

Organized administrative integration
The role of agencies in the European administrative system

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Preface

The transformation processes in Europe shape and intertwine national and European institutions with implications for the character of Europe as a political order. The topic of this dissertation is the executive dimension of this political order which involves the integration of public administrative organizations across levels of government and borders.

The last decades have witnessed extensive reforms in national administrative institutions in Europe and within the EU administrative apparatus. One notable feature of these reforms has been the decentralization of tasks to semi-independent agencies. In this dissertation I explore the transformation of the European executive order by considering the role of agencies. I analyse in equal measure and interdependently both national agencies and EU-level agencies within the European administrative system, and the basic research questions are the following: To what extent, how and why do agencies at different levels of government enhance administrative integration in the EU?

The dissertation is rooted in an interest for institutions, and in particular the organizational dimension of institutions. I consider the European administrative system as a set of organizational parts, and I acknowledge that integration of this set of parts may come about in at least two qualitative different ways. First, the parts may become connected as coherent wholes. This type of administrative integration was the intended form in the EU: a system where national governments collaborate as coherent and autonomous entities. Second, integration may imply that the parts themselves are not connected more closely as coherent wholes, but that they are reorganized and re-connected across levels of government and national borders. This latter type of integration is explored in this dissertation. I explore how change in one part (organizational decoupling) is linked to change in other parts (organizational recoupling), and I argue that 'agencification' is spurring new patterns of cooperation, coordination and power that cut across levels of government and borders. Agencies at both the national and European levels increasingly participate in cooperative structures which serve to integrate the European administrative system and challenge the vision of an intergovernmental administrative order

where national governments collaborate as coherent and autonomous entities. In short, what I observe in this dissertation is organized administrative integration.

The dissertation is organized as a collection of articles. The first part (articles 1 and 2) focusses on the role of national agencies, while the second part (articles 3 and 4) focusses on the role and development of EU-level agencies. In spite that the dissertation is organized as a collection of articles, and not as a monograph, it still constitutes a unit, and the different articles share several theoretical and empirical properties. The introductory chapter in this dissertation provides a framework for understanding the various articles and aims to show that the findings in the articles, separately and taken together, are contributing to our understanding of the role of agencies within the European administrative system and the difference they can make.

Writing an article collection implies leaving something behind as you go along, e.g. when an article is accepted for publication in a journal. At the same time conducting a dissertation is to a large extent an academic learning process and a continuous revising process, and this duality has caused some frustration. At the end I decided to present the articles as they appeared at the date for publication/acceptance of publication, and only some minor adjustments (references, language, errors etc.) have been made in the last phase.

The first article 'Run-away bureaucracy? Exploring the role of Nordic regulatory agencies in the European Union' is published in 2008 in *Scandinavian Political Studies*, Vol. 31, No. 1, pp. 27-43.

The second article 'Administrative integration through the back door? The role and influence of the European Commission in transgovernmental networks within the environmental policy field' is published in 2008 in *Journal of European Integration*, Vol. 30, No. 5, pp. 635 - 51.

The third article 'Voice or loyalty? The evolution of the European Environmental Agency (EEA)' was accepted 27. November 2008 for publication in *Journal of Common Market Studies*, and will be published in 2010.

The forth article 'Executive power in the making. The establishment of the European Chemical Agency (ECHA)' has been published as an *ARENA working paper*, No. 8/09, and is part of a book proposal on EU-level agencies for Manchester University Press. [The proposal was accepted April 2010] .

Without the encouragement, help and criticism of many people, I would never have been able to conduct this dissertation. I am most greatly indebted to my supervisor Morten Egeberg for guiding this work from my fumbling start until the end. He has been inspiring, constructive and supportive through the whole process, and I have benefited greatly from his insight comments and suggestions. I really appreciate his academic enthusiasm, skills, critical questions and open door policy.

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Last but not least, I am grateful to Harald for his enduring support and to my two beautiful, strong, funny and extraordinary children, Mathias (5 ½) and Helena (3 ½) for constantly reminding me of the most challenging and important aspects of life.

Maria Martens
Oslo, August 2009

Table of Contents

Preface

Table of Contents

Introduction

Topic.....	1
Background.....	3
Agencies as agents of transformation: de-coupling and re-coupling.....	4
An institutional perspective.....	8
Methodology and data.....	18
Four articles on the role of agencies within the European administrative system.....	23
Piecing together the different articles.....	29
Concluding remarks: legitimate administrative integration?.....	37
References.....	41

Article 1

Runaway bureaucracy? Exploring the role of Nordic regulatory agencies in the European Union

Abstract.....	55
Introduction.....	56
A 'most similar cases' design.....	57
An organizational starting point.....	60
A note on methodology and data.....	62
Nordic agencies on the European scene.....	63
The organizational explanation.....	68
Balancing output and input legitimacy.....	70

Conclusion.....	72
References.....	74
Article 2	
Administrative integration through the back door?	
The role and influence of the European Commission in transgovernmental networks within the environmental policy field	
Abstract.....	79
Introduction.....	80
A note on methodology and data.....	83
The networks under study.....	84
The European Commission: A partner and guide.....	90
Conceptualising the role of the Commission.....	92
Conclusion.....	95
References.....	98
Article 3	
Voice or loyalty? The evolution of the European Environmental Agency (EEA)	
Abstract	105
Introduction	106
The multi-interpretable EEA regulation	109
Methodology and data	111
The EEA organizational setup.....	112
Interinstitutional tension (1994-2003).....	113
Consolidation and interinstitutional partnership (2003-2007)	116
The role and autonomy of the EEA: voice or loyalty?.....	120
Managing dependencies and gaining recognition.....	122
Conclusion.....	125
References.....	127

Article 4	
Executive power in the making: the establishment of the European Chemical Agency (ECHA)	
Abstract	131
Introduction	132
An institutional account.....	134
Methodology and data.....	136
The old regime for chemicals control in the EU and REACH...	137
The Commission Strategy: Building upon existing structures...	140
The EP: Ensuring influence.....	144
The Council: The logic of compromise.....	145
Preparations in Helsinki: Cut and paste.....	147
The birth of the ECHA: Inter- and intra-institutional dynamics	148
Concluding remarks: New wine in old bottles?.....	151
Official documents.....	154
References.....	156
Annex 1: Interview guide. National agency officials.....	161
Annex 2: Interview guide. The Commission.....	165
Annex 3: Interview guide. EEA.....	169
Annex 4: Interview guide. ECHA.....	173

Introduction

Topic

The European integration process has seen profound changes in economic, social, administrative, and political organization. Basic rules of political cooperation have been reconsidered, constitutional and institutional change has taken place, and Europe as a political order is portrayed as being under transformation (Olsen 2007a). This dissertation is about the executive dimension of this order which involves the integration of public administrative organizations across levels of government and borders. The point of departure is the assumption that public administration is a key institution of government, and the assumption that 'understanding administrative change is an important, but often ignored part of comprehending ongoing transformation of the European political order' (Olsen 2007a: 252).

Several theoretical venues are possible to pursue in order to see and understand administrative change. In this dissertation the European administrative system is thought of as a system consisting of different organizational components, and it explores the transformation of this system by considering new patterns of cooperation, coordination and power among, within and across its constitutive organizational parts. More specifically, it explores the transformation of the European

administrative system by considering the role of agencies both at the national and the European Union (EU) levels. It analyses in equal measure and interdependently both national agencies and EU-level agencies, and the basic research questions are the following: To what extent, how and why do agencies at different levels of government enhance administrative integration in the EU?

Recent years have witnessed extensive reform efforts in domestic government institutions of the EU member states and within the EU administrative apparatus. The trend has been toward increased horizontal and vertical specialization (Christensen and Lægreid 2006d: 359), and one notable feature has been the decentralization of tasks to semi-independent agencies. This dissertation argues that agencies, both at the national and the European levels, increasingly serve as constitutive building blocks of an evolving multilevel EU administration where the European Commission acts as an influential hub and coordinator. Agencies at both the national and European levels increasingly participate in network structures cutting across levels of government which informally seem to integrate the European administrative system and enhance uniform administrative practices across national borders. These developments challenge the intergovernmental vision of divided competences between the EU and the national level and the perception of a dual European administrative order, and I argue that distinct organizational conditions both at the national and European levels assist us in understanding these features. In particular I argue that agencification, understood as horizontal and vertical specialization, is spurring re-coupling to equivalent institutions across levels of government. Changing patterns of cooperation, coordination and power follow from processes of organizational separation and integration, de-coupling and re-coupling.

The first part of the dissertation (articles 1 and 2) focusses on the role of national agencies, while the second part (articles 3 and 4) focusses on the role and development of EU-level agencies. In spite of the fact that this dissertation is organized as a collection of articles, and not as a monograph, it is still integrated, constituting a unit, in which the articles share several theoretical and empirical properties. This introductory chapter provides a framework for understanding the various articles and shows that the findings in the articles, separately and taken together, are contributing to our understanding of the role

of agencies within the European administrative system and the difference they can make.

Background

The administrative systems in most EU states have changed the last three decades. They have become less hierarchical and more fragmented (Christensen and Lægreid 2001, Christensen and Lægreid 2006b, 2007a, Christensen et al. 2002, Pollitt et al. 2004). One notable feature has been the decentralization of tasks to semi-independent agencies outside the core of the politico-administrative apparatus.¹ Hence, an 'agencification' of the administrative apparatus in most EU states has taken place (Pollitt et al. 2004, Pollitt and Bouckaert 2004). Since the 2001 White Paper on European Governance, the European Commission has been officially in favour of decentralizing regulatory functions to autonomous agencies (Pollitt 2005: 371), and some EU directives have contained specific requirements as to how national agencies should be set up.

A parallel development has been unfolding at the European level where an increasing number of different agencies have been founded, although with less formal autonomy from the central EU institutions. Currently, more than thirty EU agencies have been established within different policy areas, and several are in the pipeline. Apart from being geographically spread throughout the EU, EU-level agencies cover multiple policy areas, and they have various formal powers. Together these agencies spend over one billion Euros per year and employ more than 4000 staff members (Egeberg et al. 2009). EU-level agencies, in short, have become a pervasive feature of the European administrative landscape.

How an agency is defined varies across national cultures, legal systems, and political systems (Rones 2009: 45). In this dissertation I apply the definition provided by Pollitt et al. (2004: 10) of a national agency as an organization which has its status defined in public law, is functionally disaggregated from its ministry, enjoys *some* degree of autonomy which is not enjoyed by the ministry, is nevertheless linked to the ministry in ways which are close enough to permit

¹ A comparative study conducted by Pollitt and Bouckaert (2004) reveals that the number of central agencies has grown in 10 of the 12 countries examined in Europe (Christensen and Lægreid 2006c: 22).

ministers to alter the budgets and main operational goals of the organization, is therefore not fully independent of its ministry, and is not a commercial corporation. Currently there is no clear-cut definition of an agency adopted in the EU legislation (Vos 2005: 122). The EU website defines agencies as bodies governed by European public law that are distinct from the community institutions and have their own legal personality.² In its Communication on the Operating Framework for the European Regulatory Agencies (2002), the Commission highlights the formal characteristics: They are created by a regulation, they have clearly specified tasks, they have legal personality and have a certain degree of administrative and financial autonomy.

Taken together, agencification has been high on the agenda of administrative policy-makers for a few decades, and agencies have become a salient feature of the administrative apparatus on both the national and European levels. However, organizing a government portfolio within or outside the core of the administrative apparatus makes up one of the enduring themes of public administration (Christensen and Lægreid 2006b, 2007b, Egeberg and Trondal 2010, Jacobsen 1960, Olsen 2008b, Olsen 2009b, Pollitt 2005, Wettenhall 2005), and a crucial question is of course *what difference do they make?*

Agencies as agents of transformation: de-coupling and re-coupling

In this dissertation the European administrative system is thought of as a system consisting of different organizational components (March 1999), and an important premise is that the organization of political life makes a difference (March and Olsen 1976). In organizational terms, agencies are *decentralized* and *sectorally specialized* structures. The agency model is different from the integrated bureaucratic model in that it combines autonomy and specialization of tasks in a narrow range of policy issues; there is separation both on a *vertical* dimension

² The EU-level agencies are grouped into four different categories: Community agencies (pillar 1), Common foreign and security agencies (pillar 2), Police and judicial cooperation in criminal matters agencies (pillar 3) and Executive agencies (relating to the management of community programmes, set up for a fixed period of time within the Commission structure) (see http://europa.eu/agencies/community_agencies/index_en.htm.) In this dissertation I am focussing on the community agencies under pillar 1.

between the politico-administrative leadership and the agencies and on a *horizontal* dimension between different agencies responsible for different tasks (Christensen and Lægreid 2006a: 13, Egeberg 2003). On this basis, agency structures are often expected to increase the relative importance of professional considerations and to reduce the amount of political interference in administrative decision-making (Egeberg 2003, Gulick 1937). An important point here is that degree of organizational coupling (loose/tight) in one context may have an impact on an organization's ability of re-coupling to ongoing processes in another context (March and Olsen 1976, Olsen 2009b). Thus agencies represent an organizational infrastructure which may be considered as relatively open for re-coupling into new organizational configurations, and more leeway and independence gained in one relationship may actually be followed by more dependence in another (transnational) relationship (Egeberg 2008, Egeberg and Trondal 2010, Olsen 2009b). The more loosely coupled polities are, horizontally as well as vertically, the greater the chance that they might align with their counterparts in other countries and at the supranational level (Egeberg 2009: 70, Spanou 1998). Hence, decoupling within one administrative system may lead to re-coupling within another system spanning levels of authority. Seen from this structural point of view, agencies have a *transformative* potential. However, what is our starting point, a transformation of what?

A dual administrative order

We can imagine that in a multilevel system like the EU the administration of policies adopted at the European level may be organized in different ways, and how we organize these processes may affect how policies are administrated and implemented at the national level. Some organizational arrangements may enhance the development of common rules and standards across member states, or, to put it otherwise, to reduce the room for national adaptation. Hence, it may enhance uniform administrative practices across member states. An arrangement in which the administration of common policies takes place *indirectly* through lower-level governments is probably the form that allows the most varied administration practices across territories. Such a dual administrative system and kind of 'administrative sovereignty' enjoyed by the national level was the intended form in the EU (Egeberg et al. 2009, Hofmann and Türk 2006). Even though developments in European integration have been viewed as substantively impacting national

political systems regarding polities, politics and policies, these trends have materialized in the absence of any common European administrative policy (Olsen 2003, Sverdrup 2003). How can that be?

Historically, there is a strong link between administration and the nation state in Europe. Administrative policies have been targeted at resolving tasks within the borders of the nation state, and it has been steered and governed by national leaders (Cassese 1985, Sverdrup 2003). As noted by Sverdrup (2003: 2) administrative policy has in several instances played an important role in building the nation and in creating a sense of community. The point here is that the divisions of tasks and responsibilities in the EU have broadly reflected this strong linkage between the nation state and public administration (Sverdrup 2000), and although there are variations between different policy areas, the main principle of governance has been that the European institutions decide on policies while administration, in particular implementation of policies, is regarded as the domain of national control (Cassese 1985, Hofmann and Türk 2006). Thus, an *indirect* administrative system was the intended form in the EU, a system 'in which coherent national governments constitute the basic administrative building blocks' (Curtin and Egeberg 2008: 649). Moreover, although the European Commission is formally responsible for the enforcement of EU law, the member states have been cautious in protecting their administrative prerogative and stress the principle of national administrative sovereignty within the Union (Olsen 2009b: 299). Hence, the formal distribution of administrative power and competence rests to a large extent on the idea that EU policies are administered by member states acting as coherent and autonomous entities (Pedersen 2009). In the words of Kadelbach (2002: 172) '[t]he distribution of administrative powers in the European Union rests on the presumption that EU law is administered by Member States which act *autonomously*' [italics added].

Administrative integration – how to see it?

However, the above-mentioned presumption of a dual administrative order is being challenged by several scholars, and the European administrative system is increasingly portrayed as being under transformation (Cassese 1985, Curtin and Egeberg 2009, Egeberg 2006b, Hofmann and Türk 2008, Hofmann and Türk 2006, Olsen 2003, 2007a, Sverdrup 2003, Trondal 2001, Wessels 1998). Several

theoretical and empirical venues are possible to pursue in order to see and understand this transformation. One possible venue is to explore the transformation and integration of a system by considering new patterns of cooperation and coordination among and across its constitutive organizational parts. '[I]n a multi-level, multistructured and multicentered polity with partly autonomous subsystems, a key to understanding [administrative integration] may be to study how institutions relate, balance, collide and penetrate each other (Olsen 2001: 18)'.

In this dissertation the process of administrative integration is seen as a shift of cooperation and coordination among the constitutive parts of the European administrative system and the reallocation of resources and power between them (Olsen 2007a: 95). 'It strengthens the ties within groups and weakens the ties between groups' (March 1999: 151). Hence, integration is primarily seen as changes in *structural connectedness*, i.e. inter-institutional relations (Olsen 2007a: 95). In the words of March (1999: 134) '[w]e imagine a world consisting of a set of parts. At the least, integration is gauged by some measure of the density, intensity, and character of the relations among the elements of that set.' The level of integration increases as the constitutive and relatively autonomous administrative units remove internal barriers to interaction and exchange, and develop common rules and standards for [administrative] practices through inter-unit processes (Olsen 2007a: 96). Hence, increased cooperation and development of common rules and practices among constitutive elements of an administrative system are seen as indications of administrative integration.

I will come back to the dynamics of these inter-unit processes in the theoretical section below. An important point here is that the prospects for integration may 'depend on the polities that are to be integrated' (Egeberg 2009: 70), it is organizationally contingent (March 1999), and *fragmentation* may spur a higher degree of interpenetration and mutual influence between European and national administrations (Spanou 1998: 472). In this dissertation profound integration in the EU implies that parts (nation-states) are not connected more closely as *coherent* wholes, but that parts of the states themselves are de-coupled/fragmented and re-coupled across levels of government (Cassese 1985: 40, Egeberg 2009: 70). The argument is that profound integration at a higher system level

presupposes some disintegration at the lower level. Administrative decoupling (diversity) is seen as a prerequisite for re-coupling (unity) across levels of government. On this basis, a core question is to what extent and how agencies, as vertically and horizontally specialized structures, enhance administrative integration and challenge the intergovernmental vision of a dual European administrative order. The four articles in this dissertation seek to shed light on this question in different ways.

The rest of this introductory chapter is organized as follows: First, I outline my theoretical foundation. Second, I describe methodology and data collection. Third, I go through the main findings from the four articles. Fourth, I discuss how and why the different articles are interrelated and form pieces of the same picture, and last, I briefly discuss how we can assess this picture in terms of legitimate governance.

An institutional perspective

This dissertation is rooted in an interest for institutions and starts from the assumption that ‘institutions matter’.³ The question is then what constitutes an institution and how and why does it matter. There is a vast diversity of institutionalist literature which presents a multitude of foci, interpretations and levels of analyses (Peters 1999).⁴ However, there are some common features, and according to Peters (1999: 18) the most important element of an institution is that it is

...in some way a structural feature of the society and/or polity. That structure may be formal (a legislature, an agency in the public bureaucracy [...]), or it may be informal (a network of interacting organisations, or a set of shared norms). As such, an institution transcends individuals to involve groups of

³ My theoretical approach thus implies that I have chosen to prioritize an institutional perspective (Rones 2009: 46). This implies that ‘empirical observations may fail to be detected or understood’, and ‘[e]ven if valuable findings are made, it is not possible to know whether even more could have been uncovered in other ways’ (ibid: 47-48). However, as noted by Rones (2009: 48) ‘prioritizing will strengthen the chances of logical coherence’, [...] the chances of generalizations may be increased by using the same theory for several cases’. I address this point in the methodology section of this chapter.

⁴ See Peters (1999) for a thorough overview of institutionalist theory, and in particular the different strands of ‘new institutionalism’.

individuals in some sort of patterned interactions that are predictable based upon specified relationships among the actors. [...] [A]n institution should in some way constrain the behaviour of its members. Again, the constraints may be formal or they may be informal, but they must be constraints if there is to be an institution in place. [...] [T]here should [also] be some sense of shared values and meaning among the members of the institution.

The latter view is central to the 'new institutionalism' of March and Olsen (1989) which emphasizes the significance of rules, procedures and norms in structuring political action.⁵ In their view institutions prescribe how political authority and power are constituted, exercised, validated and distributed (Olsen 2008a: 194). They integrate and structure a political system, organize actors, issues and resources, and structure patterns of political struggle (Egeberg 2006b, Olsen 2009a, Schattschneider 1975). Actors are to some extent defined by their role(s) in the broader structures, and this includes both formal and informal structures, within which they act, and even though their behaviour is not determined by these structures, their identity and role perceptions are shaped by them (March and Olsen 1989). Crucially, institutionalists concern themselves not just with the

⁵ Even though this approach is labelled as part of the 'new institutionalism' in political science (in the sense that it is not identical to the 'old' institutionalism in which attention was paid to the formal-legal aspects of institutions), it in several ways reflects a traditional format for institutionalism encountered in sociology and organization theory (Peters 1999: 26). The roots of this approach are especially evident in the work of Philip Selznick. Selznick (1949) differentiated between organizations as the structural expression of rational action and organizations as more adaptive and normative structures. These two models are mirrored in the distinction made by March and Olsen (1989) between aggregative and integrative political processes. The former is a contractual form for organizations, in which individuals participate largely for personal gain. Participation in integrative institutions is undertaken on the basis of commitment to the goals of the organization, or at least an acceptance of the legitimate claims of the organization. The focus of March and Olsen (1989) is on the integrative version of organizations (Peters 1999: 26-27). Much of the reason that they developed their 'new institutional' perspective on politics was the belief that political science was becoming dominated by assumptions that structures were aggregative, and individuals were only involved in politics for personal gain (Olsen 2007a: 3), reflected in the 'behavioral revolution' in political science in the 1950s and 1960s (Olsen 2007a: 98). Further, Olsen (e.g. 1983, 1991, 2001, 2007b) has continued to advocate the importance of organization theory for understanding politics (see Peters 1999: 31).

impact of institutions upon individuals, but with the *interaction* between institutions and individuals (Lowndes 2002: 91).

The organizational dimension of institutional life

I apply institutional theory in all the articles of this dissertation, but I apply and highlight different elements and strands of this theoretical approach depending on the different cases and research questions. In the different articles in this dissertation I focus both on how agencies work and how they (EU-level agencies in particular) are established and evolve within the European administrative system. Thus, the rest of this section is aimed at exploring and outlining institutional theory for two main purposes: how agencies work, and how they come about and develop.

As mentioned, the theoretical point of departure of this dissertation is the organizational dimension of institutions. Institutions tend to impose particular world views, ways of thinking, expectations and allegiances on their members, and more so under some organizational conditions than others (March and Olsen 1984). This organizational strand of institutional theory asserts that the formal organization of political life makes a difference.⁶ Formal organizational structures 'are expected to 'route' information exchange, co-ordination processes and conflict resolution' (Egeberg 1999: 162). They influence (but do not determine) which actors, problems, alternatives and solutions are brought together and which are held separate. They influence who has contact with whom, when and how they have contact, and which considerations are attached importance when making decisions (Trondal 2001: 63). This is partly due to the simplification that the organizational structure may provide. Individuals operate under conditions of 'bounded rationality' and limited cognitive capacities, and a kind of 'match'

⁶ Christensen and Læg Reid (2006a: 17-18) label this perspective the 'Organizational-Structural Perspective' where the formal organizational structure represents the important selection mechanism for human decision-making. They differentiate this perspective from the strand of theory that focusses on informal norms and values within organizations, a cultural approach, referring to the work of Selznick (1957) (ibid: 19). Even if I do not make the same explicit distinction in this introductory chapter, I acknowledge that there is a difference between the formal and the more cultural/informal aspects of organizational life, and this distinction is reflected in particular in article 1 (on the role of Nordic regulatory agencies in the EU) and article 3 (on the evolution of the European Environmental Agency).

occurs between the individual actor's need for simplification on the one hand and the filter that the organizational structure provides on the other (Simon 1965).

Gulick (1937) has stated some basic principles of formal organizations that are relevant for our understanding of the working of agencies. He pointed out that organizational structures affect the bringing together, or separation, of various concerns and considerations, both vertically and horizontally. *Horizontal* specialization of a structure refers to the way in which different issues and policy areas are supposed to be linked to or decoupled from each other. Those areas that are contained in the same organizational unit are more likely to be coordinated and linked together than those that belong to different units (Egeberg 2009: 66). According to Gulick (1937) there are four fundamental ways in which tasks may be distributed horizontally among units, namely in relation to territory, purpose (sector), process (function), or clientele served. Bureaucracies specialized according to territory, the *area* principle, tend to develop spatial perspectives on the world, so that various sectoral concerns will be considered coherently *within* a given geographical frame of reference. 'The area principle of organization is likely to have an interlocking dynamic across sectoral cleavages that contributes to inter-sectoral integration and geographical variation' (Trondal 2001: 44), it implies 'being more generally oriented towards geographical idiosyncrasies, variation and differentiation (ibid: 46). On the other hand, specializing according to the *purpose* principle fosters sectoral horizons, cross-cutting territories and ignoring variations as far as local needs are concerned (Egeberg 1999: 158). Agencies are mainly specialized by the purpose served (like chemical control, maritime safety, food safety, etc.). This principle tends to activate sectoral preferences and world views, and coordination and contact patterns tend to be channeled *within* sectoral portfolios rather than between them. Moreover, according to Gullick (1937) *vertical specialization* denotes the division of labour across organizational levels. In vertically specialized bodies the formal levers of steering are weakened, the distance between levels increases, and political signals are generally weaker as well (Christensen and Lægveid 2006a: 17, Egeberg 2003). Taken together, the agency model combines vertical specialization (autonomy) and horizontal specialization (purpose principle); there is separation both on a *vertical* dimension between the politico-administrative leadership and the agencies and on a *horizontal* dimension between

different agencies responsible for different purposes (Christensen and Læg Reid 2006a: 13).

Morten Egeberg (2003) summarizes the findings on agencification *effects* in a review article. He points out that although many of the same kinds of tasks are performed at the ministry level and agency level respectively, policy choices are affected by the formal organizational context within which they are made. Agency officials exercise their discretion relatively insulated from political processes and tend to give priority to professional considerations rather than political concerns. Hence, vertical and horizontal specialization through agencification seems to ensure that more independent expert considerations are fed into the policy process.

This dissertation sees national and European administrative structures as part of the same system (Curtin and Egeberg 2009, Egeberg 2006b, Hofmann and Türk 2006, Trondal 2007, 2009, Wessels 1998), and an organizational perspective is applied not only to unpack organizational features at the national level, but also at the European level and to unpack and understand links between and across different organizational entities in the European administrative system. Thus, I aim to trace how administrative life is organized at both levels of government and to understand and account for the kind of cooperation and coordination that exists at the intersection of the EU and the national level.

In the agency-literature extensive work has been done on national agencification (see e.g. Christensen and Læg Reid 2001, 2006b, 2007a, 2008, Christensen et al. 2002, Læg Reid et al. 2008, Coen and Thatcher 2005, Læg Reid 2008, Pollitt 2005, Pollitt and Bouckaert 2004, Pollitt et al. 2004, Stone Sweet and Thatcher 2003, Thatcher 2003, Thatcher and Coen 2008, Thatcher and Stone Sweet 2001). We also have evolving literature on EU-level agencies (see e.g. Borrás et al. 2007, Busuioc 2008, Chiti 2000, Curtin 2005, Dehousse 1997, 2008, Gehring and Krapohl 2007, Groenleer 2006, Kelemen 2002, Krapohl 2004, Kreher 1997, Majone 1997c, Shapiro 1997, Trondal and Jeppesen 2008, Vos 2000, 2005). However, in my view there is a need to analyse in equal measure, and theoretically interdependently, the role of agencies at *both* levels of government in the EU. This dissertation can be seen as an attempt in that regard.

An important theoretical point in this context is that the impact stemming from organizational principles existing at different levels of government may be conditioned by the degree of organizational compatibility across these levels (Knill 2001, March and Olsen 1995, Trondal 2001). In the words of Olsen (2009a: 24) '[u]nderstanding change requires information about how different types of institutions fit together'. By fit I mean that different organizations are organized/specialized according to the same basic constitutive principles – e.g. purpose or area (Trondal 2001: 50), and these institutions may align more easily across borders and levels of government than institutions organized according to different principles. The underlying assumption is that actors are more likely to integrate and play specific roles when these roles are 'compatible with their social conceptions of themselves', and that roles and modes of behaviour may be strengthened and mutually reinforced, 'as a result of having compatible institutional affiliations' (ibid: 50-51).⁷

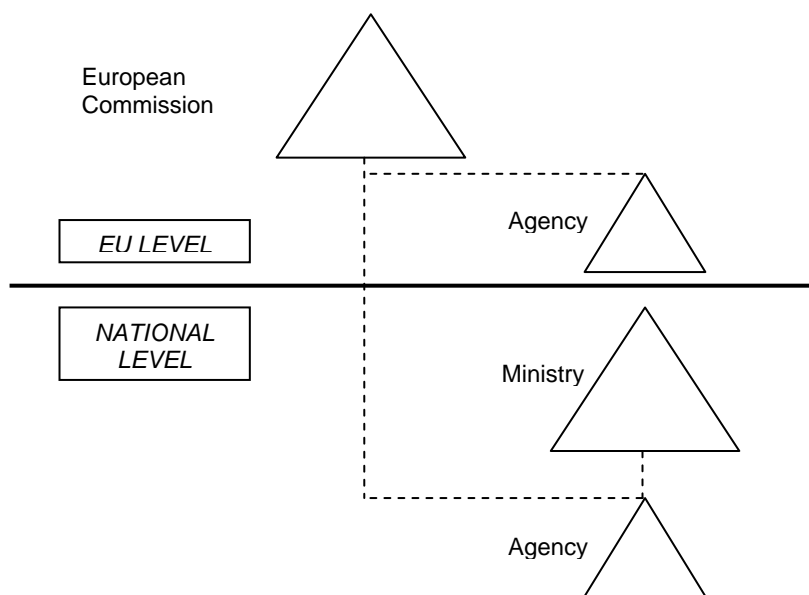
Looking at the EU institutional apparatus through organizational prisms, a feature of special interest is the division of tasks and responsibilities between the Council and the main EU executive body, the European Commission. The Council is to play a decisive role in decision-taking, the formal adoption of EU legal acts. The Commission, on the other hand, is to play an important role in preparing, proposing and monitoring legislation. Hence, there is a fundamental division of tasks between the two institutions with regard to the policy-making process, and the Commission is mainly in charge of the *formulation* and *implementation* of the processes. Moreover, the *sectoral* specialization of the Commission in different DGs makes it qualitatively different from the (basically) geographically specialized Council in which all member states are

⁷ Institutional analyses often oscillate between the organizational and micro-levels (Aus 2008: 8), and as in this dissertation they tend to focus both on the activities of formally organized institutions, e.g. agencies *and* on the behaviour of an official carrying out her/his professional duties within the institutions. However, I am well aware of that institutions as such do not act. Collectives/agencies, at least in a restrictive meaning, have no conscious. Only individuals can act, choose and decide. However, applying an institutional approach implies that explanations cannot be complete when referring to actors regardless of the structures they operate within or when ignoring the 'uniqueness' created by interaction among individuals in a collective (Sverdrup 2001: 15). When referring to agencies or other institutions as linking, cooperating, etc, I therefore mean that these actions are outcomes produced by individuals acting within these institutions.

represented at all levels (Curtin and Egeberg 2008: 646). Although there are some territorial components in the structure of the Commission,⁸ most are non-territorial: The division of labour among DGs reflects different sectors rather than geographical areas. In addition, organizational devices such as the required multinational staffing of cabinets (Egeberg and Heskestad 2010), as well as more permanent administrative posts have enhanced elements of sectorization within the organization and downplayed the geographical principle of organization (Egeberg 2008: 243). Thus, it makes sense that empirical studies portray decision-making in the Commission as more often politics among sectoral portfolios (or DGs) than politics between nation-states (Cini 1996, Cram 1997, Egeberg 2008, Trondal 2009). According to Trondal (2009: 963) decision-making processes in the Commission are shown to be biased by the horizontal organizational structures of the Commission and the 'primacy of portfolio dynamics'.

Taken together, the organizational configuration at the EU level, with a division of tasks between the Council and the Commission, which are mainly responsible for decision-taking (Council) on the one hand and for decision preparation and enforcement (Commission) on the other, as well as the different organizational logics within these institutions, has a *parallel* in the organization of the national administrative apparatus. In particular, we see a compatible organizational specialization and 'fit' between the Commission and the agency level of the domestic administrative systems. Like the Commission, the national regulatory agencies are expected to play an important role in preparing and monitoring policy and legislation, and like the Commission they are sectorally specialized. Similarly, we see a compatible organizational specialization between the Commission and the evolving population of sectorally specialised EU-level agencies. Thus, these entities can be seen as being organized along the same sectoral lines, and the *organizational compatibility* may serve to strengthen administrative cooperation and coordination among these particular entities.

⁸ The composition of the College of the Commissioners follows to a large extent a geographical principle. This has also been the case for the different cabinets of the Commissioners. However, the latter has been gradually changing towards non-geographical criteria, and a study conducted by Egeberg and Heskestad (2010) shows that a norm on multinational recruitment has been established.



Ref. Egeberg (2006: 9)

Taken together, over the last couple of decades, distinctive organizational conditions both at the national and the European levels have evolved that may trigger administrative constellations cutting across levels of government and across national borders. This argument serves as my analytical starting point and stepping stone in order to understand the role of agencies, the effect of agencification at both levels of government, within the European administrative system.

It can be noted in this respect that cross-cutting cleavages both vertically and horizontally are central topics in the so-called 'multilevel governance' (MLG) literature within EU research. 'Multi level governance' is a diverse category (for an overview see Bache and Flinders 2004a, Hooghe and Marks 2001, Kohler-Koch and Larat 2009 and Kohler-Koch and Rittberger 2006), but in essence, the perspective is challenging the intergovernmental interpretation of EU integration, and according to Bache and Flinders (2004b: 4-5) it 'reflects a shared concern with understanding increased complexity, proliferating jurisdictions, the rise of non-state actors, and the related challenges to state power'. This dissertation is in line with the core of

this literature as it focuses on cooperative structures cutting across levels of government, challenging an intergovernmental perception of EU governance. In the words of Christiansen (1997: 659) the perspective represents 'a departure from the self-contained nation state as *the* political arena and an analytical ability to 'cut across' state boundaries'. However, the multi level governance literature has tended to focus on actors at the sub-national level (regions) or in civil society (interest organizations, private companies, etc.) to the exclusion of other actors (George 2004: 125) and focus on different hierarchical levels *within* the national state administrations is to a large extent lacking. Hence, this dissertation has a different approach than most of the EU multi level governance literature as it focuses on *central public* administrative actors at different levels of government within the European governance system.

Organizational change and continuity

As EU-level agencies are a rather recent phenomenon, I am also concerned with how and why these organizational arrangements come about as well as what happens after they come about within the European administrative system. Hence, focus is not only on the *effect* of a specific institutional arrangement (agency structures), but also on the *establishment* and institutional *development* of an institutional arrangement. How can we understand the genesis and institutional development of EU-level agencies in the European administrative system? How can we theoretically account for their existence and evolution?

In order to make sense of EU-level 'agencification' scholars have to a large extent interpreted this development along functional-deterministic lines, and it is a typically explanatory pattern to derive the creation of agencies from administrative requirements occurring in the internal market (see Dehousse 1997, Geradin et al. 2005, Majone 1996, 1997c, Vos 2000, Yataganas 2001). However, this functional explanation is primarily based on the assumption that structure is determined by contextual factors: Structures exist because they match functional needs. Thus, in order to explain how or why an administrative structure comes about, why an agency comes about, it is not necessary to consider the past, 'the generating processes behind a structure', or the characteristics or resources of the reformers involved (Olsen 1992: 248). This dissertation has a different approach

that gives priority to the organizing role of institutions. It emphasizes the endogenous nature and explanatory power of institutions, and it is assumed that the organization of political life makes a difference and that institutions have dynamics of their own (Olsen 2009a: 6).⁹ The EU system is seen as a conglomerate of different institutions with different logics and resources, interacting and colliding (Borrás et al. 2007, Olsen 2007). As noted by Olsen (2007a: 105), multiple and conflicting goals are often pursued in the EU institutional landscape, and there is no shared understanding of administrative requirements and possibilities, and no single central reorganization authority. Thus, an important assumption in this dissertation is that '[u]nderstanding change requires information about how different types of institutions fit together, their interdependencies and interactions, and how change in one institution is linked to change in other institutions' (Olsen 2009a: 24). In Orren and Skowronek's formulation (1994: 321) '[t]he institutions that constitute the polity... abrade against each other and, in the process, drive further change.' Thus, in this dissertation the conception of agency creation as driven by external functional requirements is supplemented and challenged by a conceptualization of their birth 'as part of an inter-institutional struggle for power and primacy' (Olsen 2009b: 300).

Thus, rather than *assuming* relative efficiency as an explanation for agency creation, the institutional perspective applied in this dissertation encourages us to 'go back and look' (Pierson 2004: 47) and take existing institutional structures in the EU system into consideration in order to understand both how and why these organizational structures come about and how they develop. An example of such development is the process that follows the transition from 'a legal to a living institution' (Laffan 1999), i.e. after a formal decision is made to establish an agency. Then the organization has to find its place within the institutional system, and its role is shaped 'as it becomes aware of and adapts structures and practices to opportunities and constraints in the internal and external environment' (Olsen 2009a: 25). A new institution, a new EU-level

⁹ I am aware that an institutional approach is not the only plausible analytical road to pursue if we are to understand the establishment of EU-level agencies. In Egeberg et al. (2009) we conduct a 'survey' of existing literature that aims at explaining EU-level agencies, and we argue that other theoretical venues like functionalism, contingent events, and isomorphism may supplement our institutional approach in order to reach a more nuanced and fine-grained understanding of this phenomenon.

agency, must carve out a role for itself and learn its place and role with respect to other institutions (Laffan 1999, Olsen 1997). Hence, in some ways the process of agency creation appears to be a two-step process. First, there is a decision-making process within the European institutional system to create an agency. The second step appears to be the institutionalization over time (Selznick 1957) within this system. Thus, in the analyses of the establishment of EU-level agencies I analyse both steps, and the 'common determinate' is that the 'demand' side for change is not the focus. Rather, I focus primarily on the 'supply' side of the European institutional system, how agencies are extracted and mediated from and within this system and how they eventually become 'living institutions', living agencies, gradually carving out their proper role within the European administrative system.

Methodology and data

An embedded case study

This dissertation is conducted as an embedded case study (Yin 1994: 41-44) of the role of agencies in the European administrative system. The European administrative system is thought of as a system consisting of different components and attention is on the subunits that together constitute the system. An embedded case study means that the different subcases shed light on the case as a whole. This approach allows room for complexity and in-depth studies of the case under study (Yin 1994: 44). Hence, in this dissertation I am studying one phenomenon, the role of agencies within the European administrative system, from different angles and on different levels of government, and the different case studies are thought of as different, although not complete or sufficient, pieces of the same picture. Moreover, in this dissertation I have chosen to study a single policy field, environmental policy, in order to draw a more coherent picture in empirical terms and to control for possible impact or noise stemming from different policy sectors.

Environmental policy has risen from silence to salience in the EU over the last decades (Weale 1999). When it was founded in 1957, the European Economic Community (EEC) did not have any laws, policy, or bureaucracy dedicated solely to environmental issues, and in the 1970s and 1980s environmental policy was a domain of innovation in

the EU (Fairbrass and Jordan 2004, Sbragia 1999). Under the Single European Act (SEA) (1986), environmental policy was formally recognized as a proper competence to be exercised at the European level and under the 1992 Treaty on European Union (the Maastricht Treaty) it became possible to pass most environmental measures through the Council by a qualified majority. Since 1992 the institutional developments triggered by the SEA and the Maastricht Treaty were gradually revised and updated, in particular through the establishment of the European Environmental Agency (EEA) in 1994 and the European Chemical Agency (ECHA) in 2007. Environmental policy is now one of the major policy areas in which the EU plays a role, and there is continually a high number of environmental policy measures passed at the European level, of which a significant part is aimed at the harmonization of national environmental standards (Knill and Liefferink 2007: 24, Lenschow and Knill 2000). These regulations cover both the critical environmental media (water, air and soil) and a range of industrial and chemical products (Zito 2002).¹⁰

Choosing the environmental policy field as the empirical 'territory' implies that my findings are restricted to one particular policy area. However, my findings may be seen in relation to similar studies within other policy fields that have been conducted in the last years on the evolving multilevel union administration (e.g. Egeberg 2006b). I will return to this point in the section where I summarize and discuss my findings.

Case selection

Case selection can be theoretically or empirically motivated (Andersen 1997). When we are conducting empirically motivated studies, we would like to know more of, or better understand, a concrete phenomenon. The question is what class of empirical phenomenon is this a case of? The empirical phenomenon is at the centre of the analyses, and theory is primarily applied in order to shed light on and explain this specific phenomenon (e.g. Allison 1971). Theoretically motivated studies on the other hand have a deductive starting point. The mode of analyses is directed towards

¹⁰ It should be noted that there are other 'softer' means of regulation within this policy area like the Open Method of Coordination (OMC), for an overview see Homeyer (2007), see also Knill and Liefferink (2007) and Lenschow and Knill (2000).

constructing theories and hypotheses, and empirical data is applied in order to elucidate a theoretical argument (Elster 1989). The question is then what kind of theoretical assumption does the case support or deviate from (Andersen 1997).

This dissertation has both an empirical and theoretical aim. Firstly, and most importantly, it has been motivated on the basis of an interest for a specific empirical phenomenon: the role of agencies within the European administrative system. The aim has been to capture different aspects of this phenomenon within and between different levels of government. Thus, the different subcases have been chosen and elaborated in order to explore the role of agencies within the environmental policy field *both* at the national and at the European levels equally and interdependently. More specifically, they have been chosen in order to explore to what extent and how agencies both at the national and the European levels contribute to a shift of cooperation, coordination and power allocation between and within the different levels of government. However, as the subcases of this embedded case study also constitute separate pieces of work (journal articles) and the research questions are not identical in the different articles, the rationale behind studying the concrete cases are further elaborated in the different articles and in the summary of these articles below.

The empirical focus in this dissertation implies that I apply institutional theory mainly in order to interpret and understand the different subcases, and specific theoretical concepts within institutional theory function as lenses in order to gather observations and give them meaning (Allison 1971, Andersen 1997: 79). This being said, this dissertation and the selection of the different subcases have also been motivated on the basis of an interest for institutions and institutional theory. As noted, an agency is a specific institutional arrangement; it has a specific organizational form, and thus, applying institutional theory can address questions of a more general nature. What difference does an institutional arrangement make (how does it matter?), e.g. the difference between an integrated bureaucratic model and a fragmented de-centralized model (Christensen and Lægheid 2006a). How can we understand the effect of an institutional arrangement (why does it matter, under what conditions does it matter)? Moreover, how can we capture and understand institutional change and continuity (e.g. the breakdown or reproduction of

organizational structures)? I address these questions in different ways in the four articles, and at the same time I acknowledge that the dissertation gives limited possibilities for theoretical generalizations, because of the limited size of the sample of subcases and the qualitative nature of the data (see below). However, since each of the articles takes an institutional approach to the study of the role of agencies, this can allow for elaborating and suggesting more general concepts and insights that can be explored in other cases and contexts (Andersen 1997: 100-01, Roness 2009: 48, Yin 1994: 34). I will come back to these possible contributions in the section where I summarize and discuss my findings.

Qualitative methods

In this dissertation I am applying qualitative, not quantitative methods. This means that I do not make statistical inferences on the basis of my data. I do not have a representative sample of units that make it possible to generalize to a universe of units, and the interviewees function as sources, not as units in a sample. One of the reasons for conducting qualitative research is my explorative ambition. As previously mentioned, the established systematic knowledge on the role of agencies at both levels of government within the European administrative system is not very strong, even if this literature is evolving (e.g. Curtin and Egeberg 2009). Moreover, as I had limited knowledge before I started my research, it was difficult to make strong and refined statements and then go out and test them in a rigorous statistical test. In addition, I have chosen an institutional approach in this dissertation, and an institutional framework implies that the actors' interpretation of institutional structures affects outcomes, and we need to identify and understand both the external 'reality' (institutional structures) and the social construction of that 'reality' if we are to explain the relationships between social phenomena (Marsh and Furlong 2002: 31). This also has methodological implications; we need to unravel how different actors see the world, their social construction of the world. Qualitative methods seek to understand the experiences and practices of key informants and to locate them firmly in context (Devine 2002: 197), and these methods are most appropriately employed where the aim is to explore people's perceptions and the meanings they attach to those experiences like I am doing in the different articles in this dissertation.

Main empirical sources:

Face-to-face interviews and documents

In this dissertation the main data source is face-to-face interviews, and I conducted semi-structured interviews with open-ended questions. As I wanted to capture the different actors' perceptions and world views, it seemed accurate to let the interviewees talk freely and let them use their own words. Applying interview guides with open-ended questions made this possible. The interview guides contained specific questions, thus reducing the possibility of different formulations influencing answers, although the order in which the questions were discussed was not preordained. I used a tape recorder to avoid misunderstandings and the loss of information. The semi-structured interview guides gave the possibility of posing follow-up questions and adjusting the guides as I obtained new information. I also asked follow-up questions after the interviews by e-mail and telephone. The interview guides are found in annex 1-4.¹¹

I am aware of that the relationship between an interviewer and interviewee 'is not aloof' (Devine 2002: 205), and the researcher being present and playing a role in facilitating the interview has pitfalls. As noted by Devine (2002: 206) '[i]nformants are often anxious to please and offer responses that they perceive to be desirable'. As I was present and involved in all the interviews¹², I cannot guarantee that my informants were not trying to give what they perceived as the 'right' answers. However, I posed the same questions to different people within different countries and institutions in order to include different voices and perspectives. I also asked the informants for their reaction to my analyses after a period of time, giving them the possibility to adjust or revise their story, and this procedure led in some cases to revisions of the analyses. Altogether, 72 interviews were conducted¹³.

¹¹ The interview guides were to a certain extent 'living' documents, and the interview guides found in appendix 1-4 are the latest versions of these documents. It can also be noted that some interview guides were slightly adjusted to the particular interviewees.

¹² I was present except for four telephone interviews. Two of the telephone interviews were not tape recorded.

¹³ Five of the informants were interviewed twice.

Another important data source is written documents. As concerns the two articles on the role of national agencies in the EU, I used internal procedures with regard to handling EU-related work and reporting routines, as well as secondary sources about decision-making behaviour in the relevant national administrations. However, the interviews were crucial in order to attain information about the national officials' increased participation in informal network structures. Who was actually cooperating, for what purpose and under what circumstances (George and Bennett 2005: 100)? The interviews were also crucial in order to get hold of the national agency officials' subjective perceptions of their role and autonomy within these structures.

With regard to the two case studies of individual EU-level agencies (The European Environmental Agency and the European Chemical Agency) I used internal guidelines for decision-making, organization charts and annual reports in order to obtain these agencies' tasks and responsibilities. However, with regard to the evolution of the European Environmental Agency the organization charts and annual reports could tell me about the developments of tasks and competences over time, but the interview data was necessary in order to gather information about how power relations and informal cooperative processes had gradually evolved, in particular in relation to the European Commission. With regard to the establishment of the European Chemical Agency official position papers from the different institutional actors were essential in order to trace the negotiation process within the EU decision making system, but the interview data was important in order to know more about the particular perceptions, interests and resources of the different institutional actors involved in this process.

Four articles on the role of agencies within the European administrative system

Articles 1 and 2: On the role of national agencies within transgovernmental networks

The empirical stepping stone of these two articles is a pilot study I conducted of the IMPEL network¹⁴ (Martens 2006), an informal

¹⁴ The European Union Network for the Implementation and Enforcement of Environmental Law

implementation network involving the European Commission and national environmental authorities in the various EU countries primarily dealing with pollution control. In the study of this particular network I made two main observations: 1) The European Commission plays an influential role; 2) There are national differences with regard to how autonomously the agency officials operate within the network. These initial observations triggered certain questions: To what extent and how do national agencies take part in transgovernmental networks in the EU? How independently are the agency officials operating from their parent ministries within these networks? Moreover, how can we describe and understand the dynamics between the different network participants? The two articles are interlinked and come to grips with these questions. Some of the same data are used in the two articles, but they are used (and supplemented) to illuminate different research questions as we will see below.

1. Runaway bureaucracy? Exploring the role of Nordic regulatory agencies in the European Union

This article reports a comparative study of the role of environmental agencies in Norway, Denmark and Finland within the EU. The main research question is: To what extent and how autonomously do the national agency officials participate in administrative network activities at the European level? Hence, the first part of question is primarily aimed at mapping the network activities of the agency officials, and the next part concerns to what extent the agency officials are operating independently of their parent ministries within the networks under study.

The Nordic countries are seen as an interesting ground for comparative studies because they are quite similar in relation to several political and societal factors, and their central state apparatus have been affected by horizontal and vertical specialization the last decades.¹⁵ Moreover, there are organizational differences among the national administrations concerning the formal relationship between the ministries and the agencies. Hence, a study of these three countries permits a comparative assessment of the role of national

¹⁵ Agencies are not new in the Nordic countries, but the 1980s and 1990s witnessed the introduction of more extensive agencification and 'management by objectives' reforms (Christensen and Lægveid 2001, Jacobsson et al. 2003).

administrative arrangements, owing to the difference in their organizational nature.

24 interviews were conducted in the three environmental agencies, and the main finding is that increasingly and relatively autonomously from their parent ministries the agency officials in the three Nordic countries are taking part in transgovernmental networks in the EU.¹⁶ These network activities, largely informal, involve both drafting and implementation of EU legal acts. In addition, the different national bureaucratic levels play different roles in the EU decision-making process. The agency officials are increasingly linked to the Commission through different networks, while the ministry officials are linked more closely to the Council structure. Theoretically, I argue that we need to unpack the organizational features of both the national and at the European levels in order to understand these findings. However, when trying to understand differences *between* the different Nordic regulatory agencies, like the agency officials' different perceptions of their autonomy vis-à-vis the ministerial level, a formal interpretation does not bring us very far. It is possible that the organizational differences are not salient enough in order to make a fruitful comparison, and as noted by Lægreid et al. (2006: 263) '[a]gency status in itself is an uncertain predictor of steering relationships, especially when it comes to *variations* between different sub-forms of agencies' [*italics added*]. In the article I conclude that it seems necessary to supplement the organizational starting point with explanatory elements of both a cultural and a political nature to understand the differences between the Nordic agencies. The 'agencies have to be understood in their political-administrative context as well as in themselves' (Pollitt et al. 2004: 23).

2. Administrative integration through the back door? The role and influence of the European Commission in transgovernmental networks within the environmental policy field

This article focusses on how we can understand the role and influence of the European Commission within the transgovernmental

¹⁶ Interestingly, the Norwegian officials participate in many of the same networks as their Finnish and Danish colleagues even though Norway is not a member of the EU, but associated with it through the EEA (European Economic Area) agreement.

networks. The empirical material from the first article has been supplemented with interviews with officials from regulatory agencies in Latvia and Estonia and interviews with Commission officials. Hence, including the Baltic States within a larger Nordic frame gives the possibility of comparing old and new member states and exploring scope conditions for the influence of the Commission within the networks under study. The main research question is the following: To what extent and under what conditions is the Commission able to influence the decision-making behaviour of the national officials in the transgovernmental networks?

The main finding is that the European Commission is playing a proactive role, being able to use the networks as a back road to the informal harmonization of administrative practices. It is argued that it is able to do this mainly because it is perceived by the national agency officials as a credible institution with expertise and overview, assets that seem to have become even more important in EU27. However, the empirics reveal that the Baltic officials have a more humble attitude towards the Commission than their Nordic colleagues; they perceive themselves to a larger extent as being in a *learning* position. The explanation for this seems to be found in the status of being a newcomer, a *novice* at the European arena. Moreover, for the Baltic officials the notion of being a newcomer is amplified by lack of administrative resources at the ministry level, which seems to make the Baltic officials more de-coupled from the central political-administrative apparatus and more dependent upon the Commission's expertise and leadership. Thus, it is concluded that we need to take into account organizational characteristics and resources both at the national and European levels in order to understand the multifaceted role and influence of the Commission within this specific institutional setting.

Articles 3 and 4: On the role and development of EU-level agencies

The main focus in this second part of the dissertation is on the establishment and functioning of EU-level agencies. The observation of agencies as an increasingly salient feature of the EU administrative system triggers certain questions: How and why do they come about? What happens after they come about? And how and to what extent

do they manage to find their proper role within the European administrative system?

3. Voice or loyalty? The evolution of the European Environmental Agency (EEA)

This article examines the evolution of the European Environmental Agency (EEA) and analyses its gradual transformation from a legal to a living institution in the EU system. The aim of this article is to go beyond the formal regulation when assessing the role of the EEA, and the research questions are the following: What kind of role has the EEA developed in the EU system? How autonomously is the EEA able to operate within the EU system? How can we theoretically account for the development of this institution within the EU system?

I conducted 23 interviews with key-people in the EEA and parallel organizations, and the main finding is that the EEA has over the years found its place within the EU administrative apparatus. It has gradually moved beyond ad hoc information activities that serve a range of different 'clients' in its institutional environment towards more structured ways of serving the European Commission. It has moved closer to the Commission and gradually become more useful in collecting and providing information stemming from the network of national environmental agencies (EIONET) where the EEA is functioning as a hub. The Commission and the DG Environment in particular, has gradually acquired a privileged position vis-à-vis the EEA through processes of trust-building and learning, interacting and blending with processes of resource dependency. It is further argued that the EEA over time has learned to appreciate the privileged position of being an insider in the European administrative system, striving to find a balance between freedom to be critical and speak 'truth to power' on the one hand and the wish for partnership with the Commission on the other. Theoretically, I argue that we need to go beyond a legal framework when we are to assess the role and autonomy of EU-level agencies, taking into account institutional features that involve both formal and informal processes. We also need to follow processes over time in order to avoid snap-shot images and to be able to identify dynamics of institutionalization and change.

4. Executive power in the making. The establishment of the European Chemical Agency (ECHA)

In this article I study the establishment of the European Chemical Agency (ECHA), a newly born agency at the EU level. Some of the newcomers in the EU agency family may be considered to have a larger regulatory potential than the previous ones as they are assigned tasks not only related to information-gathering but also work related to risk assessment. The ECHA is one case in point. The ECHA represents an exercise in regulatory centralization, as pivotal administrative functions are now exercised by one European institution rather than many regulatory authorities at the national level. Thus, in this article I analyse the creation of an agency that seems to challenge existing power structures in the EU administrative system as early as its organizational birth, and my starting point is the puzzle why actors that are powerful under certain institutional conditions come to agree to reforms that seem to diminish their power in the system. Hence, the main research question is the following: How and why will an organization that is thought to challenge existing power structures be established? How and why did the ECHA come about?

As noted, there is a typically explanatory pattern of several studies to derive the creation of agencies from administrative requirements occurring in the internal market (see e.g. Dehousse 1997, Geradin et al. 2005, Majone 1996, 1997c, Vos 2000, Yataganas 2001), and in this article, I argue that we need to go beyond an environmental-deterministic explanation in order to give a more multi-faceted account of how and why these structures come about. Hence, I trace the process by which the ECHA attained its legal framework and organizational basis, and the goal is to map and explain the establishment process by connecting the dynamics within the EU institutional apparatus to the final outcome, and also consider the alternative paths through which the new administrative system *could* have occurred.

The main finding is that the establishment of the ECHA was mediated by and extracted from existing institutional structures, in particular from the Member States, and administrative continuity or change depended to a large extent on how different resources were distributed and validated within the European institutional system. By pointing at the interplay of several institutions as a source of both

organizational breakdown and (re)production, the study of the establishment of the ECHA highlights a source of internal dynamism which studies that only focus on environmental requirements are unlikely to capture.

Piecing together the different articles

Agencies as constitutive building blocks of an evolving multilevel administration

As noted in the introduction of this chapter, the administration of policies adopted at the central level in a multilevel system like the EU might be organized in different ways, and how we organize these processes might affect the application of the policies. Some arrangements may enhance the development of common rules and practices across member states, or, to put it otherwise, reduce the room for national adaptation. Thus, it may enhance coherent administration of EU policies across member states and downgrade local principles, rules, standards and practices voiced in the national arenas. An arrangement in which the administration of common policies takes place *indirectly* through lower-level governments is probably the form that allows the most varied administrative practices across territories (Egeberg et al. 2009). Such a dual administrative system and kind of 'administrative sovereignty' enjoyed by the national level was the intended form in the EU (Hofmann and Türk 2006). Moreover, as noted by Sverdrup (2003: 17), 'administrative sovereignty has been a fundamental building block in the European administrative order.'

In addition to the relatively 'pure' forms of direct and indirect administrative structures, we may in real life find different in-between arrangements (Egeberg et al 2009). The emergence of informal networks between the European Commission (or rather specific parts of the Commission: DGs) and national agencies, where national agencies serve both as parts of national administrations *and* as parts of a multilevel European administration, may be seen as such a hybrid. In this dissertation we observe that national agencies participate increasingly and relatively independently in transgovernmental networks. These networks, horizontally specialized, concern both formulation and implementation of EU policies. We also observe that the organizational differentiation

(vertical specialization) between ministries and agencies seem to matter. The agencies are increasingly linked to the European Commission through different informal networks, while the ministries are linked more closely (and formally) to the Council structure. Thus, national agencies seem to simultaneously constitute parts of national governments, while also being involved in informal networks that partly bypass the national administrative hierarchy. It is further observed in this dissertation that the sectoral allegiances at both levels of government enable a common professional focus within the networks. The main issue is to arrive at common definitions of problems and of the actions needed to tackle them, not to focus on national differences. The language of expertise becomes the most valid means of communication, and actions and beliefs 'are coordinated or coherent from the point of view of some common objective' (March 1999: 134). As one of the Commission officials in DG Environment puts it: *'In the network you don't have the filter effect. You have the experts. They are interested in the subject. It is much more efficient'* (Interview 5/3-07).

There are studies within four policy fields that examine explicitly the extent to which national agencies act in such a 'double-hatted' manner (see Egeberg 2006a). In all of these - competition (Kassim and Wright 2009, Støle 2006), telecoms (Nørgård 2006), food safety (Ugland and Veggeland 2006), and environment (Martens 2006) - national agencies simultaneously constitute parts of national governments, while also being increasingly involved in transgovernmental networks in which the Commission makes up the hub (Egeberg 2008). The Commission may itself have initiated the creation of such a network, as in the telecom sector (Kassim and Wright 2009, Nørgård 2006). However, the Commission has also linked into existing networks that may have been relatively independent, but for which it has gradually been able to play a more important role, as with regard to the implementation network of pollution authorities (IMPEL) (Martens 2006). These network structures are still in the making, yet they make national agencies part of both a national and European authority system, and may be perceived as 'Europeanized enclaves'¹⁷ within the national state apparatus.

¹⁷ See Vifell (2006) for a thorough study of the internationalization of the Swedish state administration and her analyses of 'Europeanized enclaves' within the Swedish

Returning to our initial distinction between indirect and direct administration, the establishment of EU-level agencies, *formally* embedded in intergovernmental structures, may be seen as a second hybrid. In the agency literature the role of agencies has often been deduced from their legal provisions (e.g. Chiti 2000, Geradin et al. 2005, Vos 2000), and the underlying assumption is often that agencies do what their creators want them to do. However, EU-level agencies may, in line with other international organizations (Barnett and Finnemore 2004), be capable of task expansion beyond their formal mandates, and the case study of the evolution of the EEA lends support to this assumption. This agency has gradually moved beyond ad hoc information activities serving a range of different 'clients' in its environment towards more structured ways of serving one particular client: DG Environment. Over time it has become increasingly useful in providing information to the Commission, in particular data on how EU environmental policies are implemented at the national level. This information stems from the network of national environmental agencies (EIONET) where the EEA is functioning as a hub. Thus, the EEA and the Commission (DG Environment) operate increasingly in unison, arguably enhancing administrative capacity at the European level within the environmental policy field. In a study conducted by Egeberg et al. (2009) on how EU-level agencies relate to and redirect the activities of national agencies, we found that EU-level agencies are also increasingly involved in the formulation of guidelines for national implementation and even in the handling of individual cases at the national level.¹⁸ This observation is in line with the study of the

public state administration that she describes as 'partly separated from the national organisational units they formally belonged to, and instead took part in European and international processes together with actors from other organisations with which they had close relations' (ibid: 362). I am thankful to Ole Andreas Danielsen for making me aware of this.

¹⁸ In this study (Egeberg et al. 2009) we apply data from a small N-survey conducted among directors general in Norwegian agencies who were asked to report on their experiences with EU-level agencies. One caveat is necessary with respect to this study: Since Norway is not a member of the EU, Norwegian agency leaders cannot be claimed to be representative for the whole population of national agency leaders within the EU. However, due to being part of the European Economic Area (EEA) Norway is obligated to implement EU internal market legislation, and Norwegian bodies in charge of implementation relate to EU-level bodies much in the same way as member state administrations. Hence, there is probably no reason to believe that EU-level agencies should not play an equally important role in relation to member

European Air Safety Agency (EASA) and the European Maritime Safety Agency (EMSA) conducted by Groenleer et al. (2008) who observe that these agencies play a considerable role in improving EU policy implementation at the national level. They observe that by organizing training through networks of national regulatory agencies, promoting 'best practices', EU-level agencies have started to contribute to the convergence of implementation practices among the different member states (ibid: 24). Thus, like the Commission, EU-level agencies seem to increasingly link into and involve 'double-hatted' national agencies in network structures.

National regulatory agencies may not only cooperate with the EU-level agencies through network structures. They may also participate *within* EU-level agencies through different committees. As we have seen, some of the newcomers in the EU agency family may be considered to have a larger regulatory potential than the previous ones as they are assigned tasks not only related to information-gathering, but also work related to risk assessment. Within these agencies, national authorities, mainly national regulatory agencies are included in the decision-making process through the committee framework. The ECHA is one case in point where national regulatory agencies have an opportunity to be involved in the evaluation of chemicals through the Risk Assessment Committee. However, even if national agencies are directly involved in risk assessment, it is not evident that they will safeguard 'a microcosm' of national control. As noted, the national agencies usually act at arm's length from direct political intervention in their daily business, and the officials adopt stronger sectoral allegiances than their colleagues in the ministries. These sectoral allegiances may actually be amplified in a European setting as the language of expertise becomes the most valid means of communication across levels of government. Metcalfe (2000: 36) notes in his case study of the EMEA that committee participation 'helps consolidate a professional identity among regulators at the European level. Representatives meet frequently with professional colleagues in a context where matters of common interest and shared problems are discussed that transcend national preoccupations' (see also Borrás et al. 2007 and Gehring and Krapohl 2007). Hence, national agencies will not necessarily play the role of an intergovernmental guarantee

state administrations. However, the observations from this study should be considered suggestive because of its limited size and country bias.

or ensure the principle of national administrative sovereignty within the EU-level agency committees.

Taken together, both the Commission and EU-level agencies contribute to the evolving 'double-hattedness', or in fact, 'multi-hattedness' of national agencies within the European administrative system, challenging the notion of national administrations acting as coherent entities within this system. Arguably, these evolving cross-cutting patterns of structured relations make domestic agencies parts of both a national and a European authority system, and vertical and horizontal specialization at both levels of government seems like an organizational prerequisite for these developments to take place.

The Commission as an influential hub

The second important finding in this dissertation is that the Commission seems to function as an influential actor within the structures described above. Firstly, we observe in this dissertation, in particular in the second article, that the Commission is able to steer the transgovernmental networks in certain directions. It plays a *proactive* role, being able to convince the national officials within the networks that a particular course of action is desirable. Secondly, we observe that it may be able to gain an influential position vis-à-vis the EU-level agencies beyond their formal mandates as illustrated in the case of the EEA (see also Busuioc 2008). How can that be? How can we understand the power of the Commission? Pointing at organizational compatibility among and across the constitutive parts of the European administrative system does not provide us with the full answer. '[A]ttention to the structure of organized action needs to be paired with attention to its dynamics' (March 1999: 132), and I argue in this dissertation that we need to take the particular features of the Commission into account within this particular institutional context. According to March and Olsen (2006: 691) specific institutional settings frame thought and understandings in specific ways and define what legitimate resources are, what the valid currency is within a specific institutional context. Within the informal network structures, resources based on knowledge and expertise seem to matter the most. According to Eberlein (2008: 314) '[t]he crucial resource of informal coordination through networks is not formal authority but information [and] ... control over credible information, supported by professional standards, becomes an important tool of 'soft steering''. It should be noted that the European

Commission is not 'imposing' its view on the officials, but it seems to hold a special position in terms of overview and expertise, and it is to a large extent perceived by the national agency officials as being in the best position to judge how a problem may be solved. Hence, its arguments seem to carry a certain weight due to its vital position and particular expertise (cf. Kassim and Wright 2009, Risse 2003: 16). Arguably, these assets have become even more important in EU27 since information, coordination and overview are needed to an even larger extent. However, the Commission does not influence the national officials in the networks in a unified way. The Commission is often in need of feedback about specific matters, and its work depends to a large extent on information and analyses conducted at the national level. As illustrated in article 2, factors at the national level, e.g. 'noviceness' and 'administrative capacity', seem to make a difference with regard to the role and influence of the European Commission vis-à-vis the national agencies. These findings may be explored within other policy fields and settings in order to examine their robustness.

With regard to the relationship between the European Commission and the EU-level agencies, resources based on information and overview seem to matter as well. Several scholars who study EU-level agencies have highlighted the multiplicity of formal control mechanisms in the EU system to which they are subjected (see e.g. Christensen and Nielsen 2008, Dehousse 2008, Gehring and Krapohl 2007). However, exploring the development of the role and autonomy of the EEA in the EU system from its inception until today, we observe that the message is more in the spirit of George Orwell: All institutions are equal, but some institutions are more equal than others. It is argued that the Commission, and in particular the DG Environment, has gradually acquired a privileged and influential position vis-à-vis the EEA through processes of learning and trust-building, and the EEA has gradually become a more loyal and stable partner to the Commission within the EU administrative apparatus. In order to understand this development, we need to take the institutional features of the European administrative system into account. Apparently, it has been *easier* to build this type of relationship to the DG Environment than other and seemingly more remote and fragmented actors in the European administrative system, like the European Parliament and the member states

representatives. The case study of the EEA demonstrates that the member state representatives, in spite of their numerical majority in the management board, have a disadvantage vis-à-vis the Commission in terms of overview and vital information. This finding is consistent with a recent study of Busuioc and Groenleer (2008) showing that the size of the boards often functions as an impediment to efficient discussions. In addition they note that participation in the boards remains for most board members a part-time job, which they exercise sporadically, while being employed full time within the national ministry. Thus, in comparison with the other institutions and 'multiple principals' (Dehousse 2008) in the European administrative system, the Commission seems to enjoy a privileged position partly due to its expertise and informational advantage (see also Busuioc 2008).

However, there are currently 35 EU-level agencies (Egeberg et al. 2009), and we should not jump to conclusions with regard to the informal influence of the European Commission vis-à-vis all of these agencies. I have conducted one case study of the EEA where I specifically address this question, and we need further studies of different EU-level agencies over time, in order to be able to identify more general patterns of power, institutionalization and change. Moreover, the case study of the establishment of the ECHA illustrates that the Commission is not always a powerful body within the EU system. Here, the Commission tried initially to expand its own administrative structures, and demonstrated a large degree of institutional resilience to the agency model. However, lack of financial resources and external support within the EU system activated internal conflicts and the breakdown of the Commission's organizational structures within the policy field. In line with this observation Kelemen (2002) shows in his study of the creation of the European Food Safety Authority (EFSA) that the Commission had a considerable stake in expanding its own administrative structures, but the European Parliament and Council placed limits on increases in the Commission's budget and made this approach difficult (see also Dehousse 2008). Hence, there seem to be limits with regard to the *formal* aggrandizement of the Commission within the EU institutional system. Here we recall the national governments concerns about their administrative sovereignty and a reluctance to grant the Commission more formal competences. Thus, it seems like the Commission to a large extent needs to rely on *informal* sources of power; it needs to

rely on *informal* cooperative structures within the European administrative system. This dissertation illustrates that agencies at both the national and European level increasingly participate in such cooperative structures which seem to informally integrate the European administrative system and enhance coherent administrative practices in the EU. In the words of one of the Commission officials in the DG Environment:

We can only make the participants in the networks change their mind by performance. Make them see that we mean what we say. So they know where we are. It is all the components of building trust. (Interview 5/3-07)

Organized administrative integration

In this dissertation I 'imagine a world consisting of a set of parts' (March 1999: 134), and I acknowledge that integration of a set of parts may come about in two qualitatively different ways. First, the parts may cooperate and become connected as relatively coherent wholes. This type of administrative integration was at the outset the intended form in the EU: a dual system where national governments collaborate as coherent and autonomous entities (Curtin and Egeberg 2008: 649, Kadelbach 2002, Pedersen 2009). Second, integration might imply reorganization of the parts themselves, which may be perceived as a more profound kind of system change. This latter type of integration is explored in this dissertation. I explore how change in one part (organizational de-coupling) is linked to change in other parts (organizational re-coupling) within and across levels of government, and I argue that agencification, understood as horizontal and vertical specialization, is spurring informal re-coupling to equivalent organisational parts across levels of government. Thus, I argue that due to the way in which the various key institutions are organized, patterns of cooperation and coordination that cut across levels of government and national borders seem to emerge. Agencies at both the national and European levels increasingly participate in cooperative structures which seem to informally integrate the European administrative system and challenge the intergovernmental vision of a dual administrative order. Arguably, what we see in this dissertation is not administrative *fusion* (Wessels 1998) in the sense that 'European administrative systems are fused together into one European 'mega-administration' (see Trondal 2009: 238); what we observe is

increasingly systematic cooperation between specific, compatible organizational entities, enhancing new patterns of cooperation, coordination and power cutting across levels of government and national borders in the European administrative system. Arguably, what we observe is organized administrative integration.

Concluding remarks: legitimate administrative integration?

In the previous section I argued that we are witnessing organized administrative integration in the EU. To what extent is this legitimate administrative integration? This is a far-reaching and complex question, and I will not be able to address it comprehensively nor sufficiently within this introductory chapter.¹⁹ The small point I want to make here is simply that the answer to this question may be related to the perception of legitimate governance and the interpretation and understanding of an institution (Olsen 2009b). When public institutions are interpreted in functional-instrumental terms, emphasis is usually on policy *effects*, and legitimacy is assessed by their capacity to solve problems efficiently (Olsen 2007a: 100-01). 'Organizational forms are assessed according to their expected substantive results and how 'practical' and 'suitable' they are' (Olsen 2009b: 300). For instance, Scharpf (1999) claims that students of European integration have become more aware of some 'lasting limitations' and the legitimacy of the EU in the foreseeable future will depend on its problem-solving capabilities (see Olsen 2007a: 100-01). In the same vein Majone (1997b: 151) argues that national variation and local notions of 'justice' are weakening the overall effectiveness of the EU, and the need for professional links is urgent, since lack of familiarity with the regulatory practices of other countries breeds distrust and impedes mutual recognition.²⁰ Administrative network

¹⁹ This section is to be considered more as an afterthought than a normative assessment. For an overview of relevant literature on EU governance and the question of legitimacy, see Bellamy and Castiglione (2003).

²⁰ The concepts of 'regulation' and 'the regulatory state' are central in the work of Giandomenico Majone (see e.g. Majone 1994, 1996, 1997a). In Majone's work the traditional state model with its 'command-and-control' policy style is contrasted to 'the regulatory state' where greater emphasis is placed on rule-making and market regulation than on taxing and spending, and autonomous agencies are to play an important role in monitoring the regulatory system. Majone sees 'the delegation of regulatory powers to some agency distinct from the government itself' as 'an important means whereby governments can commit themselves to regulatory

structures can mitigate and de-emphasize conflicts by framing issues in terms that reduce room for national adaptation and that are more compatible with a common solution (Eberlein 2008: 324, Gehring 2004, Gehring and Kerler 2008, Majone 1996, Metcalfe 1999, 2000). According to Eberlein (2008: 305) supranational policy-making is 'caught between the functional need for uniform rules in the internal market on the one hand, and the lack of formal powers to set and enforce these rules in the member states on the other hand. Hence, there is a need 'to take informal roads in order to secure some level of supranational harmonization' (ibid). In this dissertation we have seen that the administrative structures under study allow for the development of 'best-practice' rules, standards and procedures aiming at coherent implementation across the member states. Hence, they may be considered as 'informal roads', increasing the efficiency, the workability and 'output legitimacy' (Scharpf 1999) of the European administrative system.

Another approach is to assess the legitimacy of an institutional arrangement in light of the decision-making process, from the question of *how* actors or institutions make collective decisions and fulfill norms like accountability and transparency (Borrás et al 2007). According to Olsen (2007a: 123) 'a key democratic concern is to ensure institutionalized guarantees for transparency, so that citizens can monitor how institutions work, discuss how they should work, and sanction deviations from legitimate behaviour and misuse of public power'. The more difficult it is to disentangle the influence of a single actor or institution, the more likely that the concepts of responsibility and accountability will lose much of its traditional content (Olsen 2007b: 14, Borrás and Conzelmann 2007: 542). In this dissertation we see that both the informal network structures and the emergence of EU-level agencies can make it difficult to evaluate who the actors involved are and who is actually in charge, and the

strategies that would not be credible in the absence of such delegation' (1996: 71, see also Majone and Everson 2001). The main goal of the regulatory state is to improve efficiency of the economy, promote competition, and protect consumers and citizens, and less emphasis is put on redistribution of income and macroeconomic stabilization (Christensen and Lægreid 2006c: 11). There is an extensive literature on regulation and regulatory reforms (see e.g. Baldwin et al. 1998, Jordana and Levi-Faur 2004, Moran 2002). Christensen and Lægreid (2006b) provide a thorough overview of the regulation literature and see it explicitly in relation to the literature on central agencies.

European Commission may be able to *informally* gain an influential position based on its vital resources in the European administrative system. This informal influence may obscure real responsibilities and create an area of shaded responsibility (cf. Peters 2007). Thus, these informal patterns of cooperation might make it more difficult to individuate the real decision-makers within the system, and the political leadership may find itself in situations 'where it has responsibility without the corresponding power and control' (Christensen and Læg Reid 2007a: 517).

It should be noted lastly that the tension between political control and agency autonomy, between integration and disintegration, between de-coupling and re-coupling is an enduring theme within public administration theory (Olsen 2008b, Olsen 2009b), and it is to a large extent 'a never-ending story' of administrative change and reform (Christensen and Læg Reid 2007b: 16). As demonstrated by Christensen and Læg Reid (2006b, 2007b) over the years one has observed so-called second-generation administrative reforms aimed at increasing political control and coordination in the national administrative apparatus in Europe 'partly due to concerns over fragmentation, undermining of political control and co-ordination and capacity problems' that emerged from the first wave of administrative reforms at the end of the last century (ibid 2007b: 11). However, as observed by Christensen and Læg Reid (2006d: 373, 2007b: 9) the 'old' organizational structures are normally not *replaced* by the new reforms but rather revised, adjusted or supplemented as a result of these reforms. Thus, they are to a large extent layered around existing organizational structures (Thelen 2003), resulting in increased organizational complexity, and it is still an open question whether political control is *actually* strengthened (Christensen and Læg Reid 2007b: 13). In the same vein, I observe in this dissertation that new organizational structures within the European administrative system, like EU-level agencies, do not appear 'from a blank slate' (Pierson 2004: 151) nor trump completely existing organizational structures. They seem to be extracted from and embedded within existing institutional structures and come about through institutional 'interdependencies and interactions' (Olsen 2009a: 24) rather than as a pure codification of functional needs. Thus, due to institutional 'stickiness' (Pierson 2004), co-existence and co-evolution of organizational forms, both at the national level and at the European level, we face in practice more organizational *complexity*

within the European administrative system than a single principle can provide (Christensen and Lægreid 2007b, Curtin and Egeberg 2009, Olsen 2008b, Olsen 2009b). Greater consciousness of this complexity is probably needed in future studies of the emergent and dynamic European executive order and its constituent organizational parts.

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Article 1

Runaway bureaucracy? Exploring the role of Nordic regulatory agencies in the European Union

Abstract

This article reports a comparative study of the environmental regulatory agencies in Norway, Denmark and Finland. Increasingly and relatively independently these agencies are taking part in transgovernmental networks in the European Union involving the European Commission. An informal penetration, fuelled by faster electronic technology, is taking place between the European Commission and the regulatory agencies, largely outside the control of the domestic politico-administrative leadership. Changes in the character of the states' public administrations serve as an important background for these developments, a distinctive feature being the 'agencification' of the administrative apparatus during the last decades. Due to their relative autonomy, the national regulatory agencies are well placed to work 'double-hatted' in the sense that they interact directly with the European Commission at the same time as they perform traditional tasks as agents of national ministries. This development may challenge the image of integrated administrative apparatus and the notion of transparent and democratic governance.

Introduction

Since the 1980s, administrative reforms have transformed the way in which many Western governments are organized and operate. They have become less hierarchical and more fragmented (Christensen and Lægveid 2001). One notable feature has been the clearer distinction between politics and administration, with administration perceived as a craft best performed at arm's length from political considerations (Støle 2006). A possible way of gaining political leeway has been through the decentralization of tasks to semi-independent, regulatory agencies outside the central administrative hierarchy. Hence, an 'agencification' of the administrative apparatus in most European Union (EU) Member States has been taken place (Pollitt et al. 2004). A parallel development has been unfolding at the European level where an increasing number of different agencies have been founded, although with far more restricted tasks and less autonomy from central institutions (Kreher 1997, Majone 1997).

The reasons for writing about the role of national regulatory agencies in a European context are threefold. First, regulatory agencies constitute an important part of the national political systems in the EU Member States, in both policy formulation and implementation. They 'matter' in political terms. Second, little has been written regarding the role of national agencies in European cooperation; rather, the focus has been on the founding of agencies at the European level (see e.g. Dehousse 1997, Geradin 2005, Kreher 1997, Majone 1997, Vos 2000, Yataganas 2001). Finally, the emergence of systematic cooperation between the European Commission and these entities could indicate a new type of administrative coupling and differentiation, cutting across both national borders and internal administrative levels. These couplings may challenge the image of integrated administrative apparatus and the notion of transparent and democratic governance.

In this article, the following main questions are asked: To what extent do the regulatory agencies take part in administrative networks including the European Commission? How independently are they operating from their parent ministries? How can we evaluate these networks in terms of democratic governance?

The use of the term 'network' in the context of European governance often conjures up notions of self-regulation and self-organization (Schout and Jordan 2005). In this article I do not reserve the term for a specific type of steering arrangement, such as found, for instance, in the European Commission's White Paper on Governance (2001), which sees networks as an alternative coordinating mechanism to hierarchies and markets. The main concern here is to explore the variety of networks in which the regulatory agencies are engaged, including those that might be perceived as having a 'node' as well as those that are web like and thus without overt hierarchical elements (Gornitzka 2005).

A 'most similar cases' design

The Nordic countries¹ may be an interesting ground for comparative studies, not least because they are quite similar in relation to several political and societal factors. All of them are parliamentary democracies with well-developed administrative systems. They are all unitary states and are of roughly the same size (Jacobsson et al. 2004: 5). In addition, all of the administrations in the Nordic countries have been affected by the concepts of 'new public management' and 'decentralization'. Regulatory agencies are not a new phenomenon in the Nordic countries, but the 1980 and 90s witnessed the introduction of more extensive 'management by objectives' or 'steering towards results' between ministries/departments and agencies (see e.g. Foss Hansen and Holm Pedersen 2006, Lægreid et al. 2006, Salminen 2001). The basic rationale was that the relevant ministry should provide the agencies with clear and concise goals, but there should be only minimal interference in the agencies' pursuit of these goals. By the same token, there was a growing emphasis on efficiency and effectiveness in the politics of public administration - a policy objective that was also believed to be best served by giving agencies even greater autonomy vis-à-vis the ministries (Pierre 2001).

On the other hand, there are organizational differences among the national administrations in the Nordic countries, for example, concerning the formal relationship between the ministries and the outer layer of the central administration. Denmark has a monistic

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

structure, with the agencies formally part of the ministerial structure. The Environmental Ministry is divided into two levels: the Department and the Agency. The name of the environmental agency is 'the Danish Environmental Ministry, the Environmental Protection Agency', and the Minister is responsible for the Ministry as a whole. In Norway, the agencies are not formally a part of the ministerial structure. However, the outer layers are subordinate to the different ministers, who can be held responsible for all decisions made in the agencies. Finland has traditionally been associated with the 'east Nordic model',² where the agencies are formally independent of the central ministries. Recently, however, increasing emphasis has been placed on accountability of the various ministers in the Finnish government (Jacobsson et al. 2004: 17). A study of these three countries permits a comparative assessment of the role of national administrative arrangements owing to the difference in their organizational nature. Hence, we apply a 'most similar cases design', which involves choosing cases that are as similar as possible and then trying to isolate factors responsible for differences among them (Andersen 1997).

In addition to the different administrative structures in the three Nordic countries under study, there are other important differences to be taken into account when comparing these three countries in relation to the EU. Norway is not a member of the EU, but is associated with it through the EEA (European Economic Area) agreement.³ Denmark is an older EU member country than Finland, and is also known as more EU skeptical. These factors may influence the role the agencies play at the European level and their degree of independence from their parent ministries. I will come back to these factors when formulating my assumptions and analyzing the

² It has been traditional to distinguish between an east Nordic administrative model (a dualistic Swedish-Finnish model), which involves strong independent central agencies that report to the cabinet as a collective body, and a west Nordic model (a monistic Danish-Norwegian model) under ministerial control, where each minister is responsible for everything that happens at the agency level. The models are quite different in formal terms, but empirical studies have shown that the differences are not so extreme, once the various informal contacts are taken into consideration (Jacobsson et al. 2004: 75).

³ The EEA agreement allows Norway access to the preliminary work and the implementation activities of the European Commission, but not to the formal decision-making process in the Council.

empirical material. Before continuing the presentation of the study and the empirical findings, I will define two important concepts in this article: regulation and agency.

According to Christensen and Lægreid (2006: 9), 'regulation' can be used in both a broad and a narrow sense. In the broad sense, it can be defined as 'all types of state intervention in the economy or the private sphere designed to steer these and to realize public goals' (ibid: 9). In this article I use the more narrow definition, where regulation means 'formulating authoritative sets of rules and setting up autonomous public agencies or other mechanisms for monitoring, scrutinizing, and promoting compliance with these rules' (ibid: 10). These functions may be carried out by a single organization or delegated to specialized agencies - so-called 'regulatory agencies'. Hence, the regulatory function may involve a 'combination of vertical and horizontal inter-organizational specialization of the central administrative apparatus' (ibid: 10).

In terms of 'agency', in this article the focus is on central regulatory agencies. It is clear that not all agencies are regulatory agencies; some are mainly responsible for data gathering or managerial tasks, while others provide services or offer policy advice (Christensen and Lægreid 2006: 12). In this article I use the definition provided by Pollitt et al. (2004: 10) of an agency as 'an organization which has its status defined principally or exclusively in public law . . . , is functionally disaggregated from the core of its ministry or department of state, enjoys some degree of autonomy which is not enjoyed by the core ministry, is nevertheless linked to the ministry/department of state in ways which are close enough to permit ministers/secretaries of state to alter the budgets and main operational goals of the organization, is therefore not statutorily fully independent of its ministry/department of state, and is not a commercial corporation'.

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

An organizational starting point

The organization perspective applied in this article assumes that civil servants employed in government institutions are 'bounded rational', faced with information overload (Simon 1965). The vertical and horizontal specialization of public administration serves to buffer systematically the information and role expectations relevant for each civil servant, thereby simplifying preference formation and decision-making behavior (Egeberg 1999). Hence, functional differentiation of public administration tends to reduce attention problems, conflicts and ambiguity, and different civil servants become attentive to the special interests they are responsible for, depend on and interact with (Olsen 1991).

In studying the EU through organizational prisms, a feature of special interest is the division of tasks and responsibilities between the Council and the European Commission. The Council is perceived as the most important EU institution, primarily due to its decisive role in decision-making processes. The Commission, on the other hand, plays an important role in preparing, proposing and monitoring policy and legislation. Hence, there is a division of tasks between the two institutions. In addition, it may be argued that these institutions are organized according to two different basic principles in administrative life. The Commission, organized in different Directorates Generals (DGs), may be seen as exhibiting functional and sectoral principles; conversely, the Council may be viewed as demonstrating a territorial principle of organization since the key decision makers formally represent the constituent governments (Egeberg 2001).⁴ According to Trondal (2005: 8), the Commission officials are assumed to make decisions 'on the basis of their professional competences and legitimate their authority on neutral competences'. Their decision-making behavior is expected to be guided by 'considerations of scientific and professional correctness and the power of the better argument' (ibid: 8). Hence the 'territorial logic' of negotiation within the Council structure is supplanted by the

⁴ There are different organizing principles within the European Commission and the Council. Within the Commission a geographical principle runs parallel to a sectoral principle, while a sectoral principle of organization exists within the Council, supplementing the area principle (Trondal 1999). However, it is possible to claim that the dominant principles are those outlined in the article.

'functional logic' of the policy areas of the different DGs (Esmark 2005: 19).

Returning to the national administrative apparatus, we see, as mentioned, a trend of administrative decentralization where more tasks and functions are 'hived off' from ministerial departments and put into semi-autonomous agencies. Like the Commission at the European level, the regulatory agencies are expected to play an important role in preparing and monitoring policy and legislation within specific policy fields. Studies reveal that officials employed at the agency level are in general less sensitive to political inputs than their colleagues in the ministries and more likely to evoke a sectoral logic of the policy area than are officials employed at the ministry level (Egeberg 2003, Trondal 2001, Trondal and Veggeland 2003). Thus, agency structures seem to increase the relative importance of professional considerations and reduce the amount of political interference in administrative decision making – in other words, that behaviour is more guided by the professional expertise and formal background of the actors. Taken together, these observations indicate that the institutional configuration at the EU level, with a division of tasks between the Council and the Commission, as well as the different organizational logics in these institutions, has a parallel in the organization of the national administrative apparatus. Thus we may anticipate a link between the European Commission and the national regulatory agencies due to the institutional compatibility across these levels of government (Knill 2001). By connecting up national agencies in issue-specific networks, the European Commission would, in a sense, have the possibility to extend its organization down across the levels without formally establishing its own offices (Egeberg 2005).

As to the environmental agencies in Denmark, Finland and Norway: they have all been affected by the new public management (NPM) idea and do enjoy a certain degree of independence from their parent ministries/departments. This agencification process may have as such provided a window of opportunity for a new and transnational role for the regulatory agencies. On the one hand, the national agencies constitute an integral part of the national bureaucracy as originally intended. However, due to their relative independence and the compatible organizational structures at the European level, they

may also be well placed, in organizational terms, to be linked up to the European Commission in issue-specific networks.

As noted, there are differences with regard to how the agencies are organized within the central administrations. The Danish agency is formally linked closest to the parent department⁵, while the Finnish agency is formally the most independent and the Norwegian agency may be said to occupy a middle position. On the basis of these organizational differences, we may assume that the Danish regulatory agency takes part in administrative networks at the European level on a less independent basis than is the case in the two other countries, in the sense that the parent department is more in control. Here we should also take into account the fact that Denmark is known as one of the most EU-skeptical states, so the politico-administrative leadership may have a special interest in retaining some control when the regulatory agencies participate on the European scene.

A note on methodology and data

My informants are middle- and upper-middle-level executive officers in the various environmental agencies. I chose to conduct qualitative interviews with open-ended questions to enable broad reflections and extensive information from the actors involved. Given the explorative nature of this study, the opportunity to acquire as much information as possible from the relevant actors seemed most strategic. I started by sending the officers an e-mail in which I shortly described my project. After some days, I phoned them and made appointments for interviewing. I conducted 24 interviews in the three environmental agencies, and the interviews lasted between one and two hours. The questions reflected both vertical coordination in the national administrations and horizontal coordination with other regulatory agencies and the European Commission. Furthermore, patterns of roles and identities in the three different agencies were explored. A challenge in analyzing the data material was the selection and weighing of the various observations. However, the level of convergence among responses in the three different agencies proved

⁵ I use the term 'department' instead of 'ministry' in relation to Denmark since the central environmental administration is called 'the Environmental Ministry', divided into the department and the agency. As stated, the minister is responsible for the ministry as a whole.

to be quite high. In addition, I consulted written sources like organizational charts, formal procedures with regard to EU-related work and reporting routines, as well as secondary sources about decision-making behavior in the Nordic administrations. Reference will be made to these where relevant.

Nordic agencies on the European scene

There are important similarities between the three Nordic environmental agencies with regard to their involvement in EU matters. In general, an increasing amount of time, energy and resources is spent on EU-related work. Approximately 30-50 percent of the executive officers' working hours are devoted to EU-related work, and the work is primarily linked to work within the Commission structure. The degree of contact with the Commission and colleagues in other national regulatory agencies in Europe has increased, and providing information and expertise to the Commission has gradually become a more important part of their daily work. The use of e-mail has meant greater contact both with colleagues in other national environmental agencies and with the European Commission. The executive officers participate in various kinds of networks including the Commission, in addition to participation within the ordinary committee structure. The network activities which are in focus in this article, are linked both to initial drafting of legal acts (the pre-pipeline phase) and to interpretation and implementation of legal acts nationally.

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

In addition to the scope groups, the national agencies participate in more formalized implementation networks. These are networks linked to broader areas, and the members meet physically on a regular basis. The most formalized network within the environmental field is IMPEL (the European Union Network for the Implementation and Enforcement of Environmental Law), primarily dealing with pollution control. The IMPEL network was established in 1991 to improve implementation of European environmental law in the various Member States, and is composed of representatives from the national environmental agencies and the European Commission. The initiative to create the network surfaced at the national level, and the participation of the European Commission was not part of the original plan; in fact, the national officials expressed concerns about admitting the Commission. However, this skepticism gradually evaporated during the consolidating phase of the network, and the Commission has formally become an equal member of the network (Martens 2006).

Another related network is CLEEN (Chemical Legislation European Enforcement Network) responsible for implementation of chemical legal acts. Like IMPEL, it is composed of representatives from the national environmental agencies. The Commission has indicated it will support the network financially, but the members have until now kept the Commission at a distance. Hence, the Commission acts mainly as an observer within the network. A plausible explanation is that control of the chemical industry is considered a more sensitive issue nationally than pollution because of the vital economic interests involved (especially in Germany and the United Kingdom). However, the CLEEN network will most probably become a part of the EU system when the new chemical regulation, REACH⁶, is implemented at the national level. The regulation establishes an implementation arrangement as a part of the European Chemical Agency, and CLEEN is considered by several parties to be the

⁶ A central feature of the REACH system is, according to the homepage of DG Environment (http://europa.eu.int/comm/environment/chemicals/pdf/011-expl_note.pdf): '[A] duty on all companies that manufacture, import and use chemicals to use substances in such a way that human health and the environment are not adversely affected. This is to be achieved by assessing the risks arising from the manufacture, import or use of those chemicals and taking the necessary measures to manage and register any risks identified.'

appropriate institution. The role of the Commission within such an arrangement is not settled.

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

In general, network activities between the European Commission and executive officers in the three environmental agencies have increased. However, networking among the executive officers themselves is even stronger and more regular than with the European Commission. These networks are most often without a node or other hierarchical elements. Quite often, working group meetings of the Nordic Council of Ministers structure are used to coordinate EU positions, and serve as a stepping stone for further informal networking in the EU cooperation. This is in line with the observations made by Jacobsson et al. (2004: 66), who note that Nordic cooperation has increased within the EU framework. Contacts between the administrative units they studied were found to be twice as extensive in those parts of the administrations most involved in EU-related activity compared with the administration in general.

The national ministries do not take part in any of the administrative networks mentioned above. In general, there are few guidelines or preceding coordination – internal or external – for executive officers participating within network structures, and the agency officials feel they have a large degree of behavioral discretion at their disposal. In the next section we have a closer look at the three Nordic agencies under study and some of the differences between them.

Finland

The Finnish executive officers are the most formalistic and legal-oriented in describing their decision-making behavior. When explaining the division of work between the Environmental Agency and the Environmental Ministry, they make explicit reference to various legal acts. In the mid nineties the Finnish Environmental agency was reorganized and certain tasks were transferred to the ministry- and local levels in Finland. Hence, some areas like 'air pollution' and 'waste' are taken care of by the Ministry, while the Agency is the competent authority (CA) formally designated to fulfill administrative functions related to other areas like 'chemicals', 'hazardous substances' and 'pollution prevention'⁷. In general there is a clear division of labor between the Agency and the Ministry in relation to participation in institutions at the EU level. The Finnish Environmental Ministry most often participates in the Council structure, while representatives from the Agency participate within the Commission structure (when acting as CA).

The Finnish executive officers are most concerned about what is formally correct, but also what is scientifically and professionally correct. They perceive their expert field as non-political and technical, and whereas the Norwegian and Danish executive officers say they represent their home countries in the different networks, most of the Finnish officers say they participate primarily as experts. They claim that no one else knows the field the way they do; therefore, the leadership is in no position to provide them with valuable instructions when participating in network activities. However, they always write reports to the politico-administrative leadership after network meetings. In sum, it is possible to claim that the Finnish executive officers are likely to perceive themselves as Weberian-type civil servants; abiding by the rules and established practices within their specific portfolios as well as acting as independent and 'neutral' experts.

⁷ For an overview of the responsibilities of the Finnish environmental agency, see: <http://www.miljo.fi/default.asp?contented=160975&lan=sv&clan=en#a0>

Denmark

Danish executive officers are more often in contact with the European Commission in their daily work through e-mail and telephone compared to their Norwegian and Finnish colleagues. They also participate more often in exclusive informal networks with the Commission in the pre-pipeline phase. They normally do not have a formal mandate, nor do they report to the Department after network meetings, but they sometimes consult people in the Department on an informal basis. In general, they feel they enjoy quite an extensive room for maneuvering from their parent department when participating in network activities. However, they include the network activities in their yearly reports to the Minister. The Danish Environmental Department participates only in political meetings in the Council structure. When personnel from the Agency participate in the Council structure, the procedures and mandates are approved by the Department, and this makes their decision-making behavior more formalistic and foreseeable than in the different administrative networks. The Danish executive officers consider themselves to be political actors to a larger extent than their Finnish and Norwegian colleagues. They see themselves as part of the political secretariat and link this to their integrated position in the administrative apparatus. Even without a written mandate, they feel they have the relevant information and are able to identify the political frameworks and anticipate the political interests they are expected to pursue.

Norway

Norway is not a member of the EU. However, through the EEA agreement, Norway has access to the preliminary work and the implementation activities of the European Commission. The executive officers in the Norwegian environmental agency participate in the same networks in the Commission structure as their Finnish and Danish colleagues, and in line with their Danish and Finnish colleagues they do not feel particularly controlled or supervised by their parent ministry when participating in the networks. However, the interviews reveal that the Norwegian executive officers feel less secure and less comfortable when traveling to Brussels and participating in different networks physically or electronically than do their Finnish and Danish counterparts. In addition, they complain the most about lack of coordination internally and lack of political interest externally. Several of them feel that both the internal and

external leadership ignore the political dimension of the EU work, making it difficult to maneuver in a complex landscape. Somehow paradoxically, there seem to be more written routines (guidelines for writing mandates and reports) in relation to participation in meetings at the European level than in Denmark and Finland. However, the need for more fine grained instructions from the politico-administrative leadership is more salient among the executive officers in Norway than in the other countries. The informants link this to Norway's formal affiliation to the EU, underlining that the country's EEA associate status means that Norwegian politicians are less involved in the EU decision-making process compared to their Nordic colleagues. They describe the politico-administrative leadership as lacking the 'political ownership' to the matters under discussion. This observation is in line with Trondal and Larsson (2005) who have studied administrative developments in Norway and Sweden over the past ten years. According to the authors 'the Norwegian central administration' seems more sectorally de-coupled, de-politicized and fragmented than territorially integrated, politicized and coordinated when handling EU dossiers' (ibid: 19).

The organizational explanation

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

What about differences between the countries? How can they be explained? The starting point is the assumption that the Danish agency would enjoy less independence from the parent department than the agencies in Norway and Finland when participating in European network activities. We expected the Department to be more in control in Denmark than the ministries in the other two countries.

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

However, it seems that the organizational factor explains the differing degrees of political awareness or sensitivity, more than degree of hierarchical control. Executive officers in the Danish agency seem not to be especially controlled or supervised by the parent department when participating in network activities. However, due to their integrated position, they feel they are included in the political apparatus and they can anticipate the will of their political superiors.⁹ The material is not allowing us to make any firm conclusions, and it seems like differences in administrative culture also have to be taken into account. Bureaucratic organizations tend to develop added value 'beyond the technical requirements of the task at hand' (Selznick 1984: 17). They develop a certain 'logic of appropriateness' (March and Olsen 1989). Jacobsen et al. (2001: 13) describe the Finnish administration in these words: 'Finnish EU activity is carried out within a pragmatic, closed and technocratic culture operating in a central administrative apparatus with a large degree of autonomy.' We have seen that a technocratic identity is most salient in the Finnish agency. Their role perception is more linked to their professional platform and their specific technical skills, than to the role of a government representative. By contrast, the culture in the Danish agency seems more informal and less hierarchical; at the same time, it is more tuned into the political dimension of the EU work. This is in line with Bursens (2002) portraying the Danish administrative culture as emphasizing informal contacts cutting across different levels of administration (see also Pedersen 2000). Thus, when trying to understand the differences between the countries, our theoretical starting point of stressing the formal relationship between the organizational units has to be supplemented by cultural elements; agencies have to be understood in their political-administrative context as well as in themselves (Pollitt et al. 2004). Table 1 provides a summary of the findings in the three different countries.

⁹ It is however possible that the organizational differences between the countries are not salient enough in order to make a fruitful comparison. As Lægveid et al. (2006: 263) note '[a]gency status in itself is an uncertain predictor of steering relationships, especially when it comes to variations between different sub-forms of agencies' [footnote added after the article was published in *Scandinavian Political Studies*].

Table 1

	Organizational features	Cultural/political features	Decision-making behavior at the European level
Finland	The Agency is not formally part of the ministerial structure. The Agency acts as Competent Authority in certain policy areas.	Legalistic, technocratic administrative culture. Expert identity.	Independent decision making when acting as Competent Authority.
Norway	The Agency is not formally part of the ministerial structure. The Minister is responsible for decisions made in the Agency.	Associated to the EU through the EEA agreement.	Independent decision making, often in need of instructions from the politico-administrative leadership.
Denmark	The Agency is formally integrated into the ministerial structure. The Ministry is divided into two levels: the Department and the Agency.	Informal administrative culture. Political identity.	Independent decision making, often based on anticipated political reactions.

Balancing output and input legitimacy

The issue of balancing effective problem-solving and legitimate structures subjected to political control has received increased attention in literature discussing democratic aspects of 'multilevel governance' and 'networks' in the European cooperation (see e.g. Kohler-Koch 2002, Kohler-Koch 2003, Sørensen and Torfing 2004). The first type of concern may be linked to the concept of 'output legitimacy' (Scharpf 1999) where focus is on performance – in this case, the superior performance of the regulatory agencies relative to the result that would be likely if elected politicians or ministries were to perform the functions themselves (Thatcher and Stone Sweet 2001). Enhancing expertise is assumed to increase effectiveness. Pollitt et al. (2004: 5) put it this way: 'While ministers are indulging in the competitive rhetoric of the political theatre, and departmental policy advisers are packaging and repackaging their scripts, agencies are getting on with the job.'

With regard to the NPM approach and the decentralization of the administrative apparatus in most European countries during the 1980s and 1990s, the focus was primarily on the anticipated gains in efficiency. Securing expert autonomy from political interference was

expected to result in easier and faster decision-making behavior at the lower level of the administrative hierarchy (Peters and Pierre 2001). As to the networks discussed in this article, they may be said to contribute to ensuring more effective implementation of the legal acts on the ground and to enhance a harmonized internal market. According to Majone (1993) markets are best served by an efficiency-oriented policy that is best provided by experts independent of political pressure. Moravcsik (2002) defends the functioning of international institutions by conceptualizing them as agents that deliver certain services to the principals, who are democratically elected governments. Hence, both for the European Commission and the Member States, the networks may be seen as a workable solution to the familiar problem of how to ensure the functioning of the internal market without transferring more direct power from the national to the supranational level. In this respect it is possible to understand these arrangements through 'inter-governmental lenses' as securing an important political goal for the Member States – that of harmonizing the internal market in the EU.

On the other hand, it is possible to claim that this development may challenge notions of 'accountability' and 'transparency', which may also be anticipated as crucial elements of democratic governance. In this article I have stressed how the Council and the Commission activate different institutions within the national administrations. As such, interactions between the EU and its Member States seem to follow the configuration at the EU level, where officials situated in the national ministries are primarily engaged in the territorially organized Council structure, while officials in the agencies interact with the functionally organized Commission structure. Hence, we have seen that a new way of differentiation and coupling of the national administrative units has emerged within the European cooperation. These couplings cutting across both national borders and internal administrative levels may challenge the image of integrated, unified administrative apparatus and the notion of political accountability. In addition, we have seen that the administrative networks are more or less inclusive. Some are open to all national governments in the EU, while others operate more in the dark, like the exclusive networks with the European Commission in the pre-pipeline phase of the decision-making process. It is possible to claim that these 'shadow-networks' make it even more difficult to individuate the real owners of competencies and responsibilities and

contest the principle of public transparency and control. In relation to agencies at the European level, there is growing awareness in the EU of the need to ensure the autonomy of experts, while also ensuring political and legal control through increased transparency, codes of conduct and principles of good administration (e.g. Borrás et al. 2007, Curtin 2005, Vos 2005).¹⁰ In my opinion, this awareness may also find expression in relation to the role of national regulatory agencies participating at the European scene.

Conclusion

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

The EU opens new arenas for interaction between the domestic public administrations and the community institutions (Trondal and Larsson 2005: 10). In this article we have seen that a new way of differentiation and coupling of the national administrative units has been emerging within the European context. Fuelled by new electronic technology, an informal penetration is taking place between the European Commission and national regulatory agencies, limiting the capacity of hierarchical coordination.

My findings are in line with a 'multilevel governance' perspective in EU research, highlighting networks, policy communities and institutional couplings and alliances cutting across levels of government, challenging the intergovernmental or state-centric interpretation of EU integration (see e.g. Hooghe and Marks 2001, Kohler-Koch 2003, Kohler-Koch and Eising 1999). According to Hooghe and Marks (2001), the empowerment of both supranational and sub-national actors means that national governments are losing their 'gatekeeper' role. Even if these assumptions are in line with some of the core arguments in this article, I will argue that focus on

¹⁰ This is explicitly outlined in the Communication from the Commission. The operating framework for the Regulatory Agencies (2002) 718. Brussels.

different hierarchical levels *within* the national state administrations is lacking in the multilevel governance literature, which has tended to focus on actors at the sub-national level (regions) or in civil society (interest organizations, private companies, etc.). My point is that the internal institutional configurations within the national central administrations do matter, in addition to the institutional configuration at the European level, and it is hoped that this article can help to increase our understanding of the dynamics and the change of dynamics between these institutions in the European cooperation.

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Article 2

Administrative integration through the back door?

The role and influence of the European Commission in transgovernmental networks within the environmental policy field

Abstract

In the EU we see a trend towards developing informal networks between the European Commission and national regulatory agencies. Changes in character of the states' public administrations serve as a background for understanding these developments, a distinctive feature being the 'agencification' of the administrative apparatus during the last decades. This article focuses on how we can understand the role of the European Commission within these networks. The main finding is that the Commission is playing a proactive role, being able to use the networks as a back road to the informal harmonization of regulatory practices. It is argued that it is able to do this mainly because it is perceived as a credible institution with expertise and overview, assets that have become even more important in EU27. It is further argued that the influence of the Commission is conditioned by certain factors at the national level like 'noviceness' and 'administrative capacity'. It is concluded that we need to take into account institutional features both at the national

and European levels in order to understand the multifaceted role of the Commission within this specific institutional setting.

Introduction

The European Commission is a peculiar component in the institutional architecture of the EU. While councils, parliamentary assemblies and courts may be found in other governance structures at the international level as well, a separate executive body like the Commission is not in place anywhere else. From its inception, the Commission was meant to act independently from member states, pointing beyond a purely intergovernmental order (Egeberg 2006a). This article focuses on how we can understand the role of the European Commission within transgovernmental networks.¹ The networks under study consist primarily of officials from regulatory agencies in the Member States, and I ask the following question: To what extent and under what conditions is the Commission able to influence the decision-making behaviour of the national officials in these transgovernmental networks?

EU law is often open to different interpretations and allows officials at the national 'street level' to choose among various ways to reach an objective, and to advocate a specific national solution. While a more European than local outlook taken on by national officials may advance administrative integration and regulatory harmonization, it may wipe out the discretion of national officials and downgrade other concerns. EU Member States have been cautious of formally delegating administrative capacities to the Community level in order to protect 'administrative sovereignty' (Hix 2005, Sverdrup 2007). However, in this article I argue that transgovernmental networks may be understood as an informal 'back door' for the European Commission to advance administrative integration and harmonization of regulatory practices in the EU.

¹ We should be aware that the name 'Commission' can create ambiguity and may be applied in at least three different ways: First, it may be used to refer to the Commission as a collective entity. Second, it may be used to refer to the College of Commissioners. Third, it may be used to refer to certain parts of the Commission, like the Directorate Generals (Nugent 1997:1). In this article I focus on the decision making-behaviour of DG officials. Hence, when I refer to 'the Commission' I refer primarily to the administrative part of this organization.

My analytical starting point, or stepping stone, is that we have to understand the EU in terms of a multilevel governance system (Kohler-Koch 1999, 2003, Kohler-Koch and Rittberger 2006, Hooghe and Marks 2001) - a departure from 'the self-contained nation state as *the* political arena and an analytical ability to 'cut across' state boundaries' (Christiansen 1997: 65). However, notions of 'fusion' (Wessels 1998), 'fluidity' (Rosamond 2000: 111) and 'partnership'² within parts of the multilevel governance and network literature may obscure the relative strength of the actors involved, and treat them 'on a par', not being able to explain why and how they are relevant (Matlary 1997: 280).³ According to March and Olsen (1989, 2006) institutions allocate resources and empower and constrain actors differently. 'They affect whose justice and what rationality has primacy and who becomes winners and losers' (2006: 691).

In this article, I argue that in order to understand the position and potential power of the Commission in these networks, we need to study the particular interplay between its specific resources within this particular structure, taking into account institutional features both at the national and European levels. One of these institutional features is the organizational affiliation of the national officials. The underlying theoretical argument is that organizational specialization reduces attention problems, conflict and ambiguity (Olsen 1991, Egeberg 2004). Officials in central agencies, in contrast to their colleagues in the ministries, exercise their discretion comparatively insulated from ongoing political processes and adopt stronger sectoral allegiances (Egeberg 2003, 2004, 2008, Christensen and Læg Reid 2004). The language of expertise becomes the most valid means of communication (Marcussen 2006). Hence, I argue that the strong sectoral allegiances in the national agencies enable a common professional focus and trust between the participants in the networks under study. I further argue that the European Commission possesses a powerful position within this particular institutional setting based on its particular resources like knowledge, expertise and overview, assets that seem to have become even more important in EU27. However, I underline that the role and influence of the Commission is conditioned by other institutional factors at the national level.

² For a discussion of the 'partnership-principle' within the multilevel governance literature see Bauer (2001).

³ For an overview of Policy Network approaches in EU-studies see Peterson (2003).

'Noviceness' is one of these factors (Checkel 2005, Hooghe 2005). According to Hooghe (2005: 866) people in a new situation are likely to be disoriented, eager to conform and susceptible to efforts of persuasion. The empirics reveal that the Baltic officials have a more humble attitude towards the Commission than their Nordic colleagues. They perceive the Commission to a larger degree as an authority than their colleagues from the Nordic countries, and they are more disposed to copy what the Commission says and does.

Before we have a closer look at the different networks under study, a specific historical development at the national level serves as an important backdrop: A number of countries have launched programmes of 'agencification'- of transferring government activities into agency-type organizations, functionally disaggregated from the core of the ministry or department of state, and several Western European states launched these agencification-programmes during the 1980s and 1990s (Pollitt et al. 2004: 36).⁴ Agencification has also taken place in Eastern Europe during the last two decades. After the Soviet period, EU candidate countries were put under pressure to modernize their administrations, to develop a professional civil service and build institutional capacity to implement and enforce the legal framework of the European Union (Grabbe 2001: 1016, Olsen 2003: 519). The changes to unbundled agencies were extensive, and semi-independent regulatory agencies gradually became more salient actors in the political and administrative landscape (Pollitt 2004: 287). According to Pollitt (ibid) 'Agencies were seen as a way of introducing private sector-style efficiency and escaping bureaucratic rigidities. Pro-business governments were in power'.

The EU does not have a clearly defined or coherent administrative policy (Olsen 2003, 2007). However, over the past few years it has begun to focus more strongly on administrative issues, as we have seen in the White Paper on European Governance (2001) and the

⁴ According to the definition of Pollitt et al. (2004:10) an agency is 'an organization which has its status defined principally or exclusively in public law [...], is functionally disaggregated from the core of its ministry or department of state, enjoys some degree of autonomy which is not enjoyed by the core ministry, is nevertheless linked to the ministry/department of state in ways which are close enough to permit ministers/secretaries of state to alter the budgets and main operational goals of the organization, is therefore not statutorily fully independent of its ministry/department of state, and is not a commercial corporation.'

Commission's action plan for better Regulation (2002). Moreover, the EU is indirectly pushing for agencification of the national administrative apparatus through more specific directives on how to organize the public sector and through the organizational set-up that controls implementation of the EU legal acts (Christensen and Læg Reid 2004: 147). We do see a trend in the EU towards developing networked administrative structures in which the Commission and national administrative units create closer cooperative arrangements (Egeberg 2006b, Martens 2008). According to Egeberg (2008: 252) it is when 'national agencies are vertically as well as horizontally decoupled that they are open for being re-coupled into new administrative configurations'. My point of departure is that the role of the European Commission has not been properly studied within these administrative configurations and we need to know more about the dynamics taking place between the actors involved.

The structure of the article is the following: First, I have a note on methodology and data. Second, I specify the network concept applied in this article and present the different networks under study. Third, I present a general description of the role of the Commission within the networks. Last, I try to conceptualize the role of the Commission and discuss different scope conditions with regard to the Commission's potential influence and power within these structures.

A note on methodology and data

The policy field under study is environmental policy. The article is written on the basis of 35 in-depth interviews with officials from environmental regulatory agencies in five Member States in the Northern part of Europe⁵: Finland, Denmark, Norway, Latvia and Estonia and seven interviews with Commission officials from DG Environment and DG Enterprise and Industry all dealing with environmental issues. I chose to conduct qualitative interviews with open-ended questions, to enable broad reflections and extensive information from the actors involved.

⁵ Due to time constraints I chose to leave out Lithuania and Sweden. A comparative study of the Environmental agencies in Norway, Finland and Denmark has previously been conducted (Martens 2008). I apply the interview data from this study. I also include a previous smaller case study of the IMPEL network (Martens 2006) where my empirical material is based on telephone interviews with national officials from ten different member states and one official from the Commission.

As mentioned in the introduction, 'noviceness' is a relevant dimension to consider when trying to explain decision-making behaviour within international institutions (Checkel 2005, Hooghe 2005). Hence, including the Baltic States within a larger Nordic frame may help us explore some of the scope conditions for the influence of the European Commission. However, it should be noted that since the empirical results refer mainly to officials from Nordic and Baltic States, the findings are limited to the perception of these national officials.

The networks under study

The term 'network' has become a catchword in recent years, and it is used in a number of ways in the study of public administration as well of European integration (e.g. Börzel 1998, Metcalfe 1992, Schout and Jordan 2005, Eberlein and Grande 2005). It can also be used to denote a preferred steering arrangement where networks represent an alternative and normatively superior coordinating mechanism to hierarchies and markets (Gornitzka 2007: 5). This article is not concerned with network theory or with the normative qualities of network as a governance arrangement, but the networks under study have certain features in common: First, they consist of *public* actors from different levels of government, primarily officials from regulatory agencies in the member states and officials from the European Commission services (DGs). While the study of networks in a European context is often about the interaction of public and private actors (Börzel 1998), these networks link different public actors drawn from different public jurisdictions. A distinction can be made between these networks and connections of the Commission with national administrations through expert committees⁶, as well as networks between the Commission and officials at the sub-national levels. Second, the networks under study are informal in the sense that their existence is not codified in the EU legal framework. Christiansen, Føllesdal and Piattoni (2003: 7) define informal networks as 'actors pursuing common goals - which lead to cooperation, patterned relations and public decisions - through regular though non-codified and not publicly sanctioned exchanges in the institutional context of the European Union.'

⁶ For an overview of different Commission committees see Christiansen and Larsson (2007)

I divide the networks under study into two categories: 1. Drafting and 2. Implementation. Hence, the analysis of the role of the Commission is restricted to these two phases of the decision-making process in the EU, and the activities in the Council phase are excluded. Since a large part of the regulatory activity at the national level is related to implementation and enforcement, the main focus will be on this part of the decision-making process. In the next section I give a short description of the different networks under study, before I describe more thoroughly in section four the internal dynamics between the relevant actors.

Networks in the preparation/drafting phase

The networks in the preparation phase are established on a case-by-case basis and consist mainly of a small sample of national officials from regulatory agencies in the old member states. Network members are selected by the Commission on the basis of their particular expertise, but also because the Commission officials know them, have worked with them several times and trust that they will keep the information about the process to themselves. Hence, discretion and trust are essential when these networks are established. In the words of one official in DG Environment:

You know the people in the network, that is factor number one, because if you do informal consultation... If it gets out someone feels bad about it that undermines the whole thing. It is necessary that you have someone to rely on in the sense that they do not run around and tell things to the press or talk to the people that we did not ask.

(Interview 5/3-07)

The networks are described by the Commission officials as 'a first move' in the drafting process and an informal channel for the Commission to test ideas and explore different options. However, some individuals at the national level may be important allies at a later stage in the decision-making process, and some may be used to convince colleagues in other Member States to take a particular stand on the issue under discussion. According to the Commission officials, the informal drafting networks have become more important after the previous enlargements since it is difficult to include all 27 Member

States in the drafting process. As one of one of the Commission officials puts it:

If you want 27 member states to actively think the same, you need to prepare very well. And you don't do that in a meeting of 27. The network is necessary to get there. When we were just twelve you could actually both discuss and agree on solutions, half way brainstorming in say two or three meetings, but that is just impossible now. Now you have to go back stage.
(Interview 5/3-07)

The national officials participating in these drafting networks are aware of their exclusive nature, and point at the importance of discretion. They underline that they prefer to speak to the Commission on the phone, and say that any e-mails from the Commission are deleted immediately. They believe the Commission is doing the same.

The Commission's next step in the drafting process is to collect comments on the relevant draft from a wider audience, including both private and public actors. Drafts are put on the internet, sent on different public hearings, and the Commission may receive comments and amendment proposals from a wide circle of different stakeholders. These processes are more transparent and inclusive than the networks described above. More detailed accounts of these processes are readily available elsewhere (e.g. Larsson and Trondal 2006, Nugent 2001, 2003).

Networks in the implementation phase

The Commission formally has the responsibility of controlling national implementation and enforcement of EU law. However, the Member States have been cautious of delegating administrative capacities to the Community level, and its implementation functions are, in all but exceptional cases, restricted to monitoring and carrying out investigations (Nugent 2003). Hence, informal transgovernmental networks may be perceived as attempts at securing uniform implementation in the EU without transferring more direct power from the national to the supranational level (Dehousse 1997, Eberlein and Newman 2007). There are different implementation networks which consist of officials from national regulatory authorities and the

European Commission.⁷ I concentrate on the following within the Environmental field: IMPEL (The European Union network for the Implementation and Enforcement of Environmental Law), scope groups (electronic networks related to specific directives) in addition to regular informal contact on a bilateral basis between certain national officials at the agency level and the European Commission.

IMPEL

IMPEL was set up in 1992 as an informal network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The network of 2007 consists of national environmental agencies and inspectorates⁸ from the EU states, candidate countries and Norway in addition to the European Commission, supported by a secretariat located in DG Environment.⁹ The aim of IMPEL is to ensure that EU environmental directives are systematically implemented - and enforced rigorously - by all Member States. It promotes the exchange of information and experience, and without legal powers the network develops 'best-practice' rules as regards inspection, permitting, monitoring, reporting and enforcement of EC environmental legislation. The network operates to a large extent through different projects with the

⁷ See Coen and Thatcher (2007), Eberlein and Grande (2005), Eberlein and Newman (2007), Nørgaard (2006), Støle (2006).

⁸ The Member States nominate 'national coordinators', the official IMPEL-members, who are responsible for coordinating the IMPEL activities nationally (see <http://ec.europa.eu/environment/impel/members.htm>). It should be noted that some Member States nominate representatives from their national ministries. However, this does not imply that the agencies in these countries are not participating in IMPEL activities. Different agency officials who are responsible for specific policy fields and/or different EU directives are involved in different projects within the network. These agency officials may also be involved in other networks in the EU related to their specific policy field.

⁹ The Secretariat has a supportive role towards the plenary meetings and working groups and maintains the contacts with the Commission. It maintains the website and publishes reports, guidelines and conclusions from meetings. The Plenary meeting is IMPEL's main body for final decisions and approval of projects. The meeting is co-chaired by the Commission and the country holding the Council presidency. For each project a working group is set up. With regard to development of enforcement-friendly legislation, at least nine countries are represented in the group unless the Plenary meeting agrees otherwise (http://ec.europa.eu/environment/impel/pdf/struct_keyach.pdf). The members participate in these working groups irrespective of organizational affiliation in their home countries.

Commission as its main economic contributor, e.g. projects in the fields of training and exchange programmes for inspectors, application of industrial pollution control legislation, shipments of waste and implementation of the EU emission trading scheme. The national officials participating in this network devote in general approximately 1/3 of their working hours to the IMPEL network and the rest to their 'ordinary' work in the national regulatory agencies (Martens 2006).

Recently, IMPEL has also begun to engage in legislation issues, playing an advisory role for the design of new Community legislation, focusing on aspects of 'implementation-friendliness'. The Commission functions as a coordinator of the network mainly through the secretariat, and some of the national officials point to the fact that the previous enlargement has resulted in a larger organization where the Commission's overview and coordination are needed to an even greater extent in the daily activities of the network (Martens 2006). I will return to this point in the fourth section.

Electronic scope groups and day-to-day contact

The scope groups consist of responsible case handlers for one or several particular EU directives. The groups function as electronic discussion forums, and the Commission takes part in the different discussions. Most discussions are taken place at CIRCA. CIRCA is an internet tool, developed by the European Commission, and tuned towards the needs of public administration officials. It enables any given scope group to maintain a private space on the internet where they can share information and participate in discussions.¹⁰ A scope group is often activated when a national official faces a practical problem in relation to the relevant directive and presents the problem to the rest of the group. The Commission often enters in the last phase of the discussion, presenting a possible solution which is seldom contested by the other members. When the scope group has decided upon a solution, it is placed in an electronic manual, an internal guideline on the internet on how the relevant directive is to be interpreted and implemented. According to the Commission these

¹⁰ These groups may have different names, on the CIRCA webpage they are labeled 'interest groups'. It should be noted that different types of EU committees and groups are using CIRCA, not only informal implementation networks, see <https://circa.europa.eu/>.

guidelines are not formal in a strict sense, but considered as 'gentlemen's agreements'. However, they have a legal value for the Commission service since they have to hold on to this particular interpretation of the directive in similar cases. In the words of one of the officials in DG Environment: *'It's a Commission service opinion. It is not binding for third parties, but if they [the national officials] don't follow these guidelines, at least we have to ask them why. But we can not take them to court'* (Interview 6/3-07). One example is the manual of the Biocide-directive which is about 80 pages and consists of all the cases and difficult issues the network has dealt with since the directive was put into force.¹¹ Another example is the guiding documents of the Water Framework Directive, the 'Common Implementation Strategy'. The aim of the strategy is to clarify and develop the practical implementation of the directive, and different guidelines are developed for this purpose and placed on the internet (see Homeyer 2007).¹²

In addition to the networks mentioned above, some of the national officials at the agency level are in regular contact with the Commission on a bilateral basis by e-mail and telephone. According to the Commission it is possible to divide these people into two different groups: The first group consists of agency officials who have been in the game for a while and want to discuss specific and often complex problems related to their work. According to the Commission officials these people contact them because they are interested in the particular field they are working with and want to improve on what they already do well. They are ambitious with regard to their work. The second group consists of people from the new Member States who have problems understanding how the EU system works or how a particular part of a legal act is to be interpreted. They need guidance. In the words of one of the Commission officials: *'someone are active because they want to make European what they do nationally. Someone are in contact with us because they genuinely need help'* (Interview 5/3-07). I will return to these

¹¹ Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placement of biocidal products on the market.

¹² Homeyer (2007) describes the development and dynamics of the guiding documents of the Water Framework Directive. See also http://ec.europa.eu/environment/water/water-framework/iep/index_en.htm and http://ec.europa.eu/environment/water/water-framework/objectives/implementation_en.htm.

differences in the next section where I describe more thoroughly the role of the Commission within the different networks mentioned above.

The European Commission: A partner and guide

According to officials both at the national and European levels the aim of informal networking is to find solutions to different problems within a specific policy field. All of the informants stress the importance of professional competence, and highlight the importance that arguments put forward during discussions are scientifically convincing. As one of the Commission officials states: *'In the network you don't have the filter effect. You have the experts. They are interested in the subject. It is much more efficient'* (Interview 5/3-07).

Even if the aim of networking is to find common solutions to common problems based on professional criteria, the Commission officials underline that they often have a specific agenda with regard to how the legal acts are to be interpreted and implemented nationally. They consider themselves as more than a mediator within the networks and try to push the work of the implementation networks in certain directions. According to the Commission representative in the IMPEL network: *'we have great interest to benefit from IMPEL projects and it is thus important to pay attention that priority area for IMPEL and the Commission correspond to each other to the extent possible'* (E-mail 13/10-04).

When trying to explain how they are able to influence the national officials, they stress the importance of their own performance. In order to be listened to, they have to be perceived as trustworthy and knowledgeable. In the words one of the officials:

We can only make the participants in the networks change their mind by performance. Make them see that we mean what we say. So they know where we are. It is all the components of building trust.
(Interview 5/3-07)

The European Commission is described by several of the national officials as an institution with particular experience and particular knowledge about the EU system and the different legal acts and is

often perceived as being in the best position to judge how a problem may be solved. However, it is worth mentioning that the Baltic officials highlight the particular skills of the Commission to a larger extent than their Nordic colleagues. They describe the Commission as a mentor, helping them to understand complex issues under discussion, and they often call or e-mail the Commission for advice when dealing with particular matters.

The Nordic officials do also turn to the Commission for advice in particular cases. However, several of the Nordic officials point to the fact that there are individual differences with regard to competencies among the officials in the Commission and people in the Commission are often in need of information and feedback about specific matters from them. In general, the Baltic officials have fewer, prior positions than their Nordic colleagues in the network discussions, and they quite often lack a national opinion when entering the meeting room physically or through the internet. They underline that they consult their parent ministry if they feel they are facing 'a political matter' which needs a political decision. However, they feel quite often that the parent ministries are not able to provide them with the necessary guidelines. In the words of one of the Latvian officials '*the people in the ministry ask us questions which we are supposed to ask them*' (Interview 8/9-05). When trying to explain the reason for lack of guidelines from the ministry level, the Baltic officials point to the fact that salaries in general are low in the ministries and this result in a high turnover. People in the relevant ministries are often young and lack the necessary competence, both with regard to the specific issues under discussion and the EU system in general.

In summary, solutions are found within the different networks primarily through discussion, and the arguments put forward by the participants are based on scientific and professional criteria. The national officials acknowledge the specific expertise and overview of the Commission, and the Commission can act as a guide and coordinator on occasion. The Baltic officials seem to have a more humble attitude towards the European Commission than their Nordic colleagues, and they perceive the Commission to a larger degree as an authority than the officials from the Nordic countries who are more concerned about the *interdependence* of the different actors involved. In addition, we have seen that the Commission plays different roles within the drafting and implementation networks. In

the preparation phase, the Commission primarily seeks to find common ground among the national officials, and to 'test the water'. With regard to implementation and interpretation of different legal acts, the Commission often has a clear agenda, and it is active with regard to pursuing specific aims on how the legal acts are to be understood and implemented nationally.

Conceptualising the role of the Commission

As stated in the introduction, my analytical starting point is that we have to take into account institutional features both at the national and European levels in order to disentangle and understand the position and possible influence of the Commission within the networks under study. One of these institutional features is the organizational 'home base' of the national officials. The underlying theoretical argument is that organizational specialization tends to reduce attention problems, conflicts and ambiguity, and specialists become highly attentive to the special interests they are responsible for, depend on, and interact with (Olsen 1991, Egeberg 2004). Vertical interorganizational specialization enhances professional focus and autonomy, and officials in central agencies, in contrast to their colleagues in the ministries, exercise their discretion comparatively insulated from ongoing political processes and adopt stronger sectoral allegiances (Egeberg 2008, Larsson and Trondal 2006, Martens 2008). These observations correspond to the view of the Commission officials in the networks under study. As one of the Commission officials puts it:

I think that the separation between technical competence and the political area is good for decision-making. It's good for the people, because it makes them able to concentrate on what they are good at. And be able to protect it from influence. Very often the new member states ask us how the other member states are structured. Which structures are the most efficient? And of course we give them our honest advice.
(Interview 5/3-07)

In addition, the officials in the Commission look at the officials at the agency level as more stable partners than officials at the ministry level because of the lower turnover. Officials in central agencies often have a long history within the same institution and within the same

professional area; arguably this makes it easier to build relations based on trust and familiarity. Hence, it is possible to argue that the strong sectoral allegiances and low turnover in the regulatory agencies enable a common professional focus and trust between the participants in the networks. It is also possible to argue that this common professional focus enables a particular logic of action in the sense that the decisions are expected to be guided by considerations of professional correctness and the power of the better argument, and where the main issue is to find reasonable solutions – not to focus on political or national differences (Radaelli 1999). In the words of Gehring and Kerler (2007: 4) ‘If nobody is prepared to be convinced and to adjust preferences, reasons will not matter’.

According to March and Olsen (2006: 691) specific institutional settings provide ‘vocabularies that frame thought and understandings and define what are legitimate arguments and standards of justification’. Within this particular setting – the transgovernmental networks, arguments matter, and arguments based on knowledge and expertise matter the most. The language of expertise is the most valid means of communication (Marcussen 2006). In this setting, the European Commission is able to convince the national officials that a particular course of action is desirable based on its particular resources, such as expertise and overview of the EU-system, or more specifically the *perception* of the Commission as an institution assessing these resources. It is perceived as a credible institution. As one of the Commission officials states: ‘*we are perceived as a repository of knowledge and experience*’ (Interview 8/3-07). Arguably, these assets have become even more important in EU27 since information, coordination and overview are needed to a larger extent. In the words of another of the Commission officials:

With 27 it is much more complex. So in that sense we are more essential. The disadvantage is the lack of transparency, of course. That some feel that they are not owners of the process. But you have to deal with that pragmatically. Because when you become 27 you still want efficiency. (Interview 5/3-07)

This being said, the European Commission is not steering the national officials in the networks in a unified way, and we have seen the existence of systematic differences between officials from the Nordic and Baltic States both with regard to their perception of, and relationship to, the Commission. Two factors

may help us understand these differences: 'noviceness' and 'lack of administrative capacity'. We will have a closer look at these factors in the next section.

Noviceness and lack administrative capacity

We introduced the possible effect of 'noviceness' in the beginning of this article. According to Hooghe (2005: 866) people in a new situation are likely to be disoriented and eager to conform. They are more 'susceptible to efforts of persuasion, and more disposed to copy what others do' (ibid). Compared to the officials in the Nordic Member States, the Baltic officials seem to have a more open mind with regard to the arguments put forward by the Commission. They perceive themselves as being in a learning position and the Commission as a mentor. Hence, the arguments put forward by the Commission - 'the mentor'- seem to carry particular weight. In addition, we have seen that the Baltic officials have fewer former positions with regard to the issues under discussion in the networks. The explanation for this may also be found in the status of being a newcomer; as time goes by views crystallise and become more consistent and stable (Hooghe 2005: 866). Hence, it is possible to argue that these two dimensions, 'student-teacher' and 'few prior beliefs', may be interlinked and may both be understood in the context of 'noviceness'. This is in line with Haas (1992) in his analysis of the dynamics of 'epistemic communities'. According to Haas (ibid: 381) '[...] if decision-makers are unfamiliar with an issue, not having treated it in the past, an epistemic community can frame the issue and help define the decision-makers' interests. On the other hand, if decision-makers are more familiar with an issue, they tend to call on an epistemic community whose ideas 'implicitly align' with their own pre-existing political agenda and will help them further it.' As noted in section three, there are differences between officials from new and old Member States when they seek advice from the Commission. The Nordic officials often call on the Commission to discuss, justify and promote national policies while their Baltic colleagues to a larger extent seek help and guidance. Hence, the notion of 'unfamiliarity' and lack of a 'pre-existing agenda' may both be understood in relation to 'noviceness'.

However, there is another aspect to take into account when discussing pre-existing beliefs which is not necessarily linked to the

status of being a newcomer, namely 'administrative capacity'. According to Painter and Pierre (2004: 2) 'administrative capacity' refers to 'the ability to manage efficiently the human and physical resources required for delivering the outputs of government'. The more specific building blocks are 'policy expertise, professional staff, financial resources and some degree of organizational continuity' (ibid: 10, see also Olsen 2007: 140). As stated in the introduction of this article, many agencies were created in the new Member States during the first decade of independence. One of the incentives underlying this development was a wish to run away from the old bureaucratic system as quickly as possible (Pollitt 2004: 287). The national officials in the Baltic agencies confirm that the element of 'hierarchical bureaucratic control' in the public administration has decreased after the Soviet period. However, we have seen that they do not try to escape the involvement of the parent ministry. They express respect for the ministry as an institution, and they are conscious about the fact that the ministry represents a higher hierarchical level. The problem seems to be that the people at the ministry level lack institutional memory and do not have the necessary experience with regard to EU matters. Hence, for the Baltic officials the notion of being a newcomer, a novice, seems to be underpinned or amplified by lack of administrative resources at the ministry level. This is in line with Pollitt's (2004) case study of regulatory agencies in Latvia (see also Goetz 2001). Pollitt (ibid: 287) noted that civil service salaries were so low that often the only officials who could be recruited by ministries were students working on dissertations. In summary, lack of administrative capacity and ministerial control seem interlinked, and arguably make the Baltic officials more de-coupled from the central political-administrative apparatus and more dependent upon the European Commission's expertise and leadership.

Conclusion

Intergovernmental scholars describe the Commission primarily as a reactive institution, responding to pressure from external actors (e.g. Moravcsik 1993, 1998). However, in this article we have seen that the Commission is more than a mediator within the informal transgovernmental networks. It plays a *proactive* role, being able to convince the national officials that a particular course of action is desirable, especially with regard to implementation and

interpretation of the legal framework. It is able to do this mainly because it is perceived by the officials from the national regulatory agencies as an institution with knowledge and credibility - assets that seem to have become even more important in EU27.

EU law is often genuinely open to different interpretations and allows officials at the national 'street level' to choose among various ways to reach an objective, and to advocate a specific national solution. Hence, how discretion is exercised at this level is not trivial or purely technical in nature; it often 'defines what policies actually mean' (Peters 1997: 200). While a more European than local outlook taken on by national officials may help advance administrative integration, it may wipe out or downgrade other legitimate concerns that do not fit into the view of the European Commission. Hence, it is possible to see the networks under study in this article as a tool in the Commission's tool box, a possible 'back road to the informal harmonization of regulatory practices' (Eberlein 2003: 155). This being said, we have seen that the Commission is not steering the national officials in a unified way; factors like 'noviceness' and 'administrative capacity' at the national level seem to matter and may be interlinked, as we have noted with regard to the situation in the Baltic States.

In summary, when trying to understand the role and power of the Commission in these transgovernmental networks it seems necessary to take into account the special resources of the Commission and the way they are unfolding and perceived within this particular institutional context. Institutional structures are rarely deterministic, in the sense that they shape behaviour fully (Olsen 2007). Instead they convey general orientations for action, and constrain and enable what political actors are '*motivated to do and able to do*' (March and Olsen 2005: 8). The informal transgovernmental networks under study in this article may be seen as such an institutional structure, enabling the crucial resources and influence of the European Commission.

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Article 3

Voice or loyalty? The evolution of the European Environmental Agency (EEA)

Abstract

This article seeks to contribute to the debate about the role and autonomy of European agencies, and it is argued that in order to capture a fuller picture of their functioning, we need to go beyond a legal framework, taking into account institutional features that involve both formal and informal processes. We also need to follow processes over time in order to avoid snap shot images and to be able to identify dynamics of institutionalization and change. The article examines the evolution of the European Environmental Agency (EEA) from its inception in 1991, and analyses its gradual transformation from a legal to a living institution in the EU-system. Over the years the agency has become a more loyal partner to the Commission in the European administrative system, balancing the ability to have a credible voice on the one hand and the need for stability and a secure resource supply on the other.

Introduction

Over the last decades agencies have become a viable part of the European institutional landscape, and the academic debate on their role and autonomy has intensified. This article examines the institutionalization of the European Environmental Agency (EEA) from its inception in 1991 and analyses its gradual transformation into a living institution in the EU-system, balancing autonomy and the ability to speak 'truth to power' on the one hand, and the need for stability, partnership and a secure resource supply on the other.

The main questions raised in this article are the following:

How can we capture and understand the evolving role of the EEA in the EU system?

To what extent and how has the EEA been able to operate autonomously within this system?

The EEA is not a regulatory agency. It is an information-gathering agency like most of the European agencies created since 1990 (Dehousse 2008). However, my starting point for studying the EEA is that information provided by agencies may influence political decision-making, and the informational role they play may have considerable implications for their autonomy. Information is not neutral or apolitical since it 'structures the definition of problems, solutions and causal understandings' (Gornitzka and Sverdrup 2008: 1). Moreover, information may be produced and used in different ways and information agencies may play different roles and serve different political purposes. Such purposes may include enhancing the democratic ideal of informing European citizens, and 'assuring that citizens know what officials are doing' (March and Olsen 1995: 161-162). Such purposes may also include filling the knowledge gap of decision-makers, enabling them to make informed decisions and function as a vehicle and tool in administrative activities. The latter type of information is more closely connected to the motivations of specific actors within a specific decision making process and not necessarily accessible or relevant to the general public. The latter type may also imply less freedom for an information agency to act autonomously and provide information on its own terms. Hence, different ways of processing and providing information have different political implications and are related to the distribution of influence and power within a political system.

Several scholars who study European agencies have recently highlighted the multi faceted nature of their institutional surroundings in order to understand their creation and functioning. They point to different preferences of different actors at different levels of government, including the Commission, the Council, Parliament, Member States and private actors, resulting in a multiplicity of formal control mechanisms (Dehousse 2008, Gehring and Krapohl 2007, Kelemen 2002, Krapohl 2004). Dehousse (2008: 793) argues explicitly that we need to apply an anti-hegemonic, multi-principal model in order to understand the functioning of these agencies, and the *multiplicity of controls* to which they are subjected. The key principle is 'institutional balance', and according to Dehousse, 'the current 'multi-principals' compromise is here to stay' (ibid: 803).

In this article the multifaceted institutional environment of the EEA serves as an important starting point. However, I go beyond the multi-principal model and the notion that 'no one controls the agency, and yet the agency is under control' (Moe 1987). Exploring the development of the role and autonomy of the EEA in the EU system during almost fifteen years, the message is more in the spirit of George Orwell: All institutions are equal, but some institutions are more equal than others. It is argued that the European Commission, and in particular DG Environment, has gradually acquired a privileged and influential position vis-à-vis the EEA through processes of learning and trust-building, interacting and blending with processes of power and resource dependency. It is further argued that the EEA has gradually developed standard procedures of processing and providing information, and gradually learned to appreciate the privileged position of being an insider and a trusted partner in the EU-system, striving to find a balance between freedom to be critical and speak 'truth to power' on the one hand and the need for stability, partnership and a secure resource supply on the other. Applying an institutional perspective, highlighting the significance of rules, procedures and norms in structuring political behaviour and outcomes (March and Olsen 1989) allows us to capture these features and shed light on how they came about.

Within the institutionalist literature it is observed that change is 'rarely the rational, planned exercise found in strategic plans, but rather tends to be emergent and more organic' (Peters 1999: 34).

Becoming a living institution takes *time*. It takes time to 'learn one's place in a larger institutional order' (Olsen 2007: 28). In other words, *learning* from experience over time is an important stimulus for institutional change (March 1999). From repeated behavior that has proven successful, or at least feasible, organizations establish routines and standard operating procedures (March 1999, March and Simon 1958). Institutions 'can not be imposed on the world full-blown by Napoleonic decrees' (Olsen 1997: 175). They must forge a proper remit for themselves in the institutional landscape and learn to know the limits of their role and autonomy (ibid). Thus, it is not enough to open up the black box at one moment in time, instead, it is critical to go beyond the immediate and follow events as they unfold in an institutional context. Hence, in this study of the EEA I stress the necessity of studying an agency over a period of time, after the birth of the organization (Simon 1953) in order to avoid snap shot images and to identify the dynamics of institutionalization and change.

I also stress the necessity to go beyond a legal understanding of the functioning and autonomy of agencies which have been widespread in the agency literature (see e.g. Chiti 2000, Geradin et al. 2005, Vos 2000, Yataganas 2001) and rather focus on the EEA's actual capacity and ability to make decisions and perform work on its own terms, following its own logic, priorities and timetables. Thus, the institutionalism applied in this article relates to the *socio-structural* aspects of the EEA and how and why they alter over time. It relates to both formal and informal structuration and routinization of EEA's way of 'processing information, making decisions and doing work' (Olsen 1997: 159), the interpretive frames people in the organization develop to generate meaning to what they are, where they are, and what they do (Cini 1996: 6), the gradual creation of 'us' and 'them'.

Taken together, an institutional framework helps us to move beyond the notion of balance of powers and reveal temporal dynamics of change. It also helps us to move beyond a legal understanding of the functioning and autonomy of European agencies and uncover informal institutionalization processes *after* the birth of the organization. As stated above, the EEA's role and identity in the EU system has changed over time. The agency has gradually become a more loyal partner to the Commission within the EU administrative apparatus, and an institutional account is able to shed light on how this development came about.

The article proceeds as follows: First, I have a closer look at the EEA regulation, its genesis and possible interpretations. Second, I shortly discuss methodology and data-collection. Third, I have a brief outline of the organizational set-up of the EEA. Fourth, I describe the development of tasks, procedures and interinstitutional relations. DG Environment is the main EEA client, and I explore the relationship to this institution in particular. In the last section I analyse the role and autonomy of the EEA and indicate some preliminary answers to the complex how and why questions.

The multi-interpretable EEA regulation

As noted in the introduction of this article, information may be produced and used in different ways, and an information agency may serve different purposes within a political system. The regulation establishing the EEA gives few answers with regard to the role the EEA is supposed to play in the EU system.¹ The potential field of work includes factual data gathering as well as analysing and assessing effectiveness of policies and supporting specific policy initiatives. The potential constituency includes the Commission, the Council, Parliament, Member States, interest groups and the general public, and the regulation does not provide consistent guidance on the relative importance that the EEA should attach to each possible constituency. This lack of clarity can be explained by the different expectations that existed among the parties involved in the negotiations in 1990. The Commission and some member states wanted a pure data-gathering role. The European Parliament was eager to give inspection power to the agency, and also that it should be independent of the Commission (Hayward and Menon 2003, Schout 1999). Some member states attached importance to informing the public and having an independent body monitor the effectiveness of environmental policies. In sum, the creation of the EEA required a meeting of will between actors of various types; each with their own interests, making the final regulation multi-interpretable. In the words of Simon (1953: 228) there were several 'claimants to parenthood'. Moreover, the EEA parents were not even very enthusiastic about the new born baby. According to Schout (2008:

¹ Council Regulation (EEC) No 1210/90 of 7 May 1990, amended by Council Regulation (EC) No 933/1999 of 29 April 1999 and by Council Regulation (EC) No 1641/2003 of 22 July 2003 is available at: http://europa.eu/eurlex/en/consleg/main/1990/en_1990R1210_index.html

265) it started 'as a truly chaotic body that probably only few really wanted [...]. Yet, upon its launch, the EEA in fact had many tasks to fulfill because, rather than choosing between tasks, the member states and Commission simply added all the tasks that were mentioned during the negotiations [...]'.

Thus, in light of the multi-interpretability of the EEA regulation, it is possible to imagine different roles the EEA might develop. Such roles may include enhancing the ideal of accountability; audit EU decision makers and 'assuring that citizens know what officials are doing' (March and Olsen 1995: 161-162). 'As new arguments and information are introduced to political discussion, citizens are led to revise not only their choices but also their perceptions of themselves, other citizens, and their situation' (ibid: 84). However, March and Olsen (1995: 162-163) note that 'there has never been agreement [...] on exactly what information is to be made freely available' and what information 'legitimately may be concealed'. [...] 'Democracies have never developed a stable solution to the problems involved in balancing the information requirements of effective accountability with the confidentiality requirements of effective action'. In line with this thinking, Hoornbeek (2000: 148) states that environmental agencies may seek to develop information for *two* broad purposes. The first type of information effort seeks primarily to inform *public debate* on environmental issues. It does not focus on any particular audience, but rather informs many audiences in an effort to clarify the nature of different environmental problems, participate in the environmental discourse and enhance accountability through name and shame. The second type of information effort seeks primarily to create environmental information that will direct or justify particular political decision-making, serving certain actors within a specific decision-making process, in an effort to achieve specific results (ibid).

In summary, environmental information may differ with regard to how close it is connected and adjusted to the interests and programmes of relevant policy makers, how instrumental the information is provided and used. To state it somewhat bluntly, an information agency may seek to play the role as a barking watch dog or the role as a loyal lap dog vis-à-vis the political masters. Applying this broad distinction as a starting point for our analyses of the role of the EEA, it is possible to claim that the two questions presented in the

introduction are interlinked. The EEA becoming an insider, becoming a vehicle or tool in the EU decision-making system, would imply a closer link and dependence upon *specific* policymakers, and less freedom to act autonomously and make decisions on its own terms.

Methodology and data

Three sources of data have been of particular importance with regard to tracing the evolution of the EEA: personal interviews, EEA official documents and different evaluation reports presented to the Commission.

The main source of information is interview data. 23 semi-structured interviews with key-people in the EEA and parallel organizations have been conducted. Most of these people had worked within or with the agency for several years, some even from the very beginning. It seemed fruitful to pose open-ended questions and create room for broad reflections, giving people the possibility of telling the story in their own words. These data were particularly relevant for understanding how the perception of the EEA's mission and operations had evolved and adapted over time.

In order to validate the analyses, an early draft was circulated and then re-circulated to the informants. The second source of data is EEA documents. The EEA produces several official documents including annual reports, working programmes, press statements etc. These documents give an indication of tasks and priorities over time, and they are available on the EEA website.² The third source of data is secondary literature. Three evaluation reports have been submitted to the Commission during the last ten years: 1. Schout (1999) covering the period from 1991 to 1998. 2. Arthur Andersen's report (2000) mainly covering the period 1999-2000; and 3. EIPA and IEEP (2003)³ covering parts of the history until 2003. The reports are useful for obtaining an overview of the functioning of the EEA over time, particularly with regard to the early years. However, all three reports are consultancy reports, focusing on design, efficiency and potential

² <http://www.eea.europa.eu/products>

³ Report provided to the Commission by the European Institute of public Administration, Maastricht (EIPA) and Institute for European Environmental Policy, London (IEEP).

improvements. Thus, it was necessary to have these elements in mind when interpreting and using the empirical material in the analyses.

Taken together, the empirical material has been collected with the aim of capturing how the role and autonomy of the EEA has developed over time. Evidently, the story of a European agency can be told in different ways depending on the author's conceptual lenses and research questions. The goal of this article is two-fold: First, to highlight the added value of applying an institutional perspective when analysing the role and autonomy of European agencies, and second, to provide fresh data on the evolution of one specific European agency, the EEA. In going beyond both the organizational birth as well as the EEA regulation, and tracing how the role and identity of the agency has evolved and adapted over time, we are able to draw a fuller picture of how and why this institution has found its proper place in the EU system and in particular how its relationship to the Commission has developed.

In the next section we will have a brief look at the organizational set-up of the EEA before I describe the evolution of tasks, clients and procedures.

The EEA organizational setup

The EEA regulation came into force in 1993 after it was decided to locate the organization in Copenhagen. The regulation also established the European environment information and observation network EIONET. EIONET consists of the EEA itself and around 900 experts from 38 countries in national environment agencies and other bodies dealing with environmental information.⁴

The Management Board is formally the main decision-taker. It decides on the final versions of the work programmes and budgets and approves annual reports. The Board is composed of four senior officials from the European Commission and one from each member state in addition to two designated members who are independent scholars, reporting to the environmental committee of the European Parliament. The chairperson of the Board, the four vice-chairpersons,

⁴ The member states include the EU member states together with Iceland, Liechtenstein, Norway, Switzerland and Turkey. The six West Balkan countries are cooperating countries: Albania, Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

one Commission representative and one of the members designated by the Parliament constitute the Bureau of the agency. The Bureau is entitled to make executive decisions in between meetings of the Board. The EEA provides the secretariat of the Bureau. The EEA has also a Scientific Committee whose main function is advisory. It comprises approximately twenty members, and it is consulted in quality control of the work program and the different reports of the agency. The EEA has its own information center that gives responses to external requests for information. It was expanded in 2006 and receives about 500 requests monthly. A Liaison Office situated within DG Environment coordinates contacts between the EEA and the other EU-institutions. An own press officer took office in 2004, and the agency has recently improved its websites where all documents produced by the agency are accessible.

In the next part of the article, I will describe the agency's main tasks, clients and procedures and explore changes over time. I divide this part into two phases: 1. Interinstitutional tension (1994-2003), and 2. Institutional consolidation and partnership (2003-2007).

Interinstitutional tension (1994-2003)

In light of the multi-interpretable regulation, the EEA and the Commission have had difficulties in sorting out what their relationship should be. The establishment of the EEA was to a large extent regarded as the creation of a *competitor* by DG Environment and it strained relations between the EEA and DG Environment from the start (Schout 1999: 87). In the following we will have a closer look at two important issues which have caused tension between the EEA and DG Environment from the beginning. The two issues are to a certain extent interlinked:

- the tension between data-gathering and policy analyses
- the tension between targeted and general information

Data gathering or policy analyses?

The tension between data gathering and policy analyses has been a leitmotiv in the history of the EEA, and there was a constant struggle between DG Environment and the EEA on this subject during the first years of the agency's existence (Schout 1999). A key issue was how far the EEA could legitimately move beyond the collection of basic data and address matters of policy more directly, such as

reviewing implementation, assessing policy instruments, and evaluating policy effects (Schout 1999). According to Schout (1999) Commission officials felt criticized by the EEA policy evaluations because evaluations were regarded as criticisms of the effectiveness of DG Environment. The view of Directors-General Enthoven (1994-7) and Currie (1997- 2001) expressed to the EEA in letters, was clear, claiming that the chief client of the EEA was DG Environment, and the primary task of the agency was to collect data on the current state of the environment only. The development of policy implementation reviews, policy evaluations and recommendations were the responsibility of the Commission alone, and the EEA should not 'get sidetracked by the more glamorous but rather sensitive hot political issues' (EIPA and IEEP 2003: 39). Indeed, in 1995 it was argued that Article 2 of the EEA Regulation - which refers to collating state-of-the-environment data, and reporting on the quality, sensitivity and pressures on the environment - should be interpreted *sequentially*. In other words, data should be collected *before* undertaking work on the other elements. Accordingly, in the light of a budget freeze in 1998, there was considerable pressure on the EEA from the Director-General in DG Environment to remove 'less essential' tasks, other than the collection of data from the 1998 Annual Work Programme (EIPA and IEEP 2003: 39). Hence, from the start DG Environment called for hard facts, not policy analyses. EEA on the other hand did not change its approach. It continued doing policy analyses in spite of rumblings of discontent in DG Environment. According to Schout (1999: 105) Domingo Jiménez-Beltrán, the first director, wanted to avoid the EEA 'turning into a graveyard of data' and stressed vis-à-vis the Commission in the Board that an important part of the agency's role was informing the public and evaluating effectiveness of policies. In his opinion, widespread information on policy effectiveness and possible new policies, was an important mechanism to strengthen environmental thinking in society. Therefore, he stimulated the public profile of the agency, for example, through insisting on publishing everything that the EEA produced and sticking to deadlines, even though requests were made from the Commission to delay reports (Schout 1999: 107-08). Several disputes took place among Board members in the late 1990s, where the two representatives assigned by the European Parliament supported the EEA in conducting policy analyses and focusing on far-reaching reports. This leads us to the second main issue: the tension between general and targeted information.

General or targeted information?

The EEA produces two types of reports: The first type, mentioned above, involves state-of-the-environment reports which are of a general nature and described as 'useful tools for raising awareness of environmental issues and for identifying needs for new measures' (Schout 1999: 103). The 1990 regulation explicitly required the production of a three-yearly 'state-of-the-environment' report. In 1999, this was amended to a five-year report on 'the state of, trends in, and prospects for the environment.' These high-profile reports have commanded a wide audience and served as major 'flagships' for the EEA, which were important particularly in the early years when the EEA was establishing its public profile (EIPA and IEEP 2003: 30). The second type involves reports on more topical issues and more closely connected to the development of new proposals within DG Environment. Hence, the information can be of a more or less general nature. According to my informants DG Environment called several times for more *targeted* and more *relevant* information during the first years of the agency's existence. The state-of-the-environment reports were perceived as being too general for their specific needs. However, the EEA insisted on addressing the general public attaching the agency to the main and more general debates on EU's environment policy, instead of more detail-oriented special reports. According to the EIPA and IEEP report (2003: 32) 'the absence of specific target audiences, during the first years of the agency's existence, gave rise to criticisms that the EEA had taken something of a 'butterfly' approach, moving rapidly across a wide range of subjects, often in a highly visible (but somewhat superficial) way.'

In summary: During the first years of the agency's existence DG Environment called for hard facts and targeted information relevant for its own needs and was blamed for being afraid of a body that evaluated what they were doing. The EEA on the other hand insisted on carrying out policy analyses and providing the public with general information about the state of the environment. It was also concerned about being a viable organization to the general public and establishing a salient public profile. The lines along which the EEA developed during the first years of its existence resulted in conflicts with DG Environment, and to an atmosphere of mutual distrust.

During the last years, there have been some gradual changes in the relationship between DG Environment and the EEA. These changes became particularly obvious after the change of leadership in both DG Environment and the EEA in 2003, but can be traced back to the late 1990's. In the next section we will have a closer look at these developments.

Consolidation and interinstitutional partnership (2003-2007)

The relationship between the EEA and the Commission became less hostile over the years, and these changes took initially place at the case-handler level. One important feature was the increased acceptance among officials in DG Environment that the EEA was conducting policy analyses. After a few years, Commission officials working with the EEA on a daily basis became less defensive and recognized and appreciated to a larger extent the work of the organization. Thus, they gradually changed their attitude and perception of the agency. According to my informants, this development was linked to the EEAs improved recognition as a *professional* body producing *reliable* information. In the words of one official in DG Environment: *they became less 'NGO-like'* (Interview 6/3-07).

Thus, initial steps towards a better relationship took place on the case handler level from late 1990s and onward, but as previously stated, the new attitude in DG Environment became particularly outspoken after a parallel change of leadership in 2003. The new director general in DG Environment, Catherine Day, decided to abandon the 'you are supposed to produce data only' approach and rather focus on the mutual benefits of working together. Hence, she started to work closely with the new EEA executive director, Jacqueline McGlade, and the working conditions and atmosphere at the leadership level improved. In parallel with these developments, the EEA gradually developed a more customer-oriented approach and related its work closer to the agenda of DG Environment. EEA moved beyond *ad hoc* planning and contacts with Commission officials towards more structured ways of serving DG Environment. Discussions related to the development of the third Multi-annual Work Programme (2004-2008) highlighted that more direct support should be given to DG Environment's work as set out in the Commission's Sixth

Environmental Action Programme. The EEA narrowed its scope and focused increasingly on the following core areas in the Sixth Action Programme: climate change, water, air, nature diversity and land use. Subsequently, the agency developed specific databases for these policy areas based on information from national environmental authorities through EIONET (the European environment information and observation network). Employees in the EEA underline that they are not assessing compliance, but they admit that they have become increasingly useful with regard to providing data the Commission needs in order to know how different environmental legal acts are implemented in the different member states. In the words of one of the EEA employees:

We can sort of argue that we are looking for data which we can use in the state of the environment reports in a broader sense, while the Commission is looking for data which they can use to assess compliance. In fact they are often the same data. And they are being integrated into data systems which we are managing.

(Interview 22/10-07)

In addition, concrete EEA tasks were increasingly discussed and settled with the EEA prior to the annual budget proposal of DG Environment. Ultimately it is the European Parliament that decides on the EEA budget. However, the standard procedure is that DG Environment makes its proposal to DG Budget. The Commission presents the proposal to the Council, the Council discusses it, makes a recommendation and the Parliament takes the final decision. According to my informants the Council often proposes to cut the EEA budget, and the Parliament often votes to revert to the Commission's initial proposal. Moreover, what the EEA gets in the end is typically what DG Environment proposed initially. Hence, having a say in the very first phase of the budget process has become of vital interest to the EEA. One of the EEA directors describes the discussion with DG Environment on the 2008 budget in these words:

We worked with the Commission to see – well, if the agency is to provide this information to you it will cost you x millions Euros. And then the Commission took that information and said that we don't think we can persuade DG Budget to give you all of that, but we can persuade them to give you x millions minus four or something so you get about half of what you originally asked for. (Interview 23/10-07)

However, in spite of a more benign relationship, a more constructive approach on the leadership level as well as a gradual common understanding of tasks, priorities and draft budgets, the informants in the EEA underline that they have not become part of the Commission service, and there are limits with regard to their service-mindedness. One EEA employee puts it this way:

Sometimes DG Environment acts as if we were a free consultancy for them. But we are free, we are not slaves. It happens quite often that they come to us with questions and specific needs, e.g. with regard to legal proposals. And they have the money. But we have limits.
(Interview 23/10-07)

Several informants underline that the Commission can not force them to ignore certain areas if they are considered important enough within the agency. One example is the Arctic environment. In 2003 the state of the Arctic environment became a massive priority of the EEA, and DG Environment tried to stop it because it was not a priority for them. However, the EEA refused to let it go. After a while DG Environment decided to defer, and as political attention on climate change increased, the Commission started to support the study of the Arctic as well. In the words of an EEA employee: '*See what is happening now! It is clear that they were wrong*' (Interview 23/10-07). With regard to the issue of independence vis-à-vis DG Environment, the European Parliament seems to have a say as well. As we recall, the Parliament supported independence actively during the negotiation of the Regulation, and it is clear that the EEA employees regard the Parliament as an *ally* in the EU system. They see the Parliament as a hidden threat in case the Commission goes too far in its attempts of directing its work. One EEA employee puts it this way:

So if they think the Commission is too bossy, then they could be very powerful on our side in the discussions. And in case of an eventual confrontation, it would be the big guy beating up the small guy, and the sympathy is always for the small guy. (Interview 22/10-07)

However, some of the EEA employees admit that it is difficult for the Parliament representatives to have very sophisticated views with regard to *concrete* issues brought up for discussion in the Board or in the Bureau. They point at the difficulty of the Environmental Committee which consists of 68 members to communicate their views to their representatives on the Board. The Environmental Committee is often split between left and right, and between north and south. The question is then whose view do the Parliament representatives represent when they are to decide upon concrete issues? Hence, it seems easier for the Parliament representatives to have an opinion on *general* institutional questions like 'agency independence' and 'transparency' rather than concrete tasks. This also seems to a certain extent to be the case with regard to the member state representatives on the Board/Bureau. As we recall, every member state has one representative on the Board. This was an important issue during the initial negotiations in order to safeguard 'a microcosm of Council control' (Shapiro 1997: 289). However, in spite of their numerical majority the member state representatives have a disadvantage vis-à-vis the Commission in terms of vital information, and according to my informants they often lack a clear perception of what they want the EEA to do or not do. They often expect the Commission to identify the problem and then they express their opinion afterwards, if they have an opinion. In the words of one EEA employee:

There is a fundamental difference between member states and the Commission. For the Commission it is a full-time job. The guy who comes from Germany has a Ministry to run. The transaction cost for him to have as much information as the Commission has is enormous. (Interview 23/10-07)

The role and autonomy of the EEA: voice or loyalty?⁵

We recall from the introduction that information provided by an agency may differ with regard to how closely it is connected and adjusted to the interests of specific policy makers. An information agency may seek to inform public debate, shed light on what policy makers are doing and enhance accountability through name and shame. Or it may seek to create information that will direct or justify particular political decision-making, serving certain actors within a specific decision-making process. As we recall, an information agency may seek to play the role as a barking watch dog or the role as a loyal lap dog within a political system. Or perhaps it may seek to do both?

Arguably, it has been and still is crucial for the EEA to be a salient actor in the public discourse and communicate to the wider public through the media and internet. Strengthening environmental thinking in Europe has been an important goal from the start, and the organization has not become 'a graveyard of data'. It has been and still is essential to the EEA to have a salient voice that might make a difference with regard to how people assess and think about environmental issues in Europe. Producing information to the general public – to students – to researchers – to everyone – is part of the core, the essence of the EEA's identity. Along these lines, the EEA has strengthened its administrative capacity to manage public relations, e.g. it has expanded its information centre, it has established its own press officer and it has improved its website.

There might be good reasons to wait or accelerate time for publishing. But we do not suppress anything. It is very fundamental to go out with all the information we actually have. We basically believe very strongly that everything we produce is for everybody.

(Interview 22/10-07)

Having said this, we have also seen that the EEA gradually has become a more stable, predictable and trustworthy partner *within* the EU administrative system. The relationship between the EEA and DG

⁵ The concepts 'voice' and 'loyalty' here are inspired by, but not drawn upon Hirschman (1970).

Environment has moved in the direction of reciprocity and mutual recognition. During the last years the EEA has developed a feel for the needs of DG Environment as well as a feel for timing and for what can or cannot be done or said. It has started to act as an insider in the EU-system. DG Environment on the other hand has abandoned its confrontational style vis-à-vis the agency and recognized its usefulness. DG Environment is calling on the EEA to make specific support to their policy where before they may have used consultants or other arrangements. EEA has become involved both in *policy formulation* and in *implementation* reflecting to a large extent the policy agenda of DG Environment. In the words of one Commission official: *'that gives positive motivation for the agency and gives them a very concrete role* (Interview 6/3-07).

Playing a more concrete role as an insider in the European administrative system and being DG Environment's *partner* both in the initial and the implementation phase, the EEA has become more focused, and to a certain extent loyal to the policy of DG Environment. Press statements are coordinated and reports are published in accordance with the Commission's timetable. According to an official in DG Environment *'[t]hey are more loyal and predictable. Not totally by any means, but there has been a movement in the right direction'* (Interview 8/11-07). This development is in line with Selznick (1984: 7) who states that: *'[a]s a government agency develops a distinctive clientele, the enterprise gains the stability that comes with a secure source of support, an easy channel of communication. At the same time, it loses flexibility'*. This tension is already familiar, for example NGOs or trade unions which are co-opted into stakeholder committees (Olsen 1983). Becoming an insider implies in some ways less freedom of speaking 'truth to power' (Olsen 2007: 23). We have seen that the EEA has learned to modify and tune its public tone; it has become more 'professional' and 'appropriate' and less 'NGO-like'. All in all, it has become a more acceptable, stable and loyal partner in the eyes of DG Environment. It has become more like them.

Summing up, the EEA employees have been and still are aware that they are not part of the Commission service. They pursue issues they find important, and they have in many ways strengthened their public voice and visibility. Informing the general public in an effort to clarify the nature of environmental issues has been and still is part of

their role and mission. At the same time, they have gradually become a more predictable, stable and loyal partner to the Commission, and they contribute substantially both in the drafting and in the implementation phase. Hence, it is possible to claim that even if they have kept their public voice and visibility, they have gradually become a more important tool in the EU administrative machinery. How can that be?

Managing dependencies and gaining recognition

Why has the EEA evolved and changed into a more loyal and predictable partner in the EU administrative system? How can we explain the changes we have observed? Within the normative institutionalist literature it is observed that change is 'rarely the rational, planned exercise found in strategic plans' (Peters 1999: 34). The structure and identities of a new organization is mediated by actors who learn from their experiences (March and Simon 1958, Simon 1953), and organizational learning processes are a key mechanism for managing the transition from 'a legal to a living institution', gaining an identity on its own and establishing itself in a wider political and institutional order (Laffan 1999).

Arguably, the EEA has learned from experience during almost fifteen years in the EU-business. It has gradually developed standard procedures of processing and providing information, and the actors involved have been learning to know each other and cooperate - over time. DG Environment has gradually become used to the EEA, learned to trust the EEA and experienced its usefulness. The EEA on the other hand has gradually learned to play the role of an insider, it has learned the logic of appropriateness of the EU decision-making system, and gradually adjusted its public tone and performance. Hence, the two institutions have built a relationship based on confidence and partnership - over time. Apparently, it has been *easier* to build this type of relationship to DG Environment than other and seemingly more fragmented institutions in the system, like the European Parliament and the member states. In the words of one EEA employee:

We cannot be seen as working for the Commission, and we cannot be seen as working for the countries either. But there are 36 countries, 300 MEPs and one Commission. It is easier to establish or break the relationship to one actor than many.
(Interview 24/10-07)

At the same time, we have seen that it is possible to question whether the relationship between EEA and DG Environment has evolved on an equal footing. Indeed, DG Environment has learned to appreciate and trust the EEA. On the other hand, the EEA's *dependence* upon DG Environment has in a way increased as DG Environment has established itself as its main client and resource provider. As we have seen, DG Environment's responsibility for the budget, the 'power of the purse' gives it a privileged position. It has not used the budget as an explicit threat, but as an instrument to fine-tune and adjust the work priorities of the EEA.

Within the 'normative' wing of institutionalism, human rationality is often described as institutionalized, following a *logic of appropriateness* (March and Olsen 1989) while rational choice theory on the other hand is based on the belief that individuals will be motivated primarily by the desire to make maximum gain for themselves, following a *logic of consequences*. Arguably, there is a difference that reveals a tension: actors as (part of) social environments that structure appropriate interaction, as opposed to rational actors calculating what particular actions are likely to benefit them (Checkel and Zürn 2005). Apparently the latter description of DG Environment *using* the EEA budget as a *tool* to steer the priorities of the EEA falls in the last category. However, several institutionalist scholars have argued that there is no intractable and incompatible divide between the two logics of decision-making (March and Olsen 1989, Olsen 1991). They may interact, it might be a 'judicious blend of both' (Goodin and Klingemann 1996). This interaction or blend also seems to be present in the EEA-Commission relationship. On the one hand, the particular resources and strategic position of the Commission gives it a privileged position vis-à-vis the EEA. On the other hand, a thread of trust and mutual understanding has gradually been inwrought in the relationship, creating a meaning to the individuals in both organizations to what they are, where they are, and what they do - together and in relation to each other.

Institutions operate and are studied at multiple levels – from world systems to subunits within organizations (Olsen 2007). Having emphasized institutional features at the *meso* level, the story of the EEA may also be partly interpreted in light of the larger institutional context. Meyer and Rowan (1977) 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). With regard to the role of the EEA in the EU-system it is difficult to ignore the increased importance and appreciation of *credible information* in the very same system and arguably, it is possible to perceive the strong trust in and appreciation of information as such a ‘rationalized myth’, as part of the normative context of the EEA.

Using information, asking for information, and justifying decisions in terms of information have all come to be significant ways in which we symbolize that the process is legitimate, that we are good decision-makers, and that our organizations are well managed.

(Feldman and March 1981: 178)

This is in line with Majone (1997: 264) who states that ‘[i]t is by now *a truism* that public policy is increasingly dependent on relevant, timely and, especially, *credible information*’ [italic added]. Hence, ‘hard facts’ provided by ‘independent’ institutions have become increasingly important elements in ‘rational’ decision-making in the EU (and the Western world in general). In the words of Shapiro (1997: 284) ‘[t]he vision that X will gather and present the information to Y who will do the policy making so that X will be independent and Y should be political is a curiously mechanical one today’. This seems to be a ‘truism’ with regard to the EEA as well. EEA can provide arguments that stand out as neutral and unbiased, at least to a larger extent than information from a NGO or an administrative subunit. The credibility of the EEA in the EU system would be undermined if the information was perceived as biased. An official in DG Environment puts it this way:

We were very much on the back foot in DG Environment, always having to justify our actions. We are really dependent upon robust information with regard to all kinds of implications from our policy suggestions. 'What would be the implications with regard to this? Have you thought about that?' It puts a very heavy burden on us coming up with reliable information. There has been an evolution in this respect.

(Interview 6/3-07)

Hence, in order to be perceived as credible, in order to have an impact in the EU system, the agency has to be perceived as autonomous, unbiased, and unafraid, as an institution with an independent and public voice, limiting to a certain extent the direct influence of the European Commission. In other words, to be an insider, it has to be recognized as an outsider. Loyalty depends upon voice. On the other hand, in order to be able to serve the informational needs of the broader public: children, students, researchers – everyone, and to be a salient actor in the European environmental discourse, the EEA needs a secure and stable resource supply. In practice, the Commission holds the key to this resource supply. Hence, voice depends to a certain extent upon loyalty. Moreover, based on the previous analyses, it is possible to argue that this loyalty gradually has increased over time.

Conclusion

A new European institution must carve out a role for itself in a larger institutional context and define its role and autonomy with respect to other institutions (Laffan 1999). In this study of the role and autonomy of the European Environmental Agency, we have seen the transformation from a legal to living institution. We have seen that the EEA has searched for its own mission, role and identity and gradually developed standard-operating procedures of processing and providing information, as well as developing stable patterns of interinstitutional cooperation. We have seen that the Commission, and DG Environment in particular, has acquired a *privileged* position vis-à-vis the EEA through processes of trust building and learning, interacting and blending with processes of power and resource dependency. DG Environment has gradually changed its perception of the EEA, learned to trust the EEA and experienced its usefulness. The EEA on the other hand has gradually learned to play and enjoy

the insider role, and developed into an important and viable institution in the EU administrative system, balancing and mediating the ability to have a credible voice on the one hand and the need for stability, partnership and a secure resource supply on the other.

Evidently, '[t]he world in all its complexity cannot be grasped in a single picture' (Simon 1953: 235) and the story of the EEA may be told in different ways depending on the author's conceptual lenses (Allison 1971). A merit of the institutional perspective in analysing the EEA has been the ability to trace institutional dynamics over time; avoiding snap shot images, and include those aspects of organizational life that include both formal and informal processes. Applying an institutional framework has helped us move beyond a multi-principal model (Dehousse 2008) and the notion of balance of powers and to reveal temporal dynamics of institutionalization and change. It has also helped us move beyond a legal understanding of the functioning and autonomy of agencies at the EU-level and highlight informal resources and institutionalization processes *after* the formal creation, after the birth of the organization. In the words of a senior EEA employee: *Now we can relate our things to the past. In the beginning there was no past. It was just the present* (Interview 22/10-07).

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Article 4

Executive power in the making: the establishment of the European Chemical Agency (ECHA)

Abstract

The EU is gradually expanding its executive capacity through agencies, and some of the newcomers in the agency family have a larger regulatory potential than the previous ones. This paper analyses the genesis of the European Chemical Agency (ECHA), a newly born European regulatory agency. Applying a process-tracing methodology, I analyze the process by which the ECHA attained its legal framework, the processes that generated its organizational set-up, and the tensions involved in formulating its mandate. The study ascribes an independent role for institutions that goes beyond seeing functional imperatives as well as rational design as the dominant explanatory factors. The aim is to provide a clearer understanding of factors that lie behind both the breakdown and reproduction of organizational structures. The establishment of the ECHA was mediated by and extracted from the pre-existing institutional framework, in particular from the Member States, and administrative continuity or change depended to a large extent on how different resources and capabilities were distributed and validated within the European institutional system.

Introduction

The EU is gradually expanding its executive capacity at the supranational level through agencies. Some of the newcomers in the agency family may be considered to have a larger regulatory potential than the previous ones as they are assigned decision-making tasks and not only tasks related to information-gathering or network management (Gehring 2008). This paper tracks the establishment of the European Chemical Agency (ECHA), a newly born European regulatory agency. The ECHA represents a new platform for executive action and an exercise in regulatory centralization, as pivotal administrative functions are now exercised by one European institution rather than many regulatory authorities at the national level. The establishment of this organization also implied a shift of coordinating capacity from the European Commission to a unit outside its own jurisdiction. How can that be? How and why will an organization that is thought to challenge existing power structures within an institutional system be established?

Using a process-tracing methodology, I analyse the process by which the ECHA attained its legal framework, the processes that generated and created its organizational set-up, and the experiences and tensions involved in formulating its procedures and mandate: the birth and making of the organization. The study ascribes an autonomous role for institutions and shows the inadequacy of approaching agency creation as a natural and adaptive reaction to changing conditions. The EU system did not respond automatically with the appropriate administrative innovations once the limitations of the old regime became apparent. There was no organizational solution that was functionally given. The establishment of the ECHA was mediated by and extracted from the preexisting institutional framework, in particular from the Member States, and administrative continuity or change depended to a large extent on how different resources and capabilities were distributed and validated within the European institutional landscape.

The study of politics and organizations presents different theories of institutional development. Theories of rational and enlightened planning compete with theories of 'environmental determinism' (Olsen 2007: 183-99). In order to make sense of 'agencification',

scholars have to a large extent interpreted the development of EU-level agencies along functional lines, and much of the agency literature emphasizes the need to increase administrative efficiency, reduce transaction costs in the internal market, easing the workload of the European Commission and allowing it to concentrate on its core tasks (Dehousse 1997, Geradin et al. 2005, Majone 1996, 1997b, Vos 2000, Yataganas 2001). This view has also been reflected in the White Paper on Governance (2001) where the European Commission presents itself as the principal that should seize the opportunity of delegating a share of its more technical tasks to autonomous bodies, which will assist in operating the internal market (Dehousse 2008: 6). Hence, there is a typically explanatory pattern of these approaches to derive the creation of agencies from administrative and regulatory requirements occurring in the internal market (Borrás et al. 2007). However, this functional explanation is primarily based on the assumption that structure is determined by contextual factors: Structures exist because they match functional needs. It begins with society and portrays administrative change as reflecting functional shifts in the environments (Olsen 2007: 104). Thus, in order to explain how or why an administrative structure comes about, why a regulatory agency comes about, it is not necessary to consider the past, 'the generating processes behind a structure', or the characteristics or resources of the reformers involved (Olsen 1992: 248).

In this paper I argue that we need to go beyond an environmental account in order to explain the genesis of the ECHA. The ECHA was not created as a natural or automatic response to functional needs, and the agency solution was not functionally given. Different organizational solutions were brought up during the reform process, in addition to different perceptions of the problem, and I argue that in order to explore factors that lie behind both the breakdown and (re)production of organizational structures, we need to give attention to the ways institutions structure the reform process. The main point is that rather than *assuming* relative efficiency as an explanation, we need to 'go back and look' (Pierson 2004: 47). Hence, this paper ascribes an autonomous role for institutions, and below some of the main elements of such an institutional account are spelled out.

An institutional account

Approaching the study of the ECHA from an institutionalist perspective means to start from the assumption that 'institutions matter'. The birth of an organization does not start from 'a blank slate' (Pierson 2004: 151). The question is, of course, how and why institutions matter. The institutional perspective as applied in this article emphasizes the significance of rules, procedures and norms in structuring political action (March and Olsen 1989). Institutions prescribe how political authority and power are constituted, exercised, validated and distributed (Olsen 2008b: 194). They integrate and structure a political system, organize actors, issues and resources, and structure patterns of political struggle (Egeberg 2006, Olsen 2008a, Schattschneider 1975). An institutional account emphasizes endogenous forces for change, and portrays institutions 'as having lives and deaths of their own, sometimes enduring in the face of apparent inconsistencies with their environments' (Olsen 2007: 106). As actors invest in a specific institutional arrangement, as it becomes infused with value and meaning 'beyond the technical requirements of the task at hand' (Selznick 1984: 17), they have incentives to protect their investment. According to Pierson (2004: 160) if we know which elements of an institutional arrangement constitute important investments for which sets of actors, we are more likely to be able to identify which kinds of revisions they would consider acceptable or problematic. Hence, revisions of a political system will often be constrained and channeled by previous institutional choices, and concepts like 'historical inefficiency' and 'path dependence' suggest that the match between environments and institutional structures is not automatic and precise (Olsen 1992, Pierson 2004). New governing arrangements, like EU-level agencies, do not arise reflexively or automatically in response to new conditions or functional needs. Instead, they are often extracted from and mediated by the pre-established framework of institutions (Skowronek 1982). Thus, existing institutions matter, and being first on the institutional scene often confers important and enduring advantages as each step along a particular path produces consequences that increase the relative attractiveness of that path for the next round (Pierson 2004: 18).

As the idea of path-dependence is central in order to understand why institutions 'are not plastic' and 'do not adapt swiftly' (Pierson 2004:

156), it serves as an important starting point for our analyses of the birth of the ECHA. However, as we are concerned with the making of an organization that in several ways represents *innovation*, we need to take an additional step. As noted by Streeck and Thelen (2005: 24) '[t]here is nothing *automatic* about institutional stability [italics added] - despite the language of stasis and stickiness often invoked in relation to institutions'. We need to understand why some elements of a given institutional arrangement are (or are not) sticky, why some aspects are more amenable to change than others. As we recall, institutions prescribe how political authority and power are constituted and distributed (Olsen 2008b). Any given set of rules or expectations - formal or informal - that creates patterns of action will have unequal implications for resource allocation, and some institutions distribute resources to particular kinds of actors and not to others (Mahoney and Thelen 2009: 10). Power works through institutions (Orren and Skowronek 2004: 125), and a central assumption explored in this article is that the way an organization is extracted from, and processed within, an institutional system depends on how different resources and capabilities are distributed within that system and whether these resources and capabilities can legitimately be applied among and within the different institutions involved. Those who have invested in existing arrangements may have a clear preference for continuity, but ensuring such continuity requires the ongoing mobilization of political support (Mahoney and Thelen 2009: 11); they need *validation* from outsiders, and lack of validation and support 'can spur deinstitutionalization and disintegration' (Gornitzka 2007: 5).

In this article on the birth and making of the ECHA it is argued that some existing administrative structures were more amenable than others, and the institutional rules and resources faced in the course of the establishment process left important marks on the result. The very short version of the ECHA story reveals that the European Commission initially attempted to preserve and expand its own regulatory capacity, and parts of the Commission demonstrated a large degree of path dependence and institutional resilience to the agency model. However, being first on the administrative scene was not enough when the financial situation and the distributive consequences of expanding existing structures were spotlighted. The lack of necessary financial resources and external support in the EU system activated internal conflicts and the breakdown of existing

organizational structures. The European Parliament (EP), which had gained increased capacity in the EU system partly through the last treaty revisions, pushed the new arrangement in a more regulatory direction. The increased recognition of the European Parliament as a co-player in agency design gave this institution a key role in the process.

The structure of the article is the following. First, I have a note on methodology and data. Second, I describe the old European control system for chemicals and the new REACH framework. Third, I trace the establishment process and discuss how we can explain the genesis of the ECHA, how we can understand and make sense of what happened from the inception in Brussels until its birth in Helsinki. As I am applying the institutional framework outlined above, my analyses hinge not only on identifying the institutional system and the different rules and procedures, but in particular the internal distribution of resources, authority and power within and between the different institutions involved. How much influence is located in specific positions and roles and the resources available 'for those who occupy institutional command posts' (Olsen 2007: 15) before, during, and after the changes in question. As I try to go beyond an environmental deterministic account, I also need to consider the alternative paths through which the administrative system *could* have occurred. To what extent was the agency solution functionally given? Finally, I discuss what kind of institutional change the ECHA represents and its potential to actually transform how administrative entities are linked and powers allocated within the new European multilevel polity.

Methodology and data

The aim of this study is to examine how and why the ECHA came about within the EU institutional apparatus by providing a clearer understanding of factors that lie behind the breakdown and/or reproduction of existing organizational structures. In order to do this I am chronologically tracing the legislative process in Brussels (from 2001 until 2006), and the preparatory process in Helsinki (from 2007 until 2008) by which the ECHA obtained its mandate, organizational shape and internal procedures. The data from this process is drawn from two main sources: first, different official documents that include Commission white papers, the first Commission legal proposal on

REACH, and different EP and Council positions emanating from the co-decision procedure. It also includes working programmes and reports from the preparatory work in Helsinki. All these documents are easily accessible on the EU and ECHA websites.¹ Second, I apply interview data from seven semi-structured interviews with key people involved in the establishment process from the inception in Brussels until the organizational birth in Helsinki. Thus, the interview data are drawn from key informants rather than from a wider sample of interviews in order to reach a more fine-grained explanation (Checkel 2008) on why the ECHA came about. Four former European Commission officials now working in the ECHA and three officials from different national regulatory agencies were interviewed in this respect². Thus, I apply a combination of informant interviews and documentary evidence. The goal is to carefully map the temporal order of the various events by connecting the dynamics within the EU institutional apparatus to the final outcome and providing a more complete explanation of not only what happened, but also why it happened and consider the alternative paths through which the system *could* have occurred (George and Bennett 2005: 215).

The old regime for chemicals control in the EU and REACH

The latest important revision of the EU rules pertaining to chemicals was made in the late 1970s. Through this revision, a separation of old and new chemicals was introduced whereby chemicals introduced after 1981 were defined as new, and chemicals introduced before 1981 were defined as 'existing'. Market access for new chemicals was granted through a notification process where national regulatory authorities were the pivotal actors, and a single notification would be recognized by all Member States. Importers and manufacturers submitted technical dossiers to the national authorities, which were in charge of checking the completeness of the file and circulating it to the Commission and the other Member States for review. However, for chemicals that were already in circulation, the imposition of

¹ It can be noted that since EP amendments are shown in bold it is easier to track the successive changes in these documents than in the Council documents.

² We should be aware of a possible imbalance in the interview material as the majority of the informants are former Commission officials.

information supply and testing requirements was considered too onerous and potentially disruptive to the economy.

Hence, during the first decade after notification duties were introduced, EU law did not foster information supply concerning existing chemicals in a systematic way (Heyvaert 2008: 187). To address the problem of new and old chemicals, the Council adopted the Existing Substances Regulation (793/93). Pursuant to the Existing Substances Regulation, manufacturers and importers were to report all available data directly to the Commission. The various submissions were collected by the European Chemicals Bureau (ECB) established under the auspices of the Joint Research Centre Environment Institute (JRC), which processed everything into an EU-wide database. The information then constituted the starting point for an evaluation and priority-setting exercise by national regulatory authorities under the auspices of the Commission (Heyvaert 2008: 189).

It is clear that the old regime was institutionally dominated by national authorities, in the first place national regulatory agencies. National authorities administered the notification process, performed risk assessments for new substances and acted as rapporteurs for existing ones post-1993. The Commission also played a prominent role, as the JRC and the ECB orchestrated the data-gathering and evaluation regime under the Existing Substances Regulation, and formulated and adopted the harmonized classifications for dangerous substances (Heyvaert 2008: 189).

On 1 December 2006, the European Parliament and the Council of Ministers agreed on a compromise text on REACH, the new regulatory framework for the control of chemical substances in Europe. REACH stands for the Registration, Evaluation, Authorization and Restriction of Chemicals. The regulation established the European Chemical Agency (ECHA), and it provides a regulatory framework that enables information production and decision-making relating to *all* chemicals circulating in the EU market. To this effect, REACH imposes a generalized registration requirement: Manufacturers or importers of chemicals produced or imported in volumes of over one tonne per year must apply for registration, with the condition that a data file supplying health,

safety, and environmental information will be submitted.³ The ECHA is responsible for managing all registration dossiers and undertakes dossier evaluation (i.e. compliance check and evaluation of testing proposals). REACH also foresees an authorization system aiming to ensure that substances of very high concern are adequately controlled. Substances subject to authorization are included in a specific annex of the Regulation. Once they are included, the industry will have to submit applications to the ECHA to obtain authorization for continued use of these substances. Finally, the Commission will head the decision stage of the authorization process. It will formulate a proposal on the basis of the opinion delivered by the ECHA, which is finally adopted in comitology.

With the new procedures mapped out in REACH a new and more centralized institutional set-up to manage the regulatory framework of chemicals in the EU has been established. Most importantly, the ECHA functions as the chief administrator of the scheme. Pre-market control is the dominant regulatory mechanism, and from the differences between pre- and post-market regulation, variations result in the obligatory involvement of the agency at the first stage of the decision-making process (Krapohl 2004). Whereas previously Member State national authorities, primarily national regulatory agencies, were the first point of contact with private parties complying with EU regulatory requirements, and thus the chief liaison with Community authorities, applicants for registration directly submit their applications to the ECHA. In the case of applications for authorization, applicants submit to the ECHA, which then orchestrates the scientific review of the application, and drafts a recommendation for the Commission. National regulatory authorities however do have an opportunity to be involved in the identification of substances for evaluation, and perform the task of substance evaluation through the Risk Assessment Committee. Additionally, the Member States are formally represented in the Member State Committee, the Management Board and in the Commission decision-making through the channel of comitology.

³ Registration extends previous data-reporting requirements for the industry significantly. Most importantly, registration targets the roughly 30,000 chemicals which have been traded in substantial volumes within Europe for almost 30 years, but for which no information has been available (Persson 2007).

I will return to the shape of the multilevel polity in the last part of the article. The following sections review the main features of the preparation and negotiation process prior to the adoption of the REACH Regulation. What happened? How and why did it happen? What is the significance of what happened? The Commission White Paper on the Strategy for a Future Chemicals Policy (2001) serves as the formal starting point of the process.

The Commission Strategy: Building upon existing structures

In its White Paper on the Strategy for a Future Chemicals Policy (2001) the Commission outlines the outcomes of a review of the current control system and its new strategy for the registration, evaluation and authorization of chemicals in the EU. The Commission indicates that the new control system for chemical products requires the creation of a "central entity" which is foreseen as playing a key role in the administration of REACH. The appropriate format of the "entity" was then considered to be the European Chemicals Bureau (ECB), a part of the Joint Research Centre (JRC) at Ispra (Italy), which would need to be enlarged to take on the extra tasks. The expanded ECB should be a receiving body for the registration dossier, and forward the dossiers to the Member States, establish a central database on registered chemicals and perform spot-checks of the registered substances. Depending on the anticipated impact of a substance, an authorization for actual use should either be granted by Member States or by a decision at the community level. Hence, the national regulatory authorities would broadly retain their current responsibilities within the new system. They would be responsible for substance registration and evaluation, similar to their current responsibilities for new substances notifications, as well as checking the application of REACH within their own territories. They would also be able to suggest restrictions on the use of substances based on a structured risk assessment where they consider when EU legislative action is necessary.

Taken together, the White Paper indicates a careful and small step away from the current administrative structures, introducing a double set of procedures depending on the anticipated impact of a substance. Moreover, it suggests expanding the system within the *existing* Commission structures, more specifically within one

particular DG: the JRC. The Council gave its opinion on the White Paper in its Conclusions June 2001 and the Parliament adopted a report on the White Paper November 2001. Both Council and Parliament endorsed the Commission's objectives outlined in the White Paper. However, in its first legal proposal on REACH the Commission suggests the establishment of an independent agency outside the Commission's formal jurisdiction. We will look at this proposal in the next section in addition to exploring some of the reasons why the Commission left the JRC "entity" behind.

The Commission's legal proposal: an agency in from the cold

The Commission proposal (COM 644 final) was transmitted to the European Parliament and the Council in accordance with the co-decision procedure November 2003. In its proposal the Commission suggests establishing an independent agency foreseen to work in partnership with the ECB and national authorities in order to operate the REACH system. However, how these institutions are to work together is not clear. The proposal requires *authorities* to examine proposals for testing. Furthermore, it gives *authorities* the task of checking compliance of registration dossiers, and substance evaluation provides a mechanism for *an authority* to require the industry to submit more information in cases where risk is suspected. Thus, the Commission is reluctant with regard to (explicitly) granting tasks and competences to the agency, and suggests a rather vague evaluation and authorization procedure. The Commission outlines several reasons in the proposal in order to explain why it is a good thing to establish an independent agency. According to the Commission, '[s]ubsequent enquiry has raised serious doubts as to whether an enlarged ECB would be the most effective structure to meet the much increased demands of the new system. The Commission therefore undertook a feasibility study. Having carefully examined all elements, the Commission concluded that the establishment of a separate Agency is essential for the effective implementation of the proposed REACH system'. The Commission also refers to the White Paper on European Governance (2001), 'which notes that regulatory agencies: improve the way rules are applied and enforced across the Union as well as increase the visibility for the sector concerned. The existence of a separate, independent body provides a clear focus for discussions and so raises

the profile of the sector, as well as has an advantage in drawing on highly technical sectoral know-how. The Agency will be a key player in ensuring that the system has credibility with all stakeholders and the public.' Hence, the Commission's arguments are to a large extent in line with the functional approach mentioned earlier in this article: Regulatory agencies are able to meet efficiency requirements occurring in the internal market, in addition to increasing accountability and credibility in providing a clearer distinction between politics and administration (see e.g. Majone 1996, 1997a, Vos 2000).

The White Paper on Governance was drafted and published the same year as the White Paper on the Strategy for a New Chemical Control system. It seems a bit puzzling why the Commission did not bring up the White Paper on Governance and the well-known arguments on efficiency, legitimacy and credibility in the first place. How can that be? What happened within the Commission in the interim period? In the following we will look at some unofficial reasons highlighted by key Commission officials involved in the process.

Lack of resources and internal conflicts

According to the informants one of the main reasons for proposing an "entity" within the Commission itself was that the JRC already played a role within the policy field and had a considerable stake in preserving and expanding the use of existing structures. To have the tasks allocated within the ECB under the auspices of the JRC would ensure a permanent core activity for the DG. The JRC wanted to refocus and stabilize their activities which had been in a state of flux for many years. Hence, the JRC seized the opportunity to increase its resources and organizational capabilities. The JRC had also invested heavily in the ECB in building up procedures and training people in managing the Existing Substances Regulation. The JRC wanted to keep these people, and the people involved were not interested in moving to a different place. They demonstrated very strongly that they wanted to stay in Ispra.

Moreover, according to the informants there was no willingness in the European Parliament or within the Member States to grant the Commission the appropriate resources to do the necessary tasks within the new chemical regime. As the Commission's budgetary

rules are poorly constructed for financing its activities through fees from the industry, the financial situation was spotlighted. It was clear that an independent agency in contrast to the Commission could collect fees from the chemical industry and manage to be self-funded. This financial concern was in particular voiced by DG Enterprise and Industry (ENTER), the founding father of another regulatory agency: the European Medicines Agency in London (EMA). The EMA had been established by DG ENTER in 1993, and it was able to be self-funded through fees from the pharmaceutical industry. DG ENTER pinpointed this agency when the financial foundation of the JRC “entity” was hanging by a thread: *‘You have an agency that actually works; it is independent, it collects fees and it is able to finance its staff. In a nutshell: it is possible!’* (Interview 1/7-08)

In addition, DG ENTER was fundamentally more positive to an agency model than the other DGs. It was tuned towards the functioning of the internal market and particularly concerned with the competitive conditions for the chemical industry. The industry’s view was that it was better to have one agency in one place that makes consistent decisions rather than a complex and fragmented set-up within the EU. The JRC had a quite different approach. They were fundamentally afraid of losing out in the EU system, afraid of losing their position. However, the JRC was perceived as a weak DG, and when the financial question was brought up, their arguments about stability and continuity started to lose status outside their own circles. According to the informants, the other policy DGs *‘did not care much for JRC’s internal cuisine’* (Interview 2/7-08). Thus, for the Commission, lack of financial resources and external validation activated internal conflicts among the DGs. When the JRC was losing out, DG ENTER, which was perceived as a more powerful DG than the JRC internally, and had more political backing externally, had the possibility to promote the independent, self-funded EMA model. In order to avoid a situation where people *physically* had to move, the Commission suggested the agency be situated in the same place as the ECB in Ispra, Italy.⁴

⁴ In 2003 it was decided that ECHA was to be located in Helsinki. This decision was made at the level of the heads of states as part of a package deal between the Finnish and Italian governments.

The European Parliament: Ensuring influence

From 2003-2006 the REACH proposal was progressing through the legislative process for its adoption by the European Parliament and the Council. The European Parliament adopted its opinion in a first reading November 2005. In the amended proposal, the agency has a greater responsibility with regard to evaluation, the smooth running of the system and monitoring decision-making. The procedures are restructured and made clearer. The term 'authorities' is replaced by the term 'agency', and the double sets of procedures and responsibilities are deleted. The agency alone is responsible for dossier evaluation, and the Parliament is also suggesting that the agency should be responsible for the substance evaluation and the job of drawing up the list of priority substances for evaluation. To perform the substance evaluation the agency *could* rely on bodies designated for that purpose by the Member States.

The Parliament is also amending some of the decision-making procedures in a more supranational direction. In addition to decreased national representation and increased Parliament representation in the Management Board, it suggests that the Member State Committee should reach agreement with a qualified majority instead of reaching a unanimous agreement as proposed by the Commission. The comitology procedure shall be in accordance with the so-called 'regulatory procedure with scrutiny'⁵ instead of the 'advisory committee procedure'⁶ as suggested by the Commission. The 'regulatory procedure with scrutiny' responds to demands for greater Parliament involvement because it is the sole comitology procedure where agreement between the Commission and the consulted Committee of national representatives does not automatically result in adoption of the Commission proposal. Instead, even Committee-approved proposals are forwarded to the European Parliament and the Council 'for scrutiny', and institutions may oppose the proposal by a simple (EP) or qualified majority

⁵ Council Decision 2006/512/EC amending Decision 1999/468/EC laying down the Procedures for the Exercise of Implementing Powers conferred on the Commission.

⁶ The Commission is bound to take account of the advice of a committee of Member State representatives, but it has the authority to adopt its proposal even in the face of a negative committee opinion (Heyvaert 2008: 203).

(Council) respectively (Heyvaert 2008: 194).⁷ One of the key people from DG Environment involved in the negotiations describes the process in these words:

So the EP got their way. It was difficult to insist on not giving in. The new procedure had just been adopted in order to strengthen the power of the Parliament. Then it would have been very difficult for the Council to say 'sorry we don't want you involved in any of this'. It would also have been very difficult for the Commission to argue against it.
(Interview 1/7-08)

Taken together, the European Parliament used its increased capacity in the EU system to press for a more supranational agency with simpler registration/evaluation procedures and more Parliament-friendly decision-making procedures. It is not surprising that the Parliament wanted to strengthen its own influence within the ECHA set-up, but why did it push the agency in a more regulatory direction? According to the informants, on the one hand the European Parliament was lending its ear to the chemical industry which was critical both to the White paper on the Strategy for a New Chemical Control system and to the first Commission proposal (see also Persson 2007, Shörling 2004). Their starting point was not environmental concern but dissatisfaction with a system that they found too bureaucratic and complex (Pesendorfer 2006). The industry aimed for a simpler institutional set-up, a one-stop shop for chemical product control. Another element for the European Parliament was that a supranational agency could decrease the influence of the Commission and Member States. The perception was that a strong agency would imply an additional player in the administrative landscape and challenge existing power structures within the policy field.

The Council: The logic of compromise

In accordance with the Parliament's opinion of December 2005, the Council reached a unanimous political agreement on a common

⁷ According to one of the informants, the EP has already used their newly won comitology power within REACH. In the first comitology decision with scrutiny, they blocked the Commission's proposal and forced the Commission to withdraw the proposal (Interview 2/7-08).

position under the UK presidency. Not surprisingly, the Council ensures the principle of unanimity in the Member State Committee, and the composition of one representative from each Member State in the Management Board. However, the Council goes to considerable lengths to support the EP proposal. It accepts the comitology procedure with scrutiny and the simplifications of the decision-making procedures within the new control system. The agency alone is responsible for the dossier evaluation and responsible for coordinating the substance evaluation process. The double set of procedures and responsibilities suggested by the Commission and deleted by the European Parliament are left behind.

What happened behind the scenes in the Council? The EP amendments clearly pointed in a more supranational direction, which naturally caused some tension among the national representatives. As the scrutiny procedure was newly adopted, the Council could hardly argue against the use of this procedure. A more open question among the representatives was the substance evaluation procedure and the question of national involvement. On the one hand, some countries, including France in particular, wanted the ECHA to take over the whole procedure as suggested by the Parliament. For them it was mainly a question of costs. It was cheaper to make the agency perform the scientific evaluation rather than their own experts since the salaries are paid by industry fees. On the other hand, the countries that had played an important role under the previous legislation were most reluctant to grant the agency evaluation competence: Sweden, the Netherlands, Germany and Denmark. These countries thought that they would lose work and influence if the ECHA took over the job. In the words of one of the informants: *'In the past the greatest amount of work was done by the Member States, however you view it'* (Interview 2/7-08). For the UK the most important thing was to obtain political agreement on REACH. It was essential for the British government to get the proposal through during the UK presidency, and there was a common understanding in the Council that if the REACH negotiations went beyond the UK presidency, it would become much more difficult to find a final agreement. Thus, the national representatives were willing to compromise in order to find a political solution on REACH,⁸ including the role of the ECHA.

⁸ It should be noted that this paper addresses the establishment of ECHA and not the general development and negotiations of the REACH regulation. In order to get a

In the Common Position the national regulatory authorities are to play a more prominent and integrated role in the evaluation procedure than prescribed by the European Parliament, mainly through the different committees coordinated by the ECHA. The formal Common Position of the Council was approved in June 2006, a step that paved the way for the second reading of the proposal by the European Parliament, and final adoption by the end of 2006. In the next section we leave Brussels and look at the organizational preparations in Helsinki.

Preparations in Helsinki: Cut and paste

Primo 2007, thirty-seven people seconded from the Commission were sent to Helsinki in order to build up the ECHA. Essential steps in setting up the agency were recruiting and training staff, establishing standard operating procedures and preparing the agency's committees. The officials had a legal obligation in the REACH regulation to be done within six months, and the officials had to work fast. The mission was to get the ECHA up and running as quickly as possible. During this period, the procedures for the different committees were to a large extent copied from the EMEA and the other EU-level agencies in addition to the rules of procedures for the EU comitology committees. Models for internal administrative rules were taken more or less directly from the Commission, and the standard operating decision-making procedures for the agency were primarily copied from the EMEA.

We have been platonizing from the existing world. The procedures for the other agencies are quite easily accessible on the internet. Our agency is quite similar to the agency in London. It is quite handy because you can contact a colleague in the EMEA and ask how you are running these kinds of things. There has been an enormous time pressure. If we did not have the existing models, it would have been impossible to do it. (Interview 1/7-08)

fuller picture of REACH, the legislative journey of the draft regulation and the different political interests at stake, both in the EP and the Council, see e.g. Hansen and Blainey (2006), Heyvaert (2008), Persson (2007), Pesendorfer (2006), and Schörling (2004).

During the REACH negotiations in Brussels an inter-DG steering group in the European Commission had issued the so called REACH implementation project (RIP). According to the informants the overall matter was to ensure that the REACH regulation was to be implemented in a uniform manner by the ECHA and national authorities. The guidance was handed over from the Commission to the ECHA in the establishing process in Helsinki.

Thus, the establishment of the ECHA implied dependence on the Commission officials to furnish it with organizational capabilities, internal procedures and implementation guidelines. It also implied dependence on the Commission to furnish it with human capital. In the words of a former Commission employee:

It is possible that the Member States have a slightly more reserved attitude towards the newborn baby since it is such a Commission creature. But these matters of principles are not awfully important if the things are not done and resources are not received.

(Interview 2/7-08)

The birth of the ECHA: Inter- and intra-institutional dynamics

Environmental accounts begin with society and portray institutional change as a functional solution to a given problem or need (Olsen 2007: 104), and within the agency literature there is typically an explanatory pattern to derive the creation of agencies from administrative and regulatory requirements occurring in the internal market. In the White Paper on Governance (2001) and several other official position papers, the European Commission is in line with this functional approach. It presents itself as the principal that should seize the opportunity of delegating a share of its more technical tasks to autonomous bodies, which will assist in operating the internal market (Dehousse 2008: 6). However, in this article on the birth and making of the ECHA we have seen that the perception of the Commission as happily reliving it self of technical tasks to a technical body in order to be able to concentrate on important political matters is not an accurate description of the reform process nor of the final outcome. At least the birth of the ECHA appeared as a more complex, ambiguous and multi-faced process than this where the different

institutions left their marks upon the result through the process. The different institutions pursued different goals and had different perceptions of what the administrative arrangement should look like. As noted by Olsen (2007: 105) multiple and conflicting goals are often pursued in the EU institutional landscape, and there is no shared understanding of administrative requirements and possibilities, and no single central reorganization authority.

Looking back, there was no solution that was functionally given. Different organizational solutions were present, and the empirics reveal that the power struggles that ensued among and within the different EU institutions seeking to gain or maintain their institutional role and position played a prominent role with regard to the final result. We recall that the European Commission initially attempted to expand its own capacity within its own structures, and parts of the Commission had a considerable stake in preserving and expanding the use of existing structures. The JRC had invested heavily in the ECB and felt threatened by the establishment of an agency outside the Commission's framework. In addition, people living and working in Ispra (Italy) were attached to this place. As actors invest in a specific institutional arrangement, as it becomes infused with value and meaning 'beyond the technical requirements of the task at hand' (Selznick 1984: 17), they have incentives to protect their investment. Mechanisms of self-reinforcement and path dependency make institutional structures 'sticky' (Pierson 2004). The existing institutional set-up of the Commission proved to be sticky in the very first phase of the negotiation process. However, as noted in the introduction to this article, the stickiness claim may resonate more under some conditions than others, and ensuring continuity often requires the ongoing mobilization of political support.

We recall that the Commission did not receive any external support when the power-distributional implications of expanding existing structures were spotlighted, and eventually, the power struggles and lack of unity *within* the Commission itself became apparent. Distributional effects and budgetary starvation tend to make conflict and change more likely (Olsen 2008a: 15) and may trigger divisions among institutional power holders (Mahoney and Thelen 2009). The Commission is not a unitary actor (Egeberg 2005), it contains different institutions with different goals and different logics of action, and these differences easily rise to the surface when resources and

position are at play (Cini 1996). When the JRC was losing out, DG ENTER, which was perceived as a more powerful DG than the JRC internally, and had more political backing externally, seized the opportunity to promote the EMEA model.

Thus, for the Commission, lack of financial resources and external validation activated internal conflicts and resulted in institutional disintegration and organizational breakdown. On the other hand, the increased recognition of the European Parliament as a co-player in agency design gave this institution a key role in the process (see also Kelemen 2002). We recall that the European Parliament was on the offensive and was able to push the Commission's proposal forward in a more regulatory direction and reallocate resources in ways that increased its own influence within the new polity. Within the Council, the rationality of 'give and take', of integrating and connecting different views and concerns, reaching a *compromise* solution, had primacy. An essential part of this compromise solution was the integration of existing national regulatory structures within the ECHA framework, ensuring elements of institutional continuity within the new administrative setting.

Hence, through the legislative process, through inter- and intra-institutional tensions, different (possible) structures came to be rejected, reflected and re-connected to the same organization. Taken together, by pointing at the interplay of several institutions as a source of both organizational breakdown and (re)production, this discussion has highlighted a source of internal dynamism which studies only focusing on environmental requirements are unlikely to capture. In Orren and Skowronek's formulation (1994: 321) '[t]he institutions that constitute the polity... abrade against each other and, in the process, drive further change.'

Institutional adaptation

In the post-adoption phase the logic of decision-making was somewhat different than during the legislative process. The Commission was now solely in charge, and the checks and balances of the EU system were less salient. Hence, the Commission could work fast, playing the role of a hardcore executive, without being interrupted by political obstacles. As suggested by Olsen (2008b: 195) 'there may be more or less time for analyses' and 'established concepts, schemas, and scripts allow actors to ignore or resist new

evidence' (Olsen 1992: 255). In the post-negotiation phase, when the political light was dimmer and the time pressure higher, the Commission could easily work in a bounded manner, ignore alternative models and search for convenient arrangements 'in the neighbourhood' (March 1994: 28). Existing administrative structures were copied and transferred to the ECHA polity by someone who were familiar with these structures and perceived them as appropriate and satisfactory. Thus, the ECHA set-up and internal procedures were born in the shadow of local institutional structures by the pragmatic midwifery of the Commission.

In summary, the institutional forms and procedures through which the system of chemical regulation in the EU had been working would not simply give way to a new administrative arrangement as soon as its limitations became apparent. The ECHA had to be negotiated and reflected through institutions, between institutions and in the shadow of institutions. Taken together, rather than assuming relative efficiency as an explanation for change or path dependency as an explanation for continuity, this article highlights the need to have a closer look at the pre-existing institutional framework, and in particular how resources are constituted, distributed and validated within that framework.

Concluding remarks: New wine in old bottles?

The ECHA represents a new platform for executive action at the supranational level, and we have seen that the establishment has entailed a transformation of the previous regulatory regime for chemical control in the EU. Theoretically, I have argued that we need to move beyond a functional explanation and take endogenous dynamics of change into account in order to understand the making of this organization. I have also argued that we need to move beyond 'stickiness' and path dependency and take the power-distributional implications of an institutional system into account (Mahoney and Thelen 2009) in order to better understand both the breakdown and reproduction of organizational structures. By the same token, I want to underline that neither the self-funded, regulatory-agency model nor its organizational set-up appeared 'from a blank slate' (Pierson 2004: 151). The European Medicines Agency (EMA) served as an important role model, and its structures were adapted and transferred to the ECHA by DG ENTER who was familiar with these

structures and could treat them as 'self-given' (Olsen 2009). We have also seen that existing national regulatory structures were carried over from the past to be reestablished within the ECHA polity by the member states, resulting in institutional layering and succession (Quack and Djelic 2005). Thus, despite its novelty, the establishment of the ECHA was in several ways path-dependent and was 'closer to *bricolage* - recombining institutional fragments - than to ex-nihilo creation' (ibid: 274). This finding of agencification as a result of institutional bricolage and path dependency rather than rational design is also pinpointed by Krapohl (2004) who shows that several EU-level agencies have evolved from existing EU committees and adopt most of their structures, like the European Food Safety Authority (EFSA) and the European Medicinal Agency (EMA). Other scholars have highlighted how the Council has left its marks upon agency creation in securing intergovernmental management procedures as well as integrating national regulatory authorities in the committee frameworks (see Christensen and Nielsen 2008, Dehousse 2008, Gehring and Krapohl 2007), as we have also seen in the case of the ECHA.

However, even if national regulatory agencies are to play a prominent role within the ECHA polity and formally represent continuity, the scene has shifted, and it is not evident that these agencies will safeguard 'a microcosm' of national control. National agencies may potentially serve several purposes (Egeberg 2003), and what Thelen (2003: 226) calls institutional conversion refers to situations where 'existing institutions are redirected to new purposes, driving changes in the role they perform and/or the functions they serve'. In the ECHA polity, national agencies are being re-coupled into new configurations through the ECHA committees, and these shifting patterns of communication can affect the relationships and relative dependencies between the actors involved. The regulatory agencies of the Member States usually act at arm's length from direct political intervention in their daily business, and the officials adopt stronger sectoral allegiances than their colleagues in the ministries (Christensen and Lægreid 2006, Egeberg 2003). These sectoral allegiances may actually be amplified in a European setting as the language of expertise becomes the most valid means of communication (Martens 2008). Metcalfe (2000: 36) notes in his case study of the EMA that participation 'helps consolidate a professional identity among regulators at the European level. Representatives meet frequently with

professional colleagues in a context where matters of common interest and shared problems are discussed that transcend national preoccupations' (see also Krapohl 2004). Hence, national regulatory agencies in the ECHA setting will not necessarily play the role of an intergovernmental guarantee or ensure the principle of national administrative sovereignty (Hofmann and Türk 2006). They could in the long run rather become part of, and defender of, the supranational autonomy of the ECHA and contribute to transform how different administrative parts are linked and powers are allocated across levels of government within the policy field. One of the seconded Commission officials puts it this way:

We are going more in a direction of the real stuff, where the agencies have an important role, we are going away from the cozy little 'discussion agencies' on how to improve the life of workers to real decision-making agencies which are there to ensure that there is a real common market, and that the rules are the same all over Europe, with teeth and with real impact.
(Interview 1/7-08)

Nevertheless, the ECHA is a newly established agency, and even if it is clear that it has a larger regulatory potential than previous EU-level agencies, it is too early to draw any firm conclusions with regard to how the organization will work, how its different parts will develop and to what extent it will be able to actually transform existing power structures in the EU. Becoming a living institution (Olsen 1997), becoming a living agency with a distinct role and identity in the European executive order takes time (Martens 2010). It is hoped that future studies will tell us more about the actual implications of bringing this organization to life in the EU administrative system

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Annex 1: Interview guide. National agency officials

[Short description of my PhD-project]

1. Personal information

- a) Position
- b) Time of service
- c) Policy field
- d) Short job description

2. EU related work

- a) Time spent approximately on EU related work. Changes over time?
- b) The division of work in EU-matters between the ministry and agency. Changes over time?
- c) Which fora do you attend at the European level? Differences between the ministry and the agency? Changes over time?

3. Network activities

- a) What is the aim of the network(s)?
- b) Who participate in the network(s)?
- c) What kind of regular contact within the network(s)? (Face to face meetings? Through the internet?) How often?

4. National coordination before network activities

- a) How is your position coordinated internally before participating in network activities? In that regard, how will you describe: The role of your superior in the agency, the leadership in the agency, the role of the ministry. Differences between different networks? Changes over time?
- b) To what extent do you receive instructions/guidelines from the ministry when participating in network activities? Differences between different networks? Changes over time?

- c) To what extent do you feel that you have a room of maneuver when participating in networks? Differences between different networks? Changes over time?

5. Participation in the networks

- a) Who do you feel that you represent in the network (your government/ the agency/ your self as independent expert)?
- b) How will you describe the discussions in the network(s)? Changes over time?
- c) To what extent and why do you/your colleagues change your mind during network discussions? National differences? Changes over time?
- d) How will you describe the role of the Commission within the network(s)? Changes over time?
- e) Is the Commission able to make the participants change their mind? If yes, how/when? If no, why? Changes over time?

6. More on the relationship to the European Commission

- a) How often and why do you have direct contact with people in the European Commission?
- b) What kind of contact (E-mail/telephone etc.)? Changes over time?
- c) How would you in general describe your relationship to the Commission? Changes over time?
- d) How will you describe your relationship to colleagues in other national agencies compared to the relationship to the Commission? Changes over time?

7. The new member states (only)

- a) How would you describe the changes in the public administration in Estonia/Latvia after the cold war? Developments after you became EU-members?
- b) Have you participated in training activities? Trained by the Commission, other member states?

- c) Do you think you, as officials in a new member state, have a different relationship to the Commission than people from the other member states? Why? Changes over time?

Annex 2: Interview guide. The Commission

[Short description of my PhD project]

1. Personal information

- a) Position
- b) Time of service
- c) Policy field
- d) Short job description

2. General contact patterns with national authorities

- a) In which forums do you cooperate with national authorities?
- b) Who do you have contact with at the national level in your daily work (officials in ministries/regulatory agencies etc.)? What kind of contact?
- c) Do you have different kind of/ degree of contact with different kind of national officials?
- d) Do you participate in networks with national officials (outside the ordinary committee structure)? If yes, we will talk more about these activities in the forth section.

3. The general relationship between officials in the Commission and officials in the national regulatory agencies

- a) How will you in general terms describe the relationship between officials in the Commission and officials in national regulatory agencies? National differences? Developments over time?
- b) How do you think the Commission is perceived by the officials in the agencies? National differences? Developments over time?
- c) To what extent and why does the Commission need input/feedback from the agencies? Are some national officials more valuable partners than others? If yes, why?
- d) To what extent and why do the officials in the agencies need input/feedback from the Commission?

- e) What are the differences between receiving information/advice from private consultants and information from officials in the national administrations?
- f) To what extent is the Commission in direct contact with officials in the regulatory agencies in case of (possible) lack of implementation? To what extent may this evoke reactions at the Ministry level?
- g) To what extent has the internet influenced the way the Commission and officials in the national agencies are cooperating?
- h) To what extent has the previous enlargements of the EU changed the relationship between the Commission and national regulatory authorities? Implications?

4. Network activities

- a) What is the aim of the network(s)?
- b) Who participate in the network(s)?
- c) What kind of regular contact within the network(s)? (Face to face meetings? Through the internet?) How often? Changes over time?
- d) How will you describe the discussions in the network(s)? Changes over time?
- e) How will you describe the role of the Commission within the network(s)? Changes over time?
- f) If the national experts can not agree/find a solution to a problem within the network, is the Commission able to help? If no, why? If yes, how?
- g) To what extent and why do the participants change their mind during discussions? National differences?
- h) Is the Commission able to make the participants change their mind? If yes, how/when? If no, why? Changes over time?
- i) How independently do you think the officials from regulatory agencies are operating from their parent ministries in the networks? National differences? Changes over time?
- j) Do you perceive the officials from regulatory agencies as (primarily) national representatives or scientific experts within the network(s)? National differences? Changes over time?

5. The concept of 'network governance'

- a) How do you understand the concept of 'network governance'?
- b) Do you think it captures the way you are working with national authorities?
- c) Have informal networks become a more important/legitimate way of cooperating with national authorities in your opinion?
- d) What would you say are the advantages/disadvantages of this way of cooperating? Any?

Annex 3: Interview guide. The EEA

[Short description of my PhD project]

1. Personal information

- a) Name
- b) Current position
- c) Tenure
- d) Short job description

2. EEA Clients

The EEA has several 'clients' in the EU-system. In your view, who are the most important clients? Have there been changes over time with regard to the following features:

- a) Number of clients?
- b) The relative importance of different clients?

3. EEA Tasks

How will you describe the main tasks of the Agency? Have there been changes over time with regard to the following features:

- a) Number of different tasks (task complexity)?
- b) Type of tasks (e.g. data collection, policy analyses etc.)?
- c) Degree of ad hoc activities/standard procedures?

4. EEA Resources

What are the main financial sources of the EEA? Changes over time?

5. EEA Leadership

There was a change of leadership (Executive Director) in 2003. How will you describe the current leadership of the EEA compared to the

previous leadership? Have there been any changes with regard to the following features:

- a) Internal relations (e.g. intervention in daily work, coordination etc)?
- b) External relations (e.g. DG Env, Eurostat)?
- c) Media profile?
- d) Publishing policy?

6. EEA and the Commission

- a) How will you in general terms describe the relationship between the EEA and the Commission? Has this relationship changed over time? If so, in what way?
- b) How do you think officers in the Commission perceive the EEA? Internal differences in the Commission? Changes over time?
- c) To what extent is the EEA able to influence the work of the Commission? In what way? Changes over time?
- d) To what extent is the Commission able to/trying to influence the work of the EEA? In what way? Changes over time?
- e) Are there any particular cases/decision making processes you are aware of that may illustrate/shed light on the relationship between the EEA and the Commission today or in the past?

7. EEA Management Board

- a) What is your impression of the role and importance of the Management Board?
- b) In your view, who are the most important actors in the Board? Changes over time?
- c) How will you describe the role of the Commission/DG ENV in the Board? Changes over time?
- d) How will you describe the role of the Member States in the Board? Changes over time?

8. EIONET (network of national authorities)
 - a) What is your impression of the functioning of EIONET?
Changes over time?
 - b) What kind of role is the EEA playing within EIONET? Is it able to steer the work of the network? Changes over time?
 - c) What do you think is EIONET's main contribution? Changes over time?

9. EEA. General
 - a) What would you say has been the main implication of establishing the EEA in the EU-system?
 - b) Do you think the EEA has become a more/less important actor in the EU system? If so, in what way?

Annex 4: Interview guide. The ECHA

[Short description of my PhD-project]

1. Personal information

- a) Name
- b) Current position
- c) Tenure
- d) Short job description

2. The role of the Commission in the REACH-negotiation process

- a) What were the main interests/concerns of the Commission with regard to the role and competences of an agency within the (new) European chemical policy field? Differences within the Commission? Changes over time?
- b) The Commission wanted originally to expand the ECB. Why? What made it change its mind?
- c) Why did the Commission suggest shared responsibilities between the agency and the MS in the White Paper? What made it change its mind (first proposal)?
- d) The Commission wanted the agency to be placed in Ispra. What made it change its mind?
- e) What was the background/effect of the feasibility study?
- f) To what extent and in what way was the Commission's operating framework for European agencies (2002) important in the drafting process?
- g) To what extent and how were other EU-level agencies used as role models when drafting the REACH regulation?

3. The role of the EP and Council in the negotiation process

- a) What were the main differences among the Member States with regard to the role and competences of the ECHA?
- b) What were the main interests/concerns of the EP with regard to the establishment of the ECHA?
- c) What were the main differences between the EP and the Council?
- d) How were they able to solve the differences?

4. Establishing the ECHA in Helsinki

- a) How will you describe the role of the Commission in this phase? (Recruitment, guidelines, SOPs etc.) Different from the establishment of other agencies?
- b) What would you say has been the main effect of Commission officials possessing ECHA positions in the interim period?
- c) Any problems/tensions in the establishing process in Helsinki?

5. The implications of establishing the ECHA

- a) What would you say is/will be the main implication(s) of the establishment of the ECHA in the EU-system?
- b) For national agencies?
- c) For the Commission?
- d) For industry/the internal market?

6. The (future) autonomy of the ECHA

In your opinion, to what extent and how will the agency be able to operate autonomously in the EU-system?

- a) In relation to the Commission?
- b) In relation to the member states?
- c) In relation to the EP?
- d) In relation to industry?

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