



DECEMBER 2018

## EU agencies after 25 years: a missed opportunity to enhance EU governance\*

*“Nothing is possible without men, but nothing lasts without institutions.”*

Jean Monnet

### 1 Introduction: The potential of EU agencies

The EU needs effective tools of governance<sup>1</sup> to match its elaborate policy ambitions and to ensure that its economic standards warrant global economic competitiveness.

In essence, European integration builds largely on legislation. Yet, fitting legislation and effective implementation, monitoring and enforcement have remained a challenge, as underlined by crises such as in migration, labour mobility, and financial markets, and by the drift of the EMU's fiscal rules. As is normal in political negotiations<sup>2</sup>, a great deal of political energy is devoted to finding (legal) compromises. Either due to an inclination to avoid complicating political negotiations with concerns over implementation and enforcement, due to an underdeveloped interest in matching instruments to policy ambitions<sup>3</sup>, or due to resistances to change existing structures at EU and national levels, effective delivery has remained problematic. Trust in the EU and mutual trust between member states in terms of capacities to deliver (output legitimacy) are at stake without credible national and

---

\* This paper is part of a longer-term study of the EU's emerging multilevel inspection capacities. A follow-up of this research is the application of the findings of this paper to the EMU agencies that are currently being created (Schout and Schwieter, forthcoming). It is furthermore part of three papers on EU Agencies, EU Added Value and the EU's Better Regulation policy that, together, give insight into the state of the EU's efforts to strengthen evidence based policy making in the EU. These papers are: Schout, A., D. Bevacqua (2018), *EU Added Value – Fact-based policy or politicised facts?* The Hague: Clingendael Policy Brief, and: Schout, A., C. Schwieter (2018), *Two decades of Better Regulation in the EU Commission – Towards evidence-based policymaking?* The Hague: Clingendael Policy Brief. They can be found on [the Clingendael website](#).

1 Broadly defined, tools of governance are markets (competition), networks, and hierarchies (hierarchical steering e.g. through legislation): Powell (1990), Schout 2011.

---

2 Pressman and Wildavsky 1973; Schout and Jordan 2010.

3 Schout and Schwieter, forthcoming.

EU administrative structures to implement, monitor and enforce policies.<sup>4</sup>

Responsibility for implementation and enforcement are shared<sup>5</sup> between member states, which are generally responsible for first-order control, and the EU Commission, generally responsible for second-order control (monitoring the management of implementation in the member states). Given the mutual dependence on national and European administrations, the EU is prone to administrative deficits. Hence, although Juncker presents his 'the EU has to deliver results'<sup>6</sup> as a major *policy* challenge, it would have been equally wise of him to reflect on *how* to deliver results, i.e. on the way instruments are designed in terms of national and EU responsibilities and capacities. The Commission's Better Regulation Communication (Com2016/615) discusses delivery in terms of numbers of regulatory proposals. Focus in legislative ambitions is of course important. Yet, it misses the shared obligations as regards effective implementation, monitoring and enforcement, and related instruments such as EU agencies and their networks of national counterparts. Agencies and their networks formed part and parcel of the reflections on EU governance and better regulation policies.<sup>7</sup> Agencies, at their own – national or EU – level of government, can contribute to fact-finding and supervision while the related networks that bind them together are required to ensure the emergence of epistemic communities with shared professional values.<sup>8</sup>

EU agencies and their subsidiarity-based networks of national counterparts are components of the EU's multilevel administrative system. The EU now has 25 years of experience with EU agencies. Agencies became a theme in the search

for responses to the credibility crisis<sup>9</sup> that the EU suffered as a result of the activist ambitions of Delors and the fall of the Santer Commission. Once hailed as a major addition and as a professionalization of EU governance, the question has to be asked what has come of the alleged agencification of the EU's polity. This question is of considerable practical value given the renewed interest in EU agencies due to the current developments in the banking union (ESMA, EBA, ESA, ESFS, EIOPA)<sup>10</sup>, macroeconomic supervision (independent fiscal institutions, the European fiscal board and national productivity boards<sup>11</sup>), the initiative for a European labour authority<sup>12</sup>, the strengthening of border control (Frontex, EASO), the ongoing discussion about keeping the Regulatory Scrutiny Board attached to Commission or placing it at a distance in an independent body<sup>13</sup>, and the elaboration of the European statistical system<sup>14</sup>. The ECB can also be regarded as an EU agency.<sup>15</sup> Moreover, Merkel<sup>16</sup>, in her interview on the future of Europe, addressed key agency questions related to the design of the ESM/EMF, the use of the Single Resolution Fund, and her preference for keeping the European Refugee Agency independent from the Commission. Her suggestions about the future of the EMU are prematurely depicted as representing an intergovernmental view.<sup>17</sup> She might as well have alluded to a supranational union governed through EU agencies. Combining a supranational agency and subsidiarity-based network of national agencies, the agency model does not easily fit into the traditional intergovernmental-supranational dichotomy.

4 Majone 1996.

5 Rijsbergen and Rijsbergen 2016). Scholten 2017.

6 J.-C. Juncker (2015), *State of the Union: Time for Honesty, Unity and Solidarity*, Strasbourg, 9 September.

7 European Commission (2001) *European Governance: A White Paper*, COM(2001)428.

8 Selznick 1949, Sorensen & Torfing 2007; Kleef et al 2017.

9 Majone 2002.

10 Lonardo 2016.

11 Schout and Schwieter, 2018.

12 COM(2018) 131 final, 2018/0064 (COD).

13 Smulders, Paquet 2018.

14 Eurostat ESS Vision 2020: Building the future of European Statistics. <https://ec.europa.eu/eurostat/documents/7330775/7339647/ESS+vision+2020+brochure/4baffcaa-9469-4372-b1ea-40784ca1db62>

15 Busuioc 2010; Tucker, 2018.

16 <https://www.deutschland-kann-das.de/dekd/politik/aktuelles/europa-muss-handlungsaehig-sein-1141498>

17 'Merkel on EU reform: a decryption'. Jacques Delors Institute, 6 June 2018.

The question about the outcomes of the EU's agencification is also of major analytical value in assessing and explaining the (limited) outcome of the 'governance turn' that started 25 years ago at a more general level. Moreover, both academia and practitioners need to be able to address the question of what the role of EU agencies could potentially be, and how to get the design of agencies right so that they can act as independent bodies in the context of political decision making.

Section 2 addresses the emergence of agencies (generally) in public management literature as well as the rise of EU agencies as a core element of EU governance. Section 3 offers three complementary approaches to understanding the emergence of EU agencies: as a fashion, as a functionalistic imperative, and as a political phenomenon.<sup>18</sup> The state of play 25 years after the major agencification steps is reviewed in section 4. Section 5 discusses the policy relevance of the main findings. In addition to interviews conducted for previous agency studies (see bibliography), this paper also draws on interviews with national and EU officials and national and European parliamentarians involved in setting up agencies in different policy areas.

## 2 EU agencies: definitions and functions

### Agencies as part of the New Public Management revolution

An agency can be defined as a body that has its own legal personality and a certain degree of administrative and financial autonomy in carrying out its tasks as specified by the government. Inspired by the slogan 'let managers manage', New Public Management (NPM) spurred decentralisation of authority and empowerment of public authorities around 1990.<sup>19</sup> This marked a separation between politics and expert input to arrive at fact-based policies and independent

monitoring of trends. This decentralisation and fragmentation of policy processes is complemented by the search for suitable ex ante and ex post accountability structures such as task definitions, rules of procedure, transparency protocols, code books, supervisory boards (input legitimacy) and performance indicators (output control).<sup>20</sup> Agencies have become part and parcel of the checks and balances in public sector governance. They are an essential part of governance modernization in technologically advanced societies by fragmenting the policy space between different types of institutions and actors, by offering independent data gathering, and independent monitoring and enforcement,<sup>21</sup> and by contributing to professionalization of management – leaving value judgements and standard setting to the political level (i.e. through the Community method). By adding professionalisation to politics, agencies should not be equated with technocratization seeing that tasks and parameters are defined at the political level.<sup>22</sup> Agencification is about improving political discussions and implementation of political decisions. Moreover, operating within politically defined margins only works in times of reasonable stability – as also underlined by the need for the ECB to explore the margins of its mandate.<sup>23</sup> New public management modernisation has been influenced by administrative cultures. At national level, agencification was particularly important in the Nordic countries, the UK and the Netherlands.<sup>24</sup> An important question is whether the EU's administrative model is moving towards a Nordic type of agency system.

### The EU's agencification

Inspired by the NPM revolution and triggered by necessity, agencies also became a theme in EU reform. During the 1990s, the EU was rapidly widening and deepening. The internal market programme (the 1992 programme), the introduction of

---

18 Allison 1971. Bendor and Hammond 1992.

19 Osborn and Gaebler, 1993; Hood 1995.

20 Curtin 2005.

21 Börzel and Risse 2010; Coen and Thatcher 2008; Eberlein and Newman 2008; Lehmkuhl 2008.

22 Larch and Braendle 2017, p.1.

23 Majone 2009.

24 Boin, James and Lodge 2016.

the euro, the requirements of new border management systems in Schengen, and enlargement exposed that the EU suffered from overload and a “management deficit”.<sup>25</sup> EU agencies, as part of the wider search for “new”<sup>26</sup> governance instruments, was one of the planks in the EU’s management modernisation.

A specific, and important, feature of EU agencies is that they cooperate closely with national agencies.<sup>27</sup> For different reasons, most EU agencies should be expected to operate as hubs in agency networks. First of all, as underlined by Nobel-Prize winner Herbert Simon, a complex system, which the EU is in many ways, has to be decomposed to be effective and resilient.<sup>28</sup> Secondly, the subsidiarity principle creates expectations as regards the design of the EU’s multilevel administration with a view to efficiency, and creating ownership, local flexibility and visibility. Governance in the EU therefore often involves subsidiarity-based networks.<sup>29</sup>

The impression exists that there are many EU agencies, leading academic literature to refer to ‘agency fever’ and a ‘limitless appetite’ for agencies.<sup>30</sup> The website of the EU Commission lists over 40 agencies.<sup>31</sup> In addition, new agencies, such as a European Monetary Fund, are being explored and existing agencies, such as Frontex, are being reinforced. On top of the official EU agencies, Eurostat, the ECB and many less known bodies and networks resemble agency-type arrangements.<sup>32</sup> Nevertheless, it is equally possible to claim that there are only few agency-type bodies and networks in the EU. For example a recent study of the EU’s rule of law policy<sup>33</sup> finds that little attention has been given to creating agency-type arrangements and that the design of the

EU’s instrumentation is highly informal and therefore overly weak. Moreover, studies in the Netherlands show that, depending on the definition, agency arrangements are more widely used at the national level.<sup>34</sup>

### 3 EU agencies as innovation?

Taking stock of three waves of agencification<sup>35</sup> in the EU in 25 years, some conclusions can be drawn about their impact. The development of (semi-)independent agencies and networks has been studied from functional and political perspectives as well as a reflection of administrative fashion.<sup>36</sup>

#### *EU agencies as a fashion*

The current mood swing in the EU seems to be away from independent authorities and towards putting politics first. Commission President Juncker presents the Commission as a “very” political body that “should politicise everything”.<sup>37</sup> The euro crisis, a perceived investment gap, high (youth) unemployment, the migration crisis as well as institutional developments such as the Spitzenkandidaten procedure have contributed to the politicisation of the Commission<sup>38</sup>. This has coincided with discussions over e.g. the shifting interpretation of the independence of central banks. ‘Independence’ has acquired the connotation of “unelected technocrats to do the ‘dirty work’” and being overly concerned with efficiency.<sup>39</sup> Under the influence of crisis, the attention for ‘politics’ as form of governance mechanism seems to have risen among practitioners and in academia.<sup>40</sup> During the German elections Martin Schulz created the impression that “we are not the mushy technocrats of public imagination

25 Metcalfe 1992.

26 Hodson and Maher 2001.

27 Dehouse 1997.

28 Groenleer 2016.

29 Schout and Jordan 2010.

30 Busuioc, 2010; Geradin and Petit 2004: 4

31 [https://europa.eu/european-union/about-eu/agencies/decentralised-agencies\\_en](https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en)

32 Everson et al 1999.

33 Schout and Luining 2018.

34 ABD 2013.

35 Groenleer 2009.

36 Chiti 2009; Börzel and Risse 2010; Henry 2007.

37 Juncker, State of the Union, 2015.

38 e.g. Hartlapp 2017.

39 Transparency International EU (2017), Collins, P (2004). Balls, E, J Howat and A Stansbury (2016). de Haan and Eijffinger (2016). Fischer (2015). Tucker (2018).

40 Van Middelaar, 2017.

but idealists”<sup>41</sup>. Visionary leadership has its value and is part of the governance tools. Yet, pitting politics versus technocracy marks the shift away from the earlier governance debate about complementary political and depoliticised tools of governance.

Another sign of agencies being out of fashion is the dislike of creating new bodies and agencies, and the preference for streamlining EU decision making and for reducing “complexity” by reeling in outside bodies rather than creating new ones (e.g. EMU reflection paper 2017<sup>42</sup>). A comparable impression can be found at the national level, namely that EU agencies lead to ever more “useless bureaucracy”.<sup>43</sup> When discussing the creation of new EU agencies, national and EU officials explained that they try to avoid new EU agencies. EU agencies, their potential strengths and how to set them up in relation to subsidiarity-based networks do not seem to have generated a deep understanding among practitioners.

However, in some areas, such as EMU, agency-type arrangements are back on the agenda and are pushed by the ECB, Commission and IMF.<sup>44</sup> It now seems to fit the logic of appropriateness (March and Olsen 1989) that eurozone countries have fiscal and economic watchdogs. Yet, their chances of success are limited given their position as “neglected” bodies.<sup>45</sup> The ambitions with the new EMU bodies are very modest.<sup>46</sup> As regards management modernisation, agencification seems to have been a temporary fashion in the EU, if at all. This probably tells us something about North EU influence on the design of the EU’s

institutions. Even though new agencies are now on the agenda, it seems they are mostly on it as light tools of governance.

### *Functionalist analysis of EU agencies*

Functional perspectives elaborate the rationality of independent expertise (technocratic legitimacy) by enhancing the credibility of government through independent bodies, offering the ability to combine resources across levels of government, and allowing the possibility to share responsibilities where the EU lacks legal competencies.<sup>47</sup> Moreover, agencies and their networks are presented as essential for creating commitment, trust, a sense of belonging to an expert community, and peer pressure.<sup>48</sup> Professional epistemic networks form systems of (horizontal) checks and balances and help to institutionalize professional values as a counterweight to hierarchical relations between experts and governments.<sup>49</sup> The expert community acts as a buffer against political pressures. In terms of organisational development, agencies can contribute to offering the differentiation and requisite variety needed to respond to the technological and dynamic challenges in the economic environment. From a functionalist perspective, the resilience and success of organisations require both differentiation (requisite variety) and integration.<sup>50</sup> Politics can benefit from relevant expertise before taking value decisions and in monitoring progress. Factual proof of the functional relevance of good administrative systems has been derived from correlations between competitiveness, quality of regulation, and quality of government.<sup>51</sup>

### *Political approaches to understanding EU agencies*

Political studies build on principal-agent models and focus on the pulling and hauling between agencies, EU institutions and member states. Governments and Commission, for example, can use agencies

---

41 Economist on Schulz SPD speech (8-12-2017).

<https://www.economist.com/blogs/kaffeeklatsch/2017/12/use-value-0?fsrc=scn/tw/once>

42 [https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-EMU\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-EMU_en.pdf)

43 [https://www.eerstekamer.nl/id/vi0vd1zmkfko/document\\_extern/jaarbericht\\_2007\\_2008/f=/vi0vd2id9dlo.pdf](https://www.eerstekamer.nl/id/vi0vd1zmkfko/document_extern/jaarbericht_2007_2008/f=/vi0vd2id9dlo.pdf); <https://www.raadvanstate.nl/adviezen/zoeken-in-adviezen/tekst-advies.html?id=5753>, 2006.

44 Tesche 2018.

45 Larsch and Braendle, 2018, JCMS.

46 Schout and Schwieter, 2018.

47 Busuioac, 2013.

48 Majone 1996; Heims 2016.

49 Sorensen & Torfing 2007; Kleef et al 2017.

50 Lawrence and Lorsch 1967; Groenleer 2016.

51 For a discussion, see Schout 2017. Demertzis and

Goncalves Gaposo 2018.

to offload sensitive policies (blame shifting<sup>52</sup>). Outsourcing demands new control mechanisms<sup>53</sup> and the Commission has been able to develop itself into a dominant actor in the supervision of agencies<sup>54</sup>. Principal-agent studies also point to the learning processes through which EU agencies aim at strengthening their positions and to tensions between more supranational or more intergovernmental supervision.<sup>55</sup> Thatcher (2011) concludes that the Commission is keen on keeping tasks within its own organisation, but that it has been willing to create agencies when it increased its own powers. Hence, agencies will be a temporary 'second-best' option for EU institutions if member states otherwise block integration and the related influence of the Commission.<sup>56</sup>

Meanwhile, member states seem to have developed a dislike of placing new agency-type bodies under the EU Commission<sup>57</sup>, and fights about authority over independent bodies have become visible in EMU governance. The European Stability Mechanism (ESM), for example, was set up as an intergovernmental special vehicle outside the realm of the Commission. Similarly, due to lacking trust in the Commission, the Council attached banking supervision to the ECB, not to the Commission, after fierce political negotiations.<sup>58</sup> As appeared in interviews, some fear the Commission's growing power in terms of responsibilities and resources while others criticise its politicisation of supervision. In response, the Commission has embarked on a piecemeal approach, e.g. by proposing a stabilisation fund and by creating parallel ESM-type funds under the Commission as a way to erode ESM.<sup>59</sup>

The political perspective builds on the realisation that instruments are not neutral and affect power relations.<sup>60</sup> The interinstitutional power balance plays a major role in the negotiations between Commission, EP and member states over decisions about EU agencies. Interviews also display fears at the national level of seeing tasks being taken over by EU agencies or, implicitly, by the Commission directly. Agencies and better regulation more generally, also have to be seen in relation to the power struggle between small and big member states. Juncker appointed his Commissioners according to national priorities and, in line with the Dutch interests, Frans Timmermans was appointed First Vice-President with Better Regulation in his brief. A French expert commented that the Dutch are always keen to discuss interinstitutional relations whereas this is hardly a theme in French politics. For a smaller country, influence depends on the rules of the game so that political haggling is constrained<sup>61</sup> whereas big countries have the political clout to steer outcomes.

Importantly, political realism is about speaking truth to power.<sup>62</sup> Yet, those in power have to meet short-term expectations of citizens and to negotiate between different parties. Politicians therefore have to practise the art of the feasible and to formulate initiatives that fit the potential landing zones amidst the conflicting interests. Hence, fact-finding and independent controls are often unavoidably regarded as only part of the day-to-day realities and, as often mentioned in interviews, politicians and officials have serious doubts about the level of political backing for independent bodies.

Fashion, rational functionalism and politics are complementary approaches that help to identify the pulls and pushes that shape EU agency arrangements. They help identify pressures that public managers in the EU face in designing agency-type arrangements. Even though governance is associated

---

52 Eberlein and Grande, 2005.

53 Busuoioc and Groenleer 2012.

54 Christensen and Nielsen 2010 ; Levi-Faur 2011; Egeberg and Trondal 2017.

55 Zito 2009; Thatcher and Coen 2008; Kelemen and Tarrant 2011; Blauburger and Rittberger, 2015

56 Kelemen 2002, p111; Dehousse 2008.

57 Kelemen and Tarrant 2011: 929.

58 De Rynk.

59 <http://bruegel.org/2018/05/new-emu-stabilisation-tool-within-the-mff-will-have-minimal-impact-without-deeper-eu-budget-reform/>

---

60 Lascoumes and Le Galès 2007, Kassim and Le Galès 2010.

61 Compare Olsen 2003.

62 Wildavsky 1996.

with ‘governance without government’, it generally includes management roles for government so as to bring actors together, focus attention, design roles and rules, ensure that common objectives are defined, facilitate sustainable governance patterns, solve problems, bring discussions forward with new ideas, monitor implementation, etc. Managed networks perform better so that governance can be much more than soft governance.<sup>63</sup> Fashion, rationality and politics focus on different aspects of social processes that management may help to bring together.<sup>64</sup>

The outcomes of these social processes define the effectiveness of the EU’s checks and balances by combining politics and independent tasks. Current uncertainty over the future design of the EMU bodies underlines the importance of having a concept of EU agencies: are these bodies set up as Commission affiliates, as intergovernmental bodies, as half-way houses, or as independent networked EU agency arrangements? Does Merkel have a model in her responses to French and Commission proposals or is it simply politics that rules? Interviews point to a limited awareness among practitioners and politicians of these design options. This suggests an intellectual deficit when it comes to instrumentation decisions in the EU.

#### 4 The experience with EU agencies

Before assessing the value of EU agencies as governance innovation, we should moderate our expectations by looking at the poor results results of the EU governance debate more generally. The development and use of instruments in the EU has progressed in many ways. EU literature has hailed the ‘governance turn’<sup>65</sup> and the related ‘administrative

turn’<sup>66</sup> as fundamental changes in European integration – suggesting that there has been growing attention for instrumentation and that this has addressed the EU’s management deficit.<sup>67</sup> However, on closer examination, the outcomes of the governance innovations have been disappointing. EU impact assessments have remained a serious point of concern and their use has become less systematic and has possibly even deteriorated in some respects under the political Commission Juncker. More generally, studies on the components of the Commission’s better regulation policy show that reforms are taking place but that the outcomes are rarely unconditionally positive.<sup>68</sup> The mixed outcomes of professional and independent information and management instruments were also underlined by Anne Glover, Chief Scientific Advisor to Barroso. She presented the Commission, and EU decision making generally, as being ruled by the “political imperative”, where facts are “twisted” and an environment in which there is little room for independent information.<sup>69</sup> Similarly, as regards the interest in the design of new governance tools, public management issues do not seem to play a major role in the reality of everyday policy making or in European integration theory.<sup>70</sup>

Although, agencies and networks have evolved and performed differently despite similar structures<sup>71</sup>, the first general conclusion about EU agencies concerns the ambition to put tasks at arm’s length of government. Innovations in the Eurozone introduced by the Six Pack obliged governments to create independent

63 Maccio, L., D. Cristofoli 2017.

64 See e.g. Allison, 1971; Blauburger and Rittberger 2015.

65 Boussaguet, L, R. Dehousse, S. Jacquot (2011).

66 Trondal, J. (2007).

67 Kassim 2015.

68 For a review of Better Regulation and Impact Assessments at EU level, see Schout (2018).

69 <https://www.euractiv.com/section/science-policy/news/eu-twisting-facts-to-fit-political-agenda-chief-scientist-says/>

70 Blauburger et al. 2015.

71 Wonka and Rittberger (2010) conclude that internal market agencies have acquired higher levels of (informal) independence than those in more sensitive social regulation. Groenleer 2009.

authorities<sup>72</sup> specifically independent fiscal authorities, and to make statistical offices independent. Yet, the Commission has carefully defended these tasks as internal Commission tasks. Hence, ambitions to put agencies at arm's length and to make them independent seem to apply to national and less to Commission reforms. Eurostat remains hosted within the Commission, the quality of EU statistics has remained a point of concern, progress has been slow, and 'no proposal has been made to develop an independent supervisory function' regarding improvements in the European Statistical System.<sup>73</sup>

As regards the independent economic monitoring capacities (independent fiscal boards), the Commission was supposed to create an independent "budget tsar" within the Commission underp Commissioner Rehn. To ensure European and independent supervision of national fiscal policies and to separate economic supervision in the Commission from other EU semester tasks, the Commission's internal rules of procedure were rewritten. However, the Commission's economic supervision has remained political in practice and the Fin Rehn was succeeded by the more political French Commissioner Moscovici.<sup>74</sup> Similarly, the position of the Commission's internal independent Regulatory Scrutiny Board has been carefully guarded under the President of the Commission<sup>75</sup> also because of the expectation that in-house checks and balances are assumed to be effective and easier to connect to day-to-day policy making.<sup>76</sup> Under the Commission Juncker, the RSB was placed under the first Vice-President (Frans Timmermans) who has substantial 'own' policies, has to keep the momentum going on the priorities of the Commission Juncker, and represents a Commission that is keen to meet political expectations of citizens. Hence, Timmermans

seem to have to juggle with potentially conflicts between fact-based policy making and on the political expectations. Despite years of discussions on placing it at arm's length, as e.g. Timmermans in his capacity as Dutch Minister for Foreign Affairs had preferred, the Regulatory Scrutiny Board has been kept within the Commission (although it now also includes 3 external experts).<sup>77</sup> The same applies to the European Fiscal Board that relies on the Secretariat General of the Commission, and independent experts of the EFB have been granted 12 days per year for their work. When it comes to creating checks and balances by separating tasks, the Commission has been keen to prevent placing bodies at arm's length. As explained in an interview in the Commission, the reeling in of agencies can be seen in the reform proposal of the European Food Safety Agency (COM(2018)179). It had a board consisting of 15 (not 28) independent experts but the recent reform proposals presents a board consisting of national representatives and the Commission.

Member states have also been slow to develop independent agencies. Progress has been achieved in terms of central banks and national statistic offices.<sup>78</sup> However, the creation of independent fiscal boards and productivity boards has been less forthcoming. Only seven member states have set up national productivity boards. Independent fiscal institutions have been created by 23 of the 25 members that have committed themselves, but these bodies vary in terms of resources. In addition, the network of European fiscal institutions is little more than a light platform for discussion due to fears of being controlled by the EU Commission or apprehension among independent authorities (Schout and Schwieter, 2018). Similarly, although member

---

72 Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States, O.J.L. 306.

73 European Court of Auditors 2012.

74 Schout and Mijs 2015; Schout and Mijs 2016.

75 Schout and Sleifer 2014; IAI 2017.

76 Smulders, Paquet, 2018.

---

77 See also the letter from his successor Henk Kamp as Minister of Economic Affairs on behalf of Likeminded Countries: Likeminded paper 'Momentum for Better Regulation', The Hague, 1 April 2015.

78 Although Greece remains a problem, "Greek supreme court rejects statistics chief's appeal", FT 11 June 2018. <https://www.ft.com/content/c7bca3c4-6cd0-11e8-92d3-6c13e5c92914>.

states are committed to better regulation, reducing administrative costs, and impact assessments, only approximately seven countries<sup>79</sup> (including Norway) have more or less comparable independent regulatory quality control offices. The OECD concludes that most national scrutiny boards are hybrids (halfway in and halfway out of government; see the RSB that includes three independent experts next to Commission officials). Interviews at national and EU level revealed the serious political concerns and resistances as well as little awareness of potential advantages of agencies e.g. in terms of arriving at a subsidiarity system of monitoring based on first-level monitoring (national control on implementation) and second-level monitoring (monitoring organised at EU level of national monitoring systems). Interviews with practitioners also point to a concern about how to ensure that the gap between technocratic expertise and political decisions is not too wide, thus enabling communication and usability of findings.

Research findings conclude that the added value of EU agencies is not exploited.<sup>80</sup> EU agencies and the related networks are dominated by the EU Commission<sup>81</sup>: the Commission holds strong positions in the EU agencies, and the EU agencies tend to dominate the networks, among others due to the resource dependence of national agencies, permanence in the networks, and greater adaptability than national bodies ('agencified networks', Levi-Faur, 2011). The Commission has kept the upper hand, also due to its relatively strong formal involvement in boards, appointments and staff policies.<sup>82</sup> Furthermore, as underlined by Chiti (2013), EU agencies

lack formal decision-making powers and are insufficiently in touch with national implementation bodies. Networks of national authorities lack resources and cohesion due to major differences in traditions and operating philosophies.<sup>83</sup> According to five Audit Officers, this path dependence is also visible in the network of European central banks, where the centrality of the ECB is not accompanied by the development of the appropriate supervisory and transparency mechanisms.<sup>84</sup> In addition, due to a lack of a culture of cherishing independence, boards are closely linked to national authorities<sup>85</sup>, as can also be seen in the composition of the ECB's governing council, which consists of the 19 member National Banks of which only a few come from hard-currency countries so that the administrative culture in most euro countries tends to be more political (Tucker 2018).

This shows that path dependence characterises the development of the EU's administrative space. It appears to be hard to incorporate independent supervision due to different pulls and pushes from national and EU administrations on agency networks ('double hattedness', Egeberg and Trondal, 2017), vested interests of the economic sector (Kelemen and Tarrant 2011) and cultural differences. Hence, national and EU institutions are sticky and innovations in sectoral governance may turn out differently in reality than intended or take longer than expected to develop. Ennser-Jedenastik<sup>86</sup> therefore concludes that 'de-facto independence of an agency may not correspond to its level of legal autonomy'.

---

79 <http://www.actal.nl/english/regwatcheurope/>

80 Scholten 2014.

81 Thatcher and Coen, 2008; Levi-Faur 2011; Egeberg and Trondal 2011; Rittberger and Wonka, 2013; Egeberg and Trondal 2017.

82 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders, COM(2017) 571 final.

---

83 Heims 2016. However, the European Competition Network is an example of a central organisation of supervision that is subsequently decentralised and more or less successfully evolves into a subsidiarity-based agency-driven network (Kassim and Wright, 2018).

84 Report of the Task Force on European Banking Union to the Contact Committee of Supreme Audit Institutions of the European Union and the European Court of Auditors, 14-12-2017.

85 Compare the European Food Agency where the board is composed of independent experts.

86 Ennser-Jedenastik, L. (2016).

This conclusion of path dependence and centralisation modifies the earlier assumption that agencies and networks would become independent arrangements at arm's length of the Commission due to the multiplicity of national and EU principals.<sup>87</sup> This can be explained by shifts in fashion, by power struggles and, although hardly addressed in the literature, by scant awareness of and attention for the design and development of agencies. As regards attention for design issues, exceptions include the work by Egeberg and Trondal (2017), who studied staffing of agencies and the Commission's administrative capacity, the study on the centralising influence of the EU's personnel policy on EU agencies by Schout and Pereyra (2011), and Mathieu's (2016) assessment of the extent to which national and European agencies reinforce each other.

## 5 Conclusions and policy implications

Approximately 25 years ago, the EU suffered from a credibility crisis. This triggered lively debates in academia and among practitioners over European governance tools such as soft coordination, impact assessments and EU agencies. Already under President Santer, EU policies had to be fact-based and focused on essential objectives ('doing less but doing it better'<sup>88</sup>). Acknowledging that governance demands complementary steering instruments, the governance turn of 25 years ago, influenced by New Public Management thinking, was looking for ways to complement and improve political decision making with independent fact-finding and monitoring. At first sight, little has changed in the strive for better regulation. In this historical context, the slogan of the Commission Juncker/Timmermans 'Big on big and small on small'<sup>89</sup> looks familiar.

Currently, the EU is again confronted with crises that cast doubts over the EU's ability to deliver. The current challenges concern different policy areas but 'better regulation' again figures prominently in the debates on modernising governance, and the content overlaps with the situation of 25 years ago. Yet, the current discussions centre around politics, as underlined by Juncker's ambition to be a 'very political' Commission. Attention for complementing politics with independent authorities has lost momentum on the agenda due to changes in fashion, increasing politicisation and lack of awareness of how to design agencies so that functional advantages can be reaped. Although EU agencies are again a major theme, there now seems to be little ambition to regard their potential advantages, as independent authorities, as a serious tool for modernising governance.

The policy implication of this analysis is that governance and better regulation discussions have insufficiently progressed or possibly even regressed so that they need to be put back on the agenda. More specifically related to agencies, EU agencies have to be set up so that their specific advantages can materialize and political decision making is complemented with independent fact-finding and monitoring. Their potential advantages in terms of checks and balances seem no less relevant now. Apart from a number of good examples, research conducted over the past decades shows that the way in which agencies are now used and designed add little in terms of good governance. As a corollary, officials and politicians have to invest in expertise on what agencies are and how they can be used. Interviews show that there is little awareness of the benefits of EU agencies and little expertise about their proper design. As a result, agencies have tended towards becoming more of the same with a strong role for the (politicised) Commission. Yet it is difficult to see how multilevel governance in areas varying from the European Semester to border control can be credible without well-designed subsidiarity-based independent agencies to complement political decision making. As agreed in the interinstitutional agreement and Commission rules of procedure, information-gathering and

87 Dehousse 2008; Thatcher and Sweet 2002.

Compare Moe's principle: no one is in control and therefore it is under control (Majone 1996).

88 <http://news.bbc.co.uk/2/hi/europe/297643.stm>.

89 [http://europa.eu/rapid/press-release\\_SPEECH-14-585\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-585_en.htm)

monitoring processes have to be trusted, transparent and, hence, should be organised independently from political institutions. This is certainly not less relevant now than 25 years ago when the EU was primarily struggling with internal market legislation. More generally, the drifting of EU agencies as a tool of governance underlines the continued relevance of public management modernization in the EU. With political discussions focusing on policies and ignoring the thorny multilevel governance implications, the EU seems to still suffer from a continued management deficit. In addition, given the limited attention for how to use agencies and their networks, the EU may well suffer from an intellectual deficit. Lasting impact of policies demands effective institutions such as EU agencies.

## Bibliography

- ABD (2013) *Onderzoek naar de herpositionering van zbo's*, Den Haag: Ministerie van Binnenlandse Zaken, Algemene Bestuursdienst.
- Allison, G.T. (1971) *Essence of decision making*, Boston: Harper Collins.
- Balls, E., J. Howat, A. Stansbury (2016) *Central Bank Independence Revisited: After the Financial Crisis, What Should a Model Central Bank Look Like?*, Harvard Kennedy School Mossavar-Rahmani Centre for Business and Government Associate Working Paper No. 67.
- Bendor, J., T.H. Hammond (1992) 'Rethinking Allison's models', *American Political Science Review*, 86:2, 301-322.
- Blauberger, M., B. Rittberger (2014) *Conceptualizing and theorizing EU regulatory networks*, Jerusalem Papers in Regulation & Governance Working Paper No. 65.
- Blauberger, M., B. Rittberger, A. Boin, O. James, M. Lodge (2015) 'The new public management 'revolution' in political control of the public sector: promises and outcomes in three European prison systems', *Public Policy and Administration*, 21:2, 81-100.
- Börzel, T.A., T. Risse (2010) 'Governance without a state: can it work?' *Regulation & Governance*, 4:2, 113-34.
- Boussaguet, L., R. Dehousse, S. Jacquot (2011) 'The governance turn revisited', in: R. Dehousse (ed), *The Community Method: Obstinate of obsolete?*, New York: Palgrave Macmillan.
- Busuioc, M. (2010) *The Accountability of European Agencies*, Leiden: Eburon.
- Busuioc, M. (2013) 'Rule-making by the European Financial Supervisory Authorities: Walking a Tight Rope', *European Law Journal*, 19:1, 111-125.
- Busuioc, M., M. Groenleer (2012) 'Wielders of Supranational Power?', in: M. Busuioc, M. Groenleer, J. Trondal (eds), *The Agency Phenomenon in the European Union*, Manchester: Manchester University Press.
- Christensen, J., V.L. Nielsen (2010) 'Administrative capacity, structural choice and the creation of EU agencies', *Journal of European Public Policy*, 17:2, 176-204.
- Chiti, E. (2013) 'European Agencies' Rulemaking: Powers, Procedures and Assessment', *European Law Journal*, 19:1, 93-110.
- Coen, D., M. Thatcher (2008) 'Network governance and multi-level delegation: European networks of regulatory agencies', *Journal of Public Policy*, 28:1, 49-71.
- Collins, P. (2004) *The Ascendancy of the Scientific Dictatorship*, New York: iUniverse.
- Curtin, D. (2005) 'Delegation to EU Non-Majoritarian Agencies and Emerging Practices of Public Accountability', in: D. Geradin, N. Petit, R. Munoz (eds), *Regulation through Agencies in the EU: A New Paradigm for European Governance*, Cheltenham: Edward Elgar.
- Dehousse, R. (1997) 'Regulation by Networks in the European Community: The Role of European Agencies', *Journal of European Public Policy*, 4:2, 246-261.
- Dehousse, R. (2008) 'Delegation of powers in the European Union: the need for multiprincipals models', *West European Politics*, 31:4, 789-805.
- Demertzis, M., I. Goncalves Raposo (2018) *Structural Reforms 0.0 – The case for strengthening institutions*, Bruegel: Blog post.
- Dunlop, C.A., C.M. Radaelli (2015). 'Impact Assessment in the European Union: Lessons from a Research Project',

- European Journal of Risk Research*, 5:1, 27–34.
- Eberlein, B., A.L. Newman (2008) 'Escaping the international governance dilemma? Incorporated transgovernmental networks in the European Union', *Governance*, 21:1, 25–52.
- Egeberg, M., J. Trondal (2011) 'EU-level Agencies: New Executive Centre Formation or Vehicles for National Control?' *Journal of European Public Policy*, 18:6, 868–87.
- Egeberg, M., J. Trondal (2017) 'Researching European Union Agencies: What Have We Learnt (and Where Do We Go from Here)?', *JCMS*, 55:4, 675–690.
- Ennsner-Jedenastik, L. (2016) 'Do parties matter in delegation? Partisan preferences and the creation of regulatory agencies in Europe', *Regulation & Governance*, 10:3, 193–210.
- European Court of Auditors (2010) *Impact assessments in the EU institutions: do they support decision-making?*, Special Report 3.
- European Court of Auditors (2012) *Did the Commission and Eurostat improve the process for producing reliable and credible European Statistics?*, Special Report No 12.
- Everson, M., G. Majone, L. Metcalfe, A. Schout (1999) *The Role of Specialised Agencies in Decentralising EU Governance*, Brussels: Commission of the European Commission.
- Fischer, S. (2015) *Central Bank Independence*, speech, 4 November.
- Geradin, D., N. Petit (2004) *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*, Jean Monnet Working Paper 01:04.
- Groenleer, M. (2016) *Redundancy in multilevel energy governance: Why (and when) regulatory overlap can be valuable*, TARN working paper 6.
- Haan, J. de, S. Eijffinger (2016) 'The Politics of Central Bank Independence', in: *Oxford Handbook of Public Choice*, Oxford: Oxford University Press.
- Hartlapp, M. (2017) 'How time empowers agency: combining the EU Commission's political powers and its administration's advantage of acting from a long-term perspective', *Journal of European Integration*, 39:3, 303–317.
- Heims, E. (2016) Explaining coordination between national regulators in EU agencies: the role of formal and informal social organization, *Public Administration*, 94:4, 881–896.
- Henry, N. (2007) *Public administration and public affairs*, New Jersey: Prentice Hall.
- Hodson, D., I. Maher (2001) 'The Open Method as a New Mode of Governance', *Journal of Common Market Studies*, 39:4, 719–46.
- Hood, C. (1995) 'The 'New public management' in the 1980's', *Accounting Organizations and Society*, 20:2, 93–109.
- Kassim H., P. Le Galès (2010) 'Exploring governance in a multi-level polity: A policy instruments approach', *West European Politics*, 33:1, 1–21.
- Kassim, H., K. Wright (2009) 'Bringing Regulatory Processes Back In: The Reform of EU Antitrust and Merger Control', *West European Politics*, 32:4, 738–755.
- Kelemen, R.D. (2002) 'The Politics of 'Eurocratic' Structure and the New European Agencies'. *West European Politics*, 25:4, 93–118.
- Kelemen, R.D., D. Tarrant (2011) 'The Political Foundations of the Eurocracy'. *West European Politics*, 34:5, 922–47.
- Kleef, D. van, T. Steen, C. Schott (2017) 'Informal socialization in public organizations', *Public Administration*, 1–16.
- Kröger, S. (2009) 'The Open Method of Coordination: Underconceptualisation, overdetermination, depoliticisation and beyond', in: S. Kröger (ed), *What we have learnt: Advances, pitfalls and remaining questions in OMC research*, European Integration online Papers (EIoP), 1:13.
- Larch, M., T. Braendle (2018) 'Independent Fiscal Councils', *JCMS*, 56:2, 267–283.
- Lascoumes P., P. Le Galès (2007) 'Understanding public policy through its instruments – from the nature of instruments to the sociology of public policy instrumentation', *Governance*, 20:1, 1–21.
- Lawrence, P.R., J.W. Lorsch (1967) *Organization and environment; managing differentiation and integration*, Boston: Harvard Business School Press.

- Lehmkuhl, D. (2008) 'Control modes in the age of transnational governance', *Law & Policy*, 30:3, 336-363.
- Levi-Faur, D. (2011) 'Regulatory networks and regulatory agencification: towards a Single European Regulatory Space', *Journal of European Public Policy*, 18:6, 810-829.
- Lonardo, L. (2016) *The Banking Union: Agencies and the Lesson from the US*, University of Birmingham Working Paper.
- Maccio, L., D. Cristofoli (2017) 'How to support the endurance of long-term networks: The pivotal role of the network manager', *Public Administration*, 95:4, 1060-1076.
- Majone, G. (1996) *Regulating Europe*, London: Routledge.
- Majone, G. (2002) 'The Credibility Crisis of Community Regulation', *JCMS*, 38:2, 273-302.
- Majone, G. (2009) *Europe as the Would-Be World Power. The EU at Fifty*, Cambridge: Cambridge University Press.
- March, J., J-P. Olsen (1989) *Rediscovering Institutions: The Organizational Basis of Politics*, Free Press.
- Metcalfe, L. (1992) 'After 1992: can the Commission manage Europe?', *Australian Journal of Public Administration*, 51:1, 117-130.
- Middelbaar, L.J. van (2017) *De nieuwe politiek van Europa*, Groningen: Historische Uitgeverij.
- Olsen, J. (2003) 'Towards a European administrative space?', *Journal of European Public Policy*, 10:4, 506-531.
- Osborn, D., T. Gaebler (1992) *Reinventing Government*, Addison-Wesley Publ. Co.
- Powell, W. (1990) 'Neither market nor hierarchy: network forms of organization', in: B.M. Staw, L. L. Cummings (eds), *Research in Organizational Behavior* (Vol. 12, pp.295-336), Greenwich, CT: JAI Press.
- Thompson, G. (1991) *Markets, hierarchies, and networks: the coordination of social life*, London: Sage.
- Pressman, J., A. Wildavsky (1979) *Implementation; how great expectations in Washington are dashed in Oakland*, Berkeley: University of California Press.
- Rynk, S. De (2015) 'Banking on a union: the politics of changing eurozone banking supervision', *Journal of European Public Policy*, 23:1, 119-135.
- Rijsbergen, M. van, M. Scholten (2016) 'ESMA inspecting: the implications for judicial control under shared enforcement', *European Journal of Risk Regulation*, 7:3, 569-79.
- Scholten, M. (2014), *The Political Accountability of EU and US Independent Regulatory Agencies*, Leiden: Brill.
- Scholten, M. (2017) 'Mind the trend! Enforcement of EU law has been moving to "Brussels"', *Journal of European Public Policy*, 24:9, 1348-1366.
- Schout, A. (2011) 'Framework for assessing the added value of an EU agency', *Journal of Public Policy*, 31:3, 363-384.
- Schout, A. (2017) 'The EU's existential threat: demands for flexibility in an EU based on rules', in: N. Pirozzi (ed), *EU60: Re-founding Europe; The responsibility to propose*, Rome: IAI.
- Schout, A. (2018) *Two decades of Better Regulation in the EU Commission – Towards evidence-based policy making?*, The Hague: Working Paper.
- Schout, A., A. Jordan (2010) 'From 'Old' to 'New' Governance in the EU: Explaining a Diagnostic Deficit', *West European Politics*, 33:1, 154-170.
- Schout, A., F. Pereyra (2011) 'The institutionalisation of EU agencies – agencies as 'Mini Commissions'', *Public Administration*, 89:2, 418-432.
- Schout, A., J. Sleifer (2014) 'A public administration take on legitimacy: Better Regulation as multilevel governance challenge', in: M. Ambrus, K. Arts, E. Hey, H. Raulus (eds), *The Role of 'Experts' in International Decision-Making: Advisors, Decision-Makers or Irrelevant* (pp. 361-382), Cambridge: Cambridge University Press.
- Schout, A., A. Mijs (2015) 'The Independent Commissioner: An Administrative Analysis', in: E. Ongaro (ed), *Multi-Level Governance: The Missing Linkages*, Bingley: Emerald.
- Schout, A., M. Luining (2018) 'Rule of law policy: ambitions without strong networks', in: A. Schout, W. Zweers (eds), *State of the Union 2018: towards better European integration*, The Hague: Clingendael.

- Schwieter, C., A. Schout (2018) 'National Fiscal Councils, the European Fiscal Board and National Productivity Boards – New EMU independent bodies without much prospect', in: A. Schout, W. Zweers (eds), *State of the Union 2018: towards better European integration*, The Hague: Clingendael.
- Selznick, P. (1949) *TVA and the Grass Roots: a Study in the Sociology of Formal Organization*, Berkeley: University of California Press.
- Smulders, B., J.E. Paquet (2018) 'The European Commission and its Better Regulation Agenda', in: S. Garben, I. Govaere (eds), *The EU Better Regulation Agenda*, Oxford: Hart.
- Sørensen, E., J. Torfing (2007) *Theories of Democratic Network Governance*, Basingstoke: Palgrave Macmillan.
- Tesche, T. (2018) 'The Troika Is Dead, Long Live the Domestic Troikas?': *Varieties of Technocracy and the Diffusion of National Fiscal Councils in the European Union: Agents, Trustees or Orchestrators of Fiscal Discipline?*, TARN Working Paper No. 3.
- Thatcher, M., A. Stone Sweet (2002) 'Theory and Practice of Delegation to Non Majoritarian Institutions'. *West European Politics*, 25:1, 1-22.
- Thatcher, M., D. Coen (2008) 'Reshaping European Regulatory Space: an Evolutionary Analysis'. *West European Politics*, 31:4, 806-836.
- Transparency International EU (2017) *Two sides of the same coin? Independence and accountability of the ECB*, [https://transparency.eu/wp-content/uploads/2017/03/TI-EU\\_ECB\\_Report\\_DIGITAL.pdf](https://transparency.eu/wp-content/uploads/2017/03/TI-EU_ECB_Report_DIGITAL.pdf).
- Tucker, P. (2018) *Unelected power*, Princeton: Princeton University Press.
- Wildavsky, A. (1996) *Speaking truth to power; the art and craft of policy analysis*, New Brunswick, NJ: Transaction Publishers.
- Wonka, A., B. Rittberger (2011) 'Perspectives on EU Governance: an Empirical Assessment of the Political Attitudes of EU Agency Professionals', *Journal of European Public Policy*, 18:6, 888-908.
- Zito, A. (2009) 'European agencies as agents of governance and EU learning', *Journal of European Public Policy*, 16:8, 1224-1243.

### About the Clingendael Institute

Clingendael – the Netherlands Institute of International Relations – is a leading think tank and academy on international affairs. Through our analyses, training and public debate we aim to inspire and equip governments, businesses, and civil society in order to contribute to a secure, sustainable and just world.

[www.clingendael.org](http://www.clingendael.org)  
[info@clingendael.org](mailto:info@clingendael.org)  
+31 70 324 53 84

 @clingendaelorg  
 The Clingendael Institute  
 The Clingendael Institute

### About the author

**Adriaan Schout** is Senior Research Fellow and Coordinator Europe at the Clingendael Institute. He combines research and consultancy on European governance questions for national and European institutions. He has worked on projects addressing issues of the EU presidency, EU integration and Improving EU regulation, amongst others.

**Disclaimer:** This paper was commissioned by the Netherlands' ministries of Foreign Affairs and Defence within the PROGRESS framework agreement, lot 3, 2018. Responsibility for the contents and for the opinions expressed rests solely with the authors. Publication does not constitute an endorsement by the Netherlands' ministries of Foreign Affairs and Defence.