Draft paper

Administrative capacity, structural choice and the creation of EU-agencies

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Abstract

Since the 1990s the EU has established an ever increasing number of administrative agencies. Their creation has been seen as a result of policy-makers’ acknowledgment of a credible commitment problem where trust in the Commission’s role as a supranational regulator has gradually eroded. The paper systematically tests this credible commitment hypothesis. While finding support for it as a normative ideal, informing the Commission’s administrative modernization strategy, there is little evidence for its acceptance by member countries. Rather the design decisions made in the Council of Ministers conform to the predictions of structural choice theory. As a result there is a strong inverse relationship between the amount of legal authority delegated to agencies and the tightness of the procedural constraints within which they operate. The limited autonomy of the EU-agencies is consistent with established legal doctrine, upheld since the 1950s, and implies that the independent agencies fit well into an increasingly complex institutional set up where different types of agencies exist side by side with varying forms of network management.

Over the years the EU has developed into a supranational regulatory polity. Within important fields it has created a considerable body of binding law that sets the framework for a European internal market. Thus the conditions for competition and business activities in Europe are to some extent defined by EU-regulation. This is also the case for regulation protecting the environment and consumers. The administration of this European regulatory policy is the shared responsibility of the Commission, the EU’s executive arm, and national and sub-national authorities.

The co-existence of a complex regulatory polity and strong constitutional and political constraints on the Commission raises the question how the EU can adapt its own administrative capacity. Such a need is taken for granted as the EU has developed its regulatory scope and depth while the basic institutional structure has remained intact. The capacity constraints are even more pressing because over time EU regulation has become administratively more demanding as existing legislation has been amended to meet new or changing problems. One answer to this challenge has been the creation of independent EU-agencies. These agencies are set up according to specific EU-legislation, enjoy status as legal personalities, have separate budgets, and a political and administrative governance structure laid down by the empowering EU-law, in most cases a regulation issued by the Council and the European Parliament or by the Council alone.
In early 2007 25 agencies were operating. Even if their official names vary EU terminology generally refers to them as independent agencies.¹ The first agencies were created in the 1970s, but they were clearly exceptional. Since the 1990s when the implementation of the internal market started and successive treaty revisions have been enacted to re-invigorate the EU more and more agencies have been set up. What is more, several new agencies seem to be on the drawing board at any time. To this comes that the EU has recently created a new type of executive agencies. They are agencies set up to administer specific programmes for the Commission. In contrast to the independent agencies their mandates contain a sunset clause. Therefore, they are presumably closed at the expiration of the current program. As the terminology indicates they can be seen as temporary expansions of Commission capacity rather than as more or less autonomous agencies. Both types of agencies belong to EU’s first pillar. But outside it the EU has created other agencies with tasks related to the common foreign and security policy and to cooperation on internal and judicial affairs.

This paper analyses the design, tasks, and institutional setting of the agencies. Focus is on formal agency autonomy. Here structural autonomy is defined as the insulation of the agency from respectively Commission and member government control. The implication is that autonomy is a relative phenomenon where autonomy may increase in relation to Commission control while decreasing in relation to national control and vice versa. The other dimension, legal autonomy is defined as the authorization of the agency to act in its own capacity and ranges from purely informational tasks to binding decisions.

Our ambition is to answer two basic questions: 1) What is the degree of autonomy given to independent agencies and 2) to which extent does agency autonomy vary with the tasks and authority of individual agencies? Both questions have been central themes in the scholarly literature that since the 1990s has dealt with the new phenomenon of independent EU agencies. But many articles were written quite early, i.e. from the moment where the new institutional trend within the EU was first spotted (Dehousse, 1997; Majone 1996; 1997; Kelemen 2002; Kreher 1997). Other articles are case studies where the agencies responsible for the licensing of new medical drugs (EMEA) and the improvement of food safety (EFSA) have attracted special attention (Krapohl 2004; Gehring & Krapohl 2007; Randall 2006).² The paper takes advantage of the gradual and over

¹ The official EU-website refers to them as community agencies, cf. http://europa.eu/agencies/community_agencies/index_en.htm
² The agencies covered by the analysis are listed in the appendix, displaying both their long names and their acronyms.
time remarkable growth in the number of independent agencies. This allows us to conduct a comprehensive and comparative analysis of all agencies operating at the beginning of 2007.

We argue that the independent agencies since the 1990s have allowed the EU to expand its administrative capacity so that it better matches its tasks, mainly within the regulatory field. We further argue that the institutional structure of the independent agencies has basically not changed the allocation of authority between the Commission and the member governments. Our final claim is that if some executive authority is delegated to an agency then the preferred structural choice provides strong safeguards against agency intrusion in affairs where the member governments want to preserve the final, even if formal word. Therefore we argue that it is important to analyze how the agencies fit into the general pattern for institutional adaptation within the EU.

In the following paragraph we briefly review the existing literature on independent EU-agencies. Then a presentation of our theoretical framework follows. In order to sharpen the analytical focus we make a distinction between modern theory of regulatory governance and structural choice theory. The former emphasizes the problem of credible commitment in regulatory administration, the latter how the organizational design may be used as a strategy for freezing the power over administrative authorities. After a brief presentation of the data on which the analysis is based the empirical analysis follows. It is divided in two parts. The first lays out the legal and institutional setting within which independent EU agencies are set up and compares the independent agencies with other steps taken to adapt EU’s administrative capacity. The other analyses the institutional structure of all independent agencies, i.e. their internal governance structure and embeddedness in EU’s institutional system. The final part of the paper discusses the findings in a theoretical perspective. The conclusion is that the continuous establishment of new agencies expands the EU’s administrative capacity without compromising member state control over the agencies. This strategy fits well with both established legal doctrine that sets limits to delegation within the EU and parallel efforts to strengthen Commission capacity in a politically controlled way.

**EU agencies and network coordination**

Giandomenico Majone pioneered in drawing scholarly attention to EU agencies. In a series of articles from the late 1990s he described them and presented a first theoretical account of this new and as it turned out increasingly important institutional phenomenon. Majone describes them in realistic terms. It is fully realized that generally they have limited authority. In most cases they are
placed at the centre of a network of national authorities. Their principal task is to coordinate the
collection and to some extent the analysis of information. Any power they may have is not derived
from their formal authority but rather from their ability to supply information that is relevant for the
making and implementation of policy within the EU. It is also acknowledged that delegation of
authority to the agencies raises political concerns as to the control over the EU. Therefore, national
governments have been on guard because the creation of independent agencies might disturb the
delicate balance within the European Union’s institutional set-up (Majone 1997; 2002). Majone’s
other line of argument goes much further in formulating a theoretical, to some extent even
normative, rationale for the creation of independent agencies at the European level. One argument
sees the contours of a European regulatory state. It is compared with American regulatory policy
that traditionally has relied on independent regulatory agencies, a topic we return to below (Majone,
1994).

Other scholars have contributed to the analysis of the independent EU-agencies. Through their
research considerable insights in the status, tasks, and development of the agencies has
accumulated. Their empirical research has not been directed by a common theoretical model, and in
some cases the analysis is primarily descriptive. Still, interesting observations can be derived and
systematized from this literature that point towards problems to be taken up in other research.

The research covers a broad range of issues. There is general agreement that the EU Commission
has a strictly limited and generalist capacity (Dehousse 1997: 253-254; Kelemen 2002: 101; see
also Franchino 2004). One issue therefore is to which extent the EU can expand its capacity and
gain direct access to specialist and even scientific expertise through the creation of independent
agencies. As it is now the EU depends on expertise provided within the extremely broad networks
of committees on which national civil servants as well as technical and scientific experts are
represented. Such networks expand administrative capacity, but they lack the permanence and
resources of a proper organization. The agencies provide this, and where the networks are seen as
national checks on the Commission, agencies can be designed otherwise. So, in the EU terminology
the agencies are often characterized as independent. But this begs the question independent of
whom, as some of the literature rightly points out (Kreher 1997:238; Buonanno 2006). Here the
central problem is how the agencies are placed in relation to the Commission, respectively the
Council and the member states. The fact that the agencies have been created in fields where the EU
was already active and operated extensive networks emphasizes the capacity expanding potential of
agency creation (Majone 2002). At the same time it opened the issue whether the agencies would
shift the balance between European and national institutions. The existing literature has clearly laid out that both the Commission and the member states have been keenly aware of this when they have decided over agency governance structure and responsibilities.

The early empirical literature generally points to the strong representation of member states within the governing boards of the agencies. But in spite of this general fact there are indications of variation in the governance structure and decision making procedures of the agencies. Such variation leaves open the question how the institutional status of EU agencies varies with their tasks and responsibilities and the time of their creation. Here the literature draws attention to the ambiguity surrounding the European Parliament’s attitude towards the increasing reliance on agencies within the EU (Kelemen 2002). With the stronger legislative role of the parliament the question is how the generally pro-integration MEPs view the agencies: Do they perceive them as a national strategy to limit the role of the Commission? Or does the European Parliament follow a strategy where properly designed agencies are one of the ways in which the EU can guard and even strengthen the position of EU institutions vis-à-vis national governments and their administrations? For the latter strategy the issue is whether this has any consequences for the way in which agency governance structures have developed, and especially whether it has paved the way for some parliamentary control over them. So, far the literature has concluded that the agencies remain under the tight control of national governments (Dehousse, 1997; Kreher 1997; Kelemen 2002). But the governance structures are complex and new agencies are incessantly set up. In either case there is a need for a more comprehensive analysis reflecting the incessant creation of new agencies.

A related institutional issue has to do with the representation of non-governmental interests. In national level European politics it is historically well known that organized interests are often formally represented on policy making and administrative boards or both. In particular this is widespread practice when it comes to labour market and related policy areas. Some of the early EU agencies have tasks within this policy area and replicate national level representational practices with a tripartite governance structure (Kreher 1997: 234). With the expansion of the European Parliament’s lawmaking authority one parliamentary strategy for constraining the power of the national governments as well as the Commission might be to insist on the representation of third party interests. The installation of such institutional fire alarms would not only apply to traditional economic interests as those of the labour market, but to consumer and environmental groups as well. There is some evidence that this has happened even if the issue has not been subject to systematic analysis.
The other main issue concerns the tasks and responsibilities of the agencies. The literature distinguishes between agencies with mainly informational tasks and agencies with some executive or regulatory responsibilities. The general picture again seems clear. Most agencies have informational tasks related to either policy making or policy implementation within a very specialized field of EU-policy. Here the agencies provide the organisational framework for a network of civil servants and experts that represent member countries and to some extent the Commission. A smaller group of agencies may still have wider responsibilities, although EU legal doctrine makes it very difficult to draw a clear line of distinction between agencies with purely informational responsibilities and agencies that possess executive authority. Still, there is agreement that two relatively long-established agencies (the Office for Harmonisation and the Community Plant Variety Office) have such authority. The same applies to newer agencies such as EASA (aviation safety), EMSA (maritime safety), and CFCA (fisheries control). But the rules governing both the European Medicines Agency (EMEA)\(^3\) and the European Food Safety Authority (EFSA) demonstrate the complexity of this issue. Both agencies operate within economically important policy areas, and neither of them have formal power to make authoritative decisions. Yet, it is haphazard just to write them off as the organizational core of an information network without leverage within their portfolio. It is no wonder that precisely these two agencies have attracted strong scholarly attention. It is equally natural that there has been some discussion of how to interpret their political and administrative potential in the interaction between national and European institutions (Eberlein & Grande 2005; Randall 2006; Krapohl 2004; 2007; Gehring & Krapohl 2007; Majone 2002).

American regulatory policy has played a considerable role in the scholarly debate on the EU independent agencies. This debate is directly linked to a broader research agenda on the institutional framework for regulatory policy and administration (see e.g. Jordana & Levi-Faur 2004; Coen & Héritier 2005). Here the American administrative tradition with regulatory agencies and independent regulatory commissions has attracted considerable attention. Delegation to agencies and especially to independent regulatory commissions has been seen as a solution to a credible commitment problem. At the root of this problem is policy makers’ temptation to renege on the basic principles of regulatory policy if situational contingencies makes it political advantageous to do so. One argument has been that the American practice is relevant because it offers a practical and well-tested solution to the credible commitment problem. The argument is also that the EU

\(^3\) The official and full name of EMEA was until 2007 The European Agency for the Evaluation of Medicinal Products.
increasingly faces such a problem and this makes it relevant to draw lessons from American regulatory administration (Majone 1988, 1994 and 2000).

Any lesson drawing from American regulatory experience brings back the question of independence of whom. Even if some federal agencies and independent regulatory commissions dispose of considerable authority both to decide individual cases and to issue statutory regulation their institutional status varies considerably. So, it is only in cases where there is political agreement that certain regulatory issues should be decided on technical-scientific criteria that it makes sense to see the regulatory administration as autonomous in political terms. Such autonomy has little to do with their formal structure and status (Skogstad 2006). Rather the institutional framework for American regulatory administration varies considerably. It ranges from authorities with departmental status and non-departmental agencies to independent agencies and regulatory commissions. This variation can only be understood within the American checks-and-balances context. Delegation of regulatory authority to agencies outside the presidential hierarchy has historically taken place where a congressional majority has wanted to limit the president’s executive powers by placing an agency under congressional supervision or by setting up a commission whose members are appointed by the political parties in Congress (Shapiro 1997). This in no way makes the American tradition irrelevant to the design of European regulatory institutions. But it points to the political importance of the design decisions and the relative character of the concept of independence and autonomy.

**Bureaucratic Credibility and Structural Choice in the EU**

Some theorists see European integration as the result of a delegation of authority from member states to supranational European institutions. In their perspective the institutional set up demonstrates member states’ commitment to European integration. This commitment is credible because it implies their acceptance of decisions even if they run against their immediate interests. Thus they bind themselves through acceptance of supranational authority. At the same time supranational institutions ensure them that other member states are bound as well. This protects their interests in situations where they are themselves well served by a common policy but where the common policy runs against the immediate interests of their fellow members (Pollack 2003).

The Commission is central to this analysis. Because of its independence of national interests laid down in the treaties it is different from other kinds of political executives. So, it is the sole initiator of new EU legislation and monitors national implementation of EU policies. In this latter capacity
the Commission is conceived as guardian of the treaty and it can even bring member governments for the European Court of Justice. With these institutional provisions the Commission is endowed with many of the attributes that characterize other institutions removed from day to day politics in order to guarantee the integrity of their operations.

In this perspective it may be difficult to see why regulatory authority should be delegated to EU agencies that are separate and even independent from the Commission. If European law makers perceive a credible commitment problem the logical answer seems to be that the European Commission from the very beginning has been designed to meet these requirements. It even combines executive and statutory authority. So it can both propose new legislation to the Council and the European Parliament and issue its own rules if EU legislation authorizes it to do so.

Still, the argument is that EU’s regulatory policy has a credibility problem. It may even amount to a more general credibility crisis. Majone (2000) gives several reasons for this. 1) The expansion of the EU’s responsibilities that followed from the implementation of the single market enhances its vulnerability because national regulatory structures may be fragile and because the EU does not have the capacity to balance them. 2) Increasingly the EU suffers from politicization. This problem appeared early because the Commission co-opted national civil servants both at the preparatory and at the implementation stage of EU decision making (Coombes 1970). Although such co-optation strategies may be wise if the Commission wants to protect itself politically they will in certain situations compromise its credibility as an independent regulator. 3) With the power given to the European parliament in appointing members of the Commission and overseeing their work, there will be situations where the Commission can only keep the confidence of the European Parliament if it accommodates its majority. However, an accommodation strategy may again undermine Commission independence of extraneous concerns and thus threaten its credibility (Majone 2002).

Modern theories of regulatory governance rely on a similar logic. Policy makers who want to keep their long term credibility towards in particular regulated business are expected to delegate executive authority to regulators placed beyond their own reach. This reasoning is based on an analogy to the theory of central bank independence. Here politicians bind their own hands because they realize that it is in the long term interest of the economy to control inflation. They thus give up policy making power because they foresee their own indulgence to political pressure in a situation where unemployment is going up. Similarly, the theory of regulatory governance claims that policy makers may have a long term interest in delegating the power to execute and even make regulatory
policy to an independent regulator. By leaving it to an expert body to make the right decisions at the right time, politicians credibly signal that they will not give in to political pressure to e.g. intervene into investment decisions or into the price structure at the market if this is not justified in the present market situation (Gilardi 2002; Jordana & Levi-Faur 2004; Christensen & Yesilkagit 2006). There is empirical evidence that a large number of regulatory agencies have been created in many countries in recent years (Levi-Faur 2005; Gilardi 2005). It remains less clear to what extent and in which sense they are independent.

Credible commitment theory rests on the assumption that policy makers acknowledge their sensitivity to short-term political incentives which run against long-term societal interests. It also rests on the assumption that policy makers are willing to forgo influence by delegating authority to independent regulators. Politically this assumption may appear less realistic and in some versions highly normative and prescriptive. In comparison structural choice theory rests on the rival and apparently realistic assumption that policy makers favour organizational and institutional designs guarding either their own long term influence on administrative decisions or the influence of stakeholders whose interests they want to protect. This clearly does not preclude delegation to independent regulators, although the theory emphasizes the need to define a more precise concept of independence or autonomy. Rather administrative design becomes an important strategy for ensuring political control over policies that can impossibly be fully specified in formal legislation (Moe 1990 and 2005). Policy makers dispose of different strategies if they want to create a governance structure that freezes future control over a certain organization and the policy which it is responsible for implementing.

The design strategies fall in two broad categories: One is to set up authorities with well-specified tasks and a formal governance structure that precisely defines who is to be in control of the organization. This can happen through integration into the executive hierarchy or through the creation of a collegiate board structure on which representation is formally regulated by law (Moe 1990; Horn 1995: 40-78). The other is to design a set of procedures that specify how a decision should be prepared and in the end made (McCubbins & Schwartz 1984; McCubbins, Noll & Weingast 1987). In the former case policy makers have opted for a design that takes the decision out of not only their own but also the hands of their successors. It may thus imply delegation to an independent and expert regulator. Equally well it may imply the design of a governance structure where policy makers delegate to a body on which actors with a strong political stake in future decisions, e.g. interest organizations, are represented.
In the latter case of procedural regulation policy makers can design more or less complex procedures that regulate who should be involved, at which stage it should happen and on the basis of which kind of information a decision should be made. Because of the complexity of procedural designs they may range from the installation of ‘fire alarms’ designed to warn off policy-makers if a particular issue is arousing their concern to procedures installing veto points into the decision making procedure.

The credible commitment hypothesis is actually a special variant of structural choice theory. The difference between the two sets of theory follows from their different motivational assumptions. Credible commitment theory assumes that politicians are motivated by general and long term policy goals. Structural choice theory assumes that politicians are motivated by their concern for reelection, office, and power. The empirical implication of the credible commitment hypothesis is that we should expect agencies to be set up a) to which regulatory authority has been delegated and b) which have got governance structures shielding them against member state control. To the contrary if the structural choice hypothesis holds we should expect EU agencies to have strictly defined and limited authority and to have governance structures which are dominated by national authorities and eventually affected interests.

Data and design
The empirical analysis involves two steps. The first is a qualitative analysis of the political and historical setting within which the independent agencies have been established. It builds on documentary and secondary sources. The second step is a quantitative analysis of the 25 agencies existing at the beginning of 2007. The general claim is that there is an inverse relationship between the formal authority of the agencies and their structural autonomy within EU’s institutional system. To analyze this we have set up a database with information on the tasks and authority of the agencies and on their formal organization covering both their internal governance structure and their relationship to EU’s institutions, the member governments, and affected interests. The data sources are first of all the EU-rules, i.e. most often the regulations setting up each of the agencies including later amendments to these statutes. We have also retrieved information from other sources, i.e. reports from the standing committees of the European Parliament, the Social and Economic Council and from agency web sites. Table 1 gives an overview of variables and shows the frequency distributions for each of them.

- Table 1 about here –
The independent variables measure the formal authority of the agencies. We have defined four different types of agency tasks that involve increasing levels of agency authority. These variables are all operationalized as dummies. They range from simple information gathering (the collection of statistics, evaluations etc.) to authoritative decisions on specific rule-application, e.g. inspections or the issuance of certificates. In between these extreme points we have first the coordination of networks, second the more demanding task of providing policy advice to the Commission. The overwhelming majority of the agencies have tasks involving little authority. So, 80-84 per cent of the agencies have tasks related to information processing and network coordination, very often both. However, agencies frequently have policy advisory tasks (44 per cent), some formal decision making authority (28 per cent) or both.

The dependent variables measure the formal autonomy of the agencies. Again several indicators are used. They focus on three different aspects of agency organization and agency relations with its political environment. Three dummy variables measure whether formal constraints have been placed on the agency through an advisory board, an appeals board or through a comitology procedure allowing external stakeholders to oversee its operations. These procedures do not exclude each other. Therefore we have constructed an index measuring the degree of agency embeddedness in the EU political environment. This index is operationalized as the average of the three variables mentioned above. Table 1 shows that 52 per cent of the agencies have an advisory board, but only a minority has an appeals board or is integrated into the comitology procedures. Other variables focus on the decision making procedures within agency management boards (unanimity (3 cases) or majority voting (22 cases), appointment of the executive head (management board (68 per cent) or Commission/Council (32 per cent), number of external interests or stakeholders (solely Commission and member states 56 per cent, more than two stakeholders 44 per cent)⁴. Finally, we have coded information on the agency’s obligation to provide the EU main institutions with regular plans and annual reports. Again these accountability measures do not exclude each other, so once more an index with a scale going from 0-1 measures the degree to which agencies are

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⁴ In 2006 when coding took place the EU had 25 member countries. With Bulgaria and Roumania the number now is 27.
subjected to specific accountability procedures. Here variation is limited as 80 per cent of the agencies have to follow all of these procedures.

The agencies have been established over a long period starting in the early 1970s. Since then the EU has undergone dramatic change. Two developments are of particular interest. First, with the Maastricht-treaty and later treaty revisions the Council can make decisions by majority voting. During the same period the internal market has been implemented. This development has contributed to EU’s development into a regulatory state. Therefore, as a control variable we distinguish between agencies set up before 1993 or from 1993 and later. 19 of the 25 agencies are post-Maastricht creations. Second, some agencies have tasks outside the first pillar of the EU, i.e. the common market. This is the case with agencies having tasks related to internal and legal policy and to EU’s foreign and security policy. While the former agencies have been decided through EU’s legislative procedure, the latter agencies owe their existence to an intergovernmental agreement. Thus another control variable gives information on the treaty regime through which the agency was decided. A distinction is made between agencies set up according to EU-legislative procedure (22 agencies) and intergovernmental agreement (three agencies).

**Capacity Expansion in the EU Political and Legal Setting**

The Commission is normally not responsible for the administration of EU policy. This is the task of national governments and their administration. Still, there are situations where policies are administered at the EU level. This is the case where the operation of the single market relies on the existence of a uniform regulatory regime. The price regulations for agricultural products that were the backbone of the common agricultural policy in its original form are an example. Similar regulations were set up to stabilize prices for steel and coal in the European Coal and Steel Community that preceded the present EU. In either case the problem was to implement a common policy that provided for stable prices and regulated competition within the EU while protecting this market against disturbances from world market. This was a formidable administrative task. It involved the constant monitoring of the market and capacity to intervene into it. However, the EU Commission never had the capacity and the resources to manage this task itself.

Different solutions were found in the two sectors. Administration of the CAP was from the beginning based on a combination of national administration and a set of joint procedures. Current market intervention remained a national responsibility while the Commission had to monitor the
regulated market and to prepare interventions in order to keep prices within the bounds decided by the Council. One possibility would have been for the Commission to handle this task itself. However, it would have needed considerable administrative capacity to do so. It would also have aroused concern among member states about the basis for the Commission’s intervention into the market. The preferred solution therefore was to set up a network of management committees where the Commission held the chair, but had to negotiate its proposals for interventions with civil servants from the member countries (Lindberg 1963). Comitology was later expanded to cover other EU-policies (Blom-Hansen 2008). This allowed the Commission to keep its formal authority without expanding its organizational capacity while ensuring a combination of information and political trust from member governments. What is more the comitology solution paid respect to a clear legal doctrine that already at this time limited the scope for delegation to bodies outside the Commission.

The legal doctrine was developed within the European Coal and Steel Community (ECSC). Its rationale was very similar to that of the common agricultural policy. The important difference was that market concentration was much stronger and that the range of products within the regulated market was limited. An administratively feasible and politically attractive solution to the market surveillance problem therefore was to delegate the surveillance and intervention task to a corporate body controlled by affected industry interests. This happened with a decision by the ECSC High Authority (the later Commission) in 1955 to leave market surveillance for the market for ferrous scrap to an industry agency, the Joint Bureau of Ferrous Scrap Producers. The agency on which the High Authority was represented made decisions to fix an equalization tax that regulated the internal price of scrap relative to fluctuations at the international market. Still, the High Authority was responsible for levying the tax on individual firms (Decision No. 14/55 26.3. 1955). The decision is a prime example of structural choice. At one and the same time the decision relieved the High Authority of a burdensome administrative task and ensured its credibility to affected interests by delegating decisions to a body under full industry control.

The delegation was later challenged at the Court of Justice in the Meroni-case. The claim was that the High Authority had surpassed its authority by de facto delegating decision making authority to a body not foreseen in the ECSC-treaty. The claim also was that by transferring discretionary power to a bureau dominated by the largest firms, the High Authority discriminated against small and medium sized enterprises within the industry. In its rulings the Court of Justice followed the plaintiff by stating that
“such delegations of powers, however, can only relate to clearly defined executive powers, the use of which must be entirely subject to the supervision of the High Authority.

The objectives set out in article 3 [of the ECSC-treaty] are binding not only on the High Authority, but on the “institutions of the Community ... within the limits of their respective powers, in the common interest.”

From that provision there can be seen in the balance of powers which is characteristic of the institutional structure of the Community a fundamental guarantee granted by the treaty in particular to the undertakings and associations of undertakings to which it applies.

To delegate a discretionary power, by entrusting it to bodies other than those which the treaty has established to effect and supervise the exercise of such power within the limits of its own authority, would render that guarantee ineffective” (Judgment of the Court of 13 June 1958, Case 9-56 and Case 10-56).

The ensuing Meroni-doctrine has effectively constrained institutional choice within the EU. So, the comitology-procedures are fully compatible with it because the Commission retains formal authority. But comitology does not offer a solution to the capacity problem the Commission may face. Therefore, the question is to what extent it is possible to expand administrative capacity at the EU level both without violating legal doctrine and without changing the institutional balance in a way that is politically unacceptable. In recent years this concern has got considerable attention, and a number of innovations have been initiated, in most cases by the Commission (Scott & Trubek 2002; Hummel 2007). The steady creation of new agencies fits into this pattern, but represents only one strategy.

During the 1990s the Commission suffered from a series of scandals that eventually ended with the fall of the Santer Commission. One of the initiatives taken by the Commission was to prepare a program for administrative reform. In a white paper on European governance the new Prodi Commission set out its principles of good governance together with its general guidelines for reform (Commission 2001a). Part of the program was to improve EU regulation, among other things to ensure more effective implementation. The strategy pleads for more delegation to the Commission, “leaving it to the executive to fill in the technical detail via implementing “secondary” rules” as a way towards this goal (Commission 2001a: 20). The Commission also argues for the creation of further EU regulatory agencies as a step towards better regulation. These new regulatory agencies shall be granted certain clearly defined powers to make individual decisions, provided that

1. “a single public interest predominates and the tasks to be carried out require particular technical expertise (e.g. air safety).”
2. they are not “given responsibilities for which the Treaty has conferred a direct power of decision making on the Commission (for example, in the area of competition policy).”
3. they are not “granted decision-making power in areas in which they should have to arbitrate between conflicting public interests, exercise political discretion or carry out complex economic assessments.”

4. they “must be subject to an effective system of supervision and control” (Commission 2001: 24).

Above comitology and independent agencies are described as the two most important forms of administrative adaptation. They are also related in a double sense. Functionally, they represent two different strategies to enhance EU’s administrative capacity and in terms of political control they raise the same questions concerning the balance between Commission- and national government interests. However, the EU has developed other forms that balance the same need to expand administrative capacity and balance supranational and national interests against each other. These solutions apply both to regulatory surveillance and administrative support and to the management of an increasing number of EU-programs. There are four such forms: co-regulation, network management, executive agencies, and agencies established outside the EC-treaty. Table 2 gives a full overview of these forms of administrative differentiation within the EU.

- Table 2 about here -

Co-regulation is a related Commission strategy involving a combination of “binding legislative and regulatory action with actions taken by the actors most concerned, drawing on the practical expertise” Commission 2001a: 21). The Commission sees a potential for co-regulation for the setting of joint product standards and for standards aiming at reducing pollution. But as in the case of delegation to regulatory agencies the use of this New Approach, as it is termed, once more rests on the explicit presumption that the constraints defined by EU-legal doctrine are respected.

Regulatory policy and administration is certainly the most important policy field for the EU. But in addition the EU has developed a set of programs where it provides financial or administrative support in either member countries or in other countries, in particular countries that are preparing for membership. Most of these programs are implemented by national authorities as is the case with EU’s regional and social programs (Yesilkagit & Blom-Hansen 2007). Some of these programs involve the creation of joint administrative capacity at the EU level. The EU has launched two different strategies to handle these tasks. One is to manage community programs by networks of national agencies. The other is to set up an executive agency to manage a specific community programs (Council 2003).
Network management is a specific form of out-sourcing where the Commission sets up a cooperative network of national agencies (i.e. in EU terminology public sector institutions or national institutions with a public service mission). It is applied where the program is co-financed by EU- and national funds. The Commission is responsible for running and coordinating the network but the administrative tasks involved are to some extent delegated to and shared between the national partners. The network model is open for both EU-wide programs and for programs that only involve some countries. The model has been used both in the field of education, training and youth and for setting up the European Statistical System, a cooperative network furthering coordination of member country statistical authorities (Commission 2001b).

An executive agency, set up under Commission auspices, is an alternative and novel form of program administration (Council 2002). They are created because

“[the Commission] must focus primarily on its institutional tasks. It should therefore be able to delegate some of the tasks relating to the management of Community programmes to third parties. Outsourcing of management tasks should nevertheless stay within the limits set by the institutional system as laid out in the treaty. This means that tasks assigned to the institutions by the Treaty which require discretionary powers in translating political choices into action may not be outsourced.”

Like the independent agencies they have legal personality and dispose of their own budget. They also have their own management and staff seconded from the Commission or hired by the agency. But unlike independent agencies they have a common and pre-determined governance structure laid down in a Council regulation. According to this governance structure executive agencies are definitely creations of the Commission. The main principle is that the Commission appoints a steering committee of five members. The committee adopts the agency’s annual work program, after it has been approved by the Commission, adopts the agency’s administrative budget, and submits an annual report to the Commission. By 2007 there were three executive agencies working with EU programs in education and culture, public health and energy. In practice they operate on a network basis, but contrary to networks of national agencies they have a separate, even if temporary organisation that stops with the program. Interesting the anchoring of the executive agencies within the Commission has not freed them from national oversight. In a cryptic phrasing the Council regulation states that “the Commission shall be assisted by … the ‘Committee for Executive Agencies’” following the rules in the Council’s 1999 comitology decision (Council 2002).

5 Since three more have been established.
The five institutional set-ups described above all operate within the first pillar of the EU where the EC-treaty gives the Commission a key role in overseeing policy implementation. But outside the supranational framework the EU has also developed a relatively intensive cooperation that covers the fields of foreign and security policy and also the fields of internal and judicial affairs (police cooperation, asylum and immigration, human rights etc. To support this cooperation the EU has created an increasing number of agencies with specific tasks. they are not set up according to a regulation, but according to specific agreements between the member countries participating. Still, they share several traits with the independent agencies as their governance structures have been carefully designed to match the political task in question.

During its existence the EU has differentiated its institutional structure considerably. A core problem has been to adapt administrative capacity to cope with tasks of increasing scope and complexity. This adaptation started already in the 1950s and it has continued since then. The persistent issue has been what the role of the Commission should be, even in cases where the specific solution involved the creation of new and separate units. These decisions have had both a vital legal aspect because the European Court of Justice plays an active role as guardian of the EC-treaty and a strong political aspect. This is so because changes in the administrative framework may affect the balance between the member governments and EU’s supranational institutions. Thus any solution to specific problems has to respect the constraints set by a general, but clear legal doctrine defined already in the late 1950s.

**Agency design and agency autonomy**

In four of the six situations described above (comitology, co-regulation, network management, and executive agencies) the EU has managed to develop a coherent set of principles. Together they involve both procedural solutions similar to comitology (co-regulation and network management) and the creation of executive agencies that sometimes are integrated into a network encompassing both the Commission and national authorities. In this way an institutional framework has been set up that define their use, organization and basic governance structure.

This is not the case for the independent agencies and the agencies created outside the EC-treaty. The Commission has taken steps both to define a common platform for the use of independent agencies and also to enter an inter-institutional agreement with the Council and the European
Parliament on their operation. Yet, they present an extremely diverse part of EU’s administrative system. They have been created as a political response to issues of the day. The implication is that their tasks and policy responsibilities vary, and also that their administrative and political governance structures vary considerably. Equally important a clear and time consistent legal doctrine sets clear limits to delegation of discretionary authority. Hence, the analysis of any variations in agency authority and autonomy must be undertaken with care. Some agencies may actually, as discussed above have de facto decision making power, and other agencies have well-defined tasks involving their contribution to very specific decisions. But the constraints set by legal doctrine are not a pure formality. Rather the doctrine is upheld because agency organization and agency delegation remains a politically sensitive case of structural choice.

One question concerns the internal organization of the agencies. At issue here are primarily the agencies’ management structures. The agency gains in autonomy if its governing board appoints the director and if the governing board increases in size to include representatives from stakeholders other than the member governments and the Commission. The credible commitment hypothesis would expect this increasingly to be the case as integration within the internal market has increased. It would also expect decisions on the governing board to be taken by majority. What is more it would expect that autonomy in this form is more prevalent when agencies are entrusted some authoritative decision-making power.

Table 3 shows the bivariate correlations between agency tasks and the different dimensions of the agencies internal organization and governance structure. However, these correlations are generally weak and insignificant. In two of the cases where the correlation is relatively strong and significant it even goes against the hypothesis that agencies with some decision-making authority should have a governance structure that insulates them from member country influence thus bolstering their autonomy and credibility as independent agencies. Actually, these agencies are less likely to have other stakeholders represented on their governance boards than the member governments and the Commission and less likely to be bound by rules securing information on and furthering transparency regarding their activities. Rather agencies have a fairly uniform organization and their governance structure does not vary with their tasks. This governance structure gives preference to member countries’ representation on governance boards that non-regarding their tasks make

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6 See the Commission’s white paper on European governance (Commission 2001) and its draft interinstitutional agreement on the operating framework for the European regulatory agencies (Commission 2005).
decisions by majority and, as we saw above, appoint agency heads. The preliminary conclusion is that the EU here has developed a fairly uniform practice to be followed whenever an agency is set up.

- Table 4 about here -

Still, the institutional design of agencies is hardly a trivial matter for EU legislators. Table 4 shows the bivariate correlations between agency tasks and agencies’ embeddedness in the EU’s institutional system. Now the coefficients are stronger and often clearly significant at either the .01 or the .05 level. This is remarkable given the limited number of cases. Agencies that have tasks involving them in the provision of policy advice or even endowing them with some decision-making authority are much more likely to have an appeals board and to be linked to the EU-implementation system through the comitology procedure. The former provision gives affected interests like interest organizations and private business access to agency policy and decisions tried at an independent board; the latter provision provides member governments with a fire alarm to be activated if a specific decision made by either the agency management or its governance board runs against their interests. The decision at issue then will be tried by a committee chaired by the commission on which civil servants from all member countries have a seat. Equally conspicuous is that creation of an advisory board is not in the same way linked to agencies’ more or less politically salient tasks. The differentiation between agencies with some or little authority comes out even more clearly in the strong and significant correlation with the index measuring the general degree of embeddedness.

Table 5 shows the results of an OLS-regression where degree of embeddedness and the number of stakeholders represented on agency governing boards are regressed on agency tasks with control for the agency’s year of establishment and the treaty regime under which the agency was set up. The results are clear and theoretically interesting.

First, there is clear distinction between agencies with only informational or network related tasks as opposed to agencies that are called upon to provide policy advice and given some authority to make administrative decisions. If an agency is endowed with advisory tasks the degree of embeddedness increases by .53 and if it is authorized to make authoritative decisions, for example in the form of inspections or the issue of certificates, the degree of embeddedness increases by .51. In either case the regression coefficients are significant at the 0.01 and the 0.05 level, respectively. Similarly, the governance structure differentiates between agencies with purely informational and
network facilitating tasks as opposed to agencies given a role in policy-making and administration. Compared to the bivariate correlations reported in table 3, the regressions reveal partly strong and surprising coefficients. So, agencies engaged in policy advice are more likely to have other stakeholders than member governments and the Commission represented on their governing boards. However, for agencies with some decision-making authority the regression coefficient is high, negative and significant (-.66) implying that as agencies are endowed with some authoritative power member countries strengthen their ties on them by excluding other stakeholders from its governance board.

Second, control for year of establishment and treaty regime reveals clear and significant differences in agency embeddedness and governance structures. The negative coefficient (-.38) between year of establishment and the degree of embeddedness shows that agencies set up after the ratification of the Maastricht treaty are significantly much more likely to be linked to the EU-system. This happens through procedures holding them accountable to the national governments and to affected interests given access to appeals boards or a voice in an advisory board. However, it is also clear that the time of creation for the agency is not related to the number of stakeholders represented on its governing board. As to the treaty regime agencies set up according to an intergovernmental agreement between member countries are not surprisingly strongly embedded in procedures that give the national countries a high hand over the agency. But somewhat surprisingly these agencies are more likely to have stakeholders other than the participating countries on their governing boards. The important implication is that as member governments, for one reason or another, decide to delegate some authority to independent agencies they demonstrate a clear preference for structural choices that approach the intergovernmental forms used outside the supranational framework of the EC-treaty.

Finally, Table 5 shows that the simple model used has strong explanatory power when it comes to predict the variance in governance structures. In particular this is clear for the degree of embeddedness where the model accounts more 52 per cent of the variation. The model has much weaker predictive power when it comes to the internal organization of the agencies. There are notable implications of this finding. One is that when deciding to create a new agency, within or outside the EU-treaty, the member countries apparently are much more concerned about creating procedures that give them a formally high hand over agency business than its internal management.
organization. The other implication is that a blueprint for the proper organization of agencies has gradually developed within the EU. This blueprint is used non-regarding the tasks entrusted to the agencies and non-regarding the regime under which they have been set up.

Discussion

The EU has gone through a remarkable development. It has taken place without basic changes in its administrative organization and capacity. The Commission and the directorates general reporting to it remain the EU’s administrative backbone. Still, in a wider perspective the administrative set-up has undergone change. These changes have taken two parallel directions. One goes through the creation of elaborate networks where formal procedures establish tightly regulated links between the Commission and national authorities. The other is the creation of agencies established outside the Commission.

The focus of this analysis is on the creation of agencies, but it places them within the broader context of administrative adaptation and capacity expansion. The argument ventured is that both the development of different types of networks and the set up of agencies represent efforts to expand EU administrative capacity in a politically controlled way. The principal difference between the two forms of adaptation is that by setting up an organization endowed with its own financial and human resources extra capacity is visibly concentrated in the agency. In comparison the capacity created within a network is demanding in terms of transaction costs and little visible in terms of political commitment.

The agency option has another potentially attractive attribute. Because agencies are institutionally separate from the EU’s core institutions (the Commission and the Council) delegation of legal authority to them make it possible for the EU institutions to demonstrate their commitment to their official policies. By doing so, policy-makers place authority to make administrative and regulatory decisions beyond their own reach. They thus remove the risk that they will renege on earlier promises. This theory figures prominently in the regulatory reform literature. It has also been brought into play as both a policy recommendation and an explanation for the continuous agency boom setting in during the post-Maastricht-era. Where this analysis covered the 25 agencies in operation in early 2007, there are 27 such agencies in 2008, one on the drawing board plus six executive agencies, operating on a time-limited mandate and reporting directly to the Commission.

The question raised here is not whether credible commitment theory and the regulatory reform literature are right in pointing to the existence of a credible commitment problem. Actually we think
they are. Our analytical goal has been to unravel on a systematic basis whether policy-makers and legislators within the EU endow agencies with the structural autonomy expected (and recommended) by the theory. If this is true the independent agencies should be structurally insulated from national influence and control as soon as EU-lawmakers decide to delegate administrative authority to them. There are limits to such delegation because of a strong legal doctrine that has been upheld since the 1950s. Yet, our analysis shows that some agencies, all dealing with regulatory matters within the fields of economic and social regulation, have been authorized to perform inspections and to issue certificates. Even more agencies are mandated to produce policy advice to the Commission. However, such legal autonomy is inversely related to structural autonomy. If an agency is endowed with just some authority to make inspections, to issue certificates, or to deliver policy advice to other EU institutions the formal institutional constraints within which it operates are severely tightened. In our interpretation this shows that credible commitment theory has rightly identified a problem facing regulatory administration, but also that it has got the political concerns of EU-policy-makers wrong.

This brings us to consider structural choice theory as offering an alternative explanation for the developments and patterns uncovered. Here emphasis is on stakeholder control over an organization as one of the principal means to exert long-term influence over policy and its implementation. As the above analysis has shown there is a much better fit between the predictions of structural choice theory and the institutional design of EU’s new agencies. The general conclusion is that even if member countries have given their support to the creation of new agencies, thus adding specialized capacity to a generalist and increasingly weak Commission, member countries have been keenly aware to develop an institutional design allowing them to keep their hands on the steering wheel and their feet on the brakes.

There is more to it. EU policy-makers and legislators sharply distinguish between agencies’ internal organization and their embedding in EU’s institutional system. In the former case they apply a standard design that does not vary with the tasks of the agencies (Simon 1953). In the latter case their precise choice depends on the tasks allocated to the agencies and there is, as structural choice theory predicts, a strong inverse relationship between the amount of formal authority delegated to them and their structural autonomy. According to structural choice theory the future activities of an administrative agency can be kept under control by giving affected interests and other stakeholders a saying in its operation, typically through their representation on governing boards. This has to some extent also been the case with the EU’s independent agencies. The first
agencies set up during the 1970s were all responses to the launching of the then European Communities’ social dimension. Great political care was taken to involve employees and employers in the governance of the European Agency for Safety and Health at Work (now EU-OSHA) and the European Centre for the Development of Vocational Training (Cedefop) through representation at their governance boards. Later on there was a certain drive for seeing the new agencies as expert bodies, much within the line of thinking of regulatory reform and credible commitment theory. The corollary therefore was to have independent experts on agency governing boards. As the analysis has demonstrated neither concern has taken root. Rather a practice has developed where representation narrows down to the national government representatives and the Commission if the agencies are entrusted a minimum of formal authority. This does not exclude either interest organizations or experts from being heard. But their advice is channelled through separate advisory bodies and appeals boards set up to hear complaints over decisions made by agencies with administrative authority.

In recent years the number of agencies has not only increased, their status has differentiated. Besides the independent agencies, set up according to the EC-treaty, two new forms of agencies have appeared. One group of these operates within the intergovernmental frameworks of Common Foreign and Security Policy (EDA, ISS, and EUSC) and police and judicial cooperation in criminal matters (CEPOL, EUROPOL, and EUROJUST). The other group is the novel executive agencies discussed in the qualitative analysis. It is theoretically interesting that the governance structures of the independent agencies comes close to that of the agencies set up on an intergovernmental basis. It is equally notable that when the Commission is allowed to delegate implementation to an executive agency operating under a default sunset clause this agency is constrained by procedures that are identical with those leading to a high degree of institutional embeddedness for independent agencies with a minimum of power.

There is a tension between the Commission’s administrative reform strategy and long established legal doctrine. The Commission sees the delegation of administrative tasks and responsibilities to independent agencies as a solution to some of its administrative problem. Its rationale here comes close to that of credible commitment and regulatory reform theory. However, the Meroni-doctrine, upheld since 1958, blocks for delegation of discretionary power to bodies not established by the treaties. It is a matter of legal interpretation how tight a constraint the Meroni-doctrine represents (Majone xxxx ). The analysis has revealed that the doctrine has not blocked for some delegation to agencies established according to the EC-treaty, although the discretion involved is limited. At
the same time such delegated authority is heavily circumscribed by tight procedural constraints of
the kind described by structural choice theory (McCubbins, Noll, and Weingast 1997; Horn 1995;
Moe 1990; 2005). These procedures within which the agencies have to operate do not differ from
the procedures governing the extensive forms of network management that has also developed
within the EU.

Conclusions

During its history the EU has constantly been pressed on its limited administrative capacity. The
ensuing constraints have been overcome through a combination of network management and in
recent years the establishment of now more than 30 agencies. Many of these agencies deal with
regulatory policy and administration, and one interpretation has been that especially their design
represents EU lawmakers concern for credible commitment. The analysis finds little empirical
support for claims derived from this theory. Rather our empirical findings support propositions
following from structural choice theory. The agencies are strongly embedded in the EU institutional
system providing strong national constraints on their activities. Their limited structural autonomy
lines up with long established legal doctrine, stressing the constitutional limits on delegation of
discretionary authority to institutions outside the treaty system. Equally interesting it is that the
independent agencies, in spite of their name, do not enjoy more autonomy than agencies created
within an intergovernmental framework and the recent invention of executive agencies managing
certain EU-programmes on a fixed-term basis.
References


**Official documents**


Judgment of the Court of 13 June 1958, Case 9-56 and Case 10-56 (Meroni-case).
Appendix

List of agencies included in study

1) Community Plant Variety Office (CPVO)
2) The European Agency or Reconstruction (EAR)
3) European Agency for Safety and Health at Work (OSHA)
4) AMOCEB (now FRONTEX) European Agency for the Management of Operational Coordination at the External Borders of the Member States of the EU
5) European Aviation Safety Agency (EASA)
6) European Center for Disease Prevention and Control (ECDC)
7) European Center for The Development of Vocational Training (CEDEFOP)
8) European Environmental Agency
9) European Food Safety Authority (EFSA)
10) European Foundation for the Improvement of Living and Working Conditions (ERUFOFOUND)
11) European Maritime Safety Agency, EMSA
12) European Medicines Agency (EMEA)
13) European Monitoring Center for Drugs and Drug Addiction (EMCDDA)
14) European Monitoring Center on Racism and Xenophobia
15) European Network and Information Security Agency (ENISA)
16) European Railway Agency (ERA)
17) European Training Foundation (ETF)
18) Office for Harmonisation in the Internal Market (Trade Marks and Design) OHIM
19) European Defence Agency
20) European Union Institute of Security Studies
21) European Union Satellite Center (EUSC)
22) European Police College CEPOL
23) The European Union's Judicial Cooperation Unit (EUROJUST)
24) The European Police Office (EUROPOL)
25) Community Fisheries Control Agency (CFCA)
Table 1: Overview of variables measuring the authority and autonomy of EU-agencies

<table>
<thead>
<tr>
<th>VARIABLES: Measuring autonomy</th>
<th>FREQUENCIES</th>
</tr>
</thead>
</table>
| 1a: Advisory board added to agency (no = 0, yes = 1) | No = 48 % (12)  
Yes = 52 % (13) |
| 1b: Appeals board added to agency (no = 0, yes = 1) | No = 84 % (21)  
Yes = 16 % (4) |
| 1c: Regulated by comitology procedure (no = 0, yes = 1) | No = 80 % (20)  
Yes = 20% (5) |
| 1d: Overall degree of embeddedness (mean of 1a, 1b and 1c. Scale going from 0-1) | 0 = 36 % (9)  
0,33 = 44 % (11)  
0,67 = 16 % (4)  
1 = 4 % (1) |
| 1e: Procedure of decision making at management board (unanimity = 0, majority = 1) | Unanimity = 12 % (3)  
Majority = 88 % (22) |
| 1f: Degree of obligation to secure information and transparency of activities (mean of “has to make an annual work program”, “has to give annual account”, has to make an annual report of last year’s activities” (all yes = 1, no = 0). Scale going from 0-1.) | 0 = 0 % (0)  
0,33 = 4 % (1)  
0,67 = 16 % (4)  
1 = 80 % (16) |
| 1g: Executive appointment procedure (internal (management board) = 0, external (Commission and/or Council) = 1) | Internal = 68 % (17)  
External = 32 % (8) |
| 1h: Number of external stakeholders represented in governing board (scale going from 1-9) | 1 = 12 % (3)  
2 = 44 % (11)  
3 = 24 % (6)  
4 = 0 % (0)  
5 = 20 % (5)  
6 = 0 % (0)  
7 = 0 % (0)  
8 = 0 % (0)  
9 = 0 % (0) |

<table>
<thead>
<tr>
<th>Independent variables: Measuring Authority</th>
<th>FREQUENCIES</th>
</tr>
</thead>
</table>
| 2a: Agency task: Information gathering, statistics, policy and evaluation within portfolio restricted to EU and EEA-countries (no = 0, yes = 1) | No = 20 % (5)  
Yes = 80 % (20) |
| 2b: Coordination of network (no = 0, yes = 1) | No = 16 % (4)  
Yes = 84 % (21) |
| 2c: Policy advice to the Commission (no = 0, yes = 1) | No = 66 % (13)  
Yes = 44 (11) |
| 2d: Authoritative decisions on specific rule-application, inspections, issuance of certificates etc. (no = 0, yes = 1) | No = 72 % (18)  
Yes = 28 % (7) |

<table>
<thead>
<tr>
<th>Control variables:</th>
<th>FREQUENCIES</th>
</tr>
</thead>
</table>
| 3a: Year of establishment (</= 1993 = 0, > 1993 = 1) | </= 1993 = 24 % (6)  
> 1993 = 76 % (19) |
| 3b: Treaty regime (legislative procedure = 0, intergovernmental procedure = 1) | Legislative procedure = 88 % (22)  
Intergovernmental procedure = 12 % (3) |

As represented interests we differentiated between the following groups of stakeholders or interests: national government representatives, Commission representatives, EP, labour market organisations, business organisations, consumer organisations, other NGOs, e.g. environmental organisation, researchers and policy experts and “other”.

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Table 2. Administrative differentiation within the EU.

<table>
<thead>
<tr>
<th>Policy task</th>
<th>Institutional form</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Specialized agency</td>
</tr>
<tr>
<td>Regulatory surveillance and</td>
<td>1. Independent</td>
</tr>
<tr>
<td>administrative support</td>
<td>agencies within the EC-treaty</td>
</tr>
<tr>
<td></td>
<td>2. Agencies outside</td>
</tr>
<tr>
<td></td>
<td>the EC-treaty</td>
</tr>
<tr>
<td>Program management</td>
<td>5. Executive agencies</td>
</tr>
</tbody>
</table>
Table 3. Agency tasks and agency organization

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Procedure of decision making at governing board (unanimity = 0, majority = 1)</th>
<th>Executive appointment procedure (internal (Governing board) = 0, external (Commission and/or Council) = 1)</th>
<th>Degree of obligation to secure information and transparency of agency activities</th>
<th>Number of stakeholders represented on governing board</th>
<th>Number of members on governing board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency task: Information (no = 0, yes = 1)</td>
<td>-0.185</td>
<td>-0.086</td>
<td>0.351</td>
<td>0.047</td>
<td>0.167</td>
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<tr>
<td>Agency task: Network (no = 0, yes = 1)</td>
<td>-0.161</td>
<td>-0.402*</td>
<td>0.009</td>
<td>0.160</td>
<td>0.120</td>
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<tr>
<td>Agency task: Advice (no = 0, yes = 1)</td>
<td>0.327</td>
<td>0.083</td>
<td>0.101</td>
<td>0.194</td>
<td>-0.077</td>
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<tr>
<td>Agency task: Authoritative decision making (no = 0, yes = 1)</td>
<td>-0.044</td>
<td>0.145</td>
<td>-0.403*</td>
<td>-0.420*</td>
<td>-0.315</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Control Variables</th>
<th>Year of establishment (&gt;/&gt;= 1993 = 0, &lt; 1993 = 1)</th>
<th>Treaty regime (legislative = 0, intergovernmental = 1)</th>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>-0.208</td>
<td>-0.016</td>
<td>-0.080</td>
<td>-0.196</td>
<td>-0.429*</td>
</tr>
<tr>
<td>Treaty regime</td>
<td>0.136</td>
<td>-0.253</td>
<td>0.173</td>
<td>-0.208</td>
<td>-0.168</td>
</tr>
</tbody>
</table>

Statistics: Pearson correlation. ** = sig. 0.01, * = sig. 0.05 (two-tailed).
<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Appeals board (no = 0, yes = 1)</th>
<th>Advisory board (no = 0, yes = 1)</th>
<th>Comitology procedure (no = 0, yes = 1)</th>
<th>Degree of embeddedness</th>
</tr>
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<tbody>
<tr>
<td>Agency task:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information (no = 0, yes = 1)</td>
<td>-0.327</td>
<td>0.120</td>
<td>-0.250</td>
<td>-0.196</td>
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<tr>
<td>Network (no = 0, yes = 1)</td>
<td>-0.107</td>
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<td>-0.055</td>
<td>-0.064</td>
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<tr>
<td>Advice (no = 0, yes = 1)</td>
<td>0.053</td>
<td>0.206</td>
<td>0.564**</td>
<td>0.427*</td>
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<tr>
<td>Authoritative decision making (no = 0, yes = 1)</td>
<td>0.700**</td>
<td>-0.114</td>
<td>0.579**</td>
<td>0.529**</td>
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<td>Control Variables</td>
<td></td>
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<tr>
<td>Year of establishment (&gt;/&gt;= 1993 = 0, &lt; 1993 = 1)</td>
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<td>-0.352</td>
<td>0.047</td>
<td>-0.083</td>
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<tr>
<td>Treaty regime</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(legislative = 0, intergovernmental = 1)</td>
<td>-0.161</td>
<td>0.384</td>
<td>-0.185</td>
<td>-0.398*</td>
</tr>
</tbody>
</table>

Statistics: Pearson correlation. ** = sig. 0.01, * = sig. 0.05 (two-tailed).
Table 5. Agency tasks and agency autonomy towards national governments

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Degree of embeddedness</th>
<th>Number of stakeholders on governing board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>0.30</td>
<td>3.60</td>
</tr>
<tr>
<td>Agency task: Information (no = 0, yes = 1)</td>
<td>.10</td>
<td>-.13</td>
</tr>
<tr>
<td></td>
<td>(0.63)</td>
<td>(0.60)</td>
</tr>
<tr>
<td>Agency task: Network (no = 0, yes = 1)</td>
<td>-.10</td>
<td>-.12</td>
</tr>
<tr>
<td></td>
<td>(0.65)</td>
<td>(0.58)</td>
</tr>
<tr>
<td>Agency task: Policy advice (no = 0, yes = 1)</td>
<td>.53***</td>
<td>39*</td>
</tr>
<tr>
<td></td>
<td>(3.41)</td>
<td>(1.97)</td>
</tr>
<tr>
<td>Agency task: Authoritative decision making (no = 0, yes = 1)</td>
<td>.51**</td>
<td>-.66**</td>
</tr>
<tr>
<td></td>
<td>(2.70)</td>
<td>(2.73)</td>
</tr>
<tr>
<td>Year of establishment (&gt;= 1993 = 0, &lt; 1993 = 1)</td>
<td>-.38**</td>
<td>.03</td>
</tr>
<tr>
<td></td>
<td>(2.91)</td>
<td>(0.13)</td>
</tr>
<tr>
<td>Treaty regime (legislative = 0, intergovernmental = 1)</td>
<td>-.33*</td>
<td>.43*</td>
</tr>
<tr>
<td></td>
<td>(2.02)</td>
<td>(2.06)</td>
</tr>
</tbody>
</table>

Model statistics:
- N: 25
- Adjusted R^2: 0.52
- F-value of full model: 5.41***

Note: OLS-regression. *** = p< 0.01; ** = p< 0.05; * = p< 0.10 (two-tailed). Cell entries are standardized regression coefficients with the absolute value of t-statistics in parentheses.