The Role of Specialised Agencies
in Decentralising EU Governance

Report Presented to the Commission

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Terms of Reference

The following report on 'The Role of Specialised Agencies in Decentralising EU Governance,' was commissioned by the Commission of the European Communities in early 1999. In particular, the authors of the report were asked:

➢ to consider a conceptual framework for the analysis of the role and limitations of the 'agency model' in an overall decentralisation strategy for regulation within the EU; and

➢ to analyse the relation between the functions, designs and behaviour of agencies.

The conceptual framework drawn up for the analysis of the role and limitations of the agency model within the EU, was specifically to be designed to enable consideration of the dual tasks of decentralising and, at the same time, improving the implementation of EU polices. The framework was to be developed with a specific eye to comparison with other alternatives for a decentralising regulatory strategy within the EU, such as, networks, or close partnerships with the Member States, and outsourcing, or greater reliance on international offices. The specific criteria chosen for an evaluation of agencies and their alternatives, were to be their relative degrees of legitimacy, of transparency and of accountability to the executive institutions of the Community and the Member States.

The analysis of the relationship between the functions, design and behaviour of agencies was to be undertaken on the basis of four case studies of existing EU agencies and emerging European networks. The European Environment Agency (EEA), the European Agency for the Evaluation of Medicinal Products (EMEA), EUROSTAT and the national statistical offices and IMPEL, were to be investigated in order to clarify:

➢ the extent and nature of tasks delegated to decentralised bodies;

➢ the governance structures of decentralised bodies;

➢ the rules that specify the procedures to be followed in decision-making by agencies;

➢ the allocation of the resources of agencies; and

➢ the extent of *ex post* monitoring of agency actions through judicial review, through executive and legislative oversight and through citizens' complaints.

The report was to draw up a general typology of European Agencies, make concrete proposals for the design and structure of future European agencies and, more particularly, to detail the challenges that the EU would face were it to develop a greater reliance on the agency model. The parts of the report on General Principles, Institutional Problems and European Agencies within the Treaties on the European Union (pp.18-80) were written by Prof. G. Majone and Dr M. Everson. The empirical chapters were written by the EIPA team Dr L. Metcalfe and Dr A. Schout (pp. 81-280). The conclusions were written by the Project Director Prof. G. Majone (pp.281-283).

The report is presented to the Commission.

Florence and Maastricht, September 1999

Executive Summary

1.

At its simplest, the core message of this report is that the consensual approach, traditionally characteristic of regulatory policy-making in the EC, is no longer viable; a clearer assignment of responsibilities for achieving policy objectives is instead urgently needed. In particular, the Community must be able to assume responsibility for the consistent and effective enforcement of European rules throughout the Union.

The experience of several decades shows that mutual trust and loyal co-operation among the Member States are not sufficiently developed to achieve economic integration without an adequate administrative infrastructure at EC level.[*] Similarly, regulatory expertise and management skills vary too much across the Member States— and will vary even more in an enlarged Union—to justify exclusive reliance on traditional modes of decentralised enforcement.

The need for a clearer separation between political and technical-administrative responsibilities is made more urgent by the growing politicisation of EC policy-making. The procedure introduced by Article 214 of the Consolidated Treaties, introduces a deep transformation in the relationship between the European Parliament and the Commission. The 'parliamentarisation' of the Commission is becoming inevitable as more and more tasks involving the use of political discretion are shifted to the European level. It is also a positive development from the point of view of democratic legitimation, but it does force us to rethink the core insight of functionalism—that integration is most likely to occur within a domain shielded from the direct clash of political interests—and to identify domains which must still be shielded from such conflicts.

The main reason why all mature democracies choose to delegate powers to non-majoritarian institutions such as independent central banks and regulatory agencies, is the need to preserve policy continuity against the changing preferences of variable parliamentary majorities. In turn, policy continuity is seen as a necessary condition of policy credibility. Similarly, the need to preserve the credibility of the integration process, notwithstanding the growing politicisation of the Commission, provides the strongest argument in favour of an increased recourse to non-majoritarian institutions of regulatory policy-making at European level.

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[*] The European Medicines Evaluation Agency (EMEA) was established precisely because mutual distrust among the national authorities created serious obstacles to the implementation of the multistate procedure—a procedure based on the mutual recognition of national authorisations.

2.

For all these reasons, the question is no longer whether European agencies are needed, but rather how they should be designed so that their accountability may be secured and so that their sectoral responsibilities can be co-ordinated with broader horizontal concerns.

Precious time has been wasted in the effort to evade clear institutional choices. Thus, a political decision was taken in 1990 that a consolidated European Food Agency was not needed. Instead, the Commission decided to try an alternative approach, which was based on the improvement of various individual areas of scientific co-operation between the Member States and the Commission. Rather than establishing a new body at Community level, concerned with *all* issues of human health, the idea was that the Member States would use their own scientific resources to co-operate with the Commission and lend it the assistance it needs in the scientific examination of a range of issues relating to the safety of food. The fallacy of these assumptions has, however, been revealed by the series of crises that have repeatedly rocked the market for foodstuffs and have shaken the confidence of consumers in the efficacy of EC regulation. In particular, the BSE crisis not only revealed the failure to establish a stable and internationally credible community of scientific experts on food, but also exposed serious shortcomings in the overall co-ordination of European policies on agriculture, the internal market and human health. Thus, European citizens and European institutions (such as the European Parliament), have raised concerns that various Member States might have used their position within the comitology system to further national economic interests, rather than Community health and safety concerns. Meanwhile, the division of scientific tasks between committees of experts concerned with individual issues of animal and/or human health, has been identified—among others by the EP—as contributing to the dangerous confusion between the pursuit of market or agricultural policy aims and the protection of human health. Equally, the most recent institutional reform, which has seen all scientific committees dealing—obliquely or otherwise—with the issue of human health and safety, rationalised and grouped together under the co-ordinating umbrella of the Directorate General for Consumer Protection, has yet to be tested as to whether it is a credible long-term arrangement or merely yet another stop-gap institutional measure.

Furthermore, as regards current regulatory efficacy, the decentralised system of telecoms regulation also raises serious doubts in the minds of new market entrants. The Member States, as well as incumbent operators and former monopolists, argue that the national regulators and the newly established regulatory regimes should be given a fair chance to prove themselves. The present compromise on a highly decentralised set-up was probably necessary in order to establish an internal market for telecom services in the first place. However, because of its shortcomings—imprecise obligations and pricing rules for interconnection; inadequate mechanisms of dispute resolution; uneven quality of national regulators; poor co-ordination both between individual national authorities and between national authorities and the Commission; and also because of the poor record of enforcement of non voice liberalisation—the present system suffers from serious credibility problems. This is shown, for example, by the fact that European and American firms operating in Germany, are creating their own networks despite the proclaimed willingness of *Deutsche Telekom* to provide the necessary capacity.

According to informed observers, the reason competitors prefer to invest in their own networks is their lack of confidence in the ability of the German regulator to resist political pressures, and in the efficacy of the mechanisms of dispute resolution at European level.

In the area of technical standardisation, the Commission is confronted by another dilemma that cannot be resolved within the existing institutional framework. On the one hand, the artificial separation between regulation and standardisation introduced by the New Approach, as well as the independence of the European standardisation bodies, were both necessary in order to allow internal market legislation to advance rapidly. On the other hand, independence implies, at least within the existing institutional framework, that the harmonised standards must be voluntary—with all the legal uncertainty that this situation entails. One path out of this dilemma, it has been suggested, would be the creation of regulatory agencies endowed with autonomous decisional competences. Though such agencies would not assume to themselves any existing legislative competences, they would nonetheless have the task of setting all the parameters and reference values needed to flesh out the Community's legislative objectives. These parameters and reference values, by their very nature, cannot be part of the voluntary area now set consensually through negotiations between national and European standard-setters.

3.

When discussing the current and future role to be played by European agencies, it is important always to recall that there is no one 'unique' agency model. The term 'agency' is instead an omnibus label used to describe a variety of organisations which perform functions of an administrative nature, and which often exist outside of the normal departmental framework of government. What characterises an agency is not its organisational form, but its possession of the legal authority to take a final and binding action (subject, of course, to legal requirements and judicial review) affecting the rights and obligations of individuals, particularly by the characteristic procedures of rule-making and adjudication. Agency status does not require that an agency exercise its power with complete independence, either vertically (in terms of being subject to administrative review), or horizontally (in terms of being required to act in concert with others). If an authority is in complete charge of a programme, it is an agency with regards to that programme, despite its subordinate position in other respects.

An organisation, such as EMEA, is already *de facto*, if not *de jure*, an agency within the terms of the definition given above. For, even if it is true that the Commission is not required to accept the Agency's recommendations, one might nonetheless wonder how often such an event would take place. Before reaching its decision, the Commission must consult, as appropriate, one of two comitology committees responsible for medicinal products for human use or for veterinary medicinal products. Member States also have the right to send written observations on the draft decision of the Commission. In order to be effective, however, the adverse opinions of the comitology committees, or of the Member States, must demonstrate than an important scientific issue has escaped the notice of the applicant, the relevant scientific committee of the Agency (CPMP or CVMP), the Agency itself, and the Commission—an unlikely event.

4.

In terms of European law, the consolidation and extension of the agency model to meet the EU's demand for additional administrative capacity, has long been considered to be debarred by the provisions of Article 4 of the founding Rome Treaty and by the ECJ's *Meroni* doctrine, dating from 1958. Article 4 EC Treaty and *Meroni*, thus both appear to confirm the EU's quasi-constitutional commitments to a restrictive notion of an institutional balance of powers—predicated upon the exercise of treaty-stipulated functions by treaty-named European institutions alone—and to a strict 'non-delegation principle'. Seen in this limited juridical light, the extensive 'external' delegation to agencies (not named by European treaties) of tasks involving administrative discretion (and apportioned by the treaties to named institutions) would logically constitute a breach of European law.

Both Article 4 of the Rome Treaty and the *Meroni* doctrine have always had and continue to have as their aim the safeguarding of the basic legitimacy of the European Communities and Union. As such, neither may be challenged in their core premises that Europe must be founded upon the clear apportioning of powers between institutional actors and that each and every exercise of a Community competence must be traced back to an accountable institution. However, in the matter of their day-to-day application to the operating needs and administrative capacity of the Communities and Union, neither Article 4 nor the *Meroni* doctrine are writ in stone, and it should no longer be simply assumed that they act as a legal bar to the evolution of European Agencies.

Article 4's notion of institutional balance is a constitutive principle and liable to interpretative variation as the needs of the constituted European Community are refined and developed. *Meroni* is likewise a product of the jurisprudence of its time and may be updated in the light of advances in legal science and judicial thinking. Thus, where the institutional balance suggested by Article 4 is designed to safeguard a European public from the abusive use of power by ensuring that no one European institution might embark upon a course of institutional 'self-aggrandisement' through the poaching of powers and functions from other institutions, then the danger of an imbalance in powers may also be combated by distributing existing powers among a greater variety of new and independent European institutions. Equally, where once the *Meroni* doctrine attempted to ensure the accountability of European power by requiring that any delegation of powers be strictly executive in nature and immediately traceable to the responsibility of named Community institutions, such as the Commission, the accountability of external delegatee bodies—most notably agencies—may now be assured through more flexible means. Such means include well-drawn up founding statutes, budgetary accountability and yearly report of activities to be delivered to the named institutions of the Community.

Interestingly, even in *Meroni*, the justices of the European Court were prepared to recognise that some form of external delegation within the Communities was necessary in order to ensure the effective administration of Community tasks; new 'independentish' bodies, not named by the Treaties, were, in fact, acceptable under the

doctrine. Similarly, the ECJ's more recent concern that the functional legitimacy of the European Communities and Union must not be damaged by its lack of administrative capacity to fulfil it daily tasks, has been further demonstrated by its readiness to accept a very wide degree of discretion in powers 'internally' passed by the Council to the Commission and by the Commission to the comitology system. This growing judicial realism must now perforce be extended to include discretion and independence in the case of external delegation.

The Community faces a very real mismatch between its highly complex and differentiated tasks and the administrative instruments at its disposal. Agencies are an appropriate mechanism to overcome such a mismatch. European law is not a monolith but must and can respond to the demand for the creation of new and more effective administrative capacity. Rather than pursue the outdated doctrines of a bye-gone age, European law must concentrate upon the creation of new legal mechanisms to ensure the accountability of evolving European agencies. The primary plank in this mission must be the evolution of a comprehensive scheme of procedural and substantive legal review of agency decisions. European law can assure the accountability of independent agencies by: first, requiring (through a European Administrative Procedure Act) that agency decisions are taken in a transparent manner and may be challenged by all affected parties; secondly, by providing (through rules on greater access to information) that all information relating to agency decision is placed in the public domain; and thirdly, by establishing (or refining its already existing) substantive criteria on the quality and character of the expert advice upon which agency' decisions must be based.

5.

In terms of institutional design, the delegation of executive powers to a number of more or less autonomous agencies raises two key problems: accountability and co-ordination. Traditional concerns about lack of accountability—expressed by such slogans as technocratic rule, runaway bureaucracy or democratic deficit—tend to ignore that political principals have at their disposal a large number of mechanisms to control agencies and enforce public accountability, without 'micro-managing' the agencies or interfering in their day-to-day decisions. All agencies are created by statutes or equivalent legal acts. The programmes they operate are defined and limited by such statutes; their legal authority, their objectives and sometimes even the means to achieve those objectives are to be found in the enabling laws. Regulatory discretion can also be constrained by procedural requirements. Such requirements affect the institutional environment in which agencies make decisions and hence limit an agency's scope for policy action. Direct monitoring, hearings, investigations, budgetary reviews, appointments, and organisational changes are other means by which political principals can influence agency behaviour. When such a system of procedural and substantive controls operates correctly, a situation is created whereby no one controls the agency, yet the agency is under control.

The task of executive oversight and co-ordination of agencies should be the responsibility of a specialised unit. We propose the creation of a regulatory clearing house at the highest level in the Commission, modelled on the Office of Management and Budget (OMB) in the executive office of the US President. A European OMB could be established within the framework of the present Treaties. It would systematise and

generalise what the Commission is already doing, for example, in the case of EMEA, ensuring that actions taken by different agencies and DGs meet basic standards of efficiency and consistency. Such a unit would help the President to fulfil his responsibility of providing political guidance to the Commission's work under Article 214 of the Consolidated Treaties.

6.

One should not think of European agencies as self-contained organisations. In fact, the new agencies have not been designed to operate in isolation, or to replace national regulators. Rather, they are expected to become the central nodes of regulatory networks including national agencies, as well as international organisations.

National and EU representatives sit in the management boards and the scientific committees of the new agencies. The committees formulate the scientific opinion of the agency, and often perform other important functions. Thus, the two scientific committees of EMEA also arbitrate disputes between pharmaceutical firms and national authorities.

The committee members represent the national regulatory authorities, but it would be wrong to assume that, through their power of appointment, the national governments effectively control EMEA's authorisation process. In fact, both committees (CPMP and CVMP) have not only become more important, but also more independent since the creation of the agency. This is because it is in their interest to establish an international reputation for good scientific advice, and for this purpose the degree to which they represent the national governments is irrelevant.

Thus, EMEA is pioneering in the transformation of national regulators from 'locals' to 'cosmopolitans'. It does this by providing a stable institutional focus at European level, a new set of professional incentives and solid links to extra-European regulatory bodies, such as the Food and Drugs Administration in the US. Not surprisingly, EMEA is playing a leading role in a major effort in international regulatory co-operation (the ICH process), which should eventually lead to the harmonisation and mutual recognition of drug testing in the EU, the US and Japan. Indeed, regulatory co-operation becomes increasingly important in a globalising economy. Also for this reason, the EU needs clearly identifiable regulatory institutions (rather than loose and annonymous committee structures), capable of dealing directly with their homologous counterparts abroad. It is highly unlikely that any national regulatory body could have such an effective international link.

Another interesting network structure is emerging in the area of competition policy. As stated by the recent *Commission White paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty*, 'the time has come to make better use of the complementarity that exists between the national authorities and the Commission, and to facilitate the application of the rules by a *network of authorities* operating on common principles and in close co-operation (White Paper, p. 32, emphasis in original).

We submit that one of the main tasks of the Commission in the future will be to design and manage regulatory networks in all areas of economic and social regulation of Community interest. Certainly, regulatory networks are not a simple panacea for a lack of administrative and scientific capacity and may in fact prove a counterproductive regulatory mechanism where co-ordination between (governmental/institutional) partners and (private) stakeholders in the network is not properly constructed or controlled. However, positive experience with the successful EMEA network helps us to identify the contingencies for successful network operation: the existence of a well developed network; a fairly high degree of agreement on what the division of labour should be between the Agency and other organisations; high quality leadership which ensures good operational management, purposeful strategic management and recognition of the institutional limitations within which EMEA works. An important role for the Commission at the institutional management level is to seek to create these conditions in relation to other agencies so that they work efficiently and co-ordinate effectively with other organisations in their policy field.

Key Recommendations

1) The Commission should prepare a White Paper on decentralised administration in the EC, with the purpose of stimulating a broad debate on many of the issues raised in this Report. In particular, the Paper should:

➢ Undertake a comprehensive survey of the present difficulties as regards effective and consistent enforcement of EC rules, and must specifically tackle issues, such as, the functional and normative logic of external delegation within the EU, and the establishment of a means to co-ordinate delegated EU standard-setting, rule-making and implementation;

➢ Attempt to clarify a number of fundamental questions which have not received sufficient critical attention, such as, the limits to the collegiality principle, and the question of whether the *Meroni* doctrine in fact represents the ECJ's current thinking on the limits to external delegation within the EU (see, Chapter VII.3)

➢ Indicate the treaty revisions that may be necessary to allow for the creation of fully autonomous European agencies.

2) The new President should take steps to establish a central evaluation unit or regulatory clearing house. The main function of this unit would be to verify that all regulatory proposals are justified in cost-benefit terms and that they reflect the priorities indicated in the President's programme. In addition, the unit should play a central role in the horizontal co-ordination of individual EU policies (see, Chapter VI.4).

3) The President should try to reach an agreement with the Council and the European Parliament concerning a 'regulatory budget', i.e., an upper limit on all private expenditures mandated by the EC (see, Chapter VI.4).

4) European law must begin to consider new ways in which to reinforce the accountability of delegated European standard-setting, rule-making and implementation. Such reinforcement should be based upon the extension of the judicial review of Community acts to allow for comprehensive procedural and substantive oversight of delegated European decision-making. Review should not only be based upon the procedural correctness of decision-making, but should also include an element of substantive review; in particular, as regards the quality, composition and character of the scientific bodies, upon whose evaluative recommendations European decisions are based. A comprehensive system of procedural and substantive review should rest upon a concordance of measures including, a European Administrative Procedure Act, strengthened public access to information, as well as detailed rules on the composition and quality of scientific advisory bodies (see, Chapter VII.3).

5) The Commission must take active steps to ensure that the network systems within which European agencies are evolving, should, first, be encouraged to ensure the incorporation of national administrative capacity within EU decision-making and implementation (partners), to aid in the maintenance of good relations between agencies and all European institutions, and to secure the vital participatory goodwill of private

industry clients (stakeholders) within the regulatory process. It must secondly, however, also take steps to ensure that networks are not disjointed and regulatorily counterproductive and must thus:

➤ ensure the existence of a well developed network;

➤ secure a fairly high degree of agreement on what the division of labour should be between the nodal agency and other organisations;

➤ guarantee the high quality agency and network leadership that ensures good operational management, purposeful strategic management and recognition of the institutional limitations within which European agencies and their networks operate (see, Chapter XI).

6. The Commission should clarify its relations with the European Environment Agency, especially as regards the core responsibilities of the Agency. It should provide sufficient resources for the agency to fulfil the tasks it undertakes. Given adequate resources, the EEA could play a central role in facilitating the integration of environmental protection requirements into the definition and implementation of Community competences, according to Article 106 of the Consolidated Treaties (see, Chapter X).

7. Priority areas for the establishment of New European Agencies are:

➤ food safety (see, Chapter II.1);

➤ telecommunications (see, Chapter II.2);

➤ energy (see, Chapter II.3);

➤ and more generally, public utilities based on physical networks (see, Chapter II.3).

Concerning food safety, the Commission should carefully evaluate the pros and cons of one combined agency for medicines and foodstuffs. Concerning the regulation of public utilities, the main responsibilities of the new body would consist in adjudicating disputes between owners and users of the networks, and in protecting the economic interests of all of the citizens of the Union. Hence, we propose the creation of a European Public Utilities Commission (EPUC). A majority of the members of the EPUC would consist of experts designated by the European Parliament and by the Court of First Instance.

Part One: General Principles

(Michelle Everson and Giandomenico Majone)

Chapter I: The Perils of Politicisation

I.1. Institutional Innovations and new Institutional Problems

Policymakers and students of European integration have been so absorbed by concerns over the democratic deficit that they have generally failed to probe the consequences of the increasing level of politicisation of EC policy making. The idea of reducing the democratic deficit by assigning a larger role to the EP, and, in particular, by involving the Parliament in the appointment of the Commission, is an old one. It featured in the solemn declaration on European Union adopted in Stuttgart in 1983; it has always been high on the list of the EP's demands; and it has figured prominently in the arguments of those who advocate the development of the Union in the direction of a parliamentary system.

The procedure introduced by Article 214 of the Consolidated Treaties, contains a number of radical changes with respect to previous practices—the custom of the newly appointed President of the Commission to be heard by the EP's enlarged Bureau, and for the Commission to present its programme to the full house of the EP shortly after it takes office—but also with respect to the new Article 158 of the TEU. If, under Article 158, the national governments could nominate a new Commission President only after consulting the EP, now their nomination must be approved by Parliament. Moreover, the President and other members of the Commission are subject to a vote of approval by the EP, as in classical parliamentary systems.

A further institutional innovation is offered by the link, established in 1995, between Parliament's term of office and that of the Commission. Since a newly elected Parliament takes part in nominating the Commission, any significant changes in the EP's composition can be reflected at Commission level.

Already, the difficulties surrounding the appointment of the Santer Commission showed that the EP intends to influence the distribution of portfolios among Commissioners. The events of March 1999, further strengthened these tendencies. Influential MEP's are even advocating a 'Parliamentary Commission' in which the composition and programme of the Commission would reflect the will of the parliamentary majority.

As Renaud Dehousse has pointed out, these developments augur a deep transformation in the relationship between the EP and the Commission. The Commission will, henceforth, be fully responsible to the EP, whose influence will be felt in all its activities, whether administrative or legislative. Thus, the right given to the EP to request the Commission to 'submit any appropriate proposal on matters in which it considers that a Community act is required' (Article 143 Consolidated Treaties), may be seen as coming close to a true right of legislative initiative. It appears that the signatories of the Maastricht and Amsterdam Treaties, in their desire to establish the Union's democratic legitimacy, have radically modified the balance of power between Commission and Parliament. President Prodi's recent declaration that the Commission should augment its political rather than technocratic functions may, in part, be seen as a response to this increased politicisation.

I.2. The Westminster Model

These developments have been informed, more or less consciously, by a particular model of democracy—the strict majoritarian or 'Westminster' model—which views parliaments as the sole, or, at the least the main, source of legitimation for policy making and governance. Under the strict version of this model, all institutions that are not directly accountable to the voters or to their elected representatives—independent central banks and regulatory commissions, but even the courts—are democratically suspect.

The tendency to equate democracy with majority rule is quite common, but is nonetheless puzzling, since the pure majoritarian model of democracy is the exception rather than the rule: most democratic polities, with the partial exception of Britain and of countries strongly influenced by the British tradition, rely extensively on non-majoritarian principles and institutions. This is particularly true of federal or quasi-federal systems. Federalism is fundamentally a non-majoritarian, or even anti-majoritarian, form of government since the component units often owe their autonomous existence to institutional arrangements that prevent the domination of minorities by majorities.

I.3. The Risks of Politicisation

We must acknowledge that an increasing level of politicisation of Community policy-making becomes unavoidable as more and more tasks involving the use of political discretion are shifted to the European level. Thus, a significant part of the third pillar, as well as the Schengen arrangements have been moved to the first pillar. These developments and the problems connected with the next enlargement, not only increase the administrative tasks of the Commission, but also emphasise the Commission's political responsibilities. In this context, the demand for a greater role of the EP becomes understandable.

At the same time, we should not be blind to the risks which politicisation entails for the process of European integration. It may be worthwhile to recall the core insight of functionalist theories: integration is most likely to occur within a domain shielded from the direct clash of political interests. This should not be interpreted as a rejection of democracy in favour of an abstract model of technocracy. Rather, it is the realistic appreciation of the fact that in the early stages of integration, political conflicts are about divergent national interests rather than the conflicts along ideological or party political lines with which we are familiar at national level. The same functionalist line of reasoning explains the many non-majoritarian features of the founding Treaties. Hence, for several decades, law and economics—the discourse of legal and market integration—provided a sufficient buffer to achieve results that could not be directly obtained in the political realm. The increasing politicisation of the Commission forces us to rethink the core insight of functionalism—and to identify domains which still have to be shielded from the direct clash of political interests.

I.4. The Advantages of Agencies

One of the most frequently cited reasons for delegating policy-making powers to non-majoritarian institutions, such as central banks and regulatory agencies, is the need to preserve policy continuity against the changing preferences of variable parliamentary majorities. In turn, policy continuity is seen as a necessary condition of policy credibility.

Rogoff (1985), is the classic reference on delegation of monetary policy to a central banker who is more 'conservative' (i.e., more inflation adverse) than his/her political principals. A lower average level of inflation becomes credible because the delegate values *ex post* inflation less than his principals. Rogoff's model leads the system to structure its central bank in such a way that the monetary authorities have an objective function quite different from the objective function of the government or the median voter. Intuitively, this arises because where distortions in the economy (particularly in the labour market) cause the rate of inflation to be too high, then society can be made better off by having the central bank place a greater emphasis on price stability.

The logic of the 'conservative' central banker may be extended to the sphere of economic and social regulation. In most countries, regulatory policy-making is now delegated to specialised agencies operating at arm's length from government. The point of insulating regulators from the political process is to enhance the credibility of regulatory commitments. The assumption is that the head of an independent agency attaches more importance to the agency's statutory objectives than do politicians who are influenced by electoral considerations. Agency heads are usually chosen, not only for their expertise, but also for their pro-environment, pro-consumers or pro-competition beliefs. They generally expect, and are expected by others, to have a well-defined agenda, and to measure their success by the amount of the agenda they accomplish. Regulators also are aware that courts can review their decisions and can overturn them if they seem to depart too greatly from the language and the aims of the enabling statute. Thus, they have an additional incentive to pursue the statutory objectives of the agency, even when those objectives, because of changed economic or political conditions, no longer enjoy popular support.

In conclusion, the growing politicisation of the Commission—a process which is both inevitable and, perhaps, positive in terms of perceived legitimacy—is possibly the strongest argument in favour of an increased recourse to non-majoritarian institutions of regulatory policy-making at the European level.

Chapter II: The Institutional Deficit

II.1. Foodstuffs and Pharmaceuticals

A second reason for proposing the creation of European agencies is several areas of economic and social regulation is the perception of EU citizens and economic actors alike, that the present system—with its heavy concentration on rule-making and its weak control of the enforcement process—is no longer able to cope with the regulatory challenges of globalised markets. This negative perception has been powerfully

reinforced by the recent series of crises in the food safety area. In this regard, it may be worthwhile to recall that a political decision was taken in 1990 that a consolidated European Food Agency was not needed. Instead, an attempt was made to foster better co-ordination of national scientific expertise.

Such efforts notwithstanding, the current approach to issues of food safety lacks credibility, not only in the eyes of EU citizens, but also internationally—when, at the June 1999 meeting of the G-8, President Chirac proposed the creation of a World Scientific Council on Food safety, the US reaction was noteworthy for its heavy sarcasm. American officials commented that should Europe require a strong regulatory body for food safety, they need only copy the U.S. Food and Drug Administration (*Financial Times*, 21 June 1999). Perhaps because of this reaction, France is now proposing the establishment of a European Agency for health and Environmental Safety (*Le Monde*, 25 June 1999).

Another highly instructive example of the limits of a highly decentralised regulatory framework is the failure of an early form of mutual recognition for the approval of pharmaceuticals. The old procedure for EC-wide approval included a set of harmonised criteria for testing new products, and the mutual recognition of toxicological and clinical trials conducted according to EC rules. In order to speed up the process of mutual recognition a 'multi-state drug application procedure' (MSDP) was introduced in 1975. Under the MSDP, a company that had received a market authorisation from the regulatory authority of a Member State could ask for the mutual recognition of that approval by at least five other countries. The authorities of the countries nominated by the company were required to give their approval, or to raise objection, within 120 days. In case of objections, the Committee for Proprietary Medicinal Products (CPMP) had to be notified. The CPMP would express its opinion within 60 days, and could be overruled by the national authority that had raised objections.

The procedure did not work well. Actual decision times were much longer than those prescribed by the 1975 Directive, and national regulators did not appear to be bound either by decisions of other regulatory bodies or by the opinions of the CPMP. Because of these disappointing results, the procedure was revised in 1983. Now, only two countries need be nominated in order to set a multi-state approval application in motion. However, even this new procedure failed to streamline the approval process, since national regulators almost routinely continued to raise objections against each other (Kaufer 1990). These difficulties finally induced the Commission, strongly supported by the European pharmaceutical industry, to propose the establishment of a European Agency for the Evaluation of Medicinal Products, and of a new centralised procedure, compulsory for biotechnology products and certain types of veterinary medicines, and available on an optional basis for other products, leading to an EU-wide authorisation. Both the agency and the centralised procedure are established by Council regulation (No. 2309/93 of 22nd July 1993).

The New Approach to technical harmonisation likewise leaves a number of issues still unresolved. The crucial problem here is the tension between the essential safety requirements of the New Approach directives, which are legally binding, and the voluntary character of the harmonised standards, which provide the technical framework for risk assessment. According to the Council Regulation of 7th May 1985

on the New Approach to technical harmonisation and standards, the essential requirements should be worded precisely enough to create, upon transposition into national laws, legally binding obligations. They should also be 'so formulated as to enable the certification bodies straight away to certify products as being in conformity having regard to those requirements, in the absence of technical standards'. It is not clear, however, how the risks may be addressed without the technical framework which the European standardisation bodies are supposed to provide. With few exceptions, such as the safety of toys and pressure vessels directives, most New Approach directives involve essential requirements expressed in such general terms that risk assessment is impossible without the support of detailed technical standards.

It has been argued (Previdi 1997) that the serious difficulties experienced by European standardisation in a number of areas, perhaps most strikingly in the area of construction products, derive directly or indirectly from the artificial separation that has been made at European level between regulation and standardisation. The artificial nature of the distinction is reflected in the persistent tensions that characterise relations between the Commission and the European standardisation organisations—a situation which industry has often deplored. The point is that the Commission is confronted by a dilemma that cannot be resolved within the existing institutional framework. On the one hand, the separation of regulation and standardisation, and the independence of the standardisation bodies were necessary in order to allow internal market legislation to advance rapidly. On the other hand, independence implies that harmonised standards must be voluntary—since delegation of the power to adopt binding standards would require a real executive power which the Commission does not possess under the Treaty—with all the legal uncertainty which this situation entails. A way out of this dilemma, according to Previdi (1997: 241) would be the creation of regulatory agencies 'endowed with autonomous decisional competences independent from those of the Member States (thus, excluding any decisional procedure of a comitology type!), and responding to the professionalism requirements indispensable for risk regulation'. It would be the task of such agencies' to set all the parameters and reference values to flesh our the legislative objectives, which by their nature cannot be part of the voluntary area now set consensually through technical negotiation, thus achieving the principle stated in the 1985 Resolution, namely that binding regulatory precepts ought to be reflected in sanctionable obligation'.

II.2. Telecommunications

As the examples discussed above indicate, legislative harmonisation is not sufficient to create and sustain a truly integrated European market. Regulation is not achieved simply by passing a law, but requires detailed knowledge of and intimate involvement with, the regulated activity. In all industrialised countries this functional need has led, sooner or later, to the creation of specialised bodies—agencies, commissions, boards, tribunals—capable of fact-finding, rule-making, and enforcement. The lack of such administrative infrastructure at the European level is a serious obstacle to the completion of the internal market.

The limits of the legislative approach to market integration are becoming apparent also in the case of telecommunications. Telecoms regulation is particularly interesting not

only because of the economic and political significance of the industry, but also because the principles of Open Network Provision (ONP) legislation provides the basic framework for future regulation of other Trans-European Networks (TENs). Although the telecom market is, by now, more or less completely liberalised, it is doubtful that the legislative framework already in place will be sufficient to achieve a well-functioning market for telecoms equipment, services and infrastructure. Among the shortcomings of the current, highly decentralised regulatory system are: imprecise obligations and pricing rules for interconnection; the absence of a one-stop-shop for licenses; inconsistencies between competition policy and industry regulation at both national and European levels; mechanisms of dispute resolution which fall far short of the standards of judicial review; uneven quality of national regulation in terms of independence, as well as expertise; and, poor co-ordination of the national regulatory authorities among themselves and with the European Commission (Pelkmans 1997).

While some of these shortcomings could be corrected by improved legislation, the deeper problems of the present regulatory system are institutional. This explains the recurrent demands for a European telecommunications agency. A well-publicised plea for such an agency was made by the High Level Groups on the Information Society (Bangemann Group) in a report to the European Council meeting at Corfu in June 1994. According to the report of the Bangemann group, the European regulator, in addition to advising the national regulatory authorities, would be charged with issues of a Community-wide nature such as licensing, interconnection, frequency allocation, and numbering.

More recently (Spring 1997), the EP, in the conciliation procedure on the interconnection directive, forced the Council to agree that the Commission study the merits of a European Telecommunications Agency, and that the result of the study should be used in the review of the present system to be carried out in 1999. Thus, the issue of the European Telecoms Agency is now on the political agenda. However, opinions on the structure and powers of the new regulatory body still differ widely.

The present decentralised system of telecoms regulation is supported by the Council and by the incumbent operators. The Member States argue that the national regulators and the newly established regulatory regimes should be given a fair chance to prove themselves. The compromise on a highly decentralised set-up was necessary in order to establish an internal market for telecom services in the first place. However, because of the shortcomings noted above and also of the poor record of implementation and enforcement of non-voice liberalisation between 1990 and 1995, the present system suffers from serious credibility problems. Hence, it is unlikely to represent a stable institutional solution of the complex problems of telecoms regulation in Europe.

The solution which is likely to emerge will occupy an intermediate position between the model of a European FCC—the U.S. FCC has all the necessary powers to declare that its regulation supersedes state regulation if inter-state telecoms are significantly affected, and to settle disputes that cannot be resolved at state-level—and the current decentralised regime. The European telecoms regulator will be neither a centralised body, not a collection of national representatives, but a network built on the ONP Committee. EMEA will provide the appropriate model.

II.3. Public Utilities

Telecoms regulation is, however, only one special case of the general problem of regulating public utilities based on large physical networks such as electricity, gas, water and railways.

Technically, economically and politically, public utilities are special industries. Their technology exhibits, in general, important economies of scale; a large proportion of their assets are specific or, in the language of economics, non-redeployable; and their customers comprise the entire voting population. Each of these characteristics has significant regulatory implications.

First, as natural monopolies, utilities have always been subject to some form of regulation. Second, public utility regulation is constantly exposed to political interference because the social significance of the services offered by these industries naturally attracts the attention of politicians. No government can ignore the utilities, whether they are publicly or privately owned. Finally, the non-redepolyable nature of their assets makes the utilities particularly fragile industries. Once the investments have been made, politicians may be tempted to use regulation to set prices below long-run average costs, de fact expropriating the utilities' sunk costs. Hence, without a credible regulatory commitment to allow a fair rate of return on capital, the companies will refuse to invest or will not invest enough to satisfy actual demand.

History is full of examples of attempts to gain political advantages by manipulating the prices of public services—and of attempts to gain political advantages by manipulating the prices of public services—and of attempts by the public utilities to fend off such actions. For example, recent research suggests that the initial creation of state public utility commissions in the United States was related to the inability of the municipalities to commit to stable regulatory regimes. Throughout the nineteenth century, American public utilities were typically regulated at the municipal level. Between 1907 and 1922, nearly thirty states created utility commissions, apparently to prevent cities from imposing onerous regulations that would discourage future investments (Troesken 1996).

In contemporary Europe, the problem of public utility regulation is complicated by the fact that, until recently, most public utilities were, and some still are, state monopolies. Because of this close association with the national governments, the former monopolists still enjoy enormous political and economic power with respect to would-be competitors and the consumers at large. Indeed, the managers of the newly privatised utilities have played an important role in the definition of the regulatory system which was supposed to control their companies. Thus, because of the 'regulatory bargain' struck between the utilities and the British government at the time of privatisation—a bargain generally slanted in favour of the utilities—regulators operate within a regulatory system which was the outcome of an earlier capture. As Veljanovski (1991) has shown, this happened in the very formulation of the authority of the regulatory agencies and the structure of the industry itself. Such pre-emptive regulatory capture has occurred not only in the UK, but in all the other Member States.

Because of this situation, the doubts expressed above about the adequacy of the current decentralised system of telecoms regulators, is even stronger in the case of other public utilities, in particular, electricity. It seems highly unlikely that the equivalent of the ONP Committee established by Directive 90/387 for telecommunications, would be forceful enough to restrain the power of the former monopolists, and the tendency of national governments to intervene in their favour. The members of the ONP Committee are drawn from the national regulatory authorities, but many Member States still lack credible public utility regulators.

Also Directive 92/44 on the application of ONP to leased lines, introduced a number of significant innovations. Thus, Article 8 of the Directive requires the Member States to establish a dispute-settlement procedure which should be easily accessible, capable of settling disputes in a fair, timely and transparent manner, and respect due process and the rights of parties to be heard. Article 12 introduces a conciliation procedure for disputes that cannot be resolved at the national level, or involve telecommunications operators from more than one Member State, through review by a working group of the ONP Committee. However, the working group is charged solely with non-binding arbitration and, thus, can be seen, at most, as a first step in the direction of centralised conflict resolution.

To remedy the defects of the current system, and to create a countervailing force to the power of the former state monopolies, we propose the establishment of a European Public Utility Commission (EPUC), responsible for the implementation of all ONP legislation. Given the special characteristics of the public utilities (see above), the EPUC should enjoy direct democratic legitimation. It should also be credible as a quasi judicial body, capable of settling transboundary disputes in a fair, timely and transparent manner. These requirements could be satisfied if the majority of the 'Commissioners' (for example, four out of a total of seven members) were designated by the European Parliament and the Court of First Instance.

We realise that such a far-reaching institutional innovation is not, today, feasible, either politically or legally. However, it could be advanced as a proposal for the next IGC. In the meanwhile, the Commission could stimulate a public debate about the problems of public utility regulation in the EU, and mobilise a coalition of consumers and would-be competitors in support of the proposal.

Chapter III: Preserving the Institutional Balance

Concluding this introductory part of the report, it is worth considering in detail the very positive role which agencies might now play in preserving the institutional balance of powers within the European Union.

Introduced into the legal vocabulary of the European Communities by Article 4 of the founding Rome Treaty, the European concept of the 'balance of powers'—or the stipulation that each of the institutions named within Article 4 Rome Treaty, act only 'within the limits of the powers conferred upon them by the Treaties'—resembles the traditional constitutional theory of 'a separation of powers', but nonetheless varies vitally from it. An 18th century notion, the constitutional separation of powers served to

apportion, and thus control, the exercise of state power upon the basis of a task-based separation between legislative, executive and judicial arms of government. Thus, or so it was argued, the dangers of an abuse of sovereign state power were to be lessened by assigning distinct political decision-making, executive and adjudicative functions to different constitutional organs; each of the named organs within the *trias politica* would thus play its stipulated and controlling part in the evolution and final execution of all acts of government.

Within the initial institutional constellation of the European Communities, however functionalist integrative logic—in conjunction with the need to ensure the continuing core sovereignty of the EC's founding Member States—determined that a strict separation of powers along the task-based lines of the legislative, executive and judicial distinction of the *trias politica*, was simply not feasible. Thus, in line with the functionalist requirement of economic integration, the Commission could not simply act as a conventional executive arm of government, and would, instead, require policy-initiation competences of its own. Equally, concerns about the formal sovereignty of the Member States determined that they too would not simply play a 'legislative' role in the Council, but that they would also take on important executive tasks, and more particularly, the final implementation of Community measures. By the same token, however, this very same mix of functionalist and sovereignty-based concerns nonetheless also dictated that some manner of 'power-balancing' need be established by the Treaty: first, to ensure the non interference of political actors within the Commission's policy formulation programme, and thus, the credible long-term adherence to EC functionalist/integrative aims; and secondly, to secure the Member States' core sovereignty, both in matters of legislative activity—or the Council's continued overall direction of the integration project—and in the area of the implementation of Community measures.

Accordingly, the means chosen to ensure both credibility of European integrative goals and continuing Member State core sovereignty, was Article 4 EC Treaty's requirement that each named European institution adhere strictly to, and act only within, the limits of the individual competences which are assigned to them by the European Treaties. Article 4 thus established and regulated the essential doctrine of institutional 'non-interference' in the areas of competence of other European and Member State actors.

To be sure, the notion of an 'institutional balance of powers', especially as it is formulated in Article 4 EC Treaty, has been strongly criticised (Läufer 1990: 219-220). In this view, the instrumentalism inherent to the European institutional balance of powers—and, in particular, its legally formalistic anchoring in the notion of the exercise of Treaty-enumerated competences—weakens its power as a normative principle of governmental organisation within the European Communities and Union. Thus, or so it is argued, with each Treaty revision and consequent re-apportioning of competences between European institutions, the balance of powers in the Treaty is altered, determining that it has no more status than a mere 'snapshot' of existing institutional arrangements. In contrast, however, such a view clearly fails to pay due regard to the fact that the European balance of powers is representative less of a traditional constitutional desire to preserve a European civil society from the illegitimate use of a sovereign state power, and more of a need to ensure and support the complex evolution of an international community, which seeks to consolidate and further its own goals of

economic integration, while at the same time preserving the core sovereignty of its constituent Member States.

Seen in this light, the European notion of a balance of powers represents a dynamic rather than static (constitutional) principle of governmental organisation. In other words, it is not to be read simply as a negative obligation to limit the encroachment of state power into a civil sphere (though this obligation does *also* exist as a part of the shared constitutional traditions of the Member States), but more as a positive duty to ensure—regardless of all institutional re-alignments—the continuing credibility of the European integration project, as well as the core place within that project of the Member States. On the one hand, this dynamism inherent to the European notion of balance of powers helps to explain why the ECJ has never, in fact, taken a formalist stance in relation to Article 4 EC Treaty and has instead allowed—in the interest of efficient EC government—the delegation of a wide range of European tasks (if not, strictly-speaking, competences) to institutions, such as agencies and committees, which are not even listed within that Article (see, the *Meroni* and *Rey Soda* cases, and the more detailed analysis in part III below). On the other hand, it also explains the very positive role which agencies may play in relation to recent re-alignments of competences within the EU.

As noted above, recent institutional reform within the EU has not only seen very many once exclusively-held Member State competences 'communitarised' through their transference from the third to the first pillar of the Union Treaty, but has also witnessed a vital change in the make-up and role of the institutions of the European Union. First, the continuing empowerment of the European Parliament, designed to overcome certain of the democratic deficits of the EU, has introduced an element of direct democratic participation within European policy-formulation. Secondly, the right of the EP to approve the Commission and its programme of policy-making has similarly augmented political activity within that institution. Thirdly, the process of politicisation of the Commission has also been given added impetus by the enhanced powers of the President of the Commission to choose his Commissioners. Fourth,

and as a consequence of such re-alignments within the Commission and Parliament, the Member States' political precedence over the integration project has been, if not weakened, at least challenged by the growing politicisation of Community organs.

Accordingly, it may be argued that a Community reliance upon European agencies, operating at arm's length from the political branches and in close association with national bodies (transnational regulatory networks), can help preserve the institutional balance: a) between the European institutions; b) between the European institutions and the Member States; and c) between political and non-political branches of the Union (ECJ, ECB). Thus, on the one hand, 'de-politicised' agencies might, in no small measure, reassert the credibility of the Union's functionalist/integrationist policies; on the other hand, they might equally—through both their assumption of policy-implementation tasks from the politicised Commission and their networking with national administrations—preserve a core national presence within the European project.

Part Two: Institutional Problems

(Michelle Everson and Giandomenico Majone)

Chapter IV: Agency Model(s)

IV.1. Agencies

'Agency' is not a technical terms, but rather an omnibus label to describe a variety of organisations—commissions, directorates, inspectorates, authorities, services, offices, etc.—which perform functions of a governmental nature, and which often exist outside of the normal departmental framework of government. The most comprehensive definition is probably provided by the US Administrative Procedures Act (APA). According to this important statute which regulates the decision-making processes of all agencies of the federal government, an agency is a part of government that is generally independent in the exercise of its functions and that by law has authority to take a final and binding action affecting the rights and obligations of individuals, particularly by the characteristic procedure of rule-making and adjudication.

It should be noted that agency status does not require that an agency exercise its power with complete independence, either vertically (in terms of being subject to administrative review), or horizontally (in terms of being required to act in concert with others). If an authority is in complete charge of a programme, it is an agency with regards to that programme, despite its subordinate position in other respects.

To exemplify, the independent regulatory commissions, such as the Interstate Commerce Commission or the Securities and Exchange Commission are agencies in the sense of the APA, but so are the Occupational Safety and Health Administration (located within the Department of Labor) and the Army Corps of Engineers. In the EU context, most European agencies of the first and second generation, as well as EUROSTAT, are *de facto* agencies in the same sense. Thus, although this report will largely focus on agencies as decentralised organisations, some of the benefits of the agency model may be achieved also by the setting up of special offices within the existing DGs.

Because agencies can be sub-parts of larger units, they may be established through the orders or regulations of existing departments, rather than by statute (or, an enabling regulation in the case of European agencies). In the UK, for example, agencies which have been established independently of the 'Next Steps' initiative, are almost always based on statute. The empowering legislation for bodies such as the Civil Aviation Authority, the Monopoly and Mergers Commission or the regulatory offices created to oversee the privatised utilities, state in some detail, the composition and powers of such bodies, as well as the role of the Minister within that particular regulatory area. The Minister may, for instance, be able to give statutory directions to the agency, or ministerial approval may be required before certain courses of action can be taken. Any legal action for judicial review will normally be brought against the agency in its own name, unless the applicant is seeking to impugn a particular decision taken by the Minister.

The position with regard to Next Steps Agencies is markedly different. The main thrust of the Next Steps program, launched in 1988, is the break-up of the unified civil service.

The uniformity of pay structure, of grading, and of the status of civil servants are being changed by the program, and a two-tier civil service created with a policy-making core (the departments) and a policy-implementation periphery (the operational agencies). Now, the powers of these agencies are defined not by the Statute, but by 'framework agreements' between the sponsoring department (and often the Treasury as well) and the agency. The agreements set out a 'corporate plan' defining current and future objectives; they dictate the financial arrangements for the agency, including accounting and auditing procedures; and they detail the agency's personnel and staffing policy. The agency's chief executive is responsible for its day-to-day running and can be removed if goals are not met. Initially, the Next Step agencies were accountable to Parliament through the relevant Ministers, although MP's could deal directly with the Chief Executive on operational matters. Now, however, the Chief Executive himself replies to Parliamentary Question—subject to the proviso that he will not 'wilfully' reply in a way of which the Minister would not approve.

The Next Steps agencies are intended to operate as largely independent entities with the Chief Executive being responsible for the attainment of corporate goals. This sense of independence, has been enhanced by statutory changes which have further emphasised the separateness of the agencies. One such change is that a number of the agencies (including HMSO, the Patent Office and the Vehicle Inspectorate) are now financed as trading funds pursuant to the Government Trading Act 1990, which allows certain activities to be funded by monies obtained though the provision of goods and services.

Notwithstanding this and other factors which serve to emphasise the separateness of Next Steps agencies, they do not have any formal legal status of their own. Hence, legal actions will, in general, have to be brought against the relevant Minister under whose aegis the agency functions (Craig 1994: 93-96).

In conclusion, the term 'agency' includes a great variety of activities, objectives and institutional designs. Even within the class of Next Steps agencies, considerable differences exist. Thus, some of these agencies have a monopoly status over their activity while others do not; some agencies are self-funding, while others rely on departmental funding; and a number of agencies perform regulatory functions while others are primarily concerned with service delivery.

Such functional differences can have a significant impact upon the practical operations of the agencies, and should therefore be reflected in their institutional design (see, for example, chapter X, for the EEA, and chapter XII, for EMEA). This point should be emphasised since the European Union has—to date—followed essentially one institutional model for all the agencies created since the 1990 (with the possible exception of the Plant Varieties Office and the Office for Harmonisation of the Internal Market—both characterised by a greater attention to the detailing of their substantive tasks and powers in their founding regulations). A more sophisticated approach must rely on a sufficiently rich taxonomy of agency types and functions, especially to define appropriate standards of effectiveness and of accountability. Before considering taxonomic issues, however, it is important to understand the reasons why certain tasks are delegated to agencies rather than being assigned to the central administration, or to other institutions.

IV.2. Why Agencies?

Here we discuss the main reasons for delegating powers to regulatory agencies, although many of the same considerations also apply to operational agencies. The main institutional alternatives to regulatory agencies are government departments (or, Directorates General), control by Courts, or, self-regulation. A number of factors may influence the placing of new regulatory tasks on agencies, rather than allocating them to existing departments, or giving more work to courts. In some cases, the new activities may not match the already existing duties of departments or courts. In other cases, functions are thought likely to be better administered if they are the sole or central interest of a specialised agency, rather than a peripheral matter dealt with by some one whose attentions are primarily directed elsewhere.

The increasing technical and scientific complexity of many regulatory issues has also led to the establishment of agencies which are seen as experts in these substantive matters. The required expertise might have been developed inside existing departments or courts, however, the need for expertise is often found in combination with a rule-making, decision-making or adjudicative function that is thought to be inappropriate for a government department or court (Baldwin and McCrudden 1987: 4-5). Moreover, a department is often seen as not able to provide the independence from government needed in some of these applications of expertise. This is because experts are oriented by goals, standards of conduct, cognitive beliefs and career opportunities that derive from their professional community, giving them strong reasons for resisting interference and directions from political outsiders. Thus, any expert agency provides a much more attractive working environment than a bureaucratic organisation.

Delegation of rule-making powers, may also be needed where constant fine-tuning of the rules or standards, and quick adaptation to technical progress are required. As the experience of technical standardisation in the EC prior to the New Approach demonstrates, a collegial body, such as, the Council of Ministers, often cannot justify devoting the time needed to these matters, or else, they simply cannot act quickly enough.

Agencies' separateness from government may also make them a preferred mechanism for co-opting certain groups into the decision-making process. This seems to have been an important consideration in the creation of such agencies as the European Foundation for the Improvement of Living and Working Conditions and the European Agency for Health and Safety at Work. In more general terms, agencies are intermediary institutions between state and civil society, in that they are an instrument of state action, but at the same time they open the door of governmental institutions to civil society.

When regulatory responsibilities are delegated, not to agencies, but to private or semi-private bodies, one speaks of self-regulation. Self-regulation plays a significant role in highly technical areas, such as standardisation and wherever product quality is an important consideration. A self-regulatory organisation (SRO) can normally command a greater degree of expertise and detailed knowledge of practices within the relevant area than a public authority. A second advantage is that the rules issued by a private body are less formalised than those of public regulatory regimes. This informality reduces the cost of rule-making, facilitates quick adaptation of the rules to new technical knowledge

and changing conditions, and permits more flexible enforcement. Another attraction of SROs in a period of fiscal austerity is that the administrative costs of self-regulation are normally internalised in the trade or activity which is subject to regulation.

Under the New Approach to Technical Harmonisation and Standardisation, legally-binding EC regulation is restricted to essential health and safety requirements. In turn, essential requirements are elaborated by European standardisation bodies (CEN, CENELEC, ETSI) in norms which are not legally binding Since these are private-law associations, the New Approach *de facto* delegates technical regulation to SROs. This example reveals one of the problems of self-regulation in the EC context. In the majority of directives adopted under the New Approach, the essential requirements are expressed in such general terms that they cannot be applied without the support of standards. Hence, the voluntary standards produced by the European organisations become *de facto* binding.

This is an awkward situation from the point of view of legitimacy—as already noted, the European standardisation organisations are private-law associations with which the Commission has only contractual relations as it has with hundreds of private consultants—and also with respect to liability, should a harmonised standard turn out to be defective. Both Commission and standardisation bodies seem to encounter serious difficulties in finding the point of equilibrium between the need of regulation on the one hand, and the independence of standardisation on the other. As Previdi and other experts have suggested, agencies could represent the stable institutional solution which is so badly needed. It would be the task of the relevant agency 'to set all the parameters and reference values to flesh out the legislative objectives, which, by their nature, cannot be part of the voluntary area, nor set consensually through technical negotiation, thus achieving the principle stated in the 1985 resolution on the New Approach, namely that binding regulatory precepts ought to be reflected in 'sanctionable obligation'' (Previdi 1997: 241).

Another problem of self-regulation is the risk of capture by the regulated interests. Capture is also a problem for agencies, but with self-regulation, regulatory capture is there from the outset. Precisely to reduce this risk, the European standardisation organisations are required to allow all interested parties to participate in standard-setting. However, this requirement may not be sufficient to give adequate representation to diffuse, ill-organised, interests. Public regulatory agencies may provide better protection of such interests than an SRO.

Monitoring is a third potential problem. As already mentioned, an important advantage of entrusting regulation to SROs is that practitioners are likely to be better informed than the public authorities about what is happening in their field of activity: their ability to discover and expose malpractice is superior. The disadvantage is that the willingness of an SRO to publicise and punish wrongdoers is likely to be less than that of a public regulator. One possible solution is a two-tiered system where a public agency acts chiefly as a regulator of regulators, with the SRO's handling day to day rule-making and supervision.

In conclusion, self-regulation—at both national and European level—may be a useful adjunct to statutory regulation administered by a public, independent agency, but cannot replace it.

IV:3. Agencies as Instruments of Regulatory Commitment

In the preceding section, we have discussed several reasons why political principals may choose to delegate policy-making powers to an independent agency. In light of the increasing politicisation of Community policy-making (Chapter I), however, the most compelling reason is related to the problem of achieving credible regulatory commitments.

The commitment problem is a direct consequence of the nature of the democratic process. One of the defining elements of democracy is that it is a form of government *pro tempore*. The time limit inherent in the requirement of elections at regular intervals is one of the main arguments for democracy, but it also implies that the policies of the current majority can be subverted, legitimately and without compensation, by a new majority with different and perhaps opposing interests. Hence, political executives tend to have shorter time-horizons than their counterparts in the private sector and lack the ability credibly to commit themselves to a course of action.

At the same time, between elections there are few limits to what a cohesive majority can do. The discretionary power of the current majority gives rise to the problem known to economists as 'time inconsistency'. Time inconsistency occurs when a policy which appears to be optimal at time t_o no longer seems optimal at a later time t_n. Without a binding commitment holding them to their original plan, governments will use their discretion to switch to what now appears to be a better policy. The problem is that if private actors anticipate such a policy change, they will behave in ways which prevent policy-makers achieving their original objectives. For example, a policy of low inflation may be optimal over the long run, but at any time there can be short term gains from surprise inflation. If the policy-makers have the possibility of revising the original policy to achieve such short term gains, private actors will recognise this and change their behaviour in such a way that the outcome is worse than if the *ex ante* optimal policy had always been adhered to.

Such arguments provide the main theoretical justification for the independence of central banks; *mutatis mutandis*, they also justify the independence of regulatory agencies. Selection of a central banker whose preferences are different from the preferences of a majority of voters (see, Chapter I) implies that the banker must be independent. Otherwise the voters would be tempted to dismiss him when he is trying to implement a restrictive monetary policy. Hence, it is important that delegation to the central bank is credible. In fact, the Statute of the European Central Bank gives the Bank a very high level of independence, which should guarantee the Bank's ability credibly to pursue its main objective of price stability.

The logic of the model of an independent central bank, holds also in the area of economic and social regulation. In most countries, regulatory policy making is now delegated to specialised agencies operating at arm's length from government. The point

of insulating regulators from the political process is to enhance the credibility of regulatory commitments. The head of an independent agency will, normally, attach more importance to the agency's statutory objectives than the government, parliament or the average voter. As noted above (Chapter I.4), agency heads generally expect, and are expected by others, to have a well-defined agenda, and to measure their success by the amount of the agenda they accomplish. They also are aware that courts can review their decisions and can overturn them if they seem to depart too greatly from the language and the aims of the enabling statute. Thus, regulators have an additional incentive to pursue the statutory objectives of the agency, even when those objectives, because of changed economic or political conditions, no longer enjoy popular support.

In sum, the delegation of policy-making powers to non-majoritarian institutions, such as an independent central bank and regulatory agencies is a means whereby governments can credibly commit themselves to policies which would not be credible in the absence of such delegation. This credibility problem will become increasingly severe at European level with the growing influence of the EP upon the nomination and performance of the Commission, and the consequent politicisation of Community policy-making. For example, one can expect renewed interest in the idea—advocated, among others, by the German Federal Ministry of Economics—that the administrative powers of the Commission in the areas of cartels, abuse of a dominant position, mergers and perhaps also state aids, be transferred to an independent European Cartel Office, while legislative powers in this area would remain with the Commission.

Chapter V: Problems of Delegation

V.1. Functional Legitimacy and Questions of Legal Legitimacy

In a recent article (Dorf and Sabel 1998), two prominent American academics have reiterated the vital and responsive governmental role played, in the United States, by the founders of the New Deal Commissions of the 1930s and the Regulatory Agencies of the 1970s. In the 1930s, a desire to increase congressional activity in the area of economic regulation led to a vast increase in governmental tasks, which the Congress itself did not have the resources to undertake. Similarly, in the 1970s, the complexities of social regulation overtaxed and overburdened both the expertise and the technical legislative resources of the congressional arm of government. However, rather than abandon ambitious regulatory programmes, or be satisfied with sub-optimal legislative regulation, the founders of the new agencies responded innovatively to the 'serious mismatch between the increasingly specialized functions of government and the administrative instruments at its disposal' (Majone 1996). They established new and experimental institutions, which were not foreseen within the scheme of American government, or the American Constitution. As such, these latter-day reformers shared much in common with earlier generations of British and American administrators, who, in the field of industry and commerce regulation, smoothed the turn-of-the-century transition from *laissez-faire* to regulative and active government through the creation of Advisory Sunshine Commissions (US), as well as more powerful Independent Regulatory Commissions (US) and Statutory Boards (UK). In other words, 'experimental' institutions, similar to agencies, have long played a vital role within

government, responding to an unforeseen institutional need for additional administrative resources.

In this sense, boards, commission and agencies, operating at arms length from traditional governmental structures, have always possessed a form of functional legitimation of their own. Where the initial choice is one of giving up ambitious legislative programmes, or alternatively of being content with their sub-optimal legislative execution, a third way, or recourse to unforeseen and experimental institutions brings obvious advantages through its ensuring of efficient and responsive government. However, as also noted (Dorf and Sabel 1998), the use of such innovative institutions also gives rise—in law—to important legitimacy concerns, and, in particular, raises the question of how to ensure the faithfulness of these bodies to the long-term aspirations and more immediate political goals of the citizenry as a whole.

Traditionally, such legitimacy concerns are grouped together under the heading of the 'delegation problem'. Generally-speaking, however, this problem is two fold: entailing, first, a 'high-level' constitutional dilemma, relating to the maintenance of a 'separation of powers' and thus the protection of civil society from the intrusive exercise of governmental functions; and encompassing, second, a more practical consideration about how the law might ensure the adherence of independent institutions to the political goals identified by the political community.

As noted above (Chapter III), the European Union's particular emphasis upon a 'balance' rather than 'separation' of powers, determines that, in the EU, a very specific form of 'delegation problem' arises which will be dealt with in detail below (Chapter VII.1). However, both by virtue of the fact that the EU is bound, in accordance with the constitutional traditions of its Member States, to also pay due regard to the issue of civil society protection which underlie the notion of the separation of powers, and since the Union is also clearly interested in the legal control and the continued political accountability of new European agencies, the main contours of the traditional national delegation problem—as well as its solution—are spelled out here.

The creation of innovative institutions, such as agencies, which often perform all three executive, legislative and judicial functions, and which are further not recognised by the national constitution, has historically given rise to very particular legal problems. Thus, or so it is argued, the delegation of tasks from the legislative, executive or judicial arms to constitutionally-unforeseen institutions, creates an essential problem of control: first, upsetting the regulative balance between the powers of the named executives, legislatures and judiciaries; and secondly, distancing the exercise of power from citizens. In certain countries, such as the United Kingdom, such problems have been relatively easy to solve. Thus, the UK's continuing emphasis upon the central place of the Westminster Parliament within the governmental model, and its consequently weaker regard for a notion of a separation of powers, has determined that both balance and political control have been re-established through the linkage of the actions of bodies, which operate at arm's length from government, to the concept of ministerial responsibility. Even with regard to the more recent amongst the New Steps Agencies, the vital link to parliamentary control over ministerial action is thus maintained through the requirement that the heads of such agencies report on their actions to Parliament with adequate reference to the views of the Minister who retains overall control over

their activities. It is, on the contrary, in countries with strong constitutional statements of the separation of powers and non-delegation principles that explicit legal problems have arisen, and exemplary solutions have been spelled out.

V.2. The Separation of Powers

Thus, and focusing on the US as an initial example, the Federal Constitutions' historical commitment to a plural scheme of government, which strictly apportioned powers between President, Senate, Congress, Supreme Court, Federal Government and the individual states in an effort to lessen the danger that minorities of citizens might be subject to misrule by the majority, initially appeared to stand in the way of the evolution of independent regulatory agencies. The American Constitution separated and thus controlled power on the basis of the apportioning of executive, legislative and judicial competences to particular institutions; within this scheme, new institutions accordingly seemed to have no formally legitimated place. However, the Supreme Court, mindful of the need to allow a government, established by ancient and static legal texts, to evolve in order to deal efficiently with modern problems, nonetheless opened the door to the establishment of independent agencies (for full details of a long and tortuous body of case law, see, Strauss 1984). The argument deployed was simple, highly effective and generalisable for constitutional schemes of government throughout the world: if the underlying logic of the separation of powers was to control power by spreading its exercise among many bodies, then, while any attempt by any named constitutional organ to wrestle power from another would certainly constitute an injury to this principle, the delegation of powers to new and independent institutions was not, in any sense, an act of institutional 'self-aggrandisement', but, on the contrary, a contribution to the fragmentation of power and, thus, supportive of the basic pluralist principles underlying the separation of powers. Certainly, agencies might appear concurrently to exercise executive, judicial and legislative functions; nonetheless this mixing of tasks served efficient government. In the final analysis, the threefold and functional executive, legislative and judicial divide was only one means of fragmenting power, and other pluri-institutional solutions might also legitimately serve the same ends.

V.3. The Non Delegation Doctrine and the Securing of Democratic Accountability

The second, and in a certain sense, more pressing legal problem that agencies pose, however, is that of the need to ensure that independent bodies are adequately controlled by the law, so that their adherence to the immediate political aims of the citizenry can be assured. This essentially democratic concern that the law must ensure that the will of the polity is done, is thus the flip side to a legal principle of 'non-delegation' which applies to legislative bodies and their competences. In other words, most national bodies of constitutional and administrative law—and both civil and common law systems— start from the assumption that any delegation of legislative functions from the parliament to other policy-making institutions is *de facto* an abuse of the democratic imperative of the citizenry, which finds representation within the legislative arm of government. In this, its strictest form, the non-delegation principle is clearly a barrier to the evolution of independent regulatory bodies (and might also, in its broadest terms, be

used to block the activities of all non-majoritarian institutions, including the courts). It has, therefore, slowly been modified as the need to ensure efficiency of government has proven to be imperative and the legislative arm has sought the regulatory aid of new regulatory institutions.

In brief, the legal historical attempt to modify the non-delegation principle and to create some other form of democratic accountability for agencies, is littered with pitfalls and has ultimately only come close to resolution as legal science has begun to take on board studies from non-legal disciplines, which demonstrate how, with the aid of various institutional design and procedural mechanisms, a situation can be created whereby 'no one controls the agency, and yet the agency is under control' (Moe 1987).

To explain further: the once widely accepted legal notion of 'transmission belt' administration and control, based upon the assumption that the legislature would give very strict direction to delegatee bodies to guide their daily activities, while the judiciary would simply ensure that such rigid mandates not be deviated from, was, for example, to be quickly frustrated throughout the legal world. Modern administration was a matter of constant interaction between policy-making and execution and thus necessarily required a far greater degree of operative flexibility than such mandates allowed (Craig 1994). Equally, however, the very democratic impulse, or desire, to create some form of connection between the citizenry and independent agencies, proved equally difficult to accommodate solely within the doctrines of the law of standing, or *locus standi*. Thus, on the one hand, individual citizens might challenge agency decisions if their individual rights were effected; yet, such a rights-based reading of administrative review, achieved little with regard to ensuring that the interests of *all* citizens be respected. Similarly, on the other hand, allowing interest groups to challenge the activities of independent regulatory authorities did ensure added political representation for groups of citizens within the administrative process; however, once again, this was surely only a partial reflection of the public interest of citizens and the political community as a whole (Croley 1998). Clearly, some more comprehensive scheme of oversight was required to ensure the accountability of independent institutions.

In this respect, academic literature has accordingly developed a series of more comprehensive administrative oversight mechanisms; many of which have been taken up within national and EC law. These proposed and partially accepted instruments of control of democratic accountability may be divided into four categories; the vital point to note, however, is that such instruments derive their major strength in the controlling of accountability from their ability to complement one another to give rise to an overall scheme of control.

Independence: One of the primary causes of intransparent administration is thus argued to be a close linkage between government departments, or political actors, and the administration. Thus, where administration is buried within or answers directly to governmental departments, political goals may be easily adjusted, or subverted, without any public debate. Accordingly, it is apparent that ensuring that agencies, and like bodies, enjoy a degree of independence from government, can, in fact, serve democratic transparency, determining that all policy changes are discussed in the public debating arena.

Founding statutes: though the exact mandating of agencies to perform specific 'daily' tasks has proven not to be possible, well constructed 'founding statutes' which lay down the general policy goals which agencies must pursue, as well as the level of performance which they must achieve, nonetheless play a major part in ensuring the accountability of independent bodies. Such founding statutes thus furnish the vital yardstick against which agency performance may be evaluated.

Accountability to the named institutions of government: though the independence of agencies needs to be safeguarded, they may still be subject to a subtle control by the named institutions of government. In the United States, for example, the President retains a degree of control through his power to nominate the chiefs of individual agencies. In the United Kingdom, United States and in the European Union, the power of the legislative arm to review agency budgets also furnishes greater accountability since agencies may be allowed or denied the funding which they have requested to follow particular policy goals. Similarly, courts retain a major power to review the actions of agencies through mechanisms such as the US Administrative Procedure Act, which requires agencies to follow set patterns in their policy, rule and decision-making processes.

Accountability to the public: various 'soft' and 'hard' mechanisms may be used to ensure accountability to the general public. Primary amongst soft mechanisms of control is the stipulation that agency staff must be suited to the tasks which they are required to perform. They must be 'experts' in their field, so ensuring the core convergence between the policy which the agency pursues and the goals which it is set by the public (a primary legitimating plank within the New Deal Agencies). Such expertise can thus be assured through the publication of decisions—allowing experts external to the agency to review the work of their peers—or through review by parliamentary committees. Similarly, soft control can also be furnished through review (budgetary or otherwise) of annual agency reports by other independent bodies—an example here is the European Court of Auditors' power to review agency budgets. In contrast, 'hard' mechanisms of public control are the classical instruments of judicial review, which allow individuals (and sometimes groups) to challenge decisions which have personally affected them. In law, individual 'rights' provide the vital basis for standing before the courts, while procedural legal instruments, such as the American Administrative Procedures Act, or the European 'duty to state reasons' (Article 190 EC Treaty), furnish the courts with a legal quality yardstick with reference to which they may review individual decisions. Where procedures have been incorrectly followed, or decisions poorly-reasoned, they may be overturned.

Chapter VI: Institutional Design—Efficiency and Effectiveness

VI.1. Agency Costs and Transaction Costs

However varied their form, agencies—as the term indicates—are the agents established by some principal(s) to carry out their single or joint purpose. An agency problem accordingly arises because of the possibility that the administrative agents will not comply with the policy preferences of the principal. This problem creates 'agency costs'—that is, the costs incurred during the effort to induce the agents to implement

faithfully the principals' objectives, and the losses which principals sustain where they are not able to control their agents perfectly. Agency costs include the costs associated with selecting the executives of the agencies and monitoring their compliance, the costs of using corrective devices (rewards, sanctions, and legislative direction), and the cost of any residual non-compliance that produces a difference between the policy enacted and what is implemented.

Agency problems can be addressed in a number of ways. For example, the same level of administrative compliance can be achieved with less monitoring if *ex post* rewards and sanctions are made more effective at aligning the incentives of the agents with the principals' policy preferences. Similarly, neither monitoring nor incentive devices are as important if it is possible to appoint agency executives who share the objectives of the principals. The objective of institutional design is to identify the mix of selection, monitoring, and *ex post* incentive and correction devices that will reduce agency problems at lowest cost to the principal(s).

The decision to delegate certain tasks to an agency does not depend only on agency costs, but also on other 'transaction costs', such as, the cost of decision-making *per se* and the cost of achieving credible policy commitments. Moreover, the two classes of cost are closely related. Thus, a broad delegation reduces decision-making costs since the principal does not have to invest resources in working out the details of regulation, but it increases the cost of controlling the agency's discretion. Similarly, a high level of agency independence increases the credibility of regulatory commitment by reducing the influence of political considerations in agency decision-making, but it increases the risk that the agency will not comply with the policy preferences of its principals.

These rather abstract considerations may be illustrated by reference to the logic of delegation in the EU. As is well-known, two types of delegation must be distinguished: external delegation to outside bodies, including the Member States, and internal delegation of executive powers from the Council to the Commission. According to the jurisprudence of the Court of Justice, external delegation may be only of a very limited nature, while delegation to the Commission may involve wide discretionary powers. The standard explanation for this difference is the existence of a widespread system of committees of national representatives through which the Council can, at least in theory, control the exercise of the delegated powers by the Commission. Thus, in *Rey Soda*, the ECJ pointed out that under the comitology system, the Council can delegate exceptionally wide powers of implementation while reserving the right to intervene where necessary.

In spite of recurring disagreements with the Council concerning the procedures to be adopted under the Comitology decision, also the Commission seems to feel that the advantages of the system outweigh its costs. The main advantages are the obligation imposed on the Council by Article 145 (3) EC to delegate implementing powers; and the greater efficiency in decision-making, since now the Council does not have to concern itself with technical matters which, in the past, have seriously retarded the adoption of regulations needed for completing the internal market.

The pros and cons of the comitology system are discussed in another part of this report (Chapter VII). Our brief mention of the logic of delegation in the EC is only meant to

provide a concrete example of the calculus of the costs and benefits of delegation, and to prepare the ground for the general discussion of the relevant decision variables in the following pages.

VI.2. Institutional Choice

It is up to the principals to structure relationships with their agents so that the outcomes produced through the agents' efforts are the best the principals can achieve, given the choice to delegate in the first place. The following institutional choices are crucial for the design of an efficient and accountable agency (Horn 1995):

The extent to which decisions are delegated to the agency rather than taken by the principals themselves—i.e., institutional variable D, ranging from 0 ('no delegation) to 1 ('full delegation').

The governance structure of the organisation to which powers are delegated: ministerial departments, single-headed agency, multi-headed commission, self-regulatory organisation, court, etc.. The single most important dimension along which these organisations vary is their degree of independence from their political or bureaucratic principals. Thus, institutional variable G can range from 0 ('no independence') to 1 ('full independence').

The rules that specify the procedures to be followed in agency decision-making: rules of evidence, reason giving requirements, rules defining the rights of various groups to participate directly in the decision-making process. This variable P is clearly multi-dimensional. If, however, we focus on participation, we can again scale P from 0 ('no participation') to 1 ('full participation').

The extent of *ex post* monitoring through ongoing legislative and executive oversight, the budgetary process, judicial review, citizens' complaints, expert criticism, and so on. This variable M can be scaled from 0 ('very easy') to 1 ('very difficult').

The institutional design problem facing the principal can be represented in very general terms as: choose the values of the variables D,G,P and M so as to minimise the sum of agency costs, decision-making costs, and commitments costs (see, Chapter VI.1), subject to some constraints.

These constraints indicate how agency and transaction costs are related to the four choice variables. Thus, agency costs increase with increasing values of D, since more delegation means greater agency discretion, and with increasing values of G, since more independence implies more discretion; they decrease when the cost of *ex post* monitoring (M) is low and procedural requirements (P) are tight. Again, principals' decision-making costs are inversely related to the degree of delegation, as already discussed, and positively related to P, because of the time and effort taken in setting tighter procedures; while G and M should not have much of an impact on the decision-making costs of the principals. Finally, commitment costs decrease with increasing levels of independence and tighter procedures, while ex post monitoring will have different effects according to who does the monitoring (e.g., judicial review will

typically increase the credibility of regulatory commitments, while administrative sanctions will have the opposite effect).

This analysis is not meant to suggest that agencies can be designed by mathematical algorithms. Rather, its purpose is to identify the crucial institutional choices to be made in designing an agency, and to call attention to the relationships between these choice variables and the different categories of cost. Moreover, these choice variables are important not only from an efficiency perspective—the minimisation of the sum of agency and transaction costs—but also for the design of an effective accountability structure (see, Chapters VI.5 and VII).

VI.3. Executive Oversight

Even a country like the United States, with its century-old experience of statutory regulation at state and federal level, had no executive branch oversight of regulatory agencies until the 1970s. After the emergence of the health, safety and environment regulatory agencies in the 1970s, however, it became important to verify that these regulations were in society's best interest and, in particular, that the costs they imposed were justified by the benefits they were expected to produce.

Traditionally, agencies were constrained by little other than their legislative mandate and potential judicial review as to whether they were adhering to the mandate. Congress can, of course, pass legislation requiring that an agency take a particular type of action, but routine regulatory actions seldom receive congressional scrutiny. Most important, there is no need for congressional approval for a regulatory agency to take action provided that it can survive judicial review. Hence the need for executive oversight of the agencies. Such oversight is the responsibility of a specialised unit within the Executive Office of the President, the Office of Management and Budget (OMB).

A regulatory clearinghouse is needed also in the EU in order to ensure that actions taken by different agencies and DGs meet basic standards of consistency and efficiency. Moreover, such a unit would help the President to fulfil his responsibility of providing political guidance to the Commission's work under Article 214 of the Consolidated Treaties. A European OMB could be established within the framework of the present treaties. It would systematise and generalise what the Commission is already doing, for example, in the case of the Medicines Agency. For all these reasons it is instructive to analyse in some detail the role of the American OMB in controlling and co-ordinating the work of federal agencies.

The first stage of the development of a federal regulation occurs at the time when an agency decides to regulate a particular area of economic activity. Once a topic is on the agency's regulatory agenda, it must be listed as part of its regulatory programme if it is a significant regulatory action that is likely to have a substantial cost impact. OMB has the authority to review this regulatory programme, where the purpose of this review is to identify potential overlap among agencies, to become aware of particularly controversial regulatory policies that are being developed, and to screen out regulation that appear to be particularly undesirable. These reviews have essentially an informational function, alerting OMB to potential inter-agency conflicts.

The next stage in the development of a regulation is to prepare a Regulatory Impact Analysis (RIA). This requires the agency to calculate benefits and costs and to determine whether the benefits of the regulation are in excess of the costs it imposes on the regulated activities. The agency is also required to consider potentially more desirable policy alternatives, such as information strategies instead of a command-and-control approach. After completing the RIA, the agency must send the analysis to OMB for its review, which must take place 60 days before the agency issues a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. During this period OMB reviews the proposed regulation and the analysis supporting it. In the majority of cases, OMB simply approves the regulation in its current form. In some instances, OMB negotiates with the agency to obtain improvements in the regulation, and in a few instances OMB rejects the regulation as being undesirable. At that point, the agency has the choice either to revise the regulation or to withdraw it.

This OMB review is generally a secret process. The secretive nature of the review process is intended to enable the regulatory agency to alter its position without having to admit publicly that it has made an error in terms of the regulation it has proposed. Keeping the debate out of the public arena prevents the parties from becoming locked into positions for the purpose of a public image. The disadvantage of secrecy is, of course, that it excludes Congress and the public from the regulatory policy debate. For this reason, under the Clinton administration, OMB has made a major effort to open up more aspects of this review process to public scrutiny.

If the proposal does not receive OMB approval, the agency can make an appeal to the President or to the Vice-President if the latter has been delegated authority for this class of regulatory issues.

After receiving OMB approval, the agency can publish the NPRM in the *Federal Register*. Included in the material inserted in the official journal is typically a detailed justification for the regulation, which often includes an assessment of the benefits and costs of the regulatory measure. Once the proposal has been published in the *Federal Register*, it is open to public debate. This is a 30 to 90 day period for public notice and comment. After receiving and processing these public comments, the agency must then put the regulation in its final form. In doing so, it finalises its regulatory impact analysis, and it submits both the regulation and the accompanying analysis to OMB 30 days before publishing the final regulation in the *Federal Register*.

OMB has roughly one month to review the regulation in its final form and decide whether to approve it. The overwhelming majority of regulations are approved and published as final rules in the official journal. Generally-speaking, one can say that the OMB review process alters regulations in minor ways, such as introducing alternative methods of compliance that will be less costly but equally effective as those proposed by the agency. The main function of OMB review is to force the agencies to support their proposals by well-developed analyses. OMB has also been successful in screening out some of the most inefficient regulations, such as those with costs per life saved, well in excess of $100 million (Viscusi, Vernon and Harrington 1996: chapters 2 and 20).

VI.4 Co-ordination and Regulatory Budgets

In addition to monitoring the quality of individual agency proposals, a regulatory clearing house located at a sufficiently high level in the Community bureaucracy, preferably in the office of the President, could also co-ordinate all regulatory activities by imposing a novel type of budgetary discipline.

Co-ordination is a serious problem in all complex organisations, but it is especially acute in the case of regulatory activities. While the size and priorities of non-regulatory, direct-expenditure programmes are determined by political executives through the normal budgetary process, budgetary constraints have a limited impact on regulatory activities. This is because the real costs of regulations is borne not by the regulators, but by the individuals and organisations that have to comply with the regulations. The result is a serious lack of co-ordination both within and across regulatory programmes and agencies.

Regulatory issues tend to be dealt with sector by sector, and even within the same sector it is often difficult to see that regulatory priorities are set in a way that explicitly takes into consideration either the urgency of the problem or the benefits and costs of different proposals. For example, the imbalance between water and air pollution control existing in the EC can hardly be explained by differences in the seriousness of the relevant problems. Also, the marginal health benefits produced by certain environmental directives, such as the one on the quality of drinking water, appear to many analysts to be out of proportion with the very substantial costs imposed on the water industry and, ultimately, on all citizens. Again, the piecemeal procedure of the Commission in proposing new regulations has resulted in directives in areas where harmonisation is a low priority, while neglecting other areas that need a considerable amount of harmonisation. Such problems are compounded whenever previously centralised responsibilities are allocated to various decentralised agencies.

If lack of budgetary discipline is a serious defect of the regulatory process, one can attempt to create co-ordination and control mechanisms similar to those traditionally used for direct public expenditures. This is the idea of a *regulatory budget*. In its basic outline, the regulatory budget—as proposed by several distinguished American economists—would be established jointly by Congress and the President for each agency, starting with a budget constraint on total private expenditures mandated by regulation, and then allocating the budget among the different agencies. Simultaneous consideration by OMB of all major regulatory proposals would permit an assessment of their joint impact on particular industries and on the economy as a whole.

Thus, the administrative procedure for implementing a regulatory budget would mirror that of a fiscal budget. In addition to the traditional budget submissions, the President would send to Congress a budget limiting the regulatory costs that could be imposed on the national economy. After hearings by the relevant committees, each house would vote on the specifics and a conference committee would produce a compromise bill. After enactment by both houses, the regulatory budget would be forwarded to the President to sign into law. Like the fiscal budget, the regulatory budget would be open to political debate. In fact, the actual level of the regulatory budget can only be determined through the political process, as in the case of the fiscal budget.

Again like the fiscal budget, the regulatory budget focuses on the costs rather than the benefits of regulation. However, since each regulatory agency would face a constraint that limits its total mandated spending, it would have an incentive to allocate its resources in the most efficient manner to achieve its policy objectives. If forced to choose between programmes, agencies would be encouraged to choose those that provide the greatest benefit per unit of cost. By formalising this portion of the budget allocation process, Congress and the President would have an added interest in ensuring that regulatory funds are allocated to the agencies which produce the most substantial benefits for society. They would also assume responsibility for the overall magnitude and priorities of regulation, and for inter-agency co-ordination.

The primary difficulty in implementing a regulatory budget is cost estimation. Without a reliable, consistent estimate of costs (broken down by agency and by regulatory programme), it is impossible for a budgetary authority to make sensible allocations of resources across different agencies and regulatory programmes.

Regulatory costs fall into three distinct categories:

➢ Operation of the regulatory agency. These costs are represented by salaries, administrative costs and capital expenditures needed to operate the agency.

➢ Compliance by firms, consumers and government organisations. This category includes the direct expenditures that are needed to comply with a given regulation. So-called process costs—the costs of filling out paperwork and dealing with administrative requirements—also fall into this category of direct costs.

➢ Indirect economic costs in the form of reduced output and efficiency loss. For example, if a regulatory agency mandates a new safety device on a product, then the price of that product will almost certainly rise because of higher production costs. Because of this, some consumers who would have bought the product at the old price will now find themselves priced out of the market. In addition, producers will earn lower profits, and some marginal firms may go out of business. These combined efforts are often termed 'dead-weight loss' to reflect unrecoverable costs to society of reduced production due to regulation.

Now, operating costs are relatively easy to quantify, as they are already reported as part of the fiscal budget; they are by far the smallest part of the cost of regulation. Compliance costs are generally obtained through surveys or audits of affected firms, or through engineering studies. Indirect economic costs would have to be calculated by means of general equilibrium models simultaneously examining the interactions of all consumers, all firms and all markets. Whatever the theoretical interest of such general equilibrium analysis, its usefulness in a policy structure such as the regulatory budget is probably limited. In practical terms, the most important inputs into the regulatory budgetary process are estimates of compliance costs.

Sophisticated techniques of compliance cost assessment (CCA) have been developed in recent years, not only in the US, but also in Europe. In the US, for example, the Environmental Protection agency has carried out extensive analyses to estimate the cost of recent amendments to the Clean Air Act (CAA) and to the Safe Drinking Water Act

(SDWA). Estimates of pollution control expenditure mandated by the CAA amendments indicate a 'budget' of $79 billion in compliance costs borne by economic agents between 1993 and 2000. Similarly, private expenditures resulting from new regulations for water treatment have been budgeted at $1,5 billion to $2,4 billion a year, or $20 billion for the entire 1993-2000 period.

In the UK, all government departments must prepare a CCA when evaluating policy proposals likely to affect business. Similarly, all papers for cabinet and cabinet committees, and minutes to No. 10 for collective discussion that deal with proposals, which may have an impact on business, must clearly spell out likely compliance costs.

Departments are also asked to prepare a CCA for all EC regulations and directives likely to be burdensome to business, whether or not the Commission is preparing an impact assessment. A CCA should also be prepared for all UK legislation to implement agreed EC directives, as well as for Community acts, which, though not binding on Member States, may lead to burdensome regulations.

In 1986, the European Commission introduced a system similar to the UK CCA system for EC legislative proposals. Originally, every draft legislative proposal being considered for adoption by the Commission was to be accompanied by an impact assessment (*fiche d'impact*) outlining the impact of the proposed measure on small and medium size enterprises. Since 1990, however, assessments have only been completed on the most burdensome legislative proposals contained in the Commission's Work Programme. DG XXIII, at the beginning of each year, identifies those measures on which impact assessments should be completed. Others may be added to the list during the course of the year.

Thus, important elements of a regulatory budget are already available at the EC level and at least in some member states. This mechanism could be developed further in selected policy areas such as water pollution control. A Community OMB would provide the necessary focus for such efforts.

VI.5. Procedural Controls

There are two main forms of control of agency decisions: *oversight*—monitoring, hearings, investigations, budgetary review, sanctions—and *procedural constraints*. In the two preceding sections we discussed the role of a regulatory clearing house in overseeing and co-ordinating the behaviour of agencies, while in section VI.2 procedural rules were mentioned as an important design variable. Now we examine in greater detail how procedural requirements discipline agency discretion. Administrative law views procedures primarily as a means of assuring fairness and legitimacy in regulatory decision-making. This is, of course, a very important function of procedures, but the point we wish to stress here is that procedures also serve control purposes, for example, by mitigating informational disadvantages faced by political principals in dealing with expert agencies.

It should be noted that oversight does not deal directly with the problem of asymmetric information. If agencies have better information than their principals do, they have a range of discretion that is undetectable to external overseers. Moreover, resources

devoted to monitoring have an opportunity cost, since they could be devoted to achieving politically more rewarding objectives. Finally, most of the methods for imposing meaningful sanctions for non-compliance also create costs for the overseers. Thus, a publicly visible investigation and punishment of an agency may raise doubts in the mind of citizens about the efficiency and honesty of the principals themselves. At the same time, the sanctioning process lowers morale and distracts the agency from the pursuit of its statutory objectives.

In sum, direct oversight of agency behaviour is unlikely to be a completely effective solution to the control problem; it needs to be supplemented by more indirect and less costly mechanisms of a procedural nature. As already noted in section V.3, an optimal mix of control strategies, where each strategy complements the strengths of the other and substitutes for the other's weakness, will ensure less costly and more effective control of agency behaviour than exclusive reliance on any single control mechanism, however powerful. What is at least as important, a diversified system can reconcile accountability and independence by creating a situation whereby 'no one controls the agency, and yet the agency is under control'.

Also in the area of procedural controls, the American experience is highly instructive. We refer specifically to the Administrative Procedure Act (APA) of 1946 and to its later extensions: the Freedom of Information Act (FOIA) passed in 1966 and amended in 1974, 1976, 1986, and 1996; the Government in the Sunshine Act (GITSA) of 1976; and the Federal Advisory Committee Act (FACA), enacted in 1972 and amended in 1976 to incorporate the GITSA standards for open meetings. APA codified over a half-century of court decisions affecting agency proceedings. Prior to the APA, procedural requirements imposed by the Courts differed across agencies. These included procedures relating to information gathering and disclosure, and standards of evidence. Two important effects of the APA, therefore, were to impose greater uniformity across agencies and to raise the minimum evidentiary standards to which an agency must adhere.

The FOIA gives citizens the right to inspect all agency records that do not fall within any of ten specified categories, such as, trade secrets and those files, the disclosure of which reasonably could be expected to constitute an invasion of privacy or compromise a law enforcement investigation. However, even these exceptions are not absolute. To reduce even further the chances that an agency can manipulate the FOIA to its own advantage, the law requires the agency to prove that it need not release the information (rather than requiring the citizen to prove that it should release it). The FOIA was adopted in response to claims that many core documents and other information underlying important agency decisions were not available to the public, thereby impairing the right of citizens and of the media to monitor government performance.

The Sunshine Act is similarly designed to prevent secrecy in government, but its reach and impact are more limited than the FOIA's. The GITSA applies to agencies headed by collegial bodies, such as the independent regulatory commissions. It obliges such agencies to provide advance notice of meetings at which agency business is to be conducted, and to meet in public unless the members, by majority vote, decide that the subject matter falls within one of nine statutory exemptions. Yet, Congress recognised the legitimacy of protecting oral deliberations on issues whose resolution could be

undermined by premature disclosure and thus section 9(B) of the Sunshine Act permits closure if discussion would:

> disclose information, the premature disclosure of which would… …be likely to significantly frustrate implementation of a proposed agency action.. …but [this exception] shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or.. …is required by law to make such disclosure on its own initiative prior to taking final agency action on such a proposal'

The narrow terms of this exception, however, make closure difficult in most cases.

The FACA establishes requirements that agencies must follow when consulting groups of individuals who are not federal employees, and it prescribes how such advisory committees shall proceed in rendering their service to the agency. The main requirements for the creation of an advisory committee are the existence of a charter, which must be approved by the General Services Administration; selection of members to assure diverse views on the issues to be considered; and mandatory expiration, or rechartering after two years. The main obligations of established committees are to publish advance notice of their meetings and to deliberate in public, subject to the GITSA exceptions permitting closure.

While the APA and the other laws mentioned above have affected the content of agency decisions by bringing new information and views to the attention of regulators, Congress was not seeking through their enactment to affect specific policies. Other statutes do have clear substantive objectives, though they often employ procedural means. The following are two examples of procedural statutes with substantive goals.

The National Environment Policy Act (NEPA) of 1969 sets forth procedural requirements to assure agency consideration of environmental values in the formulation and implementation of policy. Its core is the requirement that before taking any major action that may significantly effect 'the quality of the human environment', an agency must prepare an environmental impact statement (EIS) identifying those affects, detailing their significance, and evaluating their alternatives. NEPA authorises the Council on Environmental Quality to co-ordinate the consideration of environmental issues among federal agencies and, with presidential support, the Council has periodically issued guidelines for the preparation of EISs. NEPA has served as a model for other statutes that seek to broaden the range of values and the types of information which agency executives weigh in making decisions. Our second example, the Regulatory Flexibility Act (RFA) of 1980, is an illustration.

The RFA was a product of mounting concern about the impact of environmental and health regulation on economic growth and, in particular, on small businesses. The focus of the Act is ostensibly procedural; it does not alter, or require an agency to alter, substantive regulations. Rather, it compels each agency to gather information about the impact of regulatory requirements on small business.

The RFA requires all federal agencies to modify their rule-making procedures and to consider regulatory alternatives to rules, 'likely to have a significant economic impact

on a substantial number of small entities'. Before issuing a proposal, the agency has to prepare an 'initial regulatory flexibility analysis' that estimates the proposed rule's impact on small business and explores alternatives that would accomplish the same objectives. A final 'flexibility analysis' is required to be part of the record of the agency's published rule.

Congress left unclear the issue of how compliance with the RFA was to be assured. The original Act specified that an agency's failure to prepare a 'regulatory flexibility analysis' for a rule not certified as exempt shall void the rule. But it went on to provide that agency determination of the Act's applicability, as well as their analysis, shall not be subject to judicial review.

The RFA was extensively amended in 1996. Probably the most significant feature of the amendment statute is the provision allowing the judicial review of the contents of an agency' final 'regulatory-flexibility analysis', of the agency's certification that a rule will not have significant impact on small businesses, and of the agency's fulfilment of its obligation to review existing rules to see if they should be amended or rescinded in order to minimise significant economic impacts on small businesses. The 1996 legislation also prescribed additional steps that certain agencies, notably, the Environmental Protection Agency and the Occupational Safety and Health Administration, must take to elicit the views of small business firms, and requires agencies generally to publish guides for small businesses on how to comply with agency rules (Mashaw, Merrill and Shane 1998).

The examples just given show quite clearly that procedural rules are not only a means of assuring fairness and legitimacy in agency decision-making; they also fulfil important control functions, providing cost-effective solutions to problems of non-compliance by agencies. Specifically, procedures can, first reduce the informational disadvantage of political executives, stakeholders and citizens at large; and, second, they can be designed to assure that agency decisions will be responsive to the constituents that the policy is intended to favour, even when the statutory objectives are vague and seemingly give an agency great policy discretion (McCubbins, Noll and Weingast 1987: 243-277).

Thus, the procedural requirements under the APA, FOIA and GITSA reduce an expert agency's advantage over its political sponsors in a number of ways. First, agencies cannot present political principals with a *fait accompli*. They must announce their intention to consider an issue well in advance of any decision. Second, the notice and comment provisions assure that the agency learns who are the relevant stakeholders, and takes some notice of the distributional impacts associated with various actions.

Third, the entire sequence of agency decision-making—notice, comment, deliberation, collection of evidence and construction of a 'record' (dossier) in favour of a chosen action—affords numerous opportunities for political principals to respond when the agency seeks to move in a direction that officials do not approve of. Finally, the broad public participation, which the several statutes facilitate, also works as a gauge of political interest and controversy, providing advance warning about serious distributional consequences of the decisions the agency is likely to make, in the absence of political intervention.

By controlling the extent and mode of public participation, legislators can strengthen the position of the intended beneficiaries of the bargain struck by the coalition that created the agency. This has been called 'deck-stacking'. Deck-stacking enables political actors to cause the environment in which an agency operates to mirror the political forces that gave rise to the agency's legislative mandate, long after the coalition behind the legislation has disbanded. The agency may seek to develop a new clientele for its services, but such an activity must be undertaken not only in full view of the members of the initial coalition, but following set procedures that, in relation to the RFA, for example, automatically integrate the interests of small business in agency decision-making. This in turn has lead to exemptions procedures that are designed to favour them.

The National Environmental Policy Act provides another clear example of deck-stacking. In the 1960s, environmental groups sought to affect the programmes of almost every federal agency. However, the political cost of passing legislation for each agency that would alter its decision-making procedures in ways favourable to environmentalists, was too high. Sweeping procedural change that would affect the decision-making of every federal agency was a more attractive strategy. As we saw, NEPA imposed procedures that required all agencies to file environmental impact statements on proposed projects. These procedures gave environmental actors an effective avenue of participation in agency decisions and enabled participants to voice their concerns at a much earlier time than had been possible previously. The requirements of the statute also provided environmental groups with an increased ability to press suits against agencies. Thus, the passage of NEPA effectively projected the new political environment of the 1960s and 1970s into the proceedings of any federal agency whose decisions could affect environmental interests.

The Regulatory Flexibility Act of 1980 is similar to NEPA in its approach and effect. As mentioned above, the RFA requires analysis of the impact of rule-making (but not adjudication) by public agencies on the cost to small business (see, Chapter VI.4 for similar requirements in UK and EC legislation). The effect has been to enfranchise automatically the interest of small business in agency decision-making. This in turn has led to exemptions for small business in the requirements of many proposed regulations.

This chapter has reviewed a number of administrative and procedural mechanisms to control agency discretion, reduce the informational disadvantage of political executives and citizens, and to induce specialised agencies to take into account broad concerns such as the environment or the competitiveness of small enterprises. It may be useful to add a few comments concerning the last point, which relates directly to a central dilemma of regulatory policy-making.

The delegation of powers to independent agencies is basically legitimated by the agencies' expertise in a fairly narrow range of technical issues. To go beyond this range would seriously compromise not only the legitimacy, but also the credibility of an agency's determinations. However, these determinations may affect concerns and interests outside the agency's mandate. As indicated above, procedural requirements cannot go so far as to require the balancing of conflicting values. This is a political responsibility that should not be delegated to technicians. Hence, it must be possible for the political executives to intervene whenever an authoritative resolution of value

conflicts is needed. Such interventions cannot be arbitrary, however, but must follow well-defined procedures; they should be transparent (that is, plain for everybody to see), and should entail significant costs whenever they are perceived to be motivated by partisan considerations. A good model is provided by the procedures, which the German Government must follow when it wishes to overrule a decision of the independent Federal Cartel Office.

Part Three: European Agencies Within the Treaties of the European Union

(Michelle Everson and Giandomenico Majone)

Chapter VII: The Problem of Delegation

VII.1: The Meroni Doctrine and The Rise of Committees

The current European legal stance on the problem of 'non-delegation' presents the administrative law observer with a paradox deriving, on the one hand, from a continuing judicial adherence to a strict reading of Article 4 of the Rome Treaty and the restrictive 'transmission-belt' model of the 'non-delegation' principle, and, on the other, from a concomitant political recognition—given a treaty base by the SEA amendment of Article 145 EC Treaty—that effective European governance must be based upon a wide degree of delegation from the legislative, or Council, to the executive, or Commission, arm of government.

Thus, the ECJ's 'Meroni doctrine', dating from 1958 (case 9/56 *Meroni* v *High Authority* [1957-8] ECR 133, p151) and relating specifically to the ECSC Treaty, remains 'good law', applies *mutatis mutandis* to all European Treaties, and acts as an immutable barrier to the delegation of modern administrative tasks—encompassing the on-going interaction between policy formulation and execution—to institutions not named within the European Treaties. In the Court's 1950s reasoning, the Commission could, in fact, delegate tasks to experimental institutions of European administration. However, in line with a 'democratic' concern that continuing oversight need be maintained, such a delegation was nonetheless subject to strict constraints:

➢ delegation might only relate to powers which the Commission itself possessed;

➢ such assignment must relate to the preparation and performance of executive acts alone;

➢ as a consequence of this, independent bodies may not be afforded any discretionary powers;

➢ the Commission must consequently retain oversight over the delegated competence and will be held responsible for the manner in which it is performed;

➢ finally, such a delegation must not disturb the 'balance of powers' within the European Community (Laenarts 1993).

In other words, a classic and enduring restatement of the traditional administrative law maxim that democracy can only be preserved where a direct link can be maintained between the *daily* activities of the independent administrative authority and a named, and so presumably, directly accountable, treaty-derived or constitutional organ. Such a reading of Article 4 Rome Treaty, is reflected in the current composition of European Agencies, who are subject to direct Commission oversight and largely engage only in preparatory executive acts.

The ECJ's traditional reading of Article 4 Rome Treaty is nonetheless to be contrasted with the motivation which led to the insertion by the SEA of Article 145 into the EC Treaty; demanding, and indeed obliging the Council to delegate a wide-range of 'implementing' powers to the Commission. With the Court of Justice confirming (most recently, in *Germany* v *Commission*, C240/90) that the Community concept of 'implementation' indeed does entail a wide rather than restricted measure of discretion, the case of 'internal' delegation within the Communities and Union seems, thus, to reflect a more modern view of administration, which accepts that delegatee authorities must be afforded a wide room for policy-forming and implementing manoeuvre in their daily activities.

One possible explanation for the dichotomy between these two views of administration within the Union, is nonetheless provided by the growth within the institutional structure of the EU of a series of regulatory, management, scientific and advisory committees, retardedly given a legal basis under the Council's Comitology Decision (derived from Article 145 EC Treaty, [1987] OJ L197/33), and grouped under the Commission umbrella, though with subsidiary Council/Member State representation. The comitology system accordingly plays a major part in the exercise of the implementing powers delegated to the Commission by the Council and so engages in the specification of framework directives, and thus of regulatory standards, within the internal market.

With its threefold emphasis upon continuing national representation within the delegatee body or committee, the primacy of the Commission's policy initiative and the reference to scientific and technical expertise, the committee system is thus argued to supply the vital connection between delegatee bodies not foreseen by the Treaties and the 'balance of powers principle' contained within Article 4 Rome Treaty (Vos 1997). First, national representation within the all-powerful regulatory committees is argued to ensure the continuing core sovereignty of the Member states, particularly with regard to their own constitutional duties to secure the health and welfare of their citizens. Secondly, the Commission's right of initiative is claimed to maintain the credibility of the Community's functionalist/integrationist goals, ensuring that policy-making within the committee system is not directed to subsidiary or short-term political goals. Finally, committees of experts are also said to contribute to the functionalist/integrative credibility of the Community, seeking to ensure that decision-making is not merely rational, but may be proven to be such.

Not wishing to challenge this reading of the manner in which Committees supply the essential bridge to notion of the balance of powers, it needs nonetheless immediately to be noted, that, for all its value, the comitology system has not satisfied public demands that administration be made politically accountable. Thus, notwithstanding the wide-ranging committee practice of publishing their agendas and reports (also on the internet), commentators continue to bemoan their opacity; the threefold political/executive/scientific divide perhaps serving the 'balance of powers' within the EU, but also making it very difficult immediately to identify and assess the dominant rationality behind each individual decision. Such concerns were brought to a head by the BSE crisis, where public suspicion of the motives of national representatives within the committee system reflected the traditional constitutional concern that delegation within opaque institutional structures might, in fact, conceal a case of institutional 'self-

aggrandisement' or the perversion of decision-making to serve the interests of only one institutional actor; in this case, with regard to certain Members States, who, in the public mind at least, could conceivably have used their position within the comitology system to further national economic interests, rather than Community health and safety concerns.

Such worries, however, are, vitally, also augmented by the various procedural shortcoming within the committees system. In other words, the vital balancing between political goal setting and expert/functionalist rationality is ultimately a matter for political discretion, or negotiation between Member State representatives (Joerges/Neyer 1997, and not one for supranational legal oversight. The large national political element within decision-making, thus proves a barrier to the attempt to mount an effective legal challenge to individual decisions.

Given such considerations, the retarded status of agencies within the European requires re-assessment in order to ascertain whether the various normative shortcomings traditionally associated with their use might not be overcome. Once again, the legal problems are twofold and interrelated: regarding, first, the European agencies' relationship with the European notion of 'the balance of powers'; and, secondly, concerning the identification of a scheme of control which might ensure the continuing accountability to Europeans of such independent bodies.

VII.2. European Agencies and the European Balance of Powers

We have already noted (Chapter III), that European agencies are—broadly-speaking—fully supportive of a notion of the European Balance of Powers, which reads the injunction to maintain an equilibrium between the long term credibility of the functionalist/integrative goals of the European Union and the core sovereignty of the Member States, not as an enjoinder to ensure the continuing and direct participation of national and Commission authorities within all delegatee structures, but as a benchmark reference standard for flexible institutional organisation. In these terms, the very independence of agencies from the various European institutional actors may better serve the institutional balance: first, protecting Member State interests in the integrity of social and economic integration, by sheltering regulatory policies from the possibly intrusive interests of an increasingly politicised Commission; and secondly, also compensating for the increased politicisation of the Commission and the increasing powers of the EP, by shielding various functionalist/integrationist policy areas from their direct intervention.

Beyond this, however, the make-up of current and proposed European agency structures have also evolved with due respect both to the Community's need for institutional balance and with adequate regard for the more general constitutional notion that power is best controlled if shared amongst more rather than fewer institutions. Thus, and most strikingly, the 'network system' of agency operation, which has seen existing European agencies establish close relationships with national administrations in the matter of policy co-ordination and harmonised implementation, has thus preserved the 'core' place of the Member States in the grey competence area of post-market control. In this manner, the continued post-market regulatory competence of the Member States has

been preserved, whilst the requirement for co-ordinated Community action has also been met. Equally, this is a model which has found supporters at the Community level and whose rationalised extension is now being considered with regard to competition policy.

In important addition, however, the partial and proposed reframing of the committee system (in particular, as a result of the BSE crisis) within agency structures, demonstrates how public concerns that administration has not paid adequate attention to the need to protect civil society from a poor or intrusive exercise of executive power, can be met by sharing power, not among existing bodies, but among new institutions.

VII.3. The Non-Delegation Problem and Accountability

The primary barrier to the extension of the European agency model, particularly as regards the delegation to such bodies of greater discretionary competences, remains the 'Meroni Doctrine' and the ECJ's injunction to the Commission to retain daily oversight over the exercise of its executive competences within the Union.

To be sure, such a doctrine was a result of a very genuine desire to control the exercise of Community competences and to ensure the continuing vital link to the democratic legitimation of EC action furnished by the Council's ability to oversee the acts of the Commission. In this regard, however, it need nevertheless again be noted that the case of *Meroni* dates from the 1950s. As such, the Justices of the European Court were fulfilling their duty to maintain the democratic imperative within the European Communities, with reference *only* to those measures of oversight available to them at that time. In short, the case was decided prior to advances in the theory and practice of administrative control, which have since enabled governments, throughout the world, to cede a greater discretionary administrative capacity to bodies operating at 'arm's length' from them (see above, Chapter V.3). Accordingly, it may be argued that whilst the core aims of the 'Meroni doctrine', or the desire to retain the vital link between accountability and the exercise of executive functions should be preserved, the means to achieve this aim can be adapted in the light of more modern accountability securing mechanism.

Interestingly, in this regard, the current European Agencies are themselves subject to various of the control mechanisms which have since been proposed in order to ensure that no one controls agencies, and yet agencies are under control. Thus, for example, a measure of budgetary control over the agencies is provided through a review of their reports and activities by the Commission, European Parliament and European Court of Auditors. Equally, the notion that 'expertise' can ensure commitment to the well-defined political goals laid down in founding statutes, has found a hold at the European level. Thus, Council regulations stipulate the policy aims which European agencies are required to pursue; while the independent staffing policies of the agencies, as well as their large degree of more informal networking with independent and national scientific/technical expertise (EIONET is a credible example here), secure the quality of the expertise employed. Similarly, the possibilities for a judicial review of agency action at the European level are increasing. For example, the ECJ's recent willingness to deploy Article 190 EC Treaty to ensure that the decisions of Community institutions are

'well-reasoned' and are taken with adequate reference to expert advice, indicate that Community law can evolve a scheme of judicial oversight which will increase the public accountability of the European agencies through rights of individual review (see, in particular, the case of *Hauptzollamt München-Mitte* v *Technische Universität München*, Case C-269/90. [1990] ECR I-5469, requiring the Commission to consult 'experts' prior to giving a decision).

Certainly, within the European Union, various institutional problems remain. Thus, for example, the current practice of affording the Council, European Parliament and the Commission a place within the management boards of individual agencies, may or may not raise concerns about the independent integrity of the agencies activities. Equally, the limited practice of funding agencies through fees payable by industry or 'agency clients' (see, the Plant Variety Office), may also raise various concerns about the ability of independent European bodies to evade budgetary control by the Commission, EP and Court of Auditors. And finally, if agencies are to be given a greater degree of independence from the Commission, the question must be addressed as to which among the very many European institutions, *should* play a part in the vital appointment of the head of the agency.

Equally importantly, however, the judicial contours of procedural control over agencies remain to be settled. As noted above (Chapter VII.2), the primary advantage of European agencies over Committees, may be argued to be the series of procedural controls which can be developed to ensure the public's right to challenge any arbitrary, capricious, or abusive exercise of discretionary powers. Whereas the decisions of Committees, by virtue of the political discretion afforded national representatives, are difficult to challenge in the courts, the technical, non-political, decision-making of agencies may be subject to judicial review. In this regard, however, Community law must still address issues such as:

➢ *Legal standing*: or who may challenge agency decisions. Is the current practice of extending standing only to individuals who are affected by particular decisions adequate? Should the more general interests of groups of citizens (for example, interest groups, such as the Greens) be recognised through the development of group rights of standing? Alternatively, might not institutional rights of standing more closely reflect the European general interest in non-capricious, non-arbitrary and non-abusive decision-making? In this latter regard, would it be possible for, say, the EP to use its recognised legal right to uphold the institutional balance (Parliament v Council [1995] ECR I-624) to challenge an abusive exercise of discretionary powers?

➢ *Substantive versus formal review*: or the grounds upon which decision-making is to be challenged. It has often been argued that the accountability of European administration might be enhanced through the introduction of a European Administrative Procedure Act. Such an Act, in stipulating closely the manner in which agencies are to execute their functions, thus allows a formal yardstick for review which the courts may use to strike down decisions where an agency has not followed the prescribed rules. It is similarly argued that such an Act, in creating a degree of uniformity among agency decision-making processes also serves transparency by providing a fixed reference point for the public to assess the

procedural quality of agency decisions. However, the notion of a procedure-based act also tends to restrict judicial review to purely formal criteria and to hamstring the exercise of administrative powers. In theory then, Judges review decisions purely on the basis of their adherence to formal rules; they do not assess their substantive rationality. In reality, though, such formal review often masks substantive review. However, hidden behind formal reasoning, such decisions do not provide clear substantive precedents upon which future agency decision-making may be based. In this regard, more fluid bases for judicial review are represented by 'rules of reasons requirements', which, by demanding that an agency make public the *grounds* for their decision, allow that decision to be substantively reviewed in the light of further rationality criteria, such as, the proportionality of decision-making, the reference to expertise, as well as the hearing of all interested parties. In the EU setting, it is therefore necessary to ascertain whether one or both of these mechanisms of formal and substantive review would be appropriate to secure public accountability.

In sum, Europe has begun to develop mechanisms which can be deployed to assure the accountability of agencies 'operating at arm's length' from government. However, a convincing reworking of the Meroni doctrine, in order to allow for the delegation of a greater degree of discretionary powers to agencies, still rests upon the EU's ability to fill-in the current lacunae in the scheme of institutional design and procedural controls which applies to European agencies. This report seeks to offer some suggestion in this regard (see, conclusions).

However, it need also be noted that both agencies, as well as the control mechanisms which should apply to them, are not monolithic. Agencies serve a variety of functions and so have various make-ups. Consequently, institutional design and mechanisms of procedural control must be tailored to suit each particular agency and its functions. As a consequence of this, the analysis will more closely consider the typology of agencies operating at the European level (Chapter VIII). However, as a preliminary to a discussion of the typology of European Agencies, there follows a brief discussion of one of the most important developments in the EU agency structure: the evolution of agency networks.

Chapter VIII: Regulatory Networks

As noted above (Chapter IV.1), the term 'agency' includes a great variety of activities and institutional designs. The essential characteristic of an agency is not its institutional separateness but its functional independence, that is, the decisional autonomy it enjoys with respect to some defined policy areas. As long as an administrative office is in complete charge of a program, it is an agency even if it is a sub-part of a larger unit. In particular, an agency can operate as a part of a network including both national and European regulatory authorities. In fact, the new European agencies have not been designed to operate in isolation, or to replace national regulators. Rather, they are expected to become the central nodes of networks including national agencies as well as international organisations.

National and EU representatives and experts sit in the management boards and the scientific committees of the new agencies. These committees formulate the scientific

opinion of the agency, and may perform other important functions. Thus, the two scientific committees of EMEA—one for proprietary medicinal products, CPMP, and one for veterinary medicines, CVMP—also arbitrate disputes between pharmaceutical firms and national authorities. The CPMP, like the CVMP, consists of two members nominated by each Member State, while the Commission is no longer represented in the committees, no doubt in order to emphasise their functional independence.

The committee members represent the national regulatory authorities, but it would be wrong to assume that, through their power of appointment, the national governments effectively control EMEA's authorisation process. In fact, both committees—which already played a significant role in the old multi-state drug application procedure—have not only become more important, but more independent since the creation of the EMEA. This is because it is in their interest to establish an international reputation for good scientific work, and for this purpose the degree to which they reflect the views of the national governments is irrelevant.

This change in the incentive structures of regulators operating in a transnational network deserves to be emphasised by making use of a distinction introduced by sociologist Alvin Gouldner. In his work on the sociology of the professions, Gouldner introduced the distinction between 'cosmopolitans' and 'locals'. Cosmopolitans are likely to adopt an international reference-group orientation, while locals tend to have a national, or sub-national (e.g., organisational) orientation. Hence, local experts tend to be more submissive to the institutional and hierarchical structures in which they operate than do cosmopolitan experts, who can appeal to the standards and criteria of an international body of scientific peers. Using this terminology, we may say that the EMEA is pioneering in the transformation of national regulators from 'locals' to 'cosmopolitans'. It does this by providing a stable institutional focus at European level and important links to extra-European regulatory bodies, such as, the US Food and Drugs Administration.

Another interesting network structure is emerging in the area of competition policy. This development has been made possible by significant changes that have occurred in recent years in competition law enforcement in the Member States. Where, with the exception of Germany, national enforcement of competition law was virtually non-existent until 1985, today, a large number of Member States have professional competition authorities, structured to perform their functions with limited political interference—at least with respect to non-merger cases—and with a clear mandate to enforce competition rules relying on economic analysis, rather than the protection of national champions.

As early as 1992, Sir Leon Brittan anticipated that this evolution of the national authorities, in conjunction with an increased emphasis on the subsidiarity principle, would lead to 'the achievement of the Community's objectives through a co-ordinated partnership involving regulators at the Community and national level'. The recent Commission *White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty* (COM (99) 27), represents a very significant move toward the co-ordinated partnership envisaged by Sir Leon. Regulation 17, implementing Article 85 and 86 of the Rome Treaty, laid down the system of supervision and enforcement procedures which the Commission has applied for over 35 years, without any significant

change. Under this regulation, the Commission, national courts and national authorities can all apply Article 85(1), but the power to grant exceptions under 85(3) was granted exclusively to the Commission. Now, the White Paper proposes the abolition of the present notification and exemption system and its replacement by a Council Resolution which would render the exemption rule of Article 85(3) directly applicable without prior decision by the Commission, national competition authorities and national courts. In the words of the document, '[A]fter 35 years of application of the Community competition rules, the time has come to make better use of the complementarity that exists between the national authorities and the Commission, and to facilitate the application of the rules by a *network of authorities* operating on common principles and in close co-operation' (White Paper, p. 32; emphasis in the original).

For a trans-national regulatory network to function properly, several conditions have to be satisfied. First, there must be a good deal of mutual trust and co-operation. In the case of competition policy, for example, if a national authority comes to the conclusion that a case has a Community dimension and requires action by the Commission, it should be able to forward its file, including any confidential information, to the Commission. Conversely, if the Commission finds that the effects of a disputed practice are felt primarily in one Member State, it should be entitled to send the whole of the file to the competent authority in that Member State, so that the authority can continue the investigation, making direct use in evidence of the information supplied (White Paper p. 33)

A second condition is a high level of professionalisation of the regulators. One reason why Regulation 17, which was adopted in 1962, established a centralised authorisation system for all restrictive practices requiring exemption under Article 85 (3), was that in the early years, the contours of competition policy were not widely known in many parts of the Community. A decentralised authorisation system is possible today because national competition authorities everywhere are becoming more professional and increasingly jealous of their independence. Professionals are oriented by goals, standards of conduct and cognitive beliefs that derive from their professional community, giving them strong reasons for resisting interference and direction from political outsiders (Moe 1987: 2).

The importance of professionalisation is clearly recognised by the recent White Paper; for example, where it states that '[I]n the context of pre-accession strategy, the Commission will devote particular attention to the development of competition in the candidate countries and will provide their competition authorities with increased assistance' (p. 37). A similar pre-accession strategy should be followed in all other areas of regulation in order to facilitate the development of similar trans-European networks.

A common regulatory philosophy is a third important condition for the proper functioning of a regulatory network. A good example is again provided by competition policy where a high level of harmonisation has already been achieved spontaneously in the Member States. However, regulatory philosophies evolve in response to changing economic, technological and social conditions. Hence, some institutional mechanism should be provided in order to facilitate a continuous exchange of views among national and Community regulation. To this end, the White Paper (p. 37) proposes to reinforce the role of the Advisory Committee on Restrictive Practices and Dominant Positions.

According to the Commission's proposal, the Committee 'would become a full-scale forum in which important cases would be discussed irrespective of the competition authority dealing with them. It would continue to be consulted on legislation drafted by the Commission and on draft Commission decisions in the same way as today, but the Commission, acting on its own initiative or at the request of a Member State, could also be empowered to ask the Committee for its opinion on cases of application of Community law by national authorities'. Some of the new European Agencies, such as EMEA, could provide a similar forum in their respective areas of regulation.

Typically, these conditions for the viability of a trans-national regulatory network—mutual trust, professionalism, and a common philosophy—will not be fully satisfied at the beginning. However, the very existence of the network provides an environment favourable to their development. A national agency that sees itself as part of a transnational network of institutions pursuing similar objectives and facing analogous problems, rather than as a marginal addition to a large central bureaucracy pursuing a variety of objectives, is more motivated to defend its professional standards and policy commitments against external influence, and to co-operate with the other members of the network. This is because the agency executives have an incentive to maintain their reputation in the eyes of their international colleagues. Unprofessional, self-seeking or politically motivated behaviour would compromise their international reputation and make co-operation more difficult to achieve in the future.

Thus, the function of a network is not only to permit an efficient division of labour and the exchange of information, but also to facilitate the development of behavioural standards and working practices that create shared expectations and enhance the effectiveness of the social mechanisms of reputational enforcement.

There is no reason why the network model, given the right conditions, could not be extended to all areas of economic and social regulation of Community interests, and indeed to all administrative activities where mutual trust and reputation are the key to greater effectiveness. An example is the emerging pattern of co-ordinated partnership between EUROSTAT and the national statistical offices (Chapter XII).

Chapter IX: A Typology of European Agencies

IX.1. A History of Functional and Compositional Variety

Throughout the western world, agency-like bodies—boards, commissions, offices— have been created, when and where needed, to tackle unforeseen tasks of governments for which conventional administrative, legislative or judicial arms of government possess inadequate or inappropriate resources. The range of tasks with which agency-like bodies have been charged has necessarily been a wide one. As a natural consequence of both the essentially *ad hoc* nature of agency-like bodies and the wide range of tasks which they have been called upon to undertake, agency-like bodies have been very varied in their composition, placement within or without the traditional structures of government, and in their daily functions. As such, the term agency has not traditionally denoted one fixed form of administrative organisation. Instead, agencies,

boards, commissions and offices have been very differently composed and have undertaken very many varied functions (see, Chapter IV.1).

Importantly, this variety in agency structures and functions has historically been mirrored by a variance in the modes of democratic and administrative oversight which have applied to boards, commissions and offices. For example, an agency designed specifically to undertake functions usually attributed to courts will require a different structure from bodies set up to regulate a specific sector of industry. Equally, the degree and manner of democratic and administrative oversight exercised over such bodies must also be tailored to suit the functions with which they are charged.

Broadly-speaking, traditional national agency-like bodies may be categorised in a fourfold scheme of 'strong' regulatory agencies, agencies which facilitate policy-making and policy-implementation through the independent collection of information, adjudicational agencies, and institutions allocated the task of pursuing certain 'constitutional-type' normative goals, such as the control of the money supply. Importantly, these latter bodies are further distinguished from their partners by virtue of their dual function of pursuing specific policy targets, whilst at the same time exercising a restraining hand over the pursuit of *general* governmental policy-making.

1) Regulatory Agencies

If one ideal-type of agency might be said to exist, is that of the 'independent regulatory agency'. Traditionally regarded as an American phenomenon, the regulatory agency is argued to represent the apogee of independent regulation, or the 'fourth branch of government', charged with the material regulation and oversight of specific sectors of industrial and commercial activity. Thus, the regulatory agency is generally viewed as an autonomous body, which is largely free to decide for itself the regulatory schemes which should apply to industrial or commercial activity, subject to review only by the courts, in line with the need to ensure the observance of the individual rights of parties affected by agency decisions.

Not wishing to dilute this ideal-type vision of US regulatory agencies, it might nonetheless be noted that similar bodies are not only active within the modern administrations of EU Member States (the UK utilities agencies or the French Autorités Administratives Indépendents), but have also been at the heart of European industry regulation for much of the current century. Thus, bodies such as the *Bundesaufsichtsamt für das Versicherungswesen*—or the German Federal Insurance Supervisory Authority, founded in 1901—have played a major and largely autonomous role in the regulation of European industries. To be sure, European regulatory agencies have never enjoyed the degree of independence afforded to their US counterparts. The Federal Insurance Supervisory Authority, for example, is subject to the political direction and control of the German Ministry for Economics. However, the choice of a highly-structured, professionalised and largely autonomously composed administrative unit—rather than a self-regulatory scheme or direct governmental intervention—to regulate the German insurance industry, reflects very much upon the type of function which sectoral industry regulators are called upon to perform, and further represents a structured response to the

need to avert market failure, whilst requiring an industry to respond to various social demands for regulation.

Thus, the task of the classic regulatory agency is twofold. On the one hand, the agency must ensure the smooth functioning of the industrial and commercial sector and must avert any market failure. To this end, the dual requisites of consistent technical/economic expertise and long term regulatory credibility, indicate that a specialised office, rather than a generalised governmental department, is best placed to deliver consistent and effective industry regulation and oversight. On the other hand, however, the agency is likewise engaged in the oversight of an activity which is valued by the public, but which might also pose certain dangers to the general public interest. In other words, the public requires that social norms, or 'externalities', not necessarily forming a part of the usual market logic of the industry, must nonetheless be respected by that industry. To this end, the autonomous regulatory agency is advantaged above self-regulatory structures, being distanced from the 'self-interested' industry and simultaneously forming a conduit for the imposition upon that industry of social policy goals set by the legislative or executive arm of government.

In sum, regulatory agencies thus typically engage in simultaneous industrial and social regulation. As regards consistent industry regulation, their professionally autonomous structures are designed to ensure appropriate and credible regulation. On the social regulation side, a variety of measures (overall control via a governmental ministry, or the clear setting of political goals in the founding statute) provide political direction for the securing of the general public interest.

2) Independent Information Collection Agencies

The progenitor of the American regulatory agency was the turn of the century 'Sunshine Commission'. In an early example of 'soft law making', the US government thus pioneered the art of regulation through information, or attempted to ensure industry compliance with regulation through the policy of the publication by Commissions of information on industry practices.

Within modern schemes of government, however, the notion of information has taken on added importance, both with regard to the establishment of rational and thus credible governmental policy-making, and in relation to the administrative harnessing of non-governmental or private sources of technical and economic expertise, on the one hand, and of smaller, interest-group led, nuclei of public opinion on the other. Information thus no longer merely serves to ensure compliance through 'shaming and naming', but also impacts upon the material process of policy formation itself.

In this area of regulatory evolution, the EU—through bodies such as the EEA and ETF—might be argued to be in the administrative vanguard. The deployment of structured agencies, together with their networks, which are designed to undertake the dual tasks of overseeing national implementation and of supplying government with credible expertise, as well as a more 'direct' measure of public opinion, is without doubt an innovative step in the administrative process. However, such a development also raises essential questions touching upon the structuring and control of informational

agencies. Where the tasks of such agencies are limited to soft oversight over individual industrial sectors, the impact of their activities is similarly restricted, and their composition need not be the subject of rigid design questions relating to independence and accountability. However, where such tasks are extended to encompass, first, the collation of information to ensure credible policy-making at the governmental level and, second, the collection of public opinion *within* government, concomitant questions of agency design are raised.

For example, if the primary function of informational agencies is to supply the high quality information that will lend credibility to government policy making, then mechanisms need be found to ensure that the expertise of the agency is itself of the highest quality. In addition, however, it may also be necessary to afford the agency a degree of independence from government in order to assure the public that the information collection is not tainted by transient or irrelevant political concerns (see, for example, Chapter XII on EUROSTAT). Similarly, if an agency is functioning as a direct collection node for public opinion, some additional form of political oversight may be required to again assure the general public that such direct processes of opinion formation are not dominated by vested interests.

3) Adjudicational Agencies

A striking element within the history of the British use of independent commissions or boards for governmental purposes has been the heavy reliance upon court-like bodies who have concerned themselves with the settling of individual disputes arising out of complex legislation or particular policy issues. Typically, highly specialised bodies have been deployed to deal with the intricacies of employment and social security legislation; while very visible independent bodies have been established to ensure public support for dispute settlement in socially-divisive areas of policy, such as race relations legislation, where the presence of government might not be felt to be appropriate.

4) Agencies Charged With the Pursuit of Distinct 'Constitutional-Type' Normative Goals

A final and very visible category of agency at the national level, is that of the independent body set up to pursue policies, which have, in legal terms, been given a special 'entrenched' status within higher law (the constitution) and are thus to be shielded from all and any political interference. The most immediate example of such an agency, is the central bank, which is established to ensure a long-term commitment to monetary stability.

Clearly, such agencies are distinguished from the regulatory agency model by virtue of the fact that they are not merely established to avert market or monetary failures, but also serve a subsidiary function of placing a check upon the overall political discretion of governments. Thus, for example, the *Bundesbank's* historical brief to secure the German Constitution's (indirect) commitment to price stability, finds its corollary in the subsequent restriction of the German government's usual degree of political discretion, at least in the area of monetary policy. As a consequence, central banks are distinguished by their very high degree of structured independence from government.

A model which is, by and large, accepted in the area of monetary control, the highly independent agency dedicated to the securing of policies that are entrenched in higher law, may now also be beginning to play a part in further policy areas. Thus, for example, the Maastricht Treaty's stipulation that '[E]nvironmental protection requirements *must* be integrated into the definition and implementation of other Community policies (Article 130r TEU (emphasis added)), could be read as a demand that the autonomy of general EU policy-making be subject to a 'green veto'. In this sense, it might similarly be argued that the increasingly autonomous activities of the EEA are to be seen in the light of a check upon general EU policy-making.

IX.2. Compositional and Functional Variety within the EU

Within the European Union, it is immediately apparent that the new European agencies have, in large measure, been established to fulfil the tasks traditionally assigned to agencies in the national setting. Thus, for example, the Medicines Agency (EMEA) has about it the air of a fully-blown regulatory agency, and while final responsibility the pan-European pharmaceuticals regime is still a matter for the Commission (and, to a degree, the comitology system), EMEA nonetheless plays a highly autonomous role in industrial and social regulation, authorising new products and ensuring that such products comply with established social norms. Similarly, the Office for the Harmonisation of the Internal Market, together with the Plants Variety Office, has a largely adjudicatory role in the very complex area of the award of patents and their administration. Further, EMCDDA, plays a role in regulation through information, collating details on drugs use and abuse throughout the EU. And finally, the new ECB is prominent example of highly independent body seeking to preserve the goal of price stability and placing an autonomous check upon the political discretion of the Member States of the Union.

However, in addition to these traditional governmental tasks, the European Union is a new and highly differentiated polity of its own, and seems also to have established the New European Agencies with an eye to the very particular functions which a supranational polity must now fulfil. In this regard, the innovative roles of informational agencies within the EU have been briefly touched upon above IX.1). However, a more complex series of agency functions, specific to the EU may also be identified:

(i)   *Internal Market Facilitation and Administration*: One of the primary tasks of agencies such as EMEA and the EHSA, is the maintenance within the Member States of the common standards, set within the comitology framework, which form the basis for the mutual recognition of the quality and admissibility of goods and services flowing across national frontiers.

(ii)   *Risk Regulation*: A major part of market facilitation and administration involves the agencies in the highly complex task of risk regulation. For example, in authorising medicinal products and supplying technical information to the regulatory pharmaceutical committee which sets control standards, EMEA plays a major role in the highly sensitive area of risk assessment and management.

(iii)   *Facilitating Technical Interaction between the Member State Administrations*: In a task which is once again closely related to the functioning and administration of the internal market, networks, such as EUROSTAT, and agencies, such as EMEA and its pharmocovigilance network, ease the functioning of the internal market by establishing contacts or networks between the national administrations who are called upon to play the pivotal role in the rapid identification of and reaction to problems of post-marketing control.

(iv)   *Policy Facilitation*: The Commission is a very small body. It lacks the expert staff who might develop credible policies and regulatory schemes. In this regard, agencies, such as the EEA, by marshalling and furnishing expert advice, augment the policy-making and regulatory capacities of the Commission.

(v)   *Policy Control*: By contrast, the use of agencies such as the EEA to collate independent sources of information upon which Commission policy-making *should* be based, also acts an essential check on the autonomous policy making capacities of that body.

(vi)   *Policy Impetus*: Similarly, the networking with a broader public which bodies such as the EEA and EMCDDA undertake, also provides a further source of policy impetus into the EU decision-making process, with private (interest group led) parties playing a more direct role in the collation and assessment of information.

(vii)   *Encouraging Co-operation between the social partners and EU and Member State governments*: Typically in areas of weaker EU competence, agencies such as CEDEFOP and the European Foundation for the Improvement of Living and Working Conditions provide a central node for interaction between labour, management and government in the matter of the development of better social and labour conditions.

(viii)   *Social Policy*: Again in areas of a weak EU competence, bodies such as EMCDDA and the proposed European Monitoring centre on Racism and xenophobia, act as an impetus for a European social policy, collating information and statistics upon which joint Member State or future EU policies might be based.

(ix)   *Facilitating Intergovernmental Co-operation*: In the area of social policy, the co-ordination amongst the social partners undertaken by bodies such as CEDEFOB, and the informational role assumed by EMCDDA, form a basis for governmental agreements on policy co-ordination.

(x)   *Administrative Facilitation*: Again, where the administrative resources of the EU are limited, agencies may provide additional expertise and skills through the supervision of sub-contracted services. Such supervision can relate to limited and highly technical tasks, as is the case with the Translation centre; it may, however, also have a far wider impact upon general EU policy with, for example, the activities of the European Training Foundation, preparing the way for future EU enlargement.

From this list of 10 functions peculiar to agencies within the European Union, a few trends within agency activities might be identified. First, in the area of a strong EU competence to facilitate the functioning of the internal market, agencies play a vital co-ordinatory role, ensuring the implementation of EU standards by national authorities and compliance with such standards by industry. In the area of a weaker EU competence—social policy—agencies play a softer role, supplying information and bringing social partners together in an effort to facilitate governmental co-ordination of policies and action. In the sphere of information, agencies undertake many tasks, supplying information simply so as to ease EU policy-making, furnishing a source of independent information which might conversely act as a quality check upon that policy-making, and finally marshalling public opinion and giving it a more direct route to influence EU policy making. Finally, in the area of simple administrative facilitation agencies increase the EU's administrative capacities through the co-ordination of sub-contracting.

IX.3. Towards a Typology of EU Agencies

The trends identified above allow us to suggest a tentative typology of EU agencies. Perhaps more importantly, however, this typology also helps to shed some light on the currently very varied institutional structures of EU agencies.

(Table adapted from Neils Ahrendt 1996: Agencies cited in brackets, denote a 'partial classification' or, a lack of clarity in the tasks apportioned to the Agency)

Agency	Function	Structure
1. *Adjudicational/Standard overseeing agencies*: EMEA and (the European Agency for Health and Safety at Work)	Supplying the comitology system with the information necessary for the setting of standards; networking with national administrations to ensure implementation; direct powers over industry in the matter of authorisation.	Structured central agency; strong networking with national administrations; partially self-financing (EMEA); partially financed from the general EU budget (health and Safety).
2. *Market facilitating agencies*: OHIM; Community Plants variety office	Facilitation of a consolidated internal market by the direct administration of patent award schemes laid down in the agencies' founding statutes (quasi-judicial)	Highly autonomous institutions, funded by industry clients.
3. *Policy facilitation through information provision*; *check on policy through information provision*: (EEA)	Collation of information from governmental and private sources; networking with national administrations; supplying the Commission with information on which to base policy; reviewing national implementation; shame and name.	Fairly strictly structures central agency though with a looser network; financed by Commission; fairly direct oversight by DG 11 (on the management board)
4. *Policy Impetus Agencies*:	Tripartite instrument for bringing the social partners together in a closer collaboration through collection and dissemination of information [European foundation for the improvement of Living and Working Conditions; European centre for the development of Vocational Training; and the (the European Agency for Health and Safety at Work]; Simple policy impetus agencies via the collection and collation of information from national administrations and the general public [(EEA); EMCDDA; European monitoring centre on Racism and Xenophobia]	Less structured and less autonomous; financed directly by the EU budget; smaller staffs and greater number of social partners on the management and or administrative boards
5. Administrative facilitation agencies: Translation Office and European Training Foundation	Oversight of sub-contracted services	Less strictly structured; partners represented in advisory forum (ETF); funding from Community budget and from Member States and Partner Countries (ETF)

In sum, the function undertaken by the European agency is generally reflected in its structure. The need to supply simple patent management services to industry has led to the creation of highly autonomous bodies that are exclusively funded by industry. Similarly, the dual functions of standard control agencies—to provide information for the setting of standards and to oversee their implementation by the Member States, as well as industry compliance—determines that they are funded both privately and by the

Community, while a degree of political oversight is maintained in their management boards. Equally, informational agencies are structured according to whether such information is designed to provide a policy impetus in a weak area of Community competence, or is conceived as an aid to Commission policy making (whether as a facilitator of or check upon such policy making). Finally, administrative facilitation agencies are again designed for their exact purpose: the ETF, being open to the participation of partner countries or candidates for EU membership.

IX.4. Agency Design and Adequate Mechanisms of Control?

Given this initial typology of EU agencies, the question now arises as to whether such agencies are correctly designed to fulfil their functions and whether the mechanisms of control which attach to them are adequate to ensure their political accountability and their general suitability to the tasks assigned them.

In this regard, however, this section concludes by highlighting the major problem which now faces the designers of European agencies: the fluidity of their tasks. In other words, various agencies—and most notably, the EEA—appear to be undertaking very varied and possibly conflicting functions. In this regard then, the major challenge to agency design and the development of a suitable scheme of agency oversight would appear to be the need to clarify exactly what is expected of European agencies and how their functions are to evolve as the agencies are develop. This will form the major topic tackled by the case studies in this report. As a preliminary introduction to this theme, however, the annex to this section includes detailed tables of agency functions in order to demonstrate the imprecision in the roles which EU agencies are currently playing. In particular, Table 6 demonstrates how agencies are often called upon to pursue more than one of the agency functions that are peculiar to the EU.

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Annex Two: Agency Functions and Composition

Table 1: Standards Control Agencies

Standards Control Agency 1

AGENCY	European Agency for the Evaluation of Medicinal Products
INTIALS AND LOCATION	EMEA – London
DATE/REGULAT-IONS	1995 Council Regulation 2309/93, in conjunction with directives on the authorisation of medicinal products—17/319/E 81/852/EEC; 93/40/EEC
MISSION	(i) very serious pre and post-market control in the area of medicinal products (especially in the area of biotechnology), v setting: 'high level of protection,' though ultimate control exercised (politically) by a regulatory committee within Com (ii) plus a heterarchical link with the market—advising firms on their research.
FUNCTIONS	Complex: (i) authorisation/withdrawal of community-wide products (ii) mobilising national resources; ie, information and research on medicinal products to aid in evaluation of putative co (iii) sitting at centre of Pharmocovigilance network which exercises post market (iv) co-ordination with WHO (art. 25 2309/93) (v) advice to industry (vi) co-ordination with national health–pricing remains in national hands (vii) functions (art. 52 2309/93) include review of issues such as labelling (viii) decentralised enforcement—MS law governs sanction for abuse
LEGAL BASIS	Article 235 plus harmonisation directives
FUNDING	Fees, plus Community subvention (no information on surpluses)
INTERNAL STRUCTURE	(i) Executive Director appointed by Council (5 years non-renewable) (ii) Management Board: two members per MS, two EP, two Commission (meets 4 times yearly) (iii) two scientific committees, CVMP and CPMP, 32 members each with MS's nominating two experts each (v) technical and administrative secretariat
CONTROL/ACC-OUNTABILITY	Dual control of daily functions plus general administrative activities (i) Daily functions - founding regulation plus medicinal directives give exact procedures for approval and withdrawal. 2 a rule of reasons requirement; but note, no exact provisions for ECJ review; instead political review by regulatory comm opinion can be challenged under general Art. 173 procedures) (ii) Administrative activities: budget to Council, Commission, EP, Court of Auditors
CLASSIFICATION	Not a full blown regulatory agencies in that it has no free-standing enforcement powers and, legally at least, does not en setting. However, very close; established to replace scientific committee—why? (i) technicality of medicinal research—constant heterarchical links needed with industry (ii) sensitivity (?) difficult area of risk regulation, takes heat off Member States (iii) Administrative efficiency–speedy authorisation and post-market control

Associated Network

NETWORK	Pharmacovigilance network
LEAD AGENCY	EMEA
REGULATIONS	
MISSION	
FUNCTIONS	
FUNDING	
STRUCTURE	
CONTROL/ACCOUNT-ABILITY	
CLASSIFICATION	

Standards Control Agencies 2

AGENCY	European Agency for Health and Safety at Work
INTIALS AND LOCA-TION	Bilbao
DATE/REGULATIONS	1996 by Council regulations 2062/94 and 1643/95
MISSION	In order to encourage improvements in the working environment, the Agency provides Community bodies, MS's and safety at work with the necessary scientific, technical and economic information of use in health and safety p
FUNCTIONS	(i) Information gathering and dissemination to all bodies concerned. (ii) Information gathered from national bodies—administrations and social partners. (iii) more specifically, information to Commission, who take action with the aid of a regulatory committee
LEGAL BASIS	Article 235 -- where is the Commission's competence in health and safety matters?
FUNDING	Community subvention
INTERNAL STRUCTURE	(i) Administrative Board: 48 members, 15 from MS administration; 15 from employers associations; 15 from em decision taken by 2/3rds majority. Observers may be invited from international organisations. (ii) Director: appointed by advisory board.
CONTROL/ACCOUNTAB ILITY	(i) Budget to Commission/EP/Court of Auditors (ii)Local Courts for contractual liability/ECJ non-contractual liability (iii)Legal personality
CLASSIFICATION	Hybrid institution: small standards control role plus soft policy-making via informational contact with social part (i) Standards control: insofar as Commission has regulatory right of initiative over production process (internal n acts as a scientific committee to feed economic/scientific facts to Commission's regulatory Committee. (ii) Soft policy making: wide consultative role of social partners equals input of socio-economic interests into EU information.

Table Two: Market Facilitating Agencies

Market Facilitating Agency 1

AGENCY	Office for Harmonisation of the Internal Market
INTIALS AND LOCATION	Alicante
DATE/REGULAT-IONS	1994 by Council Regulation No 40/94 Regulation also creates detailed scheme of community trade mark. An integrated scheme of regulation plus an agency
MISSION	To award, register and administer the Community trade mark
FUNCTIONS	Three functions: (i) quasi-judicial: award of trademark following very fixed, soft legal procedures laid down in the regulation. (ii) administrative market facilitation: maintain and make public the registers of trade marks To a large degree its work is enforced decentrally: (i) Judgments: application governed by 1968 Brussels convention (Art. 90 of 40/94) (ii) Enforcement by Member State Trade Mark Courts (Art.91 of 40/94) (iii) Close contacts with Member State Trade Mark Offices
LEGAL BASIS	Article 235 EC
FUNDING	From fees - with Commission subvention where necessary - surplus expected for 2000
INTERNAL STRUCTURE	(i) President: Appointed by the Council for 5 years (non-renewable) (ii) Administrative Board advises President: one member per Member State plus one member for Commission (three years (40/94) simple majority voting. (iii) Beyond that: examiners; oppositions division; administration of marks; cancellation division; boards of appeal
CONTROL/ACC-OUNTABILITY	Note dual control: of the judicial activities of the office plus of its administrative structures as a whole Quasi judicial procedures: Regulation 40/94 is an Administrative Procedures act of its own. Very strict rules on award, ca marks -- article 63 exactly regulates appeals to ECJ (rule of reasons requirements [art. 73] and possibilities for substantive Medicines/health and safety -- political review through associative regulatory/advisory committees). Only agency with exactly structured judicial appeals procedure General administrative accountability: The usual: annual report of activities plus budget sent for approval to Commission, Note, in view of its own finance raising capacities, the office has its own budget committee made up of member State repr simple majority. Similarly, a Fees Commission, which assists the Commission in setting, charges.
CLASSIFICATI-ON	A qausi judicial organ with real executive functions though implementation is decentralised. Note: not a 'regulatory' agency, since not engaged in the setting of standards; more a market facilitation body, whose cha by its intense sense of independence from 'regulatory' structures of the Commission and respect for its own industry 'clie

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Market Facilitating Agency 1

AGENCY	Community Plants Variety Office
INTIALS AND LOCA-TION	Brussels (temporary)
DATE/REGULATIONS	27th April 1995
MISSION	To administer plant variety rights
FUNCTIONS	
LEGAL BASIS	
FUNDING	
INTERNAL STRUCTURE	
CONTROL/ACCOUNTABILITY	
CLASSIFICATION	

Table Three: Policy Facilitating/Checking Agency

AGENCY	European Environment Agency
INTIALS AND LOCATION	EEA in Copenhagen
DATE/REGULAT-IONS	1993 by Council Regulation 1210/90; Note, proposed amendment (COM/97282)
MISSION	To achieve the aims of environmental protection and improvement laid down by the Treaty; to provide the Community a objective reliable and comparable information at European level, enabling them to take the requisite measures to protect ensure the public is properly informed; to that end providing the necessary technical and scientific support.
FUNCTIONS	(i) Furnishing information on air, water, fauna, flora, natural resources, noise, chemicals, coastal protection; (ii) to Members States, Community, Trade Unions, interests groups; (iii) Information collected at national level
LEGAL BASIS	103R EC
FUNDING	Community Budget
INTERNAL STRUCTURE	(i) Management Board: One member per MS, 2 from the Commission—EP designates 2 experts (ii) Chairman, elected by MB for 3 years (iii) Executive Director, elected by MB for 5 years (iv) Scientific Committee—9 members who are 'qualified' -- appointed by MB
CONTROL/ACC-OUNTABILITY	(i) Annual report of activities drawn up by management board; sent to Council. Commission, Member states (ii) Budget to same. (iii) Contract liability, under law of MS concerned; non-contractual liability to ECJ
CLASSIFICATION	The agency has a very real policy-making function—control EU environmentalism. However, influence is informal—so information. Heterarchical: integration with national administrations interests groups—information gathering at site of problems, pri node in environmental network.

Associated Network 1

NETWORK	EIONET
LEAD AGENCY	EEA
REGULATIONS	
MISSION	Decentralised information gathering and dissemination
FUNCTIONS	Member State informational nodes basis of agency information
FUNDING	
STRUCTURE	
ACCOUNTABILITY	Art 5 1210/90: individual contracts with EEA stipulate work to be done by network nodes; sanctions etc for non-ful
CLASSIFICATION	Fully heterarchical policy informing network: though, note website, nodes are not transparent.

Table Four: Policy Impetus Agencies

Policy Impetus Agency 1

AGENCY	European Centre for the Development of Vocational Training
INTIALS AND LOCA-TION	CEDEFOP Thessalonika, (ex Berlin)
DATE/REGULATIONS	1975, Council Regulation - 337/75
MISSION	To contribute to the development of vocational training through academic and technical activities (specifically to a
FUNCTIONS	Documentation; Information; plus, its own competence in the organisation of training courses
LEGAL BASIS	Article 235 EC --- to answer 118 EC duty of Community to promote co-operation between Mamba States in matte
FUNDING	Community Subvention
INTERNAL STRUCTURE	(i) Legal Capacity rather than legal personality - Executive Director is the legal representative (consequences?) (ii) Managing Board: (appointed by Council) 15 Member State; 15 Employer organisations; 15 Employee organisa Commission Representatives (all 3 years renewable) (iii) Chairman: appointed by managing Board for one year (iv) Executive Director: appointed by Managing Board for 5 years
ACCOUNTABILITY	(i) Report of yearly activities to Commission (ii) Budget to the Commission and Council (Court of Auditors?) Parliament (iii) Local laws for contractual liability; ECJ for non-contractual liability
CLASSIFICATION	An original agency; marked by two features: (i) Outsourcing of Commission tasks of policy impetus - limited to information gathering (EC competence suggest (ii) Corporatist impulse -- unions/employers -- is it changing to a social partner/private interests In brief, typical soft policy-making impetus in an area of weak EC competences

Policy Impetus Agency 1

AGENCY	European Foundation for the Improvement of Living and Working Conditions
INTIALS AND LOCA-TION	Dublin
DATE/REGULATIONS	1975 by Council Regulation 1365/75
MISSION	Planning and establishment of better living and working conditions via the dissemination of information to serve tl Specific areas: man at work; working conditions; problems of particular categories of workers
FUNCTIONS	Disseminate information to universities, trade unions, economic and social administrations Co-operation with international bodies (ILO) and national administrations
LEGAL BASIS	Article 235
FUNDING	Community subvention
INTERNAL STRUCTURE	
ACCOUNTAB-ILITY	
CLASSIFICATION	Very soft policy influence in an area of very limited EU competence. Corporatist influence again very strong.

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Policy Impetus Agency 2

AGENCY	European Monitoring Centre for drugs and Drug Addiction
INTIALS AND LOCA-TION	EMCDDA
DATE/REGULATIONS	Lisbon 1993 by Council Regulation No. 302/93
MISSION	To provide EU citizens/politicians/those working in the drug field with information to enable them to take action problems; exclusively concerned with information
FUNCTIONS	Collect/analyse existing data
	Improve data comparison methods
	Disseminate national information and data
	Co-operate with EU and international organisations
LEGAL BASIS	
FUNDING	
INTERNAL STRUCTURE	
CONTROL/ACCOUNTAB-ILITY	
CLASSIFICATION	(i) A soft policy impetus instrument in area of no real EU competence—facilitating 'intergovernmental' and 'inte
	(ii) heterarchical learning node via contacts with national administrations and private actors

Policy Impetus Agency 5

AGENCY	European Monitoring centre on Racism and Xenophobia
INTIALS AND LOCA-TION	
DATE/REGULATIONS	Proposal No 1035/97
MISSION	
FUNCTIONS	Information based
LEGAL BASIS	
FUNDING	
INTERNAL STRUCTURE	
ACCOUNTABILITY	
CLASSIFICATION	Soft policy making in an area of weak EU competence

Table Five: Administrative Facilitation Agencies

Administrative Facilitation Agency 1

AGENCY	European Training Foundation
LOCATION/INITALS	Turin
DATE/REGULATIONS	1995 by Council regulation No. 1369/90, amended by No. 2063/94
MISSION	Per self—created as a specialised body to answer EU's involvement in special issues, in this case E. Europe Objectives: -contribute to reform of vocational training in partner countries -co-operation PC's and EU -co-ordinate donor assistance -technical assistance to Commission for implementation on Tempus
FUNCTIONS	(i) Providing assistance in planning job schemes etc…. (ii) Implementing/monitoring/information dissemination
LEGAL BASIS	Article 235
FUNDING	Commission plus monies made available by MS and PCs
INTERNAL STRUCTURE	(i) Governing board: one representative per Member State, plus 2 representatives from Commission (ii) Chaired by Commission Representative (iii) Advisory forum : experts and social partners, two per MS, one per PC, plus relevant international organisation (iii) Director of foundation 5 years appointed by governing board (director is legal representative [art 7]-- no legal
ACCOUNTABILITY	(i) Annual activities adopted with aid of Commission (ii) Budget to Commission and Court of Auditors (iii) Art 15, contractual liability under relevant national laws (but no personality?) (iv) ECJ non-contractual liability.
CLASSIFICATION	Outgrown shape of original EU corporatist agencies in areas of little competence. Instead: (i) Real administrative facilitation (ii) Heterarchical learning node rather than corporatist

Administrative Facilitation Agency 1

AGENCY	Translation centre for Bodies in the European Union
LOCA-TION	Luxembourg
DATE/REGULATIONS	1994
MISSION	
FUNCTIONS	
LEGAL BASIS	
FUNDING	
INTERNAL STRUCTURE	
ACCOUNTABILITY	
CLASSIFICATION	

Table Six: Varied Functions

AGENCY/ NETWORK	EMEA	PHAR-MA NET	EHSA	EEA	EIO-NET	OHIM	PLANTS	CED-EFOP	LIVING WORK-ING FOUND-ATION	EMC-DDA	RACISM	TR
INTERNAL MARKET FACILTATION	X	X	X			X	X					
RISK REGULATION	X	X		X	X							
FACILITATING ADMINISTRATIVE INTERACTION	X		X	X	X							
POLICY FACILITATION	X		X	X	X			X	X	X	X	
POLICY CONTROL	X	X	X	X	X					X	X	
POLICY IMPETUS		X	X	X	X			X	X	X	X	X
ENCOURAGING TRIPARTITE CO-OPERATION (MS, SOCIAL PARTNERS, EU)		X	X	X	X			X	X			X
SOCIAL POLICY			X					X	X	X		X
FACILITATING INTERGOVERN-MENTAL CO-OPERATION			X	X				X	X	X		X
ADMINISTRATIVE FACILITATION												X

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Part Four: Case Studies

(Les Metcalfe, Adriaan Schout)

Chapter X

The European Environment Agency (EEA): Heading Towards Maturity?

(Adriaan Schout)

X.1. Introduction

Preface

This study of the EEA is an initial attempt to unravel its history and to map its structures. Given the time allocated to this study (approximately 20 days – including the writing), it was not possible to deal in detail with all aspects of the EEA, its structures, its tasks, and the way in which it operates and is controlled. The differences between views given in the interviews and general evaluations of the EEA were simply too great for the production of a conclusive study.

These different views mean, of course, that the case of the EEA is highly interesting for understanding and discussing the difficulties that may arise in the process of creating, managing and controlling an agency. The EEA offers all the seeds of a insightful study: sensitive relationships (e.g., between the EEA and the Commission), multi-interpretable tasks, different views on priorities and historic events, difficulties in steering and controlling, to look for appropriate designs (of the EEA, of the Commission, for steering the network), etc. Under such circumstances, it is no surprise that interviewees referred to the situation around the EEA as a 'hornets' nest' or, as 'too complex to understand'. These conditions are course especially interesting for studying the agency phenomenon and for someone with an organisational perspective.

Interesting as this case may be, it does not necessary lead to a report that is an easy read. This is the first report on the EEA in operation and hence all the confusion, sensitivities and contradictions have to be reported and analysed. The differences between interviewees, the unresolved issues, the complexities, the multiple functions, the diverging expectations, the great variety of stakeholders, etc., make it hard to present the material in a straightforward way. Thus, it is written with many "on the one hands', on the other hands', 'some say, but others say", phrases. At this stage, it is important to report people's opinions and to link conclusions to these initial interviews. The EEA is too multifarious for a more distant expert opinion on the situation. That would have required much more time and different kinds of methodologies (systematic surveys based on questionnaires among a larger representation of the stakeholders). This was not possible in the time frame of this project. However, there will be soon the evaluation of the EEA which allows more in depth treatment of the topics introduced in this paper (approximately 6 months for a team of researchers). Undoubtedly, the attempts to balance opinions will not have been conclusive and many involved in the EEA will feel misrepresented. Therefore, I should stress that this report only provides an initial description and analysis.

The analysis consists of three parts. Part X.1 covers the history and the tasks of the EEA and places it in the context of administrative decentralisation. Subsequently the design of the organisation and of its networks will be analysed in order to see whether structure matches strategy (Part X.2). The final Section X.3 provides an analysis of the empirical findings and relates the operations of the EEA to inter and intra-organisational design .

1) The Emerging Administrative System for EU Environment Policy

Understanding the evolution of agencies within the EU requires careful consideration of the situation in which they were introduced as administrative innovations. In general terms, the weaknesses in the EU polity have already been mentioned in the opening Chapters of this report. Here we will start with a brief review of the particular conditions that called for agency type of constructions in the field of environment policy.

The origin of the EEA is linked to the successes in the field of European environment policy (Jiménez-Beltrán 1996). The major advancements in this area however also produced frictions in the formulation and implementation of policies. The following issues characterised the situation at the turn of the decade 1980s/1990s (see for instance Kraemer 1997):

➢ Data limitations (absence of data and the available data was not comparable). Reliable environmental monitoring systems did not exist and Member States were reluctant to provide data.

➢ Implementation deficits (e.g., difficulties in monitoring and enforcing due to lack of data on implementation or on effects of measures and political sensitivities in monitoring).

➢ Doubts about the ability of—EU and national—administrations to defend the environment vis-à-vis other policy areas.

➢ Limited practical relevance of the Court of Justice in the field of environment policy and lack of resources and of instruments for inspection at EU level.

➢ Inconsistent objectives in legislation (due to, among other things, the need to arrive at compromises in the EU policy process).

➢ In addition, there is, at present, a concern over waning public interest in the environment.

Environment was clearly one of the growth areas, was putting additional claims on scarce resources, and required extensive information on the state of the environment.

During the 1990s, ambitions in European environment policy were sharpened and the 'integration' principle - or 'sustainable development' - developed into a major policy objective. Even though the principle of integrating environment policy into other policy fields had already been mentioned in previous environment Articles (ex Article 130s) and in the environmental action programme (1992), 'Amsterdam' gave it a more prominent place in EU policies (Preambles plus Articles 2 and 6). This changed environment from a vertical responsibility, concentrated within DG XI, to a horizontal policy.

The development of environment policy demanded administrative innovations. In line with new trends in governance, decentralising tasks in agencies and horizontal co-

operation structures between Member States (assisted by agencies) were put forward as the solution to the problems mentioned above. EEA and, later, IMPEL are fruits of this. IMPEL is an intergovernmental network based on voluntary co-operation between Member States. The EEA embodies a mixture of Community and intergovernmental elements. The innovations were aimed at better information for policy-makers, the creation of a policy community which would lead to exchange of experience and peer group pressure, an increase in public awareness, and better and complementary use of national and EU administrative capacities.

a) Key Questions and Outline

This Chapter focuses on the EEA as an organisation. Does the organisational design chosen give rise to a credible independent agency that produces relevant and high quality output? Creating agencies is one thing, designing for effectiveness is another. As discussed in Chapters 1-3, and as becomes clear in these empirical Chapters, independence, credibility and quality occupy a prominent place in the discussion on agencies as administrative innovations. These terms also figure in the founding Regulation of the EEA. But how is it designed to live up to these expectations?

The purpose of this Chapter is, therefore, to identify different design elements and to describe them. Moreover, an initial attempt is made to relate the design elements to the behaviour of the agency.[1]

The notion of 'design' in this project relates to the size and structure of the agency, the quality of its tasks, the set up of the network, decision-making procedures on programmes, supervisory structures and the Commission's internal management in relation to the agency.

The term 'designed' does not necessarily indicate an active and purposeful attempt to get the structure of the agency and its networks right. In fact, new organisations usually emerge from a set of different expectations. The issue here is, therefore, to describe and analyse the structures that have emerged and to see whether the structure that has evolved is effective in view of the tasks attributed to the EEA and its networks.

Seeing the development of the EEA as a part of an emerging environmental system, is particularly relevant because, first of all, environment policy was increasing without, initially, due consideration to the management of the policies. The agency was intended to be a node in a subsidiary—decentralised—network of national organisations. However, it was not clear how to construct such a decentralised structure and what was expected from the EEA (e.g. what does network management require?).

Secondly, those involved in the process of setting up the EEA adhere to strong, and, to some extent, conflicting ideologies of how to conduct environmental policy. Some

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[1] Given the fact that there is little empirical information available on the design and performance of agencies (or on the performance of the EEA), any attempt to relate performance to design can only be tentative. More case studies are needed for this purpose.

(broadly speaking the northern Member States) regard information as an important instrument to change behaviour. This creates specific expectations of the EEA's role in informing the public of the state of the environment and of possible measures for improvements. Others prefer to stick to the classical model of conducting EU policies, to whit, through Commission proposals and Council decisions. In this view, the EEA should be confined to satisfying the specific needs of the Commission for information.

These different views have had major implications for how to run the EEA and its networks. The agency has emerged out of the tension between these two views. Both, the design and the purpose of the agency were unclear at the start of the agency. This tension resulted in the consensus that EEA should do both (and given this workload, the attention for design soon evaporated).

Thus, one part of its task is to produce facts and figures for policy-makers. Another part is broader and concerns providing independent information to the public and providing 'policy relevant information' to policy-makers. This latter task includes analysing situations. To some extent, these tasks are compatible. They both relate to data gathering. However, the analysis part of its work is more demanding. This raises the question of how the agency ensures relevance, independence and quality in both parts of its task and of how it is able to combine both tasks with such a small staff.

One issue related to the tasks of the EEA, is the line—or grey area—between, on the one hand, analysing current situations and the effects of policies and, on the other hand, moving towards policy advice. There has been a constant tension between DG XI and the EEA over this. DG XI wants, first and foremost, information (data and analysis) which supports their policies and their policy processes. The EEA, however, has shown a desire to attach policy-related remarks to their analysis. The interviews made it clear that where the balance lies between analysis and policy advice depends on which side you are talking to. Also the opinion about who crosses this fine line is very subjective (i.e., DG XI in 'limiting' the EEA or presenting the EEA as a pushy organisation only interested in sexy policy work). This tension between analysis and policy—and hence between the EEA and DG XI—was a topic that appeared, one way or other, in almost every interview.[2] The unclear relationship between the EEA and DG XI has yet to be settled.

b) Data

This Chapter is based on interviews, reports (annual reports and internal EEA reports) and other relevant documents provided by officials in the EEA or the Commission (letters sent between Commission and agency, Board documents, etc.). Interviews were conducted with experts within the EEA and with people who are in contact with the EEA or who depend on its output. The broad spectrum of interviewees included EEA management, independent experts, national and Commission officials and (former) national experts in the EEA.

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[2] This tension is almost inherent to such an agency. It was also frequently reported in the context of national environment agencies.

A check on the information and the way it is presented took place by means of the sending drafts of this document, or of individual Sections of the report, to people who have been involved in the development of the EEA. Their comments are as much as possible incorporated in the report.[3]

The interviews relied on semi-open interviews. To ensure comparability between the four empirical studies in this report, a set of topics was agreed which was to be addressed in each case study. The issues covered in the interviews concerned the tasks of the agency and the organisation of the agency, of the network and of the Commission. The interviews were transcribed more or less literary.

2) A Brief History

One leitmotif in the history of this young agency is the grey area between policy analysis and policy advice.

The second leitmotif is the tension between factual basis for policy and information to the public. On the one hand, the origin of the EEA is closely related to a need to support European environment policy with facts and scientific evidence. On the other hand, particularly as a result of policy innovations in northern Member States, information became more popular as a tool for increasing awareness of the state of the environment.

The growing body of environment policy and the need for data resulted in the declaration at the Council in Rhodes (1988) in which the heads of state asked for better information on the state of the environment. Mr Jacques Delors seized the opportunity to announce, in 1989 before the EP, plans to deepen the co-operation in data gathering through a European network.

The initiative from Delors was both instigated by practical as well as conceptual considerations. There had been a clear message from the Member States that the Commission could not be further expanded. Therefore, the network ideas in new public management came in handy. Also more philosophical considerations lay behind the switch to this decentralised governance model. Support for the subsidiarity principle had gathered momentum. The network approach offered the opportunity to involve Member States and to build up capacities for assessing the state of the environment at

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[3] It was sometimes difficult to take all the feedback into account as it varied strongly. Remarks ranged from 'a fair description of the situation', to being too positive about the way in which the agency supports Commission officials or being too negative about this interface between Commission and agency. The differences in the comments probably emphasise, in the first place, that there are different expectations about the tasks of the agency—and hence the differences in appreciation. Secondly, the situation is changing. Some interviews apparently had past experiences in mind when commenting, some pointed to positive developments foreseen in the future relation with the agency and others were not so sure about whether the suggested changes would be substantial. In assessing the current situation, one, therefore, has to be aware of the dynamics as well as of the controversial history of the agency. As a consequence of the differences in perceptions, the ongoing changes within the EEA and in the views within the Commission on the usefulness of the agency (combined with the time limitations of the study), the ambitions of this study can be little more than to provide an initial impression of the organisation and the dynamics of this agency.

decentralised levels, without taking over responsibilities at EU level. The subsidiarity principle was deemed to be particularly important in the field of environment policy. In this way, it was kept as close as possible to the public. Therefore, the choice in favour of the EEA as the 'nucleus' in a network of national institutes, fitted pragmatic considerations and was supported by new views on (European) public management. As a side effect, the Member States would bear the costs of data gathering directly.[4]

This view on a (small) nucleus is still supported by about half of the interviews. Others hold strong views as to the constraints imposed by a nucleus organisation—as will be discussed below. In their perception, the original ideas of how the EEA would operate, underline that not much effort was put into thinking through the meaning of a network organisation and the organisational consequences of being the focal point of the network.

Delors' initiative took officials in DG XI by surprise. It was even regarded as the creation of a competitor and it strained relations between the agency and DG XI from the start onwards. Nevertheless, the initiative was adopted and elaborated by Mr Ripa de Meana (then Commissioner for the environment) who proposed an agency for co-ordinating information gathering. The Commission (the staff of the Director General for the environment), Council (notably the French Presidency in 1989) and EP worked closely together on the formulation of the Regulation setting up the agency, so that the text of the Regulation could already be published in 1990 (OJ No L 120, 11.5.1990, pp. 1-6).

Nevertheless, it took 4 years before the agency could actually open its doors. The delay was caused by the prolonged decision on the location of EU agencies. All Member States—apart from Luxembourg—where in the running for the EEA. However, in the end, only the Netherlands, Denmark and Spain were seen as strong candidates. The EEA was finally established in October 1994 in Copenhagen.[5]

The EEA was set up on the basis of two components: the agency in Copenhagen and the network. The interorganisational network consists of a physical network (EIONET-European Information and Observation Network) which connects more than 600 institutes across the European continent. Rather then gathering information itself, EEA's brief is to aggregate available information and to interconnect new data needs. From the beginning onwards, it has had a co-ordinating role. This role applies to data gathering and analysis.

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[4] The costs of running the EEA and the network are estimated as being 'peanuts' compared to the costs for the Member States.

[5] One reason for this seat was that it was believed that proximity to the Danish Ministry for the Environment would reinforce its position as an environment authority. Moreover, Denmark was offering additional financial support for the housing of the agency (but so were others). Important in the selection of the location in Copenhagen was also the fact that Denmark did not run for the other agencies as well (most Member States were in the running for various agencies). Denmark had clearly stated its priority.

The operating core of EEA consists of 35-40 scientists and national experts who are responsible for managing the network, for collecting and integrating the data, and for reporting and disseminating results.

One interesting feature is the history of the relation between agency and Commission. At first, when the agency was set up, the responsibility of DG XI was to ensure that it was working within the parameters of the Regulation. This has gradually developed and DG XI is now incorporating the products of the agency to a greater degree and is looking for ways to strengthen it and to market it within the Commission. Thus, the history of the agency shows that setting up an agency also has implications for Commission relations.

a) Pre-History

The agency did not have to start from scratch but was built up on earlier structures. There had been earlier endeavours, in the 1980s, to upgrade capacities for environmental policy making. One root of the EEA was CORINE. EIONET is a continuation of this network for monitoring the environment in Member States. CORINE was created in 1985 and was a first attempt to structure data gathering. It was created to learn and draw lessons on how to set up a data gathering system.

The evaluation of CORINE revealed that it was fragmented and not endowed with mechanisms that could further the development of capacities at national and at EU levels. Furthermore, Member States appeared ill prepared to report data to other Member States and data proved difficult to aggregate so that an overview of the state of the environment was not an option. The lesson from CORINE was that more resources, and better structures at national and EU level, were needed to gather data and to develop work programmes. This resulted in the EEA with a system of National Focal Points in Member States.

A second building block for the EEA was the task force in DG XI that was set up in 1990 after the Council had adopted the Regulation. The task force started with the first major reports of the agency and made a beginning with the first multiannual work programme of the agency. On the basis of this work, the EEA could make a good start in 1994. These reports had an important impact on EU policy making. They made it very clear that the condition of the environment in the EU was gradually deteriorating and resulted in questions in the EP. Due to this impact, the reports also helped to put the EEA on the political map in Brussels immediately.

The most recent development of the agency is that it has just acquired a revised Regulation (OJ No. L 117, 5.5.1999, pp. 1-4). This revision was foreseen for 1995 but this was postponed as the EEA only began business at the end of 1994. All parties involved regarded the original design and breadth of the mandates of the EEA quite satisfactorily so that the adaptations in the Regulation remained marginal.[6]

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[6] One aspect, i.e., the question of the languages in which the EEA should publish its reports prevented the publication of the new regulation in the Official Journal. Another issue causing delay was the obligation

b) Important Events in the Development of the EEA:

➢ 1985: CORINE information system created (taken over by EEA task force in 1990).

➢ 1988: Rhodes Declaration.

➢ 1990: adoption of Regulation and creation of task force in DG XI.

➢ 1993: adoption of Seat.

➢ 1993: first Board meeting.

➢ 1994: appointment of Director and first 6 staff members

➢ start of EEA on 31 October (official opening).

➢ 1995: building up of the EEA.

➢ publication of the first pan-European state of the environment report (Dobris Report: *Europe's Environment; The Dobris Assessment*).

➢ publication of a review of 5th environmental action programme (providing a 'trends' report). This report was input for DG XI into its assessment of the action programme.

➢ 1997: start of the revision of the Regulation.

➢ 1998: Aarhus Report (*Europe's Environment—The Second Assessment* also known as 'Dobris + 3').

➢ 1999: Report on the state and outlook of the EU's environment: *Environment in the EU at the turn of the century*. This report provides the 3-year overview of the state of environment and the prospects of Europe's environment that the agency has to produce according to the Regulation. As announced by the Director-General of DG XI, this report will be a key input to its policy.

➢ 1999: adoption of revised Regulation.

3) Mission Statement and Tasks

Before addressing the organisational design, it is necessary first to discuss the EEA's objectives.

Tasks of organisations are embedded in mission statements and formal presentations of objectives. However, we know from organisational sciences that, in practice, mission

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to produce its first evaluation in 1999 (now that it is operative for 5 years). The revised regulation still mentions the deadline of 15 September 1999 but it is unlikely that this will be met (tenders and other preparatory activities for the review have not yet started).

statements and task descriptions of organisations are usually not so clear-cut (Cyert and March 1963). Mission statements have to be short and, therefore, cannot present the necessary nuances. Moreover, missions and formal objectives are generally based on compromises. Behind general statements of core activities may lie a world of diverging expectations. In addition, the amount of work potentially mentioned in the Regulation cannot be carried out with the available resources. Therefore, the tasks and the actual work carried out will depend on ongoing refinements of mission and tasks during the process of developing work programmes and setting priorities. This usually leaves ample room for interpretation of, and discussion on, the actual core activities.

The EEA is no exception. Even though some interviewees stressed the balanced nature of the Regulation and underlined that it provides an accurate description of the tasks of the agency, others pointed to shortcomings in the legal basis. For example, can the EEA work on a commercial basis for third parties such as EMEA? What are the limits of its remit, i.e., how far should it go in analysing trends or whether it should, at least for the time being, focus on providing data on current situations? What are the limits of acceptance as regards the grey area between analysing situations, reviewing policy options and actually including additional policy options in giving advice? Should the EEA carry out policy evaluations and how far can it go in this respect when analysing trends (it is not mentioned in the Regulation but it nevertheless is a grey area in connection to policy analysis)?[7]

These and other unclear points in the Regulation, and differences in expectations, can be explained by the history of the EEA.[8] The list of tasks reflects the variety of interests of the parties involved in the creation of the EEA. In broad terms, the Commission and some of the Member States were especially concerned with the data gathering role. The EP wanted a role for the agency in monitoring implementation in the original Regulation. Other Member States, and those particularly involved in the creation of the EEA within the Commission, saw the EEA more in the context of 'soft law'— regulation through information. Each of these views left its marks on the Regulation and pulled the agency in different directions.

a) Mission Statement

The mission statement of the agency (formulated on the basis of its Regulation) refers to:

➢ Providing 'objective, reliable and comparable' information to support Community and Member States officials in taking appropriate measures for protecting the environment. Thus, decisions on information gathering have to be based on

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[7] During the negotiations over the original regulation, the Commission and Member States kept evaluations out of the regulation.

[8] The development of the EEA resembles the 'garbage can' approach of organisational decision-making (March and Olsen 1986).

relevance to, and priorities of, policy-makers. Co-ordination of the information and observation network is one important component of this task.

➢ Assessing the results of measures taken.

➢ Informing the public.

➢ Supporting the achievement of sustainable development (added in the revised Regulation in Article 1.2).

At first sight, the position of the EEA as expressed in the Regulation is clear. Its main function is to synchronise the data that is already available within Member States, and to establish systems for monitoring the state of the environment in the EU. A key component of the agency is the EIONET. Data gathering would, thus, continue to be a decentralised responsibility for national institutions, albeit co-ordinated by the EEA. Also, data analysis could be outsourced by the agency either to national reference centres or to consultants. As stated by the Council, the EEA could, therefore, remain limited in size ('a nucleus organisation').

b) Confusion and Conflicts in the Regulation

Notwithstanding this initial straightforwardness, the EEA's mission is very broad and, therefore, forces strategic choices—particularly in view of its small size. These choices, however, are complicated by the hidden conflicts in the mission.

'Relevant information' can relate to data on current situations as well as to reports on trends, reports on the effectiveness of measures and advice on how ambitious targets can be achieved. The potential field of work, therefore, includes factual data gathering as well as analysing and assessing effectiveness of policies. Some even go so far as to see the EEA as an environmental think tank. During the formulation of the original Regulation, there were different camps on how to view relevant information. This discussion was very visible during the negotiations on the Regulation.

These tasks of data gathering and digesting information relate to specific policy fields and measures. In addition, the EEA has to produce a 'state of the environment' report every three years. In the new Regulation this is now further expanded to 'state and trends' reports.[9] The purpose of these more general reports is to inform policy-makers and the public on the conditions of the environment in aggregated terms.

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[9] Whether or not the EEA should be working on trends has been a sensitive issue. Commission wanted fact of the state of the environment. Working on trends was regarded as an interference with DG XI's policies. The addition of the reference to trends in the new regulation can be seen as a further clarification of the EEA's tasks as well as a recognition of its work in the field of policy analysis. Nevertheless, the original regulation already refers to the state of the environment in the foreseeable future. This also implies 'trends'.

Finally, the Regulation also indicates possibilities to monitor implementation—another sensitive area.[10]

Thus, the mission covers data gathering, various types of tasks to digest data into relevant information, supporting specific policy initiatives and producing general reports on the state and outlook of the environment. In addition, it opens up the possibility to work on implementation. These tasks are many and extensive. In addition, they are, to some extent, conflicting. First of all, the EEA does not have the resources to do all of this. Secondly, they relate to different views on European governance (soft law versus regulation via the Commission).

c) Different Parties and their Interests

Different bodies support different tasks of the eea. In the first place, the Commission has, on the one hand, been keen on focussing the work on data gathering. The policy-makers in the technical areas of DG XI need to be supported by an agency that provides data. Moreover, the policy-makers feel a strong need to have a good and factual description of the state of the environment as requested in the Regulation. There is considerable frustration within DG XI, about the extent to which the EEA has managed to stipulate the exact characteristics of this 'state of the environment'. Despite important reports, reviews of action programmes and a range of other studies and activities, it feels that an actual and reliable state of the environment has not yet been produced. Thus, DG XI officials indicated that they would be very happy to have such a consolidated overview of one year (a sort of 'base year' to as measure to assess developments). The impression was created that similar frustrations also exist outside this DG XI.

Possibly, these are not the only frustrations on the part of DG XI. Interviewees (not only from outside the Commission) referred on several occasions to the fact that officials felt criticised by the EEA evaluations of the developments in the EU's environment. Evaluations could be regarded as criticisms of the effectiveness of DG XI. Analysing policy may threaten the existence of DG XI. ('If they analyse policy and propose new measures, what then should we be doing?') In this respect, the EEA could constitute a 'silent revolution'. Moreover, given the EEA's limited budget, there is a desire within DG XI, to focus the EEA on data gathering as its priority. The policy analysis role can then remain within DG XI, and, if necessary, consultants can be hired for the more policy-oriented tasks.[11]

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[10] Article 20 of the old regulation. The new regulation refers in Article 1.2 iii to acting as reference centre and keeping a 'data register' on the instruments taken by the Community and Member States.

[11] DG XI and the EEA often use the same consultants ('so why should we not hire these consultants ourselves?'). In the agency, as well as in DG XI, people remarked that the Commission prefers to work with external consultants because they can be better controlled and consultants do not insist on publishing the reports.

Due to a desire to have better data, but possibly also due to these other reasons that were mentioned in the various interviews, the Commission attempted to restrict EEA's role to reporting on the state of the environment, instead of including analysing trends.[12]

On the other hand, there is an increasing awareness within DG XI, that it stands to gain considerably through a strong and independent environment agency that analyses information and points to trends. It provides Commission officials with convincing and independent arguments that additional measures are needed. This positive view in DG XI on the contributions from the EEA is more recent.[13] One sign of the growing support for the EEA is the comment from the Director-General of DG XI that the state of environment report (from June 1999) will be a fundamental input into policy-making.

Secondly, some MEPs argued for an enforcement role in the original design of the agency. The reason for this being that implementation is one of the major difficulties in environment policy. However, the Commission and the EEA have been disinclined to give policing tasks a high priority as it could weaken the co-operation of Member States.[14] Furthermore, the EP, i.e., the committee for the environment, has been a major proponent of the agency and especially of the general reports on the state of the environment. These give the EP a valuable instrument to discuss the effectiveness of policies—and hence a tool to control the Commission.

Thirdly, some Member States would like to see the information and analysis role developed. The two conflicting tasks in the mission relate to different policy philosophies. The data gathering tasks are closely connected to the 'classical' policy process of policy initiatives based on proposals put forward by the Commission to the Council. The general environment reports relate to the Regulation-by-information approach that is more popular in the northern Member States—such as the Netherlands, Germany and Denmark. They serve as an educating tool to change the behaviour of people and as an instrument to create a general basis for environment policy. The environment reports also help to increase awareness of environment issues and put peer group pressures on policy-makers (e.g., by providing comparative data on emissions in Member States). State of the environment reports—it is assumed—result in behavioural changes, provide a mechanism for mutual learning and put pressure on Member States through 'name and shame'.

This shows the tension between data and information for policy-makers. Data for policy-makers relates merely to figures that can be used in, for example, cost benefit analysis of measures. Information concerns data in a digested form. The information

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[12] See also the original regulation and the various proposals from the Commission during the review of the regulation.

[13] The positive inclinations were connected during the interviews to, among other things, a new Director-General in DG XI, a new head responsible for the relations with the EEA, increasing recognition of the value of working with an independent agency. The satisfaction started to increase, according to interviewees, some 2 years ago (but improved especially over past 6 months—depending on the area and the people involved).

[14] The question over policy and enforcing arose again last years during the revision of the regulation.

provision task of the EEA may move the agency, according to interviewees, towards occupying the seat of the policy-maker (e.g., evaluating effectiveness of policy, giving policy advice, and reinforcing the soft-law approach).

Some regard this tension as natural and inherent in such information bodies. Others, however, doubt whether this is innate and underline that EUROSTAT also delivers information whilst being careful not to touch upon policy advice.

Fourthly, one should also take the EEA's own ambitions into account. The agency does not want to become a 'graveyard of data'. It is also interested in informing the public and in evaluating effectiveness of (proposed) policies (EEA 1994). Some in the Commission cynically referred to the state of the environment report as the 'state of the environment policy report'—criticising EEA's focus on policies instead of on describing the state of the environment.

As discussed, the mission of the agency is to be more than a data gathering body. However, given the breadth of the mission, its workload and the conflicting expectations, the agency, together with its managing Board, has to carefully balance the various interests.

In addition to these different views (each included in the Regulation), the competence field of the agency is even more elaborate. Environment policy has been upgraded in the EU through the inclusion of the 'integration' principle (i.e., sustainable development) in the preamble of the Treaty. Following this change, the EEA's working area has been broadened and the revised Regulation now also refers to 'sustainable development'.

Although it is too early to judge, it seems that the main tension between data and information is now regarded by most people involved as 'healthy' and that the EEA has to challenge policy-makers (provided, as was commented, that it is based on proper data). The Commission has been more concerned with EEA's tasks in data gathering rather than using the still fragile and understaffed agency for more wide-ranging policy analysis. However, now that data gathering systems are being established, and the EEA has acquired expertise and a reputation as independent body producing reliable information, it is now more widely accepted that EEA's analyses can also make valuable contributions to policy. Still, some sections of DG XI would like to keep the EEA's focus on data gathering and would like to reserve policy related tasks to the Commission instead of relying on the 'regulation through information' approach. Therefore, some tension between DG XI and the EEA, and between information and soft law, has remained.

d) Tasks

Articles 2 and 3 of the Regulation elaborate the tasks and the areas of work. The tasks stipulated are:

➢ To gather, process and analyse data in order to provide the Commission with the objective information needed to identify, prepare and evaluate measures and to draw up more general reports on the state of the environment (including a 3-annual report).

- To co-ordinate the network.

- To provide uniform assessment criteria for assembling and reporting information across the Member States.

- To ensure a broad dissemination of information (to inform the public of the state of the environment).

- To stimulate the development of forecasting techniques.

- To stimulate the development cost-benefit-analysis of damage and measures.

- To stimulate the exchange of information on best available technologies.

- To support the incorporation of EU data in international environment monitoring programmes.

- To support the incorporation of EU data in international environment monitoring programmes.

The areas in which the EEA should be active include: air quality, water quality, the state of soil and of flora and fauna, land use, waste, noise, chemical substances and coastal protection.

In executing these tasks, the agency should prevent overlap with national agencies, EUROSTAT and the Joint Research Centre in Ispra (JRC).

The relationship with EUROSTAT is particularly important in this respect. EEA and EUROSTAT are similar because they both collect information from the Member States—they do not gather data themselves. This requires that they work through a network of national bodies and necessitates standardising methodologies and formats. Moreover, they both work mainly for the Commission. As a result, some have openly wondered why EEA was created and whether the activities of EUROSTAT could not have been expanded instead.[15] According to some Commission officials, this would even have facilitated data gathering because EUROSTAT is more concerned with reporting than with analysing.

Others, however, argue that the added value of EEA is that it goes beyond data gathering and that it works more on information for the public. Furthermore, the work of the EEA is more future oriented whereas the statisticians in EUROSTAT are more concerned with data gathering and time series analysis (see the Chapter on EUROSTAT). [16]

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[15] A reason that was given for not expanding EUROSTAT was that this organisation has already committed its attention to other priorities (e.g., EMU, see the Chapter on EUROSTAT).

[16] Moreover, a major difference between the EEA and EUROSTAT is that the EEA is more involved in the technical details of environment whereas EUROSTAT reports more on the industrial and sectoral

The working solution to manage the overlap between the two statistical bodies is that EUROSTAT provides the data in some areas that are processed by the EEA. Nevertheless, the EEA also gathers primary data through its network of ETCs. In one area, waste, they have been carrying out comparable tasks. Thus, a clear sense of competition has existed between the two bodies. This also emerged from tenders which these bodies have issued without informing (and thus excluding) each other. The institutions are working towards improving co-ordination, clarification of boundaries, and better working relations through memoranda of understanding. The latest impression of interviewees is that, even though the competition persists, a *modem vivendi* is being developed.

e) Clarity of Tasks

The list of tasks reveals the same tensions as discussed above. The Commission needs specific data to prepare the measures and legislation, to carry our cost benefit analysis and to evaluate measures. Raising the awareness of the public requires general environmental reports. Thus, the tasks are broad and connected to different kinds of governance philosophies.

As interviewees emphasised, the tasks show the ways in which, the Commission, especially, has been trying to limit the role of the EEA to a service body instead of pushing the agency as an instrument for environment policy.[17] For example, the Regulation underlines that the EEA should not take over responsibilities from the Commission. The Regulation specifically stipulates that the information has to support the Commission in its tasks of identifying, preparing, and evaluating measures (e.g., Article 2.iii). Moreover, the EEA has to support cost benefit analysis—instead of carrying them out.

In addition, there are too many tasks for an—developing—agency. Thus, priorities had to be set at the outset. Given the fact that both EEA staff and the network still had to be created, the activities were initially restricted to four areas. Gradually, activities have been added. All parties in the interviews are positive about the way in which the EEA has been phasing its workload during its starting up period. Nevertheless, everyone involved in the agency is convinced that the EEA's limited capacities have been overstrained. Choices are, therefore, needed.

As the agency developed, it was not at first clear to everybody concerned, just how big the EEA would be. The interviews show that Member States and the Commission expected a stable staff of about 60 employees, whereas, within the EEA, a growth to around 200 was expected, also with a view to the workload (almost double the current

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indicators. EEA also work with different national partners (the national environmental institutes and NGOs).

[17] The same tension is also visible in the revision of the regulation. In this process, the Commission has been putting forward drafts that connect the EEA to the Commission, at the expense of working for the other institutions or on its own initiative. Moreover, as was commented, the Commission has been using the regulation to restrict the work of the EEA.

size). Thus, doubts have existed about the adequacy of the budgetary commitment with regard to the expected workload. One official, therefore, commented that there were many expectations about output but little thought about costs.

However, for the agency it is necessary to work with a broad range of clients, in order to create commitment and to prove its usefulness. For example, preventing cuts in budget negotiations between Council, Commission and EP depends to a large extent on the visibility of the agency and on a recognised position. On the one hand, focusing attention may be necessary in the first years. On the other hand, this is unwise from the view of creating institutional support from the Commission, the EP, Member States, Committee of the Regions and the public. The agency has, therefore, been careful in deciding what to do and for whom.

f) The EEA's Implicit Attachment to DG XI

The Regulation specifies that the agency should work for, among others, the Community and the Member States. This is, for example, laid down in the way in which major decisions on the use of the budget and the composition of the annual and multi annual work programmes are taken in the Board. The Board consists of the Commission (represented by DG XI and DG XII), Member States and experts designated by the EP (see below).

However, there are also mechanisms that link the EEA more specifically to DG XI. One of these is that, as was emphasised, DG XI has a strong influence in the Board ('over and above our numbers'). Member States recognise the importance of the EEA's work for the Commission and, therefore, tend to follow DG XI in most decisions.

Moreover, DG XI is the main client. In formal terms, this work is not done for DG XI but for the Commission and for the Community. Reports from the EEA, on e.g., water quality, are also of interest to those dealing with agriculture. Nevertheless, the specific mentioning of areas in Article 3—water, air, etc.—implies that it works mainly for DG XI.

As interviewees pointed out, the connection to DG XI is reinforced by the agency's budgetary dependence. The EEA falls within the budget of DG XI for practical reasons. Some DG XI officials emphasised that DG XI is only a post-box and that the amount and use of the budget are determined elsewhere. The amount is set in negotiations with the EP and the use of the budget is decided on by the Board (and finally adopted in Council).

Others, however, held strong views on the influence of DG XI on the way in which the budget is used. DG XI tries to focus the work of the EEA on the core activities and areas mentioned in the Regulation. The areas define the basis on which the agency is held accountable. This, however, makes the use of the EEA static and prevents co-operation with other DGs. Others argue that the reference to sustainable development in the new Regulation creates opportunities to broaden the field of work to other DGs. This means that other DGs, such as the DGs for agriculture, transport and energy, should also be in a position to work with the EEA.

However, in its current work, also after the revision, the EEA's emphasis remains on the environmental fields listed in Article 3 of the Regulation. As a result, the budget for the EEA still applies mainly to activities falling under the competence of DG XI. Thus, there seems to be a conflict between the fields mentioned in the Regulation and the integration principle.

As was argued in DG XI, there are no objections against increasing work for other DGs—and there is even growing support for it—but first the agency should produce better and more complete information on the state of the environment.

The agency is very interested in broadening its work and being of more use to other DGs. Consultancy in the fields of agriculture, transport, energy, regional policy, etc., would support the development of the EEA and of the capacities of the network. Moreover, this would provide a broader basis for the EEA as consultancy in these areas would provide additional funds.[18]

Payment for services rendered to other DGs, however, seems to be the snag. The interviews show that there is discussion—if not confusion—within the Commission, regarding the possibilities for payments from DG VI, VII, or XVI. Some officials underlined technical difficulties and explained that money allocated to one DG cannot be used to spend on areas falling under other DGs or pointed to public procurement considerations (using the subsidised EEA could be regarded as unfair competition). It was also explained that, with the creation of the EEA, an internal Commission problem was created because internal Commission procedures apparently do not allow payments for services delivered.[19] Others, however, thought that there are only minor technical difficulties and that the real reason for constraining EEA's work for other DGs is that people within the Commission—especially within DG XI—do not want a strong EEA for reasons explained above. Expanding the agency's budget (via fees from other DGs) and allowing it to work for other DGs would reduce DG XI' control of agency.

Still others in the EEA, and in the Commission, proposed a different explanation for the difficult co-operation between DGs and the agency. They doubt the willingness in DGs to actually work with the EEA. This lack of enthusiasm could stem from the fact that they already have other consultants with whom they work, or that they are not interested in spending scarce funds on environment policy.[20]

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[18] Nevertheless, the agency co-operates with DGXI and other DGs on integration indicators, spatial analysis, TENs and other topics. DG XI is instrumental, via its liaison officer, in establishing high level contacts to get this work going.

[19] In the early days it was feared that the budgetary committee of the EP would not accept an expansion of the EEA's budget through resources from other DGs. In fact, however, this committee suggested that the EEA can work for the other DGs on the condition that the marginal costs of these activities are paid for in addition to the regular budget.

[20] Others argued that the EEA should work more for other DGs—and less for DG XI—in order to stimulate 'integration' and help DGs in the removal of financial barriers in this respect.

Possibly each of these reasons explains a bit of the difficulty in working for other DGs. An underlying dilemma, to which we will return in Section 9, may be that no one in the Commission seems to be responsible for the relations between the Commission and the EEA. Thus, problems between DGs linger on and the various parts of the Commission have their own practices and preferences. Different DGs have their own contacts with consultants, not everyone is aware of the existence of the EEA nor of its potential usefulness, and different views exist regarding the need to elaborate an environmental monitoring system through the EEA.

In such a situation, when a new organisation has be institutionalised and new linkages have to be built, also within the Commission, it may be necessary to support this process by actively marketing the agency within the Commission. This may be particularly important when the new organisation gives rise to sensitivities. The more difficult and sensitive these relations, the stronger co-ordinating and integrating mechanism may have to be. However, there is not one focal point within the Commission that defends the position and the usefulness of the EEA. It is, therefore, less likely, in this situation, that this will result in the additional support needed for strengthening the agency.

On the one hand, DG XI would be the obvious spot for such a 'marketing' role. On the other hand, if DG XI has to market the agency then the agency is at risk of loosing its independence (or risks being seen as 'DG XI's agency').[21] One solution to this could be to attach the agency to the more neutral—and arguably more powerful—Secretariat General. Moreover, a DG XI official stated that defending the EEA was not their task.[22]

This is an important aspect of the institutionalising of an agency, since it emphasises the need to consider the consequences of agencies for the internal management in the Commission.

4) The EEA in the Context of Decentralising Governance Structures

The respondents see the EEA as an element in a decentralising governance structure. In spite of this common understanding, the term decentralisation seems to give rise to confusion. Three complementary views can be identified on the way in which the agency contributes to a decentralised governance model. These are (1) the EEA is regarded as a subsidiary of the Commission. (2) The EEA is a node within a network (i.e., co-operation between Member States following the subsidiarity principle). (3) The EEA signifies a move away from regulation towards soft law and other instruments directed at changing behaviour (e.g., comparing Member States as a benchmarking exercise and attempts to change behaviour of people through information).

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[21] Others however argue that a stronger marketing role from DG XI would not necessarily endanger the EEA's statutory independence and that it would be needed with a view to the Amsterdam Treaty (i.e. integration of environment).

[22] Nevertheless, there are coordinators, albeit in different ways, for EEA related activities (e.g., a co-ordinator of the steering committee in the Commission for the state of environment report and the coordinator for general EEA relations—see below).

These models are closely related to the inherent confusion as to what the EEA in fact is, i.e., a data gathering body for the DG XI, a new instrument for modifying public behaviour, an organisation in its own right (e.g., a type of think tank) or merely a node in a network.

a) The EEA as a Subsidiary of the Commission

From one point of view, the agency can be understood as a way to decentralise responsibilities away from the centre—i.e., the Commission—to a support body operating at arms-length. The initiator of environment policy—DG XI—lacked data but was not in the position to expand its own organisation directly. In this context, the EEA is a subsidiary of the Commission.

What does decentralisation mean in this context? Table 1, below, indicates the various meanings of decentralisation as used in management theories. The steps in the table represent a movement from light forms of decentralisation (pure data gathering) to decentralisation of more strategic tasks (giving advice and decision-making). The further down the list we go, the more tasks the agency has.

Looking at the Table in the light of the relationship between the EEA and DG XI, demonstrates that some officials within the Commission, would like to see the EEA as a light form of decentralisation. In this view, it should provide the Commission with the information it needs to carry out its tasks (i.e., level 1 & 2 in the Table). Level 3 is added in the revised Regulation. The EEA will also be allowed to work on its own initiative. The Commission, in its earlier drafts of the revised text, did not propose this point nor was it keen on accepting this widening of the EEA's remit. One practical limitation arises, however, in this respect. The EEA does not have the resources to work on its own initiative in the way it—and others—would like.[23]

Processing information into advice (level 4) is a sensitive point and touches upon the thin line between information and policy advice. In this respect, the agency had to learn to formulate conclusions carefully. Nevertheless, the EEA is eager to use what margins it has.

Nevertheless, the other levels have also been mentioned in the interviews as potential roles for the EEA. It was suggested—and not just by EEA staff—to expand the right of the EEA to work more on its own initiative (level 3), to develop into a think tank (levels 4-5), to liberate DG XI from operational tasks (levels 6-7), and to monitor implementation (level 8).

This discussion shows, above all, that the agency in fact represents a weak form of decentralisation. There are those, especially within the Commission, who would like to see the EEA as a subsidiary with a limited set of tasks. Secondly, the opinions of what the core activities of the EEA should be, differ within the Commission and across the

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[23] Nevertheless, there are areas — e.g., 'indicators' - in which the EEA has been ahead of the policy-makers and it can influence its own work programme.

various institutions involved. These differences have existed since its conception. To some extent, this is also a sign of a developing organisation.

We have to be aware that, in discussing the EEA, we are dealing with a dynamic situation. A very recent development is that the Director-General of DG XI has announced (June 1999) to his staff that the reports of the EEA will become the basis of the work of DG XI. This means that the tasks of determining which information is needed and processing information into advice (levels 3 and 4) are becoming more important.

Table 1—The Various Meanings of Decentralisation

	Task	EEA
1	collection of information (crude data)	Yes
2	processing of information (reporting data in refined formats)	Yes
3	determining which information is needed	the revised Regulation allows it to work on its own initiative; constrained by limited resources
4	processing information into advice (elaboration of alternatives)	thin line between 'conclusions' and 'policy advice'
5	selection of alternatives	no
6	authorisation to carry out tasks	no
7	execution of tasks	no
8	monitoring implementation	no (only in the sense of monitoring general conditions of the environment)

(Based on Paterson 1969)

b) The EEA as the Node in the Network

The perception of the EEA as a subsidiary, is certainly relevant. However, the EEA is not just a subsidiary of the Commission. It is a very specific agency as it operates largely through other organisations. Due to the EEA, it is not necessary to centralise monitoring and information tasks (within the Commission). The present format makes it possible to rely on a network of national institutions.

In this second model it is particularly important to discuss the functions of such a node within a network. The roles of network organisation can include building common perspectives, diagnosing problems, redressing weaknesses in the system, etc. As will become apparent in Section 13, the agency has in fact important tasks in ensuring that the various networks operate effectively and that the quality of the output is up to standard.

This second model is important in terms of organisational design. The interviews show that the initial staff hired was principally oriented towards technical issues (more in line with the view of the agency as discussed above and less pertaining to the node in the network). Currently, the recognition of the EEA as network manager results in a different staff profile. Experience in project management is increasing in importance in matters of attracting new people.

Some in the agency, therefore stressed that the requirements of such a network organisation, and of the staff profile this demanded, were very unclear when the EEA was created.

c) The EEA as a Element of Informal Policy-Making

The third way of understanding the agency as a decentralised governance structure implies a move away from hierarchical regulation towards soft law. The agency's attempts to create awareness among the public through its general reports have to be understood in this context.

Even though this model also applies to the EEA, it is constrained by the shortage of resources and the other tasks which it also has to fulfil. Reports on the state of and trends within the environment, are time consuming and require the co-operation of a range of national institutes and consultants. Moreover, some parts of the Commission and some Member States are not keen on elaborating the role of EEA in this direction.

The three ways in which the EEA relates to decentralisation of governance structures, demonstrate the complexity in the Regulation and the host of tasks that have been attributed to it. The discussion also indicates the practical and philosophical obstacles to developing each of these three models (lack of resources and different views on what the agency should do).

5) A Brief Assessment of the EEA and its Contributions to Environment Policy

a) Output

Before commenting on the performance of the agency, it is necessary to list the main products of the EEA. In random order, one part of the output of the agency is the network (EIONET) through which data is amassed. This network is generally regarded as a major innovation in the field of environment policy. The network consists of sets of co-operating European Topic Centres (ETCs), consortia in which Member States co-operate in specific policy areas, a physical network which interconnects organisations working in the environment field, networks of national and Commission officials (e.g., meeting of NFPs, Board meeting), and the Scientific Committee meeting. This wide network is used, for instance, for hiring experts for writing specialised reports or to act as resource persons in the workshops the EEA organises. The wide network encompasses more than 600 organisations. These are connected via the agency by means of the physical infrastructure through which reports and information is diffused and discussed. In addition, many are involved in one way or the other in the production and distribution of information (as data gathering organisation, as consultant in the analysis, or as experts invited to review products, or as national link to the public).

Secondly, one of the added values of the EEA and its networks is its contribution to the harmonisation and levelling up of data and data gathering methodologies. This allows aggregation of data gathered from the affiliated countries.

Thirdly, the main products in terms of physical output are the various kinds of reports. As discussed above, major reports are the 'state of environment' reports, the pan-European Dobris reports and the input for the evaluation of the action programme. These are widely known and are regarded as reference documents. Officials (in the Commission and in Member States) and MEPs see the reports as useful tools for raising awareness of environmental issues and for identifying needs for new measures. DG XI is now using the latest state and outlook report as input for its policies. The EP relies on them in its function of policy controller.

One change in the new Regulation is that the state of the environment report has to be updated every 5 years—with annual updates on main indicators—instead of every 3 years. In addition, the report is no longer confined to the state of the environment but may also include, politically more sensitive, 'trends'. Trends implicitly include an evaluation of the effectiveness of the current policy mix and open up discussions on 'if then' questions (if this policy is opted for, then the outcome will be x, and is that sufficient a measure?).

The EEA also produces reports on more topical issues and reports more closely linked to the development of new proposals within DG XI (e.g., on sewage treatment in the area of waste policy).

EEA officials, or people from the network, are also increasingly consulted in the drafting of new legislation. Their contributions lead, for example, to more realistic

objectives about monitoring systems, so that implementation mechanisms in new measures are linked to available or feasible sets of data.

In addition to the main reports and network building, the agency has to produce a range of (shorter) reports for various clients. For example, at the Aarhus conference, Ministers asked for two specialised reports, the EP asked for reports dealing with taxation and certain Member States have also asked for specific reports.

Equally, the EEA has been trying to market itself by offering its services to other EU institutions and to industry and it has been looking for opportunities to increase its visibility (e.g., through the Princes' Award).

In all, the EEA is active in a great variety of ways and for a range of different clients. The general comment on the range of activities is that it is too much and too *ad hoc*. At present, even people within the agency have lost track of all the products (despite the workprogramming and programme reporting system – see below).

b) Brief Assessment of Output

The aim of this part of the study is, primarily, to describe and analyse the organisation of agencies. Organisational design should not be seen as separate from performance. However, given the limited size of this study, we can only make brief evaluative remarks on performance in passing.

Therefore, this Section can by no means present an in depth assessment of the behaviour of the agency. In fact, at the time of writing we are waiting for the decision (to be specified in the new Regulation) on when and how to carry out an encompassing assessment of the first 5 years of the EEA in operations.[24] That evaluation might include also a cost benefit analysis of the agency. At this point in time we have to be more modest. Here we can only describe organisational structures and present the views on the EEA's performance as they were given by the various kinds of experts in the interviews.

Having presented the different views on what the agency should do, it will come as no surprise that there are also different ways in which the usefulness of the EEA is evaluated. The various views on the performance can be linked to the different expectations regarding what it should do.

Almost all the interviews support the concept of an agency with a network that delivers data. Also, people are generally happy with the progress EEA has made in such a short stretch of time. Compared to the start of the 1990s, when there was little directly useable and detailed information on the environment, the agency now offers a more advanced system to collect, harmonise and report data from across the EU. Aggregated and comparable information can be delivered in the form of rough data, special reports

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[24] Each of the European agencies has to be evaluated every 5 years. The new regulation posits that the EEA should have produced an evaluation by September 1999.

and general state of the environment reports. The organisation for data gathering and analysis that EEA offers is generally highly appreciated and meets a much-felt need.

Nevertheless, those who depend on the specific data necessary for preparing policy, for carrying out cost benefit analyses, or for evaluating the effectiveness of measures are less pleased with the progress EEA has made. The policy-makers in the Commission need more detailed facts. They still rely on other sources for detailed figures (such as consultants or EUROSTAT). It is from this side that strong criticisms can be heard about the relevance of the work programme of the EEA and on its ability to deliver factual information. The feeling is strong in parts of the Commission that the agency wants to do data analysis and carry out policy assessments instead of delivering hard facts. Moreover, the state of environment reports are presented as being 'too general' for their needs. Some even claim that these reports are unnecessary since they contain, according to interviewees, little new and overlap with reports from OECD or from specialised environmental bodies.[25] Insiders also commented that the report of June 1999 overlaps too much with the Aarhus Report because it was produced only one year later (implying that it would have been more efficient to produce one report which contains more in depth information on the EU rather than using scarce resources for two reports—on the EU and on Europe more in general).

Therefore, one part of the policy-makers in the Commission would like to see the data-gathering role strengthened as the EEA's core business. Some even doubted the need for the EEA altogether because data can be received through other bodies and through EUROSTAT. This would also save time Commission time spent preventing the EEA from engaging in policy analysis.

Those in favour of strengthening the role of the agency in informing the public on states and trends would like to see more attention paid to analysing and reporting on issues which affect the EU. These views are also supported in factions within DG XI, and are represented by the northern Member States and the EP. Supporters of this line of work emphasise the effect these general reports have had on the awareness of policy-makers and the public (through media coverage) of the deterioration of the European environment. EEA reports have resulted in, for example, pressures from the EP on the Commission for additional measures in order to meet pre-established targets. In addition, because the reports are based on comparative figures, they have put pressures on Member States to reinforce national monitoring systems and to take additional environmental measures. A large share of the interviewees would like to see the analysis role of the EEA strengthened (i.e., the soft-law approach).

Criticism may also be heard about the Commission—also within the Commission. DG XI is blamed for restraining the EEA in terms of its size and of its role and for being afraid of a powerful body evaluating what the policy-makers are doing.[26]

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[25] Given the limits to this research, we could not establish what percentage within DG XI holds this view.

[26] For the sake of completeness, it may be necessary to reiterate that others in DG XI argue that they are not controlled by the EEA but by the EP and that the EEA is not created to evaluate them even though this may sometimes seem to be the case.

Some doubted the practical impact of the work of the EEA. Whether national governments adapt measures or whether new initiatives will be taken by the Commission depends on a range of factors, such as the general interest of decision-takers in the environment and the co-operation of related DGs, Ministries and Councils. Soft-law and name and shame may not be sufficient to change behaviour.

The opinions diverged strongly as regards the quality of the state of the environment reports. Some praised most parts of the analysis—some parts are obviously weaker as the EEA and the ETCs are still in their building up phase—and cited impact on policies. Others, however, were very critical about the usability and originality of the reports. As was pointed out by a DG XI official, strong letters have been sent from DG XI with a view to steering and improving the reports and making them more directly relevant.

One particular point about the quality of the output of the agency relates to its ability to reach the public. This, no doubt, is a challenging task. In this respect, the agency has been innovative in creating awareness for its products. It attaches great importance to the presentations of its products, as has been proven by the fact that it has won several rewards for its presentations (for the writing in a scientific report and for a video). Moreover, it has instituted the Princes' Award and it is working on an award for industrial innovation. Furthermore, the agency prepares press conferences in each Member State to launch the next state of the environment report.

Nevertheless, one can wonder whether there is 'a public' and whether it is at all possible to reach it. Some even questioned whether the reference in the Regulation to serving the public makes any sense since it gives rise to vague grounds for producing output that would otherwise not be produced.

Comparable, Relevant and Independent Information

The Regulation states that the information EEA collects should be comparable, relevant and independent. The views on the output of the EEA and its network do not differ as regards the attempts it makes to deliver comparable information. The creation of a network of national institutes co-operating in data gathering and analysis is generally well received.

Relevance appears to be more of an issue—see above. One dilemma regarding the relevance is that the EEA has a wide audience (and limited resources). The Commission may be its main client, but the agency also has to serve the EP, Member States and the public. Moreover, it is recognised within the agency, that its long-term survival depends on the institutional support it has mustered. Thus, in the five years of its existence, it has also been writing documents for EP and Member States (for upcoming Council Presidencies) and it has been building close links with ECOSOC, the Committee of the Regions, the press and industry. On the whole, this has resulted in a wide support for the EEA and its products. Thus, it has a host of clients to prove its relevance to and serve them in different ways and with different products.

The drawback of this is, however, that the output of the EEA has been pulled in different directions. Moreover it leads to the feeling among some clients—policy-makers in the Commission—that do not get what they need.

The views on relevance may differ but opinions are more univocal concerning the EEA's independence. In terms of steering (i.e., proving its relevance) and institutional support, the agency and everyone in its environment recognises the necessity of being independent.

However independence can be used in twos senses. In the first place, it relates to the EEA's ability to take major decisions regarding the work programme. In this respect the EEA is not independent. The agency is aware of the fact major decisions about the work programme and projects cannot be taken independently of its network and institutional environment. Thus, the EEA takes great pains to involve Commission, Presidency, EP, Member States and also the private sector. This means that compromises have to be found between workload, clients to serve and even quality (e.g., doing more means giving in on quality[27]). Nevertheless, none of the organisations in its environment can dominate decisions.[28] Moreover, it has to be re-emphasised that the agency's resources limit its room for manoeuvre.

Secondly, the independence of the agency is at stake when it comes to drawing conclusions in reports. Political colouring of findings will undermine the long-term viability of the agency. If this happens, reports from the agency will lose credibility and clients will prefer to work with other, more prestigious, consultants. Being aware of this, the EEA attaches great importance to drawing independent conclusions. Even though (short-term oriented) political pressures can be felt to alter or weaken conclusions, such politicisation of reports is prevented.[29] The Board and the Scientific Committee have been major supporters of this line and have helped to neutralise political interference. Professional values (or professional 'obstinacy') of EEA staff have also been instruments in fighting off such pressures. An effect of this, is that EEA data is never doubted during negotiations.[30]

One way to defend the EEA's independence is to stick to deadlines, even though requests have been made to delay reports. Moreover, the EEA is adamant about publishing reports, even consultancy reports (e.g., for the Commission). It regards it as part of its brief to inform the public and it uses publications as a tool for quality control. This drive to publish has resulted in conflicts with clients. From the point of view of the policy-maker, publications can be undesirable (e.g., when DG XI wants to address

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[27] Compare the concept of quality as used in EUROSTAT which includes among other things timeliness, accurateness, completeness.

[28] Some commented on this multifarious decision-making setting in a negative sense: 'They can trick us and play us out against the others'. Even though some cases were found in which there is a suspicion that this happened, the danger of this not so big. Member States watch the workload from the EEA's work programme and the Commission will focus on relevance.

[29] EEA officials underlined that they have, however, learned to 'modify the tone' of their conclusions, i.e., 'to give the same message but in a different key'.

[30] One of the problems in EU environment policy in earlier days was that often the data underlying proposals was put in doubt. With EEA's focus on independent data and conclusions, this has never been the case.

sensitive issues and when timing is a strategic factor, or when the Presidency has just put major effort into hammering out a hard-struck compromise). Commission officials, although respecting the EEA's desires to be independent, wondered whether the EEA could not be more flexible as regards the need to publish everything. As consultants, they argue that 'you have to know that assignments and timing can be sensitive'. The EEA, however, regards decisions regarding timing and publicising as part of its independence.

The insistence on publishing and the, sometimes, strong conclusions have led some in the Commission to argue that the EEA does not have sufficient feeling for the political climate in which it operates.

The discussion on its independence shows that the agency depends on clients for its work programme. However, the EEA is independent as regards carrying out the work programme (compare the definition of an agree in the theoretical Chapters.

Criticisms

The interviews also reveal the criticisms of the agency. In the first place, the critics pointed to fact that it should do more data gathering. The tension between data gathering and analysis has been a leitmotif for the EEA's. However, as discussed below, even though this tension is not disappearing—it more or less belongs to this kind of organisation—there is now a wider acceptance of its policy analysis tasks.

In addition to the amount, the quality of data has also been questioned. However, often this is also a problem of getting the data from the Member States.[31]

Moreover, the agency is criticised for relying heavily on consultants and for being weak in key areas (e.g., waste, and agriculture).[32] Working through consultants also prevents the creation of the required European expertise. Consultants leave after a few months and take knowledge and expertise with them. In addition, as a direct result of its independence, the EEA does not allow political interference to be a cause of delaying publications. However, interviewees remarked that the EEA sometimes fails to stick to deadlines itself.[33]

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[31] Getting data from Member States is of course difficult. Countries have their own data priorities and systems. Unlike EUROSTAT, the EEA has no power to compel cooperation.

[32] To avoid confusion, the EEA has limited resources so choices have to be made regarding the areas in which is operates and how strong it wants to be in these areas. Moreover, decisions on priority areas are taken in the Board.

[33] One example is the report on the state of the environment which should have been published in 1998 but which came out in June 1999.

The relevance of output has also been doubted. Reports have been published and papers written whose appropriate nature experts doubted. Some in the Commission were generally sceptical about the use of the EEA for their work.[34]

ETCs were another area about which interviewees made strong remarks (inflexible selection of topics, uneven quality of the ETCs, insufficiently integrated with the EEA and with each other).

A current much criticised issue in relation to the agency, is the *ad hoc* nature of its work. The agency has to serve a range of clients, and it has had to make itself known, during these formative years, to a wide audience. The result is fragmentation of output. It is even hard for people within the agency, to have an overview of what is happening and why things are being done. At this point in time, streamlining of the work of the agency seems the greatest challenge.[35]

Some of these points can be explained by lack of resources. Sticking to deadlines or expanding expertise are not without cost. Also the internal organisation has been used to explain these points. Internal fragmentation resulted in delays and lack of synergy between the units of the EEA. Other issues relate to the fact that the EEA and the Commission have had difficulties in sorting out what their relationship should be and how the EEA can be of use to the Commission.

Moreover, these weaknesses, as will be elaborated below, can be seen as the result of a need to pay more attention at the conception of the agency for thinking through the tasks of the agency, its design, the design of the network and the internal management of the Commission. As a corollary, the agency—with the Commission—is still in a process of finding its bearings in terms of deciding on core tasks and setting up effective intra- and inter-organisational procedures. Hence interviewees talked about a maturing process.

The critique of the ETCs is partly related to the politicisation of major decisions in the Board. With these issues of the internal management of the agency and of the Commission and of the interorganisational decision-making we have entered the field of organisational design.

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[34] One remarked, for example, that only the initial task force had produced information that was useful to them and that its use and the quality of the EEA staff has gone down since then.

[35] However, this cannot be done by the agency alone. It depends especially on close cooperation between agency and Commission in sorting out main tasks and budgets.

X.II. The Design of the Organisation

6) Design Dilemmas

a) The Main Challenge: Quality versus Politicisation?

The core of the EEA's tasks is to collect data and to report it in the form of relevant information. Those who are responsible for ensuring the effective and efficient operations of the EEA are presented with a number of challenges. One major dilemma is to combine steering of the work programme with the need to produce information that is relevant, credible and independent. This closeness to policy-makers-cum-clients can easily threaten credibility and independence. Pressures can be expected due to the sensitive nature of information (Landy, Roberts and Thomas 1990). The line between information and politics is very thin. Thus, the information role of the agency naturally mingles with the political task of agenda setting. For example, conclusions that gaps exist between targets and policy agendas are likely to lead to questions from the EP or to pressures from the public for additional measures. Moreover, information implies evaluating the quality of policies and hence of the activities of Member States and Commission. As a result, according to interviewees, The Member States and Commission have exerted political pressures, for example, to postpone or alter conclusions, to focus on data gathering instead of on analysis, to assign tasks to consultants (which can be more easily controlled), to appoint experts who are more sensitive to political pressures, to limit fields of work or to attach specific conditions to budgets.

Furthermore, the information has to be delivered by Member States. However, information may give sensitive insights into implementation of EU policies. It may even support the Commission in bringing cases against Member States before the Court of Justice. These sensitivities may lead to political pressures from Member States to alter the content of the work programme (e.g., to pre-empt certain topics) and on conclusions.

The main challenge is, therefore, to design a system in which there no trade-off between relevance and credibility.

b) Additional Challenges

The Regulation also asks for flexibility, supporting the creation of a network of agencies, supporting integration of environment into other areas and expanding the EIONET to East European countries. Besides, for its longer-term survival, the EEA also has to create commitment and support from a range of relevant institutions (such as EP, ECOSOC, Member States and industry).

The challenges provoke the question of how a nascent organisation can live to up to this range of multifarious expectations. Each requires investments and attention and competes for scarce resources. It is quite exacting to expect from an organisation in its

infancy to ensure its visibility, to produce the required output and to create a network across, at least, 15 Member States plus 3 EFTA countries.[36] At the same time, it has to cope with the constraints of being a 'nucleus' organisation and, therefore, being kept to a minimum size and budget.

Limiting the need to tinker with appropriate designs can prevent frustration and opposition. Timely attention to tasks and appropriate structures is, therefore, important, so that a supportive institutional environment can be counted on. Moreover, particularly for a small organisation, it is important to see to it that structures are well thought through.[37]

The focus is on design as an important determinant of organisational behaviour. However, this is not to say that it is the only factor that influences the output of an organisation. Other major elements are, for instance, people (e.g., co-operative or non-co-operative, sensitivities to threats) and politics (e.g., is environment in or out of fashion?).

c) Design Elements

Quality, relevance and independence of the agency depend on the way in which the organisation, the network and political steering are organised. In addition, effectiveness in reaching its targets is connected to the ways in which the Commission and Member States manage their relations with the agency internally (compare Schout 1999). For example, internal design questions for the Commission are whether it should stimulate DGs to work with the agency in order to strengthen the agency and its network, and how it can internally formulate a work programme that reflects the interests of all DGs concerned. Within the Member States, mechanisms have to be in place to ensure that Board members and the contact points (national focal points—NFPs) can represent the national interest, as well as ensure the follow up of the decisions taken in meetings with the EEA.

Summarising, the design elements in this study include the way in which the EEA is organised, the internal management of the Commission and of Member States, the functioning of the Board and of the Scientific Committee, and the design of the networks. Analysing design, therefore, also demands attention to the network and to how network components are managed internally.

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[36] The full network consists of 44 countries.

[37] Moreover, the dynamics of design have to be taken into account,. Especially in the area of environment policy, new measures are taken (e.g., bio-diversity, and noise), fields of activity are added or increase in importance (e.g., agriculture), new principles are introduced ('integration'), and new Member States join the pack. An organisation in this line of work is unlikely to be static.

7) Organisation of the EEA

The following design elements will be discussed in relation to the internal management of the agency: staff, structure of the organisation, composition of management and budget. The following Sections will pick up on the organisation of its environment (Scientific Committee, Board, Commission and the network).

a) Staff

Staff issues that may have a major impact on the performance of an agency include:

➤ Number of employees.

➤ Hiring mechanisms (on the basis of nationality—'flags'—or of expertise?).

➤ Composition or profile. Are national officials on secondments used or does the agency prefer to hire professionals on the basis of their expertise? Both categories have advantages so that a balance may be needed. Seconded officials are less costly and have usually good contacts within their national administrations. However, in the EU, not always the best officials are seconded. Moreover, they may not have the appropriate level of expertise. With seconded national experts it is, therefore, especially important to see whether the organisation can still select the candidates or whether there is pressure to accept those who are sent. Professionals from outside the administrations may lack the feeling for the political world.

➤ Temporary agents or permanent staff? Temporary contracts offer the advantage of maintaining a flexible workforce, but it may lead to the organisation becoming an unattractive employer and thus reduce quality. Permanent staff may lead to inflexible work programmes and expertise.

Size and Composition

The agency was created as a nucleus and was meant to remain small. Approximately 65 people work in this agency (at the start of 1999—recruitment positions included). Half of the staff consists of experts. Of the 35 experts, 3 are officials from PHARE countries (consultants financed by DG I-A).

To ensure flexibility in the content of the work, it was decided when the agency was created to work only with temporary contracts. Contrary to other agencies, only two of the supporting staff have permanent contracts. Experts have 5-year contracts that can be renewed. Secondees stay in Copenhagen for 3 years. There is no indication that the limited contracts have had a negative impact on attracting staff. The EEA is regarded as a good career opportunity. Moreover, under normal circumstances extensions can be expected.

The number of national experts is limited to 8-10 positions. Although national experts are regarded as a useful addition, they are not seen as resources without cost—hence the limitation.

All experts are hired on the basis of their professional and academic credentials. Politicisation of appointments is prevented (outside management positions) and discussions about the 'flags' are ignored as far as possible. For example, letters of recommendations sent by official or political superiors are disregarded in recruitment procedures. The country of origin only comes into consideration when candidates offer equal quality. The secondees also go through recruitment procedures - albeit that these procedures are less rigorous as in the case of the 'normal' staff.

At present, all Member States are represented in the staff. Also officials and experts from the European Economic Area work in the agency. Nevertheless, some northern Member States are strongly represented.

Control Mechanisms

Staff management practices indicate that the organisation is in transition. On the one hand, it resembles a young organisation in which the initial Director has a visionary way of operating and a strong influence on projects and programmes (i.e., the entrepreneurial type of organisation). On the other hand, it is clear with its highly trained staff, the organisation is a professional organisation in which the experts play—or, according to insiders, should play—an important role in developing projects and horizontal co-ordination.

The experts have considerable room for manoeuvre, as can be expected in a professional organisation. They have relatively clear task assignments, e.g., monitoring developments within an ETC or, analysing trends in specific areas. It is also their task to spot opportunities, interconnect their work with colleagues when necessary and help formulating annual programmes. Their output is mainly controlled on the basis of the deadlines and through the control mechanisms installed to ensure the quality of the agency as a whole (e.g., reports are discussed with members of the Scientific Committee). The staff has to report progress on a number of occasions, such as within the framework of the reports which the Director has to present three times in a year to the Board and the deadlines attached to the specific programmes and projects. In addition, the annual work plan and the annual reviews ensure that there is a constant monitoring of the state of play in the projects. As experts, they are also expected to anticipate when new activities are needed at EU level in their field of work.

Notwithstanding these elements of a professional organisation, the interviews show that the agency has also strong characteristics of a young entrepreneurial organisation. The Director is active in project acquisition and creation of new opportunities. This results in regular interference by the hierarchy in ongoing projects and the experts have to accept new activities and take on board additional tasks. In such instances experts have to put current assignments on hold for a while. This produces some frustration among the professionals and it contributes to the organisation becoming intransparent. The experts, therefore, no longer have the oversight over ongoing activities and over how they could

potentially connect to other projects in the EEA.[38] Moreover, it has resulted in a fragmentation of the work programme and in overload.

In line with the professional type of organisation, interviewees suggested the decentralisation of management tasks. In this way the experts would be able to have a stronger input into programme decisions. Moreover, streamlining of the work programme, i.e., careful definition of the core business, is thought to be one way to give experts a better focus in their work.

Moreover, this hands-on involvement in ongoing projects implies that a lot of management time is spent on day-to-day issues. As a result, strategic issues have not been addressed. Questions that were suggested that demand management attention, included the need:

➢ To deepen the working relationships with DG XI and with other DGs.

➢ To deepen the discussion on sustainability and how this affects the core business of the agency.

➢ To develop strategic views on the current discussion on the future of the Commission (e.g., towards less operational activities) and how this could affect the core activities of the agency.

➢ To ensure that the subsidiarity principle is adhered to with regard to the agency.[39]

➢ Upgrading the internal management of the agency.

If this could contribute to a streamlining of the work programme, then it will also mean that the professionals can be put in charge of setting out the mainlines of work in their fields of expertise. This would contribute to a clearer focus in the work programme and allow more room for manoeuvre for the experts.

The current situation is typical of a maturing organisation. Given the workload and the level of institutional recognition, the entrepreneurial management model is no longer applicable. The organisation has become too multifarious. As was also strongly suggested in the interviews, more structured planning, selection of key activities, horizontal co-ordination and more bottom up processes are needed.[40]

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[38] According to insiders, also people involved in the oversight of the agency sometimes lose track of EEA's activities due to additions to the agreed work programme.

[39] As commented, some of its current tasks are less interesting seen from an EU point of view and could be left to the national level.

[40] More precisely, a different kind of entrepreneurial role is required, i.e., one of consolidating a professional working environment and one of stable interinstitutional relations providing a stable working environment for professionals.

However, as will be discussed, more structured ways of planning and decentralisation along core activities can only be done if the Commission is open to discuss the EEA's core business in view of its main policy themes (i.e., if there is less of a need for the agency to 'shop' for all kinds of programmes).

Profile of the Experts

Even though the mission of EEA is to operate as a network organisation, initially experts were attracted mainly on the basis of their technical qualifications. Currently the requirements for EEA staff are changing to what can be called 'T-figures' (i.e., combining in depth expertise with horizontal abilities to link to other themes and to manage projects and networks).

In addition to having technical qualifications and managerial experience, people working in the agency should be able to liase with the political levels. Being connected to political decision-making (if only due to the fine line between facts and policy) involves developing impressions of the future needs of politicians as well as developing a feel for timing and for what can or cannot be done or suggested.

This implies walking a few steps ahead of the politicians who are more focused on everyday issues.[41] EEA is, however, aware of the fact that it should not be the clown in front of the music. Having a feel for what is needed and how far one can go in developing new activities or in giving advice are important qualities (especially in the context of the EEA where advice has been a sensitive issue).

The fact that EEA has to perform at least two sorts of tasks (data gathering and analysis), grouped in parallel units may indicate that the work between the units differs. This was also what some initially expected. The EEA's unit for data-gathering was thought to be more oriented towards managing and monitoring ETCs, while the analysers were thought to be more exclusively involved in producing the output (reports). In practice, the tasks of both units turned out to be comparable. The ETC-people also contribute to papers and reports and they integrate their work with other fields. The analysers are spending time on managing those involved in producing the output, i.e., the ETCs, colleagues in the other units, consultants who produce Chapters, etc. The boundaries between the units for data gathering and analysis are less strict than initially designed and hence staff profiles are more comparable.

Staff Composition—a Discussion

Three conclusions can be drawn from the staff figures. One is conclusion is that the EEA has been able to focus on quality in the appointment of staff and it has been able to resist pressure to pursue other priorities. The second conclusion is that, in management

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[41] As with EUROSTAT, data gathering and analysis systems have long lead times. Hence, ideas about future issues are important. On a couple of occasions EEA thought it was important to work on new topics whereas this was not yet politically feasible. At a later stage such issues developed into political priorities for which the EEA was prepared (e.g., as was the case with the development of indicators to compare trends in the state of the environment to objectives in order to manage 'integration').

terms, the organisation is at the stage where a structural change is needed from an entrepreneurial organisation towards a professional organisation. The outgoing management style contributed to an impressive number of products and major advancements in terms of institutionalisation. However, the work overload and extent of diversification, point to the limitations of the entrepreneurial model. As acknowledged by experts in the agency, as well as by others, the core business needs to be streamlined and the professionals should co-operate more in the formulating and carrying out of programmes.

The third conclusion is that the EEA is a small organisation with a huge task. Environment policy is, by nature, an ambitious area to be responsible for. The changes in the Treaty introduced in Amsterdam, and the increased attention resulting from 'Kyoto' and 'Cardiff', made other policy areas more relevant for the EEA. To get things done, the agency has to use consultants both for data gathering and for analysis. This, however, implies that it is difficult to build up expertise and maintain the expertise at EU level (consultants hardly add to a collective body of knowledge or experience). Moreover, consultants working on short-term contracts cannot manage a vast network. This requires building on longer-term working, and trust, relations. Thus, the question can be raised whether the staffing of the agency is appropriate to its workload.

When confronted with the tension between tasks and size, some interviewees noted that that size should not be an issue. Every organisation asks for more resources and the agency has to make the most of what it has. Others emphasised the need to expand the agency and the fact that the EEA operates below its minimum threshold. For example, only one person deals with energy and one with transport. So far, the EEA does not have someone for agriculture (one of the major areas both in the EU and from an environmental point of view). Also in other fields, Commission officials commented that working with the EEA is not an option because of its limited expertise. Moreover, it has to cope with the 'integration' principle; it has to respond to the enlargement of the EU and it has to support capacities in affiliated countries. Despite the fact that EEA's staff is highly committed and working beyond the required office hours (e.g., on Saturdays), it is clear that going that extra mile is not the solution.

It seems that the staffing of the agency was not very well thought out at the start or at later stages in its development. Several Commission officials, even those who are critical of the EEA, pointed to the need for expansion in order to put it in a better position to deliver what they actually need.[42] However, an expansion of staff does not seem likely in the near future—despite the additional tasks in the revised Regulation (such as working with IMPEL). Therefore, it is questionable whether, in the case of the EEA, the marriage between the practical need to limit the size of the agency and the theoretical model of a nucleus organisation has been a happy one. Even a nucleus needs a staff relative to its responsibilities.

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[42] One official added that the EEA should only be expanded is it was also better controlled to ensure that it would deliver what the Commission asks for.

Limits due the Size of the Agency and the Role of DG XI

One possibility for expansion is through paid consultancy for other DGs. In this way, the EEA's budget would be expanded so that it could build up expertise and EU networks in other areas. This would also facilitate integrated assessments. Discussions on this issue are going on with other DGs (e.g., in the field of transport, agriculture, regional policy and energy).[43]

However, this raises a couple of questions. One question is whether the Commission should have felt more responsible and whether it should have marketed the EEA more within its internal structures. In principle, the agency is independent and strategic decisions are made in the Board so that DG XI has no immediate responsibility for strengthening the agency. Nevertheless, such a task could be expected from DG XI. It is the main client and has an interest in raising awareness of environment conditions and stimulating integration. Strengthening the agency and creating additional opportunities for it, could, therefore, be expected.[44]

However, as discussed below, the activities of DG XI in this respect have been limited. But this is now changing. One of the interesting aspects of the creation and development of the agency is the evolution of the relationship with the Commission (mainly DG XI). Oversimplifying this relationship, one can say that DG XI has developed from a sceptical client (which tried to narrow the work of the agency at least initially) into a more active partner who markets the agency and is looking for additional opportunities for it.

A second question, however, is whether DGs should actually be stimulated to work with the EEA. Several more sceptical Commission officials raised this issue. They argue that there are different bodies that deliver comparable products and that each DG has its own links and networks. Why put all the eggs in one basket? On the other hand, the value added of the EEA is that is an instrument for creating a network of data gathering and policy analysis bodies.

The fundamental question is whether such an agency was actually needed. The only reason, as was cynically noted by two interviewees, for the existence of the EEA is that an agency had to be allocated to Denmark (and an environment agency looked attractive to the Danish government).[45] Some in the Commission have contemplated whether it

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[43] It should, however, be noted that building up expertise requires considerable amounts of resources. Tackling the field of agriculture requires a long-term and broad commitment in order to go beyond 'amateurism' (as one respondent put it).

[44] Moreover, the Commission as guardian of legislation also has to monitor the EEA, detect weaknesses and suggest changes when needed. Albeit that traditionally, this guardian role has been interpreted mainly as a legal, and less of an organisational, responsibility

[45] No proof could be found for this. On the contrary, 2 officials involved in the negotiations were very surprised about this rumour that the EEA was created to satisfy Denmark. In fact, there were other countries already lobbying for the EEA before Denmark joined this race.

would not be better to ignore the EEA and to work with other partners on data gathering and analysis.

Others, however, as discussed above, are clear about the need for an EEA (with a view of publishing information on the general state of the environment, to provide the Commission with detailed information and to set up a monitoring network).

The key issue here is: if the EEA is needed, then it needs resources and these have to come from other parts of the Commission budget. Concentrating work more within the EEA, instead of relying on consultancy organisations, seems required, in order to make the agency worthwhile. However, whether all the eggs should be put in one basket is a question that is not yet solved. Moreover, marketing the agency continues to demand much (additional) internal-Commission management.

b) Structure

The structure of the organisation deals with unit grouping and the way in which units are glued together. An inappropriate structure is likely to lead to poor output (e.g., due to fragmentation or delays). Moreover, it leads to additional needs for co-ordination and the organisation runs the danger of becoming bound up in internal conflicts (due to overlapping responsibilities or due to ineffective ways of integrating interdependent units). One way to overcome such difficulties is to use the slack within the organisation. This, however, is not an option for a small and overburdened agency. Alternatively, organisations may have to decentralise and rely more on horizontal co-ordination mechanisms.

The discussion of the mission demonstrated that the agency has been pulled in diverging directions. As people explained, the – unresolved - question of the EEA's core business is also reflected in the structure. In broad terms, the structure is divided between the two main tasks. The operating core is divided into a data collection unit and an analysis unit (see annex 1). In addition, there is a unit for organising publications, distribution and the technical facilities that a physical information network (EIONET) requires.

The activities of the three units can be typified as gathering the input, ensuring the through put, and organising the output. The three units are of equal size (15-16 people).

The 'Monitoring and Databases Programme' unit is charged with the task of gathering the data and setting up the data collection network. The European Topic Centres (ETCs) constitute the core of this network. Thus, instead of collecting data itself, EEA makes use of national institutes. For each of the priority topics mentioned in the Regulation, the EEA has appointed an ETC. The topic centres deal with waste, soil, emissions, air emission, marine and coastal environment, land cover, inland waters and nature conservation and biodiversity. The centres work in—preferably—small consortia of institutions from other Member States. In this way, 9 Member States have an ETC. All countries are involved in some of the ETCs through participation in the consortia. The ETC structure is a 'source' oriented system of data collection. The ETCs fall under the responsibility of this unit. The main functions of this unit are, therefore, to set up the topic centres and to supervise their performance.

The unit for 'Analysis and Integrated Assessment Programmes' is responsible for reporting. In addition to the reports on individual topics, the main output of this unit are the reports on the state of the environment (now every 5 years) and the other major reports mentioned above. The data on which this unit depends come, to some extent, from the ETCs (hence the extensive co-operation with the previous unit). Other sources of information are EUROSTAT, national institutes, DG XI and consultants.

'Operational Infrastructure, Publications and Information'—the third unit—can be seen as a service unit. It ensures that publications are translated, produced and distributed. In addition, it takes care of the technical facilities—computer networks, websites, library, etc. A major task relates to the technical side of the EIONET.

Analysis of the Organisation

The organigram depicts a classical divisionalised organisation with three equal and fairly independent parts. Originally, it was clear to the first officials in the EEA that the parts should be integrated. However, in practice, little attention was given to co-ordination. Lack of time quickly led to units working independently.

Also the way in which the ETCs have been organised, reflects a divisionalised organisation based on separation rather than on integration of tasks (see below). The data-collecting unit responsible for the ETCs was set up with regard to individual pollution media—emission, air, inland water, marine and coastal environment, soil. Each of the ETCs has a contact person in the ETC-unit. Thus, there was a tendency to create pockets for independent data collection also within units.

The interviews demonstrate that not much thought was put into linking the units. At the beginning, it was more important to get the agency up and running. The establishment process itself was difficult enough, without thinking about how to link the various pieces.

There was little help from the Commission in designing the agency. [46] The Commission had little experience or interest in design issues. Moreover, as was argued, the agency is independent also where operations and organisation are concerned.

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[46] Basically, EEA was told to apply the staff regulations and a close contact existed—and still exists—mainly with DG IX about appointments. It is interesting to note is that the Commission staff regulation applies even though not everything that is relevant to the organisation of the Commission is also directly applicable in the EEA. First of all, the Commission staff regulation is oriented towards a hierarchical organisation. However, in the EEA an effort is made to maintain a flat organisation. It regards itself as too small for the elaborate hierarchy as presented in the Commission payment system and does not want to take over the hierarchy system. At present, people in the EEA are more equal. In practice, this also means that some are working below the levels at which they would be working according to the staff regulation. Secondly, financial systems had to be set up. For this, close contact existed with DG XX over financial procedures (about drafting contracts with clients and consultants). These contacts were almost exclusively informally. When the agency asked for instructions in writing, they were told that this was not possible (according to some interviewees to avoid formal responsibility for decisions).

Thus, on several occasions people expressed the need to draw lessons from the recent past in setting up agencies. The EEA had to learn how to operate an agency and conclude contracts in practice. This was described as a process of trial and, especially, one of avoiding errors.

The advantage of the divisionalised structure is that it does not force choices between the two tasks or about how they are connected. Both tasks can be tackled separately. Moreover, it pays to put people in one unit who have to set up and manage the ETCs, and to concentrate those who are working on analysis. The disadvantages become clear when the parts are interdependent. In a small organisation, co-ordination can be handled informally, but this will not be reliable or efficient in the case of complex interdependent tasks or with people working under time pressure.

The units in the EEA are, however, interdependent and have considerable workloads. The interconnectedness became increasingly clear in the production of the 1999 state of environment report. Also the changes in policy (e.g., 'integration' and the related 'integrated assessments') force more co-ordination between units and between ETCs.

These changes in environment policy, which have emerged during the short existence of the EEA, demand a different internal management system. Instead of working with the 'media' separately, integrated assessments are asked for which focus on the interaction between media and sources of pollution. In addition, it was necessary to better integrate data collection and analysis. The data delivered by the ETCs had to be better geared towards the needs of the analysis unit. This not only demands better co-ordination between the units but also implies that the ETCs have to work more together and work more with other experts in the EEA.

The major general reports (Dobris + 3 and the 1999 report) were important in opening the discussion on the effectiveness of the EEA's internal management.. The first report (Dobris, 1995) was to a large extent prepared by the small task force within the Commission and with the help of consultants. The state of the environment report should already have been published in 1998. However, the report was only published in June 1999.. The interviews show that the reasons for the delay included difficulties in the internal organisation. Also co-operation with and between ETCs proved to be problematic[47]. The Unit that works with the ETCs, and the ETCs themselves, have become more involved in analysing and integrating. The 'analysis' unit has become more involved in steering the ETCs.

The 1999 report is the first major report from the EEA on its operation and it links the work of the entire organisation and its network. During the process it proved difficult to actually make the ETC-unit more serviceable to the work of the analysis unit and to

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[47] In addition, the report was delayed due to negotiations with the Commission over the content of the report. DG XI officials thought it was too much policy oriented and had doubts about the quality of Chapters so that rewriting was necessary. Moreover, new parts were added at a late stage in the process. All of this added to the delay.

open up the analysis unit to the comments from the ETC-unit about what information was actually available and what kinds of analysis would be possible.

The process of producing this report gave an important incentive for developing and integrating the organisation. Currently a discussion is taking place within the agency, on how to better integrate the units. After the initiating period of quick growth, a first serious attempt is now underway to streamline activities and organisation. An internal analysis is being made of ongoing projects (i.e., creating an overview of activities and of the way in which these are related).

In addition, a structural change has been proposed to the Board (early 1999) for improving co-ordination between the units. The proposal suggests a project team structure. Each unit will set up 3 project teams (so 9 teams in all). Liaison agents from each of the units will co-operate in each of these task forces.

This signifies a structural change in the design of the EEA. It is moving from a typical divisionalised organisation to, what can be called, an 'innovative organisation'. The innovative type organisation is characterised by decentralisation of decision-making towards the professional level and by horizontal co-ordination between professionals and units.[48]

Putting the various discussions and change attempts together results in a picture of a maturing organisation. Originally, the agency was set up as a divisionalised and entrepreneurial organisation with a close management involvement in the work of the experts. Now it seems to be moving towards more decentralised ways of working. Decisions tend to be taken more at the level of the professionals and the need is expressed for experts to rely more on horizontal co-ordination (i.e., the professional and innovative organisational forms).

Looking back on the early design of the agency, it is clear that the design of the organisation was regarded as being of secondary importance. In the Commission, people commented on the fact that, besides the Commission, there are approximately 60 satellites and that it is impossible to think about the design of each of them and of the Commission. Others thought that designing an organisation is a matter of trial and error. Nevertheless, as it turned out in this agency, difficulties in internal co-operation have been attributed to a confusing form of organisation (both internally and in the composition and co-operation with and between ETCs).

c) Management: Profile and Appointment Procedures

In general, the operating values of the Director have a major influence on the status of an agency. These values, for instance, can include defending the independence of the organisation, or they can be opportunistic (trying to liase with the political level and

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[48] Those involved in the original design of the agency were not surprised that this change became necessary. They never expected that EEA could work on the basis of independent units. However, there was no time for thinking through the design nor was there any professional guidance on this matter.

achieve short-term favours). This sets the tone—both within the organisation, and in relation to the potential clients—as to what can be expected from the agency (Landy, Roberts and Thomas 1990).

The values will be particularly important in the start up phase of an agency. Once the agency is on a specific track, it will be hard to change its approach. It is hard to establish a good reputation and present a recognisable image (e.g., of independence) to the outside world.

In addition to these values, the Director has a task in setting up and planning the organisation. In the formative years, the Director has to make strategic choices concerning whether a quick or a careful growth pattern is preferable, how to create institutional linkages and what form of organisation is most appropriate at what price.

The apex of the EEA consists of 1 Director and (since autumn 1998) 1 Deputy Director. The management group is composed of the Directors, Head of finance and human resources and the heads of the three units. Management is appointed for 5 years and the position is in principle renewable.

The selection procedure is managed by the Commission and is, in principle, an open process. The position is announced in the Official Journal and other publications. The Commission makes a first selection of the candidates and circulates a shortlist to the Board, Scientific Committee and to the management of the EEA. At this stage, also the EP is regularly consulted. The management Board finally decides, taking into account of the views of the Scientific Committee.

The current Director is Mr D. Jiménez-Beltrán, a former official who has spent most of his career working the field of environment policy. He held previous positions in the Spanish government as Director-General for environment policy (also during the formative years of the EEA, 1991-1994) and as attaché for environment matters in the Spanish Permanent Representation. He also worked as head of unit in the DG for consumer policy in the Commission. He is now in his second term as Director.

The interviews indicate that Jiménez-Beltrán has already left his mark on the agency. He is well known for his clear vision of the agency. Prominent in his thinking is that he does not want to see the agency develop into a graveyard for data, nor into a body which describes the situation of the environment in the past. In his view, information on current situations, trends, and on past and possible new policies, is an important mechanism to strengthen sustainable environmental thinking in society. Therefore, he has stimulated the information role, for example, through insisting on publishing everything that the EEA produces, developing new areas and drawing policy relevant conclusions. His has also attached the agency to the main and more general debates on EU's environment policy, instead of to more detail-oriented special reports. Prominent in the strategic choices of the agency, have been the focus on state of environment reports, sustainable development, and evaluations and follow ups of environmental action plans. Furthermore, he has defended the credibility of the agency. Independence of the conclusions of reports has, therefore, been cherished.

Moreover, he has been able to put the agency on the map. He has been aware of the fact that, also due to its broad mission, the agency should be recognised and supported by a wide audience, instead of being dependent on a limited clientele. As EEA officials, therefore, explained, an exclusive dependence on DG XI would make the agency vulnerable. He has, therefore, been active in explaining the products of the agency and its potential usefulness to other DGs, the EP, industry, the Committee of the Regions and to Presidencies of the Council. This has greatly contributed to the EEA's institutionalisation and interconnection with other parts of the EU polity.

The lines along which he developed the agency resulted in conflicts with, especially, DG XI. The Commission is—or used to be—more interested in data instead of in trends and in policy advise and it has been less keen on immediate publication of reports. Those who prefer the EEA to be a data-gathering agency regard the general Director as 'pushy' and 'expansionistic'. One consequence of his ambitions is that it contributed to sub-optimal working relations with DG XI and to an atmosphere of mutual distrust.

On the positive side, he has ensured that the independence of the agency is not in doubt and that the EEA is seen as a credible organisation that plays an important part in strengthening the support for the EU's sustainable development. The flip side is that some DG XI officials have strong views on the relevance of the work of the EEA. They argue that that the agency has not delivered what they need (i.e., data) and think that it has moved too early and too quickly into policy advice. Pushing the agency to do data collection, analysis, work for Presidencies and the EP, etc., has resulted in the critique that Jiménez-Beltrán has overextended the agency. A focus on information would, according to his critics, have been more suitable.

Under the entrepreneurial influence of Jiménez-Beltrán, the EEA has been able to grow and become institutionalised. The organisation now seems to be moving towards a new phase in which new choices have to be made and a new management style is needed. Most of the interviewees underlined that the EEA now has to carve out, together with the main clients, a more stable core business and organise the organisation around that. For this purpose, a position of Deputy Director was added in 1998. The heavy external responsibilities of the Director can no longer be combined with paying attention to the management of the agency. Moreover, the agency has to implement changes that will demand considerable management attention. Thus, the tasks of the Deputy Director focus on internal management of the agency.

Appointment Procedures

Both management positions are open appointments. However, the question is how open an appointment procedure can be. The Board finally appoints the candidate behind closed doors. It has not been possible, within the limitations of this study, to discover the real reasons behind the appointments. Thus, we shall limit ourselves to the two stories that have been told by several interviewees. As was noted, these differing versions need not exclude the other. One version is that almost 1400 candidates applied for the position of Director. The shortlist of 5 names was prepared by the Commission and presented to the Board. The shortlist of the Commission and the Board decision were both based on quality considerations. Mr Jiménez-Beltrán had the valuable

experience of knowing what is expected from such an agency since he had been a high official in a Member State and in the Commission—i.e., he knew the demand side.

The other version that was presented is that it was clear from the start that the position would go to a Spanish candidate. Denmark and Spain were main competitors for the agency. Copenhagen got the EEA, so Spain got the position of Director. Furthermore, Mr Jiménez-Beltrán was already the favoured candidate from the start onwards. He had been involved in the negotiations on the agency and was part of the high level meeting from which the EEA originated (meeting of high level officials from Member States and the Director-General from DG XI). He came from, as it was called, the 'inner circle' and the Board and the Commission knew what to expect of him.

Interviewees also used political forces to explain the appointment of the Deputy Director. With a southern Director, the Deputy should come from a northern Member State.

It seems that the selection process is less transparent than one might be led to believe at first sight. Most interviews regard Mr Jiménez-Beltrán an excellent candidate and he has been strong in fending off negative forms of politicisation. The Commission had also played an important role in his re-nomination.[49] The question, however, is how the new Director will be appointed and on what basis. Is it necessary for the Commission and Member States to have a stronger influence on the next Director or should the next appointment be depoliticised?[50]

d) The Budget

The size of the budget and the procedures through which it is granted are important elements in ensuring the independence of an agency. The budget of the EEA amounts to 17.8 Euros and is paid by the Community institutions.[51] Initially, the budget of the agency was supposed to go up, but so far the increase has been limited. In broad terms, minor changes are expected[52] in the budget in the near future as the decision has already taken that the agency has reached maturity.

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[49] Even though some DG XI officials and some Member States might want a more servile profile for the Director. Others prefer to continue on the tracks set out by Mr Jiménez-Beltrán.

[50] Suggestions put forward for depoliticisation included strengthening the role of NGOs in the appointment process and extending the term in office to 10 years with no possibility for extension. The current 5-year period with possible renewal may make a Director susceptible to political pressures. Also the appoint a shadow Director from the Scientific Committee was suggested.

[51] In addition to these funds, the EEA has also received specific earmarked contributions for setting up the physical network in the EU and in other European countries (from the Danish government as well as among other things from DG IA and DG III).

[52] As emphasised by a DG XI official, all resources for environmental expenditures are limited—hence also for the EEA.

It is recognised within the Council, the agency and the Board, that the budget is not realistic in relation to the workload. Nevertheless, the EEA is expected to increase its activities in the field of integration and in relation to enlargement. However, hardly any activities of the EEA have ever been scaled down. Instead, there is a tendency in the Member States, the Commission and EP to ask for more activities. The pressure already on the budget is, therefore, likely to increase even further.

One of the first workplans states that 40% of the budget shall be spent on the internal operations of the EEA.[53] More than half of the budget goes to institutions in the Member States for building up the network (i.e., the ETCs) and for using national expertise. As a corollary, the agency's funds for analysis and for working on 'own' projects are limited.

In formal terms, the budget of the EEA is a budget line under DG XI. According to some in DG XI, this has no formal implications. However, as discussed above, others, also in the Commission, pointed to several implications, such as a strong influence of DG XI on the work programme and the focusing of the EEA on environment topics close to its own remit rather than allowing the agency to work more generously with other DGs.[54]

However, things have been changing in DG XI over the past months. To reinforce integration, DG XI is now supporting the EEA in a joint project with DG VII on transport indicators and has organised high level meetings to get this project off the ground. Similar high level meetings have been organised by DG XI to strengthen linkages between the EEA and other DGs.[55]

In order to broaden its financial basis, the EEA spends a great deal of time acquiring additional assignments ('shopping for projects'). Consultancy activities, e.g., for other DGs, could support the development of expertise and reinforce its network building obligations. However, the dilemma of this type of programme acquisition is that it pulls the programme of the EEA in different directions.

At present, a discussion seems to be starting up in DG XI and in the EEA to prevent the need for this kind of 'shopping' and to tie the work of the agency more to the integration of environment. One question related to this more structural relationship to the work of other DGs is whether it is possible to also provide a suitable budget for this

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[53] Insiders commented that it would be more appropriate to spend 60% on EEA. The belief that a lot can be done through the network with a small focal organisation seems delusory.

[54] To avoid confusion, environment topics such as water, air, noise, etc., are also mentioned in the regulation. On the other hand, sustainable development is also mentioned and this would give more room for cooperation with other DGs (and hence lead to new activities and a broader client base).

[55] However, the money issue remains. High level meetings are not sufficient. Despite some funding from DG XI for DG VII projects, the DGs would like more support for integration activities with the EEA. At the time of writing, discussions were going in DG XI to use its 'common pot' for these purposes. One issue, however, is that funds from the common pot need a more structural place within the budget of the Commission in order to give integration a longer-term footing.

kind of activity. Given the increased importance of sustainable development in 'Amsterdam' and the reference to it in the new Regulation, it seems logical to expect the EEA to work more on pressures on the environment coming from the sectoral areas (agriculture, transport, energy, etc.). This would provide a clearer focus in the work of the EEA in the sense that it no longer has to shop for contracts.[56] One implication of this would be that the budget should be expanded. This is only possible if clarity can be achieved within the Commission, on the attention that DGs have to give to integration. A clearer focus in the work of the agency and a realistic budget will, in part[57], depend on decisions that have to be taken within the Commission—and in the Board—about core tasks and about how these can be financed in a realistic way (see below).

e) Conclusions: Trends in the Development of Internal Management

The development of the EEA as an organisation is marked by some interesting trends:

➤ a) The EEA has made a flying start and achieved wide recognition. The Director has made important contributions to the institutionalisation of the agency. Also the efforts of the task force and the focus on clearly recognisable output, such as the Dobris Report, gave the EEA immediate objectives.

➤ a) The EEA's tasks were not entirely clear at the outset. This had a strong influence on the design of the organisation.

➤ b) The emphasis was on getting started and less on designing the organisation. Co-ordination between units had not received a great deal of attention. Nevertheless, integrated assessments and sustainable development demand co-ordination between units. The EEA would have benefited from a better initial conceptualisation of the type of organisation which the EEA is (i.e., setting it up not as a divisionalised but as a professional/innovative organisation based on horizontal co-ordination).

➤ a) The staff profile was not entirely clear at the outset. The emphasis has been on technical expertise, whereas in fact the agency has been created as a network organisation.

➤ a) The Commission—i.e., mainly DG IX, DG XI, DG XX—was more interested in getting the agency going than in setting up the agency. The main help the EEA got was in the form of the Commission Staff Regulation, which had to be adhered to.

➤ b) Questions are open as to whether appointment procedures for senior management are transparent or politicised. Moreover, it is not clear at this stage whether an effort is needed to depoliticise the appointment of the Director.

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[56] For example, it was suggested that the EEA could focus on annual environmental indicators to follow progress in specific areas and publish these annually as well as base the multiannual state and outlook reports on the indicators.

[57] EEA officials emphasised that it is also their task to muster support for the integration.

➢ c) The budget falls under DG XI. This has resulted in suspicions about the (large) influence that the Commission may have on the work programme and hence on the way in which the EEA works.

➢ d) The resources are limited for an 'independent' organisation.

➢ The EEA is maturing and moving from an entrepreneurial towards a professional organisation. Horizontal co-ordination is now being added to hierarchical control and co-ordination.

➢ Further maturing of the organisation depends, to a large extent, on whether the main client can give focus to its demands on the EEA.

8) The Supervison of the EEA: The Scientific Committee and the Board

a) The Scientific Committee (SC)

The SC's main function is advisory. It is frequently consulted on the work programme and it is involved in quality control of the ETCs and EEAs reports. Moreover, the SC contributes to keeping the work programme of the agency up to date. Examples of contributions to quality control include the involvement of SC members in criticising reports before publications, assessing the functioning of ETCs and fighting off pressures from specific Board members to alter conclusions in EEA studies. Thus, it serves an important function in guarding the credibility of the agency. As it is not connected to the EEA as a client, it can keep its focus on longer-term developments. It is one of the elements which supports the agency in developing a work programme that is not just useful to DG XI, but that is also useful from a scientific and from general public point of view.

The SC comprises at least 9 members. As this figure already indicates, the members do not represent national governments but are appointed with a view to their expertise in a specific field. With a view to building up EU networks of expertise, an attempt is made to have a broad representation of Member States in the Board. This is, however, not the same as being national representatives. In addition to the 9 full members there are also experts with observer status. In all, the SC hosts 14 members (including one member from Norway and one from the Czech Republic). There are currently no members from Spain and Luxembourg.

The SC members each have a specific field of expertise. The expertise gathered in the SC has to reflect the topics in the ETCs. Since there are also 9 ETCs, it is no surprise that each SC member is closely connected to the area of one ETC. In appointing SC members or observers, careful attention is first given to which area of expertise is most needed at that point in time. In this way, the body of expertise advising the EEA remains flexible (no topics can be included in the SC) and the agency is offered an instrument to remain up to date and renew its output. The SC members play an important role in identifying new developments. The SC meetings not only discuss work programme proposals of the agency but also look at new issues that may become important for the EU and for the agency in the medium term.

The SC consists of independent experts from universities and recognised national research institutes. They are appointed on the basis of their expertise. Frequently, the SC members put forward their own suggestions for candidates to fill vacancies. The Board appoints the members after having consulted with the Commission and the national focal points (EEA's liaisons in the Member States).

In addition to monitoring of the relevance and quality of the agency, the SC members are also a source of additional expertise. For example their academic expertise is often used to organise and run workshops in which new topics are discussed and tested as a potential area for the agency.

In sum, the SC is important for finding a balance between short-term relevance and longer-term viability and between academic and political rigour and it serves to protect credibility.

b) The Management Board

The Board is the main decision-taker. It decides on the final versions of the work programmes and budgets, approves annual reports, and decides on the work programmes of ETCs and on the composition of consortia. In addition, it decides on general staff policy (how many officials and what levels). This means that the Board has a strong influence on all aspects of the agency.

The Board is composed of senior officials from the Commission and from Member States. In addition to the 15 Member States, 2 officials represent the Commission. One Commission official comes from DG XI and one represents DG XII (the JRC) and EUROSTAT.[58] The three countries from the European Economic Area are present in the Board but do not vote.

The EP is not directly represented. The EP—i.e., the environment committee—wanted to keep its hands free vis-à-vis the agency. A seat on the Board would also mean co-responsibility and hence impede control. Nevertheless, the EP is indirectly represented through two designated members in the Board. The designated Board members are independent scholars (university professors). They receive—sometimes to their own regret—little instruction from the EP. These experts report to the environmental committee once or twice a year. The distance between the Board and the EP is understandable since the EP has little direct interest in the work programme of the agency (see below).

The Director and the management team of the EEA are present as advisors. The Chairman of the Scientific Committee is invited as observer and completes the list.

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[58] DG XII's involvement has a historical reason. The original network for data gathering—CORINE—was mainly a technological innovation in the form of a cross-EU physical network. DG XII was the main sponsor of this network. Moreover, some of the official tasks of the EEA mentioned in the regulation still connect it to DG XII (e.g., diffusion of environmental friendly technologies).

Decisions are taken with a two-thirds majority when voting is required. (Until the revision, only ETC-decisions required unanimity due to the political sensitivities).

To ensure a suitable level and continuity, each Board member has appointed a stand-in (i.e., a Deputy Board member). Generally, Member States are represented at the level of Director-General (Director as alternate). From the side of DG XI the Director responsible for liaison with the EEA is, in principle, the formally named representative on the Board.

Functions of a Board Member and the Connection to Politicisation

Three functions can be distinguished for the Board members. In the first place, the Board is responsible for the relevance and the quality of the output. It is the task of the Board to ensure that the agency does what it is supposed to do according to the Regulation. Hence, the close involvement in programming, evaluations in the annual reports and in other types of assessments and evaluations (e.g., of important reports and of ETCs).

Secondly, the Board members represent national interests and specific interests. The two Commission members have to ensure that the work programme of the agency suits the needs of the policy-makers—the legislative programme of the Commission. Being a collegial body, these Board members represents the Commission as a whole. However, some interviewees believe that mainly DG XI's interests are defended.[59] Thus, the influence of DG XI has been to steer the EEA towards data gathering to support its legislative programme.

To some extent this second function coincides with the first function of ensuring relevance to policy-makers. The Board members come from the environment field and have broadly comparable interests at national and EU level (i.e., strengthening environment policy). EU interests and national interests are however not always the same. For instance, EU monitoring systems may put expensive demands on national authorities. Moreover, Member States may not like to be involved in EU programmes that will show them in an unfavourable light and Member States have attempted to alter or delay publications via the Board.

National interests are especially visible in the two major and recurrent discussions in the Board. These concern languages and ETC decisions. The dilemma with languages is that the EEA prefers to use English, otherwise the entire budget would be spent on translations. The ETC-topic is similar to the general agency debate: every country wants an ETC or, to be, at the least, represented in the consortia. These issues are politicised in the negative sense of the word. In these cases, the national interests tend to take priority over quality (see the discussion on ETCs below).

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[59] As discussed above, the regulation specifies the EEA's field of work. These fields fall broadly within the scope of DG XI. Nevertheless, some interviewees, from within the Commission as well as from other institutions, thought that the regulation can also be used to broaden the field of work so that the agency can also work more on sustainable development—i.e., environment issues connected to other DGs.

Thirdly, the Board plays an important role in representing the interests of the agency and its network within Member States. The Board's 'reporting back' function is an example of positive politicisation (co-optation). Board members have to present and defend the criticisms emerging from EEA studies back home (peer pressure, for instance when data has not been delivered and the country appears as a blank spot on the map or when a country's performance comes out below average). This forces Board members to put pressure on their colleagues to do better next time. Such criticisms did not go down well in the past, but they now get serious attention and lead to discussions on causes of problems, as well as to suggestions and support for improvements.

Thus, positive and negative forms of politicisation operate in the Board. Careful reflection is, therefore, needed whether the negative aspects can be prevented. We will come back to this question in the discussion of the ETCs.

Influence of the EEA and the Commission on the Board

So far, the discussion has been on the responsibilities of the Board, as if the EEA were merely an outsider and adviser. This would be a misrepresentation of the informal powers that the agency has. The Board decides for example on the work programme, but the agency negotiates with the clients and pieces their demands together. Moreover, the agency has to satisfy a range of tasks and clients. Thus, as some argued, the agency is in a position to 'trick us out'—i.e., to lump the demands together in order to put forward the things they want to do. Nevertheless, the agency has ensured support from all its clients for its short-term needs for resources, as well as, for its longer-term survival. This does not mean that everyone is happy with the product mix of the agency, but those involved tend to agree that the proposals from the agency reflect the different interests that it has to take into account. For this purpose, the agency tries to keep the planning of the work programme transparent (see Section 14).[60]

As already discussed, DG XI also has a major influence on the Board. This point was substantiated by pointing to the budget (being a budget line under DG XI) and to the impact of the Commission's legislative programme on the programme of the EEA. The point that DG XI has more to say because it sits on the budget is appealing, but can easily be misleading. The budget is a 'Community' budget and is decided on by the Commission, Council and EP.

What seems to be a more powerful argument is that DG XI is stronger in the Board than its two representatives would suggest, because the relevance of the agency depends, to a large extent, on the contribution it makes to the Commission's legislative programme. This fact is also recognised by national representatives who were presented as 'following the Commission'. Member States acknowledge that the relevance to EU policy is mainly a Commission issue (due to the fact that the Commission initiates EU

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[60] Even on several occasions it was remarked that sometimes the agency initiates new activities and 'sells them to the Board afterwards'. Such comments should, however, probably be seen as less important given the fact that the work-planning is quite elaborate and that there is considerable and continuous contact with the Board and Bureau.

policy). Moreover, Member States also want good data to ensure quality EU legislation and hence support a close link between the agency and DG XI.

Nevertheless, the Commission is only one of the players and has to recognise that the agency has many other tasks (e.g., to work for the public—a role more supported by the EP). These other tasks greatly reduce the power of the Commission.

Position of the Chair

As with the Director, the Chairman of the Board usually also has an important impact on decisions and the development of an agency. Moreover, the Chairman has to ensure consensus between Board members.

In the case of the EEA, the Chairman is not only closely involved in the preparations of the Board meetings but is also part of the Bureau that maintains close links with the EEA management. He keeps in touch with the agency through Bureau meetings, written decision-making procedures and informal contacts. Moreover, he regularly visits the EEA and 'grills' the staff about ongoing developments.

The British Board member, Mr Osborn, is the current Chairman. Time and space prevent a detailed analysis of his contributions. The impression created in the interviews is that the Chairman has been actively seeking a balance between the various views on the tasks of the agency. The agency has to carry out, as best as possible, its data gathering and analysis roles. Moreover, the Chair has been keen, together with the Director, to focus on quality. He has been instrumental in fighting off the negative side of politicisation and in keeping the discussion focused on issues, problems and solutions. Thus, there have been numerous heated debates on the performance of Member States. These debates, however, are seldom conducted in a condemning sense, but concentrate on opportunities for improvements. This also means that Member States—no exceptions—have to be prepared for strong debates and criticism.

c) The Bureau

As discussed, the Board is deeply involved in a range of decisions. However, it only meets 3 times a year. Therefore, to unburden Board meetings and to prepare its meetings, a Bureau was installed in 1997 (it is not mentioned in the original Regulation). It has executive powers and can take decisions (that have to be ratified). The EEA provides the secretariat of the Bureau. The Bureau is informed and consulted mostly in writing. Also decisions are taken in writing by passing round sheets for approval.

The Bureau consists of the Chairmen of the Board and three elected Board members. In addition, one member from the SC, one from the EP and one from the Commission are also invited to Bureau meetings.

d) The Board as Jack-of-all-Trades?

A large group of actors is involved in the supervision of the agency. Even though none of those involved has a predominant position, the Commission (DG XI) has a strong influence.

The various powers around the agency keep each other in balance. This balance has implications for the politicisation of decisions. Apart from one topic—the ETCs—there is little evidence for negative politicisation. The strong representation of DG XI, scientists (in the Board and in the SC), Member States and other actors, as well as transparent decision-making, mean that every one is aware of the need to take balanced decisions. This is the positive side of politicisation. The Member States, Commission and scientific community are forced to discuss issues and problems and there is little room for trying to change conclusions or findings.

One, important, area of negative politicisation concerns the topic centres. In this area unanimity still applies and Member States have been making use of their powers to block decisions. In this way, the Board can be seen as reasonably credible and supporting the independence of the agency. However, as this is an initial report on the design and functioning of the agency, some questions must be raised in the discussion of the Board and in an initial evaluation of its supervisory tasks.

In the first place, the issue of the ETCs credibility seems to open up the debate on the suitability of the Board (the building up of the network is one of the EEA's core tasks and main elements for getting at better data). Here, the quality of the ETCs is at stake.

Secondly, the credibility of the agency is also in other respects put at risk. The level of frustration in working with the agency in the Commission points to further questions about the suitability and relevance of the agency. If one part of the task of the EEA is to support the Commission and to carry out state of the environment reports, why does this lead to so much frustration in the agency? Why does the Board let this linger on?

As a fact, the EEA's task is multifarious. It is quite possible that each of the tasks of the agency requires a different composition of the Board. In Section 4, three main areas of work are listed: supporting the Commission (among other things) with better data, setting up the network, and informing the public with independently selected information.

As an initial hypothesis one could suggest that, for the first task, the Commission should have a stronger say in the Board. This might curtail the EEA's opportunities to add projects which leads to an overly complex work programme—this leads to less directly relevant information for the Commission. A comparison with the supervision of EUROSTAT might be useful for this task.

The EEA's second task of building up the network might gain in credibility, if it had a more de-politicised Board (e.g., through a stronger role of the SC). The task of producing independent reports on the state and outlook of the environment might again demand a specific Board. For this purpose, the Commission might be better kept at a

distance. Since it concerns trends and alternative policy trajectories, independent experts might be better placed in the Board.

Summarising, it might be necessary to disentangle the complexity of the EEA's Regulation and think about different supervisory structures for each of its tasks. It is debatable whether the current Board can be a jack-of-all-trades for all tasks. Hence a contingency view on the composition and tasks of the Board may be needed.

9) The Commission

Two topics need to be considered in discussing the relationship between the Commission and the agency. These are the responsibilities vis-à-vis the EEA and the organisation of this relationship within the Commission. The internal management of the Commission leads to a discussion on the special responsibility of DG XI and raises the question of whether DG XI is able to defend the interests of the agency within the Commission.

As will be argued in this Section, the position of the Commission can probably be best understood when the various tasks of the EEA are distinguished. Subsequently the role of the Commission in relation to each of the tasks can be discussed separately.

a) The Commission's Responsibilities

The involvement of the Commission in the EEA can be summarised under two headings, i.e., organisational responsibility and the relationship as the 'main client'.

In the first place, the Commission has an organisational responsibility. This involves, at the least, ensuring that the agency has an adequate legal basis (proposing the original Regulation and drafting the revision).

Even though the Regulation may seem merely legal, it nevertheless lays down specific organisational characteristics, such as the definition of the position of the Director, specifications for budgetary control, and the need to evaluate and update the organisation. So the Commission has at least an initial organisational responsibility.

The involvement of the Commission in organisational design was limited. The original task force started with the content of the agency and ensured that two major reports were well on their way in 1994. The actual design of the agency received less attention. This was, instead, mainly a process of trial and preventing error. Moreover, supervision of the agency in the first years was on related to its output and not to the question of whether the organisation was developing properly. From an organisational perspective, it would not have been illogical in, at least, the first years to audit the design of the agency in view of its effectiveness and efficiency.

But even after the creation of the agency, the Commission still has the right of initiative and the duty to ensure that regulations are implemented and that measures are taken if problems arise in this respect. A continuous responsibility for sharpening the Regulation, as well as the organisational elements within it, can be expected.

Currently, after 5 years, the organisation of the agency seems to be in the process of finding a stable pattern. It is developing its role as network manager and adapting the personnel profile accordingly. Furthermore, internal organisation is being redirected to horizontal integration.

Notwithstanding the major progress within the EEA, there are a number of important issues that demand attention. They concern, among other things, the actual tasks of the agency, the appropriate design, its size, and the effectiveness of supervision structures. To this can be added the question of 'instruments' (as mentioned above, contrary to EUROSTAT, the EEA has no legal means to oblige Member States to produce data). Should a decision be taken as to the core task of the agency? Is it possible to keep the agency, in its current size, working on four different tracks (data gathering, comprehensive reporting integration and enlargement)? How to adapt the internal organisation and improve the operations of the network? Can data be used as a directive instrument? Is there a need to open up the discussion on the suitability of the Regulation and of the functions and composition of the Board?

The interviews demonstrate that different answers are being given by Commission officials and by other experts involved. Not addressing these questions may lead to further frustration for those who want to develop the agency's role as informer of the public, as well as, for those who would like to see the EEA as a data gathering body.

This leads to the question of who is responsible for addressing these issues? People look for answers to the Board, the EEA and the Commission, but from whom can initiatives be expected? The responsibility lies, to a large extent, with the Commission. However, the interviewees have pointed to the limited time, and a possible lack of interest in the Commission, to open discussions on these issues.

Moreover, the Commission points to the responsibility of the Director for organisational issues and feels that it should avoid interference in the issues referred to. However, given the responsibilities of the Commission and the degree of mutual interdependence, such a strategic involvement could at least be discussed.[61]

Secondly the Commission, i.e., DG XI, is the main client. The agency has been created to support the Community in policy formulation. Moreover, the Regulation refers to specific fields of the environment. This especially connects the EEA to the environment DG. Thus, the relevance of the agency depends, in part, on the steering it receives from DG XI.

However, DG XI has been slow to develop an organisational responsibility for the EEA. The EEA's relevance for DG XI is limited by the fact that officials have contacts and networks with other consultants and bodies. In fact, officials even prefer to work with outsiders in areas in which the agency is active. Reasons for this vary. In the first place,

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[61] It has to be re-emphasised that some in DG XI do not see why they should have an organisational responsibility for an independent agency. From an organisational point of view, it is hard to see how an agency can be created and followed without an organisational responsibility from the Commission. See also the remarks in the Chapter no the EEA on the organisational responsibilities of the Commission.

the agency is understaffed and lacks human capacities and valuable expertise in specific areas. In some areas, the EEA has 1 or 2 experts and in other areas it has hardly any resources at all. As Commission officials explained, working with the agency is, therefore, not an option. Secondly, officials pointed to the disadvantages of working with an independent agency. Independence means less control compared to consultants (cf. EEA's insistence on publication of results).[62] Thirdly, due to its size, the agency has to work with consultants itself. Officials, therefore, prefer to hire outside expertise directly. A final reason is that some in the Commission are not particularly keen on seeing the agency develop into a strong body.

However, by virtue of this, the agency has faced difficulties in expanding its activities and building up EU networks where it does not have the support from additional Commission projects. A managerial role for DG XI could have led to, e.g., a broader basis for the EEA within the Commission or, to a streamlining of the EEA's work programme. The interviews indicate that it is safe to conclude that not everyone in DG XI was happy with the agency.

b) The Internal Management of the Commission

The main responsibility for the agency lies with DG XI.B (Environmental action programmes, integration, relations with the European Environment Agency). The reorganisation of DG XI in April 1999 merged the responsibilities for the EEA with the unit for 'integration' under the Director-General. One person in this unit is the co-ordinator for the general relations with the EEA. This unit takes care of the legal matters of the agency, such as the redrafting of the Regulation and it is instrumental in the work planning of the agency. The head of this unit is also present at Board meetings (as substitute Board member for the Director-General and for the Director of DG XI.B). Even though this unit has put an effort into smoothing relations between the agency and other DGs, it has been presented as being more of a service unit between the agency and DG XI than an active proponent of the agency.[63] The one person dealing with the agency is generally kept informed of all the contacts between the EEA and officials in the various DGs.

In addition, there are contact persons, or co-ordinators, for special tasks. The main example of this is the co-ordinator for the Commission for the state of environment reports. This co-ordinator chairs a steering committee of Commission officials that follows the writing of reports and that comments on draft chapters.

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[62] It must be emphasised that officials increasingly recognise the advantages of working with an independent agency.

[63] The efforts of DG XI have been limited—not absent!—in terms of actively looking for additional project opportunities for the agency in other parts of the DG XI or in other DGs. Difficulties in marketing the agency across boundaries of DGs, an alleged lack of weight of DG XI and lack of time were presented as explanations. Some, more cynical, Commission officials even doubted the interest of DG XI in marketing the agency. In addition, see also the discussion about the loss of the EEA's independence if DG XI would market the agency. However, to some extent these may have be objections more related to the past then to the future because DG XI is now more active in building bridges between DGs.

In general, the creation of the agency and its network has meant 'business as usual' for most parts of the Commission. No further responsibility for strengthening the EEA or for strengthening the internal management of the Commission was defined or accepted.

One legal reason why no further attempts were taken in DG XI for reinforcing the EEA, is that a budget has been agreed for the EEA with the Council and the EP. At least at first, people in the Commission thought that it would not be opportune to expand the budget via the backdoor through additional projects. However, this argument has lost some of its value since the EP has now agreed to this possibility (PE 224.736.fin). Some pointed to technical difficulties connected to public procurement regulation. The EEA is not allowed to tender for Commission projects and DGs are not allowed to pay particular attention to EEA offers. Being a subsidised body, working with the EEA could be regarded as false competition. Others in the Commission, however, pointed out that public procurement regulations do not inhibit co-operation with other DGs. Another reason is that DG XI officials are not particularly happy with the data they get from the agency or they respect the EEA's independence. They, therefore, see no further need for actively reinforcing the EEA and its network.

In the work planning process, the responsible official in DG XI gathers the desires from the various units in DG XI and from other DGs and transmits these to the EEA. In these first years of the agency, DG XI units have mainly demand specific data so that there was a preference in DG XI for a data gathering tasks. This hampered the support for a broader oriented agency (e.g., analysing policy-related trends).

There are signs that this is now changing, see for example the support from the Director-General for using the latest EEA report as input for policy, the interest in broadening the basis of the agency in the Commission by the new head of unit and the efforts of DG XI in stimulating projects with other DGs.

In sum, there have been doubts about the active role DG XI played in reinforcing the EEA and there are different views on whether DG XI should have had a role in this (e.g., there have been expectations that it would invest more in looking for opportunities to strengthen the basis of the EEA or in supporting the more general information role). The co-ordinating role within the Commission, has, therefore, been presented as mainly transmitting information on data demands between the units. However, recent developments show that this may be changing and that DG XI now recognises a more active role in this respect. Apparently, setting up an agency also demands such internal tasks in order to use and reinforce it.

A stronger internal management on the part of the Commission, and a responsibility for actively reinforcing the EEA, could have been of use to the agency in its first years. Of course, such a lobbying role need not be the exclusive role of a Commission official. The EEA also has its own responsibilities in this respect. The EEA is criticised for not developing reliable working relations with the Commission and for being too far removed from the thinking of policy-makers. The EEA has one person located in DG XI full time, for the purpose of monitoring new legislation in the Commission and for dealing with contractual issues. Given the workload and the sensitivities in overcoming barriers between DGs, there are doubts about whether both DG XI and the EEA have made enough people available for activities connected to managing their mutual

interdependence. Since this year, the EEA is trying to establish closer links with the DGs and explore, at management level, where it can contribute to the work programme of DGs. The agency has to spend even more time on building and maintaining contacts.

However, there are strategic issues related to the EEA that requires careful consideration and decisions within the Commission. A better focus on main policy themes within the Commission, could help to streamline the current work programme of the EEA. As pointed out in the interviews, the EEA could focus on sustainable development, which would give a clear focus and independence in terms of selecting priority areas. Moreover, it could act as think-tank and develop vistas on the major policy discussions such as subsidiarity, enlargement, and future of role of the Commission and EEA, etc. This will require a change in focus in the EEA from project acquisition and handling day-to-day management issues, towards more a focus on more strategic questions. With the appointment of the new Deputy Director, the EEA has started working on this. But such decisions also depend on Commission decisions about what it expects from the EEA.

c) Commission Roles in the Context of the Three Main Tasks of the Agency

The analysis again indicates that there are various expectations regarding the roles of the Commission. Clearly, the Commission does not have one, but various roles. However, the views and expectations as regards what these roles ought to be differ.

Rather than deciding that some have the correct and others the wrong view on the roles of the Commission, it might be useful at this stage to make an attempt to order the roles of the Commission in terms of the different tasks of the agency. Connecting the roles to the three tasks identified in Section 4 may help the discussion and connect these different views and expectations to the complexity in the Regulation. But, at present, this can only be done in a tentative way.

The first role of the EEA is to provide better data to policy-makers. This requires a strong input from the Commission in order to decide what information is needed. In addition, it is necessary to keep an eye on what a realistic budget is for this task and whether the EEA is sufficiently endowed, equipped and organised (in terms of staff and structure).

The second role, network building, may put the Commission in the position to strengthen the EEA's internal capacities for network building. Of course, the EEA has its own operational responsibilities, but nevertheless a Commission monitoring role can be expected. Furthermore, the network role seems to demand additional projects and funds so that more resources are available for strengthening the network. In this respect, one could imagine that there is a responsibility for 'marketing' the agency within the Commission, and for identifying fields in DG XI and in other DGs that can be used to strengthen the EEA in its efforts to build networks in more fields. This role is now being recognised in DG XI (even though resources for this in DG XI seem limited and there are unresolved issues over e.g., whether this role endangers the neutrality of the agency and whether problems of interdependence between DGs arise.

The third role connects to the public informational role of the EEA. This is the role that seems to create the major tension between the Commission and the agency. This is the area in which quite some Commission officials would like to see the wings of the EEA clipped—even though others argue that this is also an EEA task according to the Regulation. The Commission is now growing more favourable towards this role. However, in order to perform this role, the EEA could benefit from more resources. Moreover, a discussion is needed on whether this implies a stronger focus of the agency on sustainable development. More contacts with other parts of the Commission would again be needed for additional projects or funding, or a higher initial budget is required. Furthermore, this task of the agency would probably be best fulfilled if the Commission could be distanced as regards the definition of the programme.

Thus, in each of these roles, it is possible to discuss specific roles of the Commission. As appears, the issue of the roles of the EEA can lead to sharp differences in what an be expected from the Commission. Defining relevant information needs suggests a strong involvement from the Commission in the formulation of the work programme. The task of the EEA to monitor the environment and to inform the public would require a role for the EEA independent from the Commission; otherwise the Commission might be able steer reports from the EEA that evaluate the effectiveness of policies and of alternative policy trajectories.

To disentangle the roles of the agency, a discussion may now be needed on the precise tasks of the agency. Subsequently, the role of the Commission can be considered in the light of each of the tasks (a contingency view of the roles of the Commission). If all three tasks apply, as is the case now and will probably remain the case in the future, then Commission roles must be varied. This will require careful attention for how the specific tasks are supervised.

Once Commission roles are discussed in view of the tasks of the EEA, then it may also be necessary to discuss the internal management of the Commission.

d) Is the Connection to DG XI Desirable?

In an effort to solve the problems in the relationships with the Commission, it was suggested by EEA officials to locate the agency under the President of the Commission or under the Secretariat General. This would make it easier for the agency to work with other DGs (e.g., since the budget would be no longer attached to DG XI). Moreover, it would be easier for the SG to market the agency internally due to its neutrality (see above). Such a position would be especially practical if the unit for 'integration' could also be located in a more central position in the Commission. In practice, the EEA could then be more easily used to focus on integration issues—which requires working with other DGs. The affiliation of the agency to DG XI connects it to sectoral policy and hence to inter-DG haggling. Due to inter-DG sensitivities, it is not easy for DG XI—i.e., for the Director-General from DG XI—to comment on the work of colleagues.

On the other hand, it can be doubted whether the agency would gain much. Within DG XI, the agency can benefit from the support for environment policy. Under the President

or the Secretary-General, environment policy may have to do without such a focus on environment. Its budget might then be an easy target for cuts.

It will probably be more important to reinforce co-operation between DGs and between the EEA and DGs, and to look at ways to strengthen the position of the agency by reformulating the role of DG XI vis-à-vis the agency (e.g., reinforcing DG XI's role in identifying and facilitating co-operation with other DGs along).

e) Decentralisation v. Centralisation? The Role of the Commission

Several ways have been presented in which the agency represents a move towards decentralised governance structures (i.e., as Commission subsidiary, as move towards changing behaviour instead of hierarchical legislation, and as network organisation). The analysis of the possible roles for the Commission vis-à-vis the agency underlines that decentralisation always requires attention for the roles and organisation of the centre (Schout 1999).

10) The European Parliament

The EEA works for the Community institutions and for the public. This means that the Commission, and especially DG XI, may be the main client, but it is not the only stakeholder. The EP is not an immediate client for detailed work on specific measures. However, it is keen on ensuring that the EEA is consulted in the preparation of proposals to ensure that they have a proper factual basis.

Moreover, the EP, especially the Committee for the Environment, has a great interest in the state of the environment reports and the reviews of the environmental action programme. In addition, in consultation with this Committee, the agency has produced two special interest studies (on fiscal measures and on tax measures specifically).[64] The general reports on the state of the environment and on trends in the environment are highly appreciated by the EP and have been occasions to discuss EU environment policy with the Commission at an aggregate level. Hence, the EP is more interested in the EEA as provider of general information and of analysing trends. This information role of the EEA also gives the EP more power in controlling the Commission. For its purpose, the EP is best served by an agency that is independent from the Commission.

The EP's support for the EEA appeared, for example, during the negotiations on the revisions of the Regulation. The Environment Committee has tried to broaden the EEA's room for manoeuvre, emphasising that the agency should work 'on its own initiative'. Moreover, to give the EEA flexibility in its work, the EP has left the door open for an implementation/monitoring task (the EP suggested on several places to insert terms such as 'implementation', 'data register' on measures taken by Member

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[64] As can be imagined, DG XI was not so happy with these reports. One reason for this was that DG XI thought that the EEA should focus on getting the work on the state of environment report and track rather than moving to additional activities. Moreover, the timing of these reports was not beneficial to ongoing negotiations in the Council.

States, and 'enforcement'). This Committee has also tried to create flexibility by means of reinforcing the position of the multiannual work programme and a multiannual budget (so that it would be less bound by annual interference).

It is not unlikely that the EP would use the agency for more detailed work on new Commission proposals. However, the Environment Committee is not equipped to look at the legislative agenda of the Commission and decide, at an early stage, which topics it would like to see developed by the EEA. The EEA, therefore, serves more a general need in terms of general information and trends.

The second EP Committee that is relevant for the EEA is the Budget Committee. This Committee has been concerned with the costs of agencies in general. It disliked a trend for growing budgets that would not be under EP's control. Thus, consultancy for other clients and a shift from funds from DGs to agencies were not supported. The agencies should work both within the constraints of the budget and within the tasks that are attributed to them by the Regulation. However, at present this Committee is more lenient, at least towards the EEA. It supported the possibility for EEA in the revised Regulation to also work for other parties, as long as the marginal costs would be covered. In this way, the agency can expand its activities, but it will not make additional profits that would give it more independence and hence make the EP's job more difficult.

Representation on SC and Board

The EP is represented in decisions on the EEA's work programme through designated experts in the Board and the Scientific Committee. These members are not MEPs but experts from academia. It was thought that this would depoliticise the steering of the EEA and strengthen objectivity in the Board. As the EP only has a general interest in the state of environment reports, it left the designated experts in the Scientific Committee and the Board quite independent—even though they themselves would prefer some more steering from the EP. Due its reliance on independent experts, the EP plays an important role in depoliticising the EEA. This appeared for example in discussions in the Board in which the conclusions of reports were attacked on political grounds and these independent experts defended objectivity.

11) The Member States

As the agency has to prove its relevance to the Community institutions and the Member States, all the national administrations are represented in the Board. The main connection to the Member States is through the work programme. However, this is mainly an issue for the EEA and the Commission to decide. The Member States rely, in the Board, on the Commission because the EU officials have to prepare proposals and need the data. Direct influence of Member States on the programmes is limited and the behaviour of the Member States in the Board has been presented as 'mostly following the Commission'.

This does not mean that Member States are inactive in the Board or vis-à-vis the EEA. In the first place, they have to bear the brunt of the data gathering. Therefore, it is in

their interest that the work programme proposed by the EEA and the Commission is realistic and feasible. Often, national administrations will have to adapt or set up new monitoring systems. Given the costs and the national priorities, active contributions can often not be expected right away. In most areas, Member States cannot be forced to deliver information. Attempts to add legal requirements to deliver data have been resisted by the Member States. For example, the proposed formulation in the revised Regulation hinted at a duty to report. The proposal that Member States 'shall co-operate' was diluted to 'shall, as appropriate, co-operate'. In this respect, it is also important to consider that the capacities of Member States to monitor and deliver environmental information vary considerably. Imposing reporting requirements would mean that national policy priorities have to be changed to accommodate European standards. In general, northern countries have a longer history in monitoring and attach greater value to environment issues. (This, however, does not mean that these Member States always come out on top as concerns reporting or the condition of the environment.)

Nevertheless, participation in this EU network puts pressure on Member States to adapt even without formal obligations. Member States do not want to appear as a blank spot on the map (i.e., showing a failure to deliver the information). Therefore, Member States have learnt to be quick in adapting data systems. However, adapting systems and delivering data in the right format, and at the right time, has proven to be difficult and insiders still speak of Member States 'inertia'.

Secondly, Member States will not always be happy to deliver the required information because it may lead to unpleasant comparisons. However, Member States have also been upgrading their contributions. A shift in mode has been noted from one in which Member States felt attacked when they were evaluated as performing poorly, to a spirit in which Member States want to show improvements in terms of environmental conditions and data reporting. This also affected their behaviour in the Board. Mostly, representatives of national governments are usually keen on discussing issues and problems instead of trying to change conclusions.

Thirdly, the main debates in the Board in which Member States are active are connected to the decisions regarding ETCs, e.g., decisions about locations of ETCs, their budget, and the national organisations that take part in consortia. The ETCs are funded, at least in part, by the EEA. The money aspect, and the prestige involved, have made the ETC decisions the most sensitive issues in the Board. This is the topic where Member States have been most active in the negative sense of politicisation (see below).

Fourthly, Member States may also ask the EEA for projects.[65]

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[65] The characterising feature of such requests is that Member States, and the Commission, always ask for more work. Cutting back on activities proved to be politically sensitive.

12) The Network

The agency was deliberately created as a network organisation. In this sense, it is the agency's task to politicise co-operation. It has to institutionalise co-operation with and between national governments and EU institutions. This Section and the next examine the implications of being a network organisation and compare it with initial expectations. In this Section, we describe the network. The next looks at the practical meaning of network management, i.e., of building capacities and of managing the political processes of decision-making in an interorganisational setting.

The hub of the network is the agency. It consists furthermore of European Topic Centres (ETCs), National Focal Point (NFPs), National Reference Centres (NRCs) and Main Component Elements (MCEs), and the EIONET. In all, the network entails more than 600 organisations. In 1998 there were 9 ETCs, 18 NFPs (including the European Economic Area), 124 NRCs and 334 MCEs. In addition, there are counterparts of each of these in the PHARE countries.

The core elements of the network are the EEA, the ETCs and the NFPs. NRCs and MCEs are more loosely connect organisations which can be used to complement the ETC network (NRCs are partners in the consortia) or for more *ad hoc* studies (MCEs). Together, these organisations create a European mechanism for monitoring the environment, sharing information and undertaking integrated assessments. Moreover, the Regulation stipulates that the network should be flexible and adapt to new topics and needs. The more loosely connected MCEs and NRCs are especially helpful in this respect.

a) The ETCs—European Topic Centres

The European Topic Centres are the spine of the network. There are currently 9 ETCs (see annex 2). Usually, they are national institutes that work on one of the topics specified in the Regulation. They work together with a few NRCs in a consortium. A consortium consists of, preferably, 3 or 4 institutions. The consortium ensures cross EU participation, so that expertise and capacities in Member States connected to a topic are aggregated into a small network (i.e., an ETC consortium). Not every country hosts one. This is then compensated for by the participation in the consortia.

The agency is responsible for the work programme and the quality of the output of the ETCs. The 'Monitoring and Databases Programme' unit manages eight of the ETCs. The ninth falls under the unit for 'Operation Infrastructure, Publications and Information'.

ETCs are paid for by the agency. However, this is only a part of the costs of the ETCs. They also draw on national expertise and on the institutions in the Member States. Moreover, the countries support the topic centres directly. Thus, the money from the EEA has an important multiplier effect. A much larger EU network is created through the agency funding. The direct responsibility of the EEA for the ETCs gives them a special position in the network. Other organisations in the network are connected as

consultants or are voluntarily connected to the physical network and are informed of the developments in the European environment.

The Board takes decisions on the topic centres. These decisions concern ETC location, participation of national institutes in the consortium, and allocation of budgets to ETCs and consortia.

These are the most politicised decisions connected to the agency. Every Member State wants an ETC and if this is not possible, they want to be represented in the consortia. In addition, hosting such a centre is attractive since it adds to the prestige of the leading institute within a Member State in a particular field. Related to the hosting of the centre is of course the sensitive issue of the size of its budget. These decisions were taken by unanimity under the old Regulation. On various occasions, Member States have used their power to veto, block or weaken decisions on ETCs and consortia (e.g., in the decision proposed by the EEA to modify and cutback the budget of the ETC on soil).

In the discussion on the EEA, the ETC issues are the major points of politicisation. This has left its mark on the development of the EEA and affects the effectiveness and efficiency of the way in which the funds allocated to the EEA are being used. Most experts, in the EEA, DG XI and from outside the EU institutions, have qualified the way in which the current ETC system operates. The main points of debate are the topics of the current 9 ETCs, the allocation of the funds and the number of organisations in the consortia. Experts have suggested cutting the funding of some ETCs. One reason for this is that some centres underperform. A second reason is that the funds of the EEA are not sufficient to maintain 9 topic centres.

The second major point of debate has been the number of organisations in the consortia. At present the EEA is trying to reduce consortia in size to prevent the funds from becoming too fragmented. Member States have, however, prevented this in some cases, leaving consortia rather large. The biggest consortium consisted at one point of 15 organisations.

The third issue connected to the ETCs is the question of the topics that they should focus on. At present they focus on single pollution media (soil, water, air emission, air quality, etc.). In view of the need for integrated analysis, a focus on major themes is more desirable (e.g., on climate change). Even though it is too early to judge, some fear that once a Topic Centre exists, it will prove hard to change it. ETCs were set up to offer flexibility. Therefore, the Regulation stipulates that these centres shall be designated for a period no longer than the duration of each multiannual programme (Article 4.5). However, the sensitivity of decisions in this area makes flexibility unlikely.[66]

The previous unanimity principle prevented major changes in the ETC structure. Under the new Regulation, ETC decisions are to be taken by a two-third majority so that it will be easier to change the present structure (especially the allocation of resources and the

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[66] Moreover, in addition to political sensitivities for changing ETCs, topic centres are difficult to change due to the experience they have acquired and because the environment problem is not likely to go away.

size of the consortia). Nevertheless, the basic structure of the current 9 topic centres will probably not be easily changed . Moreover, there is not yet a profound discussion on the desired system of ETCs. Moreover, changes will still require finding compromises between the 15 Member States.

The ETCs fall under the EEA's responsibility. This also implies that the EEA has had an important role in initiating the current system of topic centres. In 1994 the agency asked Member State organisations to tender for ETCs. This resulted in lists of Member States running for one or two specific centres. The decision on the location of the ETCs was based on criteria formulated by the agency, e.g., related to proven expertise in the field, to the key scholars involved and to the composition of the consortium. For some topics, i.e., the 'old' topics such as air, it was possible to apply the criteria. However, for the newer topics, such as Soil and the Catalogue and Data Sources and Thesaurus (an ETC supporting the standardisation of data and accessibility of the data network), it proved difficult to apply the criteria because there was only 1 bid. This meant that there were no alternatives to choose from.

The EEA made a preliminary assessment of the tenders. The Board took the final decision on the division of ETCs over the Member States. This was a long drawn out decision process in which a balanced compromise had to be found. Even though the agency presented its list of proposed ETCs, the Board still decided to change the ETC composition in order to obtain consensus. The final outcome is not regarded as optimal from an effectiveness or efficiency point of view. Moreover, there is a general feeling that the ETCs were created too quickly. Furthermore, they were set up under the assumption that funds would increase. Therefore, in the end, the ETC structure is now over-extended and underresourced. From an effectiveness point of view, fewer and smaller ETCs and a better targeting of topics would be preferable.

The strong influence of the Member States on the funds implies that the agency only has a limited influence on the ETCs. At present, the agency would like to shift resources from one ETC which is under-performing to another area where it thinks that the resources are needed more . In the end some cuts have been made, but only to a limited extent ('to spare the tar we spoil the ship'). Moreover, a discussion over the usefulness of the current topics is hard to start up.

The decisions on the ETCs are quite essential to the work of the agency. First of all because they form the backbone of the agency, and secondly, because they involve a large share of the external budget (60%). Despite the major depoliticisation of the agency, the ETC structure is still highly sensitive and a source of critique and frustration.

b) Quality Control

The EEA's responsibility for the ETCs also implies that it has to monitor their output and quality. The quality control system consists of the regular review of the ETCs. An ETC is visited very three years by a committee of Board members, EEA experts, members from the Scientific Committee, and consultants. In the evaluation, performance and future plans are discussed. Currently, some ETCs are in the process of

being reviewed and automatic extensions of current contracts is not to be expected. Suggestions for changes in size, in consortium composition and in integration with other ETCs are more likely. However, the time has been limited for this review work and the process of evaluations is behind schedule. This, once again, underlines the extent in which network management makes claims on scarce EEA resources.

In addition, EEA experts (in the ETC-unit) evaluate the products of ETCs on an ongoing basis. Moreover, as the analysis unit uses the output, here there is also a constant feedback. Also, the annual and multiannual work programmes and the annual reports ensure a process in which products and outputs are constantly reviewed and redirected towards new needs. Furthermore, the products of the agency are always thoroughly discussed with experts and consultants prior to publications.

Finally, each of the members of the Scientific Committee is an expert from the field of one of the ETCs and is expected to follow it more directly—e.g., as member of the Board of the topic centre.

This system of output control leads to a fairly consistent monitoring and discussion of the output. Data and reports are thoroughly discussed and weaknesses are unveiled. The EEA is aware of the need for openness in this respect to main its credibility.

Despite this quality control system based on inside and outside experience, two Commission officials had sharp views on the EEA's ability to control quality. They pointed to reports being sent to them— produced by ETCs—which were below the mark. This was presented as an indication of lacking expertise to check the work for which the EEA is nevertheless responsible (or of extending activities outside their core activity).

Thus, the EEA's ability to monitor and steer the ETC structure shows a mixed pattern. On the one hand there are quality control and planning mechanisms. On the other hand, the major ETC decisions are taken by the Board and are strongly influenced by national interests, instead of by the original mission of creating an effective European environment network.

c) Brief Assessment of the ETCs[67]

Five remarks must be made in relation to the performance of topic centres. These concern the quality of their output, the relevance of their output, the extent to which they are interdependent, their flexibility and the contribution they make to the monitoring and analysis network.

The quality of the work of topic centres varies. Three of the nine were judged to be ranging from 'very poor' to 'below target'. The reasons for this differ. To some extent

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[67] As already emphasised above, conclusions on effectiveness can only be tentative at this stage and in this type of initiating study. A more elaborate picture on the ETCs will emerge from the much more in depth evaluation of the EEA (mentioned in the new Regulation).

political forces cause the problems: the consortia are too big and the Board has not allowed a rational discussion on the setting up and funding of the ETCs. Moreover, at the start of the agency, there was an unrealistic expectation regarding the efforts and resources that the EEA could put into the ETCs. To secure resources, the EEA had to jump into 9 ETCs too quickly. Nevertheless, the resources of the agency did not grow in relation to the development of the 9 centres. Member States also thought that the topic centres were subsidised organisations that would work for the host government.

However, to some extent, the favourable and unfavourable evaluations can also be explained by the fact that the 'good' ETCs deal with areas in which there was already a lot of expertise and legislation in the EU. Air, for example, was already amply monitored. Waste is still a relatively new area and is, therefore, more difficult to tackle.

Each of the ETCs is supervised by the EEA. In cases of disappointing performance, the EEA has not paid for the final product (or withheld certain parts of it). In cases of consistent lack of quality, and after attempts to upgrade the ETC, it has proposed cuts in the annual budgets to the Board (albeit with varying degrees of success: generally the Board found it hard to accept the proposed cuts).

The varying quality and dynamics of the ETCs has implied that the EEA officials have been spending a large share of their time in monitoring the topic centres and upgrading them when necessary.

In the interviews, the relevance of the ETCs topics frequently caused. The current nine topics are not seen as the most relevant ones. Setting up a system according to the 'media' of environment problems still dates, according to some interviewees, back to a fragmentation of issues in environment thinking. Instead suggestions were made to focus more on integrated pressures and production chains.

Therefore, interdependence of the ETCs is an issue. The ETCs were set up as individual data gathering networks. However, it turned out that they are more interconnected with each other and with the production of the output of reports of the agency. The ETCs are more aware of the specific situations in Member States and of the details than the experts in the EEA, so that the information can better be processed there. This decentralisation to ETCs asks for new ways of integrating the topic centres. One of the current challenges is therefore to upgrade the interconnection of the ETCs and their networks.

In this respect, flexibility of ETCs was mentioned as a problem. On the one hand, the topic centres proved to be very flexible as regards changes of emphasis within ongoing programmes (e.g., to accommodate new demands or to adapt to budget cuts). Changes in work programmes had to be made from one year to the other and also in ongoing work projects. However, switching to new topics has proved, so far, to be very difficult.

The final issue to consider, is the question of whether ETCs have contributed to the creation of monitoring and analysis networks. This has been the case. On the whole, the agency structure and the co-operation of the Member States in the Board have produced incentives for the Member States to upgrade monitoring capacities and to be effective partners in upgrading throughout the EU. One element that has contributed to this

success, is the fact that Community resources have been supplemented by national subsidies. Thus, the agency framework resulted in a considerable multiplier effect. EEA's contribution amounts to 200—600 thousand Euros per topic centre. A large share of this money is used for travel expenses and arranging meetings of the consortia. Other operational expenses have been funded through national resources.

A continuous debate concerning the ETCs is the question of the effectiveness of the investments. Some argued that a clearer focus of the ETCs and a centralisation of data gathering and analysis capacities in the agency itself would result in a more efficient environmental monitoring system. However, from the point of view of setting up a cross-EU network, the ETC-system has made important contributions.

Nevertheless, the strong involvement of Member States in determining the focus of the ETCs and the division of tasks between them has hampered their effectiveness and the reputation of the agency. On the one hand, the inefficiencies and initial problems in steering the ETCs can be seen as the price to pay for European integration. On the other hand, the negative national interference has not been helpful. In the long run, people involved in the steering of the ETCs hope that the system will become more effective and more focused on quality and relevance instead of on *juste retour*.

Questions regarding the management of the ETCs and the data gathering and analysing networks are also important with a view to deciding on how to steer the EEA and the network towards more integrated ways of working. The ETCs are expected to work more together and to move into the direction of integrated assessments. This process has started recently. However, the current decision-making system operates rather slowly. It remains to be seen whether it is sufficient to only change unanimity voting.

An assessment of the ETCs is bound to lead to a mixed picture of their performance. They have been created in part to set up a network and in part to gather data. A trade-off can, therefore, easily be expected.

At this point, it does, however, seem appropriate to stop and think about the future of the ETCs, their structure and the topics that are needed. This, however, would first of all demand clarity on the focus of the agency.

d) The Network of National Focal Points (NFPs)

In addition to the ETCs, another important link in the networks is the system of National Focal Points (NFPs). An NFP is the contact person for the agency in a Member State. The NFP mostly works a national ministry or in a major national environment agency. They have a good overview of the potentially relevant and related organisations in the Member State. They know what these organisations are doing, how they could be interconnected with the EEA network and what contributions they could make as consultants or in consortia. Moreover, they are expected to have insight into national data gathering systems and know how these are or could be connected to the work of the EEA.

In accordance with the Regulation, every Member States has appointed a NFP. These contact persons have to defend the interests of the agency within the Member States.

They have to communicate the needs for additional data and for new information systems and muster support for the work of the agency. In addition, the NFPs will look in the Member States for the most appropriate organisations to deliver specific data (e.g., on the list of the NRCs). These tasks mean that the NFPs play an important role in managing the network around the EEA and in pressing the administrations to adapt national monitoring systems to meet the needs of the emerging EU network. The NFPs play an important role in keeping the network transparent. They act as linking pin between the Member States and the agency.

One of the continuous tasks of the NFPs is to ensure that the financial issues connected to the data requests are taken care of. Most of the time, when new work has to be started, the issue arises as to who will pay for it. This can be the EEA, the national environment ministry, one of the other sectoral ministries, or one of the agencies in the Member States who is already working on these activities.

In addition, the NFPs are generally closely connected to the national representatives in the Board. The NFPs have the factual and detailed insights into the issue on the agenda and, therefore, play an important part in determining national positions.

This also means that the NFPs have a two-way communication task. Not only do they defend the work of the EEA at home, they also express their national interests and concerns (e.g., about data costs) at the meetings of NFPs in the EEA. The NFPs are not independent from their national governments—as e.g., the Scientific Committee members. They also have a role in connecting the work of the EEA to the demands and abilities of their home governments.

Even though the network of NFPs was created to support the EEA in the developing of the necessary contacts, it in now also increasingly used to support the dissemination of the output of the agency.

The NFPs meet 3 times a year. Their meeting is organised in between Board meetings to support the national Board member and to deal with the more technical issues.

The NFP-network is an important practical and technical link between the agency and the national organisations. The challenge of the NFPs, however, is to represent the Member State and to report on new EEA developments. One of the weaknesses in the system is the fact that an NFP is only one person. Moreover, he (no she's are involved) is usually at the margins of national decision-making. His counterparts are national ministries, economic sectors, and statistical offices. This greatly limits the work of the NFPs and the power they have in representing the agency.

Having presented how the NFPs operate, it is interesting to compare this to why some Member States wanted NFPs in the first place. During the original negotiations some Member States wanted to use the NFPs as 'filter' between the agency. This would offer a way to monitor the information that was sent to the agency and to prevent incriminating information being passed around. But, this phase is now history and NFPs developed more positive roles.

e) MCEs and NRCs

The core of the network is the system of the ETCs and their consortia. The Main Component Elements (MCEs) are specialised bodies within the Member States, and were already mentioned in the Regulation as the natural contact organisation for the environment agency and the ETCs (e.g., as part of the consortia).

The National Reference Centres (NRCs) are the other organisations with which the EEA or the ETCs have frequent working relations, albeit on a more *ad hoc* basis. The Regulation does not refer to the NRCs, but, during the setting up of the network, it was found to be necessary to make a distinction between the various organisations with which frequent contact existed and those that are more distanced from core activities and projects. The NRCs can be relevant at later stages or they are part of the target group of the output of the EEA (e.g., NGOs).

f) EIONET

The total network is quite large (already approximately 600 organisations in the 18 member countries only). The EIONET is the overall framework of the network including the physical infrastructure through which the organisations are connected. The EIONET encompasses the various parts of the network just described.

g) Assessment of the Network

Throughout its existence, the EEA has contributed to the creation of an environmental monitoring and analysis network. The capacities of Member States are becoming increasingly interconnected and the network has supported, directly through funds or indirectly through contacts, to the reinforcement of environmental monitoring capacities in the Member States.

However, it remains to be seen to what extent there is now a strategic network of relations between Member States. The experts noted during the interviews that the organisations are mostly working on individual topics whereas co-operation between centres of excellence across a range of topics is needed. Moreover, seen from the perspective of policy-makers, no integrated network exists—apart from the consortia around topic centres. The various parts of DG XI and of other DGs still work with their own consultants and contacts outside the framework of the EEA.[68]

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[68] As discussed above, the EEA would like to see more of the additional work for which almost each official in the Commission has his/her own contacts directed towards the agency. In this way, the EEA would receive more resources and could use the extra assignments to further the network. Others, however, argue that there is nothing worrying with relying on other information sources (see above). In addition, Commission officials would like to keep the opportunity to work with consultants (no danger of publications, and they can be used for 'lighter' assignments). Moreover, as discussed above, DG XI would like to see the agency first deepen the development of the state of reports before new assignments are taken on Board.

13) The Management of the Network

The EEA was deliberately created as the nucleus, or headquarter, of the network. However, as already discussed, the implications of what a network involves for the staff were not clear at the outset. Initially, the emphasis was on producing the work programme and the first major reports. The focus was on attracting the appropriate technical expertise and on getting the first ETCs up and running. The need to develop the managerial part of the agency was less pressing than the need to get the technical side of the EEA right. Looking at its role within the network, it is clear that the EEA fulfils important roles in managing the capacities of the individual components of the network as well as in strengthening the relationships between the organisations in the network. In fact, a large part of the financial and human resources are devoted to setting up and maintaining the network.

Even though we will speak about the network, it should be understood that this consists of various sub-networks. The EIONET comprises the Board, the ETCs and the consortia, the NFPs, the NRCs and the MCEs. The agency is embedded in several networks. Each of these is different in terms of number of organisations, interconnectedness and strength. Also the functions of the agency differ in the networks.

The activities of the EEA in terms of network management can be summarised by highlighting some of its activities in each of the components of the network.

a) EIONET

In connection to the EIONET, the EEA is responsible for the mapping of the network, ensuring that the physical infrastructure is up and running, that national partners are identified, and that information is distributed to the partners. Moreover, in addition to these organisational tasks, the agency has to ensure that common methodologies for information collection and distribution are developed (through consultants and ETCs).

In addition to setting up and organising this network in the EU, the EEA is now expanding the network to the East. Building physical capacities for the network is one its activities. For this it needs support from DG IA—which, as discussed, has not been easy to secure. A report from 1996 indicates the issues which the EEA had to deal with in setting up this network (Norup 1996).

b) ETC Network

The ETC-network was first set up as a loosely coupled system. Gradually, under the influence of the EEA, it is developing into a more integrated system. The ETCs now meet in a separate meeting organised in conjunction with the meeting of NFPs. These meetings are organised by the EEA and deal with common problems and issues such as funding, programme management, setting up data systems and quality control.

Furthermore, under the pressure of integrated environment assessments, the ETCs are becoming more interdependent. This has highlighted the task of strengthening the relationships between the topic centres.

In addition, the EEA has a major responsibility for each of the individual topic centres. A great deal of effort has been put in the selection of topic centres, the steering of each of them, quality control and programme development in view of the (multi) annual programmes. The EEA decides, in close co-operation with the Board, the topics that have to be covered by the ETCs and selects the candidates for the ETCs. This involves tendering for the centres and selecting the most appropriate candidates. This is not a passive role of picking and choosing between the offers but requires active involvement from the agency because the ETCs and their consortia do not readily exist. They sometimes have to be created and organisations have to be stimulated to submit a tender as a consortium (in the first round, the EEA had to accept 'one-bid' ETCs, see above). In this process, the agency has to take into the geographical distribution of ETCs and consortia into account, the quality, spin off the centre would have on national capacities. A balance, therefore, has to be found between quality and building capacities (i.e., stimulating Member States to develop new organisations or upgrading existing ones).

The enlargement is already casting its shadows as the EEA is increasingly involved in building capacities in affiliated countries and in possible Member States. This again demands additional contacts with DG XI and DG IA to discuss needs and resources.

c) The Consortia

The management of the ETCs also involves managing the consortia surrounding these centres. The ETCs and the consortia encompass approximately 60-70 organisations.

The consortia have demanded a considerable amount of attention from the agency. The creation of the data gathering mechanism has not been just a matter of hiring ETCs and related organisations in the consortium. One responsibility is to ensure that there are actually good consortia applying and even of creating competition in this respect. Moreover, the EEA plays a major role in ensuring that the individual ETCs, with their consortia, produce output of a sufficient quality and within the deadlines, and that their products are integrated into the environment reports.

Furthermore, the ETC structure is now likely to change (e.g., in order to move towards less ETCs, to change the topic of these centres, to interconnect them). Thus, management of change, will also be a future issue.

Managing consortia also demands the handling of sensitive relationships. Due to political factors, the consortia have a tendency to grow too large. The EEA, therefore, has the task of analysing the weaknesses in the consortia and restructuring them (e.g., upgrading or replacing weak partners and downsizing the consortia in order to increase efficiency). One important instrument the agency has for this is the budget. On several occasions, it has not paid the full amount of the budget when the quality was below standard.

d) More Loosely Connected Components: MCEs

For its output the ETCs and the EEA work with more than 600 organisations across Europe. This network is connected to the EEA via the electronic network. These

organisations are kept informed of the work of the EEA and the ETCs and they are involved in projects when needed. The NFPs are responsible for mapping this network, keeping it up to date, informing the partners, and involving them in projects, diffusion of information and building up capacities required for data gathering and analysis.

e) The Official Networks: the Board Members and the NFPs

As discussed above, the networks of the NFPs and of the Board members play important roles in managing the organisational networks around the EEA. They agree on the work programme and on the definite form of the ETCs and the consortia. In addition, they have to ensure that the capacities of the Member States are available to deliver the requested information and that capacities are strengthened where needed. Weaknesses in the system at national levels are discussed in these fora and progress in adapting the capacities of the network and of Member States is a recurrent theme in the meetings. The NFPs deal with a host of technical and organisational issues and meet more often and also more informally with the EEA. The Board deals with political issues and final strategic issues.

f) The Institutional Network: The Commission, the EP, ECOSOC, the Presidency, EUROSTAT and the JRC

The Commission can also be seen as a specific network. Even though the EEA is not responsible for this part of the network, in practice it spends a lot of time on building relations with DGs. The first five years of the existence of the EEA have shown that the internal management of the Commission demanded stronger attention—according to interviewees from within DG XI and the EEA.[69]

One issue that can be expected in the near future is that the EEA must develop into a more mature organisation. That involves streamlining its programmes, aligning itself closer to main policy lines and strengthening budget relations. This development will demand a lot from the Commission in terms of internal management. Since, this proved to be difficult in the past, the EEA may have to be prepared to regard inter-DG relations as an important part of its work.

In addition to the Commission, the agency requires institutional support from the other EU institutions. This demands nurturing relationships with the Member States, the other affiliated countries and with upcoming Presidencies.

According to the Regulation, the EEA has to work closely together with EUROSTAT and the Joint Research Centre (JRC). These organisations are specifically mentioned because they have overlapping assignments. The links with the JRC have been fairly

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[69] EEA and Commission officials emphasised that even more effort is needed. Some Commission officials commented that the EEA should have spent more time on aligning the organisation to Commission needs. The EEA and DG XI are currently in the process of strengthening the relations especially with a view to programme development. Also the EEA is devoting more attention to this (since 1999).

straightforward. The JRC in Ispra works on technical ways to reduce burdens of production and consumption on the environment (best available technologies). The EEA can be a mechanism to diffuse the know-how produced. The relationship with EUROSTAT has been problematic as regards work on data gathering—even in the same areas. This has been led to mutual distrust. Particularly the EP has been keen on the management of overlap and on avoiding uncoordinated tendering. Currently, the relations between the EEA and EUROSTAT are improving. One reason for this is that working relations are progressing.[70] Secondly, agreement has been found over the division of responsibilities in the overlapping areas (the EEA is more oriented towards analysis whereas EUROSTAT provides the data in specific areas). The situation is, however, far from relaxed as yet.

The discussion of the networks and EEA's role in setting up and maintaining networks show the extent and different kinds of involvement of the EEA in network management. The agency has been active in setting up and strengthening physical infrastructure, individual organisations and interorganisational relationships. Furthermore, these network management activities have also involved dealing with the politics of integrating environment.

One of the difficulties has been to ensure the co-operation of Member States and to strengthen their monitoring capacities. The agency has been confronted with major differences in terms of interest in the environment, traditions and capacities. In general, the northern Member States have had more advanced monitoring systems, given environment policy a higher priority, and are more interested in the 'regulation by information'.

In terms of network management, the activities of the agency have contributed to the creation of capacities across the EU (strengthening networks and raising capacities within Member States). In addition, they have stimulated the integration of those involved in environment policy so that an 'environmental community' has been created. This community has resulted in peer pressures between Member States. This is clear from, e.g., discussions in the Board and at meetings of the NFPs on gaps in reporting and performance. Member States now make an effort to not end at the bottom end of the scale when countries are compared. Moreover, it is hoped that the exchanges in various networks will lead to a common understanding of the importance of regulation by information. This, however, has demanded hands on network management from the EEA.

14) The Planning Cycle

The work of the agency is mainly connected to DG XI. Only a few projects have been carried out for other DGs. These projects have mainly been initiated by the EEA to

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[70] Some Commission, however, proved to be surprised about this conclusion and have not noted any positive change in the relation between EUROSTAT and the EEA. Others, however, have.

create working relations with these DGs and to prove its usefulness.[71] As yet, however, they have not led to additional consultancy projects.[72] Other clients are the Council and the EP—but these are less important in terms of workload. Furthermore, the agency has to take into account the other tasks mentioned in the Regulation (e.g., raising public awareness and, since the new Regulation, serving IMPEL)

The variety of tasks, clients and purposes and the potential size of the work imply that work planning is an important mechanism to ensure a correct balance and a focus in the work of the agency. This balance has to relate to size of the workload, share of work it does on its 'own initiative' and work for clients, and the division between data gathering and analysis. As discussed above, the current work programme lacks focus due to the different tracks along which the EEA operates. The agency works for a host of clients and produces a range of different kinds of products and outputs. In this Section we will examine how this situation has arisen and discuss suggestions for changes.

a) The Annual and Multiannual Work Programme (MAWP)

The main steps in the programming of the agency are the development and presentation of the multiannual work programme (MAWP) and of the annual work programme. In addition, the annual reports provide an evaluation of the achievements during the year.

The basis for planning is the Regulation. The tasks mentioned in the Regulation are worked out in the multiannual programme. This document presents how the objectives in the Regulation will be implemented in the coming 5 years. It gives the general priorities as well as the projects that it wants to start up in the years to come.

The annual work programmes present a more detailed plan and makes it possible to adapt the MAWP according to new needs and demands. In this way the work programme of the agency has the long-term perspective needed to set up programmes of data gathering and analysis, but it also offers the flexibility to change programmes and priorities according to new needs.

The task force in the Commission prepared the basis for the first long-term work programme. This made it possible to present the document in 1994—even before the office in Copenhagen was opened. The second multiannual work programme entered into force in 1999.

The programme sheets are a main tool in both programmes. They list content of programmes, priority and state of play. The updates of these sheets are presented in the annual reports. Both types of programmes and the programme sheets ensure a reasonably transparent programming.

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[71] In the final stage of writing of this Chapter, the decision was taken in DG XI to base future work more on the 1999 state and outlook report (from June 1999). Hence, this could mean a deepening of the EEA's work on areas traditionally falling under other DGs.

[72] One Commission official cynically noted that the projects the EEA volunteered to do for other DGs 'backfired'.

The Director presents the work programmes, after consulting the Scientific Committee, to the Board. They are presented together with the opinion of the Commission.

b) The Process

The main impetus in programme development comes from the EEA. The development of the programme is an interactive process between the agency, the Commission, Member States (contact points in the ministries and the NFPs) and members of the Scientific Committee. This process relies heavily on electronic mail and bilateral contacts. On the whole it is a very informal process driven by the EEA. This process occupies one senior official in the EEA, more or less, full-time.

Another key player in the planning process is the contact person from the unit in DG XI who acts as interface between the Commission and the EEA. This contact person co-ordinates the relationships with the EEA and is kept informed by his colleagues about project discussions.[73]

The process starts in early spring each year and has to result in a Board decision at the end of the year. However, one practical difficulty in this respect is that the Commission works on a different time schedule and presents its work programme to the EP only in November. Thus, there is considerable pressure to ensure that the deadline of the agency can be met on the basis of the work programme of the Commission. As a corollary, presentations of the annual work programmes have, therefore, had to be postponed to the first months of the year.

The starting point for the agency is that it has to satisfy the various tasks assigned to it by the Regulation: gather relevant data for policy-makers and produce reports informing the public on the state of the environment. The task of providing relevant data, in particular, requires close co-operation with the clients in the formulation of the work programme.[74] For this purpose, experts from the EEA take the work programme from the Commission—especially from DG XI—into account. In addition, they follow (supported by the contact person in DG XI) ongoing negotiations in the Council in order to see what is included in draft legislation on monitoring requirements. Furthermore,

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[73] Interviews in the Commission and with other experts indicate that one person seems to be quite the minimum for managing the relations between the EEA for the Commission as a whole. As is also concluded in the Chapter on EUROSTAT, setting up an agency closely connected to, and supporting, Commission policies demand careful handling of the mutual interdependence. There is a broad range of potential linkages with DG XI and with other DGs that demand attention. Furthermore, there are expectations that the EEA should be marketed more strongly within DG XI and in other DGs (even though this is now happening). Therefore, as pointed out, the internal management of the Commission is a complex and time consuming tasks and is complicated by sensitivities in the management of relations between DGs. Hence, there are limits as to what can be expected from basically one full-time official in DG XI in terms of creating contacts, building bridges between DGs or thinking through strategic issues.

[74] Nevertheless, 'relevance' is not a precise term. It has been used to refer to general information and state of environment reports, reports challenging other DGs, as well as for specific data (and even policy advice).

they keep in touch with the various units in the Commission working on topics in which the EEA can make contributions.

The Member States are also duly consulted throughout the planning process. The NFPs play an important role here in acting as the bridge between the agency and those in ministries who can identify the needs for new products. Nevertheless, the main input for the programmes comes from the Commission.

Drafts of the programmes are first circulated (within the Commission, to NFPs, SC members, ETCs, etc.) and adapted where needed. At the end of the process they go to the Scientific Committee for advice. The Scientific Committee looks at long term relevance and usefulness from a scientific point of view. This Committee was presented as a safety net for quality and long term relevance. These experts are also important to discuss information that will be needed in the future. Any data gathering body—see also EUROSTAT—will need to anticipate demands due to the long lead time of monitoring systems (policy-makers are more concerned with immediate policy needs). The programme is finally presented, with comments from the Commission and the Scientific Committee, to the Board for approval.

The planning system offers some flexibility. In the planning process priorities can be altered and projects can be put on the backburner. Changes can also be made during the year (in consultation with the Bureau/Board). The work programme only deals with projects, budgets and priorities. The detailed content of projects is a point of continuous discussion between the project managers in the agency, the ETCs and the NFPs.

Nevertheless, changes can only be made incrementally. It is hard to move into new areas or to change the focus, size or the number of ETCs. Moreover, once new activities have been started up, it is hard to discontinue them. Environmental problems usually do not disappear, so that continued attention is required. Also, a considerable share of the resources is already committed to state of environment reports and to work which has to be carried in relation to specific directives (e.g., provide data to monitor progress in specific areas).

c) Discussion

Five points of discussion can be distilled from the analysis and from the interviews. Two are mainly operational topics—but are nevertheless important—and concern the time involved in planning and the constraints of the annual budget. Three are strategic issues: the relevance of the work of the EEA, the fragmentation of the work plan and the internal management of the Commission.

Time Consuming Process

Due to the long procedure and range of steps involved, the planning is quite labour intensive. Relative to its size, the process occupies a great deal of manpower from the agency. One of the 35 EEA experts works full-time on planning. In addition, the agency has one person located within DG XI who is also heavily involved in planning. Furthermore, the process demands considerable EEA management attention. Also, the experts are in regular contact with their home countries about the work programme. The

workload which result from this has been described as too much for such a small agency. Nevertheless, an interactive planning is imperative.

Despite the interactive nature of the process, various comments were made that the agency was 'totally out of touch' with the various parts of the Commission. This is now being redressed. Visits have been arranged between management from the agency and the different stakeholders in the Commission to discuss, at an early point in the year, how the agency can support the officials in their work. This, however, leads to even more scarce resources devoted to planning.

Annual Budget, Multiannual Programme

The budget process is also point of debate with regard to the planning of activities. The budget is determined annually and depends on negotiations between Commission, EP and Council, and on negotiations within the Commission on the allocation among the DGs. This leads to an annual figure for the EEA. However, the work programme depends on multi annual planning.

The current set-up makes it difficult to engage in long term commitments. The uncertainty of the size of the budget can amount to approximately 1 or 2 million Euro. Considerable cuts in the EEA and in ETCs have, therefore, been necessary. A multiannual budget was, therefore, suggested as being more appropriate.[75]

Relevance of the Work Programme

One of the issues to be addressed is the question of whether the planning process leads to a relevant work plan. As can be expected from the discussion above on the two types of tasks of the agency—data versus analysis—there are, broadly speaking, also two views on the relevance of the output of the agency. According to some in DG XI, the agency should produce more and better data.

On the other hand, there are those who find it more important that the agency focuses on general information. In this view, the relevance of the agency and of, for example, its state of the environment reports are not in doubt. At present, DG XI is working closely with the EEA on the basis of the EEA's environmental outlook report (from 1999).

Another point of critique that appeared in the interviews on the relevance of the work programme concerns the agency's alleged leeway in formulating the programme (due to the variety of interests and actors it has to serve and due to the fact that it manages the planning process). No one, as was argued, knows the full extent of the demand expressed to the agency. This could give the EEA the opportunity to shift priorities or to add topics.

This critique seems to be unjustified by the fact that Moe's pluralistic control principle applies in the agency ('no one controls the agency, and yet the agency is under control', see the theoretical Chapters in this study). Decisions are taken in the Board and the

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[75] A multi-annual budget is mentioned in the new regulation but only as an indicative tool.

process seems transparent enough to detect the less relevant assignments. Also the contact person in the Commission has a good oversight over the EEA's work programme. This pluralistic control suggests that the agency can do little independently or on its own initiative (even though, according to the Regulation, it should be able to do so). Moreover, the room for manoeuvre is reduced by the limited size of the resources and the heavy workload to which the agency is already committed. One danger of this is that the agency has little opportunity to work on longer-term developments and prepare itself for future information needs.

Complexity of the Programme

One of the main issues of the EEA is the *ad hoc* nature in which clients have been served, commitments have been accepted and opportunities for increasing the EEA's visibility have been created. Being a new organisation put pressure on the agency to work for a range of clients in the first years. In addition, the complex mission of the EEA has pulled the organisation in several directions. As a result, the programme of the agency is, according to interviewees, complex in its broad range of activities and was presented as intransparent. Even officials within the agency lack oversight, and they no longer know how their work connects or could contribute to the work of their colleagues.

The informal consultation with individual clients allows a continuation of the incremental way in which the programme is developed. So far, there is only a seminal discussion on how these individual contacts can lead to a more coherent programme.

To some extent this fragmentation is an expression of the current state of the development of the EEA as entrepreneurial organisation. Moreover, it is the result of the internal operations of the EEA and of the Commission. In the first years of the EEA, it has been trying hard to make itself know, work for potential clients, respond to all sorts of request, etc. Moreover, increasingly DG XI staff is finding its way to the agency and also other DGs are becoming interested. In this respect, the EEA has been very successful.

At present there seems to be a need to streamline these activities and make strategic choices. The current workload has grown beyond its capacities and it has shown a tendency to grow too diverse. Moreover, there are new developments asking for attention and choices. These new vistas include enlargement and building capacities in the East, subsidiarity (what are core activities at EU level and what kinds of data gathering and analysis can better be left at Member State level) and integration. Particularly 'integration', and the connected topic of sustainability, demands attention. It is a major new policy development and implies close co-operation with other DGs. Moreover, it demands the refocusing of the work programme on indicators (i.e., on the main themes to follow in the various policy fields) and on building up the data gathering and analysis systems around them.

In order to focus itself, the EEA must start itself to develop these strategic options. In part, the responsibility for developing the future conditions and role of the agency depends on management input. So far, the management of the EEA has, according to

the interviews, been involved more with operational issues and building *ad hoc* commitments. Though important for a young agency, a new focus is now demanded.

Nonetheless, this refocusing of the agency cannot all be done by the EEA on its own. It needs to be done in close co-operation with, at least, the Commission.

Internal Commission Organisation

The discussion on the core tasks and the work programme of the EEA has to be seen in relation to the way in which the Commission steers and supervises the agency.

One general conclusion that results from this Chapter is that the Commission has been instrumental in creating the agency and in steering it in directions relevant to its own needs. However, in the first phases of the EEA, not much thought was put into thinking through the consequences of the agency for the Commission's own internal management. We already saw that DG XI has had to develop a more active role in terms of building linkages with other DGs and in steering discussions internally on what it expects from the agency (this development is still in progress). Some in DG XI have been willing to co-operate with the agency, others preferred to work with other consultants. In addition, the relationship between the EEA and other DGs proved to be difficult, there are budget difficulties (paying for the EEA and allowing it to do consultancy for other DGs), and there have been problems in relation to building and supporting monitoring capacities in PHARE countries. In all these issues, DG XI has had difficulties in recognising the need to market the agency actively and to solve problems between DGs: 'DG XI is not co-ordinating'; 'we still have to find ways of working with the agency'; 'it is true that there are some unresolved issues', etc.

These difficulties can be attributed to the start up phase. DG XI and the rest of the Commission had to get used to working with the agency, accept the EEA's existence and finding out what it can do for them. However, at present, the agency seems to have to move beyond *ad hoc* planning and contacts with Commission officials towards more structured ways of serving the Commission and focusing on core activities. This will only be possible if agreement can be found on the core of the work of the agency. Otherwise, different parts of the Commission will continue to pull the agency in different directions. To streamline the work programme, strategic discussions and decisions are needed on 'integration', on indicators on the state of environment in various sectors, on subsidiarity (what monitoring tasks should be done at EU level via the agency), on less important agency tasks and on the consequences of enlargement. In addition, the discussion on the future of the Commission may have to be incorporated in the decisions on the developing relationship between DG XI and the agency. If, for example, the Commission has to shift attention to policy initiation and strategic policy decisions, than this may have consequences for the work of the agency (e.g., serving preparation of policy as well as execution of tasks).

These issues indicate that there are a number of ways in which the agency can contribute to the work of the Commission. At this stage a discussion is needed as to how to arrive at an understanding of core business of the agency and how this links with the main discussions within the Commission. In addition, the budgetary consequences have

to be considered. So far, additional requests have been included within the work programme, without due consideration for their costs.

In sum, the maturing of the agency also demands a maturing of internal management in the Commission. Even though interviewees agreed about the need to develop a more mature work programme and to discuss the consequences of this for the Commission, they do not see this happening. For the internal management, it seems to suggest that the position of the EEA, DG XI's responsibility for the agency, the internal management in the Commission and the budget have to be carefully reconsidered.

15) The Seat: Copenhagen

The location in Copenhagen is presented as positive and negative. On the positive side, people are aware that not everything can be done in Brussels. Some also argued that it is good that an organisation that evaluates environment policy should not be near the Commission. Denmark was originally also very pro the siting of the agency in an 'environmental' Member State. The vicinity to a national ministry with high environmental standards was assumed to have a spillover effect on the agency.

Others have been more reserved in their praise of Copenhagen. First of all, there is no proof that a location closer to the Commission would have disrupted independence. Secondly, distance makes it difficult and expensive to strengthen relationships with the various DGs and units. Currently, the EEA is considering reinforcing its permanent representation in Brussels and investing in closer contacts with its major client.

On the whole, the seat of the agency is not regarded as a major issue. With a comparable staff, and embedded in the same institutional networks, there is little reason to assume that it would operate differently in a different location. In the end, probably the only valid argument for not locating the agency in Brussels is the fact that you cannot have everything located around the Berlaymont.

16) Languages

The language regime continues to be sensitive. It even held up the decision on the final approval of the revised Regulation. Everyone is aware of the importance of information in the official languages. Addressing people in their own language is vital in view of the task to inform the public of the state of the environment and of changing behaviour. However, comprehensive translations would take up the entire budget. Thus, a pragmatic solution has been proposed. The agency suggested publishing all reports in English. Only summaries should be published in the official languages. In addition, the major reports (e.g., state of environment report) would be translated into the languages of the Union. Furthermore, if Member States want reports in their own languages then they should finance this themselves; while national cross-subsidies for translation might also be possible. Even though already in use, this pragmatic solution is hard to commit to paper in the form of a Regulation.

One new way to make the reports known in Member States is to organise information days on the state of the environment in each of the Member States and organise press

conferences. This reduces the need to have all reports published in each language while increasing awareness nevertheless.

X.III. Analysis and Conclusions: An Agency Heading Towards Maturity?

17) The EEA's Character, Dynamics and Challenges

The EEA is a specific agency in terms of history, structure and inter-institutional position. In this study we came across a range of different expectations, interpretations of the Regulation and views on what the EEA is and how it performs. The complexity of the EEA case determines that this analysis is merely an 'initial' study.

However, the importance of such a preliminary study is that it presents a first state of play. Its novelty is that it tries to link the issues arising to (intra and inter) organisational design.

This EEA case readily demonstrates the difficulties encountered in setting up an agency and it points to the range of factors that have to be taken in to account. Furthermore it highlights the degree of energy needed in to create and institutionalise an agency (i.e., to ensure that it gets an accepted position in its institutional environment) and the sensitivities and issues that may have to be managed. It also leads to questions, for example, about the roles and internal organisation of the Commission.

a) Findings

In the case of the creation of the EEA we saw, in the first place, that there is was considerable amount of confusion about a range of issues. Differences of views were clear in the interviews in relation to facts[76], interpretation of the Regulation, expectations concerning the EEA's *reason d'être*, and the expectations as to what the roles of the Commission were or should be.

This confusion is to a large extent created by the Regulation. Interviews emphasised that while the Regulation is very clear on individual aspects, major interpretational differences nonetheless arise. The Regulation gives rise to unclarities by virtue of the number and diversity of agency tasks listed. This has caused debate on the core tasks of the EEA. The revised Regulation only added tasks and did not clarify core business. Moreover, the agency has to satisfy a range of clients. Thus, the agency is pulled in different directions.

The terms used in the Regulation add to this confusion. For example, the EEA is supposed to work for the 'public' (this can mean almost anything), 'support' policy-makers (who, how, with what?), describe the 'state' of the environment (what does this

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[76] For example, have one or two state of environment reports been produced? What were the reasons behind the appointment of management?

mean? is there a fixed year in which it has to be described?), describe outlook in the medium term (does that mean evaluate policies?).

These ucertainties can be explained by the different expectations that existed among those parties involved in the negotiations on the agency. For example, some Member States attached importance to informing the public and having an independent body to monitor the effectiveness of policies (by providing information). Others, especially in the Commission, have been keen on reliable facts.

Secondly, there are a range of sensitivities involved in setting up this type of agency. Anecdotal evidence—albeit recurring at most interviews—indicates that the EEA is regarded as a threat because analysing situations and trends also implicitly touches upon policy effectiveness. The agency has also been pictured as a usurper of Commission activities (through e.g., developing and analysing alternative policy trajectories). Moreover, Commission officials already have their own contacts and consultants and the officials are not always easily inclined to start working with the agency. An overburdened work programme increased sensitivities among some Commission officials because output produced by the consultants used by the EEA could not always sufficiently be scrutinised by the EEA and, therefore, has been occasionally below the mark.

Thirdly, we saw an ambiguous relationship between DG XI and the agency in terms of setting up and steering the EEA. Any new organisation will find it difficult to carve out a niche and institutionalise itself. In the case of the EEA—with its unclear range of tasks, sensitive relationships, and budget constraints—management of interdependence is particularly important. Attention has, therefore, been demanded, not only in terms of setting up the practical side of the agency, but also in terms of pushing the agency within the Commission (to link it more and better to directions in DG XI and to other DGs) and in terms of broaden its financial base where necessary.

This organisational role has met many obstacles (the Commission was slow to admit managerial responsibility and was constrained by the need to preserve the independent status of the agency, etc.) The dilemma, however, is that setting up such a type of agency also demands pushing and nurturing it—as should be done with any new organisation that has to find its niche.[77]

DG XI's willingness to build bridges is new and is starting to develop. One lesson from this study is that the creation of an agency also asks for a review of the internal management of the Commission. This requires attention and resources. Particularly in the case of an agency with a complex, unclear task and inherited sensitivities, such internal management can be important. However, an unresolved issue is still whether DG XI can push the agency in the Commission without threatening its independence.

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[77] A comparison with the EMEA is interesting because it has a clear niche so that nurturing was less needed.

This, and other reasons mentioned above, might speak for its location under Secretariat General umbrella.[78]

Setting up an agency is not only a matter of ensuring that there is a regulation. It not only requires re-assessment of the internal management of the Commission, but also necessitates support in terms of thinking through the design of the agency. Designing the EEA was an effort in trial and avoiding error. In order to 'get up and running' as quickly as possible, it tended towards a divisonalised - compartmentalised -organisation eventhough it was also clear from the start that a more professional/integrated way of working was needed.

The EEA's organisational form could also have benefited from a better thinking through of staff requirements. Staff policy now pays more attention to managerial capacities. EEA staff not only require expert knowledge; they also need to be skilled in managing networks in political environments. Moreover, doubts have resulted about the breadth and depth of EEA staff expertise in relation to that required by the work programme.

Fourthly, an agency requires sufficient resources. On the one hand, it is possible to say that 'if only it would focus and data and produce the state of environment report' then it would than have sufficient resources. On the other hand, working in different languages, setting up and running a network, ensuring hands-on management of the interface with the Commission and with others, presenting information to the public, etc., make great demands on resources. Moreover, institutionalisation also demands attention (even though some doubt whether the EEA should have spent time on this). If more resources are not an option, then streamlining of the regulation, or, at the least, the work programme is needed.

Fifthly, the functioning of the Commission and of the Board can be questioned. Here, a 'contingency approach' has been suggested in order to analyse the positions of the Commission and the Board. The agency has three major sets of tasks (see Section 4). Each of these is likely to demand specific functions from the Commission and the Board. At present, a 'single' Board supervises 'the' agency. Deaggregation of agency tasks, supervisory roles and Commission responsibility is probably needed.

Finally, following from the previous points: the setting up an agency is very demanding and requires far greater Commission attention. This study underlined the need to deal with issues, such as, agency design, the role of the Commission, the internal Commission consequences, network operations, the functioning of the Board, quality control, task specifications and institutionalisation. The more complex, difficult and sensitive the challenge, the greater the degree of managerial responsibility.

At present I have the impression that many of these—often organisational—issues were (are?) underestimated. Changes are now taking place in the interaction between EEA and DG XI. Contacts are increasing and improving but it is doubtful whether that will be sufficient given the questions that are still open.

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[78] Arguments mentioned against this have also been mentioned above. For example, the EEA might be one of the minor fields for the SG and hence 'drown'.

b) The Problems of Supervising a Complex Agency

While the agency status of EUROSTAT and IMPEL may be doubted, the EEA is, in this respect, more straightforward. It is an agency with a regulation that defines its statutory independence, it has a building, it is detached from the Commission, it is supervised by a Board, and it is responsible for carrying out its work programme independently.

Its agency status, however, also leads to specific advantages and disadvantages. These are clear when comparing it to EUROSTAT. One advantage of the EEA is that it has a Board and that, therefore, decision-making is more transparent. EUROSTAT does not have a Board but falls under the college of Commissioners and hence is a little suspect and intransparent where major decisions are concerned (see the EUROSTAT Chapter). Moreover, its independence is probably stronger footed due to the Board, Scientific Committee, staff composition, values of the Director, overlapping networks, etc.

The disadvantages of the EEA's agency status are that it has more budgetary uncertainty and that it lacks EUROSTAT's legislative authority. The EEA is, therefore, dependent on voluntary co-operation from the Member States. Thus, the EIONET is a more loosely coupled network than the network around EUROSTAT and, therefore, also demands more managerial attention.

c) The Functioning of the Board

The main issue of the agency status of the EEA is the extent to which it is independent in carrying out its work programme. This is closely related to the functioning of the Board.

On the one hand, the Board structure functions in an effective way. It clearly is the place where major decisions are discussed. Moreover, the Board has defended the EEA's independence in most respects and is doing so increasingly (also due to the change from unanimity to qualified majority where ETCs are concerned). On the other hand, the functioning of the Board did raise questions, such as:

➢ Why does the Board not take decisions regarding the clarity of the EEA's work programme? It apparently allows frustrations to linger on.

➢ Why can the Commission not clarify and defend its needs better in the Board? The relevance to policy-makers is emphasised in the Regulation. Nevertheless, it seems difficult to ensure a clear Commission input—otherwise there would not be so many frustrations and criticisms among Commission officials.

➢ Why are ETC decisions so difficult? Is the Board in this area too politicised?

As presented above, it is advisable not to talk about 'the' functioning of the Board. I suggest discussing the functioning of the Board in the context of each of the different tasks of the agency. This leads to questions about whether the Board is sufficiently equipped and adequately placed for each of these tasks.

One task of the agency is to support European policy-makers, or, the Commission. This determines that the EEA is, more or less, an independent subsidiary of the Commission. In this context, it seems that the Board is too weak. The wishes of the European policy-makers are connected to better state of environment reports, clearer description of a base year on the basis of which the impact of policies can be measured. In the current way of operating, it is clear that there are different expectations from the EEA and hence considerable frustrations within the Commission. Member States in the Board are not overly active in discussing this part of the work programme (they try to prevent unrealistic demands for information). National representatives have been presented as leaving considerable room to the agency.

Thus, one could argue that the EEA has too much independence in the context of this task. It is not only independent in carrying out its task, but, given the complexity of its tasks, also in the formulating of its work programme. Even where there are clear Commission wishes, it cannot get the agency to fulfil them.

The second major set of tasks of the agency relates to sustainable development—analysing trends towards or away from durable growth—and to informing the public. This task is connected with the soft law approach and with putting peer group pressure on national policy-makers. Here, the agency must be more independent, also in the formulation of the work programme: determining which areas need to be analysed, how to assess trends in the environment and linking this to alternative policy tracks, and informing the public of the trends can better be based by independent experts. It can be argued that the professionals should be independent in deciding which areas they should focus on (e.g., energy instead of tourism) and when and how to publish their findings.

One would expect a Board in this context to consist more of independent professionals in the field who guide and supervise the process of the programme development and who assess the outcome (as its present Scientific Committee).

A third area in which the agency has to operate is the management of the EIONET. In this context close contact with Member States is required. It seems, however, that there are good grounds to question the credibility of the EEA with regard to the ETCs. Negative politicisation is not a major issue for this agency as far as the content of the reports is concerned. However, political pressures do influence ETC decisions—and not always for the better. The network of topic centres has developed into a fairly inflexible data gathering system. Due to the fact that Member States want to host ETCs, or at least be part of consortia, these networks have become large and inflexible. Sixty percent of the resources of the EEA are devoted to the networks and the ETCs are the major recipients. The number of ETCs, the focus of these centres and their quality have been major sources of criticism. One important explanation for this is the fact that Member States in the Board have defended national interests.

Concluding, it seems that one of the problems with supervising this agency is that it has different tasks for which different kinds of supervisory mechanisms are needed. Thus, its complex regulation also creates difficulties in its supervision. Rather than pretending to give advice on Board compositions, it appears that a discussion would be useful on ways to disentangle the tasks of the EEA and to assign supervision mechanisms appropriate to each of these sets of tasks.

d) Towards Maturity?

During the study, interviewees often used the term 'maturing'. Yet, are current developments sufficient to warrant the conclusion that the agency and its working environment are maturing?

Clearly, progress has been made in each of the three sets of task. Firstly, the EIONET is developing and growing and Member States and other countries receive support for building up capacities. Also the role of the EEA in managing the network is developing. The result is an increasing set of integrated databases and methodologies. Secondly, the EEA has produced influential reports and been successful in attracting attention from the EP and newspapers. Thirdly, the Commission is increasingly using EEA information and relating policies to EEA reports. However one looks at it, there is more and better data.

Moreover, organisational capacities are currently being upgraded. The EEA is in the process of strengthening internal management and planning. DG XI has taken up a role of building bridges within the Commission, while the EEA's network management capacities are also improving.

Nevertheless, frustrations still exist in each of these areas. There is a need for streamlining the programme, upgrading quality and relevance of the EEA's output, upgrade decision-making on ETCs, etc. Thus, the agency's credibility is not ensured nor generally acknowledged. In this sense it is too early to talk about maturity.

Maturing will require further intra and inter-organisational development and decisions about supervision. Maturation is not only a matter of agency development. The agency's status also depends on the development of other organisations and the maturing of relationships. Maturing may also be needed within the Commission. The Commission may need to adapt its internal management, its marketing of the EEA, its degree of responsibility for changing the Regulation of the agency (in view of the complexity of tasks) and may have to discuss a re-allocation of the agency to the SG. Also relations between Commission and agency could be upgraded (a start has been made but this may not be sufficient). Moreover, the composition and powers of the Board may have to be rethought.

e) Conclusions

The EEA has developed a great deal in its short history. However, the analysis also highlights complexity in the setting up and steering an agency. This case demonstrates that considerable effort is needed to create and organise an agency, while continuous effort must also be devoted to the selection of its tasks and monitoring. Moreover, also the internal management of the Commission and the Member States must also be taken into account in the creation process. The EEA is not just something 'out there' but affects the internal organisation of its clients. Also, the functioning and supervision of the network need attention.

The case of the EEA shows the amount of attention that is needed for the range of factors that have to be taken into account in order to create and monitor an agency. Moreover, this particular case, with its inherent sensitivities, shows that challenges are easily underestimated. Furthermore it underlines the importance of clear tasks so that different expectations are minimised and supervision is facilitated.

This initial report on the EEA suggests that, after the first five years, it might be wise to stop and think about where the agency is now and consider ways to streamline tasks and structures. Probably a more fundamental revision of the Regulation should also be considered. The 1999 revision satisfied the Council, EP and Commission. Yet, a different type of revision might be preferable with a view to creating an agency with realistic expectations (by clarifying tasks). This could then be followed by a discussion on the allocation of realistic budgets, the creation of tailor-made supervisory structures per task, and the identification of the different roles of the Commission in relation to the different tasks.

Annexes

Annex 1: The EEA's unit structure

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                    ┌─────────────────────┐
                    │ Executive Director's│
                    │       Office        │
                    └─────────────────────┘
                              │
                    ┌─────────────────────┐
                    │  Deputy Director's  │
                    │       Office        │
                    └─────────────────────┘
                              │
  ┌──────────────────┐                      ┌──────────────────┐
  │   Planning and   │                      │ Finance and Budget│
  │    Strategic     │                      │                  │
  │   Development    │                      └──────────────────┘
  └──────────────────┘
                                            ┌──────────────────┐
                                            │  Personnel and   │
                                            │  Administrative  │
                                            │     Services     │
                                            └──────────────────┘

  ┌──────────────────┐  ┌──────────────────┐  ┌──────────────────┐
  │   Analysis and   │  │  Monitoring and  │  │   Operational    │
  │Integrated Assessment│ │    Databases     │  │ Infrastructure,  │
  │    Programme     │  │    Programme     │  │ Publications and │
  └──────────────────┘  └──────────────────┘  │   Information    │
                                               └──────────────────┘
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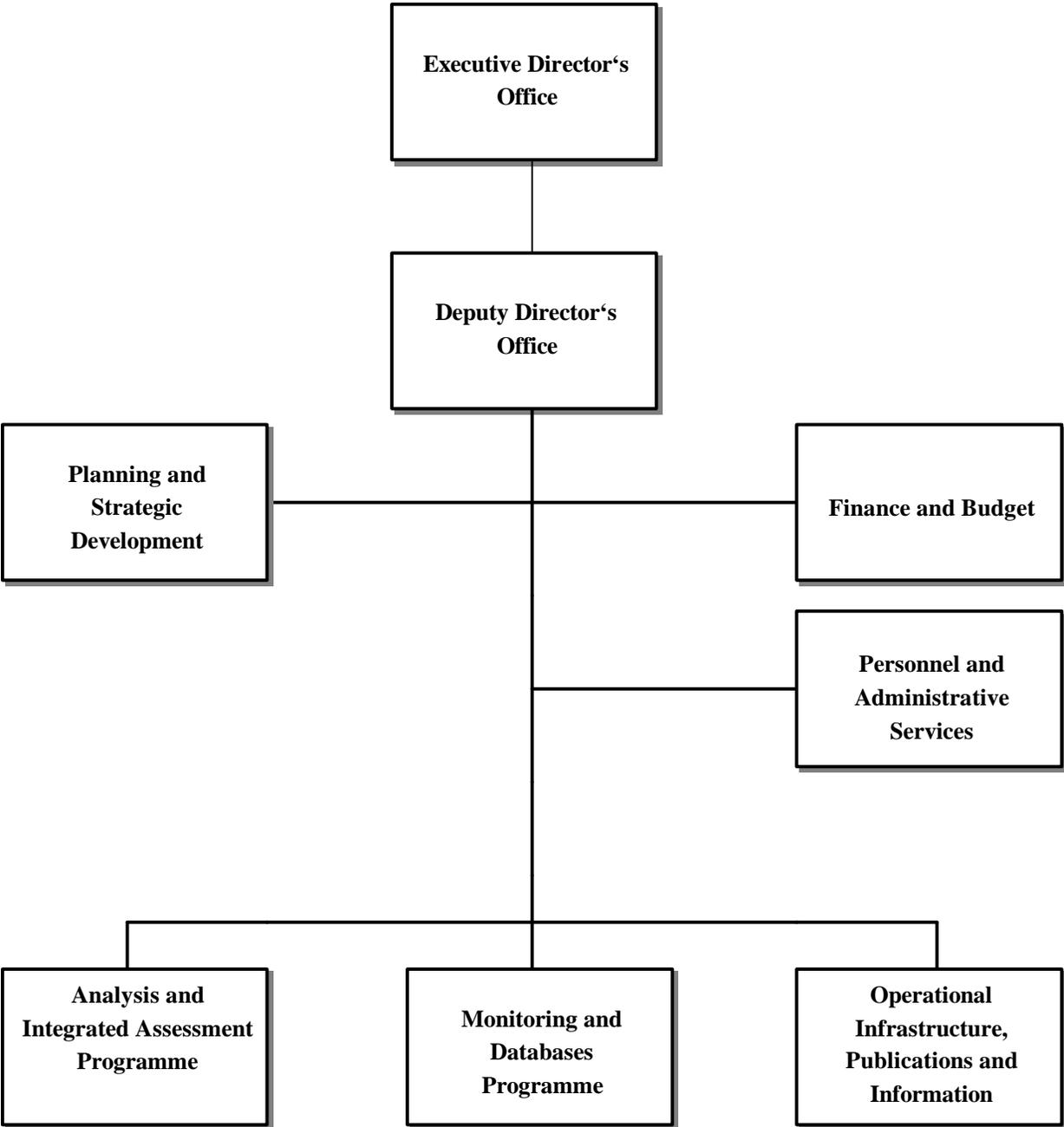
Annex 2: Network of the EEA
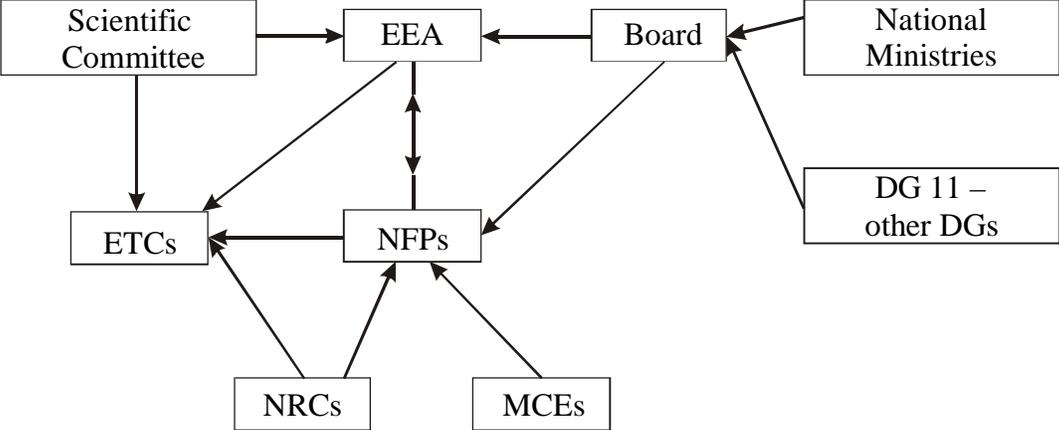
Annex 3: European Topic Centres (ETCs)

Topic centre	Host country
Air emission	Germany
Air quality	The Netherlands
Catalogue and data source and thesaurus	Germany
Inland waters	UK
Land cover	Sweden
Marine and coastal environment	Italy
Nature conservation	France
Soil	Spain
Waste	Denmark

Annex 4: List of interviewees

NAME: ORGANISATION

Mr Johannes Blokland: Co-president, Group of Independents for a Europe of Nations, European Parliament, Brussels (B)

Ms Margaret Brusasco: Adviser, DG XI, European Commission, Brussels (B)

Mr Ken Collins: Chairman, Committee on the Environment, Public Health and Consumer Protection, Member of the European Parliament for Strathclyde East, (UK).

Mr Rob Donkers: DG XI, European Commission, Brussels (B)

Mr Kevin Flowers: DG XI, European Commission, Brussels (B)

Mr Nicholas Hanley: DG XI, European Commission, Brussels (B)

Mr Henrik Gerner Hansen: Principal Administrator, Committee on the Environment, Public Health and Consumer Protection, European Parliament, Brussels (B)

Mr Jorgen Henningsen: Former DG XI, European Commission, Brussels (B)

Mr Alan Huyton: European Commission, DG XI, Brussels (B)

Mr Domingo Jiménez-Beltrán:Executive Director, European Environment Agency, Copenhagen (DK)

Ms Jytte Keldborg: Project Manager, European Environment Agency, Copenhagen (DK)

Mr Ernst Klatte: Project Manager, European Environment Agency, Copenhagen (DK)

Mr Ludwig Kraemer: DG XI, European Commission, Brussels (B)

Mr Jef Maes: Programme Manager, European Environment Agency, Copenhagen (DK)

Mr Daniel Mailliet: DG XI, European Commission, Brussels (B)

Mr Gordon McInnes: Programme Manager, European Environment Agency, Copenhagen (DK)

Mr Paolo Meozzi: Project Manager, European Environment Agency, Copenhagen (DK)

Mr Adriaan Minderhoud: National Institute of Public Health and Environmental Protection, Bilthoven (NL)

Ms Edda Mueller: Deputy Director, Environment Agency, Copenhagen (DK)

Ms Josiane Rivière: Project Manager, European Environment Agency, Copenhagen (DK)

Ms Cécile de Roose: Assistant Management Board Secretariat, European Environment Agency, Copenhagen (DK)

Mr Javier Ruiz-Tomas y Parajon: DG XI, European Commission, Brussels (B)

Mr José-Luis Salazar: Project Manager, European Environment Agency, Copenhagen (DK)

Mr David Stanners: Programme Manager, European Environment Agency, Copenhagen (DK)

Mr Chris Steenmans: Project Manager, European Environment Agency, Copenhagen (DK)

Mr Jacco Tavenier: Ministry of Housing, Spatial Planning and Environment, The Hague (NL)

Mr Peter Wicks: DG XI, European Commission, Brussels (B)

Mr Kees Wielinga: DG XI, European Commission, Brussels (B)

Mr Keimpe Wieringa: National Institute of Public Health and Environmental Protection, Bilthoven (NL)

Mr David Wilkinson: Expert Environmental Legislation, Institute for European Environmental Policy, London (UK)

Mr Brian Wynne: EEA Management Board Designated by the European Parliament, and Research Director, Centre for the Study of Environmental Change, Lancaster University, Lancaster (UK)

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Chapter XI

EMEA: Innovation in European Public Management

(Les Metcalfe)

XI.1. Introduction

"The legal status was considered and it was agreed not to restrict the prescription status. Clarification was requested from the company on the usage/market surveillance of sildenafil (e.g. educational training materials for the prescriber).

Taking into consideration the data provided, the overall safety issues and the benefit to risk balance, as well as the commitments to be undertaken by the company, the CPMP considered the benefit to risk assessment positive and recommended the granting of a Marketing Authorisation for all strengths and presentations of this medicinal product. The product is authorised for the indication 'treatment of erectile dysfunction, which is the inability to achieve or maintain a penile erection sufficient for satisfactory sexual performance."

(Committee for Proprietary Medicinal Products/1136/98).

Drugs frequently hit the headlines for one reason or another. The technical opinions of European Agencies such as EMEA, the London-based European Agency for the Evaluation of Medicinal Products, are less often regarded as newsworthy. But the profile of EMEA was raised when it recommended that sildenafil, otherwise known as Viagra, should be granted market authorisation by the European Commission. Viagra is only one of the numerous new drugs that are submitted for official evaluation and authorisation each year before they can become available for human or veterinary use in the European Union (EU). EMEA and its national counterparts are the gatekeepers between the pharmaceutical industry, which develops new drugs, and the health-care professionals and the ultimate users. Like all regulatory authorities they must uphold a set of standards and, at the same time, take into account the legitimate interests of all parties in the process. In this case, the regulatory task is particularly difficult and demanding because of the nature of the products, the commercial interests involved and the political sensitivity of regulatory issues concerned with public health standards.

This chapter examines the organisation and functioning of EMEA as an example of administrative decentralisation and, more generally, as an innovation in European Public Management. EMEA's position as an Agency outside the Commission structure is more than just a technical means of performing a specific function more efficiently. Decentralisation, in this sense, is important as part of a larger picture. EMEA was created as part of a reform of the whole EU regulatory system for pharmaceuticals. The new system, which has been in operation for approaching five years, has both centralising and decentralising features. EMEA's creation involved decentralisation of certain responsibilities formerly exercised by the Commission. But, as will emerge, decentralisation is only one dimension of a more complex picture of Agency functioning and performance. EMEA's relationships with the Commission need to be seen in the context of the total network of partnerships among the organisations in the regulatory process. EMEA will be analysed from a public management perspective in order to understand better the role it is developing in the European Union's regulatory system for medicinal products. This analysis will provide a basis for generalising to other situations where Agencies play a role in European policy management regimes.

It is essential to begin by setting out briefly in the next few pages what is distinctive about European Public Management and why it is important to give more systematic attention to it. In the past, management has not been a priority concern. The appointment of a new Commission with a mandate for reform offers a unique opportunity to make up for neglect of management. But what new management methods and models are appropriate? There is a danger that the opportunity will be missed if reforms are not based on an understanding of the particular needs and constraints of European Public Management. The solutions that are appropriate are not the same as those that have been employed in other contexts such as business and national governments. Furthermore, the process of reform will need to take account of the unusual parameters within which the European policies are managed.

This is not to endorse a "not invented here" attitude. Nor is it to suggest that the EU is *sui generis* and there is nothing to learn from experience elsewhere. Rather, it is to make two basic points. One is to stress the limitations of what can transplanting solutions from other contexts. While the successes and failures of reforms at the national level do hold lessons for European Public Management they do not permit simple extrapolation and imitation. They always have to be interpreted in the light of the distinctive needs of the EU context. The problems of European Public Management and the context within which it operates are more complex than those of national governments. Since EU policies have to be managed across all the Member States this may seem self-evident. However, when there is a political desire for quick action, what appear to be ready-made solutions may prove very attractive. Consequently there is a risk that significant differences between public management reforms in a purely national context and those in the EU context will be disregarded. The second point is to underline the value of what the EU can learn from its own experience.

Examining the particular case of a decentralised European Agency like EMEA offers some valuable lessons. EMEA is, in effect, part of an experiment in public management reform that the EU itself is conducting. It must be emphasised at the outset that there are some surprises. EMEA does not fit into a conventional category or conform with a standard definition of an agency. It is particularly important to note that preconceptions based on what agencies are expected to do in national contexts are liable to obscure innovative contributions it is making that have wider relevance. Since its creation, it has established its credibility and secured acceptance of a new role in the regulatory system for pharmaceuticals. Blanket assertions that the whole EU system requires root-and-branch reform should not overlook what can be learned from what has already been done in this particular area and the part that EMEA has played in it.

Consider, for example, the question of "decentralisation". It is very likely that this will become a guiding theme of reform in the EU just as it has elsewhere. There are good reasons why it should. However, however there is no reason to fall into the errors and oversimplifications that have hampered progress elsewhere. Centralisation and centralisation are not opposites. It is often necessary to centralise in order to decentralise. And, in public management, it is important to distinguish between decentralisation *within* an organisation such as the Commission and decentralisation *among* the organisations in a policy management system. Decentralisation within an organisation takes place within a hierarchical framework of authority. Decentralisation among organisations requires explicit differentiation of responsibilities among a

network of organisations together with arrangements for coordination that often take non-hierarchical forms. In fact, the reform of the regulatory system for pharmaceuticals has centralising as well as decentralising components. EMEA, as an organisation, is an example of *decentralisation* in the sense that tasks delegated to it would otherwise have been the responsibility of DG III within the Commission. But it also has a key role as part of the regulatory network in making a *centralised* evaluation procedure work efficiently. To give another illustration, EMEA is an independent organisation with a distinct corporate identity and a sphere of autonomy. Nevertheless, it does not have powers of final decision on authorisation medicinal products. It is responsible for providing independent professional risk assessment advice. Responsibility for decisions on risk management remains, broadly, with the Commission. (Strictly speaking the position is more complex than this). Even within its sphere of professional autonomy EMEA does not simply pursue an independent line of its own. The way it exercises its independence contributes to coordination within the regulatory system and to managing interdependence with other stakeholders. Thus, although EMEA has operational management responsibilities - as conventional executive agencies in national governments are expected to have - it is by no means just a useful cog in the EU's administrative machine performing a predefined task. It is also a crucial node in the regulatory network and acts as a forum for strategic debate about the functioning and performance of the regulatory system as a whole. It does so by drawing other actors and stakeholders, including the Commission, into the process of considering how the system is evolving and how it should develop in the future.

Three related questions inform the analysis. First, what does it mean in practice to be a European Agency? Rather than attempt to fit EMEA into an agency model or assess its correspondence with an *a priori* definition the aim is to look at what it does and how it does it. The purpose is to clarify the kind of organisation it is by looking at the roles it plays. Second, how does EMEA's institutional environment influence how it works? The design of any organisation is shaped not only by the taks it has to perform, but also by its environment and especially the types of relationships it establishes with other organisations. Third, from a broader perspective, how are the existence and activities of EMEA shaping the institutional environment in which it operates? It is important to consider how the existence of EMEA is making a positive contribution to the integration of its regulatory network and also, from a "value-added" standpoint, whether it is doing so in ways that complement rather than duplicate what the Commission itself can do. These questions are relevant to the performance of any Agency. The general aim is to uncover through an analysis of EMEA ways in which Agencies can make innovative contributions to the effective management of EU policies.

Ironically, when new solutions are being sought, the experience of EMEA and, perhaps, other Agencies is in danger of being overlooked. The lack of a well-developed management tradition in the Commission means that it is difficult to learn from experience close to hand. The erroneous assumption is made that European Agencies are very similar in their tasks and working contexts to national agencies. While any general definition should be treated with scepticism, independent agencies at the national level have usually been seen as executive bodies established to undertake self-contained tasks in a decentralised way. They are regarded as operational management units insulated from short-term political pressures and *ad hoc* linkages to the policy

process. The Swedish model of independent administrative authorities is sometimes quoted (see, for example, Larsson, 1995). The "management-by-objectives" focus on specific tasks, targets and performance indicators is often regarded as the key feature of the agency concept. In the words of the British government's ''Next Steps' report, published in 1988, executive agencies were given managerial independence in order to concentrate on 'the job to be done'.

Even at the national level, reality often cannot be confined within such a limited framework that relies on the obsolete policy-administration dichotomy. At the EU level the situation is sufficiently different that prescriptions based on experience of agencies at the national level are liable to be extremely misleading. European Agencies operate in a more complex and differentiated institutional environment. As European organisations they must develop interfaces with the very diverse national systems of administration in the Member States as well as with the European institutions and other stakeholders. Indeed, rather than just being efficient instruments for decentralising or unbundling responsibilities performed by the Commission, their current prominence can be viewed as an adaptive response to a fundamental change in what we understand by Europeanisation.

Europeanisation: Competences and Capacities

Europeanisation used to be equated with the transfer of legal competences and political responsibilities from the Member States to the European level. The acquisition of new competences by the European institutions and a corresponding reduction in the power of the Member States was taken as a measure of progress in integration.The conventional terms of debate about intergovernmentalism and supranationalism presumed an inverse relationship between gains in power at the European level and loss of sovereignty at the national level. This view of Europeanisation accorded with a state-building view of the trajectory of integration. Implicitly it was usually coupled with a vague assumption that the reallocation of (legal) competences would be matched by a corresponding strengthening of (management) capacities at the European level. It was assumed that political leaders who willed policy ends would will the administrative means of achieving them. The transfer of competences and the development of capacities were presumed to go hand in hand Reality is different. It is often hard to see a simple transfer process and even harder avoid shortfalls and mismatches between competences and capacities. When legal competences are transferred to the EU level the administration of EU policies often continues to depend on co-operation between networks of EU and national organisations. The trajectory of integration is towards the development of a pluralistic system of multilevel governance. Effective integration depends on strengthening co-ordination among the administrations of the Member States and between different levels of government.

This pluralistic pattern of policy management casts the process of Europeanisation in a different light. What is crucial is the way in which organisations at each level of government work together in the implementation of European policies. Europeanisation means linking levels of government by ensuring that the networks of organisations involved are effectively co-ordinated. Ideally, the organisations involved know their own responsibilities and are able to work together. The performance of the system

depends on whether the organisations involved in different countries and different levels of government can co-ordinate their efforts deliberately and systematically on a continuing basis. It has often been the case that the process has not worked well because of a combination of lack of trust, lack of resources and lack of a clear understanding of what was involved in managing such complex organisational networks. These shortcomings are endemic in pluralistic systems, but as discussed in the next section the EU is particularly prone to under-invest in *interorganisational* capacities for policy management. One of the interesting and important features of EMEA is that as well as doing an executive job it is also playing a valuable role in helping to create, develop and strengthen links between levels of government and between the diverse administrative systems of all the countries involved in its policy field.

XI.2. Europe's Management Deficit

The previous section has given a foretaste of what is to come. It is important to see the issues raised above against the background of current moves towards the reform of the EU's institutions and their management. Reform of the Commission seems certain to occupy centre stage and even allowing for the initiatives launched in recent years it is overdue. Criticisms of managerial inadequacies, some justified and some misplaced, have long been levelled at the excessive bureaucracy and ineffectiveness of the system. But there was little political support for positive action from the Member States. The Maastricht II IGC and the Amsterdam Treaty failed to break the stalemate over institutional reform.

There are two powerful reasons for suggesting that the situation has changed and there is a clear political recognition of the need for reform. The first is enlargement. The prospect of having to cope with the implications of the forthcoming enlargement with quite inadequate management capacities has brought home the seriousness of the EU's management deficiencies. Where was formerly brushed aside as chronic problems of poor performance are now being recognised as a potential source of an acute crisis of effectiveness. Second, the resignation of the Santer Commission linked concerns about management and institutional reform in a way that has never happened previously and brought them to the forefront of public debate. Political concern has been underlined by assigning responsibility for administrative reform to a Vice President of the Commission.

This is only a beginning. Recognition of the need for reform is not the same thing as a thorough understanding of what is required and a coherent strategy for action. The main focus will be reform of the Commission. The Commission is already being inundated with advice about how to restructure and streamline its internal organisation. But most prescriptions are based on incomplete diagnosis or sometimes misdiagnosis of the problems. There is remarkably little discussion of the distinctiveness of the current challenges that reform poses. Some advice will, in effect, merely revive Golden Oldies like the recommendations of the Spierenburg Report of 1979 for fewer DGs and fewer Commissioners. But what is done about the internal organisation of the Commission is only a small part of a much wider problem. If recent evidence is anything to go by a good deal of advice will be based on experiences with quite different organisations from the Commission. Some will be based on the experiences of businesses that can choose,

if they wish, to divest themselves of difficult problems and costly activities. The EU by contrast is committed to moving into poorly explored if not entirely uncharted territory. Enlargement will prove extremely difficult to deal with but the the challenge has to be confronted. Other proposals build on what has been happening at the national level. The views of the Member States about the best way forward for the Commission will certainly be coloured by their own (diverse) experience of management reforms. However, national reforms have addressed quite different questions from those facing the EU as whole. They have been primarily concerned with reducing the scope and scale of existing national administrative systems. The question has to be asked how relevant this experience is when the tasks facing the EU are more in the direction of designing and developing new intergovernmental systems.

Anecdotal evidence about the defects of the system abounds. But, when real reforms are planned, it is especially important not to confuse symptoms with the underlying causes. The Commission, not without some justification, has long been a convenient scapegoat for what in reality are deep-seated systemic biases in the way the whole EU policy process works. Reforming the Commission is only a small part of the total task of reform. from The EU has a management deficit that is at least as important for its credibility and effectiveness as the democratic deficit is for its legitimacy. A thorough diagnosis must take into consideration three fundamental features of the management deficit covering policy- formulation through decision-making to implementation. The first is that the EU has proved more adept at acquiring new policy responsibilities than at managing them systematically and well. The EU policy process is geared to policy invention rather than management innovation. It takes on things that it cannot deliver. It is much easier to initiate new policies or at least to make public pronouncements of good intentions than to make new policies work well in practice. The second, already indicated above, is that there is often a mismatch between legal competences and management capacities. Creating legal responsibilities does not guarantee that there are also the administrative resources to implement new policies where they are needed and when they are needed. The gap is particularly difficult to fill in a pluralistic system where competences are located at the EU level but the capacities needed to give effect to them should be distributed at different levels of government across the Member States.

The third component of the management deficit is, in one sense, a problem of success. The advances made in the 1992 Single Market programme were largely based on a de-regulatory philosophy of negative integration with slogans such as 'bringing down the barriers' and 'eliminating the costs of Non-Europe'. What was evident at the time, but has only slowly percolated into public awareness, is that making the Single Market work (and nearly everything else in the EU) also requires positive integration. The capacities needed to manage European policies effectively are often inadequate and frequently poorly co-ordinated. New and more robust governance structures are needed to make the system work well now and prepare for the future. Building adequate governance structures involves solving large-scale problems of institutional development and capacity building which go far beyond any detailed changes in the internal organisation of the Commission. Markets do not work in an institutional vacuum. Substantial investments in new institutional frameworks at the macro level are essential to create the environment in which markets can work reliably at the micro-

level and non-market policies can be administered effectively across the whole of the EU.

Although the management deficit is a long-standing problem, deriving from habits and practices established in simpler times, the challenge now is to find ways of dealing with it that recognise the full complexity of the tasks ahead. While there are undoubtedly some insights to be gained from looking at management solutions devised for business and national government, there are advantages in assessing experience closer to home. The need for policies of positive integration to reduce the management deficit has been increased and public awareness of the need has been sharpened by the prospect of the eastward enlargement of the EU. It is quite clear that the administrations of the candidate countries have to be brought up to standard before they can be fully effective and reliable members of the EU. This is a delicate and politically sensitive issue in the candidate countries and in the Member States as well. Such a major change, combined with much increased political and economic diversity, has forced a recognition that the structures and systems of the existing Member States are sometimes not up to the required standard. Unless action is taken the combined effect of the deepening and widening will be to increase the EU's management deficit. It will widen gap between the EU's legal competences and its management capacities rather than narrowing it.

XI.3. European Public Management and the New Public Management

How should the management deficit be remedied? It seems obvious that reform proposals should take account of the distinctiveness of European Public Management. This is not to strike a defensive 'We are different' posture or to accept the conservative claim that the EU is *sui generis* and only those who have been initiated into its mysteries and accept established practices can be taken seriously. On the contrary the EU's management deficit is an acute case of the chronic problems of undermanagement and sluggish response to change in government.

The management of EU policies creates management challenges of an exceptionally high degree of complexity that preclude the direct imitation of business management methods or public management reforms at the national level. Despite this, because of current political pressures to show quick results in institutional reform, there are temptations see both as short-cuts. It is a serious (but frequently repeated) mistake to assume that business has all the answers to government's management problems. Management in a business context is often defined as 'getting things done through other people'. The main focus is usually on management within an organisation, or if managers are dealing with the external environment how they should act for and on behalf of their organisation. Public management adds an important dimension to this because it is almost always 'getting things done through other organisations'. Generally, in public management, there is an organisational division of labour. A policy is not the an exclusive task or the sole responsibility of a single organisation. Instead, several organisations are involved. Even if they are formally autonomous they are functionally interdependent. Effective overall performance depends not simply on the efficiency of the individual organisations concerned but also on good co-ordination among them. In a network of organisations, each of which has a different task and a specific contribution to make, effective performance depends on how well the parts work together as well as

on their operational efficiency in performing their designated tasks. European public management introduces additional complexity because in the EU context "getting things done through other organisations" means ensuring effective co-ordination among organisations that are spread across all the Member States. And, as the processes of EU enlargement and globalisation develop, this extends into candidate countries and beyond them to third countries and international organisations.

Although many governments, including EU Member States, have been engaged in management reform programmes and are likely to believe that solutions that have worked for them should also be adopted at the European level, this claim should also be treated with scepticism if it relies on one or other version of New Public Management (NPM). There are already signs that NPM is being portrayed as the basis for solutions to European Public Management problems. But because the main prescriptions of NPM are concerned with improving the efficiency of individual organisations they fall well short of providing a model for new EU structures of governance and systems of management. They do not provide a basis for designing and developing new multi-organisational networks. Rather than regarding European Agencies as self-contained independent organisations techn their role needs to be seen in the context of organisational interdependence rather than as free-standing,.

XI.4. The Organisation of EMEA

Against this background it will be useful to have in mind the main features of EMEA as an organisation and the way that its internal organisation is related to its functions within the pharmaceuticals regulatory system. Although it is virtually impossible to avoid making some reference to the US Food and Drug Administration (FDA) in this context, it is immediately obvious that the differences between EMEA and the FDA are sufficiently great as to preclude any simple and direct comparison. The EMEA is a much smaller organisation than the FDA, with a staff of less than 200 compared with the FDA's 3000. Its budget is a fraction of that of the FDA budget. The FDA as its title indicates, covers food as well as drugs. In the EU, food safety is the responsibility of DG XXIV, Consumer Affairs. EMEA has no jurisdiction in relation to food as such, although it is concerned with drug residues in animals that are part of the human food chain. The FDA is responsible for enforcement of regulations. EMEA is not. The EU system leaves enforcement to the national authorities of the Member States. Since the differences are more important than the similarities, the best thing to do is to consider EMEA itself.

This cannot be done by deducing what its role is from a definition of an Agency. The term 'Agency' is a label, like quango, that is applied to quite diverse entities. It is not a concept or a model of a type of organisation. Any attempt to classify or categorise Agencies will run up against the unavoidable facts of organisational diversity as well as terminological vagueness. One thing is clear. The use of the term in the title of EMEA should not lead to the assumption that it is like an executive agency in the sense that, for example, 'Next Steps Agencies' were created in British Government in order to separate 'management' from 'policy' and enable specialised organisations to concentrate on "the job to be done". This design for governance relied on the dubious assumption that "the job" could be sufficiently precisely defined and would remain stable enough not to

prompt policy revisions and political adjustments (Cowper and Metcalfe 1998). The diverse functions of European Agencies are discussed in other parts of this report.

While EMEA does have important operational management responsibilities it is not a purely executive body. Nor does EMEA carry out its executive responsibilities on its own. It differs in key respects from agencies at the national level. Executive agencies in national governments are generally part of a process of divisionalisation and decentralisation of responsibilities within a single organisation. Such reorganisations are usually based on the assumption that responsibilities and tasks can be separated out and managed independently in a way that reduces the need for co-ordination among them to a minimum. Even in its operational management tasks EMEA is an organisation that works closely with a network of other organisations. And, its role also has a strategic dimension. Thus, rather than just acting independently to achieve its own objectives, it has the integrative mission of seeking to ensure the effective functioning of the network of interdependent organisations that constitute the EU's regulatory system for pharmaceuticals. The design of the EMEA organisation and its modus operandi reflect an underlying concern with building the integrative and co-ordinative capacities needed to reduce the management deficit in this particular policy field.

An important feature of Agency governance requires immediate comment; the role of the Management Board. As usual the Board has overall responsibility for setting general policy and supervising management. It provides the main focus for management accountability though it is by no means the only element in EMEA's accountability system. The Board, as the main institution of corporate governance, reflects EMEA's integrative mission. It is composed almost entirely of outsiders; non-executive directors in business parlance. Moreover the membership consists largely of representatives of the governments of the Member States. While the specifics of membership vary from case to case the predominance of outside Board members is standard practice for European Agencies. It has to be seen as an important design feature of corporate governance and accountability. A later section of this report is devoted to considering the role and composition of the Management Board of EMEA and their general relevance to the design of Agencies.

The executive core of the organisation is the EMEA Secretariat based in London, led by an Executive Director who is appointed by the Management Board and responsible for organising and managing the work of two main committees; the Committee for Proprietary Medicinal Products (CPMP) and the Committee for Veterinary Medicinal Products (CVMP). It is these committees, headed by independent chairmen and composed of experts in the appropriate field, who conduct the product evaluations. Two Units of the EMEA Secretariat are responsible for organising the work of these committees and the substructures of working parties: the Unit for the Evaluation of Medicines for Human Use and the Unit for the Evaluation of Medicines for Veterinary Use. Their work is supported by a Technical co-ordination Unit and an Administration Unit responsible for personnel, budget and accounting. The staff, as noted above, numbers less than 200 people, having grown from zero when it was formed five years ago. There is a firm policy of in-house management of recruitment and selection of staff who are employed on a contract basis to meet well-defined job requirements. They are not employed as permanent career officials. This policy applies from the Executive
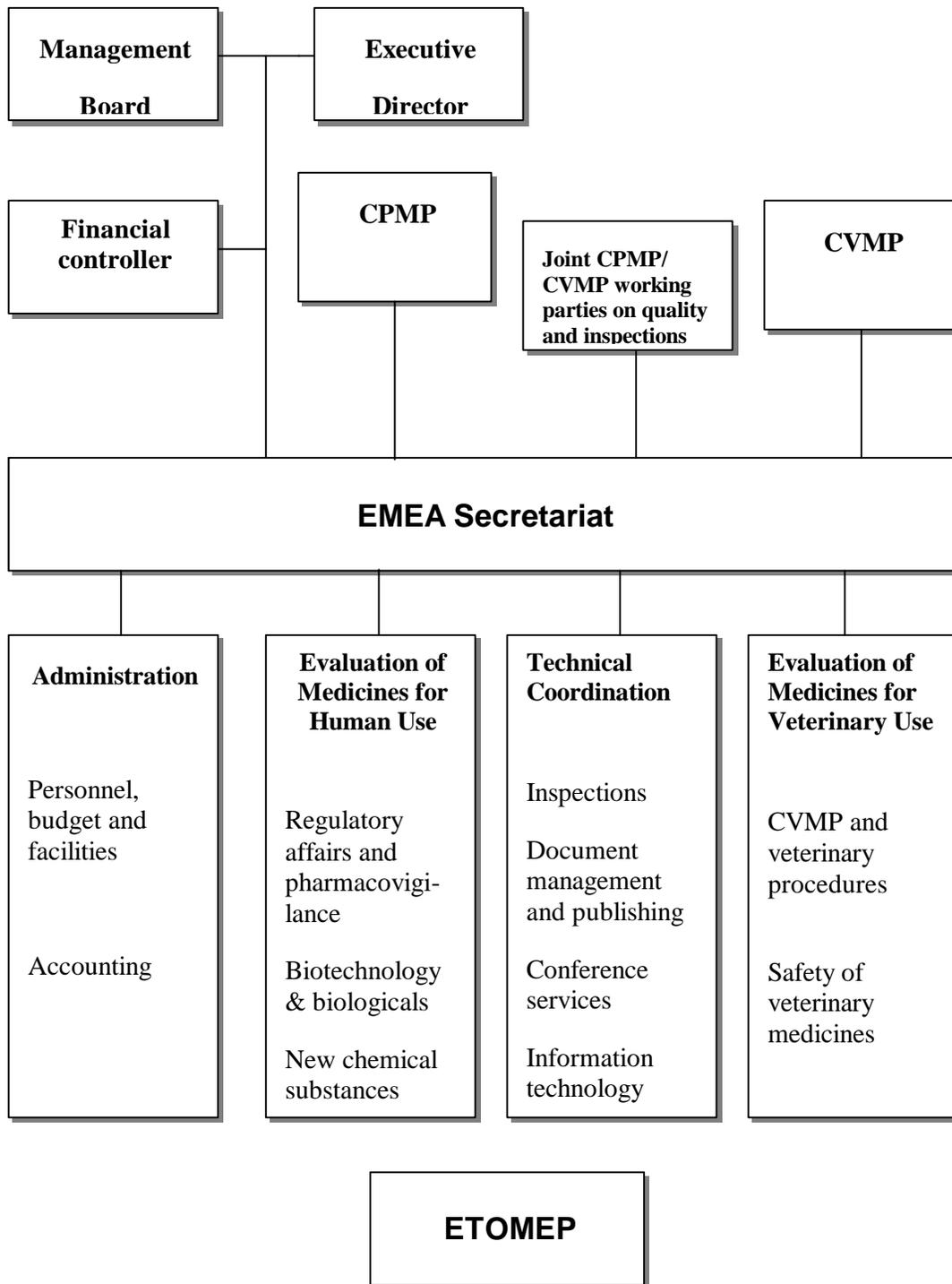
Director down. There is a limited but controlled policy of secondment from the national authorities.

In addition to the staff and organisation summarised above, the European Commission Joint Research Centre at Ispra has an office in the EMEA headquarters to manage and develop a telecommunications network to facilitate the exchange of information between EMEA and national regulatory authorities. The ETOMEP is funded through the fifth EU framework programme for research and technological development. As a deliberate part of a policy of transparency EMEA has a well-developed and well-connected website that ETOMEP manages. A staff member of the Commission's Joint Interpreting and Conference Service (JICS) has been seconded to EMEA to strengthen co-operation in conference organisation and assist with the multilingual aspects of its communications responsibilities (e.g. to ensure that labelling of medicines is standardised, accurate, and intelligible in all languages).

The work of evaluation carried out under the supervision of the CPMP and CVMP is done by committees of experts drawn from lists proposed by the national authorities of the Member States. EMEA works by creating and managing an EU-wide network of professionals. Experts are included in lists of approved specialists on the basis of their professional expertise. They work independently of their home organisations on terms defined by EMEA and subject to assurances that there is no conflict of interest. Working groups are formed according to the specialist needs of particular cases as applications are prepared and received for evaluation from companies. The services of experts are paid for by EMEA out of fee income from applicant companies. EMEA also provides them with working facilities and makes the necessary conference arrangements as part of the total process of managing the evaluation process.

The accompanying diagram sets out the main constituents of the EMEA organisation in conventional organigram form. As usual, this organisation chart describes the status and reporting relationships among the main units of the organisation but does not explain how it works. A brief organisational analysis is needed to avoid the misleading impression that EMEA is a conventional machine bureaucracy (Mintzberg, 1983). One sign that it is not, is the highly technical content of some of its work. Another is the way that it is concerned with topics such as pharmacovigilance that are important for the effectiveness of the regulatory system as a whole. A third is that EMEA relies in its evaluation work on marshalling high-level professional expertise but not not employing experts on a permanent basis. In short, it functions as a professional organisation rather than a machine bureaucracy. Its work is to provide professional evaluation services to clients. At the operational level this means organising and managing project teams of experts to evaluate particular pharmaceuticals. At a more strategic level it means establishing a professional definition of its own role and designing its external relationships on a professional-client basis The Commission is the client for the evaluations conducted within the EMEA framework and, as in any well-structured professional-client relationship, the Commission retains the right not to follow professional advice. In a different way, pharmaceutical companies are clients because EMEA evaluates their products. In both respects EMEA's independence is a boundary condition that establishes safeguards for it to exercise professional autonomy in making risk assessments of new products and not a basis for imposing its decisions unilaterally (Metcalfe 1998). To give it a legal right of decision would transform it into a different

kind of organisation; relying on hierarchical authority rather than professional expertise. This would violate the basis of its professional-client relationships and undermine the credibility and trust it has built up with other organisations in the system. This is a subtle, but important, point in considering how to design effective Agencies. *Effectiveness depends, not so much on independent power, as on establishing good working relationships with other stakeholders on an appropriate basis.* Paradoxically, an independent right of decision would inhibit rather than enhance EMEA's effectiveness, because its effectiveness depends on its ability to secure cooperation in exercising its autonomy.

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┌─────────────────┐    ┌─────────────────┐
│   Management    │────│    Executive    │
│      Board      │    │    Director     │
└─────────────────┘    └─────────────────┘

┌─────────────────┐    ┌─────────────────┐    ┌─────────────────┐    ┌─────────────────┐
│   Financial     │    │      CPMP       │    │  Joint CPMP/    │    │      CVMP       │
│   controller    │    │                 │    │  CVMP working   │    │                 │
└─────────────────┘    └─────────────────┘    │ parties on quality│   └─────────────────┘
                                              │ and inspections │
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EMEA Secretariat

Administration	Evaluation of Medicines for Human Use	Technical Coordination	Evaluation of Medicines for Veterinary Use
Personnel, budget and facilities	Regulatory affairs and pharmacovigi-lance	Inspections	CVMP and veterinary procedures
Accounting	Biotechnology & biologicals	Document management and publishing	Safety of veterinary medicines
	New chemical substances	Conference services	
		Information technology	

ETOMEP

The internal organisation of EMEA corresponds with the professional role it plays in the regulatory procedures that are explained later and the need to establish working relationships with the other organisations involved by the regulatory system. These relationships are important because EMEA is a small organisation. With a staff of only 200 people it would not be administratively feasible for it run the whole EU regulatory process on its own even if it were politically acceptable. Nor does it does not attempt to do so. It is essential to see it as part of an organisational division of labour that brings it into contact with many other organisations. These include national regulators, pharmaceutical companies and their representative associations, health care professionals and patients' organisations as well as other EU institutions. And, outside the EU, EMEA is building up links with regulatory counterparts in other countries and in international organisations.

Thus, in contrast with the image (if not the reality) of national-level agencies, EMEA is not just a self-contained organisation performing a given executive task within a predetermined policy and resources framework. It occupies a strategic position as the hub of the EU's regulatory system for phartmaceuticals and has an integrative mission as well as a set of professional tasks. It has a wider institutional responsibility as a bridge between different stakeholders in the regulatory process, and as a link between levels of governance, the national, the European and the global.

XI.5. Prehistory: Groping Towards Integration

EMEA did not spring into existence as an Agency out of nothing. It was designed as part of a new regulatory system and its creation reflects problems and deficiencies in what had gone before. The new system that came into operation in 1995 was not designed *de novo*. It has important new features, but its architecture is shaped by its history and the usual struggle to construct a European system on national foundations. Gardner (1996) and Vos (1999) provide more detailed accounts of the development of the regulatory approach to pharmaceuticals in the Community from the 1960s. Some historical background is provided here to explain the institutional needs to which EMEA is the response. Bearing in mind what was said earlier about the EU's management deficit the evolution of the regulatory system for pharmaceuticals reveals some of the difficulties of diagnosis and the political obstacles to reform. On one side there are the concerns of industry to have an efficient regulatory system. On the other side there is the debate about how to combine intergovernmental and supranational interests in an integrated system. Similar problems are likely to arise in many other fields of European Public Management as the process of institutional reform gathers momentum.

Before the present system was established the pattern of regulatory responsibilities evolved in a number of stages. The evaluation and authorisation procedures have changed. So have the roles of national and supranational organisations in the procedures. This does not mean that the present system is a natural and logical culmination of an unfolding plan.. The politics of regulation in pharmaceuticals have not been characterised by an orderly, well-managed process of institutional reform. For a long period of time there was confusion and uncertainty about how to proceed because important interests were at stake. While there was a good deal of dissatisfaction with the functioning of the system there was mistrust among the main actors about how to

change it for the better. In general, management of change has not been a strong point of the EU.

The purpose here is simply to point to the way for thirty years the politics of pharmaceutical regulation were groping rather slowly and haltingly towards integration. There seems to have been frustration and dissatisfaction on all sides but no accepted mechanism for formulating change or the capacity to steer a change process. Though it would be quite wrong to suggest that something like the present system was always in view, it is possible to discern in earlier initiatives some of the underlying features of the present system. Significantly, perhaps, until a late stage in the process the agency concept was absent and there was no neutral ground between the EU and national levels. Governance and management issues were politicised.

Predating developments at the European level there was a long-standing governmental concern with public health at the national level. The potential benefits, together with the attendant dangers, risks and costs of pharmaceuticals, have played a prominent part in ensuring that there was tight regulation of the pharmaceuticals industry at the national level. All Member States have had strict systems for regulating the production and use of pharmaceuticals. The regulations in force sometimes included cherished national idiosyncrasies and provisions to protect national pharmaceutical companies from foreign competition. The concern of national governments about pharmaceuticals was reinforced by the fact that they have to pick up a large part of the bill for drugs.

The European Dimension: Multi-State and Concertation Procedures

From the 1960s onwards European integration introduced a new dimension to the nationally based systems for the regulation of pharmaceuticals. At the European level, the first stage was a 1965 Directive on the authorisation of medicines aimed at protecting human health and eliminating obstacles to trade. The requirements for market access were refined in further Directives in 1975. They also established the CPMP and CVMP, the precursor of the current committees, with a membership composed of national government nominees. The CPMP was given the task of advising national authorities whether specific products should be licensed. At the same time, a Pharmaceutical Committee was formed on a similar representative basis and consisting of public health experts. Its remit was to advise the Commission on general policy questions as distinct from the technical or scientific advice from the CPMP and CVMP.

So far as harmonisation was concerned a 'Multi-state' procedure was introduced to establish the principle that pharmaceutical products approved in a Member State should in general have market access in others. Otherwise companies would have to go on making separate applications in each Member States and find that inconsistent and even contradictory decisions were being made. Where there were persistent objections by some national authorities (which were not necessarily motivated by product safety concerns) against products already authorised in other countries, the issue would be referred to the CPMP or CVMP. The committees however, had no arbitration authority. If they gave an opinion there was no obligation on the Member States to accept it as binding. In any case, this procedure was too cumbersome to use. It required a company

to have an authorisation in one Member State and then to apply for authorisation in at least five other Member States.

The flaws and delays in the system caused dissatisfaction both among regulators and regulated. This prompted a debate about how to reform and improve upon these practices but produced little change because of lack of agreement about the way forward. The pharmaceuticals industry was reluctant to see a centralised authorisation procedure established in the Commission, fearing that it would prove inflexible and excessively demanding. In pursuing this line they had the support of Member States in which pharmaceutical companies were based. As an industry with a strong record of growth there was naturally a concern to see that any new system did not turn out to be a regulatory straitjacket. On the other side, consumer organisations aligned themselves with the Member States that did not have strong producer interests in the pharmaceuticals industry and argued against moving to a decentralised mutual recognition procedure on the grounds that it would dilute regulatory standards. Some adjustments were made under Council Directive 83/570/EEC but they were not perceived as significant improvements.

In 1986 a new 'Concertation' procedure was introduced for medicinal products derived from biotechnological and other high-tech processes. This, in some respects, foreshadowed the current compulsory centralised procedure. Its purpose was to apply the criteria of safety, quality and efficacy to new products using the CPMP and CVMP. Applications had be filed at the European level as well as national authorities. Final decisions on market access remained with the Member States, unlike the current centralised procedure where the Commission decides.

The Internal Market '1992' programme launched in 1985 with an emphasis on the removal of obstacles to trade among the Member States threw into sharp relief the special circumstances and problems of regulation in the pharmaceuticals field. The predominantly negative integration strategy of the 1985 White Paper, inaugurated an era in which deregulation was perceived as an economic panacea. In so doing it skated over the positive integration problems of constructing a regulatory regime in pharmaceuticals that took into consideration both the health of the public at large and the economic health of the pharmaceuticals industry. Deregulation was not an option in pharmaceuticals but there was no coherent general strategy for 're-regulation' nor a specific strategy for pharmaceuticals. The problems of designing and developing coherent and workable European regimes had not been properly addressed, let alone solved.

Eventually, in 1990 the defects of the system were acknowledged and the Commission made a new proposal to design a regulatory system based on two authorisation procedures similar to those as described above; the centralised procedure and the decentralised mutual recognition procedures. The proposals also included the creation of EMEA with a role in each process. In the centralised procedure it was made responsible for managing the evaluation process. In the decentralised procedure EMEA was given a specific responsibility for arbitration in the event of disputes arising over mutual recognition at the national level. EMEA was part of a flurry of Agency creation. But the flurry took time to get started. The politics of Agency creation (status, powers and location) interposed further delays. It took until July 1993 for the Council to adopt

the substance of the proposals and it was not until early in 1995 that EMEA actually started to function.

XI.6. The European System for the Evaluation of Medicinal Products

The first indication that EMEA has to be seen in different terms from national executive agencies is that it was created as part of the redesign of the whole system of evaluation and authorisation of pharmaceutical products. It was not created as part of a general reform of the Commission and cannot be understood as a decentralised agency that is an appendage of the Commission and nothing more. In fact, rather than narrowing its focus to predetermined executive tasks, decentralisation has given it degrees of freedom to develop an integrative role within the pharmaceuticals regulatory system.

The function of the system is to evaluate and authorise medicinal products for human and veterinary use so as to protect public health and facilitate the free circulation of pharmaceuticals within the EU. A precondition of authorisation is evaluation of the benefits and risks of new pharmaceuticals. The system is intended to serve both the interests of users of pharmaceuticals in having better medicines available and the interests of the pharmaceutical industry in having efficient and ready access to the single market. In the rhetoric of the 1992 programme the system is a means of eliminating the obstacles and the costs of 'non-Europe'. But its primary task is to safeguard public health. The system must therefore cope with the tensions between two important policy objectives; the single market programme which requires the removal of barriers to trade relies on negative integration while protection of public health in the context of an EU market requires new measures of positive integration with investments in new governance structures and the management capacities necessary to make them work on a continental scale.

Centralised and Decentralised Evaluation Procedures

In an attempt to meet these extremely demanding requirements a new system of authorisation for medicinal products was designed and inaugurated in 1995. It has two main components; a *centralised* procedure managed directly by EMEA and a *decentralised* mutual recognition procedure operated among the national authorities of the Member States. In addition, for medicinal products sold in only one Member State it is still possible to have a purely national authorisation. Since authorisations have a time limit and manufacturing processes as well as the products themselves are subject to evaluation there is a pharmacovigilance system for monitoring compliance with standards. Pharmacovigilance is the responsibility of national authorities but, as we shall, see it is not a subject that EMEA ignores.

The *centralised procedure* is obligatory for all advanced medicinal products based on biotechnology. It may also be selected by companies in some additional cases. Companies producing other innovative products have the option of using the centralised procedure by submitting an application to EMEA in cases where the centralised procedure is not mandatory. In the centralised procedure the EMEA has 210 days in which to make a risk assessment judgement on a new product and its opinion is transmitted to the Commission which retains the right of decision on authorisation and,

therefore, risk management. The procedure is designed to separate risk assessment from risk management. There are various ways in which companies can challenge judgements and decisions. The main locus of arbitration is the Commission.

The *decentralised procedure* applies to other medicinal products whose marketability across the EU depends on the operation of the principle of mutual recognition. The EMEA may become involved as an arbiter in the decentralised procedure if there are disputes among interested parties about mutual recognition—or lack of it.

A further distinction, which has organisational implications, needs to be mentioned. There are separate centralised and decentralised procedures for pharmaceuticals for human and veterinary use because of differences in the issues involved and the expertise needed to evaluate products developed for these different uses. Veterinary products are assessed to discover what residues they may leave in animals that are part of the human food chain. This distinction is reflected in the internal organisation of the EMEA which has separate units for dealing with applications for each use. The committees and working parties involved in assessing medicinal products for human and veterinary use work within the same basic premises and the same criteria of evaluating the quality, safety and efficacy of new products. Within that framework there are different sets of specific criteria related to individual products and whether they are intended for human or animal use.

The summary above gives the basic outlines of the two regulatory procedures which both apply to pharmaceutical products for humans and animals. It shows that EMEA has some specific operational responsibilities and executive tasks that give it a definite place in the regulatory system. Once one examines the system in more detail there are additional complexities to take into account. Some of them begin to emerge from a closer consideration of the EMEA as an organisation. Others from the way that it links with other organisations in its environment. From a functional point of view EMEA may be regarded as the hub of the EU's regulatory network for pharmaceutical products. It occupies a strategic position in relation to the stakeholders in the regulatory system; the pharmaceutical industry, the national regulatory authorities responsible for ensuring that old as well as new products comply with established standards, the health-care professionals who select and administer drugs, the health authorities responsible for purchasing them and the patients as the ultimate users.

As explained above it is a professional organisation in the sense that it defines its main working relationship in professional-client terms. (To point up an important distinction, NPM reforms often assume that public organisations should imitate business and define relationships in supplier-customer terms. For EMEA to do so would invite accusations of regulatory capture. A supplier-customer is based on a responsive exchange basis of satisfying *wants.* A professional-client relationship is based on autonomous professional diagnosis of *needs* and prescriptions subject to client approval). in the context of a regulatory process, professionals need an intimate understanding of the industry they regulate as well as independence in formulating their judgements. in an industry like pharmaceuticals this is no easy task.

XI.7. Industries Aren't What They Used To Be

'The pharmaceuticals market is not a normal market.' (COM (93) 718 final, p.17 1994)

There is no disputing the validity of the quotation above from a communication from the Commission to the Council and the European Parliament 'On the Outlines of an Industrial policy for the Pharmaceuticals Sector in the European Community'. (Com 93 718 final 1994, p.17). This document went on to underline concerns about the long term prospects of the European pharmaceutical industry and its competitiveness in the face of tougher global competition. It drew attention to the economic importance of the industry as a producer and employer and to specific features of this sector of industry that warranted special consideration. These included the competitive necessity of continuing high levels of investment in research and development in fields where the costs of research are rising steeply and the lead-times of significant new pharmaceutical products are lengthening. Related to this pressure to innovate there is a highly developed system of regulation to safeguard public health. In addition, while research and other product development costs (including regulatory requirements) are escalating, national governments as purchasers or paymasters for national drugs skills have been concerned to control prices -–sometimes directly and sometimes by limiting access to their domestic markets.

EMEA and the current EU regulatory system must be seen against that background. One of the driving forces behind the development of the present system was the concern that the European pharmaceutical industry was falling behind its global competitors and that a clumsy, fragmented, uncoordinated regulatory system was partly to blame. As the Single Market programme got underway in the 1980s regulatory reform was frequently equated with deregulation. The theme of deregulation fitted neatly with the general thrust of the 1992 programme for negative integration the removal of barriers and obstacles to trade. But whatever the case in other industries, it was always clear that in pharmaceuticals reform would involve re-regulation—the design and development of a new regulatory system—rather than deregulation. The peculiarities of the pharmaceutical industry and the multiple roles government plays towards it, as purchaser, promoter and host as well as regulator complicated the process of defining the direction of regulatory reform. The task of designing a new system could not be met by attempting to reverse the course of economic history and transforming the pharmaceuticals market into a 'normal market'. After all, what is now normal? From a comparative industrial organisation perspective the emphasis on the unique features of pharmaceuticals been overdone.

Another way to look at the role of regulatory institutions is to place them in the context of generic features of contemporary industrial organisation. Industries are not what they used to be. The textbook picture of an industry with clearly defined product markets in which willing buyers and willing sellers exchange through the medium of the price mechanism is increasingly remote from the complexities of contemporary industrial organisation. The conventional ideal of close-to-perfect competition that underpinned much of the political enthusiasm for the single market is of dubious relevance even as an ideal to aim for. Most contemporary industries are much too complex for this view of industrial organisation to be even an approximation to reality. An adequate description of many industries must take account not just of oligopolistic and imperfect competition

among leading firms but also the co-operative as well as the competitive endeavours of very large differentiated networks of interdependent organisations, public as well as private. In addition to the companies most closely identified with an industry there is the whole value chain comprising suppliers and various forms of specialist service organisations plus the institutional infrastructure that supports and facilitates its operation. The latter includes the regulatory framework that safeguards important social and economic values that markets left to themselves would not.

Michael Porter's (1990) analysis of 'The Competitive Advantage of Nations' is the best known exposition of the thesis that industries are not what they used to be. In fact, a more accurate title might have been 'The Competitive Advantage of Industries'. His main concern was to show how specific features of industrial organisation contribute to long term industrial performance. Competitive advantage is generally associated with the way individual businesses are organised and managed but Porter saw that some competitive advantages accrue from identifiable features of the way industries are organised. The performance of the whole is not merely the sum of the competitive efforts of individual businesses it is the product of a larger complex of factors. He broadened the conventional definition of industrial organisation to include not only firms and their suppliers but also the customers and public and private organisations providing ancillary services, including of course the various ways in which government impinges on business. Porter's 'diamond' of competitive advantage at the industry level includes factor conditions, demand conditions such as the sophistication of customers, intensity of competition among leading businesses and the industrial infrastructure.

Although he still maintains that, in the end, competition among leading businesses is the key to long term success (Porter 1998), according to his schema it is only one facet of the diamond of competitive advantage. Industrial success comes from the recognition that competitiveness, productivity and long term industrial performance are not just a result of closer approximation to perfect competition. In advanced industries they also require other contributions that stimulate innovation and reinforce efforts to achieve high standards.

What relevance does this have to regulation in pharmaceuticals? An oversimplified view of industrial organisation may lead to an oversimplified and obsolete view of regulation. Regulation is not just an irksome administrative burden on business that can and should be reduced to the absolute minimum. As recent food-related crises have shown, regulatory weaknesses can prove very costly to industry as well as harmful to health. Faults and flaws in a regulatory system can have devastating effects on profitability and long-lasting economic consequences if they undermine consumer confidence. An effective regulatory system may actually be a source of competitive advantage if it safeguards standards and encourages innovation and new product development rather than putting obstacles in their way. Government in its regulatory role in relation to pharmaceuticals may simulate the role of Porter's sophisticated and well-informed customers. In a way a good regulatory system plays the role that he assigns customers who critically evaluate what is produced and generate pressures that keep industry up to the mark. It is clearly impossible for the patient as the eventual user of new pharmaceutical products to make an informed judgement on the safety and efficacy of drugs and it is necessary to have a professionally based system that does so on their behalf.

XI.8. EMEA's Mission

Whatever the difficulties and delays in designing and establishing the new system the outcome was the decentralisation of responsibilities previously located within the Commission (DG III) to a new European Agency. Importantly EMEA had a mandate to act more independently than would have been possible if it had still been within the Commission. It is essential to emphasise at once that this was not just a matter of doing the same things outside the Commission as had been done within it. The establishment of EMEA and the introduction of a new regulatory system goes beyond handing a given set of executive tasks to a separate organisation. The first Executive Director, Fernand Sauer, whose own professional training and career in DG III fitted the needs of the new situation saw the opportunities to carve out a distinctive role for the Agency. Remarkable progress has been made in a short time.

EMEA's mission statement is set out below. As it shows, the new organisation has a different *modus operandi* from self-contained executive agencies and a broader remit than they are generally expected to have. It has specific tasks and developmental responsibilities. It gives explicit priority to public health. Implicitly it gives recognition to 'industrial health'. In tone it is outward-looking and developmental rather than introspective and reductionist.

EMEA's MISSION STATEMENT

To contribute to the protection and promotion of public and animal health by:

Mobilising scientific resources from throughout the European Union to provide high quality evaluation of medicinal products, to advise on research and development programmes and to provide useful and clear information to users and health professionals.

Developing efficient and transparent procedures to allow timely access by users to innovative medicines through a single European marketing authorisation.

Controlling the safety of medicines for humans and animals. In particular through a pharmacovigilance network and the establishment of safe limits for residues in food-producing animals.

With all the reservations that have to be made about mission statements, for once this seems to capture the flavour of what EMEA does, and equally important, how it does it. It would provide a reasonable basis for developing a schema to 'evaluate the evaluators'. (Though it must be added at once that the evaluators in EMEA are already evaluating themselves through a quality management programme). There is a pro-active emphasis on *mobilising* scientific expertise rather than employing it; *developing* user-friendly procedures and policies of openness and transparency and *following-up* to

ensure that what is authorised remains safe. The mission statement reflects the full range of its publics and stakeholders and recognises that its general strategy connects with some quite specific tasks involving itself and other regulators. Before going on to examine how it works within its organisational network this point needs to be clarified.

XI.9. Operational and Strategic Management

It is essential in analysing EMEA to draw a distinction between its operational and strategic management activities. This distinction is more useful in this case and probably also in other European Agencies than the policy-management dichotomy that is usually employed in assessing the work of agencies in national governments. Operational management refers to the performance of specific tasks and responsibilities, perhaps within a management-by-objectives framework. Since objectives are fixed and policy parameters are tightly drawn the main managerial focus is on resource utilisation and the speed, efficiency and economy with which tasks are performed. Strategic management is about defining and redefining what objectives should be. It is concerned with positioning the organisation in its environment to make the best of available opportunities and ward off any threats to its effectiveness. Unless they are restricted to purely operational tasks—which is difficult—Agencies need strategic management capacities to define their own roles and structure their external relationships in terms that promote their own objectives without compromising their independence. They need to be able to manage changes in their relationships with other organisations as policies and external circumstances change.

Because EMEA has a separate legal identity from the European Commission and has specific tasks delegated to it, it might appear that it is a straightforward example of decentralised EU administration; an operational management unit whose added value should be judged simply by identifying gains in efficiency from being able to concentrate on performing specialised tasks that would otherwise be performed within DG III, its parent DG in the Commission. Measured solely on this criterion it would probably show up quite well. Deliberate efforts have been made since EMEA's creation to achieve operational efficiency gains in the conduct of evaluations. These include a quality management programme that has been running for about 2 years. Quality management has become something of a management fad. Under the influence of NPM thinking it is sometimes adopted rather uncritically without serious consideration of whether the definitions of key concepts are appropriate. Often, in the form originally developed for businesses every part of an organisation is supposed to identify the 'customer' for its output. This is not what EMEA has done. The quality management teams have reformulated the basic ideas in terms which fit better with the particular characteristics of EMEA.

EMEA works, at the operational management level of processing applications from pharmaceutical companies, by managing and monitoring the centralised evaluation process. This involves all facets of planning and supervising the activities of the CPMP and the CVMP and the working parties and task forces they establish to process specific applications or to work on issues of general relevance to the evaluation process. Operational management therefore includes the provision of support services, the assembly of teams and task forces, the administrative arrangements that enable them to

work and also that ensure the formalities of submitting opinions to the Commission are properly handled. In addition, since EMEA charges fees for conducting evaluations and reimburses the organisations and individuals providing expertise there is a considerable task of financial management. These are standard functions of a well-run professional organisation.

The system for managing applications operates to a tight time-scale with strict deadlines. Given the commercial importance of ensuring that there are no unnecessary delays in the evaluation process it is important that the various tasks of operational management are handled well. The stringent requirements are reflected in the way that the personnel and finance functions of EMEA are managed within the framework of the Commission's staff and budgetary regulations. It must be emphasised that while responsibility for finance and personnel is delegated to EMEA and, as a matter of deliberate policy is managed in a decentralised way within EMEA, the agency is subject to exactly the same staff and budgetary regulations as any of the Commission's DGs or other services. While there may be a case, as the first report of the Committee of Independent Experts says, to review the Staff and Budgetary Regulations of the Commission, EMEA has been able to devise means of managing effectively in a decentralised way within the Regulations as they stand.

Operational management is generally regarded as the core of what an organisation does. It regulates the activities that in the end produce the outputs on which its performance is judged. It is commonly assumed that operational management tasks are carried out as internal functions within the organisation. But even here, EMEA operates in a network rather than as a self-contained entity. With its small staff it would not be able to process more than a fraction of the inflow of applications it receives. Even then it would require remarkable foresight to predict what companies would produce and what expertise would be needed to evaluate it. Instead, it works by drawing in relevant expertise from the Member States as the technical requirements of applications determine. This method of working involves the creation and maintenance of lists of accredited experts in all relevant fields who can be called upon to participate in working groups of the CPMP and CVMP. Again this places an administrative burden on EMEA which has to ensure that the right people are appointed to the right committees when they are needed. It also leads to a wider consideration of the character of the organisation.

Improvements in operational efficiency are important in their own right, but they are not the whole picture. There are other dimensions to EMEA's work that have the potential to add value outside the range of any direct improvements in efficiency due to administrative decentralisation. In order to consider all the relevant factors it is necessary to examine in somewhat greater depth the character of the organisation. As indicated above the EMEA has responsibility for some specific operational management tasks in the centralised procedure and some arbitration responsibilities in the decentralised procedure. It is significant that it has the independence, as an organisation, to perform these functions in the risk assessment of particular applications. At first glance it may seem that this gives it little independence because decisions based on its opinions are made ultimately by the Commission. But the procedures and rules are written in such a way as to make it unlikely that the Commission would exercise its right to go against the professional opinions presented to it through the CPMP and CVMP. To do so on a frequent basis would require the duplication of expertise

available to EMEA. Even to do so occasionally would involve an elaborate and difficult process of challenging expert opinion by introducing a competing body of expertise and this would undermine the credibility of the whole authorisation system.

If the test of agency status is an independent right of decision then EMEA would not qualify. It is responsible for risk assessment but not risk management. The ultimate power of decision whether to authorise a drug remains with the Commission. Or, rather, the Commission is strategically placed at the threshold of the political labyrinth. For if disputes arise there are backup procedures that lead eventually to the Council of Ministers. Organisational analysis provides a way of cutting through the complexities. The operational relationship of EMEA to the Commission is a professional-client relationship. It uses professional expertise to form a judgement. It is up to the client, the Commission, whether to act on it. Thus, while authority is delegated from the Commission, establishing a hierarchical relationship, professional authority relations run in the opposite direction.

XI.10. Organisational Networks and Network Organisations

In one of its current presentational documents EMEA describes itself as a 'decentralised networking agency'. This concept is elaborated in the following way:

> EMEA is designed to co-ordinate existing scientific resources of the Member States. Rather than create a highly centralised 'Food and Drug Administration' for Europe, EMEA acts a pro-active interface between national competent authorities without dismantling their structures. The EMEA has created a strong and effective partnership between national competent authorities and the European Community institutions, reinforced by contracts for services.

Although several of the terms included in this statement have become fashionable in recent years, it is often unclear precisely what they mean and how they might apply to an organisation such as EMEA. Using them to examine the management of EMEA provides insights into important themes of innovation in European Public Management. 'Networking' is perhaps the most general of the terms and offers a useful point of reference. It is evident that EMEA operates within a network. It is hardly possible to describe or understand what it does or how it does it without having in mind the extensive network in which it operates. This is significant in itself, because the agency tradition at the national level places the emphasis on designing organisations that can operate independently in a self-contained way. Consultants have usually found that politicians and civil servants are attracted to this exemplification of the KISS formula (Keep It Simple Stupid)—at least at as an initial selling point—because it seems to offer a quick and easy answer. If problems are uncomplicated it may do so.

EMEA, however, is heavily involved in the management of interdependence. Furthermore, there is a danger of confusion or trivialisation unless some distinctly different network concepts separated out. More detailed analysis is needed in order to specify the different senses in which it can be described as a 'network organisation' and the kinds of 'networking' it is engaged in. It is important to do so in order to understand

more clearly how EMEA itself works, and to clarify general issues and options relevant to the design of other agencies.

The indiscriminate use of the terms networking and network organisation frequently obscures distinctions among three different sets of managerial concerns and related organisation design issues. Each of them is relevant to EMEA's own activities. All three raise questions that are germane to the design of other agencies. It is particularly important to separate them out so that the main foci of interest are clear. Each term may refer to operational management, strategic management and what will be called institutional management. The first usage is principally concerned with operational management and often with the design and functioning of the internal organisation; the second with strategic management and the structuring of interfaces and external relations with other organisations and the third is concerned with broader features of the functioning and co-ordination of the whole network within which an Agency (or other organisation) works.

XI.11. Network Organisation and Operational Management

At the operational level, network organisation refers to processes of management characterised by fluid and flexible links among individuals and groups within an organisation that enable it to respond rapidly to new opportunities and adapt easily to change. A network organisation is usually portrayed as a flexible, organic, form of operational management that stands in contrast to the negative characteristics of bureaucracy. Network organisations are flexible, informal, adaptive, innovative, entrepreneurial and generally display all the managerial virtues of being able to cope with change and respond creatively to environmental challenges. There is a sharp dichotomy between this image of organisation and the bureaucratic vices of rigidity, formality, fragmentation, inertia and defensiveness, with sharp demarcations and clear boundaries in dealing with the outside world. Network organisations sometimes appears so fluid and open as to be borderless and so decentralised as to be virtually amorphous. Their design principle appears to be to minimise internal structure in order to ensure external flexibility.

Of course, the network organisation—bureaucratic organisation contrast is overdrawn. Too little structure is as damaging to performance as too much. In a well-functioning organisation that is flexible enough to adapt to change the reliable performance of recurrent tasks still requires a clearly structured division of labour and effective means of co-ordination and central control. How to achieve a balance between operational efficiency and flexibility is a perennial design problem.

EMEA certainly does make extensive use of networks to draw in professional resources and expertise. In doing so it displays considerable flexibility in the management of high level professionals who conduct product evaluations. But it also has a well-defined internal structure related to its primary tasks and there is a clear allocation of operational and supporting functions and arrangements for co-ordination among units. Such internal differentiation and specialisation are hardly avoidable if EMEA is to keep to the tight evaluation timetables it sets and against which it monitors progress and performance. Since it must work to the CPMP and the CVMP agenda and do so within the framework

of the Commission's Staff and Financial Regulations clearly-defined decentralised internal structures need to be matched by effective reporting arrangements to ensure central control. EMEA appears to achieve a good combination between clearly defined structure and flexible networking at the operational level.

XI.12. Networking and Strategic Management

Networking issues also arise at the level of strategic management. All organisations operate within a network of relations with other organisations. In the jargon of organisation theory, the *organisation set* of a *focal organisation* such as an Agency is the *network of organisations* in which it is located. The network is defined by *mapping the organisations and the relationships among them*. Mapping organisational networks, especially for an organisation set as extensive as that of EMEA is a major task, far beyond the scope of the present study. Though, it must be said that for its own purposes EMEA has acquired a very detailed knowledge of its network.

The character of an organisation derives partly from the pattern of the organisational network; the links and interconnections among the organisations; and partly from the way the focal organisation defines and structures its relations with them. The constraints and opportunities offered by different organisational environments vary. A tightly-knit network, in which most members of the organisation set have contacts and working relationships with each other, in addition to those with the focal organisation, imposes significant constraints on the way the focal organisation defines its role and generates strong pressures for consistency in the way it performs. A loosely-knit network imposes fewer constraints and allows the focal organisation more discretion in defining its role. On the other hand, while the external pressures are less limiting in a loosely-knit network, the disadvantage is that the possibilities of outside support are also reduced. A focal organisation may be freer to decide what it does but be unable to mobilise the requisite external support to be able to do it effectively. Mapping the networks in which different Agencies are located is likely to reveal significant differences among them and therefore differences in the feasible strategic options of the Agencies concerned.

There is no way of escaping the complexity of the organisational environment in which EMEA is located. The EMEA network seems quite highly developed and tightly-knit. It includes organisations from at least the following categories; pharmaceutical companies and representative organisations in the industry, regulatory counterparts in the Member States and elsewhere, health care professionals, organisations representing patients and, of course, the European institutions. A complete mapping of EMEA's network would require detailed information about each of the subsets listed below and the relationships among them. (Comparisons with other Agencies would have to allow for different subsets).

The EMEA Network:

➢ Relations with the EU Institutions; Commission, Parliament …
➢ Relations with the Pharmaceutical Industry (Companies and Representative Bodies)
➢ Relations with National Regulators
➢ Relations with Health Care Professionals

➢ Relations with Patients Organisations
➢ Relations with National Regulators in Candidate Countries
➢ Relations with National Regulators in Non-EU Countries
➢ Relations with International Regulators

Networking at the strategic level involves definition of roles and relationships. For purposes of illustration it is useful to look more closely at EMEA's relations with the Commission. The Agency's activities touch an increasingly large number of areas of European Union competence and this has brought it into contact with almost half of the Commission's Directorates-General.

Links with European Commission Directorates-General:

DGI and DG 1A	External relations
DG III	Industry
DG V	Employment, Industrial Relations and Social Affairs
DG VI	Agriculture
DG IX	Personnel and Administration
DG XII	Science, Research and Development Joint Research Centre
DG XIX	Budgets
DG XX	Financial Control
DG XXIV	Consumer Policy and Consumer Health Protection

The relationships are not all of the same kind. There are important qualitative differences among them which stem from the different purposes they serve. They are variously administrative, professional and advisory. Its principal contact remains with DG III the Directorate-General for industry and in particular the Unit for Pharmaceuticals and Cosmetics (DG III/E/3). This is EMEA's parent DG, the client for its evaluations and its main administrative link with the Commission. Its budget is a substantial part of the DG III budget although of course it is also financed partly by fee income from industry. On budgetary and financial matters it has direct links with DG XIX and DG XX and on personnel with DG IX. These administrative relationships reflect the fact that EMEA does not enjoy any special privileges or exemptions from the standard Commission financial and staff regulations. In fact it is quite assiduous about sticking to them. Its relationships with other DGs are more policy related and reflect the ways in which EMEA's work has implications for consumer affairs agriculture and research. In external relations EMEA contributes to the development of links with counterparts in third countries and also with international organisations such as the WHO. And, of particular current importance it is engaged in extending the regulatory network to include the relevant authorities in the candidate countries. The reason for mentioning this here is that EMEA do not act independently and on its own initiative in these areas. It works within the policy framework set by the relevant DG and in consultation with it. In addition, as a specific source of knowledge and expertise it may have an input to make in developing the policy framework Thus, EMEA plays different roles and engages in different relationships, vis-à-vis the Commission, depending on the

subjects and the DGs concerned. It is a delegated means of carrying out administrative responsibilities and is subject to administrative controls. It is a professional source of advice on risk assessment with the Commission as client in the evaluation process. It also provides specialist advice and back up to DGs in areas such as the development of the regulatory regime in areas where it has relevant expertise. Its credibility for playing these roles stems from the distinctive position it occupies in its network and the way it has developed partnerships with other organisations.

XI.13. Partnerships and Strategic Choice

Whatever the objective characteristics of a network, what is judged a threat or an opportunity depends on the character of the organisation and how it seeks to define its role. An important part of strategic management is designing and structuring the network of relations with other organisations so that they are consonant with the organisation's definition of its mission. Of course, organisations are not free to define their relationships with other organisations just as they please. The options are constrained to a greater or lesser extent. Some relationships are imposed by external circumstances. But there is usually scope for strategic choice about the form, if not the pattern, of relationships. To a large degree EMEA operates within a *mandated* network. It cannot choose which organisations to develop links with. It is obliged to work with a specific network. But as the above discussion has already shown, it has been quite proactive in defining its own role.

The balance between external constraints and strategic choice is an important one. Organisations are often portrayed as creatures of their environments, passively accepting the configuration of the networks in which the find themselves and conforming with the expectations or succumbing to the power of other organisations. Debates about regulatory capture often assume that Agencies are vulnerable to external pressure from industry or lack the leadership to manage their external relations strategically. Conversely, the view that regulators adopt adversarial postures suggests a lack of the vision and skill needed to design and develop constructive relationships. The issue of regulatory competition, often discussed as if it leads inexorably to a race for the bottom as regulatory authorities vie with each other to lower standards, implies that Agencies are either unable or willing to build stable working relationships with each other reinforce standards.

So far as its own network is concerned, EMEA has to maintain a very extensive and diverse set of partnerships. The network in which it operates is partly imposed and partly designed. Even if it cannot choose its partners EMEA appears to consider carefully how to structure its relations with them and to negotiate the terms of its various partnerships in a strategic way.

It has defined its role as a professional organisation and on this basis developed relationships with the pharmaceuticals industry as clients in the assessment of new products. Without going into detail here, the basics are clear. On the input side applicant companies, as clients, have to meet administrative requirements and pay for the service that EMEA provides in order to process the evaluation of their products. On the output side, in presenting its professional advice, the client is the Commission. In both cases

EMEA claims professional autonomy. Furthermore, in its relations with other regulatory authorities; EU and Non–EU, national and international; it is establishing a professional peer group and in the process acquiring a representational role at the institutional level. Its independence and autonomy are in part maintained by the way that it has negotiated its place in the network. This is discussed at greater length below.

It may appear that what has just been said is self-evident. However, it important to see this statement of the obvious in the wider context of neglected issues in reforms of EU governance and policy management. The way that EMEA has defined its role and designed its relationships with other organisations stems from a different strategic vision from the one that underlies many of so-called New Public Management (NPM) reforms at national government level in recent years. In many, though not all, cases the basis has been a business management philosophy. The relationships between organisation or with the publics have been defined in customer-supplier terms rather than professional-client. The distinction may seem innocuous and trivial but it has far-reaching implications for the way relations between organisations are structured, how performance criteria are set and how effectiveness is assessed. Customers expect suppliers to give them what they want and what they ask for, whereas professional service is based on an independent diagnosis and assessment of needs. In the one case the bench mark is satisfying customer wants and performance is judged by profitability. The bottom line is the bottom line. In the other case the benchmark is meeting client needs and performance is judged by professionally set criteria of client service. It is clear that it is the latter rather than the former that is of primary importance in evaluating EMEA. Moreover, by defining its role in these terms EMEA Moreover, by defining its role in these terms EMEA has moved away from the sterile intergovernmental versus supranational dichotomy.

XI.14. Partnerships and Collaborative Advantage

'Partnership' is a much abused term but, nevertheless an important one. Rather than accepting a subservient relationship as in regulatory capture or striking an adversarial posture regulatory authorities, as a matter of deliberate policy, may seek to establish mutually understood roles and mutually acceptable relationships. The rhetoric of partnership suggests a joint commitment to making the system work in a way that takes account of all the interests involved. Partnership presumes that co-operation has priority over competition but it does not presume a cosy conflict-free relationship. Indeed there may be competitive tensions and vigorous disputes. It does presume, however, that the players in the regulatory process recognise each others' legitimacy and accept rules of the game that enable them to negotiate the terms of constructive working relationships. In building up its network EMEA has gone to some considerable trouble to establish partnerships and define the terms of partnerships clearly to avoid misunderstandings and conflicts.

The partnership concept has a broader significance in the context of this discussion of strategic management. It is important in anticipation of the following analysis of corporate governance to underline a crucial distinction between strategic management in a business context and in a governmental context. In a business context strategic management seeks to position an individual organisation so as to achieve or maintain

competitive advantage. Competitive advantage is essentially individualistic. Businesses may form consortia or strategic alliances but these are dispensable means to sustain their own competitive advantage. In a governmental context the challenge is to create and sustain collaborative advantage. In other words to ensure good working relationships among all the organisations composing a system that functions as an integrated regime. This requires different core competences from those that underlie competitive advantage and a different approach to leadership. The concept of collaborative advantage shifts the emphasis in strategic management towards developing partnerships and other forms of co-operative relationships. It does not preclude or eliminate competition. Indeed, as the earlier discussion of the centralised and decentralised procedures showed, EMEA is, in some respects, in competition for with national regulatory authorities. At the same time they are involved not just in EMEA's own operations but also in its management. This is an important test of leadership that deserves closer attention.

XI.15. Corporate Governance: The Role of the Management Board

SAFAD considers that the (Swedish) Government's scope for exerting influence and gaining an understanding of operations is enlarged by the establishment of autonomous EU agencies. Its influence increases most clearly with the board form of EU agencies, when all member states have an equal vote regardless of their size. Sweden's and other member states' insight into activities is also facilitated if these activities do not take place within the Commission and are, instead, clearly demarcated and identified, with their own budget and responsibility. (Statskontoret 1997).

Public organisations have to deal with their political environments as well as their task environments. Maintaining political support and securing resources depend on demonstrating relevance and competence. This is the sphere of corporate governance. The quotation above, from a publication of the Swedish Agency for Administrative Development on EU Autonomous Agencies with the telling subtitle, 'For a more efficient Union and enhanced national influence', highlights one of the general concerns that arises when the governance of European Agencies is discussed. Taken on its own it looks like an attempt to use Agencies as a means of reversing the process of integration and recovering lost national influence. The old issue of supranationalism versus intergovernmentalism appears to lie behind it. Since, elsewhere in the same document, there is extensive discussion of federalism and administrative co-operation it would be wrong to jump to hasty conclusions. Nevertheless, the fact that such issues are raised is symptomatic of unresolved questions of governance and management that arise in relation to the design of Agencies.

Some of these centre around the composition and role of Agency Boards. The Board is a key institution of corporate governance. It is where issues of operational and strategic management come together with concerns about supervision and public accountability. The Board shapes Agency policy and defines the interface between the Agency at its organisational environment. In a well-run organisation the Board has an important function in ensuring a close and continuing correspondence between the policies actually pursued and public expectations of what the organisation should be doing. This

is a difficult balance to strike. Boards fail to make the link between governance and management effectively if they move in to take over day-to-day management functions or if they are too remote to influence the actions of top management.

The composition of the EMEA Management Board reflects different considerations from those that apply to the operational management tasks of evaluating drugs. The main emphasis in the discussion of operational management was on ensuring the independence and professional integrity of those responsible for making assessments. Operationally, EMEA seeks to function as a professional organisation which mobilises an extensive professional network. With the Management Board representative principles apply; principles which in one way or another influence the composition of the Boards of all Agencies. The Board of EMEA is composed of two representatives from each Member State plus two from the Commission and one from the European Parliament, together with an independent Chairman and the Executive Director who is appointed by the Board after proposal by the Commission. EMEA Board members are appointed as representatives of national governments. This gives rise to a dilemma of leadership that is endemic to EU Agencies. On one hand, co-operation with national authorities at a working level is facilitated by their participation in the EMEA Board. Excluding them might jeopardise the development of reliable partnerships. On the other hand, their direct involvement in the Board may threaten the continuity and coherence of EMEA's policy.

The question arises whether, giving such weight to representatives of the Member States in the Management Board compromises the independence and integrity of EMEA as a European Agency. There is no *a priori* answer because there are several strategic contingencies. What happens in practice depends on how the duties and responsibilities of the Board are defined and how members interpret their roles and organisational loyalties. It also depends on how the Board functions, whether Board Members behave as a collection of individuals with little or no identification with EMEA, or as a group with a sense of collective identity and responsibility for corporate governance. These are not just matters of individual temperament and personal preference. There are institutional factors in operation. The EMEA Board meets four times a year and is therefore in a position to follow the work of EMEA quite closely. A Member State may be able to ensure that Board Members act as if they were delegates; following the instructions of their home governments. Conversely, they may be left free to act independently because their governments do not seek to exercise any specific control over them once they are appointed. Between these extremes there is a continuum of possibilities and there is no reason to suppose uniformity in the behaviour of Board Members or what their home governments expect of them. The question is an empirical one and such evidence as there is shows diversity. Some national governments are concerned to keep a close watch on what an agency does through their Board members, while others take a more relaxed attitude. A Board Member who is also to be a senior official of a national regulatory agency will have good reason to be wary of any initiative that might give EMEA a competitive advantage over national authorities

XI.16. Corporate Governance and Co-optation

It is impossible to say at this stage how the composition and method of appointment influence the behaviour of Board Members and the functioning of the EMEA Board itself. But in order to move from the ritual polarisation of views along intergovernmental versus supranational lines it is useful to reframe the corporate governance questions in different terms. Approaching the underlying issues from the standpoint of organisational analysis the representative composition of the Board is an example of the use of 'co-optation' as a strategy for linking organisations. Co-optation is a process whereby either power or the burdens of power, or both, are shared. Co-optation is common in business, in the form of interlocking directorates and non-executive directorships, as well as in many governmental contexts. It is pervasive in the EU from the appointment of Commissioners downwards and in one way or another is a feature of all EU Agency Boards—there is not a uniform pattern and it is unclear whether there is a policy that explains the differences.

1) A Defensive Strategy ?

Although the practice of co-opting individuals into an organisation has a very long history, its systematic use as an organisational strategy was highlighted in Philip Selznick's classic study of the Tennessee Valley Authority 'The TVA and Grass Roots'. Selznick's analysis has, justifiably, had a lasting influence. But EMEA raises issues that it does not really cover. Selznick saw the deliberate incorporation of outsiders from other organisations into the leadership of an organisation as an organisational response to organisational need; in particular the need for security in relation to potentially hostile organisations in its environment. He defined co-optation as 'the process of absorbing new elements into the leadership or policy-determining structure of an organisation as a means of averting threats to its stability or existence'. Selznick distinguished two types of co-optation, formal and informal. *Formal co-optation* is designed to influence the public image of an organisation while informal co-optation is intended to come to terms with the actual distribution of power in the organisational environment and does not require any public recognition. With formal co-optation, public responsibility for the exercise of authority is shared with outsiders but without actual redistribution of power itself. The strategic use of formal co-optation occurs when an organisation needs to establish its legitimacy in the eyes of the general public. The formal, public character of co-optation is essential to the end in view. With *informal co-optation* there is a shift in the internal distribution of power, in order to adjust to the realities of the external situation. The co-opting organisation has to take account of other organisations in its environment. But once on the inside, individuals are able to exercise influence on operational decisions and the policy direction of the organisation. When co-optation is used to aid adjustment to other organisations in the environment Selznick assumed that it would be covert and unacknowledged. For this reason he saw a conflict between formal and informal co-optation. If informal behind-the-scenes adjustment to specific outside interests became public knowledge the legitimacy of the organisation as a representative of common interests would be undermined.

Bearing in mind what has been said above about the possible attitudes of Member States and particularly the difficult prehistory of the present regulatory system there was ample justification for employing defensive strategies in setting up EMEA. If an entirely new

and separate organisation had been created without any involvement of the Member States it would probably have been perceived as a threat by national regulatory authorities and found it difficult to secure their co-operation. Co-opting Board Members from the Members States probably helped to overcome some of the anxieties and fears they had.

2) An Innovative Strategy?

The use of a co-optation strategy in EMEA raises some questions that do not fit Selznick's hypotheses about the impact on policy management and the implications for organisation.

First, it is hard to see a fundamental conflict between formal and informal co-optation. Formal and informal motives worked together rather than against each other. Virtually constituting the EMEA Management Board by co-optation is undoubtedly formal and was, presumably, motivated by a desire to establish the legitimacy of the organisation. But there is little doubt that it was also motivated by a need to adjust to the actual distribution of power within the regulatory system where national regulatory authorities had and have a very important position. Before the present system was instituted there were chronic problems of ensuring mutual acceptance of organisational roles.

Second, in the case of EMEA, co-optation is a selective strategy of bringing together all the regulatory authorities rather than an all-inclusive strategy. Unlike some other Agencies where there is co-optation from virtually all stakeholder groups the composition of the EMEA Board excludes some important segments of EMEA's organisational environment. The important organisational consequence of this is to bring the solidarity of a professional peer group behind EMEA's evaluation and assessment work. While there are divergent interests within the regulatory system, since national authorities working within the decentralised procedure are partly in competition with EMEA for business there are also common interests in ensuring the integrity of the regulatory system. From the standpoint of the co-ordination and effective management of regulation this opens an avenue for addressing any issues and problems in the relations among its different components. It does not mean that all such problems can or should be resolved by the Board, but it does mean that it is hard for regulators involved in the centralised or decentralised procedure to claim that they are unaware of any problems or to deny a share of responsibility for dealing with them. Sensitive leadership is needed to maintain a constructive balance that constrains competition and promotes co-operation. The current balance might be described as competitive co-operation. If, for example, pharmacovigilance creates problems that existing procedures and practices fail to deal with effectively the EMEA provides a forum for addressing them and debating alternative ways of solving them. It is not an arena for making authoritative decisions on all general issues affecting the functioning of the system but it is a place where those who have to be involved in negotiating changes and implementing new policies come together on a regular basis. For example low-profitability, low-volume drugs, may be commercially unattractive to pharmaceutical companies but valuable for users.

These two observations point to a conclusion which is of considerable general importance. May co-optation prove a useful means of promoting innovation in the development of European public management systems, even if it was originally employed as a defensive response to external threat? Under what conditions does it do so and under what conditions does it adversely affect an Agency's sense of corporate identity?

EMEA exemplifies an innovative use of co-optation as a springboard for developing new multilevel regulatory and policy management networks that are both effective and flexible. In EMEA's case at least it has had several positive effects in promoting an integrated approach to regulation. By creating a focus for collaboration among national authorities it has achieved better access and utilisation of professional expertise. If EMEA had had to build up its own professional capacities from scratch in 1995 it would have been slow to come into operation and the system would have worked poorly. EMEA would have forced to compete for staff with national authorities and probably come into conflict with them. Another advantage of co-optation is that participation in frequent meetings of the Board in conjunction with other professional fora creates communication channels, sources of information and personal contacts. These high-level formal and informal links are often important for building agendas and forming consensus. People expect to meet regularly and establish a group with a sense of joint responsibility for the performance of the regulatory system. Furthermore, although it may not have been the original intention to do so, such regular contacts and meetings provide a means of establishing in detail what the division of labour is between the various organisations involved and occasions for identifying gaps or overlaps that need to be dealt with. The Board thus provides a way of developing and strengthening linkages between the organisations in the regulatory network.

This said, co-optation is not a panacea. It has costs and risks that have to be recognised, but provided these are taken into account it can provide the basis for building collaborative advantage.

XI.15. Improving Co-ordination

At several points it has been apparent that in order to understand what EMEA does and how it does it the functioning of the whole regulatory system has to be kept in mind. As an integral part of the system EMEA has to work with the other organisations. But as an organisation with a pivotal role in the system EMEA is also in a position to focus attention on the effectiveness of the system as a whole. In particular this means addressing issues of coordination because one of the chronic problems of pluralistic networks of organisations is that they lack adequate capacities for coordination. Inadequate coordination capacities is one of the main sources of the EU's management deficit and there is little the Commission can do about it directly because there is no EU competence in public administration that would legitimise a top-down approach.

Despite this the problems and potential solutions are frequently misdefined in hierarchical terms. In May 1994 'The Economist' ran an article about the reform of the EU regulatory system for pharmaceuticals under the title 'A Drug Tsar is born'. While this served the journalistic purpose of highlighting a new development, it also tended to

promote misunderstanding of the structure and functioning of the system. Apart from the bad pun, the article managed to present the reform as a takeover by EMEA of the responsibilities of national regulators. In addition, the 'Tsar' terminology suggested that the new system could be coordinated through a form of command and control structure based on EMEA as a central authority.

It should be clear from what has been said above that this is not how the system works. And, an attempt to impose a centralised hierarchical control structure would probably have had the effects of reducing cooperation, undermining trust, weakening the sense of partnership and causing fragmentations. What has been established in this case is a multiorganisational, multilevel, network in which the management problem is to ensure coherence in policy and operational matters by improving coordination without reliance on a central authority. To put this in a broader comparative context the process is one of developing a regime—as the concept is used in international relations to refer to 'governance without government', in other words to transform a poorly coordinated network into a regime that functions in a decentralised way without reliance on a central authority.

This requires an entirely different approach to coordination that places the main responsibility for coordination on the organisations involved rather than on a single central authority. The accompanying diagram sets out the main components of a policy coordination scale which provides an analytic tool for developing a bottom-up approach to coordination. The scale is cumulative.

CAPACITIES FOR MANAGING COORDINATION

9. MANAGING A GENERAL STRATEGY AND PRIORITIES

8. SETTING AGREED PARAMETERS

7. ARBITRATION OF CONFLICTS

6. CONCILIATION AND MEDIATION

5. CONSENSUS FORMATION: SECURING AGREEMENT AMONG PARTNERS

4. PRESENTING A UNITED FRONT: SPEAKING WITH ONE VOICE

3. CONSULTATION AMONG PARTNERS

2. COMMUNICATION AMONG PARTNERS: INFORMATION EXCHANGE

1. INDEPENDENT POLICY-MAKING BY ORGANISATIONS

The effectiveness of higher levels of coordination depends not only on the specific capacity at that level but on the adequacy of all those subordinate to it. For instance, level 5; consensus formation; requiring the organisations concerned to agree on common lines of policy depends upon a clear understanding of 'who does what', the

roles and jurisdictions of the organisation (level 1); reliable communication among them (level 7); habits of consultations and mutual responsiveness (level 3) and practices of 'speaking with one voice' rather than expressing differences of view (level 4). From the standpoint of managing coordination the important property of this scale is that it defines a series of steps that enable coordination capacities to be used and developed in a systematic way. The more reliance can be placed on the lower levels the less will be the need to call the higher levels into use. For instance, many unproductive conflicts and disputes arise out of differences about what are the respective roles and responsibilities of organisations (level 1). Since there is never complete agreement about the organisational division of labour and, in any case, interdependence makes some overlap unavoidable there are always problems of coordination to be resolved at higher levels.

Applying this scale to EMEA and the pharmaceuticals regulatory regime suggests that the creation of EMEA filled a gap in the system. Its existence and activities have had direct and indirect effects on the quality of coordination. Considering level 1 the evidence suggests that the creations of EMA along with other reforms clarified the organisational division of labour and helped to establish a situation. of greater 'domain consensus' among the constituent organisations. At the same time, this has made it clearer where there is interdependence and, hence, where higher level coordination capacities should come into play.

An important consequence of a more settled division of labour is that it has become possible to work on the development of a computerised information system that is both inclusive and secure, as mentioned in earlier EMEA has been instrumental in promoting this improvement in communications. Rapid, reliable communications are an important means of coordination in their own right. Confidence in exchanging and sharing information can avoid misunderstandings and cement working relationships. Technical means of improving communication are important but other more traditional means of doing so are still useful. EMEA has not been slow to publicise and explain what it does and to ensure transparency in dealing with stakeholders outside the regulatory system. Information days as well as a website have provided means of communicating with specific publics and the public at large. EMEA has also paid great attention to ensuring clarity and intelligibility of labelling in all official languages.

This more extensive and more systematic effort to ensure effective communication (level 2) provides the foundation on which to base fuller consultation (level 3). The key position of EMEA has strengthened consultation bringing processes partly by bringing together national representatives in the management Board and partly by developing specific means of consultation with the pharmaceutical industry, with health care professionals and with patient organisations. Particularly, when emerging issues and problems have to be dealt with across national boundaries ensuring that consultation processes are established to explore than and find workable solutions.

So far as the fourth level of coordination is concerned, it is apparent from the long discussion of corporate governance earlier that the composition of the EMEA Board generates strong pressures among regulatory authorities to speak with one voice and present a united front in dealing with other stakeholders, notably the industry. This does not mean that there are no differences of view behind the scenes but it does mean that a deliberate commitment has to be made to present a united front. The requirements for

level 5 coordination, seeking consensus and agreement on policy are even more stringent and it is unclear how well this is done. The same applies to the performance of a specialised mediation or conciliation function, though it does seem that in relation to candidate countries. EMEA is already engaged in helping their national authorities to develop the operational and coordination capacities they need to function as reliable and effective partners in the regulatory process.

Moving from level 6 to level 7, it has already been observed that the Commission has arbitration authority in the event of disputes in the centralised procedure while EMEA has arbitration authority in the decentralised procedure. These are back up coordination devices and their frequent use might be regarded as a symptom of the failure of lower level coordination processes to work effectively. So far as the highest levels of coordination are concerned, they provide the framework of policy guidance within which the whole system functions and establish the criteria for risk assessment. Having said this, it is also clear that EMEA acts as a forum in which new emerging policy concerns can be raised and questions of general public interest that are the joint concern of the organisations involved can be addressed and action mobilised to deal with them.

It would require more thorough and extensive empirical research to test these preliminary conclusions. But it does seem that in quite a short period of time EMEA has succeeded by deliberate effort and by indirect means in prompting some significant improvements in the level of co-ordinations of its network. The autocratic terminology of 'Tsar' is, however, inappropriate for a regulatory system that relies heavily on horizontal forms of coordination to manage increasingly complex patterns of interdependence.

The first question is to ask in any organisational network analysis or diagnosis is 'who does what?' What is the organisational division of labour? Besides raising questions about whether the organisational capacities exist to fulfil the responsibilities involved, the answer to the 'Who does what?' question helps to map patterns of interdependence and areas where there is duplication, or overlap, or alternatively, gaps in the system. By having an overview a network organisation can prompt action to deal with such problems and perhaps prevent unproductive jurisdictional disputes. The pervasiveness of 'turf wars' is of course symptomatic of failures to reach workable agreements between organisations on the division of responsibilities among them.

At the next level (2) where co-ordination involves exchange of information EMEA is already active through the development of computerised information systems that are both inclusive and secure. Rapid and reliable communication flows are an important means of co-ordination in their own right and the essential foundation on which all the higher levels of co-ordination in the regulatory system are based.

In fact, the underlying assumption on which this scale is constructed is that each successive level of co-ordination capacity from 1 up to 9 depends on the adequacy and effective functioning of those below. Consensus building, for instance, depends on basic agreement about who does what, exchange of information and consultation plus a commitment to speak with one voice rather than express different 'uncoordinated' views. Consensus formation adds the ability to resolve conflicts and settle differences on a voluntary basis in the process of working out agreed lines of policy. In fact it should be observed that the

higher one moves up the scale, the more co-ordination to achieve policy coherence in a network comes to depend on also being able to manage conflict constructively.

There is no suggestion that more co-ordination is always better. Co-ordination is not an end in itself. It is a means of dealing with interdependence. The purpose of co-ordination is to ensure that organisations are able and willing to manage whatever degree of interdependence they face. In a well-managed system most problems can be resolved by the use of lower level co-ordination capacities. At the same time it must be recognised that major reorganisations place greatly increased demands on co-ordination and any failures of co-ordination in a regulatory system such as that for pharmaceuticals exact a heavy price.

There are other aspects of capacity building besides improving co-ordination that might require concerted action across the whole network. An Agency such as EMEA may be able to play a useful role as a network organisation in identifying problems, focusing attention on them, prompting joint efforts to produce a shared diagnosis and stimulating action to deal with them by the participating organisations. One, already considered briefly is the design and management of partnerships. If there are design options what are the implications for organisational capacities of the various alternatives? What, in any case, are the alternatives? Another, which links up with debates about the democratic deficit, is how to design appropriate forms of accountability. If the development of regulatory and other policy regimes generates diverse forms of organisation and interorganisational networks there should be a process of designing and developing appropriate accountability frameworks to guide and safeguard their management.

It is not possible to say how far EMEA has gone in developing a network organisation role in this sense. But there are some indications that both within the organisation and among its counterparts there is some recognition that an overview of how the pharmaceuticals network is functioning and developing is needed and EMEA is becoming the logical focus for diagnosis of system-wide issues and problems and debate about how to solve them. There are few precedents for this kind of deliberate effort to steer large-scale change and for that reason alone it is important that the EU develops capacities for learning from the experience of this and other Agencies.

XI.16. Networks of Accountability

Finally we turn to the question of accountability. If EMEA were merely a decentralised administrative agency it would be subject to the same system of management accountability as any other part of the Commission. This might not be particularly well-developed or effective in practice but it would raise no new issues.

EMEA is not an agency in the conventional sense of an executive unit with purely operational management responsibilities that fits into an established pattern of accountability. It is an organisational innovation that does not fit neatly into conventional categories. This raises the question of what forms of accountability is appropriate to it.

One thing is clear. The standard hierarchical view of accountability as an additional level of control to control the controllers is too rigid and restrictive to fit EMEA's

circumstances. It may be adequate for a conventional executive agency but accountability in an organisational network as complex as this one requires a more discriminating and flexible approach to establish the right rules of the game. Apart from anything else, a hierarchical view of accountability is not inadequate from a design point of view. It over-emphasises the role of mechanisms of accountability in imposing sanctions to prevent the abuse of power and gives little attention to their potential constructive role in creating incentives that promote and stimulate organisational effectiveness (Metcalfe 1998). An organisational network requires a corresponding network of accountability to prevent the abuse of power and to promote its effective use. Pfeffer and Salancik (1978) set the scene:

> A variety of interest groups, individuals and organisations have contact with a given focal organisation; each of these evaluates the organisation and reacts to its outputs and actions. Each has a particular set of criteria or preferences that it uses in this evaluation process, and consequently, organisational effectiveness is a multi-faceted concept, where the effectiveness of the organisation depends on which group, with which criteria and preferences, is doing the assessment. (Pfeffer and Salancik 1978, pp. 32-33).

While this is a useful point of departure and does make the connection between effectiveness and accountability. It is excessively relativistic and seems to go to the opposite extreme from the hierarchical view of accountability in leaving organisations and their publics free to choose forms of accountability and criteria of effectiveness as they please. Accountability and effectiveness are not just in the eye of the beholder. External pressures, expectations and preferences set problems of accountability but they do not solve them. External demands are multiple, disparate, competing and sometimes contradictory. An organisation that merely responds to shifting external pressures lacks a clear strategic sense of corporate identity and purpose. Choices have to be made about which to respond to positively, which to give priority, which to ignore and which to reject. This is a political design function that deserves much more attention than it has generally received. The framework of accountability defines the rules of the game that govern organisational action and defines the terms on which organisations work together, rather than leaving them to respond in an ad hoc way to any and all external pressures.

Reflecting the complexity of its organisational network and its strategic position in it EMEA is held accountable in several directions and in several ways. In the first place it is *administratively accountable* within the Commission system under the normal staff and financial regulations and seeks to be seen to acting in conformity with them. It is also *politically accountable* to the European Parliament which has a representative on the Board. Third, as explained above it works closely with its national counterparts in the operational work of evaluation and also through their participation on the Management Board. This creates a framework of *professional accountability* because it establishes a regular pattern of peer-group evaluation. Judgements and decisions are open to observation and assessment and subject to the checks and balances of professional criticism. Accountability to its professional peer group not only provides safeguards for professional autonomy vis-à-vis pharmaceutical companies and political pressures from the EU but also creates incentives to define and improve standards of performance. As EMEA strengthens its extra EU role it adds another level of

government. Finally, there is *client accountability* EMEA has chosen as a deliberate policy to work in a transparent and open way towards its client groups in the industry, the health care professions and patients themselves. Thus rather than just fitting into a hierarchical control structure the configuration of its organisational network creates a network of accountability.

The issue this poses is whether the pattern and priorities among the different forms of accountability operating on EMEA are appropriate to the roles it plays in the pharmaceutical regulatory system. The foregoing analysis strongly suggests that top priority should be given to a professional client definition of the rules of the game which both protect and promote the exercise of professional autonomy in the assessment of the risks associated with new and established pharmaceuticals. However, a professional definition of accountability is not the whole story. The rules of the game within which EMEA works include subsidiary elements; administrative accountability for policy, finance and staff to different DGs of the Commission, accountability to health care professionals, patients and the industry and an element of competitors with national regulators.

In the main the accountability framework within which EMEA operates seems appropriate. Although, it is not clear whether it is a deliberately designed framework of governance or one that has evolved as a network of accountability as the organisation has developed. Perhaps the important point is that in establishing agencies the Commission should be as much concerned with designing the accountability system as with designing the organisation itself.

XI.17. Conclusions

The main challenge in European Public Management is to find ways if reducing the EU's management deficit.. Against a background of rising demands and limited capacities the management deficit is an increasingly serious problem. The creation of European Agencies offers a potentially valuable way of reducing the gap between existing capacities and future needs. The experience of EMEA suggests that they can make contributions in different directions from those generally expected. *Rather than just decentralising functions that might be performed within the Commission, Agencies may play a distinctive role in the improving the coordination of the organisational networks through which European policies are managed.* EMEA plays a clearly defined operational role and it also plays a strategic role which integrates the pharmaceutical network more effectively than previously. Moreover, along with the Commission, as part of a reformed system it has contributed to improving the coordination of the whole regulatory regime for pharmaceuticals.

In developing its professional role in the risk assessment process and helping to improve integration with an eye to future deepening and widening of the EU, EMEA can be counted an innovation in European Public Management. Its achievements in a short time rest, to an important extent on systematic management and imaginative leadership. In seeking to learn lessons from this experience that the Commission might apply elsewhere it is important to keep in mind the characteristics of the network within which EMEA is located. The rather closely-knit network offers opportunities create to

collaborative advantage as well as posing problems of building trust and confidence so as to improve coordination. These conditions are not always met in other cases.

The emphasis here is on the governance issues and options that set the context for Agency management. A more fragmented network could not provide the environment in which an organisation like EMEA could work effectively. A network where there are conflicts and mutual mistrust would not support developments like those that have taken place over the last five years. In short, the design of an Agency and an appropriate governance framework should start from a realistic appraisal of the characteristics and level of integration of the network in which it would operate.

In one sense this means no more than that the form and function of an Agency should match the environment in which it has to operate. But this is not the whole story, because a European Agency is not just a cog in a bureaucratic machine. It is an agent of integration and, therefore, an agent of change. This has important implications for the role of the Commission in relation to Agencies.

In the first place it is hardly meaningful to speak of the role of the Commission. EMEA has multiple relationships with the Commission. At the operational level there are relationships with several DGs. One question that arises is whether EMEA (and other Agencies) should be left with the main responsibility for coordinating these relationships or whether coordination within the Commission, among DGs, should be strengthened. Applying the policy coordination scale to the Commission usually produces a low score. While part of the reason for delegating to Agencies is that the Commission should be freed of detailed operational management, from a strategic management standpoint it does seem important to ensure, at a minimum, that there are capacities for managing coordination among DGs at least to the level where they can achieve consensus on what the strategy of an Agency should be. The more extensive development of agencies should, therefore, prompt reforms to strengthen coordination within the Commission.

Accountability is where the management deficit meets the democratic deficit. An old-fashioned view is that there is a dichotomy or conflict between efficiency and accountability. This view has contributed to the neglect of accountability as a tool of governance that can be used to set the rules of the game for Agency of effectiveness. Without becoming involved in operational management it is possible to set the framework of governance not just to prevent abuse of power but also to promote its effective use. In the case of EMEA a primarily professional definition of its role is associated with the development of an appropriate framework of accountability. When other agencies play different roles the accountability framework should be different. It is largely up to the Commission to see that a good match is a matter of design and not accident.

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Chapter XII

EUROSTAT: The Gains and Losses of an Agency Structure

(Adriaan Schout)

XII.1. Introduction

1) Introduction

a) EUROSTAT and the ESS

Good and reliable statistics are vital for the quality of (European) policy. Statistics are needed for, among others things, the formulating of policy, the monitoring of implementation, the allocating of funds to Member States and the supporting of international negotiations in the framework of, for example, GATT. In addition, they are vital for purposes of democratic control.

EUROSTAT (The Statistical Office of the European Communities) assembles the data necessary for the pursuit of EU policies. Contrary to a national statistical body, EUROSTAT does not go out to collect the data itself. Instead, it aggregates national statistics. It is the focal point in a network of national statistical institutes (NSIs). EUROSTAT and the NSIs, together, form the European Statistical System (ESS). This is the network in which data are collected, aggregated, controlled and disseminated. As a Commission service, it works mainly for the DGs.

The interest in facts has not always been paramount in EU policy processes. However, the increasing intensity of European integration was mirrored by pressure for better underpinning of policies. The increase in policies and the increasing pressure on scarce European resources, demanded more and better data in more areas. In the early days of European integration, the only fields in which data really counted were trade statistics and agriculture. Currently, EUROSTAT serves a broad set of policy fields and many decisions on financial transfers in the EU are based on its statistics. Moreover, European statistics have also become more important for individual Member States. Situations in one country cannot fully be understood without reference to trends in other parts of the EU. European data has become interesting, as can also been seen by virtue of the effect that monetary or employment figures have on stock markets.

The increased pressure on EUROSTAT and the ESS, has forced it to look for new ways to guarantee independent data and quality. With scarce resources becoming subject to increasing demand, new procedures are needed to fix priorities. This can only be done in close co-operation with, on the one hand, the DGs and, on the other hand, the NSIs.

However, its status as a part of the Commission casts doubts on its ability to provide reliable information. These doubts are, above all, and rightly or wrongly, inherent to any part of the Commission. Secondly, some 'incidents' in the recent past (especially connected to EMU related figures) may have given grounds for such concerns.

The purpose of this Chapter is to examine whether an agency structure would be more appropriate with a view to EUROSTAT's reputation and workload.

b) Key Questions and Outline of Research

EUROSTAT is a strange animal in this study. To my knowledge, it has not been studied as an agency before—even though the discussion of such a possibility has already been on the table for 10 years. The reason for this is that it is a DG of the Commission (DG 34) and falls under the authority of the Commissioner for Economic and Monetary Policy. Unlike other agencies, it is distanced from the college of Commissioners.

Yet, it does share characteristics with agencies, especially with the European Environment Agency. The main agency-type task of EUROSTAT is to produce independent and reliable information. This means that any sign of negative politicisation is incompatible with its mission. Moreover, it is highly dependent for resources and information on a European network. Thus, decisions on workload and programmes cannot simply be taken independently within the Commission.

EUROSTAT's formal attachment to the Commission is perceived as its main weakness. Can a statistical office within a politicised Commission produce reliable data?

The current critique of EUROSTAT is that it is too close to the Commission. First of all, this may lead to political interference in its output (see e.g., rumours about political pressures to postpone publication of data). Given its importance for policy and economy, EUROSTAT wants to prevent any such suspicions and establish an undisputed status. Secondly, the proximity to the DGs, has also lead to the criticism from the NSIs that EUROSTAT is too servile to the Commission and, thus, neglects the costs for the Member States.

For EUROSTAT, the key issue in its design is whether it can retain the advantages of being a part of the Commission, while, at the same time, assuming a more independent position. In other words, it wants to be part of the Commission but wants to avoid the drawbacks of this position.

This, of course, is not the sole design challenge. Other challenges are:

➢ to produce data with increasingly scarce resources;

➢ to respond to new developments in European policies. The widening and deepening of European integration implies developing new fields and creating new institutional linkages;

➢ to ensure the quality and independence of the output;

➢ to respond to short term needs with a system that demands a medium term perspective. Setting up and maintaining statistical systems demand a perspective of approximately 5 years. Close and continuous interaction with users and with suppliers is essential to combine what is needed with what is possible.

The question for EUROSTAT is whether these characteristics can be ensured while remaining a DG or, whether a more distant position from the Commission is needed.

c) Advantages and Disadvantages of an Agency Structure for EUROSTAT

Two advantages are associated with being a part of the Commission. The first relates to resources. EUROSTAT depends fully for its resources on the Commission. There is a close link between the work programme and the funds it has. The needs expressed by the DGs are discussed in conjunction with the budget. About 2/3 of the operational budget of EUROSTAT is fixed. Funds from DGs for additional tasks, make up 1/3 of its income. Unlike the other agencies, there is a regular discussion with practically all the DGs on the way in which the budget is used. As a service unit, DGs have a keen interest in monitoring how the budget is used and whether they get their share. In the case of the traditional agencies, which are at a greater distance from the DGs, there is a close link with the work programme and budget.

EUROSTAT fears that if this position in the Commission is lost. it will have to put more time and effort into safeguarding the annual budget and that DGs may turn to private consultants for data. This may not only be disadvantageous to EUROSTAT, but could also challenge the integrity of the European statistical system.

The second strength of a Commission service, is that it has the opportunity to issue (draft) directives or regulations obliging Member States to provide the data. There are, at present, over 200 legal acts (regulations, directives and decisions) in the field of Community Statistics. These acts cover the production of Community statistics in a wide range of fields and the arrangement of classifications. This legal right to initiate legislation on data delivery is regarded as essential by EUROSTAT officials as well as by national officials.

It is interesting to note that the European Environment Agency also depends on data from the Member States, but does not have the opportunity to issue binding legislation on data delivery. It has to rely on voluntary co-operation instead. For EUROSTAT, this determines that if it were outside the Commission, it would still like to have an office within the Commission to issue directives. This legal power within the network is one of the elements that makes the ESS a much stronger network than the EIONET around the EEA.

The main drawback is the image of being politicised and, therefore, of producing suspect figures. EUROSTAT attaches great value to maintaining a reputation as provider of credible and good statistics. However, there are strong impressions that its independence is sometimes compromised. On the one hand, this is closely connected to the Commission generally politicised reputation. On the other hand, some—and sometimes important—incidents have been reported, which, so insiders suggest, demonstrate that EUROSTAT decisions are highly political.

Another alleged disadvantage is that EUROSTAT has to follow the Commission's recruitment policy. This means that it has to rely on Commission hiring mechanisms and draw on the list of candidates that have succeeded in the *concours*. These candidates have been, so far, principally generalists, whereas EUROSTAT would like to expand its body of technicians. Also the rotation of EU officials between the institutions, means that EUROSTAT has to rely more on generalists than it would like.

Furthermore, there can be pressures on EUROSTAT to accept secondees from national administrations that could be avoided were it to have an independent staff policy.[79]

There is no guarantee that agencies do not have these (dis)advantages. The European Environment Agency (EEA), for example, also depends on the Commission's staff regulation and also has to deal with national pressures to accept secondees. The quality image and quality control are topics in each of the EU agencies. So, difference can be a matter of degree rather than of kind.

We will come back to the purported advantages of alternative arrangements in Section 17 (analysis).

d) Data

In depth interviews have been conducted. In addition, several of the European Environment Agency interviews could also be used to discuss the services of EUROSTAT. EUROSTAT and the Environment agency serve the same client—the policy-makers in the Commission—and also are in close contact with each other. This made it possible also to ask Commission officials and other interviewees to draw comparisons between the two bodies.

Furthermore, for this part of the study it was possible to rely on background material. Quite a bit of information was already available on EUROSTAT as a result of its efforts to upgrade its internal organisation and its network.[80]

In addition to the interviews and the management reports within EUROSTAT, its magazine *Sigma* also proved useful since it presents the major developments and events of the past few years and contains relevant interviews on the work and quality of EUROSTAT.

To check the data and the way in which it is presented, the report has been read by senior EUROSTAT officials and a senior national official. Their comments have been incorporated.

2) A Brief History

EUROSTAT was created in 1953 to serve the needs of the policy-makers in the European Community of Steel and Coal. The creation of the European Economic Community and Euratom in 1958, resulted in statistical offices for each the Communities. The merger of the Communities in 1965 gave EUROSTAT its current shape.

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[79] EUROSTAT needs national officials, e.g., to strengthen the links to national statistical bodies and to draw on experience available at the national level. However, that does not mean that just everybody is suitable.

[80] Wroe (1996) and XL Groupe (1998).

EUROSTAT did not attract great attention until the new advances made by the Delors Commission (mid 1980s). One explanation for this relative tranquillity, is that policy initiatives counted more than facts. The main focus of EUROSTAT remained on its two traditional strong areas, to whit, trade and agriculture. Trade was particularly important in view of the Commission's role as external representative. Its strong footing in agriculture is, of course, related to the main financial stakes.

The upswing in European integration placed additional demands on EUROSTAT. First of all, more areas had to be covered. Major policy developments affecting EUROSTAT were the creation of the monetary union, environment policy, social policy, employment policy (e.g., employment pact and equal opportunities), enlargement—to name but a few. Moreover, within each of these areas, the level of detail required increased. This resulted in some areas, such as intra-EU trade, balance of payments, budget deficits and monetary policy, the collection and production of statistics became fully integrated within the ESS.[81] It was estimated that two-thirds of the national statistics were now heavily influenced by the ESS. Secondly, the policy process now places more emphasis on facts and figures. Statistics are now closely related to a range of policies (see the employment pact, the stability pact, distribution of structural funds, etc.) and Commission officials now pride themselves on the fact that the scientific basis of legislative proposals is, unlike the past, hardly ever questioned.

The increasing relevance of EUROSTAT triggered a number of recent developments. A number of reports have been issued on ways to improve the quality of data. A process has been set in motion to adapt the internal organisation to the new statistical needs (see below). Furthermore, with the increasing demand for its output, planning became more important. Until the end of the 1970s there was hardly any systematic planning and EUROSTAT concentrated its efforts on the main data sets (trade and agriculture). Several important working parties and committees have been created to improve consultation (whether they also improve decision-making remains to be seen).

The increase in budget did not match the augmentation in the workload. Over the past 15 years the workload is estimated to have increased 6 times, whereas the budget of the EUROSTAT only rose 70%. This demanded:

➢ better setting of priorities and planning,

➢ more co-operation with the NSIs,

➢ improved monitoring of reliability and quality,

➢ better service to customers & anticipation of needs,

➢ increasing cost awareness,

➢ upgrading quality and increasing productivity.

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[81] The methodology of data gathering, however, is not harmonised. This has been a sensitive point—Member States have their own ways of working and argue for subsidiarity.

These are the most important issues, on which EUROSTAT and the ESS are currently working.

Over the past 7-10 years, much progress has been made in terms of the above mentioned issues. One topic that is on the agenda for the near future is to strengthen cost accounting so that policy-makers are confronted with a price tag when asking for data. In addition, the improved planning and costing procedures may help to end data gathering in certain fields. So far, the trend has been to ask for more figures and to add new areas without identifying activities that can be dispensed with.

The History of Work Programming

To serve policy-makers and to make better use of scarce resources, EUROSTAT had to set up a system for planning workload and priorities. Several stages can be distinguished in the development of the planning procedures.

Initially, between 1953 and 1975, EUROSTAT paid most attention to agriculture and trade figures. In other areas, data gathering and planning of activities were not so much of an issue. The first—rudimentary—form of planning started when new Member States joined in the 1970s (The UK, Denmark, Ireland). To integrate these countries, a work plan was established listing the ESS' fields of activities and methods. This was more a presentation of what was expected from the new Member States. Nevertheless, it was the first step in the direction of planning and it is regarded as the first multiannual work programme (MAWP).

For the second MAWP, EUROSTAT engaged in more detailed negotiations with the DGs. Difficulties in co-operation with several parts of the Commission resulted in more structured co-ordination with the DGs for the third MAWP at the end of the 1980s. This resulted in the creation of an inter-DG steering committee for statistics, CDIS[82], in the middle of the 1980s. In addition, closer consultation with clients had to be complemented with more interactions with the providers of the data, i.e., the NSIs. For that purpose the Statistical Programme Committee (SPC) was created by Regulation 89/382/EEC in 1989, and consisted of the directors of the national statistical offices. The SPC developed into the main advisory and consultative body on the supply side of statistics.

At this stage, the MAWP still consisted of a shopping list, or wish list, without much attention to priorities. Moreover, as insiders commented, there was not enough attention paid to political justification for the activities of EUROSTAT. The fourth 5-year programme (1992-1997) proved to be a turning point in the development of the MAWP and in the planning procedures of the ESS. In the first place, the new policy areas had to be incorporated. Major effort was required to adapt the operations of the ESS to the outcome of the Maastricht Treaty revision (especially the EMU conclusions). As a result, resources had become scarce and quality of output became a major issue to

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[82] CDIS: Comité directeur de L'information statistique (Directors' Committee of Statistical Information).

ensure a successful preparation of the EMU. In addition, priority-setting became essential. Choices had to be made between the various demands.

During the formulation of this MAWP, it turned out that a lot of energy was spent on negotiating procedures for how to formulate the work plan and on which institutions had the competence to take decisions. Thus, a draft regulation was issued on the development of the work programme and was accepted in 1997 (so-called 'statistical law' by virtue of Council Regulation on Community Statistics, No 322/97).

In addition to this regulation, a Commission decision was issued (97/281/EC), which lays down that EUROSTAT organises the execution and the co-ordination of the work programme within the Commission. This decision also specifies that EUROSTAT has to guard its professional independence in the formulation of definitions and in the selection methodologies.[83]

As a result of the legal underpinning of the work programme, the negotiations for the latest MAWP could focus on content rather then procedures. The current, fifth, multiannual work programme (1998-2002) consolidates the new procedures and it consolidates the policies in the field of ESS' activities. In this 5-year programme, even negative priorities were agreed. This required close interaction with the clients (the DGs organised in CDIS) and the partners in the ESS (organised in the SPC). In addition, major effort is dedicated to preparing for enlargement.

Also the legal format of the MAWP developed with each new version. The first programme was a document for new Member States. The second MAWP was a formal Commission document—adopted by the College—transmitted to the Council and EP for information. The next programme became a 'recommendation' of the Council to the Member States. Subsequently, the MAWP required a Council decision and had a legal status. At present, the 5-year programme has to be adopted by Council and EP (co-decision).

The development of the programme bears witness to the increasing value of statistics.

3) Mission Statement and Tasks

The mission and tasks of EUROSTAT are related to the obligation of the Commission to ensure the proper functioning of the common market. Policies, therefore, have to be based on statistics which are up-to-date, reliable and comparable between Member States (see article 285 of the consolidated Treaties).

EUROSTAT's mission is, therefore, 'to provide a high-quality statistical information service to the EU; to the national government and parliaments and international institutions, particularly those of the EU; to the business community; and to other users

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[83] It is, however, important to note that this decision does not say that EUROSTAT has to ensure the same independent values in the diffusion of statistics. Member States had urged to include this, but it was not taken over. As we will see below, doubts over EUROSTAT's independence where it concerns deadlines has resulted in doubts about the credibility of EUROSTAT.

of statistics at regional, national, and European levels' (Franchet, D-G of EUROSTAT in *Sigma,* March 1998, at p. 4). This mission statement is uncontested and widely supported.

In terms of objectives, the regulation on Community Statistics refers explicitly to reliability, comparability, impartiality, and professionalism. In the field of monetary statistics, independence is once again emphasised in the preamble of the regulation.[84]

EUROSTAT is a typical network organisation. The NSIs collect 98% of the European statistics. The ESS is, therefore, based on the subsidiarity principle. Including the co-operation agreements with other European countries, EUROSTAT co-ordinates the statistical work of more than 25 countries. In addition, the ESS—of which EUROSTAT is the co-ordinator—operates in an international context. Statistics not only have to be integrated across EU Member States, but also in the framework of UN statistics (UN Decision on the Fundamental Principles of Officials Statistics, April 1994). The UN guidelines relate to among other the international classification scheme.

In more detail, the tasks of the EUROSTAT are:

➢ to formulate the MAWP (to be adopted by the Council and EP) and the annual programme (to be adopted by the Commission),

➢ to co-operate closely with the clients and with the SPC in the formulation and implementation of the work programmes,

➢ to aggregate and disseminate statistics (in the form of reports and analysis). Information is regarded as a public good and obtainable at cost price,

➢ to protect the confidentiality of statistics providers throughout the ESS[85],

➢ to represent the EU in international statistical fora,

➢ to ensure the quality of European statistics,

➢ to ensure the quality of the NSIs and of the network. To support co-operation within the network and to enhance capacities at national level, EUROSTAT organises training seminars and exchange programmes and it supports NSIs in other ways. Such activities have also been started up in the partner countries.

Forward planning has become more important for the statisticians. To satisfy upcoming demands from policy-makers, new developments have to be anticipated and the necessary initiatives have to be taken. For example, the employment pact agreed at the

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[84] 'It [=EMI] shall exercise [tasks] without seeking or taking instructions from Community institutions or bodies, from any Government or a Member State or from any other body…'. As discussed below and as presented in the regulation, EUROSTAT and EMI work closely together on EMU-related statistics.

[85] For example, DG 4 (competition) cannot put pressure on EUROSTAT to deliver statistics in such a way that individual companies can be identified.

Luxembourg Summit (1997), proved to be a sensitive issue and was opposed by, among others, Germany. This meant that, officially, EUROSTAT could not prepare activities in this area. Nevertheless, were the Heads of State and Governments to accept the pact, then EUROSTAT would have to be able to present the necessary figures in advance. Thus, despite the sensitivity of initiating activities in this area, it anticipated a possible positive decision on the employment pact so that it could deliver relevant data within weeks after the summit in Luxembourg.

These tasks show that EUROSTAT has important organisational tasks in terms of managing the network. Rather than collecting data, it is responsible for steering and strengthening the network of NSIs. Diagnosing weaknesses and proposing improvements have been major tasks in order to ensure the production and aggregation of national statistics for European use. It has to ensure that the same principles, methodologies and quality targets are adhered to throughout the ESS. Network management also includes helping the client (gathered in the CDIS) to formulate its needs and to help them and other interested parties to find their way through the available statistics.

4) EUROSTAT in the Context of Decentralising Governance Structures

In the Chapter on the EEA, three types of decentralisation were discussed, to whit, a decentralisation of responsibilities to an agency (i.e., a Commission subsidiary), a move towards a network organisation with the agency as the focal organisation, and a decentralisation of policy by means of 'regulation by information'.

The traditional emphasis in the tasks of EUROSTAT has been on the first type of decentralisation. EUROSTAT is a part of the Commission with the specific task of supporting policy-makers with information. The extent to which tasks have been allocated to EUROSTAT is more restricted compared to the EEA. EUROSTAT does not have the task, nor the ambition, to go into policy advice or policy related economic forecasts. The only type of analyses, which EUROSTAT undertakes, are extrapolations of time series, statistical analysis of surveys and 'historical' analysis. These are independent from policy and are not connected to any form of policy advice. The job of the statistician working in EUROSTAT is to deliver facts. EUROSTAT's roles are restricted to collecting information and processing information. Processing information in the case of the environment agency, has a broader meaning (e.g., comparing trends with desired outcomes and developing policy scenarios). EUROSTAT mainly examines the quality of data delivered by Member States and produces times series (including extrapolations).

Gradually, however, EUROSTAT has also evolved into the focal point within the network of NSIs. Even though EUROSTAT has always co-operated with its national counterparts, it is only in the last 15 years that the network has become more tightly organised in order to satisfy evermore-demanding information needs. The increasing tightness is also reflected in the fact that, in earlier days, NSIs mainly operated on their own and co-operated only in specific fields. At present, the NSIs co-operate in many areas and use more or less integrated methodologies and common definitions.

The third kind of decentralisation does not apply to EUROSTAT. It has no direct or indirect policy role.

5) A Brief Assessment of Output

a) Output

The products of the ESS are figures, standards, methodologies and statistical analysis. The figures are presented in different formats, i.e., reports or computer files issued at different intervals (monthly, annually, etc.). In addition, EUROSTAT produces special reports on request.

b) Output Assessment

One line of critique is that the output is not sufficiently detailed for policy makers. EUROSTAT has to provide factual background to policy-makers in a host of policy areas. It is inherent to its line of work that is has to work in many fields and at various levels of detail. Policy-makers are often interested in details. It is, however, very difficult and costly to produce detailed aggregated data. Continuous and close interaction with clients is, therefore, needed to ensure that the right balance is struck between detail and costs. Nevertheless, detail and providing the client with the right amount of relevant information is an issue for EUROSTAT.

On the other hand, Member States and industry are unhappy with the level of detail in the information that they must provide. Details mean high costs for the data providers. National experts, therefore, commented that EUROSTAT has to be more selective in what it accepts from the DGs as tasks for the ESS. EUROSTAT should keep a better control over priority setting within the Commission.

Data users want more and more detail and the providers say that they already have to go too much into the nitty-gritty. On the one hand, this seems to be the expression of an inherent tension between demand and supply. On the other hand, this dilemma may be a sign of an unhealthy distance between the NSIs and the Commission in the formulation of the (multi) annual work programmes (see below).

Secondly, users expressed the need for more up to date information. Timeliness is an issue for several reasons. One reasons is that the lead-time of new activities is long (one has to reckon with five years). Setting up data gathering systems involves precisely determining what is required and what can be measured at which costs, ensuring the co-operation of the NSIs, setting up quality control systems, etc. Therefore, policy-makers have to make do with figures running a few years behind. To overcome this weakness, EUROSTAT is continuously looking for newly arising policy issues and tries to anticipate new needs. Another reason for delays lies with Member States that have to adapt national systems. This problem, however, is reducing because of the increase in legislation that specifies what Member States have to deliver and in which format.

Thirdly, there is doubt about the independence of the figures produced by the ESS and the influence of the Commission on publication deadlines. Some incidents have been

reported to substantiate these doubts. One of the main examples of political influence concerns the calculation of budget deficits during the preparation of the EMU criteria. France used the sale of French Telecom to reduce the deficit. A small majority in the SPC was in favour of more strict procedures for measuring budget deficits and did not want this sale to influence the figures. There is the strong suspicion among senior officials in the SPC is that 'the French connection' in EUROSTAT bowed to pressure from the French government: the French connection being the French Commissioner for monetary affairs who is also the Commissioner for EUROSTAT (Mr De Silguy) and the French Director-General of EUROSTAT (Mr Franchet). This is considered a serious example of political interference within EUROSTAT decisions.[86] Other questionable decisions related to, for example, suspicions that the college of Commissioners had decided to delay publications of reports until after Council meetings.[87]

Even though other 'incidents' were also found, interviewees were, on the whole, convinced of the general good intentions of EUROSTAT and thought that such examples should not overshadow the general impression of independence. The question, however, remains of whether such 'incidents' are acceptable for a statistical body for which trust and credibility are key resources.

Connected to doubts about the independence of EUROSTAT, are concerns over 'confidentiality'. The regulation prescribes that data delivered by Member States should be treated discretely. For example, information that may contain insights into the behaviour of individual firms should not be used for other purposes. Not every Member State is convinced that EUROSTAT can withstand the pressures from other DGs in this respect.

Also the transparency of the total budget, and the way in which it is used, has been criticised. Consultancy projects from DGs sometimes make it hard for NSI officials to determine the total amount. Moreover, accusations were made that unclear tender procedures resulted in intransparent allocation of funds to private firms and Member States. Even though, within the limits of this study, it was not possible to find factual proof for these doubts, they nonetheless indicate that intransparent budget, programme and tender procedures have a negative effect on credibility.

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[86] I am not in the position to say whether or not the 'French connection' explains the outcome of the decision. It might really be an 'image' or communications problem. Some interviewees tended to accept the politicisation. Others pointed to consultations prior to the decision. The heart of the matter seems to be the intransparency of the final decision-making procedure within the Commission. In such cases it is easy to point the finger to a 'French connection'.

[87] As remarked above, despite pressures from Member States to make EUROSTAT statutorily independent as regards dissemination of information, this was not taken on board. EUROSTAT now tries to prevent pressures to postpone publications—even though it has rarely happened as far as I could check—by announcing deadlines well in advance. Again, this may serve the image of independence (rather than that it solves a real problem—since little hard evidence was found in the short time for the suspicions). In terms of image, statutory independence would even show to sceptics that this kind of pressure is not possible.

Moreover, the ESS's total workload is criticised by the NSIs and EUROSTAT is urged to be more critical in accepting tasks from DGs. National authorities also think that they do not have enough influence on the selection of assignments and priorities.

Finally, cost effectiveness is an issue. Clients have a tendency to emphasise data needs over costs. This is aggravated by the fact that, in the present system, it is not always possible to calculate costs since these are borne by different parts of the network (mainly industry and national statistical offices).

Some of the points of criticisms are not negative remarks about EUROSTAT, but reflect the nature of decision-making. Decisions constantly have to be taken concerning detail, fields of activities, and priorities. In a network of providers and clients, each with different interests, and facing resource constraints, it is obvious that criticism will remain.

Some issues point towards the negative effects of a close relation between Commission and EUROSTAT (i.e., doubts over its independence and strong link between EUROSTAT and DGs in the formulation of the work-plan).

Despite these criticisms, the current picture of the performance of EUROSTAT is one of dynamism and improvement. The interviews show that there were great problems, especially in terms of serving the detailed needs of policy-makers. At present, the interviewees emphasise changes. These changes were needed as a result of the increased workload and the threat of DGs and the forerunner of the European Central Bank to bypass EUROSTAT and direct their requests towards the OECD and private consultants. Even though it is too early to judge, the impression given is one of change.

Nevertheless, a lot still has to be done in terms of getting the most out of the system. The past five years, EUROSTAT and the NSIs have been working hard on improving the reliability and flexibility of the ESS. Since EUROSTAT cannot achieve the required improvements on its own, much effort has been put into strengthening the ESS and contacts with the clients (CDIS). In addition, EUROSTAT has started up a process to improve quality (total quality management), to better serve clients needs and to operate more cost effectively.

Notwithstanding these improvements, independence and work planning (better setting of priorities within the Commission and in co-operation with Member States) still seem to demand attention.

XII.2. The Design of the Organisation

In order to understand EUROSTAT as an organisation we have to examine its internal organisation and the organisation of its network. In addition, the decision-making system has to be considered, in order to see how EUROSTAT and its network formulate and implement their objectives.

6) Design Dilemmas

Some design dilemmas of EUROSTAT are similar to those discussed in the case of the EEA. Other design issues are, however, uniquely related to this organisation.[88]

One main challenge it has in common with EEA is that negative types of politicisation have be prevented. Both are inherently dependent on governments and the Commission for its information, finances and objectives. EUROSTAT is particularly sensitive to the fact that its dependence on political organisations demands a special effort to defend credibility. In addition, it recognises the need to communicate and explain its professional autonomy in order to create the required level of trust in its output.

Another challenge is connected to the need to negotiate clear priorities with, on the one hand, policy-makers who tend to be late, imprecise and over-demanding. On the other hand, negotiations are needed with the national bodies that have to provide the information.

As discussed in Section 1, the seemingly unique design challenge for EUROSTAT is to make the most of the advantages of being a part of the Commission, whilst avoiding the risks of intra-Commission pressures. It remains to be seen, in this analysis and in the comparisons with the other agencies, whether these advantages and disadvantages of being part of the Commission (or of the alternative agency structure) are real.

7) Organisation of EUROSTAT

a) Staff

Size and Composition

EUROSTAT started in the 1950s with 50-60 people. Gradually, it grew to approximately 670-680. Almost half of them belong to the technical core ('A' officials). As the focal point of the ESS, EUROSTAT operates a network comprising 60,000 officials throughout the EU. At present, there is a slight reduction in the size of EUROSTAT. Between 1995 and 1998, the staff dropped from 686 to 677. This trend is also visible in the ESS at large.

EUROSTAT officials are Community officials and have permanent contracts. The advantage of this is job security and payment conditions.

One drawback of being dependent on the Commission's staff regulation is that EUROSTAT is not at liberty to attract the specialists it wants. As a result, more statisticians are needed. To date, the Commission must rely on the general *concour* for new officials. A *concour* specifically designed for statisticians is only fairly new. Thus, it has had to rely mainly on generalists attracted by the Commission. Furthermore, officials rotate between Community institutions and EUROSTAT, whilst Luxembourg

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[88] Such as, for example, the use legislative instruments to oblige Member States to deliver.

is not the most desirable living location. Moreover, Commission officials prefer a policy position in Brussels, rather than a supporting statistical job in EUROSTAT. A high turnover results.

Another disadvantage of being a Commission body is the need to ensure equilibrium between nationalities and the problem of the nomination of senior managers ('parachuting in'). Examples were, therefore, found of positions for which the preferred candidate could not be hired.

Furthermore, being part of the Commission also means that management positions are filled by national governments. EUROSTAT has had a long list of open vacancies at this level because Member States are not primarily interested in using their share of senior management positions for strengthening national influence in the statistical system. Moreover, EUROSTAT is not pleased with this way of attracting senior managers because it does not guarantee that candidates have the appropriate expertise or connections within the national statistical organisations.

Of the 668 persons employed in 1998, 52 were national secondments and 83 temporary agents or consultants. This is approximately half of the technical core. The temporary agents are often national experts as well. The temporary experts stay for 3 years. These additional consultants and experts fill up gaps in expertise. They play an important part in furnishing EUROSTAT's technical expertise. Moreover, due to their experience in national statistical institutes, they were presented as the main initiators of the processes of change in EUROSTAT. The importance attached to national experts was presented as a sign of the difficulties that EUROSTAT has in attracting qualified staff within the parameters of the Commission's recruitment policy.

Even with the new procedures for attracting statistical experts through the *concours*, secondees will continue to play an important part in the future. EUROSTAT will always continue to need national officials as they have the 'field' experience in the Member States. Moreover, they contribute to the convergence of national and EU systems.

When temporary employees are selected, EUROSTAT usually knows them already as they mostly come from the pool of officials who participate in the 80 odd working groups and committees. In general, EUROSTAT can ensure the quality to some extent and takes its own selection decisions. Nevertheless, when Member States present candidates, the most EUROSTAT feels it can do in terms of fighting off political pressures is delaying appointments. However, the system of working with secondees is relatively recent and EUROSTAT is gaining experience in how also to ensure quality in secondment procedures.

Control Mechanisms

The steering of the professionals is closely related to the MAWP. The statistical programme, once in place, provides clarity to the organisation. Fields of work prove to be quite stable. Thus, the professionals can work quite independently (once the new activities are started up). The organisation has, therefore, been designed around core policy fields (divisionalised organisation). The experts have their regular tasks and

meetings with task forces within their particular areas. As a true professional organisation, the experts have their own plots.

One drawback of this is motivation—work can become a routine. Thus, EUROSTAT is starting up training and rotation schemes to stimulate internal integration and increase job-satisfaction.

Profile of the Experts

The primarily task of EUROSTAT employees is to ensure that the ESS operates effectively in their areas of competence. It is not to carry out data gathering activities or to analyse data. Above all, employees must be project managers. However, a certain amount of technical expertise is also required. EUROSTAT lacks statistical expertise, for reasons already presented above.

In comparison with the EEA, EUROSTAT also needs to have T-figures (people who combine vertical/technical expertise with management and integrating capacities). The environment agency has more leeway to appoint the professionals it needs.

Staff Composition: a Discussion

Two conclusions emerge from the discussion of the composition of employment conditions. First of all, looking at the selection of the operating technicians and management positions, there seems to be ground for concluding that quality considerations are compromised as a result of traditional Commission-related pressures (e.g., the difficulty to fill vacant management positions). Unless the new Commission is going to adapt to these tendencies, EUROSTAT might be better off in this respect, were it to have more independence.

Secondly, size is a recurrent issue in the documents and interviews. EUROSTAT is under pressure because it has to cover more fields with the same number of, or slightly less, employees. This, however, does not directly lead to the conclusion that more staff is needed. The tension that has been created has been leading to improved programme selection, better interaction with clients, increased attention to cost effectiveness, measures to increase productivity, as well as improved integration with the NSIs. In addition, it has contributed to an operational definition of quality of statistics. Quality is now no longer only geared towards delivering the most accurate figure. With a view to costs and needs of clients, quality is disaggregated into considerations of accurateness, costs and timeliness (see below).

b) Structure

The organigram of EUROSTAT shows six operational directorates. They form the operating core—the technical heart—of the organisation. These six are complemented by a seventh (office of the chief adviser to the DG) for the necessary horizontal supporting activities (programming, information management, budget and staff matters).

Of the six directorates, two also have horizontal tasks. They work on methodologies, data analysis and relations with PHARE and TACIS countries. The other directorates are set up as in a typical divisionalised organisation, as they each have their own supporting facilities (dealing with e.g., finance and staff matters).

The traditional divisionalised form has created two problems for EUROSTAT. In the first place, from an efficiency point of view, there is considerable overlap between horizontal tasks and vertical tasks. Staff matters, finance and other organisational issues are duplicated at several points in the organisation. In addition, this divisionalisation has resulted in inflexible use of staff. The fragmentation of responsibilities also makes it difficult to shift resources from one area to another. At present, EUROSTAT is streamlining the organigram to increase the efficiency.

Secondly, from an effectiveness perspective, the directorates have to work more closely together, for at least two reasons. Policy areas are becoming increasingly related. The obvious example, is the interconnectedness between environment policy and other areas. But, interchangeability of data is needed in most policy fields (e.g., structural funds and GNP figures). Common definitions of data and methodologies and co-ordination of what is required, and for which purposes, are, therefore, needed. This is also underlined by requests from Member States and industry for better management of interdependence between directorates. These data providers complained about workload and overlap between information requests. EUROSTAT is working on improvements by means of better planning and is setting up multiple purpose information systems.

In terms of organisational form, EUROSTAT seems to be going through a structural change. It is supplementing the divisionalised form with characteristics of the innovative organisation.[89] Horizontal overlay mechanisms have been created to arrive at better internal co-ordination. Prominent in this respect, is the creation of multidisciplinary task forces. These are chaired by a director from a unit that has no direct links to the topics, in an effort to guarantee independent views and pre-empt turf battles.

So far, three such task forces have been set up. They deal with the connection between statistics on environment, macroeconomic conditions, industrial activity, trade and agriculture. These task forces are still new and it is too early to judge whether they will also lead to better co-ordination or whether they will escape the paradigm of directorates working independently. From the organisational science field, we know that breaking through boundaries of independent units is quite a challenge and the threat to incumbent power position can lead to strong opposition.

In sum, the original structure shows the preference, as was also the case in the European Environment Agency, for independent directorates. At present, EUROSTAT is streamlining its internal organisation and working on better co-ordination between the units.

[89] Schout (1999). Compare also the discussion about the structure of the EEA.

c) Management—Profile and Appointment Procedures

The appointment of the Director-General follows the standard internal Commission procedures. The incorporation of high-powered Commissions officials is important to safeguard national influence. Candidates are usually nominated or proposed in agreement with Member States. In relation to the appointment, careful consideration is given to the distribution of posts between DGs.

Paradoxically, this politicisation of appointments seems to be less possible where it concerns the position of the Director-General. The ESS (EUROSTAT and the NSIs) closely follow the appointment of the DG. The network of statisticians has a strong internal culture of defending professional autonomy. Therefore, despite the strong national influence, the candidate will most likely be someone who is acceptable to this network.

The current Director-General is the Frenchman, Mr Yves Franchet. Given the remark about the homogeneous statistical culture in the ESS, it will come as no surprise that he has roots in the French statistical system. He shares a conviction with his colleagues in EUROSTAT and in the NSIs that the data have to be relevant and credible.

There has not always been such a pressure for appointing a candidate with a relevant background. Mr Franchet's predecessors include, for example, former politicians who were given new employment. The current practice underlines the increased value of credible statistics and of the maturing of the network. With these checks and balances in the system, appointments remain political but have become less politicised.[90]

Director positions are less directly monitored by the SPC. As a consequence, parachuting can still take place at this level. Even though directors are generally regarded with respect, some middle managers would not have been selected on the basis of profile descriptions ('surprise appointments'). As was noted, Member States do not allocate their best candidates to vacancies in EUROSTAT. Furthermore, because of the national quotas, vacant positions have been one of the problems in EUROSTAT's personnel policy.

One suggestion put forward to improve the quality of management and the filling of vacancies would be to allow EUROSTAT to recruit candidates for director positions from national statistical bodies.

d) Budget

The current budget of EUROSTAT amounts to 82.2 million Euro (1999). About 1/3 of the budget of EUROSTAT originates from additional requests from DGs. This makes

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[90] It would be possible to formalise the current situation by changing the selection procedure of the Director-General. Instead of relying on the Commission procedures, it would strengthen the reputation of this function if the candidates were to be presented to and selected by an independent committee of national experts (e.g., the SPC).

the budget quite volatile (see Table 1) and has important implications for work-planning.

On the whole the budget, similar to the trend in staff, shows a downward trend. This trend also characterises the ESS.

Compared to the workload, there even is a sharp relative decline of resources. Over the past 15 years, the workload multiplied by six. However, resources only increased with 70%.

Approximately 40 % of the budget is spent on salaries and operational costs (communication costs, rent, translations and operational costs of meetings). This means that, as with the EEA, 60% of the total is used to maintain the statistical network. Part of this budget is accounted for by the operational costs of the ESS (e.g., committee meetings). Around 20% is used for supporting the development of statistical systems in other countries (TACIS, PHARE).

The fact that the budget depends strongly on additional assignments from DGs hampers EUROSTAT's independence. EUROSTAT is, more or less, forced to do as requested by the Commission in order to get its resources. The bulk of the costs, however, are borne by Member States. Member States, therefore, complained about the workload and about a work programme that does not correspond to the priorities that were agreed upon. They, therefore, suggested making the budget less dependent on specific requests. Instead, a focus on European priorities would be preferable.

Table 1—<u>Budget (Euro Millions)</u>

Five-year Programme					Five-year Programme				
1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
61.8	74.6	83.2	77.9	75.7	74.4	82.3	78.3	77.9	73.1

8) The Supervision of EUROSTAT—is there a Board?

In the cases of the EEA and EMEA, the supervision structure includes a board and one or more advisory scientific committees. The board of the EEA is the body in which the main decisions are taken on the work programmes and appointments. In addition there are all kinds of networks involved in preparing the decisions, but the main decisions concerning the EEA are taken in the pluralistic board which represents different kinds of stakeholders.

In the case of EUROSTAT, there is neither a board nor a scientific committee in the traditional, agency, manner. The Council and EP take the work programme decisions. Thus, decisions are taken at the political level, whereas senior officials take the decisions in the case of other agencies.

Even though decisions are taken formally at the political level, they are thoroughly prepared by EUROSTAT acting in close contact with, especially, the CDIS (the clients in the Commission) and the SPC (the national institutes) and in consultation with the

CEIES. The CEIES is the European Advisory Committee on Statistical Information in the Economic and Social Spheres. The CEIES represents other users and suppliers of information. It encompasses, among others, academia, trade unions and industry.

Together, these bodies represent the main clients (the DGs) and suppliers (NSIs) and the social partners. In formal terms, these committees do not have the same authority as the EEA Board. In these terms, it is hard to discuss them under the heading of 'supervisory bodies'. Nevertheless, these committees discuss and prepare the important decisions and the work programmes.

However, as will be discussed in the Section on programme development, NSIs gathered in the SPC regret that they are so remote from the final decision-making on work programmes. The SPC is consulted but has no say in the final decision. Thus, the question as to whether a formal board—or pluralist supervisory body—would be advisable will be discussed below.

Before discussing the SPC and CEIES in more detail, it is important to emphasise that these bodies prepare the work programme. As was emphasised in the interviews, work programmes are not evaluated. This may explain, at least to some extent, the criticism that priorities are only added to the agenda and never withdrawn.

a) CDIS—Comité Directeur de L'Information Statistique

The DGs in the Commission are the clients of EUROSTAT. Part of the services of EUROSTAT are free of charge for the DGs. The budget of EUROSTAT is distributed evenly over the tasks of the Commission. If there are additional tasks to be done, then DGs will pay EUROSTAT directly. Approximately 1/3 of the budget is derived from such partnerships with DGs. In the field of environment this share is even 2/3.

The DGs are organised in CDIS. This committee meets 4 times a year. This is the committee in which, in theory, DGs present their statistical needs and in which the content of the work programme is prepared.

The committee is set up at director level but, in practice, the representation of the DGs varies. Some DGs send a senior official to meetings and negotiations with EUROSTAT. Contacts with other DGs are more informal and at the level of policy managers or cabinet members who happen to have an interest in working with EUROSTAT.

To understand the functioning of this body, it has to be examined at two levels, i.e., the level of DGs and the inter-DG level. At intra-DG level, not every DG is in the position to identify and present its needs. Reasons for this include a disinterest in statistical underpinning of their work. Even though this argument was still used by interviewees, it was also noted that the importance of data is increasingly recognised. DG 5 is an example of a policy area where the interest in statistical services is still low compared to other DGs. Another reason is the diversity of tasks grouped within DGs so that it is hard for any one person in a DG to present the statistical needs.

As for the Commission as a whole, the fact that every DG presents its own 'wish list', means that a lot of topics are presented in the CDIS. Selecting between them is,

however, difficult. CDIS is not a committee in which decisions are taken on the basis of the relevance of the various requests. The demands expressed in CDIS were, therefore, also referred to as a simple shopping list, rather than a useful identification of priorities. Moreover, when DGs see that they cannot include their requests in the normal work programme of EUROSTAT (within the allocated budget), they can always ask EUROSTAT to carry out special work assignments. As a result, the total demand on EUROSTAT and on the NSI surpasses their capacities.

In addition to difficulties in weighing the priorities of DGs, it also proves difficult to recognise and manage the interdependence between the various requests. For example, DG 5 and DG 22 both deal with education and professional training and need information on this subject. This co-ordinating task falls on EUROSTAT and means that common definitions and material are needed. However, the interdependence is often difficult to see and requires more intimate knowledge of policies and the use of statistics.

As a consequence, EUROSTAT puts in a lot of energy into discussing with various people in the DGs what they would like to have, ordering priorities and presenting them to the CDIS. It subsequently arbitrates between the DGs in the process of selecting the key issues for the work programme.

However, as discussed above, national statistical offices think that EUROSTAT is not being selective enough and that, as a result, too much work is coming their way. EUROSTAT seems to be torn in two ways in this respect. It has to respond to the demands from the Commission and it has to be sensitive to the constraints faced by the NSIs.

In sum, the functioning of the CDIS is hampered by 1) the workload that falls outside the CDIS (1/3 of the budget of EUROSTAT), 2) difficulties within DGs in presenting their needs, 3) inter-DG arbitration and setting of priorities.

b) SPC—Statistical Programme Committee

CDIS represents the demand side of statistics. The SPC is the committee in which the supply side is organised. It is an advisory body that meets four times a year. This committee consists of the Directors-General in person. As it functions without deputies, high level participation is ensured. This seniority is required because the statistical work programme places great demands on the commitment of the Member States.

An expanded network of operational working parties and committees supports the SPC. There is a separate network of Deputy Directors-General in which the SPC is prepared and in which more technical issues are handled. Contacts at this level are often via e-mail. In addition, there are approximately 80 working parties that deal with specific data directives and regulations and with the data collection systems. They also discuss and prepare new data systems.

On paper, this committee is the most important advisory body. It will, no doubt, have a strong influence on many decisions. Nevertheless, national institutes doubt its steering capacities when it comes down to major decisions. As was noted by NSIs and others,

EUROSTAT has a tendency to be too close to the Commission. One reason for this is EUROSTAT's dependence on the additional budgets. The result has been major differences between decisions taken in the SPC and actual outcome of decisions taken within the Commission.

One example of a decision that was much regretted by the NSIs is the difference between the priorities presented in the latest 5-year work-plan and those listed in the latest annual work programme. The MAWP emphasises three priorities, to whit, EMU, enlargement and employment. The SPC supports these political priorities and welcomes the focus this gives to European statistical work. NSIs have to work with restricted resources and, therefore, value clear priorities. However, even after consultation with the NSIs, the first annual work programme (for 1999) subsequently lists many additional areas and projects unrelated to the agreed priorities. As a corollary, the work-plan now leads to unrealistic workloads and to additional costs for the NSIs.

The need for additional funds apparently makes it attractive for EUROSTAT to give in to requests from DGs and add topics to the programme and the SPC is not in the position to check this trend.

c) CEIES—European Advisory Committee on Statistical Information in the Economic and Social Spheres

The Commission may be the main client; it is not the only user of EUROSTAT's output. Data is regarded as a public good and the work of the ESS is, therefore, available to the public at large (through the publication office). To represent the wider circles of public life, CEIES was set up in 1991 (OJ No L 59, 91/116/EEC). It was initiated by Mr Delors and followed the example of the French National Council for Statistical information. CEIES is composed of representatives from industry, trade unions, press, and academia.

In all, CEIES consists of 60 people, nominated by the Commission. They meet annually. The bureau of this committee meets three times a year. In addition, the CEIES organises several seminars each year to discuss new issues.

This committees aims to be a bridge between the ESS and society. During the negotiations on the programme it offers industry an additional forum to emphasise the need to reduce the information burden. Moreover, the CEIES creates a basis for co-opting industry and other social actors to the programme.

The CEIES was, however, not described in the interviews as an important body. A general comment in the CEIES on the current programme is that it is too big. Besides, its composition is too wide and too varied to present a clear message. Conflict of interests within this body quickly arise. For example, small businesses pleaded for simplicity, whereas the business associations pressed for more detailed statistics. Moreover, there is a tendency in this committee to express demands without considering costs. Nevertheless, such a committee is deemed necessary in order to keep EUROSTAT in touch with wider social forces.

9) The Commission

Because the Commission is so closely involved in the supervision of EUROSTAT and in the formulation of the work programme, it is not discussed in separate detail here. EUROSTAT is part of the Commission and works mainly for the Commission.

The most important finding about the position of the Commission is that it has difficulties in deciding, within and between DGs, what it needs from EUROSTAT. An excess demand is the result. This places a challenging task on EUROSTAT to fix priorities. It is also the reason why NSIs think that EUROSTAT has to better defend the ESS against excessive demands from the Commission.

One way to reduce the demands from DGs would be to institute a board of NSIs and Commission that would take programme decisions. This would make the negotiations between DGs and ESS less dependent on the mediation of EUROSTAT. NSIs could also gain the opportunity directly to present their reservations concerning some requests to DGs, as well as their view on the whole of the work programmes (the NSIs have the intimate knowledge to do this). Moreover, it would mean that EUROSTAT's attention and interest would be divided equally between demand and supply.

10) The European Parliament

The EP has gained in importance in work programme decisions and now has co-decision powers. In general, the EP is a warm supporter of the work of EUROSTAT. Democratic control depends on proper information. Nevertheless, MEPs are not always too concerned with the details of the work programme because of their primary interest in legislation.

Given its relevance for transport, agriculture, monetary policy, the budget, women's rights, culture, etc., the work programme is discussed in most of the committees of the EP. Thus, EUROSTAT is in close contact with many *rapporteurs*. The *rapporteur* for the statistical programme from the 'Committee on Economic and Monetary Affairs and Industrial Policy' presents the consolidated opinion of the 13 EP committees. In its opinion, the EP particularly emphasised harmonisation in the field of unemployment and labour market, the internal energy market, environment, and equal opportunity statistics.

11) The Member States

After all that has been said above, the discussion on the position of Member States can be limited to two remarks. First, national statistical offices carry out the brunt of the work and bear the greatest proportion of the costs. In the past, Member States co-operation was sometimes troublesome. This is, at present, much less the case, in part because of the legal requirements and specifications of the kinds of data that have to be delivered.

Secondly, Member States are well represented in the ESS through the SPC and the various committees under this body, as well as working parties. However, as discussed,

there is a feeling among Member States that they should be more strongly represented in decision-making. The SPC is consultative and not a co-ordinating body. This may plead in favour of the establishment of a formal board, and the opening up of avenues of representation for the Member States beyond their current position within ECOFIN.

12) The Network

The network consists, on the one hand, of data suppliers. These are mainly the NSIs. In addition, EUROSTAT also gets information from other data sources (e.g., ministries, consultants and NGOs). The supply side is organised in the SPC. The SPC meetings are at Director-General level. To unburden this committee and to prepare meetings, the SPC also consists of a committee of Deputy Directors-General.

Attached to this committee are a range of Council working parties—in which directives and regulations are prepared—and committees dealing with the implementation of the work programme. In addition, new issues and new areas are often discussed in smaller groups (LEGS—Leadership Groups), which are organised by a Member State with a particular interest or expertise in a new development.

In all, the supply side meets in more than 80 committees and working groups.

On the other hand, the network consists of users. The main user is the Commission. In addition, indirect clients are industry, national governments, the academic world and other users of the statistical information. The users are organised in CDIS in CEIES. Furthermore, to enhance co-operation with clients, EUROSTAT has established special user groups in which it can discuss specific areas with officials from different DGs (GUS—Groupes d'utilisateurs statistiques).

CMFB—Committee on Monetary and Balance of Payments Statistics

In addition to these clients and users, there is a special kind of working relation with the European Central Bank. The ECB has its own statistical network but it works closely with EUROSTAT and the ESS as both networks are overlapping.

The CMFB was established in 1991 in the run up to the EMU (OJ L059, 91/115/EEC). It assists the Commission in drawing up and implementing the multiannual programme where it concerns monetary, financial and balance of payment statistics. In the Member States, financial statistics are gathered by the Central Banks. However, other relevant statistics for monetary policy are gathered by the NSIs or by other statistical offices. This raised the question of co-operation between the ECB, EUROSTAT and the ESS. The CMFB plays an important role in co-ordinating between the ECB and EUROSTAT and in ensuring that the work of EUROSTAT supports the European Bank.

The creation of the EMU proved to be a real threat to EUROSTAT. If the question of how to support the EMU and ECB was not settled quickly, EUROSTAT was in danger of being overhauled by the statistical services of the European Bank and of the national Central Banks. This situation was further complicated by the criticism on the quality, independence and timeliness of EUROSTAT statistics.

The solution that was found was to set up a co-ordinating body incorporating the national monetary authorities, the NSIs and the Commission (including EUROSTAT). In addition, EUROSTAT invested heavily in upgrading its quality and identified monetary policy as one of its three priority areas in the last and current MAWPs.

13) The Management of the Network

a) The State of the Network

Studies of the network carried out between 1996 and 1998, lead to quite a list of weak points in the European statistical network. Weaknesses mentioned include lack of leadership (e.g., no long term projects to upgrade the ESS), a frustration of decision-making by virtue of the intergovernmental unanimity principle in the ESS, the SPC's failure to function as an effective manager of the ESS, insufficient partnerships within the ESS, unclear relationships between CDIS and the ESS (see also the remarks about decision-making made above), conflicts of interest between EUROSTAT and ESS, and lack of evaluations.

The weaknesses mentioned in the reports refer to the limited capacities of the Commission to identify priorities (weak CDIS) and of EUROSTAT to upgrade the network. Also the conflicting interests of EUROSTAT and the NSIs are noted (e.g., expanding the workload with a view to the budget versus limiting the workload with a view to the capacities and willingness of NSIs to co-operate). The network is presented as a loose set of organisations that meet in too many groups and task forces. Furthermore, decision-making in the network is thwarted by the unanimity principle and by the lack of a common identity.

In particular, the *XL Groupe* study – which highlighted these ponts - was criticised for being overly negative. Moreover, it seems somewhat outdated in view of the recent attention paid to the improvement of the management of EUROSTAT and of its network. Nevertheless, as noted above, some of the weaknesses reappeared in this study (CDIS not functioning properly, conflicting roles of EUROSTAT in the network, NSIs feeling subordinate in decision-making).

b) Network Management

As the reports mentioned above indicate, the weaknesses in the network are well mapped. This, together with the scarcity of resources and the increased demand for reliable statistics, has created a feeling that decision-making within the network must be upgraded.

Currently, the network seems vast but well organised. In total, the network encompasses the European institutions, the NSIs, industry and other users and suppliers of data. In addition, the candidate countries are well incorporated into the system.

In total, the supply side of statistics amounts to more than 600.000 people. They meet in various formats of the SPC, technical committees, legislative committees and programming committees. Furthermore, the network relies on manuals for

standardisation of methodologies and data and on extensive legal obligations to deliver information in specific formats.

Together, the layered structure of the network, the strong[91] legal basis of the statistical system, the legal reporting obligations, the manuals and the common programmes indicate that it is a strong network. EUROSTAT is a clear focal point in the network and performs many network management tasks, such as hosting and preparing meetings, organising workshops, preparing work programmes, setting up quality control systems, etc. As discussed above, 60% of the budget of EUROSTAT is devoted to the network.

Currently, under the aegis of EUROSTAT, the ESS is upgrading the quality of statistics. The notion of 'quality' of statistics is no longer commensurate with 'accuracy' alone. Instead, a range of criteria is formulated according to which quality of data is assessed. These include relevance and punctuality, accuracy of estimates, comparability, coherence and completeness. [92] The quality programme runs within EUROSTAT but also applies to the NSIs. EUROSTAT is upgrading its internal functioning to enhance quality and has set up a system for monitoring the quality of data as they are delivered by the Member States. In addition, it expects NSIs to adhere to the same quality standards and methods.[93] An ESS-wide training programme is used to disseminate a common approach to quality management within the European statistical system.

Even though data delivery now functions smoothly, decision-making in the network nevertheless leaves room for improvement (e.g., the anomaly in the role of EUROSTAT as network organiser who also has financial interests in overloading the network and the distance of NSIs from the final decision-making).

14) The Planning Cycle

Planning has become more important due to the increase in demand and the relative decrease in resources within the system. The NSIs particularly request selective priorities to ensure a feasible workload. The formalisation of the SPC and the legal basis of the planning process provided by the regulation on Community Statistics, bear witness to the fact that planning has become more important and more systematised.

One characterising feature of the planning process in the European statistical system is that it is still, fundamentally, a Commission-centred process. Notwithstanding the many

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[91] There are, however, doubts about whether the Council Resolution on statistics (322/97), the Commission Decision (97/281/EC) and art. 285 of the Treaty are sufficient. One suggestion put forward, for example, was to include statutory independence regarding dissemination of data.

[92] Most of these terms will speak for themselves. Coherence relates to the fact that several policy areas work with the same basic variables. An effort is made in the ESS to limit the number of variables and to ensure that they are interchangeable between the various areas.

[93] On the one hand, quality of the ESS only makes sense if the same criteria apply to every Member State. However, not every Member State is happy with the interference of EUROSTAT with national quality criteria and argues against centralisation and in favour of subsidiarity (e.g., the need for EU wide questionnaires on working attitudes of national statistics is being questioned).

consultations with national institutes in the SPC, and the fact that the Council adopts the multiannual work programme, the programme is mainly an expression of Commission needs and drafted within Commission premises.

A second characterising feature, is the overriding importance of the MAWP. The annual programme that is derived from it has a lower visibility and is decided on within the Commission only. Contrary to the 5-year programme, it does not go through ECOFIN.

a) The Multiannual Work Programme (MAWP)

The focal point during the formulation of the 5-year work programme is the staff unit under the Director-General responsible for planning. This unit organises the process of gathering thoughts about client needs from the experts within EUROSTAT who deal with Commission officials. Moreover, it discusses plans and priorities with the DGs in the Commission and with representatives of the NSIs.

One of the major difficulties for the planners of the work programme is to know what information the officials in the DGs need. In many areas, the needs will be expressed in meetings with officials. In other areas, officials are less forward looking, so that a more visionary role is required from EUROSTAT officials in the formulation of statistical needs. An anticipatory role from EUROSTAT is particularly required in new policy areas (e.g., EUROSTAT is now preparing data systems on the Balkans, while, in the past, it had to anticipate preparations for the employment pact).

A first draft is produced for the programme on the basis of the impression developed about the client needs. This is subsequently discussed with the SPC and CDIS. These meetings look at the total of the workload and general feasibility. They also fix the priorities because it is likely that the demands will exceed the resources of the system. In addition, the individual areas are discussed in working parties at a more technical level. At this stage, a draft of the programme will also be submitted to the CEIES for discussion.

Throughout this process, EUROSTAT ensures oversights, keeps an eye on the overall costs and tries to sharpen up priorities. In addition, the different fora in which the several aspects of the work programme are discussed have to be interconnected in order to ensure consistency between the data collected and the methods used.

The final draft of the MAWP is approved by the college of Commissioners and presented to the EP and Council.

A first evaluation is made halfway through the 5-year programme. This is the start of the new round of the preparations of the next MAWP.

b) The Annual Work Programme

The process of the annual programme resembles the dynamics of the 5-year programme. Again, it is an interactive process between EUROSTAT, SPC and CDIS. The

differences are that the annual programme is much more detailed and that the programme is approved by the college of Commissioners.

One main criticism of the current annual programme is that it lists too many topics—topics that had been refused by the NSIs. Moreover, it does not adhere to the three priority areas mentioned in the 5-year programme. National institutes feel that EUROSTAT was not selective enough in formulation of the programme and had not sufficiently listened to the objections from the NSIs.

c) Discussion of the Planning Process

EUROSTAT plays an important brokerage function in the decision-making process. However, as noted above, the NSIs are not unanimously pleased with the way in which it fulfils in its tasks. Even though EUROSTAT consults all the parties involved, the decision-making on the draft of the programme rests with EUROSTAT. The outcome of the process is generally regarded as over-ambitious and EUROSTAT has been asked to be more selective in what it includes in the work programmes.

One reason why EUROSTAT tends to be lenient towards the requests from the DGs is that it depends on additional projects for income. This dependence clouds EUROSTAT's brokerage role. The NSIs are consulted, but in the end no effort is made to reach consensus between the suppliers and users of information. The effect is that NSIs feel themselves overruled.

A solution can be proposed to remedy this situation. NSIs could be drawn more tightly into the final decision-making within the Commission through closer involvement of the SPC in the drafting of the document. As discussed above, positioning EUROSTAT under a decision-making board, composed of, among others, the Commission, NSIs and representatives from the EP, could be helpful in this respect.

15) The Seat: Luxembourg

The original reason for locating EUROSTAT in Luxembourg was the distribution of institutions between Brussels, Strasbourg and Luxembourg. In addition, putting EUROSTAT at arms length from the policy DGs was also thought to strengthen its independence.

Luxembourg, however, has some disadvantages. First of all, it makes the interaction with DGs more difficult when it comes to work planning. In addition, Luxembourg is not regarded as a highly attractive living environment. Thus, it has contributed to the high turnover in staff.

On the whole, however, it seems that the location is not a major issue—neither in the positive nor in the negative sense. The main problem in co-ordination with the DGs does not lie in physical distance, but in the other factors discussed above. Furthermore, the staffing problems are mainly caused, not by the location in Luxembourg, but by the reliance on the Commission's staff regulation and practices.

16) Languages

Languages are not so much of an issue for EUROSTAT. All the daily work—working documents, papers and publications—is available in German, English and French. Legal texts are, of course, issued in the 11 official working languages.

XII.3. Analysis

The main question in this Chapter is whether EUROSTAT would profit from becoming a full-fledged agency. This requires, above all, raising the question of whether EUROSTAT is an agency and, if so, whether there is room for sharpening its agency-like structure. While considering this issue, we will also have to address the question of whether its position within a Commission DG impedes it from being (more like) an agency. Secondly, we need to see there are gains to be reaped from strengthening the agency structure. Would this be advisable and would this correct the alleged weaknesses?

17) EUROSTAT as Agency?

Having discussed the design of EUROSTAT, we can now examine whether it is an agency. As pointed out in Chapter IV, the key variable for deciding whether an organisation is an agency depends on the extent to which the work programme is executed independently. In this respect, EUROSTAT is an agency. The mission of this service unit of the Commission is to deliver *independent* information. However, it is not the (more important) 5-year programme that gives it its agency characteristic. In practice, this programme—approved by the Council—only indicates probable priorities. It is the less important annual programme, on which the college of Commissioners decides, that makes EUROSTAT an agency. Once the Commission agrees to this programme, EUROSTAT is expected to execute it independently. The regulations (i.e., those defining the procedures for the formulation of the work programme and those constituting the networks in which EUROSTAT operate) emphasise the independence of EUROSTAT and the ESS. Also its location in Luxembourg and the strong network of NSIs, in which decisions are prepared, are additional agency features.

However, some qualifications are in order. In the first place, as discussed above, there are doubts about the factual independence of EUROSTAT (and hence about its credibility). Its being a part of the Commission, as well as its financial links to the DGs, have led to rumours of interference with definitions and publication dates. Nevertheless, interviewees were, on the whole, quite pleased with the independence of EUROSTAT.

Secondly, Moe's principle that 'no one controls the agency, and yet the agency is under control', does not apply to the annual work programme. In the case of EUROSTAT it is the Commission that decides on the work programme. The Commission controls the budget and the adoption of the annual programme. Of course, the NSIs are consulted, but they would like to have more influence on final programme decisions. This second features is closely connected to the absence of a pluralistic committee or decision-taking board.

The fact that there is no such board or committee is the characteristic that sets EUROSTAT aside from the other agencies. This has little to do with EUROSTAT being a Commission body. EUROSTAT could, even as DG, still continue to function as an agency under the supervision of a pluralistic board.

The case of EUROSTAT, therefore, shows that a DG can be an agency and there need not be a clash between, on the one hand, credibility and professional autonomy and, on the other hand, being part of the Commission. Despite the fact that EUROSTAT is a DG, it is—already now, but especially if it were to have a board and more pluralistic decision-making procedures—generally regarded as a reliable and credible organisation.

18) (Dis)advantages of Reinforcing EUROSTAT's Agency Status

Even though EUROSTAT satisfies the main criteria of an agency due to its statutory independence in carrying out its work programme, there are two ways in which the agency status can be reinforced. In the first place, a board structure would make decision-making more pluralistic and make it more in accordance with other agencies. A board would enhance its credibility and bring it in line with Moe's pluralistic supervision principle, according to which no one in particular, controls the organisation. Formally this would not have to be the end of EUROSTAT as a DG.

Secondly, EUROSTAT's independence and credibility would be strengthened and supported, if it were to have its own personnel policy. At present the general staff regulation hampers its professional credibility and effectiveness (i.e., organisational legitimacy).

One remark has to be made before anything can be said about the pros and cons of reinforcing the agency status. The gains and losses of pluralistic decision-making depend on whose perspective one chooses. For example, if a more agency-like supervisory system is opted for (i.e., a board), then both EUROSTAT and the Commission stand to loose leeway in decision-making. This might imply that the national perspective gains in importance at the expense of the 'European' need for statistics.

The Alleged advantages of a board and a new personnel policy are:

➢ The SPC would gain influence. The national statistical institutes would be better placed to limit workload and ensure a stricter priority setting.

➢ A stronger position of the board would enhance the professional status. At present, the work programme is overburdened by request from DGs. However the policy makers in the Commission are not well informed of the costs and feasibility of their requests. Enhanced influence of the SPC would mean that the view of practitioners would sharpen debates about programmes, costs and priorities. It would lead to more discussion between the professionals on the supply side of information, and the policy-makers on the demand side.

➢ EUROSTAT's independence will be reinforced. At present, its independence to gather, process and publish credible information is a minor issue. Reinforcing the

agency status by creating a board might lead to improvements because the grip of the college of Commissioners would be reduced. Also the transparency of decision-making on the work programme will frustrate 'rumours'. Moreover, the image of EUROSTAT as independent body will be easier to market and, thus, will lead to an increase in trust (even though it is a DG).

➢ Staff appointments—all levels—can be handled more in accordance with the needs of EUROSTAT as a professional organisation.

Potential disadvantages of reinforcing the agency structure are:

➢ DGs can no longer lodge all their requests with EUROSTAT and the ESS (if the NSIs can ensure a stricter fixing of priorities through a board). Thus, alternative systems of data provision may have to be explored to fill the gap that the ESS would leave behind. This may threaten the development of a coherent and integrated system ESS. To qualify this argument: there does not need to be a direct connection between a stronger influence of the NSIs on work-planning and the total work to be done. What is likely, however, is that there will be more debates between NSIs and the Commission over priorities. As a result, NSIs might be more convinced of the need for additional projects, while the Commission might become more selective and aware of the costs and feasibility of data. (Thus, demands might tend to fall and supply might increase.) Moreover, one may wonder whether competition would be a real disadvantage (as long as overburdening of industry and duplication of work is prevented—but that is a matter of co-ordination within the Commission to ensure that the various requests are seen in relation to one another).[94]

➢ EUROSTAT fears that its budget could be threatened. The lesson from the current EU agencies is that they have to put a lot of energy into securing funds. This argument could not be verified. It is possible that the current position under a Commissioner, gives EUROSTAT a stronger position within the College when budget decisions are taken. Other agencies are usually supported less. However, the real issue might be to look at ways of strengthening the voice of all agencies within the Commission (see the EEA).

➢ As a Commission body, EUROSTAT now has the right to initiate legal instruments to ensure the delivery of data. New arrangements would have to be found to issue data directives and regulations were it to become an agency outside the Commission.

➢ Payment and employment conditions might be affected.

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[94] One suggestion that was made in this respect was also to put EUROSTAT in charge of coordinating the outsourcing or to let it examine whether information is already available. A major issue that should, however, not be taken to lightly is that there are already complaints about too many and overlapping information surveys.

19) ECOFIN, Board or Comitology?

So far, the argument focused on the need to create a board.[95] This would strengthen the influence of Member States. However, one could argue that Member States already take the final decisions in ECOFIN. This is true, but it appears that the council can hardly be relied upon for monitoring statistical programmes or EUROSTAT. First of all, ECOFIN mainly decides on the 5-year work programme whereas the real programme decisions figure in the annual work programme. Secondly, the meeting of finance ministers may be a few steps away from the head directors of the NSIs who are better informed of statistical practicalities (albeit that ECOFIN has closer links with the data concerning EMU). Thirdly, the question is to what extent politicians are interested in statistical programmes. Thus, a board could relieve the agenda of ECOFIN

A board can, however, produce an institutional problem. Formally, the Commission has the right of initiative and this is the basis on which it presents the work programme to the Council. A board does not fit directly in this context. One advantage of a board over a comitology committee is that it can be more pluralistic (also representatives from the EP or from the CEIES). Furthermore, it can have a rotating chairman – e.g. an field-leader who holds the chair for 5 years and whose authority is recognised by users and suppliers. This could reinforce neutrality as well as leadership in the network. Alternatively, the position could be upgraded by turning it into a more powerful comitology committee. Undoubtedly, further legal study is needed of the possibilities of a board or of strengthening the comitology position of the SPC.

XII.4. Conclusions: Sharpening the Preconditions for Credibility

The discussion of EUROSTAT and the gains and losses of an agency structure shows that EUROSTAT can already be seen as an agency. Nevertheless, there is room for reinforcing its agency character by creating a board or by adding a management committee. This would upgrade the statistical programme committee and would—more or less—formalise the situation as it already is. However, it would increase the transparency in the final stage of decision-making (now still in the hands of the Commission). Moreover, it will sharpen discussions in the programme committee on national and European priorities and make conclusions arrived in this forum more binding. One important effect of this would be that it would eliminate the current 'suspicions' of negative politicisation in the Commission. Thus, it would contribute to more binding discussions in the European Statistical System, to a greater commitment from national statistical institutes, and to less suspicions. As a result, EUROSTAT's credibility would be improved.

In addition, work planning within the Commission seems to be an issue for further attention—irrespective of the status of EUROSTAT. This will lead to a better initial internal selection of priorities and, therefore, also contribute to a more credible ESS.

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[95] Of course the composition of the board would need careful—political—consideration. It would be possible, for example, to upgrade the current SPC and include the EP and representatives from the Commission (i.e., from CDIS).

Annex 1: Bibliography

Schout, J.A., (1999): *Internal Management of External Relations—The Europeanisation of an Economic Affairs Ministry*, EIPA, Maastricht.

Wroe, (1996): *Community statistical programme 1993/1997—Mid term evaluation*

XL Groupe (1998): *Le système statistique Européen*

Annex 2: EUROSTAT Organigram

Director General

Chief Adviser

Directorate A

- Statistical information

- Research and data analysis

- Technical cooperation with Phare and Tacis countries

Directorate B

- Economic statistics

- Economic and monetary convergence

Directorate C

- Information and dissemination

- Transport

- Technical cooperation with non member countries (except Phare and Tacis countries)

Directorate D

- Business statistics

Director

- Social regional statistic geograp informa system

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Annex 3: List of Interviewees

Mr A. Chantraine, Eurostat, Luxembourg (L)
Mr K. Flowers, European Commission, Brussels (B)
Mr G. Kopsch, Statistisches Bundesamt, Wiesbaden (D)
Ms A. van Krimpen, CBS, Voorburg (NL)
Mr A. Pritchard, ONP, London (UK)
Mr W. de Vries, CBS, Voorburg (NL)
Mr D. Wroe, Consultant and former ONS, Wrickley (UK)

Chapter XIII

The European Network for the Implementation and Enforcement
of Environmental Law (IMPEL):

The Strengths and Weaknesses of an Informal Network

(Adriaan Schout and Fleur Claessens)

XIII.1. Introduction

IMPEL is an informal network of inspectors as well as policy-makers. Its objective is to facilitate implementation of environment legislation in Member States and to exchange experience with national enforcement systems.

IMPEL was set up to fill an institutional gap between the adoption of legislation in the Council and the legal watchdog task of the Commission to control implementation and to bring Member States before the ECJ where necessary. Formulation and implementation have traditionally been treated as legal trajectories. However, actual implementation proved difficult and this situation not only threatened the viability of the internal market, but also provoked complaints from industry.

Something was needed between the adoption of legislation and the filing of complaints against Member States. No institutional arrangements are foreseen in the traditional set up of the EU polity that give Member States practical guidance or support in implementation. Since no formal institution could be created, a need was felt to offer the opportunity to Member States to exchange experience informally and to create informal peer group pressure. The comitology trajectory was felt to be inappropriate because of the focus on legislation instead of on practical implementation. Moreover, an inspectorate, as proposed by the EP, was too politically sensitive an institution. Thus, the informal IMPEL mechanism was chosen. This also allowed a subsidiarity-type of solution and suited the preferences of the inspectors. As became clear in the interviews, the technical experts working on practical implementation had no interest in setting up a 'bureaucracy', and were instead only concerned with 'exchanging practical experience' and 'flexible and informal co-operation'.

The key issues in this chapter is the question of whether IMPEL is an (effective and legitimate) agency. The effectiveness issue is closely related to the question of whether it is feasible to have an informal network in the complex and often politically sensitive field of environment policy. As will be argued, even an informal exchange of experience needs some form of organisation to, for example, fix priorities and manage feedback between projects and the world of inspectors. Furthermore, this chapters discusses the history of IMPEL, its output and the partners in the network. The analysis will discuss whether IMPEL may be characterised as a classic network and what the particular strengths and limitations of this informal way of working are. This will provide insight into the feasibility of this type of agency model.

Data

This chapter is based on interviews, minutes of IMPEL meetings and on information in the IMPEL newsletter, *Spotlight*. More than the previous agencies tackled, there is very little material on IMPEL, while no effectiveness studies of this body are available. Given the limited systematic analysis of IMPEL, it is no surprise to find diverging views on the usefulness of IMPEL. It seems that the debate on the feasibility of this kind of highly informal network has yet to start (e.g., questions, such as, how to engage the weaker Member States in IMPEL, how to ensure follow up of meetings, and how to

strengthen the organisation in Member States if the network itself is only loosely co-ordinated). This chapter has been commented on by three Commission officials.

XIII.2. Design Dilemmas

On the basis of organisation literature, we may assume that informal networks are difficult to set up and maintain. Informal relations are, generally, suitable when there is a small target group with common objectives and values. Informal relations tend to be unreliable in case of large populations and major differences between actors. In such settings, informal co-operative arrangements develop slowly and can be too weak a basis for managing strategic tasks. Moreover, problem solving can be highly problematic. As a general rule, the more demanding the environment and the topics, the more attention which should be paid to the design of the organisational network.

It is therefore unfortunate in this context that implementation and enforcement are highly complex, multifarious and sensitive issues. Implementation is a major challenge, as it relates to the adaptation of national legislation and administrative systems. Inspection is even more daunting because it touches upon third-pillar issues of cross-border policing.

Furthermore, environment policy is characterised by major differences between Member States and by tensions between Member States and the Commission. There are—at least—15 Member States that differ in important ways as regards action on the environment, environment policy and administrative capacities for implementing and monitoring environment policy.[96]

Thus, *a priori*, an informal, loosely coupled, network would seem to be a weak response, given the challenges in upgrading national implementation and enforcement systems.

As will be argued in this paper, the question which those involved in IMPEL have to face, is whether a balance can be found between informal arrangements and effective structures that both ensure sensible programme selection and provide learning mechanisms.

XIII.3. The Development of IMPEL as an Organisation

Despite, or because of, the clear vision that IMPEL should be an informal network without - according to interviewees - any form of 'bureaucracy', the history of IMPEL is characterised by discussions over its structure. The debates centre around what kinds of topics should be on the agenda, selection of priorities, how to take decisions on projects, how to ensure useful representation of Member States within the network, and how to arrange feedback to national administrations and to the Commission. Related to

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[96] IMPEL is not restricted to the 15 member states. Norway has the status of observer and the same status is now offered to Liechtenstein and Iceland (following the Berlin Plenary conclusions in 1999).

the discussion on the structure, has been the debate regarding the role of the Commission in the network. On the one hand, it has been recognised that an informal network can play a useful role in co-operation between Member States and between Member States and the Commission. On the other hand, it was clear that issues of structural design had to be addressed in order to create an effective network. This resulted in a range of Commission communications, Council and EP resolutions and studies by standing committees and *ad hoc* reflection groups.[97] This continuous debate over design characterises IMPEL (see Table 1).

Table 1—Development of IMPEL—Main Steps

Chester 1993	Haarlem 1997	Berlin 1999
biannual plenary meeting	biannual plenary meeting	biannual plenary meetings
4 working groups	2 standing committees	project groups
	project groups under the standing committees	

1) The Chester Network

The origins of IMPEL can be traced back to the Dutch Presidency. The Dutch Environmental Ministry placed implementation high on its Presidency agenda in 1991. It presented a survey on implementation and enforcement of environmental legislation that pointed to the many differences between Member States in their capacities for, and in their approach to, the practical application of EC environment legislation. Moreover, the report stressed that better implementation required that more attention be paid to each of the phases in the formulation of regulation.

Given a preference for informal co-operation and exchange of experience—and the lack of alternative instruments—the Council decided, in October 1991, to establish an informal network of representatives of relevant national authorities to enhance contacts throughout Europe.

The first meeting of the network was hosted by the UK Presidency in Chester (1992)—hence IMPEL's original name, the 'Chester network'. The participants were members

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[97] Commission Communication: Com (96) 500, October, 22, 1996, no. 56, par. 55-56; No. 19 and No. 20 of the Council Resolution (October 1997, O.J. C 321/1); Discussion Paper on the future of the IMPEL (presented to the Plenary Meeting on 1 May 1997); EP Resolution (May 1997, O.J. C 167/12). See also the annexes to the minutes of the plenary meetings.

of environmental enforcement bodies concerned with the regulation of industrial installations. On this occasion it was decided to organise such a 'Plenary Meeting' on a biannual basis, hosted by the Presidency in office. One of the tasks of the plenary meeting would be to decide on the work programme.

To carry out the network's activities, four working groups were established which would deal with the core areas as identified by the meeting. In line with the informal and intergovernmental arrangement of the network, each of the four areas was to be organised and presided over by a Member State.[98]

The first meeting of IMPEL took place without the Commission. It was, however, early on recognised that the Commission should be invited to meetings in order to strengthen co-operation between Member States and the Commission and to reinforce the link between legislation and implementation.

2) IMPEL

Chester was reborn as IMPEL in 1993 in response to the Fifth Environmental Action Programme ((1993) O.J. C138/5, Chapter 9).This Programme emphasised the need for an implementation network that would support the preparation of measures, improve consultation, lead to a better practical follow-up of legislation and promote consistency in implementation and enforcement.

IMPEL undertook, as an informal intergovernmental network, to fulfil the mission of creating the necessary impetus for Member States to reinforce the application of environmental legislation. The network should contribute by exchanging information on practical experience and offering the opportunity to create a professional community of inspectors. In addition to creating a common meeting ground, on which peers could discuss common obligations and problems, the network was also set up to create and manage training and exchange programmes. The sharing of experience would not only support Member States, but it would also be of use to the Commission, when drafting or adapting legislation. It was also hoped that IMPEL would, through informal co-operation, foster minimum standards within the professional community as regards enforcement. Furthermore, the fathers of the network expected that implementation would be reinforced through the informal peer group pressure that would result.

Later, it was discussed whether the practitioners marshalled within IMPEL could be used to advise the Commission on new proposals (Council Resolution, October 7, 1997, O.J. C 321/1, no. 20).

The fact that the network was based on voluntary co-operation between Member States also implied that the financial burden fell largely upon national administrations.

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[98] The four groups are: 1) technical aspects of permitting led by Germany, 2) procedural/legal aspects of permitting led by DG XI, 3) compliance monitoring and inspection (Denmark) and 4) managing enforcement dealing with exchange programmes (Netherlands).

The network's predominantly intergovernmental basis has been a constant point of debate. Commission and Member States warmly supported the notion of informal relations between national administrations. Nevertheless, suggestions for more systematic involvement on the part of the Commission have been put forward by both sides.

For the Commission, a closer involvement would be beneficial because of the valuable insight into practical implementation difficulties that this would offer, and because of the opportunity to steer IMPEL's project selection; a fact which the Commission itself has recognised (Commission Communication: Com (96) 500, October 22, 1996, no. 55-56). However, at the same time, the Commission was reluctant itself to engage formally, in an effort to safeguard the informal nature of the network and to respect the sensitivities involved in EU inspection tasks.

The Member States had a strong preference for maintaining informal ways of working. In this way, the focus could remain on topics on which some Member States are already advancing, so that important experience could be diffused. A stronger role for the Commission would lead to additional obligations and pressures, while the additional EU workload placed on national administrations was already causing problems. Moreover, the Commission's involvement could make Member States reluctant to exchange information.[99] It was also feared that flexibility in programme selection would be reduced if the Commission were to have a role in decision-making. Nevertheless, Member States have been pulling the Commission into the network by asking it to create a financial basis for IMPEL (Council Conclusions of 15-16 December 1992 (11115/92, ENV)).

Initially, the network focused on national administration and authorities. The nature of the work, however, soon demanded the broadening of participation to regional and local levels.

3) Current Development—from Chester via Haarlem to Berlin

The first plenary meeting in 'Chester' decided on the structure of a biannual plenary meeting with four working groups. The country holding the Presidency chaired the plenary. Later on (Athens, December 1993), these meetings were co-chaired by the Presidency and DG 11 (head of unit level).[100] Member States were mostly represented by senior officials from environment ministries or from national environment agencies. These officials were supported, in most Member States, by a 'national focal point' that acted as the national co-ordinator. These focal points are often inspectors or officials responsible for inspection in the Member States.

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[99] This argument seems to be less threatening in practice. First of all, the Commission already knows many of the implementation gaps in Member States. Secondly, IMPEL does not deal with the legal transposition of legislation (which is monitored by the Commission) but with the practical side of it.

[100] Full participation of the Commission took place at the request of the Member States in IMPEL (with a view to foster interaction between policy-makers and practitioners).

The four working groups did not offer sufficient flexibility for the variety of topics that had to be addressed. Moreover, they quickly developed into independent committees, so that the plenary lacked a general overview, while decision-making on topics became difficult. Communication and feedback between the groups deteriorated due to their independence.

A need was felt better to structure the working groups according to the main objectives of IMPEL. The focus on implementation and enforcement issues demanded particular attention for, on the one hand, the practicalities of implementation and, on the other hand, legal requirements. Moreover, better feedback was needed between the inspectors and the policy-makers. Therefore, the regrouping of IMPEL into two 'standing committees' was proposed: one would deal with legal policy and implementation issues, while the other would tackle practical implementation and enforcement. These committees were called 'standing committee one' (legal) and 'standing committee two' (practical). The second committee also organised training and exchange visits.

Another major flaw in the set up of Chester originated from the predominant participation of inspectors dealing with industrial installations. Hence, the focus of the network was quickly narrowed to one particular field of environmental problems. This had to be broadened to other areas (e.g., minimum criteria of inspection and frequency of inspection, enforcement in small and medium sized enterprises). In addition, better feedback between implementation, enforcement and the original legislation was needed. Thus, a greater role for lawyers and policy-makers was requested. Legal topics that were proposed included, access to justice and consistency between pieces of environmental legislation.

In addition to a focus on a narrow field of issues, proceedings were also dominated by specific Member States. The northern Member States in particular, were keen on discussing common problems in the working groups. Hence participation was uneven as regards Member States.

Despite a conclusion in the Council resolution 'that IMPEL is a very successful informal instrument for the improvement of implementation, inspection and enforcement' (Council Resolution, October 7, 1997, O.J. C 321/1, no. 20), the opinions of practitioners is that the network was of little practical use during the formative years, 1993-1997. Thus, changes were needed in the structure of the network.

At a meeting in Haarlem in 1997 it was decided to change the four groups into the two standing committees. In addition to dealing their core tasks of practical and legal implementation, they were also made responsible for the preparation of the biannual plenary meetings (preparation of topics on the agenda of the plenary). Furthermore, the preparation of the plenary was placed in the joint hands of a troika (former, current and future Presidency), the secretariat of IMPEL (see below) and the Commission.

After this meeting in The Hague, work was carried out within 'projects' under the control of the two standing committees. These projects are managed by Member States that have a specific expertise and interest in a topic and that have proposed the topic to the standing committee and the plenary. Project leadership includes finding finances for approximately 50% of the expenses—Commission funding is available for the other

half. The participants in the project generally pay their own travel expenses. In order to host a project, the chair first has to fill in a 'terms of reference' sheet, on which the purpose and a draft budget of the project are presented. This form is first discussed at the standing committee and finally adopted by the plenary. In this way, the terms of reference are an important tool in decision-making and in ensuring transparency in ongoing projects.

However, current practice regarding decision-making about proposed projects is mixed. Interviewees referred to long delays within the Commission for accepting proposals and forwarding budgets. To avoid further delays, Member States even fully funded projects themselves, in order to get started.

Projects are decided on by the plenary. However, since IMPEL is a voluntary intergovernmental network, there is no unanimity or qualified majority voting on projects. In case of lack of agreement, a project can still begin, as long as there are a few Member States who are interested and who are willing to cover expenses.

Despite the changes in structure, the network did not prove to be effective. First of all, the participation in the standing committees was limited in terms of active Member States, as well as, in terms of people participating within the Member States. In most Member States, the national focal points and representatives to the plenary lack the time to prepare meetings, to ensure feedback or to ensure reliable participation in projects. Moreover, participation was concentrated at the level of national authorities, whereas most of the implementation and enforcement tasks are dealt with at regional and local levels. According to the interviewees, systematic representation and feedback proved to be especially cumbersome in some federal countries.

Furthermore, the separation of tasks between the practical and legal committees could not be maintained and major overlap between them was the result. Practical problems often originated from lack of clarity and specificity in EC legislation, as well as, from interconnection between measures.

In response to the criticism of the functioning IMPEL, changes were decided upon at the plenary meeting in Berlin (June 1999). These changes amounted, above all, to the abolition of the two standing committees. At the meeting it was decided that 'having the two standing committees was a waste both of 'time and resources'. Furthermore, it was agreed that the secretariat would be reinforced (see below) and play a more active role in monitoring projects, planning and agenda setting.[101] It was also re-emphasised that active participation and commitment from national experts is vital and that the Meeting should encourage this.

Not every Member State supported these changes. Critiques from representatives of, among others, the Netherlands and Italy on the reorganisation of IMPEL included the view that energy should be devoted to the actual work rather than to discussions about structures. In addition, some felt that the plenary meeting was already ineffective due to

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[101] Moreover, the 'plenary' was renamed into 'IMPEL Meeting'.

the large number of national representatives. A smaller plenary of 1 official per country would, in their view, be more flexible and could meet more frequently. Furthermore, the fear was expressed that the amalgamation of standing committees would entail the danger that the domination of technical inspectors would overshadow interest in legal matters.

In sum, the history of IMPEL's formative years shows that it has been a continuous experiment with network structures. At present, it consists of co-operation with between Member States and between Member States and the Commission. The development process is one of formalising the network and of increasing the involvement of the Commission. What started out as a purely informal network, without a focal point, is now developing into a network in which the first elements of a focal point (the secretariat) are apparent.

With a view to the emphasis on statutory independence, it is interesting to note that the network does not have a legal basis or statutes. Tasks or independence are not formally laid down. Representatives from the technical community gathered within IMPEL, underlined that experts do not need statutory independence or task descriptions. 'Technicians do not want to be inhibited in the things they do'.

4) The Secretariat and its Seat

One part of the development of IMPEL has been the evolution—and hence formalisation—of the secretariat. It was set up in May 1996. IMPEL started out without any form of focal point within the network. Subsequently the network was reinforced with a secretariat for operational tasks. Current discussions centre around upgrading the secretariat and giving it strategic management tasks. The conclusions from the plenary meeting in Berlin (June 1999) bear witness to this trend.

Even though a certain distance from DG 11 was deemed to be necessary, it was decided, after some debate, nevertheless to locate the secretariat within DG 11.[102] In this way, it would be close to the centre of EU environment policy. Moreover, DG 11 offered the use of its secretarial support that the secretariat.

The tasks of the secretariat have been mainly supportive. They include:

➢ dealing with the paperwork before and after meetings,

➢ organising plenary meetings and supporting the chairs of the various committee and plenary meetings,

➢ keeping the list of IMPEL participants up to date,

➢ distributing the newsletter,

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[102] The Netherlands had also offered to host the secretariat. However, this entailed the danger of bringing IMPEL too much under the influence of one country.

➢ keeping an overview of ongoing projects and trying to ensure that the deadlines of projects are met,

➢ helping project teams with filling in the forms necessary for getting approval from the plenary and for obtaining a budget.

These tasks are mostly operational. Recently, the decision has been taken also to add strategic tasks (e.g., agenda setting, programme development and monitoring of projects). However, in its current form, the secretariat already has serious difficulties in carrying out the operational tasks of maintaining oversight over projects and keeping the list of participants up to date. Moreover, it has not been successful in gaining an oversight over human and financial resources in the Member States. Difficulty it faces, in this respect, include the weak organisation within Member States and lack of human resources. At present it consists of one official, seconded from a Member State for a period of 3 years. Secretarial support—part time—is provided by DG 11.

From an organisational science perspective, it very difficult to envisage how IMPEL can become effective throughout the EU (i.e., not just in a few interested Member States) without an operational, as well as, a strategic upgrading of, and investment in, the secretariat.

Whether the secretariat is located in, or is partially attached to, the Commission is a politically sensitive issue that nonetheless seems to be of limited real interest (see also the conclusions on the seat of the EEA and of EUROSTAT). Being located in Brussels does not need to be a problem provided: 1) the secretariat gains some sort of statutory independence; 2) Member States are sufficiently organised (e.g., through the current IMPEL-Troika or a bureau) so that it operates in a pluralistic context[103], and; 3) there is continuous close contact between Commission, Member States and secretariat where strategic decisions are concerned. In addition, interviewees stressed the need to put an *eminence grise* in charge of the IMPEL (i.e., of the secretariat). This would provide leadership and give direction to the network (see below).

Looking at the size and tasks of the secretariat, it can be concluded that IMPEL is a weak network.[104] It does not have a focal point that deals with the necessary strategic organisation and the secretariat is not even sufficiently equipped for operational tasks. Moreover, weakness also derives from the characteristics of the network. As discussed above, IMPEL operates in a demanding environment. However, the network has few strategic capacities for selecting projects and does not support the upgrading of national networks. Even though, as can be seen from the development of the secretariat and the growing Commission involvement, there is a trend towards a more strongly co-

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[103] Compare Moe's principle that 'no one controls the agency, and yet the agency is under control' mentioned in the theoretical part of this study.

[104] In this chapter, weak and 'loosely coupled' are used as synonyms to describe the composition of IMPEL. They do not entail a value judgement. A 'weak' network has the advantages of being informal, but it also has disadvantages—see below. Whether or not IMPEL should be weak is a political decision depending on the preferences of national governments.

ordinated network. However, it is not clear whether this trend will be supported by additional investment in the network or in the secretariat. Besides, experts in IMPEL even cherish the informality within the network.

XIII.4. Output and Evaluation

1) Achievements

IMPEL's output consists of reports, surveys, workshops, manuals and exchange visits. Reports have covered, among others things, minimum criteria for inspection and have discussed interrelations between different pieces of legislation. Workshops have been organised on 'cement plants' and 'complaint procedures and minimum criteria for access to justice'. In addition, from the beginning onwards, 3 or 4 exchange visits have been organised each year. Apart from Greece, every country has organised such a visit for about 20-30 officials.

On the whole, the contributions IMPEL has made towards raising awareness of the practical difficulties Member States face in implementation and enforcement, are widely recognised. Furthermore, interviewees stressed positive examples that showed that experience gained in one country had been used in others. Interviewees also underlined that peer pressure has been put on national officials to take implementation and enforcement more serious. For example, it proved to be impossible politically to develop minimum inspection criteria. The report from the IMPEL network on minimum criteria was warmly received and accepted by the members of IMPEL. Although these criteria had no legal force, they nevertheless created informal objectives. Moreover, a first draft of a Commission initiative has already been produced to transform these criteria into legislation (see below).

2) Criticism

Notwithstanding these achievements, a range of critical remarks was also made by interviewees: The criticisms include:

➢ Uneven participation of Member States. In general, northern countries are more active and are more strongly represented in projects. Also the internal networks—i.e., national networks supporting the participants in IMPEL—are more advanced in northern countries.

➢ Incomplete feedback from IMPEL meetings and from projects to national, regional, and Commission officials. One of the reasons for this are the limited human resources within Member States and Commission for the active support of preparation and feedback. As a corollary, the informal pressure from IMPEL is seriously constrained.

➢ National, rather than European, project selection. The fact that projects are proposed by Member States, rather than an EU body, implies that IMPEL projects are not selected on the basis of EU priorities. Thus, IMPEL's work programme, and the way in which it is drafted, does not relate to European problems. As one of the

respondents suggested: the current 'self-selecting nature' of projects cloaks IMPEL's programme with the tacit 'legitimacy' of the European network.

➢ Predisposed beliefs about intergovernmental and informal co-operation have resulted in a specific organisational trajectory that is characterised by a weak network structure and weak intergovernmental relations. As a result, a large share of energy and time has been devoted to discussions about and tinkering with the design of the network.

➢ Lack of resources and commitment from Member States. Preparation of meetings, execution of projects and managing feedback from meetings, require more resources and better internal networks at Member State level. Hence, decision-making processes on IMPEL projects have been slow and completion of projects has generally taken more time than expected. In other words, project management is inefficient and ineffective (see also the conclusions from the plenary in Berlin 1999).

➢ IMPEL has not lived up to expectations. The objective of IMPEL was to develop a strong but informal mechanism for inspection. This, however, has not been the case. Moreover, IMPEL should have been involved in the drafting of legislation and should have provided practical advice.

➢ The legitimacy of IMPEL has been doubted. The way in which projects are selected means that it is not responsible to the EP, Council, Commission or national parliaments.

These criticisms indicate that there are doubts about the effectiveness and the legitimacy of IMPEL programmes and projects. One explanation for this is the limited attention paid to the questions of whether an informal network can be made to work effectively and legitimately, and of how to structure such a network.

XIII.5. Stakeholders and their Positions

IMPEL has been an institutional experiment, both in terms of additional service it offers to Member States and the Commission and in terms of design. The combination of the emphasis on intergovernmental co-operation and the need for Commission involvement, created a new kind of challenge to the attempt to foster co-operation between Commission and Member States. Moreover, the insistence on informal co-operation added difficulties as regards, setting up and organising the network, the work programme and the meetings. In such an experimental setting, different views on objectives and functioning of the network are to be expected.

1) The Commission

As mentioned above, the Commission was not involved at the beginning of the network. Member States preferred to keep it at bay. Moreover, some corners of the Commission were, at first, reluctant to co-operate and were afraid that IMPEL would enter into Commission territory and, in particular, encroach upon the right of initiative and the

drafting of legislation. In addition, the Commission feared that its watchdog function could be compromised. Others in the Commission thought that practical implementation was not of immediate concern to them.

These initial worries quickly disappeared. In general, Commission officials are now strong supporters and regard IMPEL as an important intermediary station between the adoption of measures and bringing Member States before the Court of Justice. They acknowledge the need to strengthen networks, in order to deal with problems arising from decentralised implementation and enforcement. At present, some are keen to influence the agenda and to reinforce the operations of IMPEL, as well as, the internal networks in Member States.[105] The voluntary nature of intergovernmental co-operation, in their opinion, is not a suitable basis for addressing sensitive issues. A stronger Commission involvement could therefore be of use.

Nevertheless, some Commission officials argue that IMPEL is intended to comprise informal co-operation between Member States and stress the value of this. Consequently, they emphasise that this is incompatible with Commission participation.

At present, the influence of the Commission is increasing, e.g., through a stronger involvement in chairing and preparation of meetings and an increasing budgetary responsibility (see below). This also results in a stronger influence on project selection. Some national officials are worried about this trend. They fear that the Commission is using IMPEL to achieve its own priorities, rather than supporting the topics that countries find interesting. Furthermore, they fear a formalisation and bureaucratisation of the network.

The link between the DG 11 and IMPEL is not restricted to implementation and enforcement. As laid down in a Council resolution (see above), the Commission is also expected to consult IMPEL on new initiatives. However, this has not yet happened, due to a lack of internal feedback between the DG 11 representatives in IMPEL and policy managers. As is the case in Member States, DG 11 has assigned one person to follow and participate in plenary meetings and projects (not a full time position).

2) The European Parliament

IMPEL is an intergovernmental body which is founded on voluntary co-operation. Thus, the EP is not involved systematically within the network. However, IMPEL reports—once accepted by the plenary—are sometimes sent to Parliament for discussion. This is not a formal obligation and MEPs have asked for a more regular exchange of information. This would also allow discussion on IMPEL's work programme.

On the whole, the EP is a proponent of co-operation between Member States within IMPEL. It recognises the difficulties inherent to implementation and enforcement and

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[105] One practical reservation for a more active involvement of the Commission is the fact that the staff of DG 11 is already over-stretched.

welcomes every attempt to address these. Thus, the EP has been happy to approve the budget of DG 11.

However, it is also very critical about the lack of legitimacy of IMPEL and of its work. Interviewees stressed the opaque manner in which projects are accepted and carried out. There is no way in which this process can be steered and controlled from a European and a democratic point of view.

The EP has a preference for a European inspectorate within the Commission (EP resolution (PE 221.176/fin., p. 10). In its view, this would provide a stronger and more legitimate instrument for implementation control. The function of this body would be to visit and examine national inspectorates. The EP is, however, of the opinion that, as long as a European inspectorate is not feasible, such alternative networks should be strengthened. Consequently, MEPs stressed the need for stronger national representation, a better overview of ongoing activities and a stronger involvement on the part of the Commission.

3) The Member States

In principle, Member States are in favour of an informal network to exchange experience. Two aspects need to be discussed in order to have a fuller picture of the position of national administrations within IMPEL, i.e., the views of the need to keep the network informal and the extent to which the countries are actually involved in the network.

a) Member States and Formalisation

The (in)formality of the network is closely related to the position of the Commission. Given the sensitive nature of implementation and, especially, enforcement, Commission participation has been a sensitive issue throughout IMPEL's short history. On the one hand, national officials and inspectors are in favour of Commission participation. It is generally recognised that the Commission is well placed to identify gaps in legislation, implementation and inspection and can, therefore, make valuable suggestions for priority projects. Moreover, the Commission's involvement is important, in order to facilitate feedback from the world of practitioners to the world of policy-makers.

In addition, as interviewees commented, IMPEL offers a tool to bring topics to the attention of the Commission. Rather than asking (lobbying) the Commission for new measures, IMPEL can be used to initiate projects, to involve DG 11 officials and thus, to convince them of the need for new EU measures.

Nevertheless, the role of the Commission has been a sensitive one. This is due, above all, to the division of powers between Commission and Member States regarding responsibilities for inspection. The interviews show that Member States wish to safeguard a clear division of responsibilities and that they sometimes fear that the Commission is using IMPEL to broaden its role in implementation and enforcement. One telling example, which demonstrates this tension, is the discussion on minimum criteria for inspections. In this case, the Commission used IMPEL's conclusions to

forward a new legislation. This, however, was strongly criticised by Member States. On the one hand, the link between IMPEL and a new Commission initiative was appreciated. On the other hand, it was felt that the Commission should not have used IMPEL to forego the normal procedures when initiating policy—particularly in the field of inspection which touches upon national policing. It was felt that the Commission should not have used the argument that 'this is what the Member States gathered in IMPEL want'. IMPEL is mainly a body of national inspectors and not of policy-makers. Policy-makers and permanent representations handle inspection criteria with great care. Consequently, what the Commission should have done, according to interviewees, was to set up committees or present a recommendation to the Council, rather than using IMPEL to legitimise proposals for new legislation.

Secondly, there is a continuous tension between Commission and Member States over priority projects. In some cases, Member States insist on informal selection of projects. On the one hand, this gives national administrations more room to present those issues, which they consider to be important. On the other hand, it prevents Member States from being confronted with sensitive topics by the Commission. Similarly, the Commission would like to use IMPEL to point to gaps in legislation and implementation. Yet, it would also like to prevent other topics from being discussed by IMPEL, e.g., because it is already working on new proposals and would not like to see its efforts confused with parallel discussions in IMPEL, or because it does not want to initiate discussions on the *acquis*.[106]

Thirdly, interviewees pointed out that Member States are sometimes reluctant to follow IMPEL conclusions up with changes in national inspection systems. The informality of the network also acts as a shield against obligations to do something with the outcome. It may be possible that in the longer run peer group pressure will reinforce the messages of IMPEL. At present, however, such pressures are weak (even though positive examples of peer group pressure are already available). Informal relations prevent a direct link between outcome of projects and adaptation at the national level.

b) The Internal Organisation of Member States

The position of Member States can be characterised by:

➢ Doubts about the appropriate character of national representatives in IMPEL. Most people in the network are concerned with inspection in a limited range of areas. According to interviews and minutes of meetings, a broader number of areas and a stronger role for lawyers and policy-makers is needed. Closer connection between the participants in IMPEL and policy-makers is required.

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[106] One example in this respect is the Aarhus convention on public participation. This topic deals with, among others, access to information and access to justice. Access to information is fairly well covered in the *acquis*. Hence, the Commission does not want to reopen this field. However, Member States felt a need to discuss it. Access to justice is hardly developed in EU legislation and a topic the Commission would like to discuss. However, this is an area that Member States would not like to open.

➤ The national focal points—the main link between IMPEL and the national administration—are generally poorly developed. The focal point is usually one person. The activities of IMPEL are basically an additional task on top of the normal workload. As a result, preparation of IMPEL meetings and feedback prove difficult. Consequently, it is not guaranteed that the lessons learned from projects are suitably communicated to the relevant policy-makers or inspectors in the Member States. Hence, at the plenary meetings in Vienna (1997) and Berlin (1999), it was concluded that more attention should be devoted to improving national networks. As a start, the national co-ordinators have been asked to explain national systems in IMPEL's newsletter, *Spotlight*.

➤ Major differences between Member States in terms of commitment to environment policy, capacities for implementation and enforcement and internal management of the IMPEL network. Hence, there is an uneven participation of countries in the network. This is another major drawback as regards the effectiveness of informal learning and informal diffusion of experience.

➤ Major differences in the way in which regions are involved in, and informed of, IMPEL. According to interviewees, federal countries, in particular, prove to have difficulties in this respect. Practical implementation and inspection are, generally speaking, tasks dealt with at these lower levels of administration. Their participation is, therefore, an important point for concern. On the one hand, Member States are positive about IMPEL and about the informal nature of the network. On the other hand, an effective network requires a more even participation from Member States and from local governments. Moreover, national commitment to IMPEL and preparedness to ensure effective feedback, are issues requiring attention.

XIII.6. Budget

Originally, the purely intergovernmental arrangement also implied that all costs were covered by the Member States (support for projects could, however, be obtained through tenders for Community funding). At the request of the Council in 1992, IMPEL is now supported by the Commission out of the 'common pot' of DG 11. This has been formally recognised since 1997, at the insistence of the EP.

At present, the budget of IMPEL amounts to, approximately, 400.000 Euro. This includes the subsidy from the Commission and the contributions from Member States to the projects.

The approval of the budget in the second plenary of the year, depends on a 'green light' for the work programme. Subsequently, projects can be formally submitted to the Commission, in order to obtain the subsidy.

According to the interviewees, this is a lengthy procedure. Projects and budget have to be accepted by the plenary before the Commission awards grants in an additional

round.[107] Moreover, decision taking within the Commission is generally time consuming. Also Member States proved to have difficulties in filling in the subsidy applications and sending them in at the appropriate times during the year (4 times a year).

The lengthy procedure means that project initiation can last more then a year. Hence, in some cases, Member States preferred not to go through this lengthy process, but have, instead, gone ahead without co-finance from the Commission.

Furthermore, this budget procedure has annoyed IMPEL participants from both the Commission and Member States, because it makes project selection dependent on the Commission—instead of being an informal intergovernmental co-operation.

XIII.7. Language

As in the case of the EEA and other agencies, language is also a problem in IMPEL. The dominant language is English (due to the strong involvement of northern Member States). This creates an additional barrier in the creation of an EU-wide network. It is likely to create additional problems in the future, due to efforts to broaden participation in IMPEL meetings and projects, to include more local experts and technicians. Suggestions have been put forward, on several occasions, to rely more on French and German, in order to facilitate and broaden participation. English, however, is expected to remain the documentation language.[108]

The language issue highlights the limitations of an informal European network. Certain preconditions have to be fulfilled before a network can become operative. Language is one of them in a European network and demands investment.

XIII.8. The Wider Network—AC IMPEL and INECE

IMPEL is not free-standing, but is also a part of two additional emerging networks. The major addition is the network for applicant countries (AC IMPEL)—created by the 15 Member States organised in IMPEL. The purpose of AC IMPEL is to facilitate implementation and enforcement in the applicant countries, and to provide an extra 'catching up' service. AC IMPEL consists of a separate plenary and additional projects groups. Moreover, the 11 candidate countries are invited to take part in IMPEL projects. Furthermore, meetings are organised in the applicant countries to tighten links between the two networks and to diffuse IMPEL experience.

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[107] Moreover, there is legal difficulty attached to a Commission decision on IMPEL subsidies. The Commission needs to have a legal basis for each subsidised project (Decision from the ECJ, 12 Mai 1998). Inspection is an area not duly covered in the Treaty and hence IMPEL may suffer from this Court ruling.

[108] See, e.g., the conclusions of the plenary in Berlin (June 1999).

The main dilemma for AC IMPEL, is the obtaining of resources for active involvement and participation in projects. Some support is obtained through the Phare programme. As with the general enlargement problem, size of plenary and other meetings will become issues after accession.

The second wider network in which IMPEL is embedded is the global IMPEL initiative (INECE—International Network on Environmental Compliance and Enforcement). This network was fostered by participants within IMPEL (especially the Dutch members). IMPEL has been presented as a model for exchanging experience in implementation of environment policy at a wider international level. So far, two global meetings have been organised.

XIII.9. Analysis—From Infant to Toddler

IMPEL is a peculiar agency. EMEA, EEA, and EUROSTAT, are all organisations with a director (-general), a staff and a building. Moreover, these agencies are focal points, or nodes, within a network. In comparison, IMPEL is hardly more than a loosely coupled network and has no focal organisation.

In this section we will deal with the question of whether IMPEL can still be called an agency. If so, then we have the interesting situation of an agency without an organisation. In addition, we will discuss the advantages and disadvantages of this form of co-operation. Some regard IMPEL as a major innovation in intergovernmental co-operation, whereas others are sceptical about whether it can make a systematic and legitimate contribution to European integration. In the discussion, we will put forward suggestions for strengthening the effectiveness and efficiency of the network.

1) Is IMPEL an—Effective and Accountable—Agency?

IMPEL is a network, but is it also an agency? And if it is an agency, is it an effective agency? The dominant characteristic of an organisation that makes it an agency, as presented in chapter IV, is its independence in carrying out its work programme. In this respect IMPEL, can be seen as an agency. The Member States put forward projects. Once these projects are decided on in the plenary, and provided they can be financed, a multinational team of experts and officials carry them out. The conclusions these teams arrive at, are a matter for the project teams alone. Here, the project teams are completely independent and examples have been found of outcomes that did not please national governments or the Commission.[109]

The independence of IMPEL project groups is not statutory. IMPEL is also a weak network in terms of status. The formal basis of IMPEL consists mainly of 'annexes' to the minutes of plenary meetings. The functioning of IMPEL is discussed at the plenary meetings and the conclusions are presented as annexes. These conclusions have, to our

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[109] See the minimum inspection criteria mentioned above where the conclusions from the experts and inspectors did not receive the approval of national policy-makers.

knowledge, not resulted in anything like statutes or a document providing IMPEL with a legal basis. As the interviews showed, the experts and technicians gathered in IMPEL have professional interests and standards and are not interested in a legal basis for the network or in a delineation of tasks and responsibilities.[110] Hence, IMPEL does not have, and according to insiders does not need, statutory independence. Its professional standards guarantee the independence of the participants.

IMPEL may be an agency, but is it an effective, efficient and accountable agency (or network)? Several design features have been discussed in the Chapters above which influence the way in which the tasks are exercised and the way in which developments are monitored and controlled. These are, in addition to statutory independence:

1. Governance structures, among which, a) procedures for appointing a director who defends the values of the independent agency, b) and a pluralistic board or scientific committee.

2. Rules for decision-making.

3. Accountability structures: budgetary reviews, expert reviews, citizens' complaint procedures and openness.

4. Internal organisation of the network within the Commission and within the Member States.

It is in these areas where the informal—loosely coupled—nature IMPEL becomes apparent.

First of all, as a matter of principle, IMPEL does not have a forceful governance structure. The secretariat is limited in size, functions and power. Nor does it have strong leadership in the form of a highly qualified and prestigious director who represents and defends the values of the agency from a substantive and EU point of view. This does not mean that there is no leadership at all. There are a number of national officials and inspectors who have been playing an important role in pulling the network together (the 'godfathers' of IMPEL). However, these are no people who are devoted to IMPEL full time. Moreover, theses are mainly national officials from a few northern Member States—i.e., not generally acknowledged as independent or 'European'.

Furthermore, the network operates without a pluralistic board. Instead, it is supervised and directed by the Council Presidency (Troika) and the Commission. The Presidency is constantly changing and also varies in terms of prestige and interest in IMPEL. Also the guidance that the Commission can give, is limited due to the sensitivities discussed

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[110] When asked, an expert strongly involved in the development of IMPEL was very amused: 'Why would we, the technicians, be interested in statutes?' This interviewee emphasised the fact that they are professionals and that their behaviour therefore need not be prescribed nor their independence safeguarded. In this respect, IMPEL differs from networks of policy-makers for whom statutory independence is more of an issue.

above. Hence, an informal network is, in the case of IMPEL, commensurate with a weak governance structure. Neither is the EP strongly involved.

A pluralistic board could consist of independent experts, Commission, technical experts or experts designated by the EP. At present, IMPEL is largely driven by proposals from Member States. It is, as interviewees argued, largely a 'self-selecting' network. Projects are generally not refused because they can go ahead as long as a few Member States are interested. Hence, there is little debate over priorities or whether projects selected are also those most needed from a European point of view. A stronger degree of involvement on the part of experts from outside the national sphere could, for example, be facilitated by involving university researchers or experts from NGOs.[111] They could provide a scientific or European perspective on programmes and priorities and present needs for IMPEL activities as experts from outside the policy world. They could question the relevance of projects proposed by inspectors. Moreover, the Commission could contribute its in-depth knowledge of lacunae in implementation and enforcement. Hence, DG 11 officials could be more involved in representing the European point of view. Technical experts can pinpoint activities, on the basis of their-hands-on experience.

Such a collection of professionals, academic experts and Commission officials, could reinforce discussion about priorities and content and could evaluate the outcome of projects. It is quite likely that such a form of pluralistic decision-making will lead to a higher awareness of IMPEL projects and of their outcome (e.g., because they more widely recognised as being important).

The interviews show that, at present, IMPEL projects lack credibility (e.g., too much emphasis on a limited number of areas, domination of the interests of only a few Member States, projects not selected on the basis of an EU perspective, no critical discussion about programmes and priorities due to 'self-selection', use of EU funds without EP involvement). A stronger pluralistic discussion about projects might enhance its credibility.

Secondly, while IMPEL does have has rules about decision-making and structures, these have been a continuous point of debate. They are regarded as cumbersome (difficulty in filling in forms and lengthy procedures), ineffective (continuous discussion about 4 working groups, 2 standing committees, project groups only) as well as non-binding (Member States can go ahead anyway). Hence, procedural transparency and legitimacy are weak (see, e.g., the EP critique). Decision-making on projects depends very much on the preferences of individual countries. This, of course, is closely connected to the objective of IMPEL, i.e., to have a forum for discussing national experience in implementation and enforcement. The formulation of the programme clearly demonstrates the tension between informal on the one hand relations and effectiveness and legitimacy on the other hand.

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[111] Contrary to the EEA, IMPEL does not have a separate scientific committee. This committee provides the EEA with an additional guarantee for independent output and for selecting credible projects. Instead, the driving force of IMPEL projects are the (official and political) priorities of Member States.

Thirdly, the operation of the network depends on accountability structures, such as budgetary and expert reviews, citizens' complaint procedures and openness. As IMPEL is an informal network, there are weak budget constraints on projects. Of course, the budget is limited and resources are scarce, but projects financed by Member States can go ahead without IMPEL approval. Moreover, projects are only subject to weak professional review. The outcome of projects is presented to the plenary session, and reports are distributed throughout the network, but their content is not systematically analysed or evaluated. Neither do citizens' complaint procedures apply.

The weak review procedures again underline the informal nature of IMPEL. Nevertheless, a sort of public accountability is foreseen in the sense that the network is investing in a wide distribution of reports and conclusions (also within the AC IMPEL network). Mechanisms for making IMPEL information open to the public, and accessible, include the newsletter (*Spotlight*), distribution through the national focal points and an internet site.

Finally, the effectiveness of the agency, depends on the internal management of the Member States and the Commission. As discussed above, little attention has been paid to this aspect of network management, both at national level and within the Commission. As was the case with the EEA, a new network was initiated without a review of internal management issues or of the consequences for organisations involved.

2) The (Dis)advantages of an Informal Network and the Politics of Networking

To conclude, IMPEL is a weak or loosely coupled network. It has small a secretariat that only performs operational tasks—even though a need for reinforcing managerial roles has been reiterated on several occasions. It depends on voluntary co-operation and has limited resources or powers to lure more Member States deeper into projects. Also due to its informal nature, there is no mechanism to ensure the follow-up of IMPEL projects. Furthermore, it has no director who can assert leadership and its projects are determined mainly by 'self-selection'. Moreover, contrary to the EEA and EUROSTAT, there are hardly any resources for upgrading the network and for strengthening capacities in the weaker EU Member States.

The conclusion that IMPEL is a weak network can be easily be mistaken as a critique. Before anything can be said about ways to formalise or strengthen the network, we first have to recapitulate the strengths and weaknesses of a loosely coupled network.

As discussed above, IMPEL provides a useful forum for exchanging experience and it fills a gap in EU policy-making. Moreover, project groups have produced interesting reports and manuals. Furthermore, examples can be found of cases in which peer group pressure and exchange visits resulted in adaptation of national implementation structures and procedures.

The drawbacks of IMPEL include: the slow development of the network; limited feedback between IMPEL and national administrations; lack of an EU focus in project

selection and; concern over degree of commitment from participants. Moreover, interviewees were often quite frustrated about the lack of discipline in carrying out and finalising projects (see also the Berlin conclusions).

One more general disadvantage of this type of informal network can be derived from organisational science literature. Complex and sensitive areas usually demand higher levels of organisation. Informal co-operation is more suitable for situations in which participants are relatively homogenous, where consensus exists about diagnoses and solutions, and there is a small group of people that know and trust each other. Larger settings with major differences in terms of interests and capacities, with a weak history in terms of co-operation, and with an underdeveloped degree of mutual trust, generally demand more elaborate operational and strategic capacities. The loosely co-ordinated nature of IMPEL can easily be used to explain its slow development and some of the frustrations with project selection and timely completion of the projects.

However, from a political point of view, IMPEL has been an experiment. Its objective is to create a basis for co-operation and to create mutual trust between individual countries. Given the gap between the formulation of EU legislation and action against non-compliant Member States, there was little experience of common problem-solving. In this situation, it is quite understandable that a tighter and more organised way of working would have been politically unacceptable. National governments feared a widening of the powers of the Commission in the field of enforcement and feared being controlled or pressurised by the Commission or by other Member States (e.g., in the form of one country examining the inspection in another). Hence, IMPEL has been an experiment, as well as a basis for deepening informal co-operation. Stronger organisational arrangements may be necessary in sensitive situations, but they are also more difficult to create politically.

The informal nature of the network can, therefore, be seen as the price for progress. It may have facilitated the creation of this new instrument.

Nevertheless, there is a question of whether a more systematic development of the network would have been possible. Furthermore, it can be asked whether this network will be viable in the future. First of all, considering its beginnings, it is possible to argue that a more systematic development of the network, a stronger secretariat and clearer mechanisms for formulating the work programme could have deepened discussions about projects and follow-up activities. Moreover, more careful diagnosis of problems and analysis of workable structures could have prevented problems now visible in the network. Paradoxically, due to the emphasis on the informal nature of IMPEL—and hence due to the lack of interest in organisational design—a great deal of time and effort has been devoted to the design of the network. Thus, in addition to transmitting positive impressions about the progress IMPEL has made, interviewees also showed signs of frustration regarding slow development and poor project discipline. As a result, one national official strongly involved in IMPEL summarised its development as 'a growth from infant to toddler'.

To guarantee the longer term viability of the network, it seems that, given the amount of debates and papers on the structure of IMPEL, the time has come for taking decisions about the structure of IMPEL. Topics that need diagnosis and attention include, among

others: the size and roles of the secretariat, the language base, programme selection, leadership, links with the EEA, incorporation of the EP, monitoring follow up, the strengths and suitability of national networks. One step could be to widen the role and powers of the secretariat into a board (or bureau – cf. the EEA). This would strengthen IMPEL's strategic capacities and programme development and ensure continuity in leadership. Upgrading the secretariat to include, at least, one 'field leader' (i.e., a senior expert or official with a recognised reputation) could be a first step.

3) Conclusions

It is possible to regard IMPEL as an agency – albeit in the form of a loosely coupled network. Despite IMPEL's progress, a small agency is hard to reconcile with a complex and sensitive field of work. As was the case with the EEA, this network was created without much attention to organisational design (of the network and of the internal management in the Commission and in national administrations) and has, therefore, evolved through 'learning by doing'.

From this perspective, the need for learning-by-doing could have been lessened had more attention been paid to the need for clear organisational design. This, of course, implies that more attention should have been given to explaining to officials and politicians why setting up an agency and a network needs more attention and resources.[112]

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[112] Unless of course, as more cynical observer might do, one concludes that officials and politicians do not learn from past experience.

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Annex 2: List of interviewees

Mr Cees Bastmeijer, Ministry of Housing, Spatial Planning and Environment, The Hague (NL); nd Catholic University Brabant, Tilburg (NL)

Mr Ken Collins, Chairman, Committee on the Environment, Public Health an Consumer Protection, Member of the European Parliament for Strathclyde East, UK.

Mr Rob Donkers, DG XI, European Commission, Brussels (B)

Mr Ed Eggink, Head Enforcement and Monitoring Division, Province of Limburg, Maastricht (NL)

Mr Neil Emott, Expert Environmental Legislation, English Environment Agency

Mr Kevin Flowers, DG XI, European Commission, Brussels (B)

Mr Rob Glaser, National Coordinator (IMPEL), Inspector International Affairs, Inspectorate General for the Environment, Middelburg (NL)

Ms Betske Goinga, Secretariat, DG XI, European Commission, Brussels (B)

Mr Henrik Gerner Hansen, Principal Administrator, Committee on the Environment, Public Health and Consumer Protection, European Parliament, Brussels (B)

Ms Susan Hay, DG XI, European Commission, Brussels (B)

Ms Annemarie van der Heyden, Project Access to Justice (IMPEL), Ministry of Housing, Spatial Planning and Environment, The Hague (NL)

Ms Krisztina Horvath, Ministry of Housing, Spatial Planning and Environment, The Hague (NL)

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Mr Ernst Klatte, Project Manager, European Environment Agency, Copenhagen (DK)

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Mr Georges Kremlis, Representative for the PM (IMPEL), DG X1, European Commission, Brussels (B)

Mr Jurgen Lefeverre, Staff Lawyer, Foundation for International Environmental Law and Development, University of London (UK)

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Part Five

Conclusions

Crisis and Credibility

(Giandomenico Majone)

The central theme of this report is that the current crisis of EC Regulation is, above all, a crisis of credibility. Like paper money, regulation is only as good as the confidence people have in it. Popular confidence in the efficacy of EC regulation has been badly shaken by the series of crises that have crippled the market for foodstuffs; but these episodes are only the symptom of a more widespread dissatisfaction with a system which seems to be increasingly unable to deliver what it promises—or what consumers and economic actors expect it to deliver. Moreover, because rule-making—positive integration—is so central to EC policy-making, any systemic shock, such as the events which led to the resignation of the Santer Commission, poses a direct threat to the credibility of Community regulators.

That the EC distinctive approach to regulation is seriously flawed, is hardly a new observation. Indeed, many reforms undertaken since the 1980s—the shift from total to minimum harmonisation, the New Approach to technical standardisation, the establishment of mutual recognition as a pivotal regulatory principle, qualified majority voting for internal market regulation—may be interpreted as attempts to increase the credibility of European regulations. However, these important reforms were driven more by immediate policy concerns than by a clear perception of the credibility problem.

This problem has several roots which, for the sake of simplicity, we may categorise into internal and external threats to credibility. Internal threats arise from the way the regulatory system has been designed and is operated, while external threats originate in the social, economic, or political environment in which the system is embedded.

The major internal threat to credibility identified by the present report, is the serious mismatch between the Community's highly complex and differentiated tasks, and the available administrative instruments. In sector after sector, experience has shown that legislative harmonisation is not sufficient to create and sustain a truly integrated market. Regulation is not achieved simply by passing a law—or, by approximating national laws—but requires detailed knowledge of, and intimate involvement with the regulated activity. In all industrialised countries, this functional need has led, eventually, to the creation of specialised bodies—agencies, boards, commissions, tribunals—capable of fact-finding, rule-making or adjudication, and enforcement. The lack of such administrative infrastructure at European level is a serious obstacle to the completion of the internal market.

In some areas, such as the public utilities, the problem is compounded by the fact that many Member States still lack regulatory authorities that are sufficiently credible in terms of expertise and independence. In other cases, the credibility of Community

regulators is threatened less by a lack of administrative and legal instruments than by scarcity of resources. For example, only the limited resources available to EC competition regulators can explain why the Antitrust Division of the US Department of Justice, rather than DG IV, discovered and successfully prosecuted the 'vitamin cartel'—a cartel composed by European firms. To reduce such internal threats to credibility, the Community must be able to assume responsibility for the consistent and effective enforcement of European rules throughout the Union.

Among the external threats to credibility, this report emphasises the risks inherent to the process of progressive parliamentarisation of the Commission. We view such a process as both unavoidable and positive from a normative viewpoint. At the same time, we believe that the increasing politicisation of the Commission is the strongest argument in favour of an increased recourse to non-majoritarian institutions of regulatory policy-making at the European level. In this respect, too, national experiences are instructive. All mature democracies delegate the implementation of regulatory law to specialised agencies operating at arm's length from government. The point of insulating regulators from the political process is to enhance the credibility of regulatory commitments. Independent regulators have strong incentives to pursue the statutory objectives assigned to their agencies, even where the objectives are no longer politically popular.

In short, we argue that independent agencies represent an appropriate response to internal, as well as, external threats to the credibility of EC regulation. This conclusion is based on the general characteristics of the regulatory process, but also on the specific features of the Community system, such as, the need to preserve the balance between the European institutions and the Member States, and between the political and non-political branches of the Union.

To prevent misunderstandings, it is important to keep in mind that the independence of regulatory agencies is relative. Even the powerful Independent Regulatory Commissions in the United States, are independent only in the sense that they operate outside the presidential hierarchy, and that 'Commissioners' cannot be removed from office by simple virtue of their disagreement with presidential policy. All Commissioners are created by congressionally enacted statutes; their legal authority and their objectives are defined and limited by such statutes. In general, this report shows that political principals have at their disposal, large number of substantive and procedural means to oversee agencies and keep them accountable, without interfering in their day-to-day today decision-making. In sum, agency status does not require that the agency exercises its power with complete independence, but, rather, that it possesses the legal authority to take a final and binding action affecting the rights and obligations of individuals. If an administrative body is in charge of a programme, it is an agency with regard to that programme, despite its subordinate position in other respects. The usefulness of this definition is shown quite clearly by the case study of Eurostat, which appears as Chapter XIII of this report.

On the other hand, organisations like EMEA and the European Environment Agency, are agencies de facto but not de jure. Legal and, more concretely, political reasons may explain, but do not justify, this anomaly: in the long run, the resulting ambiguity can, itself, become a threat to regulatory credibility. In view of the growing demand for European agencies in areas ranging from food safety and telecommunication to energy

and transportation, it is important that the Member States and European institutions themselves, become convinced of the advantages of the clear assignment of responsibilities, which is the essence of the agency model.

This model raises doubts about the wisdom of a generalised use of the principle of collegial decision-making—even for decisions not involving political discretion—but it does not in any way challenge the EC/U Treaties-based powers and responsibilities of the Commission. On the contrary, the delegation of implementing power to autonomous agencies would permit the Commission to concentrate on the tasks that are truly essential to the process of European integration.

Similarly, European agencies are not meant top replace national regulatory authorities; rather, they would form the central node of trans-national networks including national regulators, as well as international organisations. Such networks are discussed at some length in the report, but it may be worthwhile again to emphasise their 'super-additive' property. By this, we mean that a well-functioning network is a good deal more than a mere sum of administrative bodies: the nature of each agency in the network is positively changed by the very fact of membership.

As noted in Chapter VII.3, an agency that sees itself as part of a trans-national network of institutions pursuing similar objectives, rather than as a marginal addition to a large central bureaucracy pursuing a variety of objectives, is more motivated to defend its professional standards and policy commitments against external influences, and to co-operate with the other members of the network. This is because the agency executives have a strong incentive to maintain their reputation in the eyes of their international colleagues. Unprofessional, self-seeking or politically motivated behaviour would compromise their international reputation and make co-operation more difficult to achieve in the future.

According to the jurisprudence of the ECJ, Article 5 of the Rome Treaty imposes a reciprocal obligation of co-operation, not only between Community institutions and national authorities, but also between the national authorities themselves. Traditionally, this general principle has been honoured in the breach, but networks of autonomous agencies may provide the best conditions for its political implementation.