in the same way as member state administrations. Thus, Norwegian national agency directors should be quite relevant informants in this respect. As regards the role of EU-level agencies Norway might be seen as a kind of critical case within the European administrative space: if Norwegian national agency leaders report that EU-level agencies have assumed a key role, it is probably no reason to believe that EU-level agencies should not play an equally important role in relation to member state administrations. However, the observations from this small-N survey should be considered suggestive because of its limited size and country bias.

III. Building executive power through EU-level agencies

Only two EU-level agencies were created prior to the 1990s: the Centre for Development of Vocational Training (CEDEFOP) and the European Foundation for the Improvement of Living and Working Conditions (EUROFUND). These agencies were established as early as the mid-1970s. The second generation of EU-level agencies emerged in the mid-1990s: The European Environment Agency (EEA), the European Training Foundation (ETF), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Agency for the Evaluation of Medicinal Products (EMA), the Office for Harmonisation of the Internal Market (OHIM), the European Agency for Health and Safety at Work (EUOSHA), the Community Plant Variety Office (CVPO), the Translation Centre for Bodies of the European Union (CDT), the European Monitoring Centre for Racism and Xenophobia (EUMC), and the European Agency for Reconstruction (EAR). The third step towards agencification at the EU level was taken at the beginning of the 2000s with the establishment of the European Food Safety Authority (EFSA), the European Maritime Safety Authority (EMSA), the European Aviation Safety Authority (EASA), the European Railway Agency (ERA) and the Network and Information Security Agency (NISA). Recently, the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), the European Centre for Disease Prevention and Control (ECDC), the Community Fisheries Control Agency (CFCA) and the European Chemicals Agency (ECHA) have been founded.² Options for additional agencies are being discussed, such as in the field of inland waterways and air traffic management (Schout 2008). At present there are 35 EU-level agencies with about 4700 employees.

'Agencification' is a well known phenomenon within Europe's national executives (Christensen and Lægveid 2006; Pollitt et al. 2004; Wettenhall 2005). As seen above, the 'agency fever' at the EU level has been accelerating more recently (Dehousse 2008; Kelemen 2002). There exists no single model for organising EU-level agencies. They are typified by their variety. The agencies have different legislative and budgetary powers and different management

² In addition, the European GNSS Supervisory Authority (EGSA) and the European Fundamental Rights Agency (EFRA) are under establishment. Of the different agencies, those established in the second and the third pillars should be differentiated. The European Institute for Security Studies (ISS) and the European Union Satellite Centre (EUSC) were re-founded in 2002 after security matters were transferred from the WEU to the EU. The European Defence Agency (EDA) was established in 2004 in the framework of a joint action of the Council of Ministers. In the third pillar we find the European Police College (CEPOL) established in 2000, the European Judicial Cooperation Unit (EUROJUST) established in 2002 and the European Police Office (EUROPOL) founded in 1995.

boards. However, some common generic features are also present with respect to their management, the degree of *de jure* and *de facto* autonomy, accumulated administrative capacity, as well as their role in the implementation of EU legislation. The accumulated administrative capacities of EU-level agencies may be assessed by considering their number and size. Above we depicted three waves of agency formation at the EU level – the initial one in 1975, a second one from 1990 to 1999, and the third from 2000 to present. At present 35 EU-level agencies are in operation and more are in preparation. Seven of these agencies are granted some amount of formal decision-making powers³, while the remaining agencies have tasks such as information, data gathering, technical support and administration. Most EU-level agencies have restricted *de jure* powers, particularly with regard to making decisions. EASA is one key example where great expectations were partly dashed. When planned and established, EASA was expected to acquire major inspection powers. The result, however, suggests that EASA has received much less *de jure* powers (Schout 2008). One pertinent question is to what extent the growth of EU-level agencies has curbed the growth of the Commission services. The institutional crisis following the fall of the Santer Commission in 1999 propelled assumptions that future growth of separate executive powers in the EU was most likely to happen outside the Commission – most notably among EU-level agencies. However, Figures 1 and 2 might indicate that the mushrooming of EU-level agencies over time has occurred in parallel with expansion of the Commission services. Although the figures in these tables are not perfectly comparable, the most recent boom of separate 'executive' bodies at the EU-level (outside the Commission and the Council) seem not to have put Commission expansion on a halt.

³ OHIM, CVPO, EAR, EASA, EDA, EUROPOL and ECHA.

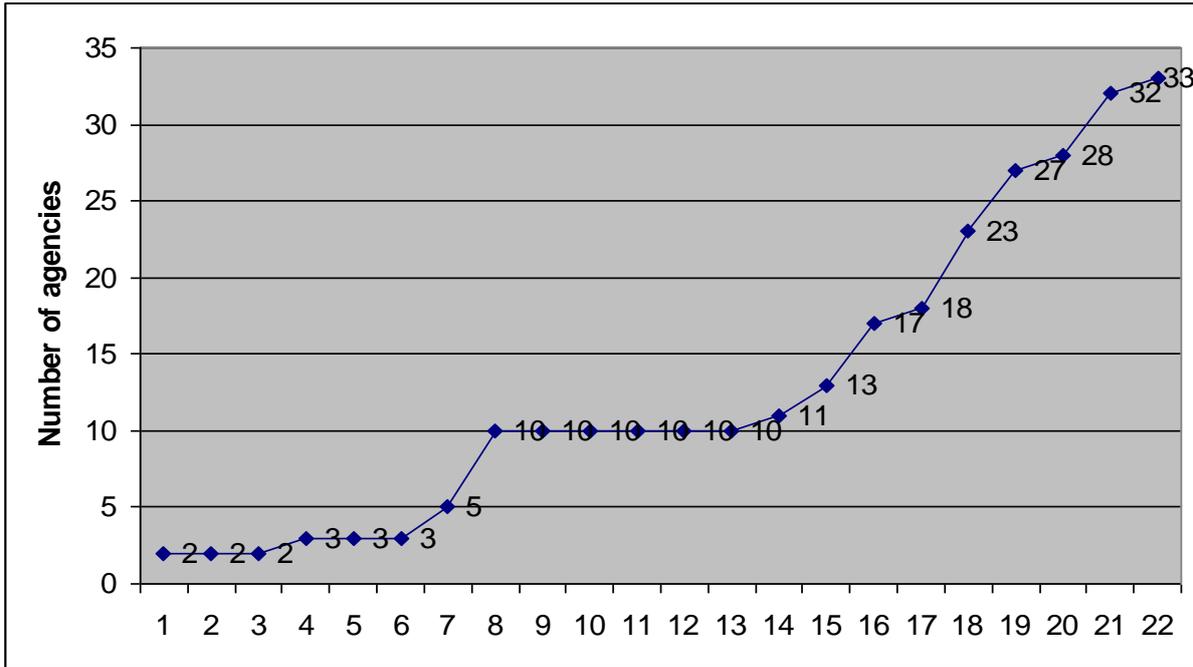


Figure 1: Numbers of EU-level agencies, 1975-2008

Year: 1975, 1980, 1985, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008

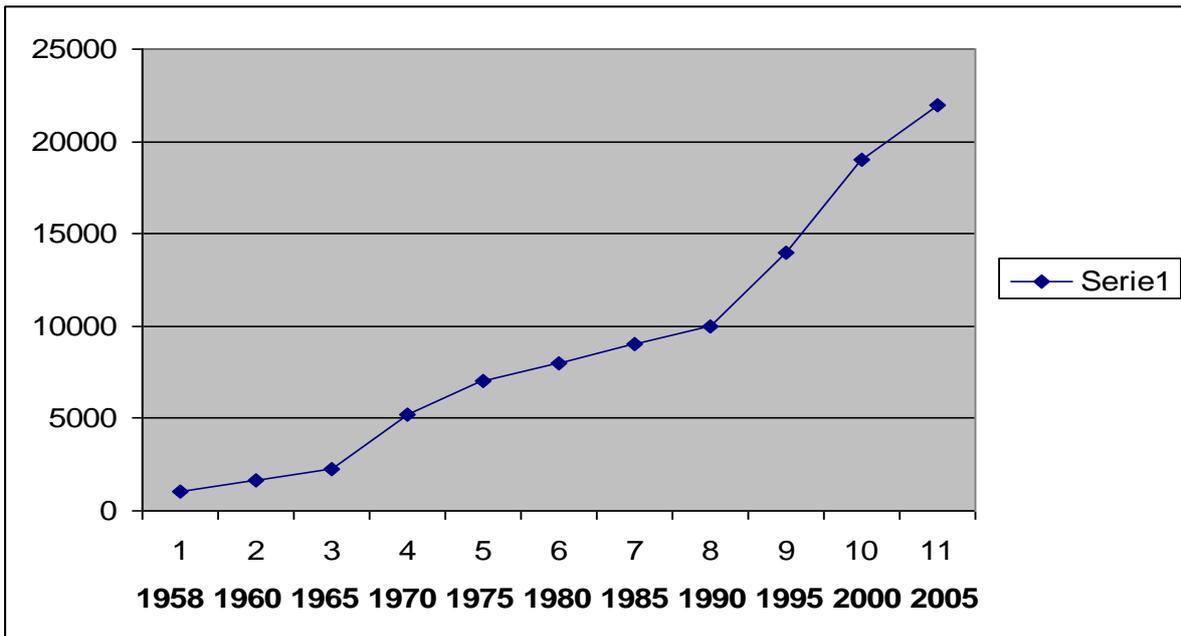


Figure 2 Numbers of Commission services personnel, 1958-2005

Sources: Dumoulin 2007: 220; Stevens and Stevens 2001: 15

Figure 2 visualises the massive increase of personnel in the Commission services from its inception to present. Whereas the Commission started out in 1957 as a relatively small club of highly dedicated, often temporary officials, it houses today around 23 000 officials, mostly employed in permanent positions. The largest increase in staff has happened post 1990, partly due to

increased workload caused by the Communitarisation of ever more policy areas, and partly due to the enlargements in 1994 and 2004. The large Commission staff also reflects continuous legislative activity of the Prodi and Barosso Commissions from 2000 to 2007 (Kurpas et al. 2008: 3). Hence, the Commission in general seems not to do 'less'. However, the Commission seems to put greater 'focus on the implementation of what is already in place' (Kurpas et al. 2008: 20). Thus, the need for implementation bodies at the Community level *and* at the national level is ever more crucial. In sum, both the Commission and EU-level agencies have acquired increased administrative capacity during recent years, partly due to a general strengthening of supranational executive powers, but also due to subsequent enlargements.

Figures 1 and 2 also demonstrate that the post 2000 area has witnessed a parallel growth of Commission staff and EU-level agencies. Today the Commission officially states that EU-level agencies have become an 'important part of the EU's institutional machinery' (Commission 2008c: 2). Our survey of the web-pages of all current **35** EU-level agencies shows that these agencies at present have roughly 4700 staff, which gives an average of 142 officials per agency. This number includes both A-level officials – who are of particular relevance when assessing executive powers – but also assistants of different kinds. The typical agency official is employed in temporary or quasi-temporary positions. However, these figures cover large variations. While the European Police College (CEPOL) has a staff size of 25 officials, the Office for the Harmonisation of the Internal Market (OHIM) has over 650 employees. Table 2 makes a simple distinction between small, medium and large EU-level agencies, measured by their number of staff. As shown, most EU-level agencies tend to be relatively large or medium sized rather than small.

Table 2: Distribution of EU-level agencies, by size (percentages – absolute numbers in parentheses)*

Less than 50 officials	Between 50 and 100 officials	More than 100 officials	Total
23	30	47	100
(7)	(9)	(14)	(30)

* Information on staff size was not available from three agencies

EU-level agencies are typically assigned a management board whose main function is to decide on the agency's budget, the work programme, and to appoint its director general. There is no such thing as a typical management board in EU-level agencies. These boards are typified by their diversity with

respect to size and composition. Most agencies have a management board consisting of some 20 to 50 representatives. These figures, however, hide great variations with respect to the size of the management boards. Whereas the European Centre for the Development of Vocational Training (CEDEFOP) has 91 members of its board, the Education, Audiovisual and Culture Agency (EACEA) has 5 members on its board. The typical management board consists of 32 representatives, including 27 member-state representatives, two Commission representatives, and three 'other' members. Hence, the management boards are typically composed by a large majority of member-state representatives and a small minority of Commission representatives. However, the increased power of the EP has accompanied an aspiration to influence agency design and to be represented on the management boards (Kelemen 2002: 105). So far, however, the EP is represented on only 18 percent of the boards. Moreover, industry, interest organisations and research institutes have also demanded attendance on the management boards of EU-level agencies – both as members and observers. They now participate on about half of these boards.

Thus, we have seen that a significant number of agencies with considerable staff resources have in fact been established over the last couple of decades. We also know that these agencies are specialised according to function rather than territory (Trondal and Jeppesen 2008), something which is expected to increase their potential for contributing to implementation uniformity (cf. Table 1). So far, however, only rather limited formal decision-making power has been conferred upon the new bodies. Thus, many are only assigned information and data-gathering tasks. And they have become formally embedded in highly intergovernmental structures: as far as composition of the management boards is concerned, they display many commonalities with Council working parties or comitology committees.

The ambiguous organisational structure characterising EU-level agencies mean that we have to study how they work in practice in order to learn how they actually function. From the literature we know that bureaucratic task expansion may take place in settings such as this, e.g Barnett and Finnemore (2004) show that even secretariats within IGOs are capable of significant task expansion. And, even if the management boards are composed very much like Council or comitology groups, we have to take into consideration that agencies are *not* primarily secretariats for the boards (as the Council secretariat is for Council groups). Finally, although member states dominate the boards, this doesn't necessarily mean that *ministries* control what is going on in the boards. It could very well be that member state representation on the boards of EU-level agencies is taken care of by their national counterparts rather than ministries. We know that national agencies in general enjoy a certain amount

of discretion vis-à-vis their respective ministerial departments and that they may practice a kind of dual loyalty or 'double-hattedness' in relation to their parent ministry and to EU-level bodies respectively (Egeberg 2006; Egeberg and Trondal 2009). Before we explore how EU-level agencies work in practice, however, the next section surveys existing literature to try to explain how and why EU-level agencies are established.

IV. The politics of agencification - explaining agency formation

A functional account

In order to make sense of 'agencification' scholars have traditionally analysed the development of EU-level agencies along functional lines, emphasising their ability to resolve various collective action problems. The principal-agent model is often the analytical expression of this functional logic, together with the notion of transaction costs (Tallberg 2003: 25). The benefits 'lie in the reduction of political transaction costs, by providing solutions to collective-action problems that prevent efficient political exchange' (ibid: 26). In the special issue of *Journal of European Public Policy* (1997), Dehousse, Kreher, Majone and Shapiro discuss the establishment and functioning of EU-level agencies along these lines. They see the development of agencies in the EU as a response to conflicting pressures following the creation of the internal market – and in particular as a response to shortcomings in the existing regulatory approach of the Commission (Dehousse 1997: 246-47). Agencies could relieve the Commission of specific administrative tasks, which would leave the Commission greater room to concentrate on giving political direction. They point out that EU-level agencies lack the independence and powers of other regulatory bodies, and are relatively 'weaker' than agencies in the US (Majone 1997: 262); (Shapiro 1997: 276-82). Nevertheless, the establishment of (more) EU-level agencies is seen as an important step towards further European integration and the creation of the internal market. This is also in line with Yataganas (2001) and Vos (2000) who see particularly the first wave of agency formation at the EU level as an answer to the need to cope with new tasks of a technical and/or scientific nature in the quest to finalise the internal market project and ensure credibility and transparency. This view has also been reflected in the Commission's own documents: In various position papers the Commission has presented itself as the principal that must evaluate the possibility of delegating a share of its powers to autonomous bodies, which will assist in completing its tasks and operating the internal market (Dehousse 2008: 792). This strategy of delegation by the Commission as a mean to focus on its core tasks is particularly outlined in the March 2000 White Paper,

'Reforming the Commission' (European Commission 2000b) where independent agencies are seen as means to improve administrative efficiency; easing the workload of the Commission and enhancing transparency and legitimacy of the EU. In sum, the pattern shown in Figure 1 above might be quite consistent with a functional explanation: the growth of EU-level agencies can be interpreted as ways of coping with the internal market as well as with Union enlargement.

Contingent events

Contingent events may help explaining institutional change and the timing of organisational birth (March and Olsen 1989, Pierson 2004). According to Curtin (2005), decisions to create several EU-level agencies have been motivated by needs to respond to particular circumstances of the moment, and in some cases the occurrence of crisis. EFSA is one case in point as it was established after the dioxin incident in Belgium and the BSE affair in Britain. BSE prompted serious criticism of the ways in which food regulation was organised within the EU (Flinders 2004, Keleman 2002, Skjerven 2005, Vos 2000). As the mad cow crisis intensified in the mid-1990s, the EP used its recently won powers to assert itself as an influential player in the design of EFSA (Kelemen 2002: 105). According to Skjerven (2005: 97) it was able to do this because unlike the member-states and the Commission, the EP was not associated with the miss-management of the policy field. The establishment of the European Maritime Safety Agency (EMEA) is another case in point. EMEA was created following a series of high-profile maritime disasters, such as the sinking of the Estonia Ferry and the Erika and Prestige tankers. The accidents was followed by extensive blame shifting among the involved parties and a general call for a uniform and effective regulatory framework within the European maritime sector (Skjerven 2005: 73). According to Skjerven (*ibid*), the Commission proposed a European Maritime Safety Agency (EMSA) as a direct consequence of these events (European Commission 2000a: 32).

Fashionable ideas – isomorphism

The creation of agencies organised at arm's length from political executives can also be seen as a *trend* in public policy and as a fashionable idea within the realms of public management (Christensen and Lægreid 2006). Meyer and Rowan (1977: 73; see also DiMaggio and Powell 1991) emphasize the importance of cultural rules within wider institutional environments which take the form of 'rationalized myths'. They are *myths* because they are widely held beliefs whose effects 'inhere, not in the fact that individuals believe them, but in the fact that they 'know' everyone else does, and thus that 'for all practical purposes' the myths are true' (*ibid*: 75). Delegating tasks to

'independent' agencies was increasingly popular in domestic politics across EU member states in the late 1980s and was therefore likely to appeal to many national governments in a EU-setting (Kelemen and Tarrant 2007: 31). When the second wave of EU-level agencies occurred during the 1990's (cf. Figure 1), the agency-idea and New Public Management (NPM) rhetoric were widespread across Europe and were also referred to in Commission documents on EU-level agencies (Kelemen 2002; Skjerven 2005). The sheer fact that EU-level agencies popped up within a fairly short period of time in the 1990s and post 2000 - and not during the 1960s or 1970s - might also illustrate the strength of fashionable ideas at the time about legitimate and efficient governance.

An institutional account

An institutional perspective as applied here ascribes an autonomous role for institutions and organisational factors that goes beyond functional needs and 'environmental determinism' (Olsen 2007). Institutions exist within a larger institutional setting and order - as is indeed the case with EU-level agencies, and innovations and change occur in the interface between different orders of institutions and interactions that exist between them (Orren and Skowronek 2004). Political institutions create elements of robustness, and concepts like 'historical inefficiency' and 'path dependence' suggest that the match between environments and new institutional structures is not automatic and precise (Olsen 2007). New governing arrangements, like EU-level agencies, do not arise reflexively or automatically in response to new conditions. Instead, they must be extorted from and mediated by the *preestablished* framework of institutions that empower and constrain political actors in different ways (Skowronek 1982). Hence, the multiple institutions in the EU may serve as an important source of both resilience and opportunities in the genesis of agencies, and rather than assuming relative efficiency as an explanation, this institutional perspective highlights the need 'to go back and look' (Pierson 2004: 47).

In line with this approach a few studies have explored the 'stickiness' of existing European administrative structures in the creation of EU level agencies. Kraphol (2004) shows that several EU-level agencies have evolved from existing EU committees and take over most of their structures, like EFSA and EMEA, while Martens (2008c) highlights that the organisational structures and standard operating procedures of ECHA to a large extent have been copied from the EMEA and the Commission framework through cut and paste. Other scholars have emphasized the particular dynamics of the EU-system that ensue among and within the EU institutions seeking to gain or

maintain political power and institutional role and position (see e.g. Dehousse 2008, Kelemen 2002, Martens 2008c). Here, agency creation is seen as partly determined by those who seek to change the existing structures and by the changes they are *able* to make and in the second instance by the arrangements that are 'carried over from the past and situated in an altered setting' (Orren and Skowronek 2004: 12), by the defenders of status quo. Kelemen (2002) and Martens (2008c) show that the Commission had a considerable stake in preserving and expanding the use of its own administrative structures, but the European Parliament (EP) and Council placed limits on increases in the Commission's budget and made this approach difficult. In line with this view, Dehousse (2008: 796) writes that from the Commission's perspective, agencies is often only a second-best alternative, 'which it will accept only if convinced that an extension of its own powers is not likely to be approved by the Council'. On the other hand, the Council has left its marks upon agency creation in restricting their tasks and agendas, securing intergovernmental management procedures as well as integrating national regulatory authorities in the committee frameworks (see Christensen and Nielsen 2008, Dehousse 2008, Martens 2008c, Kelemen 2002, Gehring and Kraphol 2007). As noted earlier, the EP played a weak role in the first wave of agency creation, as the legislative procedures used restricted it to mere consultation. However, since the mid-1990s, studies show that the increasing power and recognition of the EP in the EU-system led to significant changes, and the Parliament has gradually asserted a greater role in agency design (Kelemen 2002). Kelemen (2002: 108) shows that both the Commission's original proposal on EFSA and the final regulation that emerged from the legislative process reflected the increased legitimacy and formal power of the EP.

In sum, the observations referred to in this section go beyond functional explanations and indicate that the creation of EU-level agencies do not start from 'a blank slate' (Pierson 2004: 151). EU-level agencies tend to come about through power struggles and compromises conditioned by existing institutional orders rather than 'popping up' more or less automatically as a pure codification of functional needs or legitimate rules in the environment. EU-level agencies are strongly embedded within a larger institutional setting, and this setting may serve as an important source of both resilience and opportunities both in their *making* and in their *functioning*. In the next section we will have a closer look at the latter.

V. The role of EU-level agencies

This section reports experiences from domestic agency leaders concerning the role of EU-level agencies, particularly concerning their role in the implementation of EU legislation and programmes, but also as regards their involvement in the formulation of *new* EU laws and programmes. This section systematically compares the role of EU-level agencies in these respects with the role of the Commission and 'sister agencies' in other countries. First, Table 3 reveals the relationships between domestic agencies and EU-level agencies, the Commission and 'sister agencies'.

Table 3: Percentage of national agency leaders who report that their own agency relates to the following institutions:*

- EU-level agencies	45
- The Commission	78
- EU-related networks of "sister agencies" in other countries	73
Mean N	40

* Percentage reporting 'Yes'.

Table 3 clearly shows that most national agencies have relationships towards the Commission and 'sister agencies' in other countries. EU-level agencies don't have the same centrality although relationships towards these bodies do indeed engage almost half of the national agencies.

Next, Table 4 shows the *content* of the relationships between national agencies on the one hand and EU-level agencies, the Commission and networks of 'sister agencies' on the other hand.

Table 4: Percentage of national agency leaders who report that their agency's relationships with EU-level agencies, the Commission, and 'sister agencies' involves the following:*

	EU-level agencies	The Commission	Networks of 'sister agencies'
- Formulating/discussing <i>guidelines, standards</i> etc. when implementing EU laws/programmes	77	93	89
- Formulating/discussing <i>individual cases</i> when implementing EU laws/programmes	69	71	82
- Formulating new EU <i>laws/programmes</i>	50	82	67
- Information exchange, "best practice"	94	97	100
Mean N	17	38	28

* Percentage reporting 'Yes'.

Table 4 signifies several tendencies. First, almost all national agency leaders confirm that information exchange, for example on “good practice”, is part of all three relationships. Second, the content of the relationship to EU-level agencies is not that different from the content of the other two relationships: a clear majority reports that in *all* three relationships one deals with questions concerning the application of EU laws and programmes. Thus, the involvement of EU-level agencies clearly points beyond information gathering and exchange. Surprisingly, in all three connections implementation activities are not 'only' about formulating guidelines but also about how *individual cases* should be dealt with. Third, Table 4 indicates that EU-level agencies become engaged most strongly at the implementation stage of the policy process. It is only in relation to the Commission that an overwhelming majority confirms that there is activity also in initial phases of the policy process.

One important question was raised in the introduction of this article: To what extent may EU-level agencies act relatively independent and to what extent are they *de facto* controlled by the member states? In order to address this question, this section will first take a look at the role of the management boards of EU-level agencies and then at the power relations within the networks within which EU-level agencies are embedded. Unfortunately, only 8 of the national agency leaders surveyed had been members on boards of EU-level agencies. Almost all of them consider the board to be of real importance, in particular with respect to the agency's budget priorities and short- and long-term planning. Concerning which board members our respondents deem important, most of them point to member state representatives, the leadership of the agency and the Commission. Less weight is assigned to interest groups, industry and staff unions. As regards who are representing member states, the 'rule' seems to be that national agencies actually play this role although ministerial departments may take part occasionally. Asked about what kind of role agency personnel tend to evoke at board meetings, all respondents see them as *agency* representatives. However, they enact multiple roles in this context: a majority of our respondents also report that national agency personnel also act as *government* representatives and as *experts*.

As regards power relations within transnational agency networks, Table 5 shows how important our respondents find various network participants to be. Overwhelming majorities report that agencies from 'old' member countries and the Commission have much influence. A considerable proportion is also assigning weight to EU-level agencies. The findings are quite compatible with those made on actors' influence within management boards. In addition, the data show that agencies from 'old' and 'new' member states are evaluated rather differently in power terms.

Table 5: Actors deemed to have large* influence within EU-related networks of national agencies (Percent of respondents confirming 'large influence')

Actors	
- Agencies in 'old' member states (EU 15)	87
- European Commission	81
- EU-level agencies	58
- Agencies in 'new' member-states (EU 12)	32
Mean N	23

*Values 1 and 2 combined on a 5-point scale.

As noted earlier in this article this survey should be considered suggestive because of its limited size and country bias. However, it can be noted that several studies of individual EU- level agencies report some of the same observations concerning their ability of significant task expansion. Metcalfe (2000: 125) notes in his case study of the EMEA that the agency 'is more than just a vehicle for performing executive tasks delegated to it'. Built on its professional competence and key position in the network of national regulatory authorities, the EMEA has established a forceful role within the regulatory regime for pharmaceuticals (see also Barbieri and Ongaro 2008). These observations are in line with Gehring and Krapohl (2007: 215) who note that decisions adopted within the EMEA will usually be difficult for the member states to challenge, because their own expert administration is closely involved in the decision making process. In the same vein, Randall (2006) shows in his study of EFSA that it has become a decisive hub of the institutional set up within food safety, 'armed with superior scientific and communications instruments' (ibid: 415). Even agencies with information gathering tasks may be able to establish a more policy oriented role based on informal resources like expertise and professional competence (Martens 2008b). Barbieri and Ongaro (2008) find that the EEA increasingly has become a more credible actor in the EU-system and able to play a role in coordinating national agencies dealing with environmental issues, an observation that is consistent with other studies of this agency (see e.g. Martens 2008b, Schout 1999).

Conclusions

Establishing separate *executive* bodies (outside the council of ministers) of a confederation or of a nascent federation of states seems in many respects to be the 'hard case' of institution-building, probably because it creates real action capacity at the (new) centre. Considered as elements of an implementation structure of a quasi-federal polity, the formation of EU-level agencies is about

increasing the potential for uniform application of EU legislation and programmes across member states, or, to put it otherwise, to circumscribe the room for national adaptation of EU policies. In addition, such institution building is about strengthening the amount of supranational inputs into the policy process also at initial stages.

This article provides a broad portrayal of the population of EU-level agencies and its development over time. Contrary to at least one plausible expectation, we show that the considerable growth of EU-level agencies, both in terms of number and personnel, has not happened to the detriment of the Commission which has also, simultaneously, increased its staff significantly. Thus, at the outset, it seems as if executive power at the EU level has been considerably strengthened during the last couple of decades. Looking at the formal structure of EU-level agencies, however, we observe that they have in many ways been 'reined in': they have typically been assigned information and technical tasks more than formal decision-making power, and they find themselves firmly embedded in structures dominated by member states, as reflected in the composition of management boards and agency networks. We also see great variety in how EU-level agencies are established, organised, and managed. Still, this article suggests that EU-level agencies share some generic organisation features and roles in multilevel implementation structures.

Second, this article has suggested an institutional approach to come to grips with the advent, development and characteristics of EU-level agencies. Seemingly, functionalism, contingent events, and isomorphism may supplement an institutional approach: Agency creation may be linked to functional needs generated by the internal market and Union enlargement but also to NPM-legitimised organisation models that might be implanted regardless of specific needs. In some cases, crises and accidents have obviously acted as catalysts for agency birth. This article adds to these theoretical approaches by arguing that agencies' lack of formal power and their restricted agendas, as well as their exposure to member state control point in the direction of institutionalist explanations emphasising how new and challenging organisations have to be extorted from already established power structures. Thus, the growth of EU-level agencies result in hybrid and ambiguous structures which then is relatively 'open' as regards future behavioural consequences.

Third, in order to illuminate how EU-level agencies actually tick and work the article offers a small-N elite survey. One important observations is that while most national agencies relate to the Commission and 'sister agencies' in other countries, slightly less than half deal with agencies at the EU level. As regards the *content* of the relationships, however, the various relationships do not

differ that much: in general, national agencies' relationship to EU-level agencies is not restricted to information exchange. We have seen that EU-level agencies become involved in the application of EU laws and programmes; not 'only' as regards the formulation of implementation guidelines but also concerning the handling of individual cases. Thus, it seems as if EU-level agencies, like the Commission, contribute to the evolving 'doublehattedness' (or, in fact, 'multihattedness') of national agencies (Egeberg and Trondal, 2009). Moreover, we found that the relationship to EU-level agencies is slightly more implementation-oriented than the other two relationships which also seem to engage more in policy formulation.

Forth, even if member states dominate the management boards and constitute the networks within which EU-level agencies are embedded, this does not necessarily mean that national governments as such are in the driver's seat. In practice, national governments are represented by national agencies working in the respective policy fields. Since such agencies are highly specialised and organised at arm's length from ministerial departments, their personnel tend to evoke rather compound role conceptions and to act in a 'double-hatted' manner. Moreover, studies also indicate that the sheer size and the rather few meetings convened of the management boards weaken *their* power within EU-level agencies (Busuioc and Groenleer 2008). Also, this article signifies that agencies from 'new' member states are deemed much less influential within networks than their counterparts from 'old' member countries, a result quite consistent with other findings on effects of 'agency noviceness' (Martens 2008a). Finally, it seems quite clear that national agencies have to share their control over EU-level agencies with the Commission which might have strengthened its position within agency networks over the years (Busuioc 2008; Groenleer et al. 2008; Martens 2008b; Schout 2008; Thatcher and Coen 2008). However, the observations from this small-N survey should be considered suggestive because of its limited size and country bias.

References

- Barbieri, D. and E. Ongaro (2008) 'EU agencies: what is common and what is distinctive compared with national-level public agencies', *International Review of Administrative Sciences*, 74(3): 395-420.
- Barnett, M. N. and M. Finnemore (2004) *Rules for the world: international organizations in global politics*, Ithaca (N.Y.): Cornell University Press.
- Busuioc, M. (2008) 'Accountability, Control and Independence The case of European Agencies', *European Law Journal*, (forthcoming).
- Busuioc, M. and M. Groenleer (2008) 'Wielders of Supranational Power? The Administrative Behaviour of the Heads of European Union Agencies', Paper presented at the ECPR Standing Group on Regulatory Governance, 5-7. June, Utrecht.
- Christensen G., J. and V. L. Nielsen (2008) 'Administrative capacity, structural choice and the creation of EU-agencies', Manuscript, Aarhus: University of Aarhus.
- Christensen, T. and P. Lægreid (eds) (2006) *Autonomy and Regulation. Coping with Agencies in the Modern State*, Cheltenham: Edward Elgar.
- Curtin, D. (2005) 'Delegation to EU Non-Majoritarian Agencies and Emerging Practices of Public Accountability', in D. Geradin, R. Muñoz and N. Petit (eds) *Regulation through agencies in the EU : a new paradigm of European governance*, Cheltenham: Edward Elgar.
- Curtin, D. and M. Egeberg (2008) 'Tradition and innovation: Europe's accumulated executive order', *West European Politics*, 31(4): 639 – 661.
- Dehousse, R. (2008) 'Delegation of powers in the European Union: The need for a multi-principals model', *West European Politics*, 31(4): 789 – 805.
- Dehousse, R. (1997) 'Regulation by Networks in the European Community: The Role of European Agencies', *Journal of European Public Policy*, 4(2): 246-246.
- DiMaggio, P. J. and W. Powell (eds) (1991) *The New Institutionalism in Organizational Analysis*, Chicago: University of Chicago Press.
- Dumoulin, M. (2007) 'The Administration', in M. Dumoulin (ed.) *The European Commission 1958-72. History and Memories*, Brussels: European Commission.

- Egeberg, M. (2003) 'How bureaucratic structure matters: an organizational perspective', in B. G. Peters and J. Pierre (eds) *Handbook of Public Administration*, London: Sage.
- (2006) (ed.) *Multilevel Union Administration - The transformation of Executive Politics in Europe*, London: Palgrave.
- Egeberg, M. and J. Trondal (2009) 'National Agencies in the European Administrative Space: Government Driven, Commission Driven or Networked?' *Public Administration*, (forthcoming).
- EU observer (2008) 'EU states muscle in on bloc's judicial body', 5 May 2008, Available at: <http://euobserver.com/?aid=26082>
- European Commission (2000a) COM 142 Final, *Communication from the Commission to the European Parliament and the Council on the safety of the seaborne oil trade*, Brussels, 21 March.
- European Commission (2000b) COM 200, *White Paper -Reforming the Commission*, Brussels, 1 March.
- European Commission (2008) COM 135 Final, *Communication from the Commission to the European Parliament and the Council. European agencies - The way forward*, Brussels, 11 March.
- Flinders, M. (2004) 'Distributed public governance in the European Union', *Journal of European Public Policy* 11(3): 520-544.
- Gehring, T. and S. Krapohl (2007) 'Supranational regulatory agencies between independence and control: the EMEA and the authorization of pharmaceuticals in the European Single Market', *Journal of European Public Policy*, 14(2): 208-226.
- Groenleer, M., E. Versluis and M. Kaeding (2008) 'Regulatory governance through EU agencies? The implementation of transport directives', Paper presented at the ECPR Standing Group on Regulatory Governance, Utrecht 5-7 June.
- Gunlicks, A. (2003) *The Länder and German Federalism*, Manchester: Manchester University Press.
- Hofmann, H. C. H. and A. H. Türk (eds) (2006) *EU Administrative Governance*, Cheltenham UK: Edward Elgar.
- Kelemen, D. R. (2002) 'The Politics of 'Eurocratic' Structure and the New European Agencies', *West European Politics*, 25(4): 93-118.

- Kelemen, D. R. and A. Tarrant (2007) 'Building the Eurocracy: The Politics of EU Agencies and Networks', Paper presented at the Biennial European Union Studies Association Convention, Montréal, Canada.
- Krapohl, S. (2004) 'Credible Commitment in Non-Independent Regulatory Agencies: A Comparative Analysis of the European Agencies for Pharmaceuticals and Foodstuffs', *European Law Journal*, 10(5): 518-538.
- Kreher, A. (1997) 'Agencies in the European Community - a step towards administrative integration in Europe (1997)', *Journal of European Public Policy*, 4(2): 225-245.
- Kurpas, S., C. Grøn and P. M. Kaczynski (2008) *The European Commission after Enlargement*, Brussels: CIEPS.
- Loth, W. (2007) 'The "empty chair" crisis', in Demoulin, Michel (ed.) *The European Commission, 1958-72. History and Memories*, Brussels: European Commission.
- Majone, G. (1997) 'The new European Agencies: regulation by information', *Journal of European Public Policy*, 4(2): 262-275.
- March, J. G. and J. P. Olsen (1989) *Rediscovering institutions: the organizational basis of politics*, New York: Free Press.
- Martens, M. (2008a) 'Administrative Integration through the Back Door? The Role and Influence of the European Commission in Transgovernmental Networks within the Environmental Policy Field', *Journal of European Integration*, 30(5): 635-651.
- (2008b) 'Executive power in the making. The establishment of the European Chemical Agency (ECHA)' Manuscript, University of Oslo.
- (2008c) 'Voice or loyalty? The evolution of the European Environmental Agency', *Journal of Common Market Studies*, (forthcoming).
- Metcalfe, L. (2000) 'Linking Levels of Government: European Integration and Globalization', *International Review of Administrative Sciences*, 66(1): 119-142.
- Meyer, J. W. and B. Rowan (1977) 'Institutionalized Organizations: Formal Structure as Myth and Ceremony', *American Journal of Sociology*, 83(2): 340-363.
- Olsen, J. P. (2007) *Europe in Search of Political Order*. Oxford: Oxford University Press.

Morten Egeberg, Jarle Trondal and Maria Martens

Orren, K. and S. Skowronek (2004) *The search for American political development*, Cambridge: Cambridge University Press.

Pierson, P. (2004) *Politics in time: history, institutions, and social analysis*, Princeton, N.J.: Princeton University Press.

Pollitt, C. et al. (2004) *Agencies. How Governments do Things Through Semi-Autonomous Organizations*, London: Palgrave.

Randall, E. (2006) 'Not that soft or informal: a response to Eberlein and Grande's account of regulatory governance in the EU with special reference to the European Food Safety Authority (EFSA)', *Journal of European Public Policy*, 13(3): 402-419.

Schout, A. (2008) 'Inspecting Aviation Safety in the EU', in E. Vos (ed.) *European Risk Governance. Its Science, its Inclusiveness and its Effectiveness*, Mannheim: Connex Report Series.

Shapiro, M. (1997) 'The problems of independent agencies in the United States and the European Union', *Journal of European Public Policy*, 4(2): 276-292.

Skjerven, P. L. (2005) 'Opprettelse og organisering av europeiske reguleringsorganer', Master Thesis, University of Oslo.

Skowronek, S. (1982) *Building a New American State. The Expansion of National Administrative Capacities 1877-1920*, Cambridge: Cambridge University Press.

Stevens, A. and Handley S. (2001) *Brussels Bureaucrats? The Administration of the European Union*, Houndmills: Palgrave.

Sverdrup, U. (2007) 'Implementation', in P. Graziano and M. Vink (eds) *Europeanization: New Research Agendas*, Basingstoke: Palgrave Macmillan.

Tallberg, J. (2003) 'Delegation to supranational institutions', in M. Thatcher, and A. S. Sweet (eds) *The Politics of Delegation*, London: Frank Cass.

Thatcher, M. and D. Coen (2008) 'Reshaping European regulatory space: An evolutionary analysis', *West European Politics*, 31(4): 806 - 836.

Treib, O. (2008) 'Implementing and complying with EU governance outputs', *Living Reviews in European Governance*, 3(5),
Available at: <http://www.livingreviews.org/lreg-2008-5>

Trondal, J. and L. Jeppesen (2008) 'Images of Agency Governance in the European Union', *West European Politics*, 31(3): 417-441.

- Ugland, T. and F. Veggeland (2006) 'The European Commission and the Integration of Food Safety Policies across Levels', in M. Egeberg (ed.) *Multilevel Union Administration. The Transformation of Executive Politics in Europe*, Houndmills: Palgrave Macmillan.
- Vos, E. (2000) 'Reforming the European Commission: What Role to Play for EU Agencies?', *Common Market Law Review*, 37(5): 1113-1134.
- Wettenhall, R. (2005) 'Agencies and non-departmental public bodies. The hard and soft lenses of agencification theory', *Public Management Review*, 7(4): 615-635.
- Wilson, J. Q. (1989) *Bureaucracy: what government agencies do and why they do it*, New York: Basic Books.
- Yataganas, X. (2001) 'Delegation of Regulatory Authority in the European Union: the Relevance of the American Model of Independent Agencies', *Jean Monnet working paper* 01(3).