DELEGATION TO EUROPEAN EXECUTIVE AGENCIES: FRAMEWORKS FOR ANALYSIS AND THE 'DELEGATION OF DELEGATION'

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This thesis is the result of the author's original research. It has been composed by the author and has not been previously submitted for examination which has lead to the award of a degree.

SUMMARY

This thesis tests six models of delegation on six European executive agencies, which have been set up at the request of the European Commission since 2003. Executive agencies are a new form of agency and the first example of bodies which have been delegated powers directly by the European Commission and given full legal status. Three of the models tested stem from rational-choice approaches to delegation, while the other three are constructivist models. The thesis tests these models to determine which approaches best explain this form of delegation. The thesis also provides an empirical account of the agencies and an assessment of the implications for the wider delegation and agency literature of the Commission delegating its own delegated responsibilities to new organisations. A mixed-methods approach is adopted, including primary document analysis and qualitative interviews with management level staff at the agencies and the European institutions. The conclusion is that multi-principal, rational-choice approaches to delegation, in which competition between the European institutions is a key explanatory variable, provides the best framework for analysing delegation to European executive agencies. The thesis also concludes that the 'delegation of delegation', in which powers originally assigned to the Commission have been delegated by the Commission to new agencies, is an important new development in the EU's institutional structure and has implications for how delegation processes are studied in the EU context.

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CHAPTER ONE: INTRODUCTION

The European Union (EU) is an organisation built upon the transferral of powers from its member states to the European level. Since 1951, with the creation of the European Coal and Steel Community, successive treaties drafted and ratified by the member states have created and assigned powers to a number of supranational institutions, including the European Commission, the European Parliament, the European Court of Justice (ECJ), the European Central Bank (ECB), and an increasing number of European agencies with a variety of different responsibilities.

As Pollack (2006) states, this delegation of powers has posed two distinct questions for scholars of European integration. First, there is the issue of why European national governments have chosen to create and empower new international bodies rather than limit themselves to engaging in direct intergovernmental co-operation with one another. Second, having delegated these powers, there is the issue of how member states can exert control over the new institutions to ensure that they meet the aims of national governments. These two questions – *why* do member states delegate, and *how* do they maintain control over the bodies they have delegated powers to – are at the very heart of understanding European integration.

The dominant approach to these questions in recent decades has been to use perspectives developed from the rational-choice school of political science, chiefly principal-agent (P-A) theory, which constitutes a framework for analysing the delegation of power from one set of actors (principals) to another set of actors (agents). P-A approaches have been adopted by a number of scholars (such as Pollack, 1997; Egan 1998; Franchino, 2001) to explain and account for the powers which have been delegated to the European institutions. A complementary body of literature has also emerged on the growth of European agencies (Majone, 1997;

Kelemen, 2002; Busioc, 2009; Egeberg and Trondal, 2011) which seeks to examine the autonomy and control of these new bodies. Nevertheless, P-A approaches, and rational-choice perspectives in general, have not been without their critics. Alternative approaches based on constructivism, such as sociological-institutionalist theories of 'isomorphism' – in which delegation decisions reflect a 'logic of social appropriateness' and one form of institutional structure becomes replicated across different contexts – have presented a challenge to rational-choice approaches (see, for instance, Tallberg, 2006).

Although the literature on EU delegation and the growth of EU agencies has flourished in recent years, one type of agency has tended to be overlooked in analyses. In 2002, the European Commission formulated a proposal for the creation of a new set of European agencies termed 'executive agencies'. These agencies – six of which have been created since 2003 – are charged with managing certain aspects of 'community programmes', which are essentially funding programmes drawn from the EU budget.[1] The agencies typically handle tasks such as organising a call for funding proposals, employing external actors to judge the merits of proposals, and distributing funding to award holders. These are tasks which were originally delegated to the Commission by the member states, but which had since been assigned to private contractors. However concerns over the accountability of the system of using private actors to manage programmes, which were a key precipitating factor in the resignation of the Santer Commission in 1999, resulted in executive agencies becoming a more desirable option.

[1] Examples of community programmes operating under the 2007-2013 Multiannual Financial Framework are Erasmus Mundus, the Public Health Programme, and the Competitiveness and Innovation Framework Programme. The EU's website maintains a full list of the programmes at the following link: http://www.2007-2013.eu/community.php

Despite being a part of the EU's institutional architecture for almost a decade, very few contributions to the agency literature, or the wider literature on delegation in the EU context, have incorporated these agencies into analyses.[2] One potential reason for this is that executive agencies maintain very different responsibilities from the bodies studied in the bulk of the agency literature. This literature focuses primarily on bodies typically grouped under the term 'regulatory agencies'[3], which perform *regulatory and informational* functions, rather than the *management* tasks assigned to executive agencies. Moreover, unlike regulatory agencies, which have a certain degree of autonomy, very little discretion is intended to be afforded to executive agencies, which has led to them being viewed as purely technical bodies (Groenleer, 2009). As a consequence, studies have tended, where executive agencies are mentioned at all, to make a distinction between 'regulatory agencies' and 'executive agencies', with executive agencies effectively being excluded from the analysis. Flinders (2004), for instance, outlining his focus on regulatory agencies, presents a typical example:

> There is no single model for a European agency. However, it is possible to identify two broad types. Executive agencies are responsible for purely managerial tasks; for example, assisting the Commission in implementing the Community's financial support programmes. These agencies enjoy limited discretion. By contrast, regulatory agencies are actively involved in the executive function and enjoy a degree of discretion in relation to regulating a specific sector. They have been created as a specific tool of

[2] For a notable exception see Curtin, 2006: 93-94, which provides a discussion on the role of executive agencies.
[3] As chapter four illustrates, the term 'regulatory agency' is a broad one which incorporates some agencies with no significant regulatory responsibilities, such as the EU's criminal intelligence agency, EUROPOL.

> governance and are intended to make regulation consistent throughout the EU by networking at the EU level and co-ordinating national regulators in their specific field. These regulatory agencies… and the calls for new and stronger European regulatory agencies, are the focus of attention in the rest of this article. (Flinders, 2004: 524-525)

While there is certainly no reason to take issue with individual scholars who choose to concentrate exclusively on regulatory agencies in their analyses, there are some strong reasons for subjecting executive agencies to empirical investigation. First, it is difficult to accept the implicit notion that executive agencies should be systematically overlooked in studies of European agencies on the grounds that they lack discretion in their activities. Even in the hypothetical case of an agency which has virtually no autonomy, the process of delegation and the arrangements used to keep this agency in check would still constitute a potentially fruitful area of study. Theories of delegation do not rely on the type of bodies which are created, or the amount of discretion afforded to these bodies; rather, they seek to capture why delegation, in a variety of different contexts, occurs, and how control over this delegation is realised. The joint-issues of why powers have been delegated and how delegating actors maintain control are just as relevant to executive agencies as they are to regulatory agencies.

Second, the history of bureaucratic structures and agency creation should serve to illustrate that simply declaring a body to have limited discretion does not necessarily ensure that this is the case in practice, or that it will remain the case over time (see for instance, Niskanen, 1971). Indeed, in the case of the control and monitoring mechanisms required to ensure that an agency remains under strict control, there is ample material for examination. If executive agencies are held under

the kind of strict authority assumed in the agency literature, with their autonomy almost completely curtailed, then this is worthy of investigation in its own right.

Third, the process which has produced executive agencies is qualitatively different from that which has produced regulatory agencies. While this makes situating executive agencies within the wider agency literature more problematic – and thereby provides an incentive for studies to focus exclusively on regulatory agencies – it also raises the prospect that executive agencies are a novel institutional development. Regulatory agencies are products of the EU's legislative process, in which national governments play the primary decision-making role over the design of new agencies; although scholars have also noted the influence exerted over the design of regulatory agencies by the Commission (Hauray, 2006) and the Parliament (Kelemen, 2002). Executive agencies, in contrast, are bodies set up by the European Commission. The responsibilities delegated to executive agencies are tasks which were originally carried out by the Commission itself. As Curtin (2006) states, this has implications for how we conceive of delegation at the European level:

> Most existing studies that apply the principal-agent framework to the EU view member states as principals who delegate powers to supranational agents, typically the Commission. With the manner in which the political system of the EU has evolved over the course of the last decade or so this analysis reveals too limited an understanding of the nature of the integration process. It overlooks for example the fact that the Commission acts itself as a Principal in the case of delegation to (some) European Agencies. Over time the Commission, for a variety of reasons, has sought to delegate its own powers and tasks to others. First it did so in an

> informal fashion to private third parties and did not institute a system of control of the powers thus 'delegated'. More recently as a result of criticisms of this informal system it instituted a novel system of so-called 'executive agencies' with clearly defined (management) tasks. The main objective underlying the creation of such Executive Agencies is to empower structures with their own legal personality distinct from a Commission department with the execution of management tasks (inter alia implementation of a Community program) that are not directly linked to 'tasks requiring discretionary powers in translating political choices into actions' that the Commission wants to keep under its direct control. (Curtin, 2006: 93)

Although supranational bodies, such as the Commission and Parliament, do play a role (alongside the member states) in the delegation of powers to regulatory agencies, the case of executive agencies is altogether different. Here, the Commission is the key actor in delegating its own responsibilities to newly created agencies. These responsibilities, as stated, were originally delegated to the Commission by national governments. Thus executive agencies represent the first instance of what can be termed the 'delegation of delegation' in the EU context, where powers invested by national governments into a supranational body (the Commission) have in turn been delegated to new agencies created at the supranational level.[4] The potential implications stemming from this form of delegation have, as yet, not been explored in the agency and delegation literature in the EU context.

[4] With this stated, it could be argued that the first example of the 'delegation of delegation' occurred when the Commission employed private contractors to carry out management tasks and that executive agencies have continued this legacy. Regardless, the concept still constitutes one of the key distinctions between the delegation processes to regulatory and executive agencies.

Aims and Outline of the Thesis

This thesis takes inspiration from the above points and subjects executive agencies to a full empirical analysis. There are three research aims: 1) to study executive agencies empirically to provide an account of the reasons why they have been delegated responsibilities and the way in which delegation has occurred, including the accountability mechanisms used to maintain control over their activities; 2) to test the conceptual value of approaches to delegation in the EU context and identify the approaches and models which can account for delegation to executive agencies; and 3) in accordance with the second research aim, to assess whether the concept of the 'delegation of delegation' necessitates refining approaches to delegation in the EU context and what implications this may have for the wider delegation and agency literature.

The thesis is structured as follows. Chapter two provides the theoretical framework for the thesis, focusing on both rational-choice and constructivist approaches to delegation. An overview of the principal-agent approach is presented which introduces the key concepts of the perspective and some of the anticipated rationales for principals choosing to delegate responsibilities to agents. The chapter then focuses on the influence of rational-choice/principal-agent approaches to delegation in the context of EU studies. The discussion traces the use of these perspectives from some of the earliest applications, such as that of Mark Pollack (1997), through some of the debates and potential complications associated with employing a principal-agent approach to the case of delegation to the European institutions. Two issues are considered in particular. First, consideration is given to

Giandomenico Majone's (2001) refinement of the rational-choice approach to take account of delegation for 'credibility reasons', in which Majone conceives of delegation as a means for principals to make credible commitments by enshrining policy actions in independent bodies. Second, the 'multi-principal' approach of Renaud Dehousse (2008) is assessed, which seeks to incorporate inter-institutional rivalry between the member states, the Commission and the Parliament in a model of delegation to EU agencies. The chapter concludes by articulating some constructivist approaches and introducing the concept of isomorphism. A distinction is made between 'internal' isomorphism, where institutional forms spread between EU bodies, and 'external' isomorphism, where institutional forms are exported from out with the EU context. The concept of 'endogenous preferences', developed by Simon Hug (2003) is also introduced, which views delegation and institutional design choices as reflecting the 'in-built preferences' of decision-makers. The overall purpose of the chapter is to review the available literature on delegation in order to isolate specific models which can then be tested on the case of delegation to executive agencies.

Chapter three outlines both the methodology and the research design of the thesis. The research uses a mixed-methods approach of primary document analysis and qualitative interviews to meet the research aims. Documents analysed include European legislation, reports produced by executive agencies, data sourced from the European Court of Auditors on the activities of executive agencies, and other formal communications by the European institutions. The qualitative interviews were conducted in three separate fieldwork trips to Brussels, funded by an Economic and Social Research Council research grant, between October 2009 and October 2010. The interviews were with management level staff at all six agencies, with further communications taking place with staff at the European institutions. Having outlined

the methodology, the chapter isolates six models of delegation for use in the empirical study of executive agencies. Three of these models are derived from the rational-choice literature: 1) a principal-agent model; 2) a model based on Majone's conception of delegation for credibility reasons; and 3) a multi-principal model articulated in accordance with Dehousse's (2008) perspective. The remaining three models are derived from the constructivist literature: 1) a model of 'internal' isomorphism; 2) a model of 'external' isomorphism; and 3) an endogenous preferences model of delegation to executive agencies. Accompanying the models are some key factors which are used to test the value of each approach.

Chapters four and five provide the empirical context for the thesis. The discussion in chapter four highlights a number of tensions inherent in the EU's institutional structure which have shaped institutional design choices. It then provides an overview of the growth of European agencies and the agency literature which has analysed this process. Finally, the chapter focuses on the developments which lead to the creation of executive agencies, specifically the failure of the previous system of using private contractors to manage community programmes and the Kinnock reforms, which were enacted after the resignation of the Santer Commission. Chapter five continues this discussion by outlining the history and structure of executive agencies, drawing on the primary document analysis and qualitative interviews conducted during the research to provide an overview of each of the six agencies.

Chapter six assesses the key factors put forward in chapter three to provide the analysis required to test each of the six models of delegation. There are four parts to this discussion. First, there is an analysis of the role of the European institutions in the creation of executive agencies. Second, the rationale behind the act of delegation is assessed, focusing on the views of the European institutions and the views put

forward by staff at each of the six agencies. Third, the factors which have influenced the structure and design of executive agencies are considered. Last, the accountability mechanisms adopted in delegation to executive agencies are analysed, drawing in particular on the types of indicators used in the formal reporting procedures used by the agencies.

In the final chapter, the key findings of the thesis are articulated. First, a summary of the findings is provided, with an assessment of the conceptual value of each of the six models of delegation to executive agencies. Second, some of the limitations of the research are considered. Finally, the overall contribution of the thesis is outlined, together with an assessment of the importance of the 'delegation of delegation' to the wider agency and delegation literature.

CHAPTER TWO: THEORETICAL FRAMEWORK – DELEGATION THEORY AND THE EUROPEAN UNION

Delegation has traditionally posed a problem for those interested in the design of organisations. A widespread – and usually entirely reasonable – assumption made in political science is that a given actor will tend to want to maximise his/her own control over a particular area. Bureaucracies, if given half a chance, will maximise their resources; politicians will attempt to gain control over the most important instruments of government; and nation states will try and exercise the most influence over international negotiations. Given this background, the case of actors granting their powers and responsibilities to other sets of actors has always appeared counter-intuitive: a concern which is often formalised as 'the problem of delegation'.

As in any other area of the social sciences, there are typically two ways from which to approach this problem: via perspectives which place individual choice (agency) at the heart of explanations and via those which emphasise broader social or institutional forces (structure). This dichotomy can be expressed using any number of different labels and in countless different varieties, but the idea is essentially the same: in looking for an explanation for the behaviour of human beings we might wish to emphasise the ability of individuals to make choices, or, alternatively, the capacity of the structure within which individuals are located to influence the decisions which are made. In the context of this thesis, the two terms adopted are 'rational-choice' and 'constructivism', but other terms may be just as appropriate. Rational-choice implies a degree of rational determination on the part of actors while constructivism implies that actions are to an extent 'constructed' by the environment within which they take place. From a rational-choice perspective, for instance, we might seek an answer to the problem of delegation by isolating reasons why it is rational for a given actor to

transfer their responsibilities to another. From a constructivist perspective, we might look toward institutional forces which have led to an actor making the decision to delegate.

The purpose of this chapter is to provide an overview of the various theoretical approaches and insights which have sought to address the problem of delegation, before turning to the ways in which delegation has been studied in the context of the European Union. In conducting this review, both rational-choice and constructivist approaches are considered. Although these two perspectives are often presented as largely irreconcilable bodies of literature that can only be brought into contact by complex 'dialectical approaches' and 'meta-theories', for the purposes of this thesis the two approaches are treated simply as broad frames of reference. Ultimately the aim is to arrive at models of delegation which provide the most accurate and useful account of delegation within the EU context: which is to say that they explain why delegation has occurred and how it has been implemented in practice.

As will be seen in the outline of the formal models below, there is indeed significant overlap between models that have emerged from both rational choice and constructivist approaches. There is, in reality, nothing unusual or problematic about this: it is entirely possible for two investigations to start at opposite points of view and arrive at the same conclusion. While they may end up at the same point, however, the discussion may facilitate a more nuanced understanding of the subject. By approaching the problem from each of the two perspectives, isolating models of delegation from both approaches and applying them to a specific case in the EU (delegation to executive agencies), the research presented in this thesis can make a contribution to both the theoretical and empirical literature on delegation in the European Union.

The Rational-Choice Perspective on Delegation

Rational-choice perspectives on delegation have dominated the field of delegation scholarship. Indeed, the recent history of delegation literature is essentially a rational-choice one, with the bulk of the main theoretical insights coming from this perspective. This does not mean that rational-choice perspectives have a unique claim to legitimacy, but there have been few contemporary studies of delegation which cannot be located within a broad rational-choice framework.

Undoubtedly the most influential development in the last thirty years has been the emergence of principal-agent (P-A) theory, an approach originally applied in the context of American economic studies, but which has since been adopted across numerous areas of political science. P-A theory was primarily developed by the American economist Terry Moe (Moe, 1984; 1989) as an analytic expression for the transferral of power by one actor, or set of actors (principals), to another (agents), and the various control mechanisms which may be employed by principals to ensure agents comply with their contractual obligations once this delegation has occurred. In the original conception 'principals' were typically shareholders of a business or firm contracting 'agents' to carry out particular tasks deemed beneficial to the shareholders; however the framework can essentially be adapted to fit almost any situation where one party employs another to perform a specific task.

As a model firmly rooted in the rational choice tradition of social science, there is an assumption that behaviour within principal-agent relationships will be based on reasoned assessments of self interest (Moe, 1984; 1989). Put simply, individuals will assess, to the best of their ability, the various costs and benefits associated with a particular action and alter their behaviour accordingly. With

reference to the problem of delegation, the solution offered is straightforward: in certain circumstances principals may find that it is in their own interest (however this is defined) to delegate responsibilities to other actors.

Although this perspective is simple and intuitive, it has a number of implications. With reasoned assessments of self interest forming the primary motivation for behaviour, there is also recognition that there will always be some discrepancy between the motivations and goals of principals and agents. Just as two countries located in different parts of the earth have, by virtue of their geographic location, different resources and interests to defend; the differing position of two parties in a contractual relationship ensures that the interests of principals and agents are never likely to correspond entirely with one another. They might broadly share the same ideals, have the same principles and work closely together on a number of projects, but when pushed to the margins, there is always the potential for interests to come into conflict with one another.

Consider the example of a doctor and a patient. If a patient decides to pay a doctor directly for their healthcare, then the two parties would essentially have entered into a contractual relationship. Taken at face value, both patient and doctor would appear to have a compatible set of interests: the patient has a stake in remaining healthy and the doctor also has a stake in ensuring the patient's health (or at least that they remain alive) in order to continue receiving payment. If this relationship is pushed to extremes, however, it is not difficult to uncover potential discrepancies in the motivations of each party. A patient in perfect health, after all, is not in much need of a doctor. If payment is made at the point of use, then the situation arises in which a doctor only benefits from maintaining a patient's health up to a

certain point, but not in raising the patient's health to such an extent that they no longer have any use of the doctor's services.

In the modern world, of course, the situation in which doctors can keep patients ill would never be allowed to develop. Healthcare services are usually funded indirectly through public spending or private insurance systems; where direct payments are made to doctors or hospitals there are strict safeguards in place. However, the potential for conflicts of interest, even in relationships where a large element of trust is involved – as in that between a doctor and a patient – is entirely real and the contracts governing such relationships are generally framed around the principle of ensuring that the goals and motivations of contractual parties are kept as compatible as possible.

The use of contractual terms in this way had already received extensive attention from scholars such as Barry Mitnick (Mitnick, 1973; 1975; 1980) and Stephen Ross (Ross, 1973) prior to Moe's work on P-A theory. Mitnick (1973), in formulating what he termed a 'typology of agency', had identified the goals and motivations of contractual parties as a key area of interest and outlined a number of ways in which these interests can be manipulated by contractual terms. One of the more interesting aspects of Mitnick's work was his conception of electoral politics as a form of contract, to the extent that politicians hold office on the basis of a "mutually understood agreement to represent the electorate in some sense" (Mitnick, 1973: 20). As Mitnick points out, the way in which this 'contract' is structured can lead to politicians engaging in different kinds of self-interested behaviour.

Several studies, for instance, have attempted to assess the notion that different electoral systems can lead to different types of political behaviour from elected representatives (for example Norris, 2004; Carey and Shugart, 1995). One common

argument is that democracies which use forms of constituency voting, such as in the 'first past the post' system used in UK elections, tend to promote political behaviour which is more focused on local issues as opposed to national issues. In contrast, other systems, such as proportional representation systems involving a national vote for political parties, may promote different forms of self-interested behaviour. Politicians elected to office under these systems, it is argued, will tend to display actions with a greater national focus and act more closely in accordance with the leadership of their political party (Norris, 2004).

There is no consensus on the nature of the effect an electoral system has on political behaviour. In the case of constituency/national voting, the empirical evidence is fairly mixed. In a study of the German electoral system, for instance – which features both members of parliament elected through constituency voting and members elected via a national party list – Wessels (1997) finds that there is little difference in the local/national focus of German politicians elected by constituency and national voting. Stratmann and Baur (2002), alternatively, find that German politicians elected by constituency voting are more likely to serve on local level committees and to take a closer interest in issues affecting their districts. Ultimately, as Norris (2004) argues, the effect of different electoral systems on political behaviour can be difficult to pinpoint; however there is little question that changing an electoral system can have an impact on the types of politicians which are elected and their focus in gaining re-election.

Whether we view these issues as pertaining to formal contracts, electoral politics, or any other relationship, the essential point in the P-A framework is that the position of principals and agents is always a factor in determining their own interests. The terms of their relationship may be altered to bring the interests of both parties

closer together, or to provide incentive structures for agents to act in the interests of principals, but there will always be the potential for conflicts in interest to arise.

Information / Knowledge

In addition to a divergence in interests, the position of contractual parties in a P-A relationship also affects the levels and types of information that are available to them. One typical implication of the transferral of duties from principals to agents is that agents will come to possess more direct information over how activities are conducted on the ground. Principals, having handed over their responsibilities, may have to rely on more indirect methods for acquiring information, such as formal communications and monitoring mechanisms. For Moe, these informational 'asymmetries' have the potential to provide a strategic advantage to agents wishing to maximise their interests at the expense of those of the principal (Moe, 1984; 1989).

It is worth stating that although direct involvement in an activity can present opportunities for agents to maximise their interests, this is not always the case. It is easy to conceive of a situation in which direct 'hands on' involvement in a task actively inhibits an individual's level of knowledge. A soldier on a battlefield, for instance, may have direct knowledge of fighting on the frontline; yet this information is unlikely to provide an in-depth understanding of the general military situation or the soldier's position within it. Such information can only be gained from taking up a position which provides a broader overview of developments and it is questionable whether direct involvement presents any strategic advantage to participants in these cases.

An alternative view of informational asymmetries rests not on the direct/indirect participation of individuals, but rather on their level of expertise. Again we could return to the example of a doctor and a patient. Here the patient has direct involvement in every medical procedure – indeed they have more direct experience of the healthcare they are receiving than anyone else – but this experience can only provide an incomplete understanding of their situation due to the complexity of the environment. Without being trained in medicine or human biology, a patient is unlikely to acquire more advanced knowledge of their condition than a qualified healthcare professional.

The development of expertise also has implications for the effectiveness of reporting and monitoring mechanisms. If agents possess more expertise in a given field than their principals, then it becomes difficult for principals to ensure that they have a full picture of agents' activities. Indeed, the nature of a reporting/monitoring system may itself reflect the judgements of agents. In the case of healthcare in the United Kingdom, for example, the regulation of doctors is overseen not by politicians or a government agency, but by a body composed largely of medical representatives (the General Medical Council). This principle of self-regulation can generally be justified in cases where authorities, such as national parliaments, are unlikely to possess the necessary expertise to effectively hold individuals to account. In many cases the individuals who can most successfully develop monitoring mechanisms are agents themselves.

If a divergence of interests between contracted parties forms the basis for the P-A framework, then information is the currency through which the P-A system operates. Just as the interests of principals and agents are never likely to be aligned perfectly with one another, informational asymmetries are always likely to exist

between the two parties. Although it is possible to conceive of situations where principals may have the upper hand in terms of expertise, the very fact that both parties possess different types of knowledge makes certain that opportunities will always exist for agents to deviate from the wishes of principals. For Moe, this ensures that delegation will almost always entail some form of loss for principals (Moe, 1989).

The precise nature and magnitude of this loss will depend on the principal's efforts to ensure the compliance of agents with their demands. Losses may be conceived of as 'agency loss', roughly corresponding to the actions of agents running counter to the interests of principals, and 'agency costs', which stem from the expenditure associated with control and monitoring mechanisms designed to ensure compliance (Moe, 1989). The difficulty posed for principals in establishing control over agents under conditions of asymmetric information is termed the 'principal's problem' (Ross, 1973) and if the combined expenditure of agency loss/costs is such that it outstrips the benefits acquired, then principals should refrain from delegating (Kiewiet and McCubbins, 1991).

Agency Loss: Shirking and Slippage

Two distinct variations of agency loss can be identified within the P-A literature: agency shirking and slippage. Although the precise use of these terms varies, agency shirking is generally associated with agents exhibiting a lack of application during their employment which generates undesirable outcomes for principals (Moe, 1984). When groups of agents are employed, this problem may be particularly apparent due to the potential for individuals to 'freeload' by allowing other members of the group

to carry a disproportionate weight of responsibility while conducting their contractual tasks. As Moe (1984) attests, a team consists of individual members who know that any reward conferred on the team as a whole will be shared between the constituent parties. Shirking, however, provides a reward, in the form of a decreased expenditure of labour and time, on to the individual alone. In this situation individuals may have an incentive to neglect their contractual obligations, particularly when principals possess inadequate information concerning the conduct of agents.

Shirking may also be understood, more generally, as any form of active non-compliance stemming from the individual characteristics of agents (McCubbins and Page, 1987). Moe (1984) identifies this as a problem of 'adverse selection', where principals enter into a contractual relationship with agents who are liable to act counter to their wishes. In the political context, there are a number of factors which can increase the potential for non-compliance. An agent possessing political allegiances which deviate significantly from those of their principals, for instance, may be more prone to reneging on contractual obligations than an agent with complementary beliefs. Similarly, those with strong ideological inclinations will be more likely to deviate from mandates than moderate or relatively apolitical individuals. This problem is likely to be exacerbated when a high degree of informational asymmetry exists between the contracting partners at the outset (Moe, 1984).

In contrast to shirking, slippage refers to incidences of non-compliance which are facilitated by institutional factors (McCubbins and Page, 1987). Put simply, there may be situations where the structure of relations between principal and agent provides incentives for an agent to act in an undesirable way, even if the selected candidate represents a 'good choice' for a contracting partner. An example is the

substantive effect decision-making procedures can have on outputs. A regulatory agency assigned responsibility for regulating a particular sector of the economy, for instance, will possess certain procedural rules which govern the agreements between members of the agency necessary to produce regulations. The precise nature of these rules, however, can have a significant impact on the types of outputs produced. Mechanisms liable to promote competition and disagreement between members, such as simple majority voting, will produce more contentious and divisive outcomes than procedures which rely on principles of unanimity or consensus decision-making. Consequently, outputs which deviate from the wishes of principals may have their origins in institutional flaws as opposed to the personal characteristics and professional conduct of the agents themselves.

Solving the Principal's Problem: Control and Monitoring Mechanisms

In order to minimise the impact of agency loss, a variety of control and monitoring mechanisms may be employed by principals. Whilst a vast body of literature exists with regard to the various mechanisms available to principals, a common classification is to distinguish between *ex ante* and *ex post* controls. The distinction is relatively simple, with *ex ante* controls referring to the ways in which relations between principals and agents may be structured at the outset in order to minimise the potential for non-compliance and *ex post* controls incorporating mechanisms which can be employed by principals after delegation has occurred.

In economics, *ex ante* controls are relatively easy to identify as relationships are typically governed by a formal contract; however in political science these issues are often questions of institutional design and the ways in which the institutional

framework of a political body may be structured to ensure beneficial results. The key factor in this context is the level of discretion which is afforded to agents, with high levels of autonomy usually corresponding to high levels of risk with regard to non-compliance. While limiting the discretion of agents may lower this risk, it may also have negative consequences by inhibiting the ability of agents to pursue their objectives effectively (McCubbins and Page, 1987). Only by striking the right balance between the benefits to be acquired from granting agents a high level of autonomy and the *ex ante* controls required to minimise incidences of non-compliance, can principals ensure that delegation will prove a profitable course of action.

Ex post controls may, in turn, be separated into two distinct techniques. First, there are a range of sanctions which principals may impose, or threaten to impose on agents, to encourage compliant behaviour. Examples of these are budgetary reductions, changes in personnel, altering the agent's mandate or, in more extreme cases, the suspension or termination of contracts (Pollack, 1997). Like *ex ante* controls, the issuing of sanctions must be balanced against the various costs associated with their use. They are best conceived of not as a simple punishment, but as a tool to alter the incentive structures which underpin the behaviour of agents (McCubbins and Page, 1987). Anticipated rewards to be derived from non-compliance may be counterbalanced by the threat of sanctions and, consequently, agents may be encouraged to uphold their commitments.

A second, complementary set of techniques, are monitoring mechanisms which aim to redress informational asymmetries and provide a more accurate picture of the conduct of agents. McCubbins and Schwartz (1984) famously distinguish between two kinds of monitoring mechanism: 'police patrol' oversight, where principals actively observe the behaviour of agents throughout the duration of their

employment and ‘fire alarm’ oversight, in which no active monitoring occurs, but instead principals are alerted to suspected infringements by third parties. Banks and Weingast (1992), for instance, identify interest groups as a source for fire alarm oversight of regulatory agencies as they possess the capacity to inform government policymakers of inadequacies in regulatory outputs and active transgressions from regulators.

Although this form of fire alarm oversight is less expensive than the detailed observation mandated by police patrol techniques, there are, nevertheless, some clear limitations. Police patrol oversight is liable to be more extensive and identify facets of non-compliance which may be missed by the actors upon which fire alarm oversight is reliant: in the case of interest groups, it is apparent that many regulatory developments may take place in private committees or decision-making panels which interest groups will be prohibited from witnessing first hand. Moreover, whilst police patrol oversight has the potential to redress fundamental informational asymmetries and reduce the general risk of agents reneging on their commitments, fire alarm oversight is a simple preventative measure which provides no such benefits to principals. As such, it is only ever likely to act as a temporary safeguard and will have little impact on the underlying factors which encourage agent transgressions.

Why Delegate?

The discussion above has already touched on some of the reasons why principals may choose to delegate responsibilities to agents. We have stated broadly that, as P-A approaches take their lead from the rational choice tradition, delegation is assumed to occur when there is expectation amongst principals that it will provide them with

certain practical benefits which outweigh the costs associated with the process, but what specific functional benefits can principals anticipate? Clearly, the rationale for delegating is heavily dependent on the specific circumstances of an individual case; however, drawing on the work of Thatcher and Stone Sweet (2002), a loose typology of these benefits may be outlined for the political context.

First, delegation may be motivated by a general desire to enhance efficiency. There are numerous scenarios in which delegation may be anticipated as providing efficiency gains, but the most common of these occurs when there is a belief that an element of specialisation can enhance decision-making processes. Many political agencies, for instance, have been created to alleviate the legislative burden on parliament which stems from regulating particularly complex fields of activity such as nuclear power, telecommunications and scientific research. In these areas the complexity and time-consuming nature of legislative debates can often be ill-suited to the general decision-making of a central legislature. In the case of nuclear power, for example, parliaments may possess the capacity to produce broad pieces of legislation governing the closure and construction of power plants, the disposal of nuclear waste and other related concerns, but might struggle with issues of a highly technical nature, such as the desired specifications of reactors, or detailed safety measures. Moreover, advances in technology may necessitate new legislation at a pace which is exceptionally difficult for national parliaments to achieve. The investment of resources required for parliamentary politicians to effectively legislate on complex issues of this nature can make the solution of delegating responsibilities to a semi-autonomous body of experts, such as the Nuclear Regulatory Commission in the United States, a desirable option for political authorities wishing to enhance the efficiency of decision-making.

Second, delegation may be viewed as a means to increase the quality of policy outputs by utilising the expertise of agents. To continue with the example of nuclear power, it is clear that employing a specialised group of experts to produce legislation will not only enhance the speed and efficiency of the process, but can also provide important improvements to the quality of outputs produced. As few politicians present in a national parliament will possess an advanced knowledge of nuclear technology and other complex fields, it is reasonable to assume that most parliamentary outputs in these areas will be heavily influenced by consultations with experts; however delegation may provide important benefits over and above consultation. A politician's knowledge of a particular issue can never be as complete as that of the consulted expert and delegation presents an opportunity to overcome the problems of imperfect lines of communication and benefit directly from an agent's expertise. Moreover, it is clear that, even with regard to the most technical issues, there will always be a divergence of opinion amongst experts. Where two experts disagree, the burden for determining which competing perspective should prevail will fall on politicians who may be unable to adequately assess the relevant merits of each position. By delegating authority to a group of agents, principals can ensure that outcomes emerge from informed debates between experts as opposed to the incomplete understanding of political decision-makers forced to adjudicate between competing viewpoints.

While the above dynamic is true for complex regulatory fields like nuclear technology, it is also true for areas of political activity with a relatively low level of complexity. Following the basic division of labour principle, the very act of creating a specialised body responsible for a given task (e.g. overseeing the implementation of policy decisions or the management of a particular programme) can lead to an increase in expertise and efficiency. Even the most mundane of management tasks can

incorporate certain nuances which are best appreciated by a specialised body and it may be anticipated that transferring some degree of decision-making authority in this manner will lead to improvements.

A third motivation for delegation stems not from a desire to enhance the efficiency and effectiveness of decision-making processes, but from political calculations. If rational assessments of self interest underpin the decision to delegate, then it is clear that the interests of an individual actor do not always go hand in hand with the interests of the organisation within which that actor is located. Put simply, political actors may make decisions simply because it enhances their own political position and not because it is anticipated that their actions will lead to tangible improvements in a policymaking process. Granted there is usually a link, indirect or otherwise, between a principal and the success of his/her decisions, but in certain circumstances it can undoubtedly be in the interests of political actors to use delegation as a means to enhance their own position, over and above any actual benefits acquired.

One of the most common arguments of this nature is that delegation may be utilised as a means for political principals to shift the blame for unpopular policies on to a third party (see, for instance, Fiorina, 1982). Although the ultimate responsibility for a policy may rest with the principal, it can be a useful political tool to demonstrate that certain powers have been assigned to other parties. Whilst we may conceive of this as a fairly primitive exercise in media spin; the technique can also be used in a more practical sense. Even amongst the most well-meaning of political authorities, for instance, there will always be certain policy goals which principals are prohibited from pursuing due to the inhibiting forces of public opinion. By transferring the responsibility for particular policies to a third party, principals can enable courses of

action which would not otherwise be possible and insulate themselves from any hostile reaction by those social groups voicing objections.

Finally, delegation may be employed by principals to overcome commitment problems. This requires some elaboration, but essentially it incorporates the idea that the delegation of responsibilities to a third party may be used to guarantee the pursuit of policy goals which may otherwise be undermined by certain problems associated with political decision-making. Such assurances are important as many of the activities which political actors are involved in require them to elicit some element of trust from a wide range of actors within society. A government has a stake, for instance, in signalling to commercial interests that it will maintain favourable business conditions within its economic territory. If doubt exists over this guarantee then it may prove difficult to attract investment or encourage profitable businesses to remain under their jurisdiction.

Three main issues can be identified which have the potential to make credible commitments problematic for political actors: collective action problems; time-inconsistent preferences; and political uncertainty (Gilardi, 2002). Collective action problems occur when a group of actors resolve to pursue a joint strategy, but have conflicting motivations which encourage members of the group to renege on their obligations. The potential conflict between individually rational behaviour—the strategies which an individual member of a group will find rational to adopt in order to maximise their own interests—and collectively rational behaviour—the behaviour which will maximise the interests of the group as a whole—is a well known problem in behavioural theory and is not confined to modern political activity. In a classic example from the French philosopher Jean-Paul Sartre, for instance, we are told to conceive of a group of farmers working plots of land on a steep hillside. Each farmer

has a number of trees on their plot which are essential to prevent the soil on the hillside from eroding, but each farmer also has an incentive to remove trees in order to maximise the space available for crops. If one farmer pursues the individually rational strategy of removing trees from his land, then he will prove better off than his competitors, but if every farmer follows this course of action then the group as a whole will be subjected to the negative effects of soil erosion. The conflicting motivations of this scenario mandate not only a joint agreement between the relevant parties, but a mechanism for ensuring that the incentives which encourage individually rational behaviour are counteracted. The solution advocated is to voluntarily invest authority in a third party possessing the capacity to punish farmers who renege on their commitments and thus alter the incentive structures which underpin their behaviour.

Similarly, time-inconsistent preferences stem from a conflict between two forms of rationality: strategies aimed at securing long-term rewards and those which will produce the best possible outcomes in the short-term. It is clear that the actions which provide immediate returns are not always the best choices for the future. A government which opts to run up huge levels of public debt, for instance, may experience some temporary popularity, but such policies run the risk of doing lasting damage to the economy. Indeed, the temptation to pursue short-term goals at the expense of long-term interests—what Elster (1979) terms the 'hyperbolic discounting' of future scenarios—is a particular problem in political decision-making due to the relatively short election cycles which characterise democracies and the subsequent need for politicians to pay close attention to the wishes of their electorate in order to facilitate re-election (Majone, 2001). This can have important consequences when political actors are confronted with issues, such as global warming, which can only be

solved by adopting a perspective which places future concerns above short-term popularity. Despite the recognised importance of these issues, in many instances politicians may be unwilling, or simply unable, to enact necessary long-term solutions, such as environmental taxes, when they remain accountable to an electorate that demands short-term gratification. Only by enshrining lasting policy commitments in a semi-autonomous institution which operates at arm's length from political actors can these problems be alleviated.

The final problem of political uncertainty does not occur from conflicts between different strategies of behaviour, but rather from the reallocation of power which is inherent to democratic governance. Elections entail the periodic transferral of responsibilities between incumbent governments and their successors. Consequently, any government wishing to make long term policy commitments must be able to offer credible assurances that future governments will uphold their political choices. This is a particularly difficult proposition when one considers that successor governments will often possess a necessarily different ideology to the set of political actors they have replaced. Moreover, there are usually strong incentives for a newly elected government to distance itself from the policies of its predecessors. After all, if the incumbent government has failed to secure re-election, these policies must have proven unpopular with the electorate. Again, the solution of investing authority in an institution which is insulated from electoral forces may be seen as a means to credibly commit to long-term policies.

While delegation to enhance efficiency, raise the standard of decision-making or to secure a principal's political position, can be comfortably situated within P-A approaches, delegation to resolve commitment problems sits somewhat uneasily within the framework. The key factor in resolving each of the three commitment

problems is that delegation provides a mechanism for insulating decision-making from principals. The benefit of delegation in this context is not merely that it allows principals to profit from the qualities of agents, but that it actively prevents principals from taking a role in the decision-making process. Concepts such as adverse selection, in which a divergence in interests between principals and agents risks undermining the rationale for delegating, are less relevant to instances where a divergence in interests is a prerequisite for meeting the aims of principals. Likewise, the prevailing concern with ensuring the correct balance between discretion and control mechanisms has only a limited expression in this context due to the high level of autonomy possessed by agents. Moreover, on a general level we may ask whether the P-A approach, such that it attempts to map the relationship between two contracting parties, is applicable to a situation where agents are granted almost complete discretion over how they carry out their tasks. The utility of the P-A framework stems from its ability to provide a more nuanced understanding of contractual relations between two sets of actors; if control is simply handed over to agents and the ability of principals to influence their conduct intentionally curtailed then the efficacy of P-A models appears greatly reduced (Gilardi, 2002).

Delegation Theory and EU Studies

A complete review of all the powers delegated to European institutions would be out with the scope of this section. Nevertheless, a basic outline is required before discussing the way in which delegation has been studied in the EU context. Drawing on Nugent's (2010) standard text, the responsibilities of the European Commission,

Council of Ministers, European Parliament and European Court of Justice (ECJ) can be summarised as follows.

The European Commission, composed of 27 commissioners nominated by the member states, has a central role in the legislative, executive and administrative spheres of the EU. The Commission's primary role in the legislative process is to propose/draft legislation which is then conveyed to the Council and the Parliament, who are the chief decision-making bodies in the EU. Outside of the legislative process, the Commission is closely involved in overseeing the implementation of EU policies. Moreover, as the 'guardian of the legal framework', the Commission monitors the compliance of member states and other actors – such as companies using restrictive practices or abusing their market position – with European law. The Commission is separated into different organisational units, in a similar way to the dividing out of national governments into different ministries and departments. These units, termed 'Directorates General' (DGs), correspond to different fields of activity, such as trade, transport and energy. In addition there are also units dealing with particular services, such as Eurostat, which produces statistical information on activity within the EU (Nugent, 2010).

The Council of Ministers is the vehicle through which government ministers from the member states meet and negotiate positions. As such it is not an institution which has been delegated any powers by member states, but rather the representation of member state governments at the EU level. The Council essentially acts in three separate areas. First, the Council's decision-making role in the legislative process ensures that draft legislation produced by the Commission must be agreed to/amended by the Council before it becomes law. As Nugent (2010: 140) notes, although the Council is limited in its ability to initiate legislation by the powers delegated to the

Commission, in practice there are mechanisms available for the Council to influence this process, for instance by requesting that the Commission produces a report on a particular issue. Second, the Council maintains some executive functions which are not delegated to the Commission, particularly in areas such as foreign and defence policy. Last, in association with the European Council – the summit-style meetings of member state heads of government – the member states negotiate joint positions which influence the overall direction and priorities of the EU as a whole.

The European Parliament, composed of MEPs elected by voters in European elections, provides democratic representation for citizens at the EU level. The Parliament plays a key role in the legislative process, which has been strengthened significantly in recent years. In the past, certain policy areas incorporated a 'co-decision' procedure (originally introduced by the Maastricht Treaty in 1992) in which the Parliament had to agree to any piece of legislation proposed, along with the Council. In other areas, a 'consultation' procedure was adopted in which the Parliament only held advisory powers and the Council could therefore refuse to comply with its recommendations. In practice, the past few decades have seen the co-decision procedure extended into the vast majority of decision-making areas – so much so that it is now termed the 'ordinary' legislative procedure – although the consultation procedure and the 'consent procedure' (in which the Parliament can veto, but not amend legislative proposals) are still used in certain areas (Nugent, 2010). The Parliament's remit also extends to important budgetary tasks, including putting forward amendments to the EU's budget and adopting the final budget. Last, the Parliament has supervisory responsibilities over the Commission, which include

approving the nomination of Commission President, and it ultimately has the power to dismiss the Commission in its entirety, although this has yet to be used in practice.[5]

Finally, the European Court of Justice is the institution charged with overseeing and ruling on cases related to EU law. Its main duty is to ensure that EU law is interpreted and applied correctly. The ECJ is composed of 27 judges appointed by the member states (one judge for each EU member) for six year terms, with a sub-court – the General Court (previously referred to as the 'Court of First Instance') – dealing with more routine cases, which may be referred to the ECJ on appeal. As Nugent (2010: 223-225) notes, however, the ECJ has proven to be far more than a passive observer when it comes to adjudicating EU law, in part because EU legislation is often vaguely stated and therefore affords significant opportunities to the ECJ to 'fill in the gaps' in its rulings. As Alter (1998) states, the ECJ is also unusual for an international court in the sense that it: "can declare illegal European Union (EU) laws and national laws that violate [the treaties] in areas traditionally considered to be purely the prerogative of national governments, including social policy, gender equality, industrial relations, and competition policy, and its decisions are respected" (Alter, 1998: 121).

In addition to the institutions above, two further institutions and a number of other bodies and agencies operate within the EU's framework. The two institutions are the European Central Bank (ECB), which administers the monetary policy of the single currency (Euro), and the European Court of Auditors, which was established to audit the accounts and activities of the other institutions. Some of the other agencies and bodies, such as EU regulatory agencies (and of course executive agencies) are discussed in later chapters.

[5] The power came closest to being used during the crisis surrounding the Santer Commission in 1999, which is discussed in detail in Chapter Four.

P-A Theory and the European Union

In the past fifteen years, principal-agent theory has become the dominant approach for analysing the powers which have been delegated to the European level. In many respects this is not surprising as the approach presents a range of benefits for scholars of European integration.

First, it constitutes a framework through which the complex institutional arrangements that comprise the EU can be analysed. While perspectives on the EU are exceptionally varied, one point on which almost everyone is agreed is that the EU presents a challenge to political scientists due to the various overlapping responsibilities and competencies which are shared between different actors. Members of national governments, the European Commission, European Parliament and countless other agencies, bodies and interest groups, all have a stake in the European policy process. Mapping the relationships between these actors is a difficult endeavour and necessitates an approach which is capable of capturing the lines of accountability between a wide range of parties.

Moe (1984) regarded the ability of P-A theory to account for complicated organisational relationships as one of its key strengths. He argued that many analytical approaches used in the study of complex organisational structures often had the unintended effect of magnifying complexity, rather than reducing it. The simplicity of P-A theory, in contrast, lends itself to analyses which can reduce organisational structures to those features which are of most relevance to explanations. In Moe's words: "[P-A theory possesses] demonstrated value in clarifying what the relevant aspects of hierarchical relationships are. It cuts through the inherent complexity of organizational relationships by identifying distinct aspects

of individuals and their environments that are most worthy of investigation, and it integrates these elements into a logically coherent whole." (Moe, 1984: 757)

Second, P-A theory not only reduces the complexity of institutional arrangements, but achieves this in a manner which does not privilege the role of one institution or set of actors at the expense of another. Early studies of European integration were heavily influenced by macro-level debates on the nature of the integration process. One of the earliest theoretical approaches, neo-functionalism – based on the work of Ernst Haas (1958) – posited that integration in one policy area had the potential to 'spillover' into other areas, ensuring that the integration process was, to a certain extent, self-perpetuating. Although this approach was highly influential in the early days of the European Community, it gradually came under attack from a range of scholars such as Stanley Hoffman (1966) and Andrew Moravcsik (1993; 1998; 2005) who argued for a different theoretical perspective on the nature of regional integration. These approaches, commonly grouped together under the term 'intergovernmentalism', argued that neo-functionalism placed too much emphasis on the supranational component of the integration process and stressed that the actions of nation states remained the dominant factor in explaining outcomes, with integration effectively limited from encroaching into certain areas that impacted upon national sovereignty (Hix, 1999).

The question of which actors are central to explanations of European integration – supranational actors, such as members of the European Commission, or national actors, such as government ministers – has subsequently formed one of the key dynamics in studies of the integration process. Although neo-functionalism and intergovernmentalism have provided many valuable insights for scholars, there is nevertheless a downside to the dominance of this debate. If frameworks implicitly

ratify one of the two perspectives then there is a danger that vital elements may be overlooked in analyses. P-A theory, in the sense that it neither privileges the role of supranational or government actors, therefore possesses the capacity to transcend these debates and provide a more nuanced understanding of the relevant hierarchical relationships.

Third, as Kassim and Menon (2003) have argued, there may be benefits associated with employing a framework for analysing European integration which is also applicable in other areas of political science. Theoretical developments occur more frequently when models and concepts are exposed to a wide range of divergent perspectives. An approach which places transferable delegation processes at the centre of analyses, as opposed to emphasising the *sui generis* nature of European integration, is therefore better placed to benefit from the insights and innovations occurring in other fields of political science.

Why Delegate?

One of the first scholars to adopt the P-A approach in the EU context was Mark Pollack. In Pollack's (1997) study of delegation within the EU, a principal-agent perspective is adopted to provide an account of the reasons why member states have chosen to delegate responsibilities to the European institutions and in order to analyse the interactions between member states and supranational institutions which have taken place after this delegation has occurred. The main thrust of the analysis is to assess the extent to which the main logics of delegation – in his conception, enhancing efficiency, capitalising on expertise and resolving commitment problems – are convincing explanations for the powers which have been delegated.

Pollack's analysis highlights significant areas in which delegation has been utilised in order to enhance efficiency. The main factors leading to this form of delegation are the excessively slow and laborious decision-making processes which characterise debates in the Council and the Parliament. Unanimous or qualified majority voting and extensive negotiations ensure that substantive decisions require a large investment of resources on the part of political actors. The burden of this process has made areas which require a large degree of day to day management, such as the Common Agricultural Policy and the Common Fisheries Policy, particularly ill-suited to decision-making processes within the two institutions. By delegating authority for the running of areas such as these to the Commission, the member states have, it is argued, been able to alleviate some of the legislative burden placed on ministers in the Council and MEPs in the Parliament (Pollack, 1997; 2003).

In contrast, Pollack finds little evidence that delegation within the EU has been motivated by a desire to capitalise on the expertise of agents. While Commissioners possess some knowledge concerning the administration of certain EU programmes and related procedures, the supranational institutions tend to be lightly staffed in comparison to the member states themselves and, in Pollack's reading, possess very low levels of scientific and technical expertise. Indeed, the vast majority of expertise provided at the European level stems from committees of representatives of the member states and not from supranational actors. Moreover, Pollack argues that delegation to the Commission is less common amongst those policies and programmes where a need for significant expertise may be anticipated and that the majority of delegation takes place in purely administrative areas (Pollack, 2003).

More evidence exists for the use of delegation as a means to resolve commitment problems. Pollack argues that the extensive monitoring and sanctioning

powers which have been delegated to the Commission and ECJ are explained primarily by a desire on the part of member states to enhance the credibility of their commitments to the integration process. Similarly, regulatory powers delegated to the Commission in the areas of competition policy and international trade reflect the member states' efforts to overcome collective action problems associated with ensuring free trade within the European Union. As in Sartre's example, there is conflict amongst member states between individual and collectively rational courses of action with regard to removing trade barriers. If all members of the community agree to remove trade barriers then the group, as a whole, is likely to benefit from enhanced free trade. Should one member opt to maintain trade barriers, however, they would gain access to the markets of the rest of community whilst maintaining protection in their own. The regulatory powers delegated to the Commission in this context can best be understood as a mechanism to ensure that member states do not inhibit the development of free trade by pursuing individually rational policies of protectionism.[6]

Pollack's analysis is P-A theory at its broadest and most flexible. With rational assessments of self-interest forming the motivation for delegation, the powers which have been granted to the European institutions can be explained, with varying success, by the practical benefits which emerge from the process. As Pollack (1997) notes, however, this initial approach has its limitations. One major drawback stems from the recognition that simply identifying practical functions carried out by an institution is not enough to establish that the institution was created in order to perform those functions (Keohane, 1984). Although an institution may have been delegated powers

[6] The merits and pitfalls of protectionism are highly contentious and it is possible to make the argument that a state may benefit from abandoning protectionist policies even if other EU states do not reciprocate. The key point here, however, is that states can determine it to be in their own interest to pursue protectionist policies: whether it is genuinely in their interest or not is another question.

with a particular rationale in mind, all institutions develop over time and the situation several years down the line may be entirely different from that originally anticipated.

This is, as outlined above, the basic principle behind the neo-functionalist concept of spillover, in which one type of integration promotes further types of integration in new areas; however we do not need to advocate a neo-functionalist position to see examples of unintended consequences in the integration process. Pierson (1996), for instance, argues that unintended consequences of delegation have occurred due to opportunities being afforded to individuals, such as members of the Commission, Parliament and ECJ, to alter the institutional structure in a manner which maximises their own interests. As Pierson states: "actors may be in a strong initial position, seek to maximize their interests, and nevertheless carry out institutional and policy reforms that fundamentally transform their own positions (or those of their successors) in ways that are unanticipated and/or undesired" (Pierson, 1996: 126). The ECJ, for example, is no stranger to the charge of 'judicial activism', in which it is argued that the Court's rulings have been made for political reasons or to enhance its own institutional position. While we might reject or uphold these claims depending on our own preferences, it is clear that the Court, and indeed the Commission and the Parliament, are at the very least presented with an opportunity to acquire new roles for themselves should their principals drop their guard. All but the most extreme and inflexible intergovernmentalist approaches must therefore concede that decisions made by member state governments can have unintended consequences over time.

Here we see the merit in adopting a principal-agent, as opposed to neo-functionalist or intergovernmentalist, approach. Instead of analysing whether national governments or supranational actors are the dominant players in determining the EU's

institutional structure; the unintended outcomes of delegation decisions may be seen as deriving from the forces of agency, which always have the potential to impact upon outcomes, but which may also be effectively circumscribed by principals. For Pollack (1997; 2003a) the answer to this problem therefore lies in the accountability mechanisms adopted by the member states. Using a similar frame of reference to the *ex ante* and *ex post* controls outlined above, Pollack (1997) has mapped the various control and monitoring mechanisms which the member states have utilised to keep the EU institutions in check. The key insight in this regard is that the discretion of each institution is not a constant across all areas, but reflects the control and monitoring mechanisms which have been adopted. Thus the Commission, in Pollack's analysis, is generally seen as possessing less autonomy than the Parliament or the ECJ because it is subject to more stringent control mechanisms.

Comitology, the procedure under which committees of member state representatives oversee the work of the Commission, can be taken in this reading as a form of 'police patrol' monitoring. Different types of committee, ranging from less intrusive "advisory" committees to the more hands on "regulatory committees", are adopted across the various areas of activity. As such, the level of autonomy afforded to the Commission varies quite significantly from issue to issue. So too, of course, do the costs involved in adopting this form of oversight. Police-patrol oversight is generally taken as entailing higher costs for principals than 'fire-alarm' monitoring; however the different types of committee also entail a different type of cost. The primary manifestation of this cost is in terms of efficiency: a regulatory committee may allow member states to more stringently monitor the actions of the Commission, but it also has a negative impact on the speed at which decisions can be made.

Consequently, the member states have chosen to use advisory committees in many areas as a means to enhance the efficiency of the process (Pollack, 2003a).

While comitology constitutes the primary police patrol method of monitoring the Commission, the chief mechanism for enabling fire-alarm oversight stems from the ability of the European institutions, the member states and individual citizens to refer cases of potential non-compliance to the ECJ. This system naturally rests on the actions of the ECJ in making rulings and as such is one step removed from the member states themselves. Other institutions also play a direct role in monitoring the Commission's actions, with the European Parliament and the Court of Auditors the two clearest examples: the Parliament has the ability to dismiss the Commission in its entirety; whilst the Court of Auditors is responsible for monitoring the Commission's implementation of policies (Nugent, 2010).

Sanctions

Oversight mechanisms ensure that the member states have a number of potential avenues for identifying shirking and slippage by the Commission. For these mechanisms to be used effectively, however, there is also the need for credible sanctions to punish any transgressions which are uncovered. Broadly speaking, five different kinds of sanction available to principals can be identified in the principal-agent literature: budget reduction; replacing or removing staff; over-ruling the actions of an agency with new legislation; complete refusal to adhere to decisions made by the agency; and revising the agency's mandate (Pollack, 1997).

Although the first option of cutting an agency's budget is highly significant in some areas of political science – such as the congressional politics of the United

States – its relevance to the relationship between the member states and the Commission is fairly limited. It would make little sense to cut either the administrative budget of the Commission or the actual budget of Commission-managed programmes if this jeopardised the effective implementation of policies. Budget reductions are more applicable to situations where there are a range of potential recipients of funding and where a variety of institutional arrangements are possible. In the EU, where roles and responsibilities are delineated fairly clearly between each of the European institutions, the sanction is of less importance. The member states clearly cannot transfer some of the Commission's responsibilities to the ECJ, the European Parliament or another European body, and cutting the Commission's budget would in most cases entail such a high cost in terms of efficiency that the member states are likely to refrain from adopting it as a sanction.

Similarly, the option of replacing or removing staff as a sanction is problematic in the EU context. As commissioners are appointed indirectly and for fixed terms, member states tend to exert influence only over reappointments: dismissing one or all of the commissioners is therefore an extreme course of action. In the other institutions there is even less potential for the member states to use reappointments as a sanction. In the case of the ECJ, the same limitations on removing staff which apply to the Commission are just as relevant; however the matter is further complicated by the principle of adopting unanimous rulings. With all judges voting in favour of a particular ruling it would be difficult to single out individual judges for sanctioning, even if it were possible to remove them from their posts. In the case of the European Parliament, reappointments are simply not an option because MEPs are directly elected by European electorates. It would clearly not be acceptable, from a democratic perspective or otherwise, for the member states

to dismiss MEPs so as to encourage compliance with their wishes. The parliament is also not a unified block, but rather a disparate collection of politicians representing a wide range of viewpoints and it makes little sense to hold the entire parliament accountable for decisions, far less to sanction the institution on this basis. Indeed, although member states are responsible for granting the parliament its powers through the treaty process, the situation is complicated by the fact that individual MEPs owe their position to the national electorates who have voted them into office.

Over-ruling decisions with new legislation and the complete refusal to comply with decisions are more legitimate methods of sanctioning in the EU context, but both raise certain issues. The ability of member states to over-rule Commission decisions is constrained by the roles which have been assigned in the treaties. Member states in the Council may amend the Commission's legislative proposals as they see fit, but the Commission also oversees the compliance of member states with their commitments. When the Commission operates in this capacity it is not possible for states to over-rule its decisions; if it were possible for the Commission to be over-ruled in this context then it would not be fulfilling its purpose as a body capable of monitoring the member states. Similarly, member states do not have the option of over-ruling the ECJ in its decisions, as the explicit purpose of the ECJ's role is that it has the power to ensure that treaty commitments are upheld. As Tallberg (2002) points out, the nuances of the EU policy process also make it difficult for the member states to 'legislate over' ECJ rulings. The potential for national governments to refuse to comply with European Parliament decisions has traditionally rested on the type of procedure used in the legislative process. The scope for national governments to refuse to comply with the decisions of MEPs has therefore been drastically reduced since the early 1990s, with the extension of the co-decision procedure.

The final sanction available – that of revising the agency's mandate – is, in theory, the most credible of those available. By virtue of their role in the treaty process, ultimate authority over the institutional framework of the EU rests with the member states. If one of the European institutions deviates significantly from the wishes of national governments, then there exists the potential for member states to alter that institution's mandate in the next round of treaty negotiations. The major limitation in using treaty revision as a sanction is that the treaty process is an extremely lengthy and problematic undertaking which involves both unanimous decision-making amongst national governments and individual ratification within each state. Its potential effectiveness as a sanction also varies quite considerably depending on the institution involved.

In the case of the Commission, it is worth noting that the treaty process is not the only mechanism through which the Commission's mandate can be revised. As Nugent (2010) notes, several of the Commission's responsibilities are granted by secondary legislation such as Council regulations, which are not produced through the same stringent procedures that characterise the treaty process. While this might make the sanction a more credible threat to the Commission, however, the ability to revise the mandate of the Parliament is problematic for a number of reasons. As noted above, it makes little sense to hold the parliament accountable for the opinions and decisions of certain MEPs. Moreover, the Parliament has been delegated responsibilities, and had its decision-making powers strengthened, primarily to increase the democratic legitimacy of the integration process. Consequently, weakening the Parliament's position may have the knock-on effect of reducing the legitimacy of the EU as a whole.

In the case of the ECJ, the conclusions are more mixed. Geoffrey Garret and Barry Weingast (1993) find evidence that the ECJ tailors its decisions to the wishes of the most powerful member states due to the fear of these states revising its mandate. Garret et al. (1998) note, however, that the ECJ is likely to have more autonomy to act if there is a high level of legal clarity in the area where it makes its judgements: on the grounds that clarity in the law provides a defence against member state objections. Tallberg (2002), on the other hand, argues that the ECJ has a high level of autonomy due to the difficulty that member states have in refusing to comply with ECJ rulings, which makes re-contracting/revising the ECJ's mandate difficult once a decision has been made. One of the reasons for such varied conclusions may be, as Karen Alter (2006) hypothesises, that many judges simply have different priorities from standard agents and may be more concerned with upholding their legal reputation than with the response of national governments to their decisions. In Alter's words: "because [judges] value their reputation, they will be guided more by professional norms than by concerns about principal preferences, sometimes dying on their sword than be seen as caving to political pressure" (Alter, 2006: 334). Alter (2008) has expanded this argument to state that the threat of revising the ECJ's mandate is fundamentally limited due to the unique role legitimacy plays in the court's work. The ECJ, as with all international courts, represents a desire to uphold a certain legal standard. As such, the court is not simply concerned with how its decisions are perceived by national governments, but by wider society. For Alter, this means that the threat of revising the ECJ's mandate is a less effective tool than using other forms of persuasion, such as political rhetoric and appeals to legitimacy.

Potential Pitfalls of the Principal-Agent Approach

As stated above, Pollack (1997) identifies a number of potential drawbacks with his initial principal-agent analysis of the rationale behind member state delegation to European institutions. The first drawback identified was that the analysis took little account of the capacity for agents to shape their own institutional position. As such it is important to identify the various control and monitoring mechanisms available to member states to ensure that the institutional outcomes created by delegation are broadly in line with their own wishes.

A second limitation identified, however, is more specific. Put simply, while the attempt to find a practical, functional motivation for delegation to the European Court of Justice and European Commission is broadly successful, the approach proves of less value when attempting to find a functional rationale behind delegation to the European Parliament. This problem stems from the notion that the parliament does not exist solely for practical reasons beneficial to the member states, but for normative reasons concerning the democratic legitimacy of the EU policy process and the need for European citizens to be represented at the European level. As Pollack states:

> …despite the accuracy of functionalist predictions regarding the Commission and the Court, the functionalist approach fails almost completely at predicting the functions delegated to the European Parliament, including both its budgetary and its legislative powers. Clearly, the functionalist model fails to account for the ideological concern for democratic legitimacy that has led member governments to

> assign increasingly significant powers to the Parliament in successive treaty amendments. (Pollack, 1997: 107)

Given the origins of the P-A approach, this is perhaps not surprising. Ideology is rarely a major feature of economic behavioural models and explanations are generally sought in solid practical calculations, as opposed to broad ideas of legitimacy and fairness. It is difficult to conceive of ideologically motivated behaviour as self-interested behaviour because it stems from normative attitudes and beliefs, not from the practical realities of a given situation. Indeed, in the case of the European Parliament, it may be that delegation has not led to any great gains in efficiency, allowed member states to capitalise on expertise, or resolved any commitment problems; yet it has nevertheless occurred because there is ideological value placed on a policy process which has a more direct link to European citizens.[7]

Some attempts have in fact been made in the political science literature to accommodate notions of legitimacy into principal-agent relationships. The chief mechanism for making this adjustment is to redefine the concept of self-interest by extending the principal-agent relationship to include national electorates. An elected politician is not simply a principal delegating authority to external agents, but is also an agent such that they have been delegated authority by the voters who put them in office. As Mitchell (2000) states, for instance:

> In parliamentary systems millions of people elect hundreds of legislators who in turn elect a parliamentary majority that sustains a cabinet composed of a very small number of people presided over by a single

[7] For a discussion of the perceived 'democratic deficit' in the European policy process, see Follesdal and Hix, 2006.

> Prime Minister. Representative democracy requires such delegation much in the manner that the efficient organisation of complex societies requires an extensive division of labour. At least in ideal-typical terms government can be thought of as a vast chain of delegation and accountability relationships linking voters, legislators, ministers and civil servants. (Mitchell, 2000: 337)

Just as any agent must comply with the wishes of their principals in order to secure their position, so must an elected politician take account of the wishes of their electorate. Legitimacy may in this instance be redefined as the basic democratic standards which an electorate are willing to accept and, clearly, it would be in a politician's interest to ensure that his/her actions are deemed legitimate by voters.

Although not written expressly with the notion of legitimacy in mind, this idea has been brought to the EU context through the work of Andrew Moravcsik (1994; 1998). Moravcsik takes the basic principal-agent model and extends it to include national electorates. Member states function as both principals, when delegating authority to the supranational level, and as agents who have been delegated authority from national electorates. One of the more contentious aspects of Moravcsik's approach is the extent to which agency loss is minimised by national governments under his model. Indeed, his use of principal-agent theory is essentially an extension of his liberal-intergovernmentalism (LI) approach of the integration process, which viewed integration as a three step process: domestic preference formation; interstate bargaining; and the creation of supranational institutions to facilitate co-operation between states. Just as in LI, the primary emphasis is placed on the role of actors

below the supranational level and the capacity for supranational actors to deviate significantly from the wishes of their principals is limited.

Although Moravcsik's model solves the problem of delegation for legitimacy reasons, the intergovernmentalist assumptions that underpin his analysis are equally problematic. One of the key potential contributions of P-A theory in the EU context, as has been seen, is that it can move beyond the traditional neo-functionalist and intergovernmentalist debates on the dominant actors in the integration process. However, if the approach is simply adopted in accordance with prior perspectives, and in a manner which privileges the role of either supranational actors or national governments, then much of the utility of the framework is lost. Kassim and Menon (2003), in an early survey of P-A approaches in EU studies, highlighted this as a key concern in the way P-A theory had been adopted. As they state:

> The danger is that subtleties of analysis promised by the principal–agent model are lost when a prior commitment is made to a view that either national or supranational actors are likely to predominate in the long term. The danger is not only a collapse into the intergovernmentalism–neofunctionalism rivalry, but that intergovernmentalists will continue to disregard evidence that the organizational capacities of national governments are less than perfect, while supranationalists will overlook member state abilities to 'learn', re-contract and restrict the Court and Commission, and both will construe the relationship between member states and supranational institutions in conflictual terms – a view that neglects the policy dimension and asserts the transfer of sovereignty is always the central issue… and disregards the image of EU decision-

> making, increasingly championed by scholars and practitioners, as co-operative and consensual. (Kassim and Menon, 2003: 133-34)

Pollack (2007) is right to emphasise that this is a problem with how P-A theory has been employed, rather than a problem with the approach itself. As he states: "these biases are extrinsic to PA analyses, which when employed properly allow us to problematize, rather than prejudge, the autonomy and influence of international agents" (Pollack 2007: 6). Nevertheless, a number of substantive critiques of P-A theory have emerged, together with several analyses which identify potential shortcomings in its use in the EU context and attempt to alter the framework to account for these.

One such criticism is that there are apparent assumptions in P-A analyses concerning the types of behaviour that principals and agents are likely to exhibit which may not match reality. For instance, the notion of sanctions arguably rests on the idea that agents will wish to avoid the available punishments which can be used by principals to encourage compliance with their wishes. This seems a fairly natural assumption in most situations – sanctions are intended to be a punishment, therefore agents will wish to avoid them – however in certain circumstances this may not be the case. It has already been noted in Alter's (2006) discussion of the ECJ, for instance, that judges may hold different priorities from other agents and may be more willing to accept punishment from their political principals than risk their judicial reputation. The relevant question in this context would be whether these unexpected modes of behaviour can be situated within P-A theory or whether a different framework is required to account for them.

Pollack (2007) for his part, argues that this amounts to a 'red-herring' in critiques of the P-A approach as: "P-A analysis can accommodate a range of assumptions about actor preferences, and is therefore in principle consistent with observations put forward by scholars… about the preferences of international judges" (Pollack, 2007: 7-8). The

notion that P-A theory is broad enough to incorporate different motivations, as in the desire to uphold a judge's judicial reputation, is accepted by scholars such as Alter (2006); however Alter nevertheless questions whether P-A theory is the correct starting point through which to analyse this form of behaviour. As she states: "while one could try to model ideas like trust, reputation, or concerns about non-compliance into PA models, it is not clear that the framework itself – inspired by the insight of delegation – is the best means toward this end" (Alter, 2006: 337). The key problem in this sense is that agents act in accordance with a factor which is external to the principal (their wider reputation) and, consequently, the focus of P-A analyses on control and monitoring mechanisms, the framing of contracts, and potential sanctions, may be of limited value in this circumstance.

Two Logics of Delegation

Giandomenico Majone's (2001) 'two logics' of delegation approach, rather than simply drawing attention to potential problems with P-A theory, attempts to alter it to take account of the specific circumstances of delegation to the European Commission. Majone provides a model of the delegation of responsibilities by member states to the European Commission using the specific motivations which underpin the decision to delegate. In essence, Majone asserts that member states choose to delegate powers for two distinct reasons and that the rationale for delegating will have a substantive impact on the control and monitoring mechanisms employed in a given area.

The first rationale for delegating relates to general functional concerns associated with maximising efficiency and reducing the costs associated with decision-making. As with Pollack's analysis, the desire to enhance efficiency is driven primarily by the need to reduce the workload of the Council of Ministers and

European Parliament by delegating powers over particularly laborious and technical areas to the Commission (Majone, 2001; 2002). The second rationale for delegating roughly corresponds to the credible commitment strategy outlined by Thatcher and Stone Sweet (2002). For Majone, the Commission is in possession of a number of important responsibilities related to the integration process which would be undermined by the electoral forces associated with the problems of time-inconsistent preferences and political uncertainty. Member states have delegated these powers to the Commission in order to credibly commit to long-term and mutually beneficial courses of action.

Majone's key contribution relates to the control and monitoring mechanisms which will be employed by member states when delegation is based on one of the two logics. When member states delegate to enhance efficiency, the primary concern will be to ensure that the Commission conforms to the wishes of governments and that shirking and slippage are kept to a minimum. The most important mechanism available to member states in this context is, as in Pollack's analysis, the comitology system. Member states are liable to be confronted by the standard principal-agent dilemma in which costs associated with control and monitoring mechanisms must be balanced against the functional rewards associated with granting the Commission an element of discretion in how it fulfils its obligations. In contrast, when the Commission is delegated responsibilities to resolve commitment problems, Majone asserts that an entirely different dynamic will be applicable to the relationship between member states and the Commission. As the purpose of delegation in this context is to constrain the ability of governments to inhibit the pursuit of long-term and mutually beneficial policy goals, the key concern for member states is to ensure that the Commission is kept as independent as possible whilst continuing to act in

accordance with its original mandate. As Majone states, "the central issue in these cases is how to make the delegate independent and at the same time *accountable*" (Majone, 2001:119).

Majone's approach is best understood as an attempt to advance the P-A literature by taking stock of the unique situation where a principal transfers full power over a policy area to an agent. In this regard Majone invokes the legal concept of fiduciary duties. In law, a fiduciary relationship between two parties occurs when one party entrusts complete authority to another party – termed a trustee – with regards to a particular transaction or function. This can be distinguished from a normal contractual relationship in that a fixed contract, where the responsibilities of the agent are specified in detail, is replaced by an agreement which imposes an open-ended duty of care upon the trustee. This idea is easily expressed if we consider the example of 'house sitting' where an owner of a piece of property entrusts it to a third party on the agreement that they will ensure its safety and maintenance. It is not practical to govern such agreements with an extensive contract that details specific responsibilities and the trustee has complete discretion over how the agreement is adhered to; however, should the trustee fail to meet the duty of care expected they can be prosecuted for breaking the terms of the fiduciary agreement.

Similarly, for Majone delegation to the Commission to resolve commitment problems can be conceived of as a process in which member states entrust their political ‘property’, in the form of powers over a particular policy area, to the Commission on the grounds that the Commission will uphold the relevant duty of care. Just as fiduciary relationships in civil society are not expressed through detailed contracts, the framework on which the relations between Commission and national governments is based – the treaties – generally outlines broad goals as opposed to

specific requirements. Moreover, the mechanisms traditionally used to enforce fiduciary duties in the legal context, which include transparency mechanisms such as the obligation to provide reasons for particular actions and duties of loyalty to the principal or other trustees, often have, as Majone points out, an analogous expression in EU law. Taken as a whole, Majone asserts that whilst principal-agent approaches can provide a sophisticated level of understanding when applied to efficiency delegation, only the fiduciary principle can account for the delegation process aimed at resolving commitment problems.

The accuracy of Majone's model has been tested by Franchino (2002), who concludes that there is evidence for the idea that the motivation behind an act of delegation has an impact upon the type of control mechanisms used by the member states to ensure the Commission complies with their wishes. Nevertheless, the situation is not as clear cut as in Majone's model and there are instances where delegation to the Commission for credibility reasons has been accompanied by more rigid control mechanisms than would be expected. Alternatively, Pollack (2007) has criticised the distinction between agents and trustees on the grounds that it constitutes a false dichotomy. He argues instead that the real explanatory variable in this context is the discretion of the agent and that discretion exists on a continuum between agents with very limited autonomy afforded to them by their principals, and agents with almost complete freedom to carry out their responsibilities. For Pollack, the 'trustee' relationship is simply a relationship where there is a very high level of discretion and is not qualitatively distinct from relationships in which principals have more stringent control mechanisms in place.

The Multi-Principal Model

A second modification to P-A theory which may be considered in this context is the 'multi-principal' model outlined by Dehousse (2008). Dehousse is particularly interested in the delegation of powers to European regulatory agencies, standard setting bodies and networks of national regulatory agencies which has occurred with increasing regularity in recent years. Whilst the delegation of powers from national governments to supranational institutions such as the Commission can be comfortably situated within the terms of P-A theory, this form of delegation raises a number of problems due to the absence of a single, clearly defined principal. National governments unquestionably play a significant role in the decision-making process which transfers responsibilities to the new agencies; however the Commission and, to a lesser extent, the European Parliament, also have a stake in the process and may exert considerable influence.

For Dehousse, this situation is not merely an anomaly, but reflects the basic principles which underpin the EU's institutional framework. The key insight in this regard is that the defining characteristic of the EU's legislative process is institutional balance between the member states in the Council, the Commission and the European Parliament. Indeed, as Dehousse points out, this system has been explicitly designed to ensure that no one institution can dominate proceedings and that all three have scope to influence decisions. Standard P-A theory, in which one principal or set of principals chooses to delegate in order to acquire certain functional benefits, is therefore liable to overlook certain aspects of the decision-making process under which institutional design issues are determined within the EU. Only by taking account of the specific characteristics of institutional decision-making in the EU

context, Dehousse argues, can we gain a sophisticated understanding of the relationship between the multiple principals responsible for the delegation process and the agents upon whom responsibilities are conferred.

To this end, Dehousse formulates a 'multi-principal' model in which all three institutions are identified as competing principals attempting to influence institutional outcomes. In Dehousse's approach, the competition between these institutions supplants the functional concerns of standard P-A theory as the key explanatory variable. Put simply, the key concern of principals will be to attempt to minimise the influence of their rivals as opposed to maximising the functional benefits to be acquired from delegating. Avoiding instances of 'capture', where a newly created agency becomes strongly influenced by another principal, is likely to be the primary motivation for principals. As Dehousse argues, any approach which fails to take account of this dynamic, such as a standard P-A analysis, will undoubtedly fail to capture the determinant factors and motivations which drive delegation processes and the conduct of principals after this delegation has occurred.

One potential issue with the multi-principal model, in Dehousse's formulation, is that there is an implicit assumption that the status of each of the three institutions is roughly comparable. Unquestionably, institutional balance is a key characteristic of the EU's structure; however there are some notable differences with respect to the capacity for member states in the Council, the Commission and the European Parliament to influence institutional arrangements. Chief amongst these is that the Commission is not merely a principal, but also functions as an agent of the member states. The fact that the powers which enable the Commission to interact in debates over institutional design issues have been conferred upon the Commission by one of

its rivals—the member states in the Council—has clear implications for Dehousse's model.

The Commission is perhaps better conceived of as a 'quasi-principal' with the capacity to take a position of influence over newly created bodies, but only to the extent that this does not come into conflict with its obligations as an agent of the member states. That the Commission is inhibited from pursuing its interests in institutional debates in the same manner that the member states, or even the European Parliament, are capable of, ensures that it will always occupy a disadvantaged bargaining position. Given that the member states in the Council possess ultimate authority to remove responsibilities from their competitors; it is questionable whether the primary motivation of member states in institutional debates will be to ensure that new agencies do not fall under the influence of the Commission.

Constructivism and Delegation

The discussion above presents an overview of the rational-choice approach to delegation, both within the EU and in the wider political context. As stated in the introduction, however, the aim of this thesis is to approach the problem of delegation from two different perspectives and, as such, we now turn our attention to potential solutions from the field of constructivism.

Constructivist models, at the most basic level, can be understood as models which incorporate elements of social structure and environment into the decision-making process. Decision-makers do not simply assess their own circumstances and select the best outcome for maximising their interests, their decision is at least partly attributable to social and environmental forces. Explicit constructivist approaches to

delegation are less well defined than those contained within the rational-choice literature. While principal-agent theory, and the various refinements and alternative models which have emerged from its use, can offer concrete delegation models, we must look for constructivist solutions in broader theories of organisational choice and institutional design. This is simultaneously both a weakness and a strength in terms of evaluating constructivist approaches in the context of this thesis. On the one hand, the scarcity of constructivist delegation studies ensures that there have been few prior applications of constructivist perspectives to delegation issues within the EU; however this also offers the potential for constructivist models to offer new solutions to problems which rational-choice models, such as principal-agent theory, have trouble accommodating.

To return to the problem of legitimacy, outlined above, it is clear that Mitchell's (2000) extension of principal-agent models to take account of electorates is not the only possible solution. There is a problem identifying ideologically motivated behaviour as 'self-interested' behaviour not simply because of the lack of a sufficiently wide definition of self-interest, but because notions of ideology and legitimacy are qualitatively different concerns. This is understandable: an individual can indeed act on the basis of belief systems and normative values and it is difficult to manoeuvre all such actions into the field of self-interested behaviour. This dichotomy has arguably been established in other areas of political science. One example, for instance, is in the distinction between 'office-seeking' and 'policy-seeking' behaviour by political actors. Budge and Laver (1986), writing in the context of the formation of political coalitions, argue that two competing concerns can explain the actions of political parties. If a party engages in 'office-seeking' behaviour, they are primarily concerned with entering into a coalition that provides the greatest return in

governmental responsibilities. A ‘policy-seeking’ party, on the other hand, focuses instead on whether their desired policies can be implemented in any future arrangement. Although ‘policy-seeking’ behaviour might not always be done for purely ideological reasons, there is an implicit distinction in systems of this nature between the self-interested accumulation of political responsibilities and normative beliefs concerning the type of policies a party would like to see implemented. It follows that institutional design choices may be subject to the same forces.

Arguably the most comprehensive constructivist approaches to the question of institutional design are found in sociological-institutionalist models of organisational choice, such as those formulated by Meyer and Scott (1992). Crucial to this perspective is the concept of ‘institutional isomorphism’ which, broadly speaking, incorporates the idea that institutional arrangements present in one sector of society can facilitate the creation of similar institutional arrangements in other sectors (Meyer and Rowan, 1992). Put simply, decision-makers may choose to affirm particular organisational choices which have proven successful in other contexts or possess a certain element of prestige which makes them desirable. The reasons for this may relate to the interdependent nature of organisations, culturally defined notions of acceptability, or the credibility of particular arrangements; however the key principle is that the rationale for organisational choice is socially defined and not based on rational assessments of self interest. Although institutional outcomes may still provide delegating actors with certain practical benefits, the decision to delegate does not depend on these and actors may choose to delegate even where no functional improvements can be anticipated.

McNamara (2002), for instance, has utilised sociological-institutionalist accounts in her study of independent central banks to argue that, whilst a functionalist

justification for the creation of independent central banks has been widely articulated, the adoption of this institutional choice often has little practical relevance. Independent central banks are largely justified on the basis that they provide a solution to a particular variant of the time-inconsistent preferences and political uncertainty problems outlined in the previous section. Specifically, electoral forces and popular accountability are taken as having an inflationary effect on the economy because they encourage governments to manipulate monetary policy in order to provide short term economic (and therefore electoral) benefits, or distinguish their actions from incumbent governments. By insulating central banks from electoral forces and making them fully independent from political decision-makers it is argued that long-term price stability and low inflation may be maintained within a given territory. As McNamara points out, however, many countries with historically low levels of inflation have created independent central banks in recent years. Moreover, many of these countries have problems of low economic growth which may be exacerbated by pursuing a strategy of price stability. For McNamara, the spread of this institutional choice does not reflect functional concerns, but rather a number of social processes which have created a situation in which the adoption of independent central banks has become desirable over and above any practical benefits which may be anticipated from their creation. Only by taking account of the social processes which underpin institutional choices, it is argued, can analyses provide a complete understanding of delegation processes.

Although there is merit in this approach, there are a number of problems with affirming a social model of delegation in this way. First, it is difficult, if not impossible, to empirically verify whether social processes have determined a decision to delegate. Institutional isomorphism is not mandated by any formal communications

or official documentation and, unlike functional motivations, which are often explicitly stated, principals will almost certainly be unaware of its impact on their decision-making processes. Any identification of these processes is liable to be based on subjective interpretation which may prove contentious.

Second, the burden of proof placed on any social account of delegation is likely to be exceptionally high. It is far easier to identify a single functional motivation for delegating responsibilities to a particular set of agents than it is to determine that no functional motivation exists. In the case of central banks, for instance, there could potentially be hundreds of practical reasons for creating an independent central bank within a given territory. The fact that we can cast doubt on the standard functional account does not constitute proof that other functional motivations are absent.

Last, the assertion that institutional isomorphism constitutes a unique form of organisational choice, and not merely another facet of rational decision-making, is itself contestable. It is clear that if social norms and culturally defined notions of credibility have an impact on social behaviour, then tailoring organisational choices to meet these standards can nevertheless bring functional rewards. It may well be the case, as McNamara argues, that independent central banks are not justified as a measure to ensure price stability; however the socially defined credibility of this institutional arrangement may bring with it other practical benefits. Independent central banks, in part due to their rapid spread across developed countries, carry with them a certain element of credibility which signals to commercial interests that the economy within a particular country is favourable to business. Consequently, political decision-makers may choose to embrace them not on the grounds that they will maintain price stability, but in order to benefit financially from improving their

reputation amongst commercial interests. Indeed, unless we wish to affirm a dogmatic and extreme version of the perspective, we would expect some form of functional reasoning to impact upon organisational choices, even where social processes offer a high level of explanatory value.

This last concern is not necessarily a fatal problem with adopting constructivist approaches in studies of the EU. As was made clear at the outset, the distinction between rational-choice and constructivist approaches is taken largely in this thesis as a broad frame of reference and potential overlap between models is to be expected. We are not concerned in this context with arguing over whether rational assessments of self interest or constructivist forces explain outcomes; the aim is to formulate models which draw on the insights of both bodies of literature. The concept of isomorphism can undoubtedly be applied to institutional design choices within the EU context. In applying isomorphism to the EU, however, it is useful to make a distinction between internal and external isomorphism. Internal isomorphism is that which occurs within the EU's institutional framework and implies that the decision to delegate and the inspiration for the form of institutional outcomes stems from prior institutional design choices taken within the EU. External isomorphism views the decision to delegate as taking place within a wider social context in which successful institutional forms are imported externally.

Constructivism and EU Studies

Applications of constructivist models to the EU are still in their infancy; however they represent a challenge to the dominance of rational-choice/principal-agent perspectives. As Tallberg (2006) states: "In recent years, scholars inspired by

sociological institutionalism, broadly interpreted, have challenged the assumptions and propositions of rational-choice theorists on delegation and agency in executive politics. Even if these challenges yet do not amount to a coherent alternative approach to delegation, they generate competing expectations on key issues of executive politics" (Tallberg, 2006: 12).

As stated above, one of the problems in employing sociological-institutionalist concepts, such as isomorphism, to the field of EU delegation is that it is difficult to analyse empirically. Nevertheless, some attempts have been made in this context in recent years. Christensen and Nielsen (2010), for instance, in a study of delegation to EU regulatory agencies, have found that when the Council makes institutional design choices on the nature of EU regulatory agencies, these choices often conform to notions of isomorphism. Specifically, they find only limited variation in the internal organisation of agencies, and in the types of accountability mechanisms adopted to oversee their activities. Although this does not provide concrete proof of the existence of isomorphism; when compared with the high variation in the activities conducted by the agencies studied, there is at least some evidence that design choices reflect a logic of appropriateness, as opposed to purely functional concerns.

Alternative insights from constructivist theory may also aid our understanding of the integration process. One model of particular promise is that of 'endogenous preferences', which takes account of the impact that the individual characteristics of decision-makers can have on decisions. This principle starts with the idea that in order to understand why actors favour particular institutional design choices over others, it is necessary to identify what kind of actors they are, as much as it is to identify the circumstances which they face. In many ways, this appears logical: outside of the political world, we would not expect a group of diverse human beings to consistently

make the same decisions when confronted with similar scenarios; yet the rational choice models outlined above implicitly make this assumption by focusing exclusively on the circumstances which principals face. Although this may seem like a fairly obvious limitation in rational choice approaches, there are some compelling reasons for avoiding the issue. Attempting to isolate different 'types' of political actors and mapping the influence that individual characteristics have on decision-making is an almost impossible task. Human beings do not fit neatly into distinct categories and any attempt to construct a typology of this nature (for instance by classifying actors by their allegiance to/membership of different political parties) is likely to be too broad to be of any real value to empirical studies.

Nevertheless, it is possible to formulate a model which, if stopping short of providing a complete typology of decision-makers, can group them according to their tendency to favour certain political outcomes. In the EU context, Simon Hug (2003) has outlined one such model which focuses on what he terms the 'endogenous preferences' of supranational actors and the capacity for these preferences to shape political decisions. Although this sounds complex, the idea is simple: due to a variety of factors such as the appointment process of EU institutions and the position which an institution occupies within the wider EU institutional context, supranational actors within EU institutions possess a set of inbuilt preferences, or biases, which lead them to favour certain political outcomes over others.

As Hug notes, the notion of endogenous preferences amongst supranational actors within the EU's institutions has rarely been dealt with directly; yet the idea is more common than a review of the EU literature would suggest. A common assumption in many studies, for instance, is that the ECJ and Commission possess a bias towards integrationist outcomes (for instance, Mattli and Slaughter, 1998;

Tsebelis, 1994). Explanations for this preference include a conscious strategy by member states to credibly commit to further integration (Thatcher, 2001) and variations of Niskanen's (1971) budget maximising model of bureaucracies in which the ECJ and Commission seek to promote integrationist outcomes in order to maximise their own resources (Nicholson, 1997).

Hug, for his part, questions the empirical basis for the assumption that the Commission possesses an integrationist bias and attempts to formulate his own model of the Commission's endogenous preferences. Drawing upon American delegation literature (notably Epstein and O'Halloran, 1999), he argues that when an act of delegation occurs – in this case from the member states to the Commission – the preferences of agents are likely to reflect the preferences of principals. As the Commission has not one principal, but 27 in the shape of member state governments, Hug constructs a 'pareto set' of the varying preferences of member states and posits that the preferences of the Commission on a given issue will be located within the parameters of these preferences. He then tests this model using the preferences of members of the European Parliament (who are appointed by direct election, rather than delegated responsibilities by member state governments) as a comparison and notes that Commission preferences on a set of issues are more likely to be situated within the pareto set of member state preferences than those of EP members.

It is important to state that Hug does not necessarily view his model as constructivist, and argues that the tenets of this approach can also be situated within a rational-choice perspective. He notes that endogenous preferences are usually viewed as a phenomenon which it is impossible to address in rational choice approaches (see for instance Adler, 2002); however he rejects the idea that this is necessarily the case. Hug's intention is to "implicitly sidestep the debate" between constructivism and

rational-choice perspectives and he conceives of his model as incorporating both constructivist and rational-choice elements (Hug, 2003: 47). This corresponds with the outline of the thesis presented in the introduction to this chapter, where rational-choice and constructivism are taken as loose categories with the potential to overlap. Although the endogenous preference approach has been addressed here under the broad heading of constructivism, there is no intention to question Hug's perspective that the model could also be situated within the rational-choice body of literature.

Summary

The purpose of this chapter has been to provide an overview of delegation theory and a discussion of how the issue of delegation has been approached within the EU. This is the theoretical framework upon which the next chapter – the Research Design – is based.

The chapter began by highlighting the 'problem of delegation' and the potential for approaches to this problem to be found in both rational-choice and constructivist bodies of literature. In terms of rational-choice perspectives, the initial focus was on the development of principal-agent approaches through the work of Moe and other scholars, the importance of information to principal-agent studies and the various control mechanisms available to principals to ensure agent compliance. The discussion then moved on to the reasons why it can be rational for actors to delegate responsibilities. Drawing on the work of Thatcher and Stone Sweet (2002), four specific reasons for delegating were identified: to enhance efficiency; to increase the quality of outputs by capitalising on agent expertise; to benefit politically from delegation; and to resolve commitment problems.

Following on from this general overview, some of the literature on delegation within the EU context was addressed, such as Pollack's (1997; 2003) use of principal-agent theory to analyse the delegation of tasks to the EU's institutions. This was expanded to address recognised problems in the P-A approach – such as how to deal with the notion of legitimacy – and how P-A approaches have been adapted to suit the particular issues associated with European integration. Two models which have addressed some of these issues were introduced: Majone's (2001) 'two logics' of delegation to the European Commission and Dehousse's (2008) 'multi-principal' model of EU delegation to agencies.

The chapter concluded with a discussion of key constructivist approaches to delegation. Amongst the most important of these is the notion of institutional isomorphism and the spread of structures across a variety of different contexts. Although the use of constructivist literature in analysing European integration is not as prevalent as the use of rational-choice literature, some examples of its empirical use were highlighted. These include McNamara's (2002) study of independent central banks and Hug's (2003) model of 'endogenous preferences' amongst supranational actors in the EU.

CHAPTER THREE: METHODOLOGY AND RESEARCH DESIGN

Chapter two outlined theories of delegation from both rational-choice and constructivist perspectives and provided a discussion of how delegation has been approached in the EU context. Chapter three introduces the methodological approach and research design developed to evaluate a specific delegatory process: the delegation of powers to executive agencies in the European Union. Building on the theoretical insights from the previous chapter, the empirical research gathered on the basis of this research design will help us better understand the nature and purpose of delegation in the EU.

Methodology

Two main methods have been used to collect the data on the key indicators outlined in the analytical framework below: primary document analysis and qualitative face to face interviews.

The primary document analysis was conducted by reviewing, first, the legal documents pertaining to the creation of executive agencies. The primary focus in this regard was on Council Regulation (EC) No. 58/2003, which laid down the statute for the creation of executive agencies, and the accompanying regulations which established each individual agency. Second, the formal documents produced by each agency were collected. Each agency produces an annual activity report and numerous smaller reports on its activities which were necessary components of the research. Last, a number of reports and communications on the subject of executive agencies have been produced by the European Commission and the other European institutions,

such as the 2009 review of executive agencies carried out by the European Court of Auditors (European Court of Auditors, 2009). These reports proved an invaluable resource in both ascertaining the empirical background and in conducting the analysis itself.

The interviews were conducted with management level staff at each of the six executive agencies. These interviews were scheduled for three different sessions in October 2009, April 2010 and October 2010. In the first set of interviews, in October 2009, the director of the Executive Agency for Competitiveness and Innovation (EACI) and the director of the Research Executive Agency (REA) were interviewed, together with three heads of unit at the EACI. The second set of interviews, in April 2010, involved one head of unit from the Education Audiovisual and Culture Executive Agency (EACEA) and a representative of the director of the Trans-European Transport Network Executive Agency (TEN T-EA). The final set of interviews, in October 2010, involved the director of the European Research Council Executive Agency (ERCEA), a representative of the director of the EACEA and a head of unit from the Executive Agency for Health and Consumers (EAHC).

There were a number of reasons for choosing this approach. Primary document analysis of the relevant regulations, reports and communications provided the most logical route for analysing the act of delegation to executive agencies. The delegation process occurred, in some cases, several years previous, and incorporated a number of different actors. It would be unrealistic to have expected to interview all of the relevant parties who played a role in this process; however the positions of the European institutions with regards to executive agencies have, in most cases, been formally published or communicated.

Interviews are a highly effective method when studying the day to day functioning of executive agencies. Meeting with management level staff at each executive agency provided unique insights into the everyday mechanics of the delegatory process. The interviews were conducted on an open-ended, qualitative basis; any use of more quantitative methods or surveys would have been limited by the relatively small number of available participants. There are only six executive agencies and, although there are significant numbers of low level staff employed within each agency, only the heads of unit (typically numbering 5-8 individuals) and the director would have been capable of answering questions on the key issues addressed in the thesis. Key staff from all six agencies agreed to participate in the study. In addition, five of the six directors have either been interviewed directly or via a representative, only attempts to interview the director of the EAHC proved unsuccessful.

There are a number of potential targets within the other EU institutions who could have been approached for interviews as part of the research. In terms of the Parliament, it would not have been a logical use of resources to interview a wide range of MEPs as many members of the Parliament do not have any explicit link to the procedures associated with executive agencies. Instead, one of the members of the EU budgetary control-committee and the inter-institutional working group on agencies (Communication 5) was interviewed to provide a relevant viewpoint from the Parliament.

A similar problem exists with interviewing representatives of the member states, or national parliaments. Due to the institutional distance between executive agencies and national authorities there are no obvious interview targets with significant expertise in the use of executive agencies in managing community

programmes. The Council is also problematic in the sense that it is composed of individuals from 27 separate member states. To receive a representative opinion of member states as a whole it is therefore more practical to use the formal communications of the Council, rather than individual interviews with national representatives.

With respect to the Commission, the situation is complicated by the fact that many of the Commission staff members responsible for setting up each agency have subsequently begun working within the agencies themselves. Indeed the directors of executive agencies are typically those members of the Commission who oversaw the creation of the agency. Similarly, heads of unit are all drawn from the Commission. In many cases these individuals were responsible for managing community programmes within the Commission prior to their transferral to executive agencies. Consequently, the most natural method for gaining an insight into the role of the Commission in setting up executive agencies was to interview the directors and heads of unit involved in this process.

The data collected was used to test the six models identified in the analytical framework below. Each was tested according to the key indicators derived from the relevant theoretical literature. Before the results are presented in chapter six, chapters four, five and six present the case study of delegation to executive agencies in the European Union. Chapter four provides the empirical context for the analysis, with a discussion of the role of European agencies, the wider EU institutional context and some of the tensions which are inherent to this context, before introducing the Kinnock reforms. In chapter five the nature and structure of executive agencies is explored. In chapter six the nature and type of delegation to these executive agencies is analysed using the research design elaborated here.

Key Factors

In chapter two, different approaches to delegation were considered which all had the capacity to address the problem of delegation. Each model contained an explanation of why delegation occurs in a given context. In this thesis, particular attention is paid to the reasons underpinning an act of delegation. It is argued that the initial rationale behind delegation may have a substantive effect on the type of delegated relationship which is produced. Delegation which has occurred for one reason might lead to different types of accountability mechanisms being adopted by principals, to different priorities for each actor, and to many other factors which distinguish the relationship from that occurring under a different mechanism or rationale.

This section identifies some of the key factors which distinguish one type of delegated relationship from another. Using these factors, a detailed research design is outlined employing six models of delegation derived from the theoretical framework. Alongside each model, key indicators are identified which will be used to test the applicability of models to the case of executive agencies. This framework provides the foundation for the analysis in chapter six.

Rationale/Motivation

The first key factor of a delegated relationship is the rationale/motivation which underpins the act of delegation. Broadly speaking, we can state that if delegation has occurred for a specific reason, then this reason is likely to hold true for the motivation of principals in the subsequent relationship. If delegation has been carried out to

enhance efficiency, for instance, then we would expect that after the initial act of delegation principals will act to ensure that efficiency gains are maximised.

Although this principle appears self-evident, it is possible that the motivation of principals may change over time. This is particularly true in cases where the status of principals is subject to renewal, such as with politicians in a government. A government may choose to delegate powers to a new agency, for example, which will continue to operate for several years after that government has been removed from office. Politicians taking over power may hold different opinions and have different motivations from their incumbents. This problem has already been alluded to in our discussion of 'time-inconsistent' preferences and the problems governments face in credibly committing to long-term policies. While delegation may be used as a way around these problems, it is clear that the motivations of principals do not remain static and that opinions, personnel and motivations may be subject to change. That delegation has occurred for one particular reason does not necessarily ensure that principals will always uphold this reasoning in future dealings with agents.

There are, nevertheless, a number of reasons why we might expect the motivations of principals to have a strong correlation to the initial rationale, even in situations where personnel have changed over time. First, the freedom of manoeuvre afforded to principals and agents is often restricted by the contractual framework that underpins their relationship. We have already discussed the use of *ex ante* controls, such as principals framing a contract in order to minimise the potential for non-compliance. There is a tacit assumption here that the motivations of principals and agents can be manipulated at the outset through contractual terms (Mitnick, 1973; 1975). A simple contractual example might be the use of financial bonuses to ensure that both principals and agents have a compatible set of interests. If both agents and

principals are financially rewarded for improved performance within an organisation, then the likelihood of both parties working towards the same goal is increased. Although the individuals involved may change over time, so long as the contractual framework remains the same there is likely to be some consistency in the motivations of each party.

Second, there is the notion that an individual's position within a relationship can influence their interests. A change in government, for instance, can often precipitate a change in national policies; however there are certain policies which tend to remain uniform. Certain fundamental characteristics of an actor's position, such as the natural resources of a country, have an influence on how decision-makers choose to act. A country with large oil reserves is not likely to favour policies which will result in a significant drop in the price of oil exports, regardless of the political makeup of a new government. This is clear in several of the theories discussed in the first chapter. In Dehousse's (2008) multi-principal model, for example, the central claim is not that principals within the European Union are in essence political by nature, but that the institutional balance that characterises EU decision-making leads to decisions based on political calculations. While the extent of this effect could be influenced by other factors, there is reason to believe that if the broader environment which has led to an act of delegation remains constant, then the motivations of principals will also remain similar.

Ultimately, the extent to which the rationale/motivation of principals remains consistent depends on individual circumstances. In the case of executive agencies, it is expected that there is likely to be a high correlation between the initial reasons for delegating and the future actions of principals in dealing with the new agencies. In the context of this study, the relatively short time period between the creation of the

agencies and the fieldwork conducted for the analysis (all six agencies have been created since 2003) makes this most likely. Indeed, several of the agencies had been operational for only a short period of time at the point of interview and it is questionable whether broad, long-term shifts in the motivations of their principals would have had the potential to manifest themselves during this period.

Types of Rationale/Motivation

From the theoretical framework, three distinct types of rationale can be identified. The first is a functional rationale. Broadly speaking, this incorporates any situation in which delegation has been adopted to solve a practical, functional problem, related to the operations of an organisation. Delegation to enhance efficiency, to capitalise on expertise and to solve commitment problems are examples of this type of rationale (Thatcher and Stone Sweet, 2002). A second type of rationale, is not expressly functional in nature, but political. This corresponds to the notion that instead of attempting to make practical operational gains from delegation, individuals may choose to delegate to enhance their own position under situations in which competing interests are present. Last, delegation may, in accordance with constructivist perspectives, be driven by normative/ideological concerns. This process may be implicit, as in the case of isomorphism where institutional structures are replicated across different contexts, or it may be explicit, where actors choose particular institutional forms because they are viewed as more legitimate to a given context.

Institutional Design

A second factor of importance to a delegated relationship is, under situations where inspiration has been taken from other institutional forms, the source of this inspiration. Cleary in the case of sociological processes such as isomorphism, in which one organisational form spreads across different contexts, the source of inspiration is of some significance. This also has wider relevance, however, in relation to other delegation processes.

A political rationale, for example, in which delegated outcomes reflect competition between different interests, might entail the adoption of 'home' institutional forms by each negotiating party. We might expect national governments negotiating in an international context, for instance, to advocate solutions which are based on institutional forms present within their own country. The statute of the European Central Bank (ECB) is essentially modelled on the laws governing the German central bank, the Bundesbank. De Haan et al. (2005) have argued that this is partly a reflection of the previous success of the Bundesbank in maintaining price stability and partly a reflection of Germany's negotiating power. Under this line of reasoning the German government exerted a degree of influence over negotiations which led to the adoption of an institutional form which matched that already present within Germany.

More broadly, we might expect that any debate between national governments over the structure of supranational organisations may involve some element of national inspiration. If an organisational form has been created by a government at the national level, then it is reasonable to assume that this government will have a stake in promoting the same institutional outcome at the supranational level. Clearly there is a

tacit assumption that the government will value this type of outcome – if they didn't value it on some level then they would likely not have created it in their own territory – but there may also be strategic advantages to promoting institutional forms in a supranational context which match those present at the national level (Scott and Meyer, 1992). The source of inspiration behind institutional outcomes adopted can therefore be an important feature of any delegated relationship, even if we reject the applicability of constructivist models of delegation and the capacity for social mechanisms, such as isomorphism, to account for institutional decisions.

Accountability

A third factor which characterises a delegated relationship is the type of accountability adopted by principals to ensure agents comply with their wishes. We have already, in the first chapter, addressed some of the options principals have for ensuring agent compliance. At a broader level, however, it is possible to identify different types of accountability, with each form possessing its own set of implications.

As Lupia (2003) has stated, the term 'accountability' has generally been used in two different ways: "for some, accountability is a *process of control*… for others, accountability is a *type of outcome*" (Lupia, 2003: 35). The basic distinction here is between accountability in which compliance is ensured by taking an active role in a process and accountability in which the end result of a process is the primary concern, regardless of how stipulated goals and targets are met. A government minister looking to implement a particular policy, for instance, might choose to grant the relevant civil servants a high level of discretion over how they meet the stipulated aims.

Alternatively, the minister might take over active control of the process and issue explicit instructions to civil servants outlining how the policy is to be implemented. It might not necessarily follow, however, that assuming a higher degree of control will lead to favourable outcomes. Choosing the right type of accountability to employ in a particular context can play an important role in ensuring goals and targets are met (Lupia, 2003).

Whether process or outcome focused accountability is employed in a delegated relationship will depend to a large extent on the reasons why delegation has occurred. In the case of independent central banks, which was touched upon in chapter one, for instance, the stipulated aim of delegation is that it allows central banks to pursue a formally stated goal (price stability) free from the influence of national governments, which are associated with producing an inflationary effect on the economy due to political pressure. It would make little sense to conceive of this relationship as falling under a form of process-focused accountability. Indeed process-focused accountability, such that it enables principals (national governments) to take control over the activities of agents (central banks) would completely undermine the rationale for delegating. Only an outcome-focused form of accountability can be of any relevance in this case.

Alternatively, there are situations where a process focused form of accountability is of primary importance. It might seem counter-intuitive to argue that there are certain circumstances in which control is more important than outcomes – after all, control is often simply a means to ensure that outcomes are met – but in particular cases this may be true. Strom (2000; 2003) for instance, puts forward the notion that parliamentary democracy amounts to a form of delegation in which national electorates have delegated decision-making authority to representatives

within parliament. This is an idea which has already been given an airing in chapter one, through the work of Andrew Moravcsik in his three tiered principal-agent relationship of European integration (Moravcsik, 1998). Although it may be argued that parliamentary democracy is a mechanism for enabling a particular goal to be realised (the effective governing of a country), an alternative conception is that there is an intrinsic worth to decision-making which affords some role to electorates. This principle evokes the fairly popular idea that democracy is not simply a means to an end, but an end in itself. Elections, referenda on key issues and other democratic mechanisms are, in this reading, best understood as process-focused forms of accountability which exist independently from concerns about the actual outcomes produced.

The standards by which acts of delegation are to be judged can also be affected by the type of accountability adopted. Here it is possible to distinguish, as Lupia (2003) does, between two different standards, or metrics, by which an act of delegation can be assessed. The first can be termed *agency loss* and corresponds simply to actions which are conducted by the agent contrary to the wishes of the principal. To say that an act runs counter to the wishes of the principal is not necessarily the same as saying that an act goes against the principal's interests. Rather, the conception here is that an agent may act in a different way from how the principal had intended, or how the principal would personally act in a situation where he/she possessed the necessary expertise and resources. Clearly it is possible for an agent to act in a completely different way from that anticipated by the principal and still perform duties that are in the principal's best interests. This notion – of what is in the interest of principals – is captured by the second metric used to assess acts of delegation: the simple *success or failure* of the act. Here we may simply state than an

act of delegation can be deemed a success under this metric if it produces more favourable outcomes for the principal than retaining the status quo, in which no act of delegation has occurred (Lupia, 2003).

With both types of accountability there are, nevertheless, some broad similarities. As Strom (2003) states, two different components of accountability are applicable in all instances of delegation. For agents to be accountable, principals must possess: “a right to demand information, and a capacity to impose sanctions” (Strom 2003: 62). This is self evident when we consider process-focused accountability; however even in the case of pure forms of outcome-focused accountability the capacity must exist for principals to gain information on the compliance of agents and, if necessary, sanction agents who are not meeting their targets. The Bank of England, for instance, may have independence from the government in pursuing its aims, but it can also be sanctioned if it falls short of its targets. The routine sanction for the bank failing to meet its assigned inflation target is for the governor of the Bank of England to write an open letter to the Chancellor of the Exchequer explaining the failure and outlining plans to correct the situation.

Three Rational-Choice Models

Table 3.1 below gives an overview of the three rational-choice models assessed in the analysis.

Table 3.1: Three Rational-Choice Models

PRINCIPAL-AGENT MODEL	• **Functional Rationale / Principals act to reduce agency costs** • **Institutional design focused on oversight** • **Process and Outcome Oriented Accountability**
CREDIBILITY MODEL	• **Functional Rationale/Principals act to ensure independence/success** • **Institutional design focused on insulation** • **Outcome Oriented Accountability**
MULTI-PRINCIPAL MODEL	• **Political Rationale/ Principals act to ensure agents are not captured by other institutions** • **Institutional design focused on balance** • **Process Oriented Accountability**

Principal-Agent Model

The first model is a principal-agent account of executive agencies. Given the prevalence of principal-agent approaches in studies of delegation within the EU, it is clearly important to analyse executive agencies from this perspective. Reducing a

broad and varied body of theory down to a single, testable model, however, is somewhat difficult. There is, indeed, no such thing as a 'standard' principal-agent account and attempting to isolate 'standard' or 'basic' models of political and social processes can often be a misleading enterprise. To construct alternative arguments in relation to overly-simplified caricatures of the approach would not constitute an insightful analysis; nevertheless, there is some utility in settling on a traditional principal-agent account of European integration in order to frame the following discussion. To this end, we might sketch out some of the parameters which would be included in a 'standard' principal-agent approach. By returning to the basic principles on which the perspective is based, it is possible to isolate some of the key features which are fundamental to most, if not all, uses of principal-agent theory.

The first question that might be asked in this regard concerns the type of delegation which is implied by principal-agent theory. In the first chapter, we noted that as a perspective firmly rooted in the rational-choice tradition, principal-agent theory has been built on the assumption that behaviour is explained by rational assessments of self-interest. This is, naturally, true of all three of the rational-choice models outlined in table one. Rational assessments of self-interest, however, can entail quite different calculations depending on the circumstance. The most natural expression of self-interested behaviour is perhaps the notion of establishing functional outcomes geared towards solving a problem. When an organisation or an individual is engaged in a particular task, they will encounter certain problems that inhibit them from carrying out that process. The functional course of action is that which solves these problems and enables the process to function more effectively. Thus, we can state that under this line of reasoning principals will delegate authority to agents

because it is functional for them to do so: that is, delegation allows principals to more effectively carry out their duties.

Self-interested behaviour may be conceived of in another sense, however, by focusing on the individuals who make decisions. Whilst a functional outcome enables principals to perform tasks more effectively, it may be the case that an individual's self interest is best served by a course of action that strengthens his/her own individual position within an organisation. Perhaps a particular policy provides little tangible benefit to the organisation within which an individual is located, but nevertheless enhances that individual's reputation. In studies of political behaviour this has long been recognised as playing a role in the self-interest of political actors. Chapter two has already introduced the notion of 'office-seeking' behaviour, for example, where the actions of a politician stem from his/her desire to rise up the political ranks, as opposed to the sometimes competing desire to implement their favoured policies: 'policy-seeking' behaviour (for an application of this framework in the European Parliament, see Hix, Raunio and Scully, 1999). Alternatively, this conception of self-interest could be extended beyond individuals to include any organisation which acts to strengthen its own position over and above the tangible gains which such actions bring to the processes they are engaged in. Indeed, as will be elaborated upon below, the multi-principal model outlined by Dehousse (2008) takes on this notion of self-interested behaviour as that which strengthens the position of an institution within the EU's institutional framework.

It is perhaps because of this ready made alternative that we can settle on a principal-agent model which puts functional delegation at the root of political behaviour. Dehousse's model is best understood as altering the principal-agent model to take account of the capacity for EU institutions to act in a way that strengthens their

own position within the EU's institutional framework. Put simply, it is the natural alternative to a functionalist account of delegation within the EU context and, as such, it makes sense to settle on a principal-agent approach which rests on functionalist grounds.

The second question that might be asked about a standard principal-agent account of executive agencies relates to the motivation of principals. We have already outlined a functionalist rationale for delegation; however what will the key concern of principals be once this delegation has occurred? In this instance, the principal-agent literature is fairly straightforward. If a standard outline of a principal-agent approach exists, then the motivation of principals undoubtedly boils down to a concern with minimising agency costs. In chapter one, the various types of agency loss – shirking and slippage – were highlighted alongside the costs associated with the control and monitoring mechanisms adopted to minimise this loss. The combined effects of agency loss and the costs of control and monitoring mechanisms result in a situation in which the key motivation of principals will be to ensure compliance whilst limiting the associated costs as much as possible.

The last question we might ask is a complex one: who are the principals in delegation to executive agencies? As the discussion on the history of executive agencies would imply, this is far from straightforward. In some respects, the European Commission has functioned as a principal in the creation of executive agencies. The powers which have been delegated to executive agencies were, in essence, the Commission's own powers. The treaty process has assigned the role of managing community programmes to the Commission and it was under the initiative of the Commission that these responsibilities were transferred to the newly created agencies. Drawing on the work of Moravcsik (1998), however, we might trace this process back

a step and highlight the initial delegation of these tasks to the Commission by the member states. The member states, as the signatories of the treaties which have furnished the Commission with its powers, had first to delegate these responsibilities before they could be transferred to executive agencies. In some ways, therefore, they might be seen as the principals in this relationship. Indeed, we could take this one step further, as Moravcsik does, and focus on the European electorates which have delegated the powers to the national governments of member states which have furnished us with the treaties. Delegation to executive agencies would therefore be a 'four tiered' principal-agent relationship extending from European electorates, through national governments and the European Commission, to the agencies themselves.

As Moravcsik has himself recognised (1998) it can be impractical to apply this multi-layered principal-agent model in its entirety. Studies are better conducted when this relationship is broken up step by step, relationship by relationship. Therefore, if executive agencies are a fourth layer of a principal-agent relationship, the initial standpoint from which executive agencies may be analysed must still be the principal-agent relationship that exists between the Commission and the agencies. This is the principle which has been adopted in the analysis.

These three characteristics – a functionalist logic of delegation, principals acting to minimise agency costs and a principal-agent relationship between the European Commission and executive agencies – constitute the key features of the principal-agent model adopted.

Credibility Model

Taking influence from Majone's two logics of delegation, the second model is an account of executive agencies which places credible commitments and fiduciary accountability as the central explanatory variables. As indicated in the literature review, delegation for credibility reasons rests on the notion that by relinquishing their ability to take control over certain areas, principals can credibly commit to policies and principles which may be at risk from issues such as time-inconsistent preferences, political uncertainty and collective action problems.

The first point to be made about this model is that the rationale is firmly functionalist in nature. Delegation for credibility reasons provides a solution to particular problems and is adopted in order to ensure that certain goals are met and certain tasks effectively carried out. As in the principal-agent model, we can settle on a relationship in which the Commission functions as the principal. In this reading the Commission has created executive agencies as a functional response to certain credibility problems. What credibility problems are relevant to the case of executive agencies?

If the Commission functions as the principal, then the classic credibility problems appear less relevant. As outlined in chapter one, time-inconsistent preferences and political uncertainty are intimately linked to the problems faced by elected governments which must satisfy the wishes of the electorates that have put them in power. When electorates demand short term gratification, it can be difficult to pursue long term policies; when electorates periodically remove one government from power and replace it with another, there is an impetus to change the policies of the previous government. In the case of the Commission, which is not directly elected,

these problems are of questionable significance. Indeed, it is the very fact that the Commission is insulated from these pressures which led Majone to formulate his model in the first instance. It is difficult to see how an organisation delegated powers on this basis can, in turn, find itself transferring its responsibilities to other organisations to solve the same problems.

Nevertheless there is one sense in which credibility concerns seem acutely relevant to the case of executive agencies. Given the financial accountability issues which led to their creation, we may view executive agencies as a practical response to the issues underpinning the resignation of the Santer Commission and the damage these issues exacted upon the Commission's credibility in the context of managing community programmes. According to this account, executive agencies can be seen as a mechanism through which a credible commitment has been made to eliminate the potential for corruption and financial mismanagement in the administration of EU programmes.

In this case, the motivation of the principal is slightly different in the credibility model from that of principals in the principal-agent model above. In the principal-agent model, the key concern of principals is to ensure agents carry out their duties, whilst limiting the costs associated with control and monitoring mechanisms. In the credibility model, in contrast, principals find themselves in the counter-intuitive position in which exercising too much control over the process can jeopardise the gains to be had from delegating. The key benefit of delegation for credibility reasons is that it places decision-making powers in the hands of independent actors who are insulated from the forces that principals are subjected to. The key concern of principals will therefore be to ensure that this independence remains intact whilst also holding agents under the principle of fiduciary accountability.

Multi-Principal Model

The third rational-choice model is an application of Dehousse's (2008) multi-principal model. As stated in the first chapter, Dehousse takes as his starting point the notion that the creation of agencies can best be understood in the context of inter-institutional competition between the member states in the council, the European Commission and the European Parliament. In a sense then, these three institutions are all principals in the act of delegation because they all have a stake in the process and the potential to influence institutional outcomes and maximise their own interests.

As touched on above, the multi-principal model implies a brand of self-interested behaviour in which principals act to enhance their own position, as opposed to acting to ensure functional solutions to practical problems. It is worth emphasising, of course, that a decision which strengthens a principal's position can also lead to tangible functional gains. It may be the case that the Commission supports the use of executive agencies in order to improve its position within the EU's institutional framework, but it may also be the case that, despite this, executive agencies have significantly improved the management of community programmes. The two concerns are not necessarily mutually exclusive.

In table one this logic of delegation has been identified as a 'political rationale'. Broadly speaking, this simply indicates that the three principals are engaged in a political process in which the primary aim is not to solve functional problems, but to enhance their own institutional position. This also has an impact upon the motivation of each principal. The key insight from Dehousse in this regard is that the chief concern of principals will be to ensure they have influence over newly created agencies and to prevent new agencies from being 'captured' by their

institutional rivals. Again, this is not to say that the actual capacity of agencies to carry out their assigned duties is ignored – they still come under accountability procedures to ensure they are performing their tasks correctly – but simply that the chief explanatory factor underpinning the actions of principals in their relationships with executive agencies is the desire to enhance their own institutional position.

Three Constructivist Models

Table 3.2 below gives an overview of the three constructivist models assessed in the analysis.

Table 3.2: Three Constructivist Models

INTERNAL ISOMORPHISM	• **Decision to delegate reflects a logic of social appropriateness** • **Institutional design based on previous EU institutional choices (e.g. EU agencies)** • **Process and outcome focused accountability**
EXTERNAL ISOMORPHISM	• **Decision to delegate reflects a logic of social appropriateness** • **Institutional design based on previous external institutional choices (e.g. national agencies)** • **Process and outcome focused accountability**
ENDOGENOUS PREFERENCES	• **Decision to delegate is influenced by inbuilt preferences of principals** • **Institutional design based on external or internal choices** • **Process and outcome focused accountability**

Internal and External Isomorphism

The first two constructivist models are both models of isomorphism. Chapter one identified isomorphism as the spread of similar institutional forms across a given

context: this can occur for a variety of reasons such as the presence of high levels of interdependence or culturally defined notions of acceptability and credibility.

In the case of executive agencies, a model of isomorphism would posit that executive agencies are the culmination of a social process in which prior institutional choices have resulted in executive agencies appearing socially appropriate institutional outcomes. Again, this is not to say that executive agencies are not beneficial from a practical, functional perspective. It may very well be the case that executive agencies provide tangible functional benefits, but that they have nevertheless been adopted due to the spread of similar institutional forms. The key distinction between the two models is the source from which isomorphism stems. Internal isomorphism is taken as the spread of organisational forms within the EU's institutional framework. Thus, executive agencies in this model would reflect organisational choices made within other areas of the EU. External isomorphism implies that executive agencies are the result of importing successful institutional forms from outside of the EU context, such as from national agencies within the member states.

The form of accountability used is a more problematic indicator in the case of constructivist models than it is in rational-choice models. In the rational-choice models outlined above, the type of accountability adopted is taken as being a reflection of the rationale behind the act of delegation. There is therefore a clear causal relationship between the rationale and the type of accountability mechanisms adopted: if the expected form of accountability is not present, then it raises questions as to the applicability of the model. With isomorphism, the role of accountability is more complex. We cannot say that isomorphism will produce either process or outcome focused accountability, as it is capable of producing either form of

accountability in a given situation; however we can state that the accountability mechanisms adopted will reflect the same logic of social appropriateness that produces the act of delegation. It would not be anticipated, for instance, that agencies produced under the terms of internal isomorphism would adopt accountability mechanisms, such as reporting procedures and performance indicators, from external sources. The distinction between different forms of accountability, although not as easy to incorporate as with rational-choice models, nevertheless provides part of the picture in analysing the applicability of models of isomorphism.

Endogenous Preferences

The last model takes influence from the endogenous preferences perspective outlined by Hug (2003). As stated in chapter two, the insight upon which the endogenous preference approach is based is that certain types of actors are more likely to favour particular institutional outcomes than other actors. The nature of an actor within a given organisation is determined by a variety of factors such as the appointment process and the position which an organisation occupies in relation to other organisations. In the case of executive agencies, an endogenous preference model would focus on the inbuilt preferences, or biases, of the European Commission. The creation of executive agencies, under this reading, would reflect the endogenous preferences of the Commission which have prompted it to favour particular institutional outcomes over others.

The main difficulty in using the endogenous preference model is, as discussed in the first chapter, isolating the precise preferences which are exhibited by the Commission. There are essentially two solutions to this problem which may be used

in the analysis. The first is to adopt the common assumption that the Commission possesses an 'integrationist bias' and assess the extent to which the creation of executive agencies is in accordance with this perspective. There are certainly some empirical studies which provide evidence for this approach (for instance, Mattli and Slaughter, 1998; Tsebelis, 1994); however there is far from a consensus on this point. An alternative solution is therefore to adopt Hug's (2003) pareto-set of Commission preferences and attempt to situate the decision to delegate responsibilities to executive agencies within this framework, as Hug has done for several other decisions made by the Commission.

As the aim of the analysis is to test the model and not individual variants, it is only fitting that both of these perspectives are given due weight in the discussion. To this end the analysis will assess the model's utility first from the perspective that the Commission possesses an integrationist bias and secondly, using Hug's (2003) pareto-set of Commission preferences.

CHAPTER FOUR: DELEGATION, THE EUROPEAN INSTITUTIONAL STRUCTURE, AGENCIES AND THE KINNOCK REFORMS

The purpose of the chapter is to illustrate the context within which delegation to EU executive agencies emerged. Four specific aspects are taken in turn. First, the general institutional structure within the EU is considered. Together with the issues and conflicts associated with this structure these are fundamental to understanding delegatory developments at the European level. Second, the use of EU regulatory agencies is presented as a case of delegation within the EU's institutional framework. Third, the EU's experience of delegating tasks to private contractors/technical assistance offices (TAOs) is outlined. Finally, the chapter concludes with a discussion of the Kinnock reforms, which were stimulated by the failures of the private contractor/TAO system.

Tensions in the Institutional Structure

The EU policy process is defined by the transferral of responsibilities from national governments to supranational institutions. This process has led to a delicate institutional balance between the Commission, Council and Parliament. All three institutions have a part to play in drafting, negotiating and delivering legislative outputs. Each institution's involvement represents a different strand of the institutional structure and there are inherent tensions between each of their roles.

As Jordan (2001) has stated, tensions exist between the three institutions in part because each reflects a different kind of decision-making. The Council, as a vehicle for negotiations between member states, has an intergovernmental basis.

When the European integration process began as an agreement between six independent states[8] to create the European Coal and Steel Community (ECSC) in 1951, the key decisions were based largely on negotiations between national governments. Although there was recognition of the benefits to be derived from supranational institutions, there were also reservations concerning the transferral of significant powers to bodies such as the 'High Authority' of the ECSC (the predecessor to the European Commission). Scholars, such as Hoffman (1966) have identified this as a fundamental tension in the European integration process between the "logic of integration" and the "logic of diversity" (Hoffman 1966: 881). Put simply, while there might be gains to be made from granting powers to institutions such as the Commission, states are also keen to ensure that their own interests are protected and that they are not bound to carry out measures they disagree with.

It is easy to illustrate why this is the case. Negotiating joint decisions between independent states is often a lengthy and difficult process. Each state represents a diverse range of interests and there is a large degree of domestic pressure exerted on national governments to gain the best deal for their electorates. In certain cases it is inevitable that these interests will be incompatible and using a purely intergovernmental form of decision-making, in which each state has a full veto over any action, will significantly limit what is achievable. If this was true of the six states in the ECSC, then as the number of member states has increased (up to 27 as of the 2007 enlargement) the problem has only been exacerbated. A clear solution is to delegate powers over certain areas to supranational bodies like the Commission, or to use majority decision-making, such as the use of 'qualified majority voting' (QMV) in Council decisions. The downside to procedures such as QMV is that while they

[8] Belgium, France, Italy, Luxembourg the Netherlands and West Germany.

might lead to an easier decision-making process – and therefore allow for certain courses of action to take place which would have been impossible if every state retained a veto – they also ensure that states will occasionally find themselves implementing decisions they would not have otherwise agreed to, raising questions over national sovereignty.

This tension has resulted in a balance between supranational and intergovernmental forms of decision-making. Consequently, we find that different policy areas within the EU fall under different rules and procedures. When dealing with issues of trade, for instance, the process is more supranational in nature. Significant powers have been invested in the Commission and decisions made in the Council tend to be made using majority decision-making: that is, no state has a veto over decisions and a qualified majority of states being in favour of a piece of legislation is enough to carry it into law. In other policy areas, such as the Common Foreign and Security Policy[9], the procedures generally conform to the intergovernmental model. Although the Treaty of Lisbon (2007) extended the use of QMV into some areas of CFSP, member states still effectively retain a veto over most decisions.[10]

The European Parliament has a different role in the European policy process. If the Council conforms to intergovernmental, state-led decision-making, and the Commission encapsulates the desire to derive benefits from the use of supranational institutions; the Parliament aims to meet the need for democratic representation at the European level. The democratic legitimacy of the integration process has been a key issue over recent decades (see, for instance, Follesdal and Hix, 2006). With decisions affecting European electorates across 27 member states being made within the EU's

[9] CFSP is aimed at fostering common EU positions and endeavours in issues of foreign policy.
[10] For a detailed discussion of the use of QMV in the Common Foreign and Security Policy see DG EXPO, 2008.

institutions, the requirement for some form of political representation is self-evident. Since the 1970s, the direct Europe-wide election of members of the European Parliament (MEPs) has attempted to meet this demand. As stated above, the role of the Parliament in the legislative process has continued to increase, as has the Parliament's position relative to the other European institutions.

Accountability vs Efficiency

Tensions between institutions manifest themselves in a variety of different ways. In terms of the Commission, one of the key concerns relates to the balance between accountability and the Commission's ability to effectively conduct its duties. As with all cases of delegation, when national governments transfer responsibilities to the Commission, it is necessary to ensure that there is some degree of accountability over the Commission's actions. Too much control, however, can prove counter-productive if it comes at the cost of significantly reducing the efficiency or effectiveness of the Commission's work.

One area which has received significant attention in this regard is the use of the 'comitology' system.[11] The use of these committees in the EU policy process has become extensive since their original introduction in the 1960s. They are specifically employed as part of the process for implementing EU legislation. Member states have delegated much of the responsibility for implementing EU legislation to the Commission; however under the comitology system the Commission must work in conjunction with member state / Commission committees in carrying out these duties. There is also the potential for the representatives of member states sitting on these

[11] See Chapter Two for a discussion of comitology.

committees to refer decisions back to the Council for review (Nugent, 2010). The committees operate under a number of different procedures depending on individual circumstances. In their weakest form – known as the 'advisory procedure' – committees simply provide the Commission with information on the implementation of legislation which it may, or may not choose to take on board. Other committees have stronger powers to block or approve Commission decisions before they are put into practice.

As Pollack (2003a) has argued, the comitology system has essentially been understood in two different ways. From a rational-choice/principal-agent standpoint, the purpose of the comitology system appears clear. Having transferred responsibilities for implementing EU legislation to the Commission, comitology has been adopted as a method for ensuring the Commission remains accountable to member states (see, for instance, Franchino, 2001). Alternatively, however, Pollack (2003a) notes that comitology may be understood more broadly in sociological-institutionalist/constructivist terms as a kind of 'deliberative democracy' in which technocratic committees comprised of member state and Commission representatives pool their resources in order to arrive at the most efficient and effective outcomes for the implementation of EU legislation.

To assess the merits of each of these perspectives, Pollack (2003a) attempts to find empirical evidence in the actions of the Council, Commission and European Parliament when they engage with the comitology system. In the case of the Commission, Pollack finds that the Commission's actions correlate strongly to the notion that it will favour the weakest comitology procedures – and therefore the procedures which provide the Commission with the greatest autonomy and discretion in terms of how it implements EU legislation. Brandsma and Blom-Hansen (2010)

affirm this idea by finding that although the Commission sometimes plays an active role in shaping outcomes through committees, in many cases committees are simply instruments of control.

The European Parliament, in contrast, has criticised the comitology system from a number of perspectives. It has argued that the system lacks transparency, in that the full composition and activities of committees are not always published[12] (European Parliament, 1999: 13). More generally, it has argued that the nature of the comitology system places too much emphasis on the role of member states. Given the Parliament's position, this criticism is easy to understand. As stated, the Parliament has received significant responsibilities in the legislative process under the extension of the 'co-decision' procedure; however the use of comitology in the implementation phase of this legislation has generally excluded it from making decisions. Only member state and Commission representatives have served on the committees and if issues arise, they are referred back to the Council alone, as opposed to the Council and the Parliament. Having already established a substantive role in the legislative process, it is perhaps natural that the Parliament would wish to extend the principle of 'co-decision' into the field of implementation.

The Council's perspective on comitology is more complex. As the Council entails the sometimes diverse positions of different states, it is difficult to ascertain a unified position on the issue. Pollack (2003) finds evidence for the view that the Council will favour the most restrictive comitology procedures, but also finds significant variation in the positions of member states across policy areas. Those states with a stake in certain policies are more likely to alter their preferences on comitology procedures accordingly. This may be manifested in a desire for stricter

[12] With this stated, rules on the transparency of committees have been enhanced in recent years (see Brandsma, Curtin, et al., 2007).

comitology procedures than usual, or certain states may favour more supranational decision-making if they have a stake in maintaining an integrationist perspective. The implication here is that although we might expect the Council to favour more restrictive comitology procedures as a matter of course, the potential for comitology to undermine the efficiency of the implementation process can lead to looser procedures being adopted to facilitate a more effective system.

Representation vs Credible Commitments

We have already seen, in our discussion of Majone's (2001) 'two logics of delegation' approach in Chapter Two, that a parallel tension exists in the Commission between the need for representation and the ability of member states to credibly commit to long term policies. To recap, member states have transferred certain responsibilities, such as regulatory powers and the responsibility for ensuring states uphold their agreements, which mandate a degree of independence from the Council and the other European institutions. The Commission's ability to effectively carry out these duties is undermined by any mechanism which limits its independence in these areas. As part of the general strengthening of the Parliament, however, and in accordance with the corresponding debates on democratic legitimacy, the notion of making the Commission formally subject to Parliament, or even subject to electoral pressures via the direct election of Commissioners, has gained some traction. In what Majone (2002) refers to as 'the perils of parliamentarization', these developments have the potential to undermine the Commission's work in key areas.

In the same manner that comitology requires a balance between member state control and Commission autonomy; this conflict between a need for representation

and the need to ensure independence necessitates an intricate balance between the Commission and the Parliament. Franchino (2002), in testing Majone's model by looking at the nature of secondary legislation and the control mechanisms adopted to ensure Commission accountability across different areas, concludes that where tasks have been delegated to the Commission for credibility reasons, member states are less willing to employ stricter control mechanisms, such as comitology. The Parliament is, unsurprisingly, more willing to limit the Commission's independence in these areas and take on an active role in scrutinising the Commission's actions.

Expanding Bureaucracy vs Constrained Resources

A final tension relates to the resources available to the Commission to allow it to effectively conduct its duties. The Commission requires substantial resources – both financially and in terms of staff – to meet all of its obligations. The size of the Commission, however, has proved a controversial subject, both at the European level and in the field of domestic politics.

Political anxiety over wasted resources is nothing new. In the context of national bureaucracies, the concern has given rise to a number of perspectives, amongst the most famous of which is William Niskanen's (1971) 'budget-maximising' model of bureaucracy. Writing with regard to bureaucratic organisations at the national level, Niskanen's primary assumption is that a rational bureaucrat will seek to increase the size of the budget under their authority. This is possible, under Niskanen's model, because bureaucrats usually possess a better understanding of the true cost of providing a service than their principals in parliament, or other bodies (Niskanen, 1971). The net effect of this is that once invested with powers,

bureaucracies will have a tendency to expand over time as they increase the size of their resources. Mitigating this process should therefore be a key concern for political authorities.

Niskanen's approach, in general, has been the subject of a number of debates and critiques (for an overview, see Wintrobe, 1997); however a specific debate has taken place over its relevance to the Commission. The Commission has been viewed by some scholars as analogous to a bureaucratic organisation (see Egeberg, 2006), but it also performs important political functions and has a markedly different set of responsibilities from a national bureaucracy. Patrick Dunleavy (1997), in assessing the applicability of Niskanen's perspective to the Commission, has argued that the effect of budget maximisation is likely to be limited in the European case. Dunleavy highlights the fact that a very high percentage of the EU budget (95%) is not spent directly by European institutions, but instead passed on to other actors. The effect of this is, for Dunleavy, to limit the potential for gains to be made by the Commission in pushing for either an overall rise in the size of the EU budget, or in the proportion of the EU budget which specifically funds the Commission's operations.

Majone (1996; 1997) also focuses on the nature of the Commission's tasks and how these differ from the type of bureaucratic organisation studied by Niskanen. Majone has written extensively on the regulatory work conducted by the Commission (see Majone, 1996) and takes influence from economic studies of regulatory agencies within the national context. For Majone, the regulatory nature of much of the Commission's activities necessitates a different model of behaviour. He notes that economic studies of national regulatory agencies tend to disregard any assumptions of budget-maximising behaviour and instead predict that the primary motivation of national regulatory agencies will be to provide favourable regulatory outputs to

certain interest groups. He also highlights that one of the main differences between the Commission and national bureaucracies, or national regulatory agencies, is that its mandate (its competences) are not fixed, but have changed significantly over time.

For Majone, this leads to the conclusion that the Commission is more likely to pursue a course of action that increases the scope of its competences, as opposed to a rise in its resources. As he argues:

> The available empirical evidence, as well as casual observations, seem to support the hypothesis that the utility function of the Commission is positively related to the *scope* of its competences rather than to the *scale* of the services provided or to the size of its budget. For example, the great expansion of Community competences since the mid-1980s in areas such as the environment, health and safety at work, consumer product safety and the regulation of financial services has been accompanied by a significantly less than proportional increase of expenditures for administration—from 4.35 per cent of the total Community budget in 1985 to 4.8 per cent in 1994—while the number of directives has more than doubled in the same period. Thus, budgetary appropriations per unit of regulatory output have actually decreased, suggesting that the Commission prefers task expansion to budgetary growth. (Majone, 1996: 65)

Essentially these approaches constitute an attempt to predict the way in which the Commission is likely to try and maximise its interests. Niskanen's original model posited that parliaments, and other bodies, had a legitimate concern in preventing

bureaucracies from expanding their financial resources. The focus here is on a problem that political principals must address in dealing with bureaucratic organisations. Similarly, while approaches such as Majone's might have merit in explaining the motivation of the Commission, just as important is the perception of the Commission's principals: the member states.

In this regard, it is clear that the size of the Commission's resources have remained a key concern. Indeed, the relatively small rise in budgetary appropriations identified by Majone arguably reflects the reluctance of member states to expand the size of the Commission, even when the Commission has taken on a large number of new responsibilities. One of the key areas of relevance in this context is the size of the Commission's staff. In recent years the Commission has come under significant strain due to an increase in its responsibilities and pressure from the Parliament and Council to refrain from drastically increasing the numbers of permanent staff employed in its work. As of 2011, the Commission is currently operating under an effective 'freeze' in the number of permanent staff members it is entitled to employ. As will be seen, the constraints of low staff levels have led the Commission to pursue alternative avenues for carrying out its duties.

European Regulatory Agencies

In discussing the various applications of delegation theory within the EU, the primary focus to this point has been on the powers delegated to the main European institutions: principally the European Commission, the European Parliament and the European Court of Justice. Going back to the 1970s, however, the EU's institutional framework has undergone significant change through the creation of numerous

European agencies and decentralised bodies. Although the first agencies – the European Centre for the Development of Vocational Training (CEDEFOP) and the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) – were established in 1975, the use of agencies became more widespread in the 1990s with the creation of a series of new bodies associated with the completion of the internal market. This expansion in the use of agencies stimulated a number of studies focused on the independence, control and accountability of the new bodies (for instance, Majone, 1997; Kelemen, 2002; Busioc, 2009; Egeberg and Trondal, 2011).

The initial growth in the number of EU agencies – which are sometimes labelled 'second-generation' agencies so as to distinguish them from the two agencies established in 1975 – has its roots in the commitment, contained within the Single European Act (1986), to complete the EU's internal market by the end of 1992. The creation of a single market in which "the free movement of goods, persons, services and capital is ensured" (Article 14, EEC Treaty) has, of course, always been a primary aim of the integration process. One of the fundamental elements required for the creation of a single market is the elimination of regulatory inequalities between member states which have the potential to inhibit free trade. If we consider the case of a company manufacturing a particular food product, for instance, it is easy to illustrate why this is the case. The company, located in one member state, might manufacture the product using a variety of different ingredients which may all legally be used in foodstuffs within that territory. When they come to export their goods to another EU member state, however, they may encounter different regulations governing the ingredients that can be contained within products. If some of the ingredients are not permitted to be used within that state then it will not be possible to export the

company's product, irrespective of any broad commitment to free trade made by politicians at the national level.

Clearly, therefore, it is necessary to ensure some degree of regulatory compatibility amongst member states within a single market. Notable problems existed, however, with the initial strategy adopted for ironing out these regulatory inequalities. The initial approach, sometimes labelled 'total harmonisation', attempted to produce a compatible regulatory system through centralised legislation. Highly technical and specific regulations were produced at the European level and were to be adopted across all member states. The reliance on unanimity in negotiations and the wide array of regulatory traditions present amongst members made this particularly problematic. Decision-making procedures tended to be characterised by protracted deliberations between entrenched interests and problems were compounded at the implementation stage by the absence of assurances from member states that directives would be adopted swiftly and with strict adherence to the agreed legislation, resulting in a series of infringement cases being brought against member states in the European Court of Justice (Taalberg, 1997).

The deficiencies in this system severely limited the progress made in eliminating regulatory inequalities. From the Commission's formal adoption of the strategy, outlined in its 'General Programme' in 1968, to the mid-1980s, the average number of pieces of legislation produced was a little over ten per year (Pelkmans, 1987). As Dashwood (1983) points out, the pace at which European level agreements could be brokered was greatly outstripped by the speed at which the less cumbersome regulatory systems present at the national level could produce new regulations and, consequently, new trade barriers. The total harmonisation approach was therefore both inefficient, due to the extensive negotiations required to produce agreements, and

ineffective, given that, at best, the policy could only hope to slow down the creation of new inequalities between the member states.

The failures of the total harmonisation approach resulted in a comprehensive rethink over the completion of the internal market and the adoption of a number of different measures to further the process. The key elements of the new approach were to engage actors below the European level in the regulatory process and thereby facilitate a more decentralised system which could keep pace with developments at the national level. The creation of new regulatory agencies was a key part of this process because, as Dehousse (1997) has stated, they could take on an important role in co-ordinating the work of actors at the national and sub-national level. The new agencies also aided the process in a more general sense by enhancing the EU's overall regulatory capacity: a fundamental requirement in light of the commitment to complete the internal market by the end of 1992. Even with the responsibility for eliminating regulatory inequalities becoming more decentralised, the Commission's limited bureaucratic capacity would have been under significant strain without the creation of the new agencies.

As of 2011, there are currently 30 distinct regulatory agencies and bodies. These agencies can be separated into three different categories: the 24 'policy agencies', which are agencies set up to work in a specific field; 3 agencies associated with the EU's Common Security and Defence Policy; and 3 agencies which have been set up to help EU member states co-operate in efforts to combat international crime. Table 4.1 below gives a full list of the agencies:

Table 4.1: EU Regulatory Agencies

Policy Agencies	Agency for the Cooperation of Energy Regulators (ACER); Community Fisheries Control Agency (CFCA); Community Plant Variety Office (CPVO); European Agency for Safety and Health at Work (EU-OSHA); European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX); European Asylum Support Office (EASO); European Aviation Safety Agency (EASA); European Centre for Disease Prevention and Control (ECDC); European Centre for the Development of Vocational Training (Cedefop); European Chemicals Agency (ECHA); European Environment Agency (EEA); European Food Safety Authority (EFSA); European Foundation for the Improvement of Living and Working Conditions (EUROFOUND); European GNSS Agency (GSA); European Institute for Gender Equality (EIGE); European Maritime Safety Agency (EMSA); European Medicines Agency (EMA); European Monitoring Centre for Drugs and Drug Addiction (EMCDDA); European Network and Information Security Agency (ENISA); European Railway Agency (ERA); European Training Foundation (ETF); European Union Agency for Fundamental Rights (FRA); Office for Harmonisation in the Internal Market (OHIM); Translation Centre for the Bodies of the European Union (CdT)
Common Security and Defence Policy Agencies	European Defence Agency (EDA); European Union Institute for Security Studies (ISS); European Union Satellite Centre (EUSC)
Police and Judicial Co-operation Agencies	European Police College (CEPOL); European Police Office (EUROPOL); The European Union's Judicial Cooperation Unit (EUROJUST)

One of the most striking aspects of the list above is the diversity between the different agencies included. While all of these agencies may fall under the same heading of 'EU regulatory agencies' there is a significant difference between the nature of many of the agencies and the tasks they have been assigned. Three examples should illustrate the point.

The European Aviation Safety Agency (EASA), for instance, is an agency that was established in 2002 to carry out regulatory activities in the field of air safety. The EASA took over responsibilities from a looser system of co-operation between air safety agencies in several European states, known as the Joint Aviation Authorities (JAA). The goal of the JAA was to help foster joint regulatory standards and procedures on air safety between its members, such as specifications on aircraft components. The JAA was not formally a regulatory body, but rather a system for the regulatory bodies within European states to co-operate, given the obvious benefits of having joint standards in an international field such as air travel. The EASA, once it became fully operational in 2008, took on most of the regulatory responsibilities over air safety within the EU's member states. The agency carries out a number of complimentary duties, such as overseeing inspections of aircraft, conducting research into air safety, and recommending new pieces of legislation to the EU's institutions. As part of this process, the EASA publishes a full 'annual safety review', including statistics on global aviation incidents and developments of new safety procedures.

Alternatively, the European Union Satellite Centre (EUSC) is an altogether different type of agency. Created in 2001, and fully operational from 2002, the chief responsibility of the EUSC is to administer the analysis of satellite imagery and data. Based in central Spain, the agency was intended to strengthen the Common Foreign and Security Policy (CFSP) by providing a resource for use in conflict prevention and

crisis monitoring. The EUSC largely took on responsibilities from an existing body: the Western Union Satellite Centre. This body had a similar function to the EUSC, but was associated with the (now defunct) Western European Union (WEU). The European Defence Agency (EDA) and the European Union Institute for Security Studies (ISS) also took on responsibilities from WEU bodies as part of the transferral of WEU tasks to the EU's institutions.

Last, in the field of police and judicial co-operation, the European Police Office (EUROPOL) began operations in 1994, becoming fully operational in 1999. EUROPOL is significantly different from the EASA and EUSC, operating as a vehicle for police forces and intelligence agencies within the member states to pool their resources to combat organised crime. Like the EASA, it has its roots in a looser network between national organisations known as TREVI, which was established in 1975. It currently employs some 700 staff in order to organise communications between national intelligence agencies and conduct EU wide analyses into criminal activity.

The Politics of EU Regulatory Agencies

Although the need for an increased regulatory capacity goes some way toward explaining why so many agencies have been created in the past twenty years, it does not provide a complete picture of the reasons why individual agencies have been adopted in a given area. Regulatory agencies are not the only option available to decision-makers wishing to increase the EU's regulatory capacity. There are, indeed, a number of other options which can achieve these aims.

As Kelemen and Tarrant (2011) have outlined, when a decision is made to regulate an area at the supranational level there are essentially three different options which can be adopted by EU policy makers: to delegate regulatory powers to the European Commission; to create a new EU agency, or delegate powers to an existing agency; or to use a network of national regulatory agencies (NRAs) to negotiate joint solutions. In addition, there are a wide range of options with regard to the control mechanisms and the degree of discretion afforded to regulatory actors. How are these decisions made?

The first issue of importance relates to the policy makers involved. Broadly speaking there are three main ways in which a regulatory outcome, such as the creation of an EU agency or the use of a network of NRAs, can be determined. The first mechanism for delegating regulatory powers is through a formal treaty amendment. In this case the only actors of relevance are those who engage in the treaty process: namely, the national governments of member states. Treaty amendment is only necessary, however, when the member states wish to create a body that exercises regulatory powers independently from the Commission or any other institution.[13] The European Central Bank, for instance, is a fully independent body and, as such, it had to be established through the treaty process. In practice, regulatory agencies are not generally established by treaty amendments. Instead, they are created using powers already contained within the treaties (the second mechanism). The legal distinction in this context is fairly obscure and rests on the principle that such regulatory agencies are, formally, bodies which advise the Commission. In practice, as Kelemen and Tarrant (2011) state, there is fairly limited scope for the Commission failing to act upon the decisions of regulatory agencies. Nevertheless, when outcomes

[13] This principle was established by the European Court of Justice in the *Meroni* case: Case 9/56 *Meroni & Co, Industrie Metallurgiche SpA v. High Authority* [1958] ECR 133.

are determined by legislation, as opposed to treaty amendment, the main decision-makers are those who have a stake in the EU's legislative process: the Council and, in areas of co-decision, the European Parliament, with the Commission retaining powers of initiative. The last mechanism relates to the creation of networks of NRAs and requires no formal legislation. Typically networks are established directly between the relevant NRAs (Kelemen and Tarrant, 2011).

For Kelemen and Tarrant (2011), national governments of member states are clearly the dominant actors in this process. They are the only actors capable of making treaty amendments, they play the primary role in the EU's legislative process and they also exercise formal authority over their own national regulatory agencies. There is, however, an inherent trade off involved in these decisions between the member states' desire to make credible regulatory commitments and their ability to control the nature of regulatory outputs. Delegation of regulatory powers by treaty amendment leads to the most centralised mode of action, in which an independent and far-reaching body, such as the European Central Bank, is established at the supranational level. An institution of this nature acts independently from the member states and, as such, has the potential to produce regulatory outputs which run counter to the wishes of national governments. Kelemen and Tarrant (2011) argue that member states are therefore less likely to advocate this form of centralised, independent decision-making, in regulatory areas which have the potential to produce outputs that cause significant negative distributional effects amongst states. Rather, they will favour looser networks of NRAs, not least because the responsibility for implementing agreements rests with their own national regulatory agency and can therefore be strongly influenced by each national government (Kelemen and Tarrant, 2011).

To concentrate solely on the interests of member states, however, would be to adopt too narrow a focus. As was discussed in the first chapter, Dehousse (2008), amongst others, has drawn attention to the role of the other European institutions in the process of delegating regulatory powers. In Dehousse's reading, we would expect the European Parliament and the Commission to favour institutional design choices which enhance their own positions in relation to the other institutions. To a certain extent there is some evidence for this. The Parliament has been particularly active in advocating the need for accountability amongst newly created agencies (Busuioc, 2009). Drawing on its role in scrutinising the actions of the Commission, it has sought to extend its position to overseeing the work of EU agencies. The Commission also has a stake in this process by virtue of its status in the treaties as the primary regulatory institution within the EU's institutional framework. Regulatory agencies created under secondary legislation are, as mentioned, intended to aid, rather than supplant, the Commission in its regulatory work. Consequently the Commission also possesses responsibility for scrutinising the actions of agencies. Nevertheless, it does not necessarily follow that the Commission will favour the creation of EU regulatory agencies as a matter of course. The Commission's initial standpoint, as was touched upon above, was that the answer to the need for an enhanced EU regulatory capacity should be found in increasing the Commission's own resources to allow it to cope with the increased demands. It was only when national governments proved unwilling to increase the size of the Commission's resources that it began voicing support for the use of agencies (Kreher, 1997).

The difference between the various structures put forward for new agencies illustrates the competitive nature of this process. Each agency has a management board which functions as the main line of accountability to the other EU institutions.

The European Parliament's favoured model for the appointment of these boards (as outlined in European Parliament, 2003) is for the Commission to draw up a list of proposed board members and for the list to be submitted to Parliament, before ultimately being approved by the Council. The Commission has advocated a completely different system in which members of the board are appointed jointly, and directly, by the Commission and the Council, with no role afforded formally to the European Parliament (European Commission, 2002). It is perhaps not surprising that the solutions to practical problems put forward by each institution are those which are likely to result in strengthening that institution's own position.

Overall, there are a number of implications concerning the use of EU regulatory agencies, particularly with regard to the discretion afforded to them. Due to the regulatory work they are involved in, EU regulatory agencies are intended to operate with minimal involvement from politicians and political authorities. As Van Ooik states: "most founding acts expressly stipulate that the agency concerned will be completely independent from the makers of law and politics. The agency's output may and should not be influenced by political considerations" (Van Ooik, 2005: 125).

We have already seen, in the discussion of credibility models of delegation in chapter two, that delegated bodies with a high level of independence from their principals raise several potential issues. As Shapiro (1997) notes, however, the case of independent EU regulatory agencies is more complex than comparable situations at the national level. Whereas an independent agency at the national level is largely insulated from party politics and the control of a national legislature; bodies operating at the European level already have a degree of separation from these political arenas. The regulatory tasks delegated to EU regulatory agencies are, in effect, tasks once delegated to the European Commission. When the Commission performs its

regulatory functions, it is already insulated from not only national politics, but from the member states in the Council (see for instance, Majone, 2001). A further layer of complexity stems from the fact that EU regulatory agencies are not simply insulated from politics, but also have a degree of independence from the Commission itself (Shapiro, 1997).

The key issue with regard to EU regulatory agencies is how to maintain necessary levels of control and accountability. With the number of agencies expanding throughout the 1990s, several academics have drawn attention to the potential pitfalls associated with their use (see Vos, 2000; Flinders, 2004). Any measures designed to ensure accountability, however, must not jeopardise the independence which is a necessary component of agencies conducting their duties. As Busuioc argues: "Given that the 'independence of agencies is often seen as the most central principle of good governance and that a large number were established specifically in order to remedy, through their independence, credible commitment failures of the Commission, jeopardising this independence would defeat the very purpose for which they were created" (Busuioc, 2009).

Technical Assistance Offices (TAOs)

The use of regulatory agencies within the EU is not the only example of delegation at the European level. Rather than creating new agencies, formally delegating powers to existing institutions, or using national bodies, such as networks of NRAs to perform certain functions; another option is simply to contract private individuals and companies to carry out work on a case by case basis. Although this may not be a

solution for large scale issues, such as regulating the single market, it can be a legitimate option for other tasks.

One area in which this option has been used significantly is in the management of community programmes. Community programmes are essentially funding programmes, drawn from the EU budget, which are aimed at financing and promoting certain European industries and endeavours. In the 2007-2013 budgetary period, there were 22 of these programmes dealing with a variety of different sectors. The programmes provide funding for anything from technological developments, to financial assistance for individuals (such as scholarships for students). The MEDIA 2007 programme, for instance, is a programme which aims to support the European audiovisual sector – primarily film-makers – by providing grants for training, the promotion and distribution of films and other aspects of the filming process. Typically a call for proposals is made, inviting applications from companies and individuals seeking support. These proposals are assessed and those successfully meeting the relevant criteria are offered financial assistance, in the form of grants and other mechanisms, for a specified period.

A funding process of this nature raises a number of management issues which must be addressed for the programme to operate correctly. The assessment of individual applications usually involves the use of experts – such as those with knowledge of film and cultural pursuits, in the case of the MEDIA 2007 programme – to ensure that the correct proposals are selected for funding. There are also significant issues with regard to the management of financial resources, as all money from the EU budget must be spent properly and in accordance with the relevant auditing procedures. Formally, the European Commission has been assigned the responsibility for performing these duties and ensuring the programmes operate effectively with

respect to their overall aims. A significant growth in the number and scale of community programmes during the 1980s and 1990s, however, led to the Commission facing a strain on its resources and alternative management methods were put forward as a solution.

The key proposal made by the Commission was to advocate a process of what it termed ‘externalisation’, through which some of these management responsibilities were to be transferred away from the Commission to specialised actors. The Commission outlined the benefits of this system as follows:

> Externalisation intended to reach the concentration of the Commission services on their core tasks; the improvement of the management of the Community programmes often involving recurrent administrative tasks related to the management of multiple and relatively small grants, and the specificities of the organisation; and the development of synergies between the various programmes and rationalisation of their management. (Quoted in European Court of Auditors 2009: 34)

The first benefit is relatively straightforward. With the number of management tasks increasing, the Commission arguably found itself hampered from pursuing its other responsibilities. Small-scale acts of management and administration, such as processing payments and dealing with proposals, can tie up significant resources; however the notion of focusing on ‘core tasks’ goes a step further than simply freeing up staff and finances. The Commission’s responsibility in this context is over the overall functioning of community programmes: the aims of each programme, how funding should best be targeted, what the underpinning principles should be. These

broader concerns can be separated from the functional, administrative and management work required to implement the programmes in practice. This is a separation between ‘policy’ and ‘implementation’: a distinction which is already well established as a principle of administration at the national level (see, for instance, Stewart, 1996).

The second benefit of externalisation identified relates to improvements in the overall effectiveness of programme management. As the Commission states, the management of programmes typically involves a number of recurrent administrative tasks. Following the principle of a division of labour, employing specialised actors to carry out these tasks may lead to improvements in efficiency and effectiveness. Commission staff are likely to have more general skill-sets and be responsible for a wide range of other duties in addition to the management of programmes. In this context it might be justified to employ individuals or companies with expertise in carrying out specific duties.

Last, as a result of certain similarities across programmes, there is the potential for what the Commission terms ‘synergies’ to develop. Although the field of activity community programmes are involved in varies, many of the administrative tasks are broadly similar. Processing payments, for instance, is likely to involve the same issues irrespective of whether the payments are going toward a scholarship, technological research or to fund a short-film. As part of the externalisation strategy, the Commission aimed to group compatible tasks across different programmes into collective undertakings that could be conducted by individual actors. By doing so, it was hoped that the efficiency and effectiveness of the management of programmes could be further enhanced.

Initially, the Commission sought to meet these aims by employing a number of private contractors. Formally, these contractors were given the name of 'Technical Assistance Offices' (TAOs) and by 1999 more than 100 of these offices had been established. For example, in the 1980s and 1990s under the PHARE programme (formally known as of 2012 as the 'Programme of Community aid to the countries of Central and Eastern Europe') and the TACIS programme (which aims to promote democracy, the rule of law and a transition to a market economy in Eastern Europe and Central Asia) a significant amount of funding was distributed to nuclear safety projects, following the Chernobyl accident in 1986. As this process necessitated a high level of expertise in complex technologies related to nuclear power, and as there was a constraint on the numbers of Commission staff available to manage the programme, a large proportion of management responsibilities were contracted out to private companies.

Specifically, a consortium of energy companies, termed the 'Twinning Programme Engineering Group' (TPEG), took on a significant role in the planning and assessment of proposed safety projects. The group was composed of energy companies from the member states which had experience of operating nuclear reactors.[14] In addition, a number of bodies, known as 'supply agencies', were employed to carry out specific management tasks associated with the implementation of the projects. These tasks included: "verifying the neutrality of technical specifications; organising invitations to tender and registering tenders received; verifying technical and then financial evaluation reports; drawing up contracts with the supplier appointed by the Commission; and payment of invoices in line with the contract" (Committee of Independent Experts, 1999a: para 7.4.14).

[14] The companies were TRACTEBEL (Belgium), IVO/TVO (Finland), EDF (France), VGB (Germany), ENEL (Italy), GKN (Netherlands), DTN (Spain), and MAGNOX (UK).

As a method for implementing the Commission's externalisation policy, the use of TAOs, and contracting-out in general, appeared to meet most of the policy's aims. Concerns soon began to be raised, however, over the amount of control the Commission had over external contractors, particularly due to the significant financial resources under the control of TAOs as part of the community programmes they were involved in. At a broader level, the issue of fraud and mismanagement of the EU budget had maintained a place on the political agenda throughout the 1990s. Media reports had purported to uncover instances of mismanagement of funds, particularly with regard to the Common Agricultural Policy (for instance, Marshall, 1995). UCLAF, the predecessor to the European Anti-Fraud Office (OLAF), and the Court of Auditors had also raised specific concerns over the potential for private contractors to act outside of the control of the Commission.

The nuclear safety projects funded under the PHARE and TACIS programmes, for instance, were the subject of a special Court of Auditors report in 1998. The Court argued that in many cases the delegation of responsibilities to TPEG and the supply agencies had been excessive and that some of the responsibilities taken on by these companies called into question the Commission's control over the programmes. TPEG had, according to the Court, taken a far greater role in determining the nature of the programmes than could have been expected. The relevant energy companies had: "become increasingly involved in discussing and drawing up Commission programmes. The Commission has not, however, been represented during many of the visits made to recipients and has over-delegated its responsibilities in this area" (European Court of Auditors, 1998: para 5.4). This 'over-delegation' of responsibilities had contributed to: "prevarication and procrastination as regards the action to be taken, a lack of consistency in the allocation of resources…

and delays which undermined the value of EU action" (European Court of Auditors, 1998: para 6.3).

On the 14th of January 1999, the European Parliament, after voicing its concerns over the use of private contractors and the distribution of EU finances, adopted a resolution to assess the Commission's financial management. The resolution called for a 'Committee of Independent Experts' to be given a mandate to examine the Commission's efforts to detect and deal with fraud, nepotism and other irregularities. In addition, the Committee was charged with carrying out a full review of the use of private contractors and the awarding of all financial contracts. This process culminated in the Committee producing two reports assessing not just the overall situation with regard to fraud and mismanagement, but the degree to which individual Commissioners, and the Commission as a whole, shouldered the blame for any problems uncovered.

The Committee investigated a number of specific cases, most of which had already been raised in parliamentary discussions. In many of these cases the Committee came to the conclusion that the use of private contractors had jeopardised the Commission's control over community programmes and the proper allocation of EU funds. For instance, in the case of the MED programme ('Europe in the Mediterranean' – a programme aimed at promoting co-operation between non-member countries on the Mediterranean coast at the onset of the Gulf War in 1992) the Committee highlighted several failures. Drawing on a Court of Auditors report (European Court of Auditors, 1996) the Committee concluded that far from simply employing actors to do specific management tasks, the Commission had effectively delegated significant control over the entire programme to a private company (ARTM – Agency for Trans-Mediterranean Networks). As the Court stated: "in view of the

nature and scope of the powers conferred on the ARTM, what the Commission had actually done was to delegate its powers de facto to a third body, rather than sign mere service contracts" (quoted in Committee of Independent Experts, 1999a: para 3.2.17). Moreover, the Committee highlighted substantive conflicts of interest related to the use of TAOs in implementing the programme. Two companies employed as TAOs in the MED programme – ISMERI and FERE – were also founding companies of ARTM. The Committee concluded that the companies' dual status effectively resulted in them being: "able to participate in the process of negotiating contracts concluded with themselves" (Committee of Independent Experts, 1999a: para 3.5.9).

Although these conclusions were extremely damaging to the reputation of the Commission, the Committee did not find any evidence that Commissioners had personally been involved in fraud or mismanagement.[15] However, the fact that Commissioners claimed they were unaware of the issues raised by the committee's report provided evidence that they had lost control over the process. As the Committee stated in its concluding remarks:

> Throughout its series of hearings, and during its examination of the files, the Committee has observed that Commissioners sometimes argued that they were not aware of what was happening in their services. Undoubted instances of fraud and corruption in the Commission have thus passed 'unnoticed' at the level of the Commissioners themselves. While such affirmations, if sincere, would clearly absolve Commissioners of personal, direct responsibility for the individual instances of fraud and corruption, they represent a serious admission of failure in another respect.

[15] The Committee did find some evidence of 'favouritism' amongst Commissioners. The most important of these cases related to Édith Cresson, the Commissioner for Research, Science and Technology, who was investigated for appointing a close friend as an official advisor.

> Protestations of ignorance on the part of Commissioners concerning problems that were often common knowledge in their services, even up to the highest official levels, are tantamount to an admission of a loss of control by the political authorities over the Administration that they are supposedly running. This loss of control implies at the outset a heavy responsibility for both the Commissioners individually and the Commission as a whole. (Committee of Independent Experts, 1999a: para 9.2.1 – 9.2.2)

Alongside this general loss of control over the process, the Committee was extremely critical of the principle that a strain on Commission staff resources justified the extensive use of private contractors. The Committee argued that programmes such as the MED programme, and the nuclear safety projects carried out under PHARE and TACIS, necessitated such large numbers of external staff that it is questionable whether they should have been undertaken at all. On the MED programme, the Committee stated explicitly that: “The Commission as a whole deserves serious criticism… for launching a new, politically important and highly expensive programme without having the resources - especially staff - to do so.” (Committee of Independent Experts 1999a: para 9.2.5) On the nuclear safety projects, the Committee summed up the general conclusion of the report, stating that: “the principal accusation made by the Committee, one which applied to the Commission generally and to successive Commissioners, is the failing common to several of the cases examined, namely undertaking a commitment in a new policy area without the Commission possessing all the resources to carry out its task.” (Committee of Independent Experts, 1999a: para 9.2.9)

On the day the Committee published its first report – the 15th March 1999 – the entire Commission, led by President Jacques Santer, resigned.

The Kinnock Reforms

Following the resignation of the Santer Commission, the European Council nominated Romano Prodi as Commission President and issued a mandate for the Commission to carry out a number of reforms, in accordance with the conclusions of the Committee of Independent Experts' report. As the Council stated:

> The Commission should speedily put into effect the necessary reforms, in particular for the improvement of its organization, management and financial control. In order to do this, the next Commission ought to give urgent priority to launching a programme of far-reaching modernization and reform. In particular, all means should be used in order to ensure that whenever Community funds, programmes or projects are managed by the Commission, its services are suitably structured to ensure highest standards of management integrity and efficiency. (European Council, 1999; quoted in Kassim, 2008)

The Vice-President of the Commission, Neil Kinnock, was charged with leading the reforms, which later became known as the 'Kinnock reforms'. In addition to the conclusions from the Committee of Independent Experts' first report, the Commission was also obliged to take on board a second report produced by the Committee, due for publication later in 1999 (Committee of Independent Experts, 1999b).

The first step in the reform process was the Commission's publication of a 'White Paper for Reform' in early 2000. In the introduction, the Commission set out the aims of the process and how it intended to regain credibility and trust over financial management:

> We want the Commission to have a public administration that excels so that it can continue to fulfil its tasks under the Treaties with maximum effectiveness. The citizens of the Union deserve no less, the staff of the Commission want to provide no less. To fulfil that objective, we must keep the best of the past and combine it with new systems designed to face the challenges of the future. The world around us is changing fast. The Commission itself, therefore, needs to be independent, accountable, efficient and transparent, and guided by the highest standards of responsibility. (European Commission, 2000a: 3)

The reforms contained within the white paper arguably went far beyond those prompted by the conclusions of the Committee of Independent Experts. In all, some 98 distinct reforms were proposed, covering a variety of different issues. Four key headings, in particular, characterised the report. The first, 'A Culture Based on Service', outlined the general principles that the Commission aimed to base its operations around. This reaffirmed the Commission's commitment to independence (from national interests – i.e. neutrality), responsibility, accountability and transparency.

The second heading, 'Priority Setting, Allocation and Efficient Use of Resources', contained more substantive proposals on how the Commission's overall

workload should be planned and organised. With regard to externalisation, the paper identified the lack of an explicit policy, with detailed criteria on when and how externalisation should be used, as a key problem. Although the paper acknowledged the problems which had affected the use of externalisation in the past, it also recognised that some form of externalisation will always be desirable in certain aspects of the Commission's work:

> Apart from the self-evident need for the Commission to have an adequate level of staffing, there will always be a need for external resources too. The Commission does not have the right internal resources for some new and/or temporary tasks. Increasingly, too, experience shows that many operations are best delivered close to the target group rather than centrally from Brussels. Finally, there are tasks in the operation of any large organisation which can be done more effectively by specialist firms. (European Commission, 2000a: 10)

In terms of a policy on externalisation, the paper states that delegating tasks to other bodies should: "only be chosen when it is a more efficient and more cost effective means of delivering the service or goods concerned" (European Commission, 2000a: 11). The use of externalisation should also be formally structured, as opposed to the ad-hoc contractual situations which had characterised the use of TAOs and private services in the past. Although a 'one size fits all' solution across all Commission departments would not be appropriate, the paper states that it must: "be possible to ensure that there is more coherence so that similar instruments are used for similar cases" (European Commission, 2000a: 11). Last, the Commission should not use

externalisation as a means to initiate programmes and carry out courses of action which are overly ambitious. As the paper states:

> The Commission should refuse to take on any task which it does not consider that it is able to handle within an acceptable margin of risk, regardless of whether the task is to be managed in-house or externally… Externalisation will only be undertaken where it is justified on its own merits and will not be regarded as a substitute for shortfalls in the staff required for carrying out core tasks. (European Commission, 2000a: 11)

The third heading in the white paper, 'Human Resources Development', consisted of a large number of reforms associated with the rules on recruitment of Commission staff, promotions, unions, career development and disciplinary procedures. Many of these reforms were directly based on recommendations contained within the Committee of Independent Experts' reports; however as Kassim (2008) notes, the measures eventually implemented went further than even those contained in the Commission's white paper. They were ultimately determined as part of a special group chaired by Niels Ersbøll, which altered many of the practical regulations in the Commission's staff policy.

The final heading, 'Audit, Financial Management and Control', proposed widespread changes to the system of financial control present within the Commission. The bulk of these changes strengthened the direct accountability of Commissioners for the use of financial resources. New rules, such as the requirement for Directors-General to personally sign an assurance that all financial resources under their responsibility had been properly accounted for, effectively lead to a decentralisation

of the control system to DGs, rather than the Commission as a whole. As the Commission states:

> One central aim of the Reform is to create an administrative culture that encourages officials to take responsibility for activities over which they have control – and gives them control over the activities for which they are responsible… The Commission's systems for financial management and control are no longer suited to the type and number of transactions which they have to deal with. When the present centralised systems were designed, the Commission was processing sums of money very much smaller than today's… These realities mean that procedures need to be made simpler and faster, more transparent and decentralised. (European Commission, 2000a: 19)

Bauer (2007) has characterised the reforms as reflecting a desire to adopt 'new public management' (NPM) perspectives on administrative reform. NPM is a fairly broad concept which has been used to describe a series of national reforms of public sector management strategies which began in the 1980s. Dunleavy, et al. (2006) identify three main elements to the NPM approach, which all have their roots in management strategies previously adopted in the private sector: disaggregation; competition; and incentivisation. Disaggregation implies the breaking up of large, rigid hierarchies, into more flexible, decentralised forms of management. Competition refers to the use of measures like productivity targets and joint comparisons within and between different departments and organisations. Last, incentivisation implies the use of more concrete – largely financial – rewards for improved performance in order to provide

motivation for individuals and organisations to improve the efficiency and effectiveness of their activities.

Although it could certainly not be said that all aspects of the Kinnock reforms comply with NPM perspectives, taken at face value there are some significant similarities between the two approaches. Decentralisation, as stated above, was a key aspect of the reforms. The transferral of responsibilities over aspects of financial management to lower levels of management had the aim of both increasing accountability and improving the efficiency of the Commission's activities. Likewise, the aim of achieving value for money from Commission services was a significant motivating factor in the White Paper's formulation and many of the situations dealt with in the reform process parallel those previously encountered at the national level.

Roger Levy (2002), in an early analysis of the reform package, has assessed the extent to which the Kinnock reforms constituted a break with previous management strategies and a ratification of NPM perspectives. He concludes that although the language of the White Paper reflects NPM thinking, there remain some strong links with previous reform processes carried out by the Commission: especially the 'Sound and Efficient Management (SEM) 2000' initiative, which was an effort made in the early years of the Santer Commission to isolate and rectify management problems. Specifically, Levy argues that there still remains an overall tendency toward centralised mechanisms of control, rather than a consistent strategy to transfer responsibilities to lower levels. Indeed, as Bauer (2007) notes, the fact that NPM reforms, despite being adopted widely in the national context, had not come to dominate at the European level prior to 2000, is evidence that vested interests had previously presented obstacles to adopting an extensive NPM strategy. Nevertheless,

Levy (2002) concluded that the Commission's externalisation model, if properly realised, had the potential to modernise management tasks along NPM lines.

Michelle Cini (2004) takes the reforms as corresponding loosely with new public management thinking overall, but also argues that the Commission took an 'eclectic approach' to the issue of organisational ethics. Given the perception of unethical behaviour that motivated the resignation of the Santer Commission and the production of the White Paper, it would be expected that one of the key aims of the reform process would be to promote more ethical behaviour by staff. Two distinct strategies can be identified in this respect. First, the reforms ratify what could be termed a new public management approach to ethics. In this respect they view ethics as being improved through the 'trickle-down' effect of overall improvements to the organisational culture of the Commission. Notions of 'Standards of Behaviour', which are a feature of the second part of the Commission's White Paper, conform to this approach. Second, this is complemented by more concrete rules and codes on unethical behaviour, complete with potential punishments and sanctions (Cini, 2004).

As Cini (2007) has argued, however, the Commission's overall approach to ethics has become somewhat disjointed in practice. This is exacerbated by different mechanisms being instituted over the ethics of commissioners, on the one hand, and Commission officials on the other. One of the main distinctions made in the literature on organisational ethics is between approaches focused on *compliance* and approaches focused on *integrity* as mechanisms for promoting ethical behaviour (Lewis and Catron, 1996; Cini, 2004: 46). Compliance approaches broadly conform to formal rules preventing and punishing inappropriate behaviour; while integrity approaches rest on the establishment of principles concerning appropriate, ethical actions, which thereby affect the behaviour of individuals, albeit on a more subtle

level than formal rules. Cini (2007) finds evidence that commissioners are typically subjected to the integrity model, while Commission officials are more likely to fall under compliance approaches. As the study concludes, this is perhaps a reflection of the context through which the Kinnock reforms emerged, where the key aim was to react to the criticisms articulated by the Committee of Independent Experts', rather than to form a coherent and reasoned long term strategy:

> The main weakness in the Commission's approach, is that in dealing with ethical issues the Commission has had a tendency to be reactive; and to do little more than what was recommended by outsiders, most notably the Committee of Independent Experts. Granted, the CIE Reports included extremely useful pointers as towards what should be included in the Commission's Administrative Reform, but they did not cover all angles. In producing the White Paper only a matter of months after the arrival in office of the new Prodi Commission (something which was a political necessity), and in conducting such a wider-ranging reform too, it is not surprising that the Commission contented itself with working through the Reports line-by-line to ensure that what the Reform was about was operationalising in a practical manner the earlier document. (Cini, 2007: 138-139)

Summary

This chapter has essentially presented the background to the creation of executive agencies. Relevant tensions in the institutional architecture of the EU, the growing

use of regulatory agencies, the failures associated with using private contractors/TAOs in the management of community programmes and the subsequent reform process carried out by the Prodi Commission all contribute to the context within which executive agencies emerged. The next chapter continues this discussion by focusing on how executive agencies have been created and the structure of the six bodies.

CHAPTER FIVE: EXECUTIVE AGENCIES

Chapter four outlined the empirical context of the thesis. This chapter builds on the discussion by focusing on the specific research focus of the thesis: executive agencies. Taken together, chapters four and five provide the necessary background for the empirical analysis in chapter six.

The chapter is structured as follows. First an overview is provided on the way in which the management of community programmes was addressed in the context of the Kinnock reforms. Specifically, the developments which led to the phasing out of TAOs and the adoption of executive agencies as a solution are outlined. Second, there is a general discussion on the nature and role of executive agencies, combined with a specific focus on each of the six executive agencies established as of 2012. Last, an assessment of how well executive agencies have met their aims is presented.

Managing Community Programmes

Chapter four illustrated how the Kinnock reforms were motivated, in part, by failures associated with the use of TAOs/private contractors in managing community programmes. As we have seen, the Commission's White Paper went far beyond this single issue and sought to carry out wide-ranging changes to the way the Commission conducted its operations. Nevertheless, one of the key aims of the reform process remained the development of a better system for managing community programmes.

The key problem had not changed since the early days of the Commission's externalisation strategy: namely, how to ensure that programmes were effectively managed in a situation in which the Commission had to operate with limited resources. The first issue of importance was how to deal with TAOs/private contractors. While the

Commission intended to improve the way private contractors were used and minimise the risk of the irregularities and transgressions which had led to the resignation of the Santer Commission from happening again, there was also impetus to lessen the overall reliance on external contractors. In September 2000, the Commission produced a proposal (European Commission, 2000b) to phase out most of the TAOs then in operation. Of the 124 TAOs operating/planned for at this time, 98 were to be phased out. As the Commission stated:

> After systematically analysing the situation, the Commission has launched a plan to reintegrate most of the existing TAOs. The proposed timetable is unquestionably ambitious, but it meets the requirements of the Budgetary Authority and the Commission's commitments. Accordingly, a considerable number of TAOs will have been dismantled by the end of 2002. Their activities will be either directly taken over by the Commission or externalised in some other way. (European Commission, 2000b: para 3.2)

The abiding principle was that any future use of external contractors should only be used as an option where sufficient resources existed to monitor their activities. As the Commission put it: “the proper use of external resources is conditional on there being an adequate provision of internal resources to exercise control or direction” (European Commission, 2000a: 11).

This reduction in the use of TAOs necessitated an alternative strategy to meet the shortfall in resources. As part of the solution, the Commission highlighted a number of internal measures which could be used to alleviate the problem. First, a list of Commission activities which could be discontinued/scaled down was proposed, so as to

free up 222 staff members (full time equivalent) for redeployment. Although these activities varied considerably – such as cuts in administration tasks, information services and Commission research projects – none involved the discontinuation of community programmes.[16] The Commission was reluctant, however, to scale down any more activities. As it stated:

> A further set of activities could only be discontinued with the agreement of other institutions or would need to be prepared fully in conjunction with the third parties affected… The Commission wishes to emphasise the value it attaches to these areas and would regret withdrawing from them. It would only go ahead with such withdrawals if it were compelled to because it failed to obtain the personnel needed to perform its current tasks. (European Commission, 2000c: para 1.2.1)

The 'tentative list' of activities which could be cut did include several community programmes. Specifically, the LIFE, DAPHNE, SAVE, ALTENER, SYNERGIE, SURE and CARNOT programmes were identified as potentially available for discontinuation/scaling down.

In addition to reducing its activities, the Commission also intended to promote better use of the resources already available. The 2000 white paper advocated a form of 'activity-based management' (ABM) to promote the more efficient use of resources and minimise bureaucratic waste. ABM is a management framework developed originally amongst businesses in the private sector; however broadly speaking it incorporates the

[16] For a full list, see Commission, 2000d: Annex 1.

idea that a firmer link should exist between policy objectives (or 'aims') and the resources employed. As the second part of the Commission's white paper explained:

> In future, planning and programming must be seen as organising resources to carry out activities that pursue clearly defined policy objectives and priorities. Management by activities aims to: (1) increase cost awareness through integrated decisions on priorities, objectives, activities and allocation of human, administrative and financial resources, (2) articulate strategic planning with the operational programming of activities and the monitoring and evaluation of their implementation, and (3) develop performance management by emphasising results rather than input control. (Commission, 2000a: part II, para 3.1)

One of the main ways in which the Commission aimed to achieve this was through the outlining of five year strategic priorities and by adopting an 'annual policy strategy' detailing the specific allocation of Commission resources. Ultimately, the Commission intended to free up 315 staff members (full-time equivalent) as a result of improved management of resources and productivity gains (European Commission, 2000c: para 1.2.2).

While discontinuing activities and improving the management of resources could help to alleviate the strain on Commission resources, it is clear that they could not furnish a complete solution to the problem. For instance, the Commission's estimate of the numbers of staff needed to compensate for the discontinuation of TAOs in 2001 alone was 670 (European Commission, 2000c: para 4.5.1). Given that the overall estimated savings from the discontinuation of activities and improved management of resources was 537 staff members (and that the gradual phasing out of

TAOs would continue for several years) further measures were required to provide enough resources to sustain the Commission's activities.

In this context, the Committee of Independent Experts had, in their second report, already identified the potential for specialised community bodies to carry out the management of programmes. Writing with regard to the phasing out of TAOs, the Committee stated that: "consideration should… be given to securing access to technical assistance through the development of new Community legal structures which could be described as 'Commission executive agencies'." (Committee of Independent Experts, 1999b: para 2.3.27) The committee was keen to highlight, however, that any executive agency should be temporary in nature and not set up permanently:

> In putting forward this suggestion the Committee would straight away point out the need to avoid various stumbling blocks which have already been encountered in the past… The Commission should not be surrounded by the type of agencies which currently exist: these, far from providing a means of more flexible management enabling the Commission to tap skills which it lacks internally but which are present in the private sector, represent permanent structures within which the Commission's management powers are undermined by the Member States (which sit on the governing bodies). In addition they are very cumbersome to set up on account of the requirement for a unanimous Council decision and they are often monitored less stringently as regards the setting and the implementation of their budget... ***Any risk of creating permanent bodies should be avoided by insisting that Commission executive agencies should be set up only if specific, temporary needs***

> ***(relating to the implementation of a programme) have been identified.***
>
> (Committee of Independent Experts, 1999b: para 2.3.27; emphasis added)

The committee also argued that the overall numbers of staff employed by the Commission should not rise as a result of the creation of any new agency:

> The establishment of agencies should not lead to any increase in the size of the Commission's permanent staff, i.e. in the number of officials. The on-going nature of the Commission's tasks requires it to have officials who have received a generalist training (in the legal, economic and financial spheres), whilst in order to meet specific, temporary needs it may have to call on the skills of specialist workers, the permanent recruitment of whom is not desirable. (Committee of Independent Experts, 1999b: para 2.3.30)

Finally, the report emphasised that agencies would only be suitable options for conducting management (as opposed to political) tasks, stating that the committee:

> …must insist on issuing the following warning: although using executive agencies would make Commission management more flexible and would obviate the need for idle discussions concerning what falls into the public authority category and what does not, a distinction would still have to be made between political missions and management tasks: there can be no question of delegating the **political** aspects of Community action to agencies. (Committee of Independent Experts, 1999b: para 2.3.31; emphasis in original)

In line with the report, the Commission outlined a plan to use executive agencies to compensate for the phasing out of TAOs. The Commission's intention was to transfer the work of 69 of the 98 TAOs earmarked for discontinuation to new agencies (Commission, 2000c: para 4.3). The Commission outlined its conception of the new bodies in its formal proposal for a regulation on the creation of executive agencies:

> Implementing and managing projects is a profession in itself. Achieving excellence in this profession requires specialist staff and precise methods. The idea of executive agencies has been developed to achieve the required level of professionalism. The future executive agencies will be specialised management bodies sufficiently distinct from the Commission to enjoy maximum autonomy and flexibility in day-to-day management but with the Commission retaining enough control to ensure that its strategic objectives are met. (European Commission, 2000b: para 2.2.1)

The proposal went before the European Parliament, with 20 amendments being put forward in a legislative resolution on the 5th of July 2001. The Court of Auditors, at the request of the Council, also put forward a formal opinion on the proposal, including several proposed amendments, in October 2001.

After agreement from the European Parliament and Council, the proposal was eventually adopted as Council Regulation (EC) 58/2003. Broadly speaking, the objective stated in Articles 5-6 of the final regulation was to foster flexible, efficient and accountable management of the Commission's tasks by allowing the Commission to delegate responsibility for the implementation of projects to executive agencies.

Executive Agencies

Under Council Regulation (EC) 58/2003, the stipulated procedure for the Commission's establishment of an agency begins with a cost-benefit analysis in which the Commission must assess, amongst other factors, the justification for outsourcing management tasks, the costs of co-ordination and checks, the impact on human resources, and potential financial savings (EC-58/2003). In addition, as executive agencies are not intended to be permanent, the lifetime of the agency must be determined at the outset, though this can be extended if the relevant agency remains important to the running of a project (EC-58/2003). The member states, under the comitology regulatory procedure, must approve the creation of any new agency via the newly established Committee for Executive Agencies, composed of member state representatives. The European Parliament also provides an opinion on the creation of any new agency and the associated cost-benefit analysis (EC-58/2003). Any task associated with the implementation of projects is permitted to be delegated, but all functions requiring "discretionary powers in translating political choices into action" are to be retained by the Commission (EC-58/2003). Examples of the tasks which are deemed suitable for executive agencies are the implementation of budgets for community programmes, the gathering of information necessary to implement a project and the awarding of contracts and grants to third parties as part of the implementation process (EC-58/2003).

Once established, the Commission has ultimate responsibility for the conduct of agencies. The directors of agencies are appointed by the Commission from its own staff, as are the members of a steering committee which, in addition to co-ordinating the agency's activities, must formally report to the Commission at least four times per year (EC-58/2003). During the auditing process conducted by the European Court of Auditors,

the activity and budget reports of executive agencies are attached to the corresponding reports of the 'parent Directorate-General': that is, the Directorate-General (DG), or Commission department, which has formal responsibility for the management of the programmes for which operational powers have been granted to a given agency. In practice, this results in some executive agencies having several parent-DGs as they are responsible for managing a number of programmes from different areas (the EACI, for example, manages programmes which are the responsibility of four different DGs[17]).

Unlike TAOs, executive agencies are given a clear legal character: they are formally legal entities with the capacity to hold property, participate in legal proceedings and are given a degree of autonomy in terms of representation. The initial legal responsibility for any activity rests with the agency itself, but the Commission is assigned the task of monitoring the legality of the agency's actions. The system essentially works through a process of appeals, whereby the actions of an executive agency can be referred to the Commission by any individual, or member state, for a review of its legality. Once the Commission has heard the relevant arguments, it is required to either uphold or reject the appeal within two months and, should the Commission reject an appeal, the issue can then be referred to the European Court of Justice. In addition, the Commission is permitted to review actions by executive agencies under its own volition and can impose sanctions on agencies should they fail to comply with a decision

Executive Agencies in Practice

The six executive agencies created since the Commission's white paper in 2000 are responsible for managing spending programmes totalling some 27.9 billion Euros during

[17] The relevant DGs are DG TREN, DG ENTR, DG ENV and DG INFSO.

the present multi-annual financial framework (MFF 2007-2013). Table 1 gives an overview of the proposed lifespan of each agency, the programmes managed, the total budget managed in MFF 2007-2013 and present staffing levels.

Table 5.1: Executive Agencies

AGENCY	LIFESPAN*	PARENT DGs	PROGRAMMES MANAGED	STAFF LEVELS – FULL TIME EQUIVALENT (2009)	TOTAL BUDGET MANAGED UNDER MFF 2007-2013 (billion Euros)
Executive Agency for Competitive-ness and Innovation (EACI, formerly IEEA)	1/1/2004 – 31/12/2008 (extended until 31/12/2015)	DG TREN, DG ENTR, DG ENV, DG INFSO	Part of the 'Competitiveness and Innovation' framework programme and Marco Polo II	147	1.7
Executive Agency for Health and Consumers (EAHC, formerly PHEA)	1/1/2005 – 31/12/2010 (extended until 31/12/2015)	DG SANCO	The EU 'Public Health' programme, 'Consumer Policy' programme and 'Better Training for Safer Food' programme	50	0.5
Education Audiovisual and Culture Executive Agency (EACEA)	1/1/2005 – 31/12/2008 (extended until 31/12/2013)	DG EAC, DG COMM, DG DEVCO	The MEDIA programme, the 'Lifelong Learning' programme and several other programmes and initiatives in the audiovisual and culture fields	394	3.7
Trans-European Transport Network Executive Agency (TEN-T EA)	26/10/2006 – 31/12/2008 (extended until 31/12/2015)	DG MOVE	The 'Trans-European Transport Network' programme	99	8.0

Research Executive Agency (REA)	1/1/2008 – 31/12/2017	DG RTD, DG ENTR	The 'People' programme and parts of the 'Capacities' and 'Cooperation' programmes	349	6.5
European Research Council Executive Agency (ERCEA)	1/1/2008 – 31/12/2017	DG RTD	The 'Ideas' programme under FP7	300	7.5
Totals				**1339**	**27.9**

* As indicated, several agencies have had their lifespan extended and it is possible that these dates will be extended again (see, for instance, the discussion below on the link between the REA's lifespan and FP7/FP8).

There are typically six different tasks which the agency must carry out in order to ensure a programme operates correctly. First, the agency initiates a call for proposals in which funding opportunities are advertised to potential grant recipients. The MEDIA programme, for instance, entails a number of different grant initiatives focused on different areas of the audiovisual sector and the EACEA, as the audiovisual and culture executive agency, publicises the availability of these grants, together with the various selection criteria and conditions of awards. Second, having publicised the availability of funding opportunities, the agency then takes on responsibility for the selection procedure which determines which applicants are successful. Typically, this involves the use of experts who are contracted to judge the merits of each proposal submitted to the agency and make decisions accordingly. In certain important cases it is possible for the Commission to influence selection decisions (EC-58/2003), but in practice the

responsibility for the process rests with the agency. Given the need for expertise in judging between competing proposals – in the example of the MEDIA programme, knowledge of the film and audiovisual sector – there is usually little scope for either the agency or the Commission to make these decisions directly. Whether a given film is deserving of a grant is a matter best left to individuals with the requisite expertise.

Having overseen the decision to award grants to applicants, the third task of the agency is to manage all of the associated financial matters stemming from the programme. These include the actual payments of grants to recipients and the overall management of the operational budget of the programme, such as the payment of contracted individuals (for example the experts employed in the selection process). The agency is also responsible for the management of its own operational budget and financial management therefore constitutes one of the agency's key areas of responsibility. Although the Commission may set general priorities for the operational budgets of programmes and sets the actual level of funding available in grant initiatives, the responsibility for managing these budgets rests ultimately with the agency.

A further two tasks relate to the monitoring of grant recipients to ensure they comply with their grant conditions and the issuing of warnings/sanctions to those recipients who deviate from their contractual agreements. As with any grant, certain conditions are attached to funding such as publicising the source of the grant (e.g. providing a credit in a film acknowledging the contribution of the MEDIA programme), spending funds only for the specific purposes outlined in the grant award and completing projects within an allotted time-frame. The monitoring process which ensures that recipients comply with these conditions can either be conducted directly by the agency or by contracted individuals employed under the initiative of the agency itself. Where a recipient has violated the terms of their agreement, sanctions (typically financial penalties

or, in the most extreme cases, the complete cancelling of the grant) are employed. The right of the EACEA, and executive agencies generally, to issue sanctions in this way has been tested in the European Court of Justice in *Simsalagrimm Filmproduktion v Commission and EACEA* (case T-314/07) where, after a breach of grant conditions, the applicant argued that the EACEA should not have possessed the capacity to cancel contracts and demand financial reimbursements as these were the formal responsibilities of the Commission. This claim was not upheld by the ECJ and agencies have maintained the right to issue sanctions and to cancel grant agreements in cases of non-compliance.

Finally, the agency is required to feed information back to the Commission which may be used to assess and improve the running of community programmes. Aside from producing formal annual work programmes and activity reports detailing the activities an agency has been engaged in, all executive agencies are also in constant communication with the Commission over any day to day issues which arise. In principle this ensures that the overall running of community programmes is a cyclical one: the Commission determines issues of policy at the broadest level, these decisions are then implemented by the agency during the management of programmes and the process concludes with information being sent back to the Commission in order to inform future decisions.

The Six Agencies

Although all six of the executive agencies created since 2000 follow the general pattern outlined above, there are some differences between agencies and they all deal with different programmes.

Executive Agency for Competitiveness and Innovation

The Executive Agency for Competitiveness and Innovation (EACI) was originally established on the 1st of January 2004 as the Intelligent Energy Executive Agency (IEEA) to manage the Intelligent Energy Europe (IEE) programme. IEE is a programme intended to contribute to overall EU energy development in three main areas: by helping to develop energy diversification/security, improving competitiveness, and promoting measures to protect the environment. The IEEA was originally intended to operate until the 31st of December 2008; however in May 2007 the agency was renamed as the EACI and given the responsibility for managing other programmes in addition to IEE.

This change was motivated by the fact that in 2007 the IEE programme became a constituent part of a wider programme named the Competitiveness and Innovation Framework Programme (CIP). CIP has three constituent programmes: IEE; the Entrepreneurship and Innovation Programme (EIP), aimed at helping to finance small to medium enterprises; and the ICT Policy Support Programme, which is intended to promote developments associated with a European 'digital economy', such as the convergence of networks and electronic devices across Europe. The EACI took on responsibility for managing elements of EIP and was also transferred management responsibilities for the Marco Polo Programme (2007-2013), which is a programme intended to encourage the use of freight transport via rail, sea, and inland waterways to reduce road congestion and protect the environment. The new responsibilities of the agency were outlined/explained in Commission Decision No. 2007/372/EC as follows:

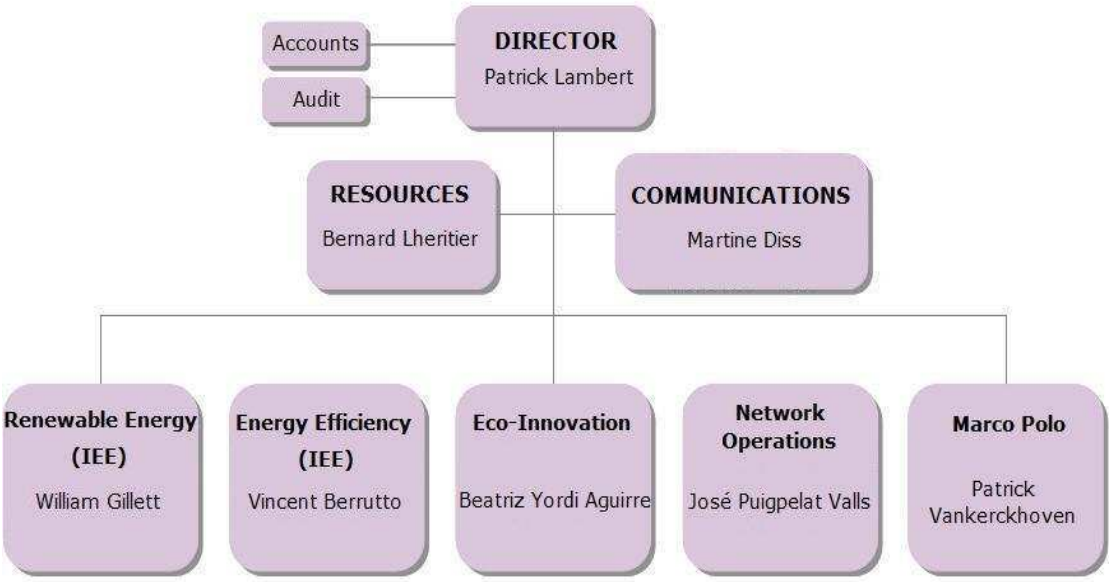
> Since the IEE Programme for 2007-2013 has been integrated into the CIP, and in order to ensure consistency in the manner in which projects are implemented

> under the CIP, the IEEA should be entrusted with certain implementation tasks related to the Entrepreneurship and Innovation Programme, which also forms part of the CIP, in addition to the execution of the IEE Programme for 2007-2013. Moreover, since Marco Polo II shares common objectives with the CIP, and in particular with the IEE programme, namely to improve energy efficiency in transport and reduce its environmental impact, and both programmes could benefit from important synergies, certain implementation tasks related to Marco Polo II should also be delegated to the IEEA.

In 2008, the EACI was also transferred responsibility for managing 'Enterprise Europe Network' which is an initiative aimed at helping businesses collaborate with each other across the single market. As a result of the addition of these programmes/actions to its remit, the newly created EACI had its lifespan extended until the 31st of December 2015.

In terms of structure, the EACI is split into five separate units corresponding to different aspects of the programmes under its management: IEE Renewable Energy; IEE Energy Efficiency; Eco-Innovation; Network Operations; and Marco Polo. Each of these units is co-ordinated by a head of unit who has been drawn from the Commission's own staff. In addition to the five programme units, two supporting units – 'resources' and 'communications and network support' – manage the administrative tasks associated with the agency's work. At the head of the agency is the Director, Patrick Lambert, who in turn is assisted by an accounting office and an audit department. The EACI has produced an 'organigramme' illustrating the basic structure of the agency:

Figure 5.1: EACI Organigramme



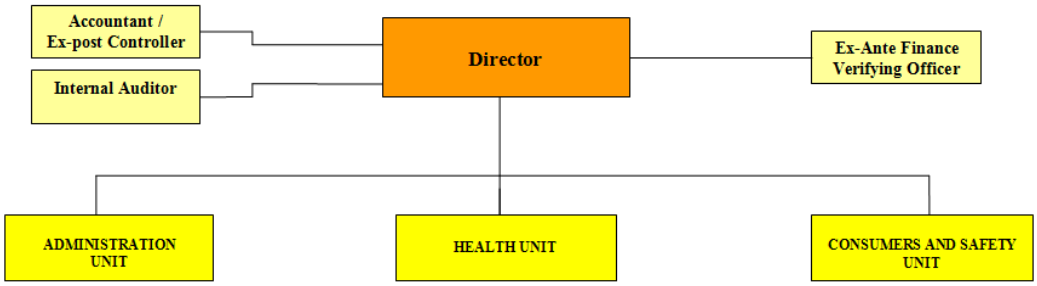
The EACI's work is overseen by four 'parent' DGs: Energy (DG ENER); Enterprise and Industry (DG ENTR); Environment (DG ENV); Mobility and Transport (DG MOVE). These are the DGs responsible for the programmes under the EACI's management. Specifically, DG ENER has responsibility over the IEE programme; DG ENTR is responsible for Enterprise Europe Network; DG ENV is responsible for Eco-Innovation; and DG MOVE is responsible for Marco Polo. In effect this has resulted in the IEEA/EACI moving from just a single parent DG, under its initial setup, to four.

Executive Agency for Health and Consumers

The Executive Agency for Health and Consumers (EAHC) was established on the 1st of January 2005 as the Executive Agency for the Public Health Programme (PHEA). It was originally intended to operate until the 31st of December 2010. The public health programme is aimed at promoting improvements in the health of EU citizens through

both direct initiatives and education. In 2007 PHEA was also assigned responsibility for managing the Consumer Policy programme, which is a programme aimed at enhancing consumer protection through better regulation and safety standards. In 2008, as part of the new public health programme (2008-2013), PHEA was renamed as EAHC and transferred responsibility for a food safety training component of the public health programme. The lifespan of the agency was therefore increased until the 31st of December 2015 to correspond to the lifespan of the new programmes. The agency has a single parent DG: Health and Consumers (DG SANCO), which is the DG responsible for the programmes under its management. Figure 5.2, below, illustrates the structure of the EAHC:

Figure 5.2: EAHC Organigramme



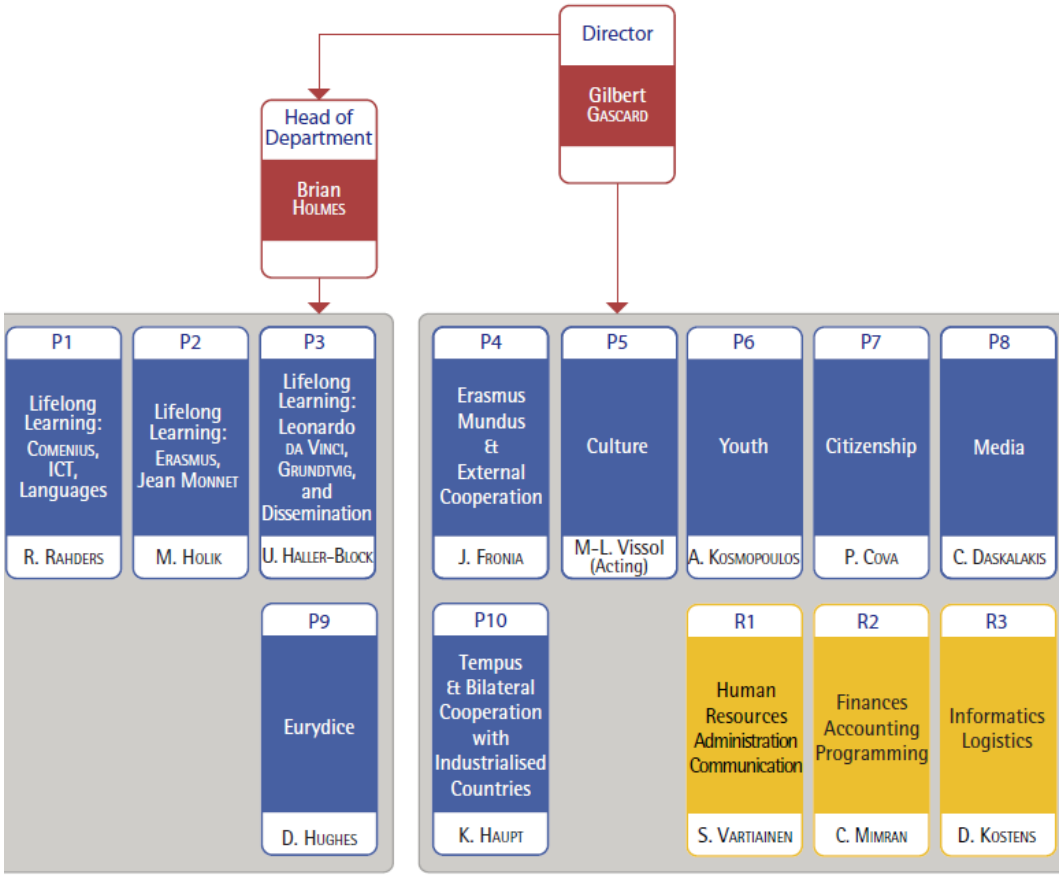
Education, Audiovisual and Culture Executive Agency

The Education, Audiovisual and Culture Executive Agency (EACEA) was, like PHEA/EAHC, also established on the 1st of January 2005 and became fully operational on the 1st of January 2006. The EACEA has a wider set of responsibilities than the EACI/EAHC and has had its mandate increased on four separate occasions. Broadly

speaking, the agency manages programmes related to media (such as the example of funding short films above), education and other cultural pursuits. As of 2011, there are essentially nine separate programmes and actions which the EACEA is involved in managing: MEDIA 2007; Erasmus Mundus (2009-2013); Tempus; Bilateral Co-operation; the Intra-ACP academic mobility scheme; the Culture programme (2007-2013); Europe for Citizens; and Youth in Action.

Some of these, such as MEDIA 2007 and Erasmus Mundus are formal community programmes, while others, such as the Intra-ACP academic mobility scheme, are specific schemes aimed at distributing financial support through mechanisms such as the European Development Fund (EDF). In the case of the academic mobility scheme, funds are directed to African, Caribbean and Pacific states to improve higher education institutions and provide direct support to students, researchers and university staff. As the EACEA's operations are much wider than agencies like the EACI and EAHC, the organisational structure of the EACEA is based around broader groupings of areas of involvement, rather than specific programmes. The groupings are: Education; Culture; Youth; Citizenship; and Audiovisual. Figure 5.3, below, illustrates how the agency is structured:

Figure 5.3: EACEA Organigramme



The extent to which the agency's mandate has been increased is illustrated by the rise in the level of its administrative budget and the total number of staff employed at the agency, shown in Table 5.2, below:

Table 5.2: EACEA Administrative Budget and Total Staff (2006-2011)

Year	Administrative Budget (Million Euros)	Total Staff
2011	50	438
2010	49.5	412
2009	46.4	414
2008	41.2	376
2007	36.1	340
2006	36.1	302

Figures taken from the agency's Annual Work Programmes (AWPs).[18]

While the budget managed under the programmes assigned to the EACEA is not the largest of the six executive agencies, the EACEA does employ the largest numbers of staff. Of its organisational areas, Education accounts for the highest proportion of staff (47%), followed by Audiovisual (17%) and Culture, Youth and Citzenship (6% each). The remainder of the total staff employed by the agency is administrative.

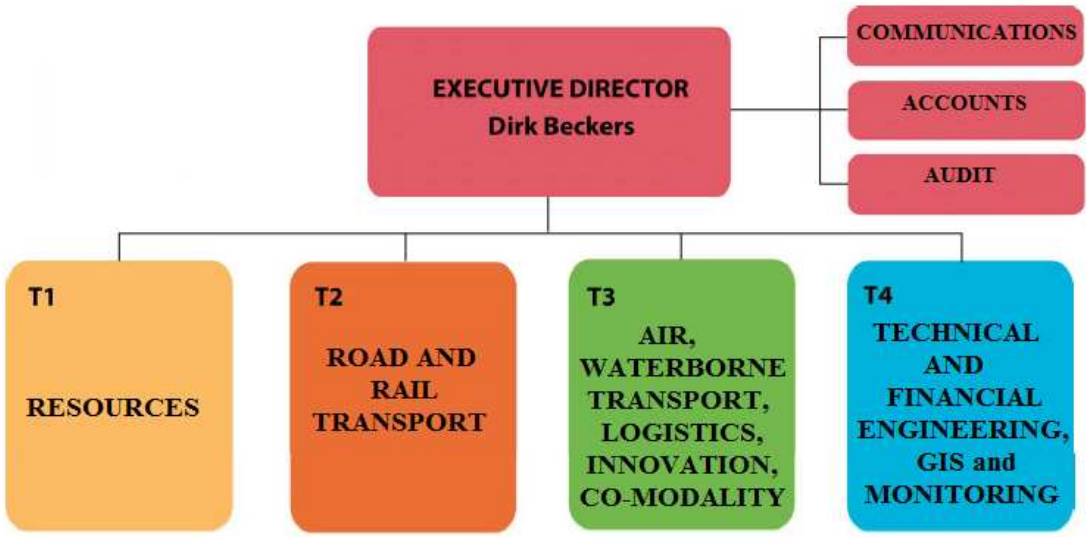
Although the EACEA has had as many as five parent DGs, in 2011 its work is overseen by three: Education and Culture (DG EAC); Communication (DG COMM); and EuropeAid Development and Cooperation (DG DEVCO). As a result of the addition of new programmes and actions to its remit, the EACEA has had its intended lifespan extended until the 31st of December 2013.

[18] Although it would have been useful to provide these figures for all of the six executive agencies, the other agencies did not have a consistent set of figures across all annual reports.

Trans-European Transport Network Executive Agency

The Trans-European Transport Network Executive Agency (TEN-T EA) was established on the 26th of October 2006 to manage projects associated with the Trans-European Transport Network (TEN-T networks) strategy. TEN-T was originally adopted in the 1990s to promote co-ordinated improvements in transport infrastructure across Europe. These include improvements to long-distance road networks, high speed rail, improvements to sea ports and better air connections and facilities. Unlike agencies such as the EACEA, which manage a wide variety of diverse programmes and actions, TEN-T EA was established specifically for the purpose of managing the projects that are undertaken to achieve the aims of TEN-T. It therefore is subject to a single parent DG, Mobility and Transport (DG MOVE), which is responsible for TEN-T. DG MOVE sets the overall aims of TEN-T, makes the final financial decisions regarding the programme and monitors and supervises TEN-T EA. Figure 5.4, below, illustrates the structure of the agency:

Figure 5.4: TEN-T EA Organigramme



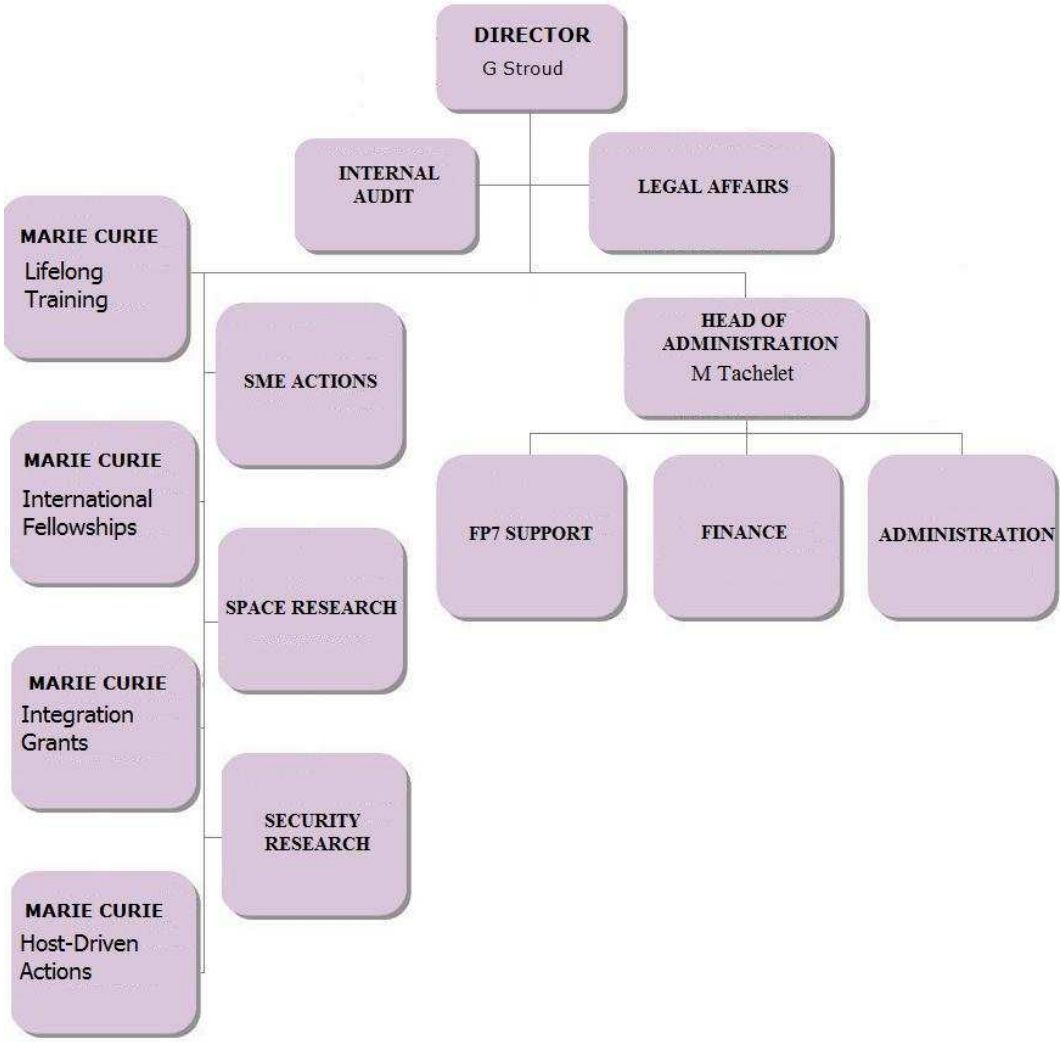
TEN-T EA initially had a limited expected lifespan, but this was extended until the 31st of December 2015. Under MFF 2007-2013, TEN-T EA manages the largest budget of all six executive agencies at 8 billion Euros.

The Research Executive Agency

The Research Executive Agency (REA) was established on the 1st of January 2008 to manage significant parts of the Seventh Framework Programme for Research, Technological Development and Demonstration Activities (FP7). FP7 is a programme aimed at encouraging research within the 'European Research Area' (ERA). The ERA is a system of integrated scientific programmes designed to foster co-operation between research endeavours within the EU. Although FP7 is only intended to run until the end of 2013, the REA will remain operational until at least the end of 2017 to oversee the management of projects set up under FP7. An eighth framework programme (FP8) is intended to run from 2014-2020, which may or may not end up under the responsibility of the REA.

The overall work of the agency is overseen by two parent DGs: Research and Innovation (DG RTD) and Enterprise and Industry (DG ENTR). In terms of structure, the REA is essentially split into three different sections. One section deals with 'Marie Curie', which is a research training component of the FP7 programme. A second section deals with support given to small businesses, space research and security research. A third section deals with the administrative side of co-ordinating research work within the ERA. Figure 5.5, below, illustrates the structure of the REA:

Figure 5.5: REA Organigramme

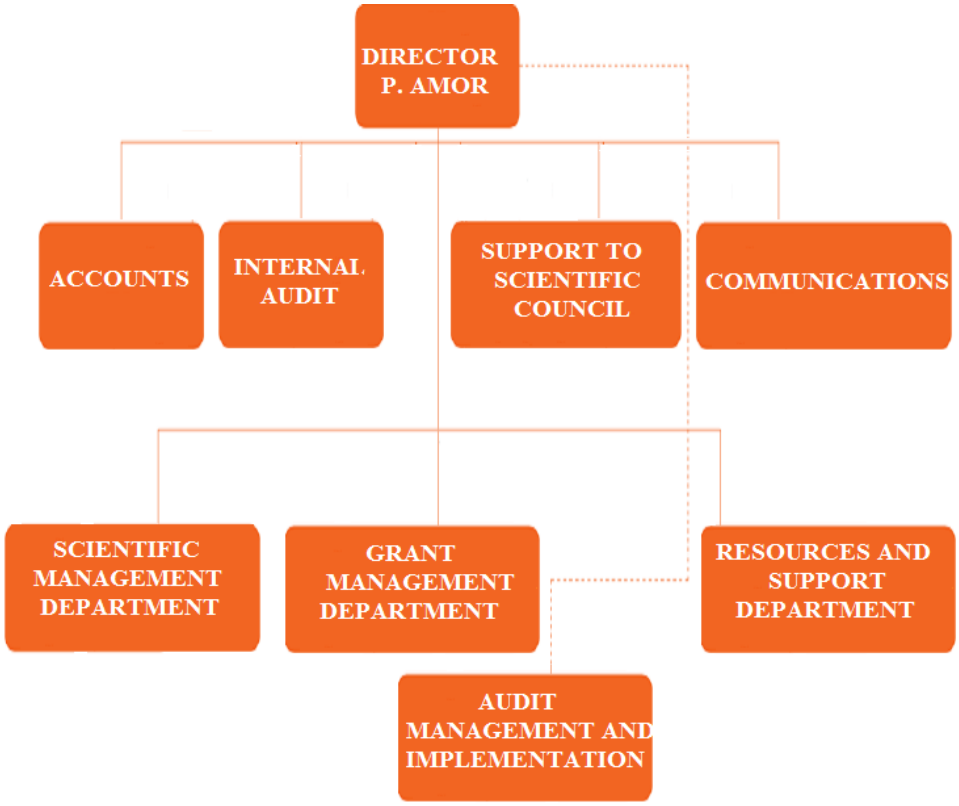


European Research Council Executive Agency

The European Research Council Executive Agency (ERCEA) was set up at the same time as the REA – the 1st of January 2008 – to manage activities associated with the European Research Council (ERC). The ERC is a direct, competitive funding mechanism for academic research. The ERCEA manages the call for proposals in which researchers can submit bids for funding and also manages the peer-review process in which proposals are assessed, together with the distribution of awards. In essence the REA manages schemes

for promoting general research initiatives within the EU, while the ERCEA, in managing the ERC, distributes direct funding for specific pieces of academic research. The two agencies work closely alongside one another due to the overlapping nature of their responsibilities and, like the REA, the ERCEA is intended to operate until the end of 2017, but could potentially have this extended. The ERCEA has a single parent DG: Research and Innovation (DG RTD). Figure 5.6 illustrates the ERCEA's structure:

Figure 5.6: ERCEA Organigramme



Assessing the Use of Executive Agencies

Before assessing the effectiveness of executive agencies, it is worth drawing a distinction between executive agencies and regulatory agencies. Executive agencies differ substantially from regulatory agencies. The first major difference is that the agencies have

been created by the Commission, as opposed to the member states (as in the case of regulatory agencies) taking the lead role, with the Commission and Parliament only involved as part of the legislative process. Although the use of TAOs was essentially a form of outsourcing Commission responsibilities to external actors, executive agencies constitute the first instance in which the Commission has formally delegated its own powers to another organisation. There are some implications stemming from this with regard to a principal-agent conception of delegation within the EU. Powers which the Commission has delegated to executive agencies were initially delegated to the Commission by the member states. In effect, executive agencies are the result of the *delegation of delegated responsibilities* or, in Moravcsik's conception of a 'three-tiered' principal-agent relationship between national electorates, member states and supranational institutions (see chapter 1), we could essentially add a 'fourth tier' of supranational agencies which have been delegated authority by a supranational institution (the Commission).

A second major difference lies in the lines of accountability. Whereas regulatory agencies are accountable to a committee of member state representatives, Commission staff and other involved parties; executive agencies are accountable solely to the Commission. This has implications should an agency deviate substantially from its mandate as the Commission bears ultimate responsibility. As stated above, the activity/budget reports of executive agencies are attached to the corresponding reports of the parent DGs and the steering committee and directors of executive agencies are appointed by the Commission from its own staff. Executive agencies, whilst formally independent in many respects, are therefore more closely aligned with a single institution (the Commission) than are regulatory agencies.

Last, the key separation between policy and implementation is more rigid in the case of executive agencies. The corresponding legislation explicitly precludes executive agencies from acquiring responsibilities which entail a large element of political discretion and, whilst some degree of overlap between policy and implementation is inevitable – particularly with regards to the ability of agency feedback to influence future Commission decisions – the degree of discretion afforded to executive agencies is in principle limited in comparison to regulatory agencies which enjoy broader mandates for action.

An Effective Option?

In 2009, the Court of Auditors carried out a broad review of the use of executive agencies in the management of community programmes. Three questions in particular were addressed: (i) whether the creation of agencies was justified under the terms of the cost-benefit analysis procedure and the stated rationale of improving efficiency / allowing the Commission to focus on core responsibilities; (ii) the degree to which executive agencies had provided efficiency gains and cost savings; and (iii) the extent to which the Commission had successfully monitored agencies to ensure compliance with their mandates.

On the first issue, a needs assessment was conducted to determine whether genuine issues existed with regards to efficiency gains and freeing up the Commission's resources. It is not a given that externalisation will enhance efficiency as a matter of course, but instead efficiency gains will only be apparent where certain specific factors are present. The benefits acquired from executive agencies standardising repetitive management tasks, for instance, will only be applicable in the management of

programmes that lend themselves to this type of reform. Similarly, if the administering of programmes requires little expertise, then there is little need for the development of a specialised agency with an enhanced understanding of the management issues at play. Whilst these mechanisms for enhancing efficiency may have a sound logical basis in principle, the Court of Auditors was keen to establish whether there were reasons to believe that these effects would be apparent in practice (Court of Auditors, 2009).

Contrary to expectations, the Court found that the primary precipitating factor behind the creation of executive agencies was not the anticipation that executive agencies would enhance efficiency, nor a pressing need for the Commission to focus on its core responsibilities, but instead a practical concern with overcoming staff shortages. Alongside the gradual phasing out of TAOs which began with the 2000 white paper, the Commission's resources came under significant strain towards the end of the decade. The number of permanent staff the Commission is allowed to employ has been frozen at the present level[19] and the ceiling on the Commission's administrative budget outlined in the MFF 2007-2013 provides little room for manoeuvre in employing temporary staff. This has created a strain in certain areas with the Commission struggling to find adequate staffing provisions, both in terms of numbers and expertise, to cover its management responsibilities. According to the Court of Auditors, the creation of executive agencies and the transferral of further responsibilities to existing agencies has become a popular option for overcoming these problems:

> The Court found that the initiative to set up agencies was mainly taken by the Commission in response to practical problems, in particular the need to compensate for discontinuing TAOs and to allow for the continuation of the

[19] There are currently 32,140 staff employed by the Commission (European Commission, 2010).

> programmes they managed when no new resources were made available under the ceiling on the Commission's administrative budget set by the MFF… Despite the intentions set out in the White Paper and the guidance documents, staff shortages (in number and specialisation) at the Commission were the main driver for externalisation… Recent documents confirm that it continues to be the Commission's practice to explore the option of creating new executive agencies when faced with a shortage of resources.[20] (European Court of Auditors, 2009: 14)

Given that the administrative costs of executive agencies are funded directly from the EU budget (therefore falling outside any limitations on Commission spending) and given that the staff of executive agencies are formally independent from the Commission (and therefore not affected by the freeze on permanent Commission staff); it is not difficult to see why the use of executive agencies has been adopted where staffing levels are a concern.

Consequently, the Court concluded that the creation and use of executive agencies often bore little relation to the nature of programmes, but instead reflected internal issues within the Commission. In addition, the use of cost-benefit analyses also attracted some criticism. As stated above, one of the fundamental requirements in the establishment of an executive agency is that the Commission produces a cost-benefit analysis for the proposed agency which details the precise gains which are anticipated from the act of delegation. The Court found, however, that the majority of cost-benefit analyses were largely preoccupied with financial considerations. Potential gains in efficiency and the ability of the Commission to focus on its key responsibilities tended to be neglected and the bulk of the analysis rested on simple comparisons of cost such as that between

[20] The Commission has disputed this: see 'Commission Reply' in Court of Auditors, 2009.

employing permanent Commission staff and cheaper contract staff within an agency. The fact that executive agencies employ a large number of temporary contract staff (usually around 75% of the total) ensures that such comparisons are usually favourable towards the creation of new agencies. Indeed, the court did not find a single cost-benefit analysis produced by the Commission which decided against the creation of a new agency, though this in itself did not prevent several proposals for new executive agencies from being rejected.

Concerns over the rationale for the creation of executive agencies and the quality of cost-benefit analyses produced by the Commission do not, of course, preclude the use of executive agencies from delivering tangible benefits. Indeed, the Court found broadly positive evidence concerning the use of executive agencies and their ability to improve the functioning of community programmes. From a financial perspective, as already recognised, there is ample evidence that the greater use of temporary contract staff, as opposed to more expensive permanent Commission officials, has proved beneficial. Of the 1,339 members of staff employed by executive agencies in 2009 (see Table 1 above), roughly 70% are contract staff and, with a standard estimate of contract staff receiving around 50% of the salary of a permanent Commission official, it is clear that the use of executive agencies provides significant savings in salary costs (European Court of Auditors, 2009: 17).

This does not, however, take into account the monitoring role which the Commission must undertake after the creation of an executive agency. It is perfectly legitimate for the Commission (and the Court) to identify cheaper staff as a positive, but for every programme managed by an executive agency there is also a corresponding cost which must be borne by the Commission. Commission staff must undertake monitoring responsibilities which would not be required if the management of programmes was

conducted within the Commission itself. Indeed, the Commission has estimated the number of staff required for such monitoring duties and at around 175 individuals, the number corresponds to roughly 13% of the total staff employed by executive agencies (European Commission, 2009). Even with this taken on board, though, the use of executive agencies still represents a significant financial saving over the management of programmes by the Commission.

The Court has also assessed the extent to which executive agencies have provided improved management of community programmes. Unlike financial calculations about staffing costs, it is fairly difficult to arrive at concrete conclusions about benefits in service delivery. Nevertheless, the analysis used a number of quantitative indicators to give a general impression of the degree to which the management of programmes has been influenced by the use of executive agencies. The key indicators available are the length of time it takes to progress from the 'evaluation of proposals' stage to formal offers being made to applicants (contracting time); the length of time required to produce technical and financial reports on funded projects; and the amount of time taken to provide payments to applicants (from a payment request to the actual transfer of funds).

Generally speaking, the Court found that executive agencies tended to reduce the amount of time required in each of these three areas. In the case of the Public Health programme, for instance, the transferral of management responsibilities from the Commission to the EAHC has led to an average reduction in contracting time of 126 days (from 345 to 219); a reduction in the time required to produce technical and financial reports of 48 days (from 90 to 42); and an improvement in the time taken to make payments to applicants of some 412 days (from 503 to 91) (European Court of Auditors, 2009: 20). These are significant improvements in efficiency and, whilst they are by no means repeated across every programme, it is clear that there is some broad evidence

from the available quantitative indicators that efficiency has been enhanced by transferring responsibilities from the parent-DGs to executive agencies.

There are also some notable examples of qualitative improvements. The EACEA, for instance, has undertaken a policy of simplifying the funding process by using more streamlined application forms, online submission, and standardised grant levels and payment plans (as opposed to the old system of setting individual grant levels based on the needs of individual applicants). This simplification process has been repeated in other agencies and may in turn feed into the improvements suggested by the quantitative indicators. Moreover, the use of agencies with a dedicated website, logo and communication channel has arguably had a positive effect in terms of publicising the projects undertaken by grant recipients (Education, Audiovisual and Culture Executive Agency, 2009). The EACI, for instance, has also held a number of 'info-days' (over 30 per year) to promote calls for proposals and the various funding opportunities available to applicants. This is beneficial not simply to the applicant, by providing improved exposure for projects (for example films funded under the MEDIA programme), but also to the EU as a whole in that it provides enhanced visibility of the EU's actions amongst European citizens.

Of course, these improvements must be put in context. In the case of a relatively new programme, for instance, we might expect management efficiency levels to improve as a matter of course whether the programme is managed by the parent-DG, an executive agency, or some other body. In the case of the Public Health programme above, for instance, the new programme (2003 – 2008) was adopted in 2003 and the Commission took over management responsibilities for the first two years of its operation. It was only in 2005, with the creation of the EAHC (at that time called the Public Health Executive Agency) that the programme began to be managed by an executive agency. It is possible

that the improvements in quantitative indicators of efficiency are at least partly down to the gradual eradication of teething problems which occurs over time during the running of any programme. Similarly, it is apparent that certain qualitative improvements attributed to executive agencies may have occurred regardless of the management organisation. Online submissions of grant proposals, for instance, have become increasingly common amongst funding bodies at the national level and it is possible that they would still have been adopted for community programmes if the Commission had retained management responsibilities. The improvements identified in the Court of Auditors report are significant, but it may have been more useful to put these benefits in context by comparing executive agency managed programmes with those which are still managed by the Commission. It is clear that in some cases Commission managed programmes might also have experienced efficiency gains over the past six years and that all improvements may not simply be attributable to the use of executive agencies.

Control and Monitoring Mechanisms: Police Patrol and Fire Alarm Oversight

The main mechanism available to the Commission for monitoring the work of agencies is the use of the steering committee. The steering committee, as outlined above, is appointed by the Commission from its own staff and is responsible for reporting the activities of the agency, both on a general routine basis and via the two formal reports produced annually: the Annual Work Programme (AWP) and the Annual Activity Report (AAR).

Drawing on the framework outlined in chapter one, we can conceive of this form of monitoring as a clear example of police patrol oversight. Indeed, the system has broad similarities with the comitology system of oversight, identified by Pollack as the primary police patrol mechanism used by the member states to ensure the Commission's

compliance with its obligations. There are, however, some important differences. Chief amongst these is that the steering committee is not actually the instrument of control, as in the case of comitology committees which vote formally on Commission measures. Rather, in the case of executive agencies the steering committee provides the Commission with the necessary information on which to judge the actions of the agency. Nevertheless, through the AWP, which is produced by the steering committee at the start of each year and approved by the Commission, the Commission may, at least in principle, exert significant control by setting objectives for the agency to pursue.

In practice, however, there are a number of issues which limit the effectiveness of AWPs as a system of control (European Court of Auditors, 2009). First, it is not always the case that AWPs are approved at the beginning of the year and therefore before actions have actually taken place. The Court found evidence that many AWPs were approved towards the end of the year (for instance Executive Agency for Competitiveness and Innovation, 2008; Education, Audiovisual and Culture Executive Agency, 2007) and in some cases the reports were not approved at all (Education, Audiovisual and Culture Executive Agency, 2006). It is apparent that AWPs can only function as a method for setting objectives if they are approved significantly in advance of the actions carried out. Second, the Court has highlighted a number of deficiencies in the structure of AWPs which limit their effectiveness as both a control and monitoring mechanism. One example is the tendency to set out far more performance indicators than can feasibly be managed, with the EACEA, for instance, containing 109 performance indicators in its most recent AWP. As with the use of performance indicators at the national level, it is usually more beneficial to focus on a smaller number of key indicators which illustrate the broader picture of the agency's compliance with its obligations.

Overall, the Court found strong evidence that the formal reporting structure of the steering committee does not enable the Commission to exercise effective control over the actions of agencies. Instead, informal communications between agencies and the relevant parent-DGs have tended to characterise the relationship. This has been facilitated by the geographic proximity of the two parties (all of the executive agencies are based in Brussels, with the exception of the EAHC, which is located in Luxembourg) and the fact that management level staff of executive agencies have been appointed from the Commission's own staff. From interviews with some of the directors and heads of unit at the EACI, EACEA, REA and TEN-T EA, it is apparent, however, that even the informal relationship can leave parties dissatisfied. One individual at the EACEA argued strongly that the cyclical process – in which policy is determined by the Commission and implemented by the executive agency, before experiences are reported back to the Commission in order to inform future decisions – tended to break down at the reporting stage, with the Commission often overlooking, or even ignoring entirely, the information passed back by the agency. An example was cited of a problematic area in the management of a particular programme which had been consistently reported to the Commission for three years and had yet to receive an adequate solution at the policy level (interview 6, April 2010). Even where communications between the Commission and executive agencies are more effective, there may still be potentially negative effects in other areas of policy. Whilst the agency and parent directorate may, in practice, be able to arrive at an informal working relationship, the neglect of the formal reporting of activities can prevent other departments and organisations from receiving full information on the work carried out.

In terms of fire alarm oversight, the main mechanism is the appeals system, outlined above, in which the actions of agencies can be reported to the Commission by

individual actors and, in turn, to the European Court of Justice. Again, there are broad similarities here with the fire alarm oversight of the Commission identified by Pollack in chapter one. However, this framework poses a number of technical legal questions that require some clarification. First, some legal scholars (for example Craig, 2006) have noted that recourse to the Court of Justice is asymmetrical in the sense that it is only permitted when the Commission has rejected an appeal, but not where an appeal has been upheld. This can perhaps be understood by the fact that executive agencies have been delegated responsibilities which formally remain tasks of the Commission. As executive agencies are not intended to be independent, there is little scope for them to reject a direct mandate from the Commission. Indeed, granting executive agencies the right to defend themselves within the EU's legal framework would violate the rules on discretion: if executive agencies can reject mandates from the Commission, then they must possess some discretion over how they conduct their activities. Nevertheless, if agencies are granted a legal character then there is arguably a contradiction in prohibiting their access to the Court of Justice (Craig, 2006).

Second, there is potential for a conflict of interest in the Commission's review process. As the Commission is responsible for establishing each agency, it has a stake in defending the administrative framework it has helped to create. Moreover, the line between policy formulation (the Commission's responsibility) and policy implementation (the responsibility of executive agencies) may often be blurred. If an appeal against the implementation of a particular policy implicates those responsible for the policy's formulation, then there are obvious problems with the Commission overseeing the review process. The ability to refer rejected appeals to the European Court of Justice is a safeguard against this issue, but given that the responsibility for monitoring the actions of executive agencies is assigned, in the first instance, to the Commission, it is not surprising

that some actors, notably the European Parliament, have raised concerns over the effectiveness of this form of oversight (European Parliament, 2003).

Summary

The distinctive character of the delegation process to EU executive agencies has been highlighted in this chapter. In chapter six, this process is analysed in more detail. Using the framework developed in chapter three, the question of which theoretical approach(es) best explain this process of delegation to executive agencies is assessed.

CHAPTER SIX: ANALYSIS OF EXECUTIVE AGENCIES

Chapter three provided a research design focusing on six separate models of delegation to executive agencies. These models were presented with key indicators derived from the literature on delegation presented in chapter two. Having outlined the empirical context of the thesis in chapter four, and provided a practical overview of executive agencies in chapter five, this chapter conducts the analysis of each model contained in the research design. Using the data collected during fieldwork and primary document analysis, the chapter focuses on each of the key factors of delegation to executive agencies identified in chapter three: rationale/motivation; institutional design; and accountability.

Who is Responsible?

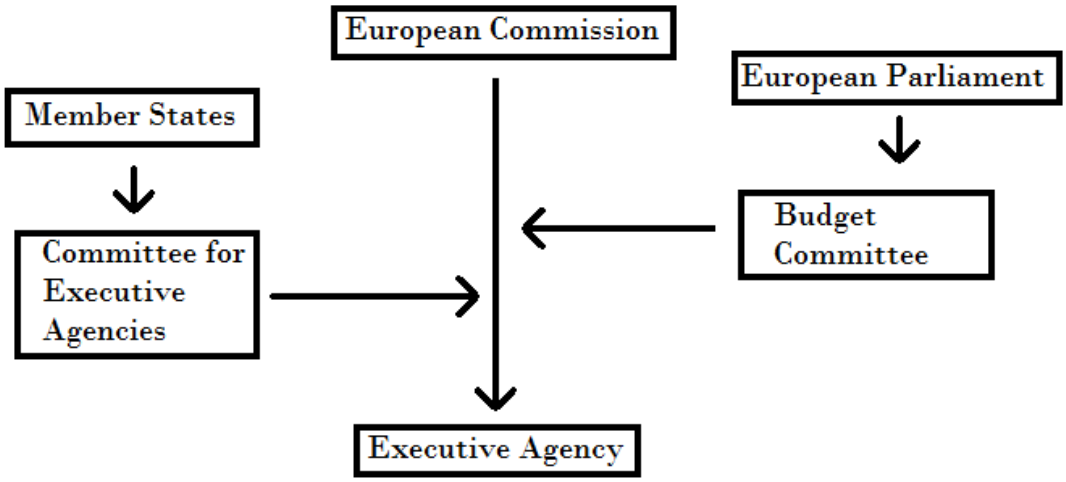
To assess the key factors underpinning the delegation of management tasks to executive agencies, it is necessary to identify the actors responsible for the delegation process. This is far from straightforward. Taking a principal-agent approach as a starting point, it is clear that a number of different parties could be identified as 'principals' in the case of EU executive agencies.

The process through which executive agencies were created began with an act of delegation by the governments of EU member states. National governments allowed for the creation of community programmes and, through the treaty process, delegated the responsibility for administering these programmes to the Commission. Following on from this initial act of delegation, the Commission then proposed the delegation of some of these responsibilities (the management of community programmes) to newly created bodies: executive agencies. This proposal led to the

Council, having taken formal opinions from the European Parliament and Court of Auditors, to pass Council Regulation 2003/58/EC, laying down the procedures through which the Commission could propose the creation of individual agencies.

Under Council Regulation 2003/58/EC, the Commission is formally responsible for creating a new executive agency, but the member states and the Parliament also maintain roles. The procedure for the Commission's establishment of an agency begins with a cost-benefit analysis in which the Commission must assess, amongst other factors, the justification for outsourcing management tasks, the costs of co-ordination and checks, the impact on human resources, and potential financial savings. The Parliament, through the budget committee, provides an opinion on both the cost-benefit analysis and the creation of the proposed agency; while the member states, under the comitology regulatory procedure, must approve the creation of any new agency via the Committee for Executive Agencies. Figure 6.1, below, illustrates the procedure:

Figure 6.1: Procedure for Creating a new Executive Agency



Overall, three different processes can be identified: (i) the transfer of the responsibility for administering community programmes from the member state governments to the Commission; (ii) the legislative process, involving the Commission, member state governments in the Council, European Parliament and Court of Auditors, which led to the adoption of Council Regulation 2003/58/EC; and (iii) the individual acts of delegation, produced by the Commission with input from the member states (through the Committee for Executive Agencies) and in close cooperation with the European Parliament (through the budget committee).

The first process can be comfortably described in principal-agent terms. As we have seen in Chapter One, acts of delegation from the member states to the Commission (and the other European institutions) have frequently been studied from a principal-agent perspective (for instance Pollack, 1997; 2003). From this standpoint the member states, through the Council, act clearly as delegating principals, with the Commission taking on the role of agent in the delegated relationship. It is not within the scope of this analysis to address the reasons behind the member states' delegation of the responsibility for administering community programmes to the Commission; however it is important to emphasise that the creation of executive agencies incorporates the delegation of delegated tasks. The nature of this 'delegation of delegation' is significant both with regards to the question of who is ultimately responsible for the creation of executive agencies and on a broader level with regard to the lines of accountability and democratic legitimacy that underpin the agencies' activities.

'Chains of delegation' have long been viewed as important in studies of European integration. The notion that a neat line of responsibility can be traced from supranational actors (in particular the Commission), through member state

governments and back, ultimately, to national electorates, has underpinned several accounts of the integration process. Of these, Andrew Moravcsik's (1998) adapted liberal-intergovernmentalist approach is perhaps the purest expression. In Moravcsik's account, actors at the supranational level maintain only a limited capacity to deviate from the wishes of actors at the lower levels (member state governments and national electorates) and a thread of accountability can effectively be traced through each rung of the system. This approach mirrors those which have attempted to map chains of responsibility in the national context. Kaare Strøm (2000), for instance, identifies an 'ideal-type' of parliamentary democracy built on a series of delegated relationships: from electorates to legislators in parliament; from legislators to national governments; from national governments to executive departments; and from executive departments to the civil servants charged with implementing policy (Strøm, 2000: 267).

As some scholars have argued, however, this conception of a single line of delegated tasks can prove problematic in the case of European integration. Deirdre Curtin (2006), for instance, argues that:

> In the EU context it is very difficult to establish a single chain of delegation... Moreover it is difficult to conceive of each link in terms of a single principal delegating to a single or multiple non-competing agents. Even if we view the national legislature (connected to the voters) as delegating power upwards via the national governments to the EU supranational actors… it is difficult to link that same authorisation by the national legislature with the output of the EU actors. (Curtin, 2006: 90-91)

There are several reasons why this may be the case. The first corresponds simply to the distance between actors at either end of the chain. This can most accurately be termed a problem of *quantity*, such that it arises simply from the number of actors – the number of links in the chain – involved in the process. Just as a message passed between multiple individuals is likely to become confused as the number of people increases – as in a game of Chinese Whispers – a large number of delegated relationships may increase the likelihood of the chain breaking down. There is no 'breaking point' at which an extra stage precludes us from speaking of a chain of delegation; however the fact that institutional outcomes within the EU tend to be characterised by several delegated relationships makes this problem of particular relevance.

A second, related problem is associated with the accountability of actions taken at the highest level of the chain. As Strøm (2000) notes, a chain of delegation essentially functions in two directions. On the one hand policy preferences are transmitted from the lowest level (electorates) through each delegated relationship to shape the actions of actors at higher levels. The system can only function, however, if there is "a corresponding chain of accountability that runs in the reverse direction" (Strøm, 2000: 267). Put simply, the effective communication of ideas from the bottom up is not enough to ensure that the desired actions will be carried out: if there is no effective line of accountability from the top down, then compliance cannot be guaranteed. Following the tenets of principal-agent theory, the monitoring of an agent's activities is highly important in this respect, although in the case of electorates, who cannot effectively implement monitoring mechanisms, it is perhaps more applicable to focus on the *visibility* of actions – how clear these actions are to the lower levels.

A final problem stems from the fact that chains of delegation may not always run in a straight line. It is intuitive to conceive of lines of responsibility which are structured around simple hierarchies. If responsibilities are transferred from 'actor A' to 'actor B', and these responsibilities are in turn transferred in their entirety from 'actor B' to 'actor C', then it is fairly straightforward to conclude that a hierarchy exists in which 'actor A' holds the highest level of authority, 'actor B' the second highest level, 'actor C' the third, and so on down the chain. This situation becomes more complex, however, when direct relationships emerge between actors who are not side by side in the chain (for instance between 'actor A' and 'actor C'). The situation may be further complicated when links in the chain are fulfilled by more than one actor or there are competing claims for positions of responsibility.

In Strøm's analysis this problem is expressed in the national context by highlighting a government's competing loyalties between its parliamentary support base and the electorate: what he terms "diverted accountabilities" (Strøm, 2000: 284). Although in a parliamentary democracy a government has effectively been assigned its authority by members of parliament, government ministers also have a direct line of accountability to voters. Under certain circumstances, the interests of a government's support base in parliament and the interests of voters can come into conflict. Strøm cites the example of a pledge made by Norwegian Prime Minister Thorbjørn Jagland in 1997 to illustrate:

> Prior to the September 1997 parliamentary election, Jagland declared that his Labor Party government would resign if the party received less than 36.9% of the national vote, regardless of the parliamentary distribution of power. The election, which gave the party 35.0% of the national vote,

> therefore effectively eliminated Labor from consideration and indirectly installed a centrist minority government with only about 25% of the parliamentary seats behind it. For the first time, Labor had precluded itself from power in a situation in which it might well have been able to form a viable government. Had Jagland not committed himself to his game plan, he most likely could have continued in office after the election. Instead, bargaining over government formation was constrained by his pledge and led to the formation of a cabinet with very shaky parliamentary foundations. In a sense, Jagland's accountability to the voters conflicted with his accountability to the parliamentary majority. The voters won, with results that complicated parliamentary decision making in the years that followed. (Strøm, 2000: 284-285)

If chains of delegation operated in a strictly linear fashion, then we would expect that a government's sole loyalty in a parliamentary democracy would lie with its parliamentary support base. In reality, direct relationships can emerge between actors that cut across the lines of responsibility.

In the European context this problem is, if anything, even more pronounced. It is clear that there are not only a number of diverted accountabilities, but that some of the positions of responsibility are contested by competing bodies. The European Parliament, for instance, holds a direct line of accountability to national electorates by virtue of the European elections held in each member state; yet in some respects it has also been granted responsibilities by the member state governments through the treaty process. The Parliament can certainly not be deemed simply to be an agent of the member states, but nor is it solely an agent of national electorates.

Perhaps more importantly with regards to executive agencies, the decision-making process for creating new bodies at the EU level is split between different institutions. Curtin (2006), explicitly focusing on the issue of agency creation at the European level, highlights the competing executive functions taken on by the member states in the Council and the European Commission. For Curtin, both institutions behave as executive actors in different situations and this has particular relevance for the creation of new agencies. Put simply, both the member states and the Commission have, in different contexts, functioned as principals in the creation of new agencies and this calls into question the notion of a single line of responsibility underpinning the integration process. As she states: "when we consider the delegation of powers at the horizontal EU level the chain of delegation fragments even further as *de facto* there are two institutions [the Council and the Commission] performing tasks of an executive nature in the EU and both of them separately delegate discrete executive tasks to a variety of independent agencies and for a variety of reasons" (Curtin, 2006: 90).

Processes (ii) – the legislative process producing Council Regulation 2003/58/EC – and (iii) – the acts of delegation to each individual executive agency – are clear examples of this type of decision-making. While a linear chain of responsibility would lead to the Commission, as the last link in the chain, taking on the role of principal in delegating its responsibilities to executive agencies, the situation in reality is altogether more complex. The legislative process was initiated by a Commission proposal – amended in accordance with recommendations by the Court of Auditors – before being passed on to the European Parliament and the Council. Ultimately, the process rested on the authority of the member states in the Council to adopt the regulation. In the individual delegation processes carried out to

create each agency, however, the Commission functions more as the principal, but formal roles are nevertheless afforded to the member states, via the Committee for Executive Agencies, and the European Parliament through the budget committee.

Clearly, the notion of a single line of responsibility is not entirely accurate in the case of executive agencies. The conclusion that the Commission acts solely as a principal in delegating authority to executive agencies and that this authority can be traced neatly back, ultimately, to national electorates, appears too simplistic to account for the various bodies involved in the process. How can this situation be unpacked?

A natural starting point is to assess how far back in the chain it is useful to go in tracing the influence behind the final decision to create an executive agency. Certainly at the lowest level there are several problems with incorporating national electorates and national parliaments into the process. The problems of quantity, visibility and a meandering line of responsibilities all hinder the oversight of electorates and parliaments. In the case of executive agencies at least five links in the chain exist: from electorates to legislators; from legislators to national governments; from the 27 national governments to the joint decision-making body of the Council; from the Council to the Commission; and finally from the Commission to an executive agency.

Moreover the visibility of the decision to create executive agencies is fairly limited, particularly as far as electorates are concerned. There are no opinion polls which attempt to gauge the European electorates' knowledge of executive agencies, but it is safe to assume that they are not of great electoral salience. For example, a search for the names of each executive agency on Hansard – the database of printed transcripts of parliamentary debates in the United Kingdom – reveals few explicit

questions on the use of executive agencies in the management of community programmes. This is not to say that executive agencies are of little importance to national electorates or parliaments in terms of their effects, but simply to say that the decision to create executive agencies has neither been well publicised nor well discussed at these levels. It is certainly highly questionable whether any assessment of executive agencies would benefit from searching for direct inputs from either electorates or national parliaments, regardless of whether a theoretical chain of responsibility can be traced to these actors or not.

A more realistic approach is to draw the line at the EU bodies, including the member state governments in the Council, which have exerted formal influence over the process. Although we have already noted the limitations in conceiving of the Commission as the sole delegating principal, there are nevertheless sound reasons for placing the Commission as the primary area of focus in the analysis. The Commission proposed the initial use of executive agencies, it is formally responsible for the proposal of each individual agency and it is assigned the bulk of the responsibility for scrutinising the activities of executive agencies and ensuring they remain accountable for their actions. The role of the member states in the Council is, if not as important as the Commission, also highly significant. The Council ultimately held the authority over the passing of Council Regulation 2003/58/EC and in many ways functions as a partner with the Commission in the setting up of individual executive agencies. Following Curtin's (2006) perspective on the dual executive responsibilities maintained by the Commission and the Council, it is natural that the Council is the second area of focus.

The European Parliament and the Court of Auditors have also maintained roles in the delegation process and in the mechanisms for ensuring the accountability

of executive agencies. The Parliament and Court have both provided formal opinions on the creation of executive agencies and both, in different ways, have a role in the accountability process. Aside from the specific role afforded to the Parliament's budget committee during the creation of an individual agency, the Parliament is also responsible for the final discharge of the overall budget. One of the main resources available in this context stems from the work of the Court of Auditors in conducting independent audits on the spending and collection of EU funds. The Parliament and the Court are therefore involved in the financial accountability of executive agencies in the sense that executive agencies have been assigned financial management tasks by the Commission. The Court also has a more general role in the accountability process which is probably best illustrated by the full review into executive agencies carried out in 2009 (European Court of Auditors, 2009).

Ultimately the involvement of all four of these institutions – Commission, Council, Parliament and the Court of Auditors – has helped shape the character of the six agencies and different institutions have put forward competing explanations for the decisions which have been taken.

Rationale

The Views of the Institutions

Focusing on the Kinnock reforms and the need for a new system for managing community programmes after the scaling back of TAOs, the Commission has, broadly speaking, maintained that it has acted in accordance with a functional rationale for the creation of executive agencies. As the Commission states:

> Executive agencies are the outcome of an externalisation policy of the Commission that was triggered mainly by two factors: the end of the collaboration with so-called Technical Assistance Offices (TAOs) which assisted the Commission in the management of some Community programmes; and the need for the Commission to refocus on its institutional tasks such as policy-making and strategic management. (European Commission, 2009: 2)

According to the Commission, the proposal for the use of executive agencies was made "against the backdrop of expanding Community programmes" and was seen as "key for managing Community programmes both more *efficiently*, i.e. at lower cost by comparison to the Commission and more *effectively* through a high degree of specialisation or the regrouping of similar programmes and activities within one agency so as to achieve economies of scale" (European Commission, 2009: 2). The Commission has also cited improvements in the efficiency and effectiveness of the management of community programmes as evidence that executive agencies have proven a beneficial form of externalisation (European Commission, 2009).

The Council, in the preamble to regulation 2003/58/EC, articulated a subtly different rationale, with a particular focus on the accountability of the Commission:

> If the Commission is to be properly accountable to citizens, it must focus primarily on its institutional tasks. It should therefore be able to delegate some of the tasks relating to the management of Community programmes to third parties. Outsourcing certain management tasks could, moreover,

> be a way of achieving the goals of such Community programmes more effectively. (Council Regulation (EC) No 58/2003)

The focus on the accountability of the Commission is interesting in this regard as it indicates the different priorities of the Council. Whereas the Commission focuses largely on the functional benefits of delegation to executive agencies; the Council, although noting potential gains in effectiveness, places accountability at the forefront of its justification. Of course, while the Council states that it has the intention of making the Commission more accountable to 'its citizens', the Commission, as the agent of the member states, is also accountable to the Council. This should not be surprising given that the creation of executive agencies took place as part of the fallout of the resignation of the Santer Commission, where the accountability of the Commission was the key concern. The Santer Commission did not resign on the basis of ineffective or inefficient management of programmes, but due to concerns over the accountability of the private contractor system.

The Parliament and Court of Auditors, in their official opinions on the proposed Council Regulation, also focused on the ability of executive agencies to both enhance accountability and improve the effectiveness and efficiency of Community programmes. The Court of Auditors was also keen to emphasise that in several of its reports over the preceding decade it had identified issues with the Commission's externalisation policy and had proposed the creation of similar bodies to executive agencies as a solution. As the Court stated:

> The commitment of the Commission… to develop a coherent and manageable externalisation policy, in order to correct aberrations caused

> by poor control of various technical assistance offices (TAOs) meets a need highlighted by the Court over several years in its annual and special reports. In light of its past comments, the Court generally welcomes this proposed Regulation. (European Court of Auditors, 2001)

At the agency level there is some agreement with the Commission's functional account. One agency director, for instance, was clear on both the reasons behind the creation of executive agencies and the benefits which have been acquired:

> The reasons (for executive agencies) are… simple and… borne out in practice… The agency is responsible for the management of (programmes)… there is the expertise needed to do our job to the standards required… (which) frees up the Commission to do its job properly. (Interview 1, October 2009)

Beyond the apparent consensus on the functional benefits to be acquired from creating executive agencies, there are some other key differences in how each institution has approached the issue.

During the legislative process, one particular debate between the Parliament and the Commission focused on the legal character of the newly created agencies. Unlike the technical assistance offices they were intended to replace, the Commission's proposal argued for executive agencies to possess a clear legal character. They were to be individual legal entities with the capacity to hold property, participate in legal proceedings and were to be granted a degree of autonomy in terms of representation. Nevertheless, the question of whether the actions of executive

agencies should be subject to legal review by the European Court of Justice (ECJ) has proven controversial. A number of representatives of the European Parliament were keen to ensure from the outset that as executive agencies fulfilled roles originally assigned to the Commission, the Commission should be liable for the legality of their actions.

It is not difficult, given the experience of the Santer Commission, to understand the motivations of the Parliament in this regard. Representatives were clearly keen to ensure that executive agencies possessed a genuinely higher level of accountability than technical assistance offices and did not function as a mechanism for the Commission to simply absolve itself of responsibility for the actions of its contractual partners; whilst the Commission had a clear incentive not only to protect itself from potential failures within the new agencies, but also to offload some responsibility for monitoring their actions to the ECJ. The final outcome was something of a compromise in which the initial legal responsibility rests with the agency itself, but the Commission is assigned the task of monitoring the legality of the agency's actions. The system essentially works through a process of appeals, whereby the actions of an executive agency can be referred to the Commission by any individual, or member state, for a review of its legality. Once the Commission has heard the relevant arguments, it is required to either uphold or reject the appeal within two months and, should the Commission reject an appeal, the issue can then be referred to the European Court of Justice. In addition, the Commission is permitted to review actions by executive agencies on its own volition and can impose sanctions on agencies should they fail to comply with a decision.

In truth, it is questionable whether the Commission could ever have been accused of attempting to use executive agencies to shield itself from the kinds of

mismanagement and irregularities associated with TAOs. As a method of blame avoidance, the delegation of responsibilities to executive agencies would always have been problematic. While responsibilities may be delegated to other agencies, formally the Commission is still assigned the responsibility of managing community programmes under the treaties. The delegation of management tasks to executive agencies is essentially a decision concerning how the Commission meets its responsibilities. It would not have substantively changed the nature of the Commission's legal obligations and, regardless of the nature of executive agencies, the Commission would have remained responsible for any mismanagement of community programmes. As the Council clarifies:

> As the institution responsible for implementing the various Community programmes, the Commission is best qualified to assess whether and to what extent it is appropriate to entrust management tasks relating to one or more specific Community programmes to an executive agency. Recourse to an executive agency does not, however, relieve the Commission of its responsibilities under the Treaty, and in particular Article 274 thereof. It must therefore be able closely to circumscribe the action of each executive agency and maintain real control over its operation, and in particular its governing bodies. (Council Regulation (EC) No 58/2003)

The concern of Parliament representatives is more indicative of the preoccupation of the Parliament with issues of accountability, particularly in relation to budgetary matters, than it is of a genuine desire on the part of the Commission to use executive agencies as a shield from financial mismanagement. The Parliament has maintained a

strong interest in ensuring the accountability of executive agencies. In an interview with a member of the European Parliament's Budgetary Control Committee, accountability was identified as the key concern of the Parliament's work with executive agencies:

> I think accountability, in general, is key for the future of the European Union, especially, since the perception of European citizens on whether their money is spent efficiently or not on the European level shapes their attitude towards Europe and its politics. Moreover, the accountability of executive agencies is in particular interesting since with a delegation of tasks the perpetuation of institutions and growing bureaucracy is likely. Once established a newly created institution can hardly be abolished in the future. (Communication 5, March 2011)

The final comment that an institution cannot be abolished is interesting in this context. Formally, an executive agency is a temporary body whose lifespan is determined by the programmes under its management. Each agency is granted an initial period of operation, although this may be extended. In practice, despite some name changes and reorganisations, none of the six executive agencies have yet been allowed to expire. It is notable that a member of the Parliament's Budgetary Control Committee goes as far as to rule out the possibility that executive agencies would be allowed to expire. Clearly this reflects a concern over issues of accountability, but also over the potential for agencies, and the (Commission's) bureaucracy, to continue to expand. In this context the role of the cost-benefit analyses, produced by the Commission when

proposing the creation of a new agency and scrutinised by the Parliament's budget committee, are of key importance.

It is possible that the Parliament's concern with accountability also stems from a desire to carve out a role in scrutinising the actions of executive agencies. To a certain extent the Parliament has competed with the Court of Auditors over this supervisory role and the member of the Parliament's Budgetary Control Committee highlighted some draw backs with the Court of Auditors part in the accountability process:

> Some problems are foreseeable… [For example] in the discharge process, EP and Council have relied in the past heavily on the reports of the European Court of Auditors. Which is not per se disadvantageous, but since the reports of the ECA are limited in terms of performance evaluation and seem excessively formalistic in some cases, the possibilities of EP and Council to evaluate effectiveness and efficiency of agencies might be hampered. Therefore, objective and comparable performance indicators need to be established, accountability must be enforced and the ECA needs to involve performance issues in its reports. All these are topics which are also discussed in the Inter-institutional Working Group on Decentralized Agencies in whose work I participate. (Communication 5, March 2011)

The lack of objective and comparable performance indicators and the need for the Court of Auditors to focus on 'performance issues' are intriguing criticisms given the content of some of the Court of Auditors' reports. Indeed, in the Court of Auditors

‘Special Report’ on the use of executive agencies (Court of Auditors, 2009), one of the key recommendations/criticisms of the Commission’s formal reporting mechanisms was precisely that they lacked objective performance indicators. As the Court states:

> The Commission’s supervision of the executive agencies’ activities is not fully effective… The executive agencies have generally been assigned tasks without results-oriented and targeted objectives. Monitoring, whilst making use of a large number of indicators, is restricted to the management activities and does not cover the key aspects of effectiveness and efficiency… In order to fully evaluate the benefits produced by the executive agencies, the Commission should ensure that it has relevant, reliable workload and productivity data related to the implementation of the delegated tasks, both before and after externalisation. (European Court of Auditors, 2009: 27)

The Court also criticised the content of the cost-benefit analyses (CBAs) which the Commission must produce when proposing the creation of a new executive agency. The Court found that issues of efficiency, specialisation and the potential for the Commission to focus more effectively on its core tasks received only limited attention in CBAs. Instead, CBAs tended to be dominated by simple financial considerations. As the court states:

> It (the Court) found that, in general, the CBAs were restricted to the financial aspects and took little account of other factors justifying the

> outsourcing... Emphasis was placed on the savings deriving from employing cheaper contract staff rather than permanent officials. The aspects of improved performance and efficiency gains were scarcely considered, though including such elements in the analysis might have strengthened the case for the creation of agencies. As such, the analyses were mainly cost comparisons, rather than CBAs in the proper sense of the term. (European Court of Auditors, 2009: 15)

Although this may be seen as an implicit criticism of the European Parliament's supervisory role in assessing the merits of the CBAs produced by the Commission, it is more important as a criticism of the Commission's stated rationale for the creation of executive agencies. The Court has gone further than simply criticising the nature of CBAs and argued that the primary rationale underpinning the Commission's proposal for executive agencies was not a desire to acquire the benefits associated with externalisation, but simply to compensate for staff shortages:

> The Court found that the initiative to set up agencies was mainly taken by the Commission in response to practical problems, in particular the need to compensate for discontinuing TAOs and to allow for the continuation of the programmes they managed when no new resources were made available under the ceiling on the Commission's administrative budget set by the MFF (Multiannual Financial Framework)… Despite the intentions set out in the White Paper and the guidance documents, staff shortages (in number and specialisation) at the Commission were the main driver for externalisation. Recent documents confirm that it continues to be the

> Commission's practice to explore the option of creating new executive agencies when faced with a shortage of resources. (European Court of Auditors, 2009: 14)

Compensating for staff shortages, while not in keeping with the Commission's own articulation of the reasoning behind the creation of executive agencies, still amounts to a functional rationale; however there is also a political, inter-institutional, element to this issue. The Commission is assigned an administrative budget by the European institutions to allow it to meet its responsibilities. Moreover, the Commission has for several years operated under a freeze on the number of permanent staff members it is allowed to employ. In practice, therefore, the Commission's resources (financial and in terms of staff size) are heavily restricted. This presents a problem for the Commission in meeting its responsibilities and, just as importantly, in maintaining community programmes which fall under its remit. Decisions on the size of the Commission's administrative budget, the number of permanent staff it is allowed to employ and the community programmes which are maintained or discontinued are not solely practical considerations, but reflect political outcomes furnished by inter-institutional decision-making processes.

In relation to the issue of staff shortages, the director of one executive agency went as far as to state that one of the key benefits of executive agencies was their potential to circumvent not just the freeze on permanent Commission staff members, but other rules associated with the location of Commission buildings and associated costs:

> Well (one benefit) is that there is a cap on staff levels (at the Commission)… We are independent so… although there is a limit on the number of staff we can employ… (it) means the Commission has more staff available… There are (also) rules on where we are located… the Commission has to be within a certain radius of (the centre of Brussels)… and we can be located in other areas… The (land costs) here are vastly cheaper… (Interview 2, October 2009)

As independent legal entities, executive agencies do not, however closely integrated, contribute to the Commission's formal staff levels. Whether in allowing the Commission to increase its administrative resources, or in reducing financial costs associated with the location of buildings and other concerns, it is clear that executive agencies carry the potential to provide the Commission with a number of benefits over and above those associated with externalisation.

Institutional Design

We have considered the actors responsible for delegation to EU executive agencies and the rationale underpinning the decision to delegate. The next step is to address the nature and structure of the new agencies and the factors which have influenced the selection of these structures. This section examines the make-up of EU executive agencies and how it relates to the structure of other organisations.

The first feature of EU executive agencies which may be assessed is the underlying principle of externalisation. We have seen that externalisation, which may be stated more simply as the desire to free the Commission from

management/implementation tasks, is the starting point from which executive agencies have been created. This principle – the separation of issues of policy from issues of implementation/administration – has a long history. Woodrow Wilson (who would later become President of the United States) wrote as far back as 1887 that: "although politics sets the task for administration, it should not be suffered to manipulate its offices" (quoted in Hummel, 2007: 204). While the environment of 19th century American politics could hardly be more different from that of 21st century European integration; it is obvious that there has long been recognition that some benefit can be derived by policymakers from transferring implementing and administrative tasks to other actors.

From a more contemporary standpoint, the delegation of management and implementation tasks to specialised actors became particularly significant at the national level towards the end of the 20th century. Throughout the 1980s and 1990s the principle became a fundamental component of the reform of public service delivery at the national level in the United Kingdom, Sweden, Germany, France, Italy and other European countries. Like the Commission's externalisation strategy, these reforms were typically advocated on the basis of perceived efficiency gains associated with specialisation and as a mechanism for allowing centralised authorities to focus more effectively on their core tasks.

Academics and politicians alike, however, were keen to emphasise that the gains associated with delegating responsibilities to specialised bodies and other 'alternative service delivery systems' must be balanced against the need to maintain accountability over the actors assigned implementation and management duties. Rod Rhodes (1994), for instance, writing more generally on what he termed the 'hollowing out of the state' – a process encompassing not just externalisation, but also the

transfer of powers to the European level, the privatisation of service delivery systems, and a broad series of reforms termed 'new public management' – warned of reforms which "erode accountability", highlighting in particular that the "sheer institutional complexity" of the new reforms "obscure who is accountable to whom for what" (Rhodes, 1994: 147). For Rhodes, a lack of coherence in policy outputs may also arise from the new reforms unless actions were closely coordinated by central authorities. As Sir Robin Butler (1993, quoted in Rhodes, 1994) argued: "it is essential that it does not reach the point where individual Departments and their Agencies become simply different unconnected elements in the overall public sector... with no real working mechanisms for policy coordination" (Butler, 1993: 404; Rhodes, 1994).

The explicit use of agencies as a mechanism for separating policy from implementation has its own history. One of the most significant adoptions of what could be termed 'executive' agencies at the national level came in the United Kingdom under the 'Next Steps' programme (named after a 1988 report titled *Improving Management in Government: the Next Steps*). 'Next Steps' sought to reform the way in which British government departments delivered policies through the civil service. The chief recommendation was for the creation of numerous 'executive agencies' – usually referred to as 'Next Step agencies' – which were to be transferred responsibility for implementing policy decisions made by government ministers. Ministers maintained control over policy decisions; however the new agencies were granted some discretion over their own activities. These agencies can be distinguished from bodies which operate at arm's length from government ministers and have more autonomy in terms of decision-making – often called non-departmental public bodies in the UK context, or QUANGOS (Quasi-Autonomous Non-Governmental Organisations).

As Colin Talbot (2004) points out, the use of Next Step agencies was both extensive within the UK context and widely emulated: “with countries as diverse as Jamaica, Japan, Latvia, Tanzania and the USA explicitly referring to the UK model in relation to similar reforms” (Talbot, 2004: 104). Their use was also extremely controversial, with a number of politicians and academics highlighting the potential of Next Step agencies to fragment the civil service and raising issues of accountability, in accordance with the arguments put forward by Rhodes and Butler above (see, for instance, Chapman, 1995; O’Toole and Jordan, 1995).

A variety of aims have been put forward to explain the adoption of the Next Steps programme. Talbot states that: “The specific aims of structural change as set in the programme can be summarized as creating executive agencies within government departments which would be task-focused, with an accountable chief executive, a well-defined framework in which to operate, and greater freedoms and flexibilities over the way they could manage themselves internally” (Talbot, 2004: 106). To this he adds two further aims, noting that Next Step agencies were intended: “To improve the strategic management and policy-making roles of government departments by allowing them to focus on setting broad strategic objectives and policies… [and] to improve public accountability by publishing information about agency performance” (Talbot, 2004: 106).

It is clear from this discussion that many of the themes dealt with by the Commission in relation to externalisation, the Kinnock reforms and the use of EU executive agencies had been encountered previously in other contexts. Rhodes and Butler’s warnings of inadequate oversight and coordination, though written in relation to the national level, could just as easily have been written about the Commission’s first attempts at pursuing externalisation through the use of TAOs in the management

of community programmes. The key problems identified by Rhodes of organisational complexity and a lack of centralised co-ordination leading to eroded accountability are acutely relevant to the shortcomings in the TAO system reported by the Committee of Independent Experts. The broadly unstructured use of TAOs was, according to the committee, "marred by a jumble of disparate source texts" (Committee of Independent Experts, 1999b: p4) and raised serious questions about the accountability and transparency of the management of programmes. The Commission's white paper on reform (European Commission 2000a) promised to address these issues by ensuring that externalisation was adopted on a more consistent basis across all of the Commission's activities, with similar solutions favoured in different areas:

> Externalisation must never be used for administering ill-defined tasks and it must never be at the expense of accountability… The need for externalisation differs between departments according to their activities, so a 'one size fits all' approach will not be appropriate. It must, however, be possible to ensure that there is more coherence so that similar instruments are used for similar cases. (European Commission, 2000a: 11)

Similarly, it is possible to draw parallels between Next Step agencies and the justification put forward for the creation of EU executive agencies. The key dynamic of 'task focused' executive agencies with freedom over their own internal management decisions presents obvious similarities. In both cases the benefit of allowing government departments/the European Commission to focus more effectively on wider policy decisions is highly significant. The Commission made this

explicit in the proposal for Council Regulation 2003/58/EC, stating that it had: "based its approach on its vision of an administration re-focused on its core tasks and activities" (European Commission, 2000b: 3). The last aim of improving public accountability through increased transparency is particularly relevant to the case of EU executive agencies. One contemporary criticism of TAOs, prior to the creation of executive agencies, was that there was no right of public access to their records and that this lack of transparency raised the potential for mismanagement. Some observers went as far as to directly advocate the replication of Next Step agencies at the European level as a means to alleviate these problems. Stephen Grey (1999) from the Centre for European Reform, for instance, argued that: "the use of arms-length agencies to ensure good management should not be dismissed out of hand. Agencies that operate outside the Commission often use more flexible employment patterns or other private sector practices to meet precise performance objectives. The use of such bodies for the delivery of public services in the UK—known as next-step agencies—has led to big improvements in value-for money. The Commission should thus examine the idea of creating a small number of statutory executive agencies. These should be operationally independent, but publicly accountable to the European institutions." (Grey, 1999: 15)

As David Clark (2000) has argued, there are generally two ways in which to understand parallels of this nature. The first is to assert that the emergence of similar organisational forms across different contexts represents a trend toward convergence and isomorphism. As discussed in Chapter Four, isomorphism refers to the spread of organisational structures, with successful forms being replicated in different areas. Under this line of reasoning, 'Next Step' style implementing agencies and new public management perspectives on decentralised and outsourced forms of administration

emerged within certain territories, such as the UK, and spread organically into other territories. That we now find similar structures and ideas, borne from similar circumstances, at the European level, is perhaps evidence that some form of isomorphism has occurred.

An alternative conception, however, is that the spread of ideas can be viewed as an act of learning in which decision-makers within different territories adopt ideas which have been successful in other areas. Key to this perspective is the notion that different political environments contain different characteristics and organisational cultures which determine how reforms are instituted. Organisational forms do not spread into new territories, colonise political systems and wipe the indigenous structures from the landscape, but instead are adopted in accordance with the prevailing administrative culture within that territory. In Clark's (2000) words, the process may be understood as being *adaptive* rather than *transformational*. A reform may be inspired by the experiences of other decision-makers, but within a given location it could be implemented quite differently.

In terms of the significance of these perspectives to the case of EU executive agencies, it is worth noting some of the unique circumstances present in European integration. While many scholars have written extensively on the spread of reforms across different countries (for instance, Premfors, 1998; Christensen and Lwogried, 1998); the situation with respects to institutional reforms at the EU level is somewhat different. The EU is a supranational organisation and there is therefore some overlap between the 'territories' relevant to a given reform. If an organisational structure present within one of the EU's member states was replicated as a part of the EU's institutional architecture then, to a certain extent, this process would be analogous to the spread of an organisational form from one country to another. However, because

the EU's institutional framework is also part of that member state's 'territory' – in the sense that the member state's government participates in the organisation and is subject to its decisions – the situation may be more complex.

The European Central Bank (ECB) provides an example. A common perception (see, for instance, Elgie, 1998: 64) is that the ECB has essentially been modelled on its German counterpart, the Bundesbank. This has been put forward with respects to both the ECB's primary aim of pursuing price stability (low inflation) and in terms of its actual organisation and the degree of independence it maintains from political authorities. This outcome, however, is not adequately explained simply by the principles of isomorphism or adaptive learning. These two forces may well have played a part, but as several studies have recognised, some of the most vital components in determining the structure of the ECB were the power structures which underpinned the intergovernmental negotiations (see Gros and Thygesen, 1998). That the eventual outcome replicated many features from the central bank of the largest and most economically powerful member state could be seen as learning from German success, but, as McNamara (2001) argues, it must also be seen as a political outcome in which the financial position and credibility of the German government provided significant bargaining power in the negotiations.

A second concern is the degree to which the experience of 'Next Steps' and the spread of new public management ideas constitute a distinct, specific concept that can be adopted in different contexts. If isomorphism is to have any utility as an explanatory mechanism then it would seem to rest on there being a consistent, substantive form which can spread across different territories. If this form is only vaguely articulated, or if the actual implementation of it varies significantly from

territory to territory, it is questionable whether isomorphism adds any value to our understanding.

Consider, for instance, the architectural plan of a house being built by a construction company. The plan might contain certain distinct features, a novel layout of rooms and various architectural principles unique to that design. Should this plan prove popular, there is a good chance it will be replicated by other construction companies, perhaps with some minor variations depending on the individual circumstances of a site. With a detailed, specific plan and the adoption of this model in various locations, it is easy to see how a popular form in one area is capable of spreading into other areas.

Imagine, however, that instead of discussing the detailed architectural plan of a house, we were discussing a much looser construction idea: say the principle of building a house with a basement. Certainly, it will be possible to isolate many different examples of buildings which have been constructed in accordance with this principle (that is, they have a basement). However the principle is of such a basic nature that we would have serious problems in arguing that the construction of one house with a basement necessarily has anything to do with another house containing the same feature. Similarly there may be two houses with basements that are constructed quite differently from each other and have little, other than the label "basement", in common. To meaningfully discuss the spread of one form across different contexts, a certain element of distinctiveness, complexity and consistency is surely vital.

In the specific case of EU executive agencies, it is clear that the initial proposals resulting in their creation were both vague in their general outline and contained certain measures and concerns which were unique to the EU context. In the

second report by the Committee of Independent Experts (1999b), in which the use of agencies to perform management tasks was first recommended, only three distinct points on the nature of these agencies can be identified: (i) that agencies should be created by the Commission, as opposed to being created by a unanimous vote on the Council; (ii) that the use of agencies should not result in an increase in the size of the Commission's staff; and (iii) that the new agencies should not be permanent and that measures should be put in place to ensure they do not become permanent (Committee of Independent Experts, 1999b: p68-69). Of these three concerns, it is doubtful whether the first two have a direct parallel with agencies at the national level. The first reflects a desire to ensure that the procedure for establishing executive agencies is not too cumbersome, but also reflects some inter-institutional issues relating to the influence of the Council over the Commission's activities. The Committee argued that previous attempts for the Commission to work alongside agencies should not be replicated, stating that: "these, far from providing a means of more flexible management enabling the Commission to tap skills which it lacks internally… represent permanent structures within which the Commission's management powers are undermined by the Member States (which sit on the governing bodies)" (Committee of Independent Experts, 1999b: p68). Instead the Commission should maintain the right to set up agencies on a case by case basis. The second concern also reflects inter-institutional issues. The desire on the part of the European Parliament, from whose members the Committee was composed, to prevent the Commission from increasing its resources is evident in the desire to maintain Commission staff levels.

Ensuring executive agencies do not become permanent has a more direct parallel with concerns at the national level. The key anxiety on the part of the Committee was clearly that, once created, an agency may continue to expand and

acquire more resources and responsibilities over time. This is an issue which has received extensive attention at the national level, going back to William Niskanen's (1971) 'budget-maximizing' model of bureaucracy. With this stated, the temporary nature of executive agencies also reflects some more specific concerns associated with the management of Community Programmes. Taking influence from the previous contractual system used with TAOs, the idea put forward in the final Commission proposal leading to Council Regulation 2003/58/EC is that agencies should have the same lifespan as the community programmes they are charged with implementing. When a programme finishes, the relevant agency in charge of managing it should also be dissolved. As we have seen, this principle has not been put into practice so far – all of the six agencies created since 2003 were still in operation in 2011 – which perhaps reflects the relevance of the committee's original concern and, indeed, the longevity of Niskanen's insights.

Aside from general concerns over the potential for agencies to increase their resources, or potentially deviate from their mandate – something common to all forms of delegation, as we have seen – it is difficult to isolate direct parallels between reforms at the national level and the creation of EU executive agencies. The fact that similarities can be drawn between the success of Next Step agencies at the national level and the adoption of executive agencies at the European level does not mean that Next Step agencies served directly as a model for EU executive agencies. All we are left to conclude is that many of the same priorities which led to the launching of the Next Steps programme were also applicable to the reform process that produced EU executive agencies. While some form of adaptive learning may have occurred, the actual make-up of the agencies can be shown to reflect concerns which are specific to the EU level and it would be difficult to conclude that the creation of these agencies

stemmed largely from a process of external isomorphism. Given similar circumstances and operating under similar principles, it is perhaps likely that decision-makers will favour similar outcomes.

There is more evidence in favour of a limited form of internal isomorphism. A review of the structures of each agency indicates that they all contain certain similarities in terms of their organisation. All six agencies are headed by a director, with heads of unit managing different sections organised broadly around the programmes under that agency's control. Similarly, all six agencies are subject to the same system of accountability measures, chiefly through the production of AWPs and AARs and the communication of key indicators to the Commission. This corresponds with previous findings in the agency literature, such as Christensen and Nielsen's (2010) test of the explanatory value of isomorphism in the creation of regulatory agencies (see chapter two, page 68). As with regulatory agencies, a general blueprint for executive agencies appears to have developed, as opposed to each agency being organised solely around the needs of individual programmes. Like Christensen and Nielsen's study, however, it is difficult to determine whether this represents isomorphism in its purest sense, or the Commission simply learning from its previous experiences in developing executive agencies.

Accountability

Following on from the institutional design of executive agencies, this section examines in more detail the mechanisms put in place for ensuring the accountability of executive agencies.

Council Regulation 2003/58/EC, which establishes the procedures for the creation of executive agencies, states that the role of supervising the agencies rests with the Commission. Article 20 (1) asserts that: "Implementation of the Community programmes entrusted to executive agencies shall be supervised by the Commission" (Council Regulation 2003/58/EC). The rationale for this arrangement is clarified in the opening section (point 9) of the regulation:

> As the institution responsible for implementing the various Community programmes, the Commission is best qualified to assess whether and to what extent it is appropriate to entrust management tasks relating to one or more specific Community programmes to an executive agency. Recourse to an executive agency does not, however, relieve the Commission of its responsibilities under the Treaty, and in particular Article 274 thereof. It must therefore be able closely to circumscribe the action of each executive agency and maintain real control over its operation, and in particular its governing bodies. (Council Regulation 2003/58/EC)

In addition to the supervisory role afforded to the Commission, Article 20 (2) establishes that auditing should be conducted by the Commission's internal auditor; Article 20 (4) indicates that the European Anti-Fraud Office (OLAF) shall maintain the same powers over executive agencies that it holds over the Commission; and Article 20 (5) states that the Court of Auditors will be responsible for examining the agencies' accounts (Council Regulation 2003/58/EC).

The actual line of accountability to the Commission goes through the individual Commission DGs responsible for each Community Programme (the

'parent' DGs of each agency). The Trans-European Transport Network Executive Agency (TEN-T EA), for instance, manages the Trans-European Transport Network programme, which is a programme falling under the remit of the Directorate-General for Mobility and Transport (DG MOVE). The supervisory role is therefore fulfilled by DG MOVE. Whilst this arrangement is clear with the TEN-T EA, which manages a single programme, three of the executive agencies (the EACEA, EACI and REA) manage several programmes across a wider variety of sectors and therefore have several parent DGs responsible for supervising their activities. The REA is supervised by two DGs, the EACI by four and the EACEA by five.[21]

The most striking feature of this system, even before considering the mechanisms for ensuring accountability, is the number of actors involved in the process. The Commission is explicitly identified as the institution with primary responsibility for supervising the actions of executive agencies; yet it shares some of these responsibilities with OLAF (itself an independent part of the Commission) and the Court of Auditors. When the Commission exercises its powers of supervision, it does so through the parent DGs of the agencies, with some agencies falling under the remit of as many as five DGs. With so many bodies involved in this arrangement, it is worth assessing the nature of the boundaries of responsibility between each set of actors.

A simple explanation for the shared responsibilities between the Commission, OLAF and the Court of Auditors is that the role of each body corresponds to a different form of accountability. In the previous chapter, the discussion of accountability focused on the distinction between process oriented and outcome oriented forms of accountability. This is a distinction based on the way in which

[21] Table 1 in Chapter Three contains a full list of the parent DGs for each agency.

actors attempt to hold agents to account: either by taking active control over how agents carry out their duties (process oriented) or by setting performance targets in which the outcomes produced by agents can be judged (outcome oriented). Accountability may also be categorised, however, by the type of activity principals are concerned with. Laffan (2003), for instance, makes a distinction in the EU context between financial accountability and other more general forms of accountability focused on an agent's assigned tasks. In the case of financial accountability, the primary concern is that associated funds are spent correctly, efficiently and that the potential for fraud and the mismanagement of funds is minimised. The more general form of accountability is focused more explicitly on whether an agent performs their assigned tasks: in short, whether they do what they are supposed to do (Laffan, 2003).

The role of OLAF and the Court of Auditors, not just in the case of executive agencies, but across the entire European Union, can be understood as corresponding to the need to ensure financial accountability. The Court of Auditors has become increasingly important in scrutinising financial management across all of the EU's institutions and, since its creation in 1999 as part of the Commission's reform strategy, OLAF has worked closely with the Court in minimising the potential for fraud (Pujas, 2003). In the case of executive agencies, the corresponding view would be that the Court of Auditors and OLAF have taken on responsibility for ensuring the financial accountability of the agencies, whilst the Commission, through the parent DGs, supervises the general activities of executive agencies to make sure that they comply with their stipulated aims.

Although this account is intuitive, in reality there are reasons to believe that the boundary between financial and general forms of accountability is a 'fuzzy' one, at least with respects to the Court of Auditors. It is clear that, in practice, the Court

does not restrict its activities solely to issues of financial management. In 2009, for instance, the Court conducted a full review of the use of executive agencies which, in addition to issues of financial management, also covered the extent to which executive agencies had improved the efficiency of community programmes, whether there were sound reasons for establishing individual executive agencies and the effectiveness of the Commission's supervision of the agencies' activities (European Court of Auditors, 2009). Of particular relevance here is that the Court not only possesses a role in scrutinising the activities of executive agencies, but also maintains a more general position of authority over the Commission by assessing its actions and presenting recommendations for improvements. As will be seen below, this has led to some disagreements between the Commission and the Court over how the accountability of executive agencies should be ensured.

The Commission's Supervisory Role

'Supervision' is a broad term, however outside of the auditing process conducted by the Commission's internal auditors, there are essentially two main avenues through which the Commission is expected to monitor and maintain control over the activities of the agencies: by appointment and through reporting/monitoring processes. The first is achieved by appointing the director of each agency, together with the five members of a steering committee charged with taking all management level decisions. The directors and steering committee members are appointed from the Commission's own staff for a stipulated time period, with their positions within the Commission being retained throughout the duration of their appointment. They remain permanent

Commission staff members[22], their positions within the Commission are not permitted to be filled during their period of employment at the agency and there is the full expectation that they will return to the Commission upon completion of their assignment. As one interviewee explained:

> We are a separate organisation which is in many ways like… a department of the Commission... I worked at the Commission before working here, my responsibilities are to a greater or lesser extent similar… and were the agency to cease into being I would return to my old position. (Interview 3, October 2009)

The steering committees are responsible for producing the two major reports, submitted by the agencies to the Commission each year: the annual work programme (AWP), presented at the start of the year to outline the activities which will be engaged in over the next 12 months; and the annual activity report (AAR), submitted at the end of the year in order to review how the agency's activities have been conducted. Communications between the Commission and the agencies are not simply limited to these two reports: there are extensive informal contacts between the parent DGs and the agencies to coordinate management tasks associated with the programmes. Nevertheless, the two reports maintain a prominent position in establishing the formal accountability of agencies to the Commission. The Court of Auditors has been particularly keen to emphasise the importance of formal reporting mechanisms to the oversight of each agency (European Court of Auditors, 2009). As

[22] Although this position is clear within the Commission itself, it has proved problematic in other respects. One member of the steering committee of the EACEA was at pains to point out that upon transferring to the agency he unexpectedly found himself foregoing pension, schooling and other privileges afforded to employees of the Commission. Several phone calls to Belgian call centres were required before these privileges were returned!

the Court states, formal reports are important not simply in ensuring the effectiveness and efficiency of the agencies' operations, but also in allowing information on the implementation of programmes to be accurately transmitted back to the Commission in order to aid policy development:

> If [informal contact] ensures communication on day-to-day management issues, it does not take the place of well-structured relationships based on clear performance measurement instruments and reports… This is also crucial in the longer term for the Commission's strategic functions (its 'core business'), which require knowledge of project implementation on the ground (especially for policy domains that rely heavily on evidence-based project results to develop new initiatives). (European Court of Auditors, 2009: 25)

The relevant point being made by the Court in this context is that whilst informal communications are perfectly acceptable for co-ordinating management tasks; it is necessary to have a legitimate formal reporting process, such as that furnished by the AWPs and AARs, to ensure that agencies are kept fully accountable for their actions. In terms of aiding policy development, it is worth emphasising that, as stated in chapter three, the key principle put forward by the Commission to justify the creation of executive agencies is that they allow for a separation between policy and implementation (part of what the Commission terms 'externalisation') in the running of programmes. Broadly speaking, the Commission retains the right to initiate policy (the aims, extent and nature of Community programmes) whilst the agencies are charged with the management and implementation of these programmes. Having fed

the relevant policy decisions into the actions of the agencies, the policy cycle concludes with the agencies feeding information back to the Commission in order to aid future policy development. It is this final link in the chain in which the AWPs and AARs, according to the Court, must play a pivotal role.

Annual Work Programmes and Annual Activity Reports

Examining the nature of the reporting system is therefore a starting point for assessing both the extent to which the Commission is able to hold agencies accountable and in determining the type of accountability mechanisms (process or outcome focused) which have been adopted. In terms of the fundamental effectiveness of the AWPs and AARs, there are a number of issues which are worth addressing, some of which have already received substantial attention from the Court. The first is that the Commission has tended to be fairly slow in approving the AWPs of the agencies. Under Article 9 (2) of Council Regulation 2003/58/EC, the agencies are required to submit their work programmes at the beginning of each year. In practice, however, this is complicated by the Commission's own responsibility, under Council Regulation 2002/1605/EC – which lays down the financial regulations for the execution of the general budget of the European Communities – to submit AWPs for each Community programme. The Commission's AWPs, due to the different stipulations contained within Council Regulation 2002/1605/EC, are typically submitted around the end of March. As a result, the agencies' AWPs are often only approved by the Commission later in the year, or in some cases (for example the EACEA in 2006), not at all (European Court of Auditors, 2009: 23).

The notion that the agencies' AWPs can function as complete work programmes, or set credible performance targets, is therefore undermined by the differing timescales. It is difficult for credible performance targets to be set in the AWP if the programme itself is only approved by the Commission after a substantial period of the year has passed. It is also impossible for an agency's AWP to be comprehensive when it cannot include the content of the AWPs associated with the community programmes it is responsible for. The solution is, as might be expected, to resort to more informal modes of communication between the Commission and the agencies in which management tasks are coordinated, but limited performance targets and goals are put in place from the outset. The Commission has highlighted that a 'pragmatic approach' has been adopted to minimise any problems arising from the time lag between the two reports, with the lack of formal approval from the Commission for AWPs being mitigated by informal coordination via the steering committee. In the Commission's words: "the lack of a formal adoption does not mean that there has been a lack of guidance and monitoring of agency performance, as the draft documents have been examined by the steering committee. Therefore progress can be monitored and continuity ensured." (European Commission, 2009: 42-43)

Whether the differing timescales and delays in the formal adoption of AWPs are the defining factors, or otherwise, it is clear from the content of the AWPs that their use as a mechanism for setting concrete performance targets is limited. Each AWP contains a number of indicators related to the work carried out by a given agency. The number and type of these indicators varies from agency to agency, but broadly speaking they can be separated into two different types: indicators related to the management activities carried out by the agency and performance targets

concerning the actual programmes under the agency's management. In the case of the ERCEA, for instance, the situation was clarified in the following way:

> The ERCEA produces two kinds of indicators: those related to its own performance and which typically include information on number of grants signed, time to grant, time to payment, audits performed, payment times for experts, etc.; and those related to the specific programme… which typically include the number of international prizes and awards by ERC grant holders and the number of scientific publications by ERC grant holders. (Interview 10, October 2010)

Put simply, there is a recognised separation between indicators focused on the management *process* within each executive agency and those indicators focused on the *outcomes* produced for the relevant programmes. The Court of Auditors, in its review of executive agencies, makes a similar distinction between the types of indicators contained within AWPs, though the process indicators are separated further into indicators focused on 'tasks' and 'workload'; whilst outcome indicators are split into 'effectiveness' and 'efficiency' (European Court of Auditors, 2009: 24).

It is apparent from the content of the AWPs that the balance of indicators is heavily skewed towards those focused on the management performance of the agencies. For instance, in the TEN-T EA 2010 annual work programme, all 23 of the stipulated indicators were related to management processes: targets ranged from achieving 90% of decisions on funding proposals by the end of March 2010, to simply increasing the daily traffic to TEN-T EA's website (Trans European Transport Network Executive Agency, Annual Work Programme 2010). In the Court of

Auditors review, written in 2009 and covering the 2008 AWPs submitted by the four executive agencies fully operational at that time, only two of the four agencies contained indicators focused on the outcomes produced by programmes: the 2008 EACEA work programme contained six effectiveness indicators out of the 109 present in the AWP; whilst the 2008 PHEA (now the EAHC) work programme contained only one effectiveness indicator out of the 53 present in the report. Figure 6.2 below illustrates this:

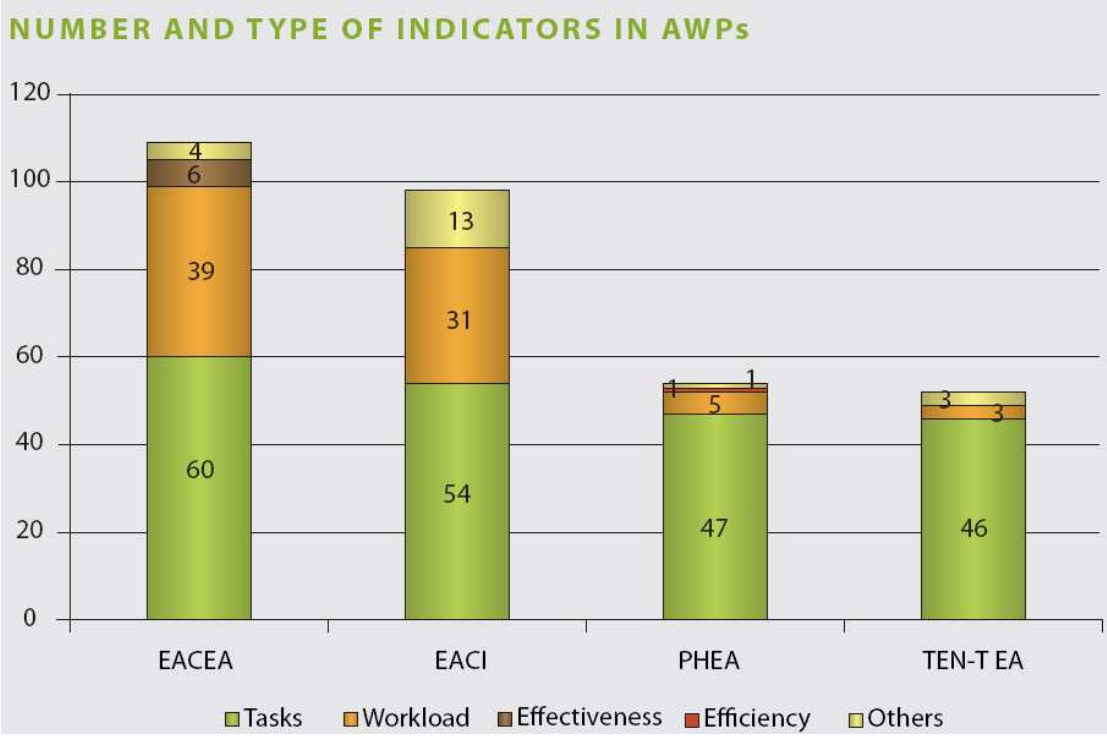


Figure 6.2: Reproduced from European Court of Auditors, 2009: 24

The Court concluded that:

> The indicators used are mostly related to the management activities (tasks and workload) rather than to the results of the programmes managed. Only a limited number of indicators aim at measuring delivery against objectives (effectiveness) and there are no indicators to measure the

> relationship between resources employed and the results achieved (efficiency). (European Court of Auditors, 2009: 24)

The annual activity reports (AARs) follow a similar pattern. The Court has nevertheless criticised AARs for lacking consistency with the indicators used in AWPs stating that:

> [Reporting] is usually confined to the budgetary data (e.g. the consumption of commitment appropriations and payment delays). The AARs are not always consistent with the indicators of the AWPs, make no systematic comparison with all the targets set in the AWPs and make no reference to progress achieved from year to year, or to corrective actions required for the future. (European Court of Auditors, 2009: 25)

The Commission, for its part, has defended the nature of the indicators employed by stating that it: "considers that it is appropriate that indicators used are mostly related to management activities" as "following the distribution of roles between the Commission services and the executive agencies, the monitoring and the evaluation of the programmes' effectiveness and efficiency remain the responsibility of the Commission services" (European Commission, 2009: 43). There is some merit in this argument. If, as the Commission has stated, the intention behind the creation of executive agencies is to separate issues of policy from issues of management/implementation, then it might be expected that the indicators under which executive agencies are judged relate primarily to management tasks. It is questionable, however, whether effective control can be maintained simply by

focusing on management level tasks, at the expense of the wider effect of this management on the functioning of the relevant programmes. The Court has been particularly scathing in this regard, arguing that:

> Due to the weaknesses [with AWPs/AARs] the Commission's control over the agencies is not fully effective. On an operational level, there are informal contacts on a regular basis between staff at the Commission and the agencies (facilitated by geographical proximity). If this ensures communication on day-to-day management issues, it does not take the place of well structured relationships based on clear performance measurement instruments and reports. (European Court of Auditors, 2009: 25)

This is not to say that the Commission has not kept any track of the effectiveness and efficiency of agencies. Indeed, there are a number of indicators which have been employed by the Commission in assessing the efficiency and effectiveness of the agencies, many of which have shown that the agencies have significantly improved the operation of the programmes. What is clear, however, is that a fairly restricted, management process focused approach to formal target setting has been employed by the Commission, not simply in the context of the AWPs, but in accordance with a more general philosophy concerning the delineation of responsibilities between the Commission and the agencies. Whether these targets have been effective in promoting better run Community programmes is a question which has largely been assessed at the Commission level, to an extent independently of the agencies themselves.

Process or Outcome Focused Accountability?

The above discussion of the formal target setting and reporting structures used by the Commission to monitor executive agencies provides some fairly strong evidence for the idea that a form of process focused accountability has been adopted by the Commission. For the most part, interview responses were consistent with this idea, though opinions were more divided on whether this form of accountability was positive or detrimental to the agencies' work. One of the most forceful respondents on this issue was a head of unit at the EACEA, who not only identified a process focused form of accountability, but went as far as to claim that it was excessive and negatively impacted upon the work of his agency:

> Yes… it definitely puts how we do our job above the results… I would prefer it to be more about results… We are a part of the Commission really, but they (the Commission) don't see it that way… We're subordinates… (to) them… We are, I like to think, the experts at managing the programmes… and then you get people at the Commission, who know less about all of this stuff than we do, telling us how it works. (Interview 6, April 2010)

The last point was a common theme in many of the interviews: that despite being the 'experts at managing the programmes', agencies often find themselves being forced to adopt procedures determined at the Commission level. In many ways, this is an understandable response and one that would be expected to accompany a form of process focused accountability. The Commission's stated rationale for the creation of

executive agencies, as we have seen, is to improve efficiency and effectiveness by separating the policy of Community programmes from the implementation of these policies. The key benefits derived from the new arrangement stem from the capacity for agencies to acquire enhanced expertise of management tasks through specialisation and to create 'economies of scale' or 'synergies' by combining related tasks. An overly restrictive approach from the Commission undoubtedly inhibits the potential gains to be acquired through these mechanisms.

This not withstanding, not all interviewees were as negative about interference from the Commission. One director, for instance, saw it as simply the most effective mechanism for conducting the work of the agency:

> So much (of the work done by the agency) is related to the parent DGs… so we need that level of support and communication… (there are) lots of disagreements… (but) it's not just the case that you can just let the agency get on with it… it's more complex. (Interview 9, October 2010)

The extent to which agencies rely upon input from the Commission is, indeed, an important point. Although the interview data and the formal monitoring and reporting mechanisms provide little evidence for a form of outcome focused accountability, it is important not to overstate the argument. In many respects it is to be expected that the Commission will exert some authority over the management of programmes. This is not simply the result of the type of accountability it has chosen to adopt, but also because the parent DGs of the Commission still retain a great deal of responsibility over the actual running of the programmes by virtue of their role in making policy decisions. Coordination is clearly vital to the successful implementation of decisions

and whilst some respondents appear to view this as restrictive, others simply see it as a part of the balancing act between two organisations with split responsibilities for the running of Community programmes.

Nevertheless, the majority of evidence – from the analysis of formal reporting, from the interview data and from the Court of Auditors review – points towards a form of process focused accountability. The key elements of this are the appointment of directors, steering committee members and heads of unit from the Commission's own staff; formal targets and reports chiefly related to detailed management processes, as opposed to general performance outcomes; a series of informal inputs into the operations of agencies; and a general philosophy about the delineation of responsibilities between the Commission and executive agencies in which management processes are the primary prerogative of the agencies and judgements on the effectiveness and efficiency of Community programmes remain largely confined to the Commission level.

Summary

This chapter has considered the actors responsible for the creation of executive agencies, the rationale behind the decision to delegate, the design of the new agencies and the mechanisms put in place to ensure their accountability. Although a theoretical line of responsibility can be drawn from executive agencies, through the European institutions, to national parliaments and national electorates; the analysis concluded that the key actors responsible were the institutions based at the European level.

Consideration was given to the various reasons which motivated the decisions made by these actors during the creation of executive agencies. Determining why

actors came to a particular decision is an inexact science; however there is some fairly strong evidence that both functional and political rationales have been important to the final outcome. The functional benefits to be acquired from externalisation in general, and the use of executive agencies in particular, are fairly well established. However, inter-institutional competition has also shaped the decision-making process, with contentious issues such as the Commission's staffing levels being shown to influence the decision to create new agencies and the Council emphasising the potential for executive agencies to enhance the overall accountability of the Commission.

In terms of institutional design, the process of isomorphism was examined, along with the possible use of national implementing agencies as a model for executive agencies. Despite some similarities between executive agencies and other structures (such as 'Next Step' agencies) it is difficult to conclude that the creation of the agencies stemmed largely from a process of external isomorphism. There is, however, some limited evidence for internal isomorphism given the broad similarities in how the six agencies are structured. More concrete conclusions can be drawn with regard to the agencies' accountability. Here there is strong evidence that a process focused (as opposed to outcome focused) form of accountability has been adopted. This has been confirmed by the responses of interviewees, though respondents were more divided over whether this form of accountability is beneficial or detrimental to the work of the agencies.

CHAPTER SEVEN: CONCLUSIONS

The thesis had three research aims: 1) to subject executive agencies to a full empirical analysis to assess the reasons why they have been delegated responsibilities, and the nature of this delegation, including accountability mechanisms; 2) to test the value of delegation approaches from both the rational-choice and constructivist literature by analysing the key factors of delegation models generated from these approaches to the case of executive agencies; and 3) to examine whether the 'delegation of delegation' necessitates refining approaches to delegation in EU studies and what implications this may have for the wider delegation and agency literature.

The thesis realises these aims by generating six models of delegation to executive agencies, based on the rational-choice and constructivist literature reviewed in chapter two. From these models, key factors were identified which were then analysed in the case of executive agencies: rationale, institutional design, and accountability. Of the models, outlined in the third chapter, three models were derived from the rational-choice literature on delegation: 1) a principal-agent model with a strictly functional rationale; 2) a model which incorporated the credibility rationale developed by Giandomenico Majone (2001; 2002); and 3) a multi-principal model which put the inter-institutional rivalry between European institutions as a key explanatory factor in understanding delegation to executive agencies. The remaining three models were derived from constructivist theories: 1) a model of internal isomorphism, where executive agencies reflect the spread of similar institutional forms within the EU context; 2) a model of external isomorphism where executive agencies are the product of the spread of institutional forms from outside of the EU context; and 3) an endogenous preferences model based on the work of Simon Hug

(2003). For ease of reading, table 7.1 below reproduces the table of the six models, together with their key factors, shown in chapter three.

Table 7.1: Six Models of Delegation to Executive Agencies

PRINCIPAL-AGENT MODEL	• **Functional Rationale / Principals act to reduce agency costs** • **Institutional design focused on oversight** • **Process and Outcome Oriented Accountability**
CREDIBILITY MODEL	• **Functional Rationale/Principals act to ensure independence/success** • **Institutional design focused on insulation** • **Outcome Oriented Accountability**
MULTI-PRINCIPAL MODEL	• **Political Rationale/ Principals act to ensure agents are not captured by other institutions** • **Institutional design focused on balance** • **Process Oriented Accountability**
INTERNAL ISOMORPHISM	• **Decision to delegate reflects a logic of social appropriateness** • **Institutional design based on previous EU institutional choices (e.g. EU agencies)** • **Process and outcome accountability**
EXTERNAL ISOMORPHISM	• **Decision to delegate reflects a logic of social appropriateness** • **Institutional design based on previous external institutional choices (e.g. national agencies)** • **Process and outcome accountability**
ENDOGENOUS PREFERENCES	• **Decision to delegate is influenced by inbuilt preferences of principals** • **Institutional design based on external or internal choices** • **Process and outcome accountability**

Before the case of executive agencies was analysed, chapter four reviewed the literature on agencies. The chapter also provided the background to the creation of executive agencies, specifically the resignation of the Santer Commission and the subsequent adoption of the Kinnock reforms. Chapter five then provided an empirical overview of executive agencies, before the key factors were assessed in chapter six. The intention was to both meet the first research aim by assessing the reasons why executive agencies have been delegated responsibilities/how these responsibilities have been delegated, and to test the key factors which were generated by each of the six models. The analysis also indirectly illustrates the extent to which executive agencies constitute a novel case based on the 'delegation of delegation', rather than a case which can be comfortably situated within existing approaches.

The Explanatory Value of the Models

To state the key findings of the analysis more clearly, the various forms of rationale articulated in the models in Table 7.1 can essentially be conceived as falling into five categories. The first is a functional rationale focused on gains in effectiveness and efficiency, together with balancing agency loss and agency costs, in accordance with the principal-agent literature. The second is a functional rationale, but with a focus on credible commitments, together with the insulation and success of an agency. Third, there is a political rationale in which delegation reflects a concern with European institutions, such as the Commission, strengthening their position relative to the other institutions. Fourth, there is a rationale in accordance with the principle of isomorphism, in which delegation reflects a 'logic of social appropriateness'. This, as shown in the separation between internal and external isomorphism in the models,

may be derived from internal or external sources. Last, there is the rationale derived from the endogenous preferences model, in which delegation is based on the inbuilt preferences of principals. Table 7.2 illustrates the different rationales implied by the models and their key factors.

Table 7.2: Five 'types' of Rationale

Type 1: Functional rationale; gains in effectiveness and efficiency; concern with balancing agency loss and agency costs.
Type 2: Functional rationale; delegation as a means to make credible commitments; concern with insulation and overall success of agency.
Type 3: Political rationale; concern with the institutional strength of principals and the capacity of delegation to affect this; concern with preventing 'capture' by other institutions.
Type 4: Delegation based on a 'logic of social appropriateness'.
Type 5: Delegation based on the inbuilt preferences of principals.

Similarly, six different types of institutional design can be isolated, based on the models in table 7.1. These are illustrated below in table 7.3.

Table 7.3: Six Types of Institutional Design

Type 1: Focused on oversight and the balance between agency loss and agency costs.
Type 2: Focused on insulation to protect credible commitments.
Type 3: Focused on the institutional balance between EU institutions and the ability of delegation to strengthen institutions against others.
Type 4: Institutions modelled on previous forms at the EU level.
Type 5: Institutions modelled on previous forms outside of the EU context.
Type 6: Institutions which reflect the inbuilt preferences of principals.

Last, accountability can be separated along two types: process and outcome focused.

Table 7.4: Two Types of Accountability

Type 1: Process focused accountability.
Type 2: Outcome focused accountability.

Key Findings

The analysis presented in chapter six finds that all of the European institutions have articulated a functional rationale for delegation to executive agencies, but that there are clear 'political' elements apparent in the way each institution has acted. While the Commission has focused on the gains in effectiveness and efficiency to be derived from using executive agencies (European Commission, 2009: 2), the analysis illustrates that there is an inter-institutional component due to the constraints on the Commission's staff, which in turn reflect the tension between 'expanding bureaucracy' and 'constrained resources' which was identified in chapter four. There

is strong evidence, from the Court of Auditors and the interview data, that the Commission has used executive agencies as a means to solve staffing problems caused by the reduction in the use of TAOs and the limits on the permanent staff it is allowed to employ. The fact that executive agencies are not part of the Commission's staff, but merely operate under the Commission's control, have made them an attractive option in this respect. Similarly, the Council has emphasised the capacity for delegation to executive agencies to be used as a means to enhance the overall accountability of the Commission. This also implies an inter-institutional element as the Commission is, in addition to being a principal delegating authority to executive agencies, also an agent of the member states.

In contrast, there is less evidence that delegation to executive agencies has been carried out on the basis of making a credible commitment, particularly in terms of isolating the work of agencies from the Commission. Certainly, delegation to executive agencies was motivated largely by the failings in the use of private contractors and there was a desire to respond to criticism by signalling that a new, more accountable way of managing community programmes had been instituted. However, the concept of insulating the work of these agencies from the Commission is simply not relevant in this context. Indeed, the exact opposite has occurred, with agencies typically complaining of the Commission being too involved in the process and preventing them from carrying out their duties effectively. Overall, the accountability mechanisms adopted in the case of executive agencies conform strongly to the process-focused type of accountability. Similarly, there is no evidence for the notion, which was shown to be partly entertained by the European Parliament in chapter five, that the Commission might be able to shield itself from the poor management of programmes by delegating authority to executive agencies. This is

neither an effective defence against wrongdoing, nor a feasible strategy given that oversight mechanisms (such as auditing procedures) of agencies are typically annexed to those of the Commission in formal assessments.

The constructivist models, as was noted at the outset, are more difficult to assess. Nevertheless, there is some limited evidence that a form of internal isomorphism could be present in the design of executive agencies. As illustrated in chapter six, the six agencies all contain common structural features and accountability mechanisms. This corresponds with studies of regulatory agencies (Christensen and Nielsen, 2010) which suggest that over time a 'blueprint' may be developed from the experience of creating previous agencies. Whether this constitutes internal isomorphism or simply a general process of learning is difficult to determine, but there is evidence that executive agencies are set up more in line with a general blueprint than with regard to the specific programmes they are charged with managing. Indeed, as chapter five illustrates, some of the agencies have managed a number of different programmes over the course of their lifespan, indicating that the specific requirements of programmes are not fundamental to the way these agencies are structured and operate, certainly not in the case of the general architecture such as accountability mechanisms.

It is also possible to conceive of a hypothetical logic of social appropriateness deriving from the overall use of agencies in the EU structure and more widely in the national context, such as through the use of the 'Next Step' agencies discussed in chapter six. Faced with the issues resulting from the resignation of the Santer Commission, the use of agencies as a solution may have been 'in vogue' or socially appropriate. As the analysis shows, however, this is a superficial notion when institutional design is examined more closely. Broad similarities may be detected

between Next Step agencies and executive agencies, but the idea that they have functioned as a blueprint is not very convincing. Moreover, as shown in chapter six with the discussion of the ECB and its links to the Bundesbank, it is difficult to determine whether the replication of organisational forms from the national level would represent a process of external isomorphism, or whether it reflects the power structures of the EU, in which member states have an incentive to replicate their own national solutions at the EU level.

Last, there is very little evidence for the endogenous preference model in which delegation reflects the inbuilt preferences of principals. As shown in chapters five and six, delegation to executive agencies was strongly linked to the failings in the use of private contractors and the subsequent criticisms produced by the Committee of Independent Experts' (1999a; 1999b) two reports. It is difficult to view agencies that have emerged as a response to a crisis as reflecting inbuilt preferences, based on long term factors such as the structure of the Commission, when, as the discussion in chapters four and five illustrates, they were acutely linked to the criticisms raised by the Committee. Executive agencies represent a solution to a problem and the precise nature of that solution has been shaped by joint-desires to enhance the effectiveness and efficiency of the management of programmes and, as shown above, as a reflection of inter-institutional politics, with perhaps some influence from internal isomorphism in the precise structure of these agencies.

Overall, the research presents evidence that the rationale for delegation to executive agencies is partly reflected by both 'type 1' and 'type 3' in the typology illustrated in table 7.2, though with a particular emphasis on type 3 due to the type of accountability mechanisms that have been adopted. Specifically, the Commission, in instituting accountability measures which place strict controls over the agencies, has

shown only limited regard for the balance between agency loss and agency costs. In the principal-agent literature, it is theorised that a principal will refrain from putting in place controls which are too strict if these have a cost in terms of reducing accountability. Despite evidence that the Commission's strict control over executive agencies has had a negative impact in some areas of the agencies' work (for example, in the response in interview 6 outlined in chapter six), the Commission has maintained such strict measures of control over the agencies that in some ways they appear "more like a Commission DG than an external agency" (interview 9).

Institutional design also conforms to a mix of the 'type 1' and 'type 3' forms shown in table 7.3, but there is also some evidence for a limited version of 'type 4' due to the evidence for some form of internal isomorphism presented above. Accountability allows for the most concrete conclusion as the evidence in chapter six indicates strongly that executive agencies have fallen under a form of process focused accountability, or 'type 1' in table 7.4.

The models which therefore provide the most explanatory value in the analysis of executive agencies are a mixture of the principal-agent model and the multi-principals model, with a particular emphasis on the multi-principal model's role of inter-institutional competition. Although it is not possible to strongly argue in favour of any of the constructivist models, there is some evidence for the applicability of the model of internal isomorphism. In contrast, the credibility model, the external isomorphism model and the endogenous preference model do not seem to capture delegation to executive agencies to any significant extent.

Limitations of the Research

Before assessing the contributions of the thesis, some limitations in the research can be highlighted.

One limitation is that some of the agencies are still in their infancy. While the first agency (the EACI) began operating in 2004, the most recent agencies, such as the REA and ERCEA, have only been operating for a few years. Although this has not represented a great obstacle in the analysis, it has closed off some potential avenues for investigation. The most important of these relates to the supposedly 'temporary' nature of the agencies and whether these agencies will remain temporary over time, or become permanent fixtures in the EU's institutional architecture. As chapter six illustrated, some members of the European institutions (for example the member of the European Parliament's Budget Committee in Communication 5) have drawn attention to the apparently permanent nature of the new agencies. Whether they will have their mandates extended in future years remains to be seen.

Second, while the thesis has argued for executive agencies to be subject to the same standard of investigation as regulatory agencies, they remain a unique case. This makes generalising the conclusions from the analysis more problematic as they have been produced under different procedures and assigned different tasks from the regulatory agencies studied in the agency literature. As such, the conclusions reached in this thesis are only partly indicative of the utility of the delegation approaches studied. Certainly, the thesis makes no claim that the 'unsuccessful' models – such as the credibility, external isomorphism and endogenous preference models, which the analysis concludes did not account for executive agencies to any significant extent –

have no conceptual value. In other contexts, including studies of regulatory agencies, they may have more utility.

Implications of the Thesis and Contribution to Knowledge

The first contribution of the thesis has been to provide an account of executive agencies, the delegation process which has assigned them responsibilities, and the control mechanisms which have been put in place to ensure they comply with their obligations. In this sense, the thesis has been motivated by the two questions posed at the start of the introduction: *why* has delegation occurred and *how* has it been realised in practice, particularly with a view to maintaining control over agents. Although executive agencies were a significant part of the Kinnock reforms, have been a part of the EU's institutional structure for almost ten years and should, at the very least, constitute a subset of the burgeoning literature on EU agencies; these questions had not previously been analysed in any great detail in the case of executive agencies.

The second contribution of the thesis has been to test delegation approaches from the rational-choice and constructivist literature in a new area of delegation. Part of the motivation in this respect has been to assess constructivist ideas such as isomorphism, which had been raised in many articles (for instance Tallberg, 2006), but had been used in few empirical studies. In this respect the analysis has suffered from the same limitations which were well known to constructivist approaches. Even where plausible examples of isomorphism can be identified, it is difficult to conclude that isomorphism was the causal mechanism through which decisions were made. Nevertheless, there is some evidence for internal isomorphism which potentially corresponds to findings in the agency literature. The link between this analysis and

Christensen and Nielsen's (2010) study of isomorphism in the case of regulatory agencies (see chapter two, page 68) may be worthy of further investigation to determine whether a blueprint exists for agencies overall. If strong links between agencies as diverse as regulatory and executive agencies can be shown, then the concept of isomorphism may have a stronger footing in analyses of EU delegation.

The third aim of the research was to assess whether the concept of the 'delegation of delegation', in which the Commission has delegated its own delegated responsibilities to a new agency, has wider implications for the agency and delegation literature. Having presented the key findings above, it is possible to review this issue.

The thesis has shown that existing delegation approaches, albeit in conjunction with one another, can broadly account for most elements of delegation to executive agencies. The use of executive agencies can be characterised as emerging from a combination of functional and political rationales, in which process focused accountability mechanisms have been employed both to ensure executive agencies comply with their responsibilities and also in accordance with the Commission's own institutional position, in which executive agencies offer a means to solve staff shortages. Isomorphism may also play a role in this regard, though its exact effect is difficult to determine. The fact that the responsibilities of executive agencies have been delegated from the Commission does not seem to prevent the existing delegation approaches from accounting for the process.

Nevertheless, there are some implications of the 'delegation of delegation' for the wider literature. The first is that while a debate may still be had over the extent to which the Commission functions as a joint-principal in delegation to regulatory agencies (as opposed to the member states functioning as the principal), the research clearly establishes that the Commission does function as a principal in the case of

executive agencies. Even if existing delegation approaches can account for this process, it is necessary to extend the 'chain of delegation' to the supranational level in conceptual frameworks, such as that presented by Moravcsik (1994; 1998) and Strom (2000).

Second, the principle has implications for how the Commission is viewed in wider analyses. The tendency to write off executive agencies on the grounds that they lack discretion, for instance, overlooks the fact that the Commission has, as illustrated by the research presented in this thesis, carved out a mechanism for improving its own institutional position and the size of its available resources. By using delegation, even in a largely technical area such as the management of community programmes, the Commission has been able to conduct activities which it would be otherwise unable to engage in. Indeed the Commission now presides over hundreds of extra staff, which it maintains exceptionally strict controls over to the extent that the line between 'external agency' and 'Commission DG' has become blurred. All of this has occurred in a technical area of management, yet in the context of concerns over 'expanding bureaucracies' the principle has obvious significance.

Last, the principle has implications with regard to accountability. Chapter six illustrated that the further the chains of delegation become stretched, the more questions are raised over the ability of those at the start of the chain (European citizens) to hold higher levels accountable. Similarly, it was stated that delegation does not always progress in a linear fashion, but that different links in the chain can engage with one another over time. Although the Commission has put strict controls in place over the work of executive agencies, the expansion and 'permanence' of this process may pose future questions for the legitimacy and accountability of the Commission.

Finally, the thesis also has some policy implications. As stated in the analysis, a consistent message from agency staff was that despite being the 'experts in managing community programmes' they were often granted only limited levels of discretion by the Commission in terms of how they carried out their duties. This impacts upon the overall efficiency and effectiveness of the agencies. One of the key stated benefits of using executive agencies is that agency staff may develop specialised knowledge and expertise which can enhance the management of programmes. The thesis presents evidence that this benefit is not being fully realised. Adopting a more outcome-focused form of accountability, which allows for higher levels of discretion for agency staff, may be beneficial in this respect.

Similarly, the overall legitimacy of the agencies could be strengthened if there existed a clearer separation from the Commission. Legally, executive agencies are independent from the Commission, yet, as outlined above, a common theme in responses from agency staff was that they viewed themselves as more analogous to a Commission DG than an independent body. If the Commission is using executive agencies as a method to compensate for staff shortages, then the legitimacy of the agencies may come into question. There is clearly an inconsistency between legal independence and the degree to which executive agencies are actually linked to the Commission in carrying out their responsibilities.

Some future avenues for research may emerge from these conclusions. As noted above, it would be useful to assess whether the limited evidence for isomorphism presented in the analysis is also applicable to other institutional forms at the European level, such as regulatory agencies. Similarly, the types of delegation identified could also be assessed in the case of regulatory agencies and other bodies. While executive agencies may often be regarded as a special case in the agency

literature, the process which has produced them might offer some tangible insights into the development of the EU's institutional architecture as a whole.

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INTERVIEWS CONDUCTED AND FORMAL COMMUNICATIONS

Interview 1: Executive Agency for Competitiveness and Innovation, Director: October 2009.

Interview 2: Research Executive Agency, Director: October 2009.

Interview 3: Executive Agency for Competitiveness and Innovation, Head of Unit, Renewable Energy: October 2009.

Interview 4: Executive Agency for Competitiveness and Innovation, Head of Unit, Network Operations: October 2009.

Interview 5: Executive Agency for Competitiveness and Innovation, Head of Unit, Internal Audit: October 2009.

Interview 6: Education, Audiovisual and Culture Executive Agency, Head of Unit, Lifelong Learning: April 2010.

Interview 7: Trans-European Transport Network Executive Agency, Representative of Director: April 2010.

Interview 8: Trans-European Transport Network Executive Agency, Head of Unit, Resources: April 2010.

Interview 9: Research Executive Agency, Director: October 2010 (second interview).

Interview 10: Research Council Executive Agency, Assistant to Director: October 2010.

Interview 11: Education, Audiovisual and Culture Executive Agency, Representative of Director: October 2010.

Interview 12: Executive Agency for Health and Consumers, Head of Unit, Health Unit: October 2010.

Formal Communications – E-mail

Communication 1: Executive Agency for Competitiveness and Innovation, Press Officer: September 2009.

Communication 2: European Commission, Office of the European Commission in Scotland, Edinburgh: April 2010.

Communication 3: European Commission, Information Office, April 2010.

Communication 4: Member of the European Parliament, Inter-Institutional Working Group on Agencies: October 2010.

Communication 5: Member of the European Parliament, Budgetary Control Committee / Inter-Institutional Working Group on Agencies: March 2011.

INTERVIEW STRUCTURE

Interviews with agency staff had an open-ended structure, but were based around the following topics:

1. Setting up of the Agency

- How do you view the agency's role in the management of community programmes?
- Do you see your agency as truly independent from the Commission?
- Strengths/weaknesses of the agency structure.
- Why use agencies?

2. Relationship to other Institutions

- How communication takes place with the Commission / limitations of the relationship.
- Any lines of communication with the other institutions (and does this go through the Commission).
- How work is co-ordinated with organisations at the national level.

3. Accountability

- Whether the agency is subject to accountability mechanisms which are more process focused, or outcome focused.
- Disputes, areas of conflict.
- Auditing and reporting procedures.