

# **‘The autonomy of EU-level agencies’**

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## **Introduction**

The proliferation of EU-level specialized agencies over the last two decades has altered the configuration of EU executive powers (Dehousse 2002; Egeberg and Trondal 2009), influenced EU policy-making (Coen and Thatcher 2008, Gehring and Krapohl 2007) and institutional framework (Wonka and Rittberger 2010), and has had a direct impact on individuals, regulators and Member States (Busuioac 2010). The agencification phenomenon in the EU has nurtured theoretical debates on the role and centrality of agencies in executive politics (Trondal 2010; Maggetti 2009). Literature on EU agencies has recently devoted growing attention to the role of agencies in the EU institutional order, with studies focusing on the creation, reform and institutionalization (Kelemen 2002; Groenleer 2009; Thatcher and Stone Sweet 2002; Pierre and Peters 2009; Martens 2010), accountability, legitimacy and governance (Bovens 2007; Busuioac 2009; Trondal and Jeppesen 2008; Borrás, Koutalakis and Wendler 2007; Klintman and Kronsell 2010) and, to a larger extent, the way in which the agencification phenomenon is transforming the EU political-executive order (Trondal 2010; Egeberg and Trondal 2010).

Within the bulk of specialized literature, research addressing the autonomy of EU-level agencies has recently raised growing attention among scholars (Christensen and Laegreid 2006; Pollit et al 2004; Groenleer 2009). Yet, the literature provides few contributions presenting comprehensive and systematic analysis of the autonomy of EU agencies, with varying conceptualizations of autonomy. In broad terms, the related literature has provided a first conceptual distinction emphasizing agencies’ functional capacities to decide on different dimensions of their activity, namely policy, managerial, financial and personnel aspects, without the interference of the principal institution (Pollit *et al* 2004; Christensen and Laegreid 2006). A second distinction refers to formal and *de facto* autonomy to differentiate agencies legal status, formal structure and design, on the one hand, and effective practice, on the other, (Groenleer 2009; Trondal 2010). Most of the existing research has prioritized the formal approach, with

contributions emphasizing the effects of the founding regulations of European agencies and rules governing delegation on formal-institutional independence from their political principals (Wonka and Rittberger 2010; Gilardi 2008). Outstandingly, Wonka and Rittberger (2010) measure formal-institutional independence of 29 EU-level agencies based on Gilardi's (2008) independence index. This type of approach provides a comprehensive picture of formal agency autonomy as it assesses the institutional resources and formal powers at the disposal of the agency in order to influence EU policies (Wonka and Rittberger 2010). Yet, it does not fully capture post-delegation agency behaviour. This is not a minor point since EU agencies may share similar levels of formal autonomy but display different levels of practical autonomy (Maggetti 2007). And the reverse may hold true. Indeed, some authors suggest that autonomy does not necessarily reflect or depend on legal considerations (Pollit *et al* 2004; Buisonic 2009; Trondal 2010), with this leaving unresolved the question of why agencies with similar formal characteristics may evolve and behave differently (Maggetti 2007; Groenleer 2009). Further, recent studies reveal that agencies that have been entrusted high levels of powers display lower levels of autonomy (Busuioc 2009). Taking such considerations into account, this study focuses on de facto autonomy as it aims to reaching a better understanding of EU-level agencies practical behaviour.

When examining autonomy of EU-level agencies, the literature has raised a central the question of who can be regarded as the principal (Dehousse 2008; Thatcher and Stone Sweet 2002; Trondal 2010). In this respect, Dehousse (2008) suggests that there is no defined hegemon within the EU and raises the idea of 'multiple principals'. With similar connotations, Thatcher and Stone Sweet (2002) advance the idea of 'composite principals'. To this respect, Wonka and Rittberger (2010) have investigated the formal autonomy of EU-level agencies from the Commission, the Member States in the Council and the European Parliament. Our research acknowledges the coexistence and interaction of the three political principals. Its empirical focus, however, is placed on agencies autonomy vis-à-vis the Commission. The main reason is that most agencies are normally more closely connected to the Commission rather than to other EU institutions. Indeed, the Commission is considered to have a privileged and pivotal position in relation to EU agencies (Egeberg and Trondal 2010). This is because, traditionally, agencies were generally created to reinforce the Commission capacities by conducting technical and scientific tasks, and in turn, contributing to expand and improve implementation of EU regulation. Yet, in practice, the Commission influence and control capacities are uneven, as some agencies are considered to be strongly controlled by the Commission, whereas others have achieved high levels of autonomy (Groenleer 2009).

Accounts of agency practical autonomy have looked at various other directions. Some studies have developed theoretical explanations based on the core assumptions of the standard Principal – Agent (PA) approach (Groenleer 2009), which broadly views agency autonomy as a function of informational asymmetries and weak oversight mechanisms for principals to reduce

agency losses (McCubbins and Schwartz 1984; Kiewiet and McCubins 1991). Yet, the PA accounts of autonomy have been questioned in the study of EU-level agencies. Interestingly, specific studies provide empirical evidence demonstrating that tight oversight is compatible with quasi independent agency action (Gehring and Krapohl 2007) and revealing that agencies that were created as independent entities may remain as highly dependent on both the Commission and the Member States (Groenleer, Kaeding and Versluis, 2010). More generally, the PA approach is considered to offer a disrupted view of effective autonomy of EU-level agencies for two main reasons. First, it assumes that the accounts for agency creation are equally valid for agency development (Coen and Thatcher 2005; Groenleer 2009). And second, much of the literature based on the PA theoretical approach misses the institutional context in which agencies operate. To this respect, alternative explanations of practical agency autonomy focus on organizational and institutional aspects. On the one hand, some contributions demonstrate that *de facto* autonomous task expansion of EU-level agencies is a result of organizational capacity building and subsequent *de facto* actor-level autonomy (Trondal 2010). On the other hand, some scholars have highlighted the influence of the EU distinctive institutional dynamics on the act of delegation and in agencies autonomy (Kelemen 2002; Busuioc 2009). For instance, Kelemen explores how the inter-institutional politics, and more specifically, strategic interactions between the Council of Ministers, the Commission and, in some cases, the European Parliament, has shaped the design of EU agencies and affects their capacities to behave on a more autonomous way (Kelemen, 2002). From a different perspective, Dehousse suggests that the absence of a clearly defined principal in the EU affects agencies' performance and autonomy (Dehousse 2008).

This paper is grounded in the theoretical debates on the autonomy of EU-level agencies emphasizing the institutional considerations. More specifically, it aims to reach a better understanding of why some EU agencies perform more autonomously from the Commission than others. It argues that agencies autonomy from the Commission is a function of several interrelated factors including the communitarization of competences, relationships among multiple principals, and agencies' resource mobilization capacities. Based on this outlook, the study presents three hypotheses:

*Hypothesis 1: 'communitarization of competences'*

Agencies undertaking more communitarized tasks (former first pillar) are expected to display lower levels of autonomy from the Commission, whereas agencies undertaking intergovernmental tasks (former second and third pillars) are expected to perform more autonomously from the Commission.

### *Hypothesis 2: 'relations between multiple principals'*

Agencies operating in institutional frameworks where multiple principals keep balanced power relationships are expected to display higher levels of autonomy from the Commission than those in which principals keep unbalanced power relationships and are not intergovernmental in nature.

### *Hypothesis 3: 'resource mobilization capacities'*

Agencies better equipped to produce and mobilize scientific information, reputation, funding and networking resources are expected to exploit its advantageous position vis-à-vis the Commission and display higher levels of autonomy from this principal than those with lower resource-building capacities.

This paper offers the results of a comprehensive empirical study of 25 EU-level agencies. The data source has been obtained from documentary analysis and 60 semi-structured interviews with representatives of the Member States, the Commission, European Parliament and stakeholders at the agencies management boards, as well as other Commission officials.<sup>1</sup> The paper expected contribution is both empirical and theoretical. Empirically, it aims to offer a comprehensive picture of EU-level agencies' autonomy and ultimately a better understanding of the ways the relationships between the Commission and EU agencies are framed. Theoretically, it aims to contribute to the literature debates by unfolding the modes in which the institutional dynamics influence agencies autonomy. The paper proceeds as follows. The first section offers a broad overview of the rationale of the Commission as regards agencies' autonomy. The second one focuses on the dependent variable by looking at the different types of strategies employed by the Commission to control agencies and by offering a broad but comprehensive map of the autonomy of 25 EU agencies. The third section assesses three different accounts of agency autonomy, namely, communitarization of competences, relationships among multiple principals and agencies organizational capacities. The paper ends with some concluding remarks and a theoretical discussion.

## **1. Mapping agencies autonomy**

The specialized literature has provided both functional and strategic accounts for the creation and proliferation of EU agencies over the last two decades. Functional arguments place emphasis on technocratic benefits derived from agency creation, as agencies provide independent scientific expertise, overcome informational asymmetries and improve the

efficiency of rule-making and implementation (Thatcher and Stone Sweet 2002; Majone 1997). Strategic arguments emphasize the idea of *aggrandizement* of the Commission powers and EU regulatory expansion (Kelemen 2002). While the focus of this paper is not agency creation, both functional and strategic type arguments cannot be disregarded when addressing autonomy in the post-delegation phase. The main reason is that the Commission behaviour regarding agencies autonomy appears to be both functionally and strategically based, with both dimensions closely interrelated. The empirical data obtained in this research suggest that the Commission has generally both functional and strategic incentives to increase agencies tasks. On a more functional basis, EU agencies perform different type of functions, including regulatory and executive activities, direct assistance to the Commission, operational activities and research and information gathering.<sup>2</sup> More generally, most agencies provide technical input for legislation, independent expertise and, in some cases, greater capacities to bring stakeholders together. First, in accordance to some of the arguments advanced by the functional approach (Thatcher and Stone Sweet 2002), the majority of the Commission representatives in agencies boards who were interviewed reported that agencies help the Commission to elaborate legislative proposals and undertake much of the preparatory task for legislation by providing scientific data and expertise. Moreover, the Commission acknowledges being heavily dependent on the technical or scientific knowledge provided by the agencies. Generally, when the Commission needs data to come up with a piece of legislation, agencies are ready to provide evidence. By conducting independent research, they are crucial in preparing draft versions of legislation that later on the Commission will present.<sup>3</sup> Significantly enough, most of the Commission representatives interviewed emphasized the scientific superiority of agencies and highlighted that the Commission could by no means undertake the tasks delegated to the agencies. Second, by being based on independent scientific grounds, agencies are expected to provide extra credibility and authority (Commission 2008). It is a generally accepted opinion that certain tasks undertaken by agencies would not generate the same level of confidence as if conducted by the Commission, with this trend often being considered an important added value of EU agencies.<sup>4</sup> In brief, isolating agencies activities from politics (Thatcher 2005) provides a functional value for the Commission. Finally, some agencies have capacities to bring stakeholders together easier than the Commission does, so that it can benefit from both the expertise provided by industrial and social groups, as well as by the culture of dialogue among stakeholders of some agencies.<sup>5</sup>

Functional benefits for the Commission in the post-delegation phase are closely connected with the strategic ones in at least two ways. First, in line with the *aggrandizement* arguments, functional expansion may increase the Commission's expectation to increase its regulatory capacity and further advance in European integration. This seems particularly plausible in agencies performing tasks that otherwise would probably have not been transferred to the EU (Kelemen 2002), thus involving some degree of Europeanization. In line with this argument, our data shows that the Commission puts growing pressure on certain agencies, for instance EFSA,

FRA, ECHA, EMA and EMSA, to increase their tasks and influence and ultimately create a more centralized European system. Yet, it also reveals that the Commission does not always have univocal incentives to push for task expansion, especially if it perceives that agency growth goes hand in hand with the reinforcement of the Member States and/or the European Parliament in the inter-institutional balance. On the Member States side, they are sometimes reluctant to agency growth as long as the Commission has minimal capacities to resource them and, most importantly, as if they fear that task expansion would reinforce a centralized EU. And second, agencies technical superiority, scientific independence and stakeholder dialogue are the added value justifying agency growth before institutional actors that might be critical with the idea of agency expansion, namely the European Parliament and the Member States.<sup>6</sup> In sum, both functional and strategic arguments seem to motivate the Commission pressure on many agencies, although not in all, to expand their tasks and increase their workload, in some cases even beyond the provisions established in the legal mandate. In this respect, some agencies including CPVO, EEA, EASA, EMSA, ERA and EFSA acknowledge to over perform.<sup>7</sup>

EU agencies task expansion in many cases provides strategic benefits for the Commission as it is better equipped to initiate legislation, secure regulatory and executive activities, improve implementation of EU policies and, in some cases, gain centrality in the inter-institutional balance. Yet, as the agency literature has extensively reported, delegation of authority from the principals does not normally come at zero cost, as agencies performance often tend to deviate from the policy preferences of their principals (Thatcher and Stone Sweet 2002). The Commission is generally enthusiastic about agencies assuming more tasks and, as suggested by Busuioc (2010), it hardly interferes with agencies day-to-day technical tasks, working methodologies and internal organization. Yet, it has strong incentives to exert influence on agencies priorities, agenda and strategic decisions. As a national representative of an EU agency clearly summarized:

‘They [the Commission] are the big boss, we are under the umbrella of the DG and they set the guidelines, the policy, what we have to achieve. But they do not interfere in how we work’.<sup>8</sup>

In practice, the Commission has different practical capacities to influence agencies and limit their autonomy. Among those, agenda setting, agency alignment, voting avoidance, open allocation of representatives and regulation control appear to be the most relevant.

### *Agenda setting*

The Commission power to control European agencies and limit their autonomy to a great extent derives from its agenda setting capacities. The main goal pursued by the Commission is to

guide the agency according to its own priorities, which implies the definition of agencies' long term strategic guidance and programming through the multiannual frameworks, and the definition of short term objectives and tasks, through the annual programmes. In practice, the Commission capacity to set the agenda and define the strategic objectives and priorities of agencies varies considerably across agencies. In some of them, for instance at ECDC, ERA and FRA, the objectives and working programmes are in practice decided according to the preferences of the Commission, which often establishes official and unofficial contact with the agency management structure to secure that the working programme reflects its own preferences. It is reported, for instance, that the annual work program of ERA is always elaborated outside the management board according to the general guidelines of the Commission. Illustratively enough, some of the interviewed suggested that their agency management board sometimes limits itself to approve the decisions previously agreed in informal arenas and without any strategic discussion. In other agencies, the setting of the agenda is less unidirectional. For instance at CdT, EMSA, EASA, ENISA or the EEA, the annual plan is often adopted in close cooperation with the Commission. In addition to providing general guidelines, the Commission also tries to control specific but strategic issues agencies may be highly concerned with. For instance, it is reluctant to the EEA gaining self-rule regarding greenhouse emissions or the exploitation of the Arctic. At the other extreme, the Commission has hardly any agenda-setting and programming capacity. This is for instance the case of FRONTEX, where the annual plan is submitted to the Commission but can also be ignored or outvoted.<sup>9</sup>

Although the Commission is in a minority at the agencies boards, in practice it mobilizes different types of resources to gain influence in the process of agenda setting and programming. First and foremost, the Commission tries to exercise its real power at the boards and, more importantly, at the agencies' bureau, which is a rather informal body generally composed by the Executive Director, the Chair and ViceChairs, and representatives of the Commission and a limited number of Member States. The Bureau is often the arena where the agenda is normally fixed and prepared, where the real discussions and management take place, and where conflicts are solved and agreements are reached before the meetings of the boards. For instance, the bureau of Eurofund and Cedefop prepares all the discussions that later on the governing board validates. In other agencies bureaus, for instance at the EEA, the position of the Commission is more balanced vis-à-vis the Member States and sometimes it is seen as a *primus inter pares*.<sup>10</sup>

In practice, the Commission is unevenly equipped to include certain points in the agenda of the meetings of the boards and remove others if it anticipates disagreements. It also attempts to avoid discussions over policies or new legislation and focus on the technical or procedural aspects of the agenda. This is particularly true for those agencies that are considered to be of the Commission, for instance ETF or ECDE, where it has a lot of margin to define the issues to

be included and discussed in the agenda. In practice, this involves setting the limits of the tasks and activities the management board can handle. Similarly, the agenda of the EMSA is normally drafted by the Executive Director and the Chairperson, although before circulation it is discussed and agreed with the Commission, who has the capacity to add or remove items. In other agencies the Commission capacities to define the agenda is less prominent. At the ECHA, for instance, it is the Secretariat of the board together with the executive director those formally setting the agenda of the meetings, although in practice the Commission attempts to influence as much as possible. At the other extreme, the Commission has hardly any influence on agenda setting, for instance in the cases of CEPOL, CPVO, EDA, EUROJUST, FRONTEX and OHIM, being because it has no representatives at the management board, because it has representatives with voting rights or because, because it can easily been outvoted or because it is not an agency under the umbrella of the Commission. For instance, the Commission has neither institutional role nor capacity to influence the agenda of the EDA.<sup>11</sup>

### *Agency Alignment*

One of the most important means for the Commission to reach agency alignment, that is, to make the agencies orientations be as similar as its own preferences, is through the capacity to be decisive in the appointment of executive directors and keep close relationships with this key figure, and to a lesser extent the Chairperson and key staff. Agencies regulations describe the ways to appoint the executive director. In the oldest agencies, namely Cedefop and Eurofund, the boards draw up a short list of candidates and it is the Commission the one nominating the executive director. By contrast, in most of the agencies that were created under the first pillar, the Commission draws the short list and it is the management board deciding. In the latter, the procedure is not uniform across agencies, as the Commission may propose the candidate or a shortlist of candidates, or the candidacy may be proposed by the Commission with other candidates not being necessarily excluded. Beyond formal powers, the appointment of executive directors at CFCA, ECHA, EMSA and ERA usually comes directly from the Commission, which in practice is said to hold the last decision. In other agencies, for instance EASA or ENISA, the Commission expresses its preferences over the candidates or elaborate a shortlist, but it is the management board the one appointing the executive director through a vote in which the executive director might not be in close synchrony with the Commission. In practice, the Commission displays uneven powers to influence the appointment of executive directors, although in most agencies it is a non-written norm that executive directors should not be persons contrary to the Commission. Other than that, the Commission has hardly any capacity to influence the selection of the executive director in those agencies that were created under the second and third pillars.<sup>12</sup>

Beyond appointments, the Commission has in practice uneven capacities to keep the executive directors moving along their own lines. It tries to influence the executive directors reporting at the boards and advising the agency, as for instance at the ECDC and the EEA. In case of disagreements between the Commission and the representatives of the management board, the executive director plays a key role, and for the Commission it is crucial him or her being closely aligned. In some agencies, for instance at ETF, a non-written but broadly accepted norm is that the duple formed by the executive director and the Commission is the real chairmanship of the meetings and constitutes one of the main governing rules of the board. More generally, it is reported that during the meetings of the management board of the agencies that are clearly an extension of certain DG, the Commission manages the debate and, at a certain point, it is difficult to differentiate the agency from the Commission.<sup>13</sup> Yet, the Commission may not always have full capacity to reach the alignment of executive directors. It is clearly not enthusiastic about some executive directors keeping close relationships with the European Parliament, as the cases of FRA and EEA reveal, or with the EU Presidency, as for instance the case of Eurofund. In addition, the Commission is critical about executive directors having a too active communication policy or elaborating and presenting their own policy papers. It is clearly opposed to executive directors not performing according to the guidelines of the Commission. The threat not to renovate the executive directors' mandate when facing clear opposition from the Commission has eventually come into practice, as reported by some representatives at ETF, EASA and GSA.<sup>14</sup>

Besides the alignment of executive directors, the Commission also tries the Chairperson to include or exclude certain issues for discussion of the meetings of the boards. In some agencies, the Chairperson follows the Commission lines and gives this actor the central role. Moreover, he or she tends to actually recognize a special status the Commission during the meetings of the management board by, for instance, leaving its role to the Commission and sending an alternate who behaves as a national representative, or conceding a number of interventions between national representatives and the Commission so as to the latter is not isolated. It is reported too, that some national representatives may abstain at voting in order not to obstruct a proposal by the Commission.<sup>15</sup>

#### *Voting avoidance*

Consensus building and avoiding voting is one of the Commission' most aimed practice to keep the control of the decisions adopted by agencies. Voting is obviously the Commission very last preferred rule of decision-making as it can easily be outvoted since it is always in minority at the agencies boards. In spite of the arithmetic inferiority of the Commission, however, decisions in most agencies are normally adopted by consensus. For instance, the boards of ETF, ECHA, EFSA or EMSA very rarely come to an explicit vote. At ENISA, for instance, voting is very

exceptional and is normally limited to the election of the executive director and the Chairperson, or to those issues that are conflictive and consensus has not been reached beforehand. In some agencies, for instance at FRA, informal show of hands revealing what the majority position is and if further discussion is needed is a widely accepted non-written rule. Normally, voting rights is somehow a safeguard clause in case consensus is not reached and only explicit contentious issues are voted. In those cases, majorities are very much affected by the distribution of voting rights among the members of the management board. In many stances, the Commission is in clear minority, although this does not necessarily prevent decisions from been taken. Indeed, in agencies such as CFCA, EASA, FRA and FRONTEX, among others, the Commission has sometimes been outvoted.<sup>16</sup>

One of most common practice the Commission employs to avoid voting consists of making efforts to solve conflicts at the bureau, working groups or other informal arena before the meetings of the management board. Other reported practice includes trying to remove items from the agenda and postponing conflictive issues to future meetings. Perhaps most importantly, as the Commission holds power of legal interpretation as acting as the guardian of Community law, it is a relatively common practice for the Commission to argue that certain agency documents or proposals do not conform the EU *acquis*. In many cases, therefore, the Commission has normally the final say.<sup>17</sup>

#### *Open allocation of representatives*

The founding regulations of agencies do not establish which Commission DG has to be the representative at the agencies boards. This leaves open the decision of which representative is sitting at or attending the meetings of the boards. Open allocation of representatives at agencies boards main rationale are both functional specialization and institutional control. To this respect, the Commission allocates representatives or attendants at management board meetings according to their competence and specialized fields in relation to the tasks covered by the agencies. For instance, as DG Health and Consumers tutelles EFSA, EMA, ECC and CPVO, the Director General normally seats in the boards of the four agencies. Similarly, the Director of DG Enterprise is regularly the representative at the board of ECHA, EMA and sometimes EFSA. It is not rare that the allocation of Commission representatives is flexible and in practice it is usual that a single Director or a Director General represents the Commission in a non-fixed number of agencies. For instance, the representative of DG Environment may occasionally attend meetings of the management board of transport agencies if specific environmental issues are to be discussed. Similarly, the Commission representative at EASA may be an alternate at the boards of ERA and EMSA. Likewise, the three representatives of the Commission attending the meetings of ETF management board may come from DG Education and Training, although sometimes they may come from DG External Relations, DG

Development or DG Enlargement. This type of situations may generate perplexity among national representatives, who rather view changing Commission representatives as a problem of internal coherence at the Commission. In general, open allocation of representatives enhances the Commission capacities to examine agencies functions from a wider perspective and reinforce transversal control. Sometimes, changes of DG on which agencies depend may be addressed to increase the Commission control over agencies, thus provoking negative assessments by national members of the management boards. For instance, some national representatives at EMA are critical about the agency not depending on DG Enterprise anymore but on DG Health and Consumers, as they consider the agency works now under much strict control from the Commission.<sup>18</sup> In brief, open allocation of Commission's representatives at agencies boards allows DGs with higher organizational capacities, and in general the Commission, establish closer links with agencies and display high levels of influence and transversal control.

#### *Regulation control*

The Commission most formal mode of limiting autonomy of EU agencies is through legal mechanisms and its role as guardian of EC Treaties. The Commission tries to make sure that agencies do not overstep their responsibilities through regulation control, which implies the clarification of what the founding regulations allow, as well as through financial regulations, involving budget administration implementation. At the practical level, the Commission representatives at the meetings of agencies boards often clarify political positions of the Commission or bring legal interpretations. In addition, the Commission controls the budget of those agencies that are financed by the EU and, which in practice involves constraining agencies to follow the Commission principles and guidance. Moreover, if budget is not well implemented, the Commission may more or less explicitly threat agencies with reducing future funding. Beyond that, the Commission cannot run the risk of not exerting rigid budget control as the European Parliament scrutinizes agencies activities and the funding balance among them.<sup>19</sup> On the Member States side, the Commission is generally seen as performing very rigidly in the control of the application of budget and staff regulations, and very specifically those concerning budget implementation.<sup>20</sup> As this study reveal, agencies that are fully funded by the EU perform less autonomously from the Commission than those that are partially self-funded, namely CPVO, ECHA, EMA and OHIM, or, in some cases, those whose activities are directly funded by the Member States.

The Commission has formally been endorsed with relatively reduced formal powers in the agencies boards but in practice its capacities to influence agencies do not always reflect its formal powers. This study observes variations as regards the Commission's capacities to influence and control agencies, which therefore reflects latter levels of autonomy (see Table 1).

The autonomy map offered in this study is very approximate as the composite of EU agencies is heterogeneous as regards tasks, size, age and governance. Nonetheless, drawing from the interviews conducted in this study, which emphasize practical behaviour, broad levels of autonomy can be identified. Agencies with low levels of autonomy include those in which the Commission possesses higher capacities of strategic guidance and agenda setting, agency alignment, voting avoidance and regulation control. In agencies with low-medium levels of autonomy, the Commission has quite capacities to exert influence and limit their autonomy, whereas agencies find narrow channels to behave in a more autonomous fashion on specific issues. Those agencies with medium-high levels of autonomy find more room to escape from the Commission's influence as regards their capacities to uphold their preferences. Finally, there is a group of agencies that in practice are capable of upholding their own preferences, defining objectives and strategies as well as taking decisions with a minimal or even null interference of the Commission.

Table 1. Agencies' Autonomy from the Commission

Low	Low-Medium	Medium-High	High
CdT Cedefop ECDC EIGE EMCCDA EMSA ERA ETF Eurofund EU-OSHA GSA	EEA ENISA ECHA FRA	CFCA CPVO EASA EFSA EMA	CEPOL EDA EUROJUST FRONTEX OHIM

Source: own data derived from 60 interviews.

### 3. Why are some agencies more autonomous than others?

In order to account for variations at the level of agencies' autonomy, the arguments presented in the three proposed hypotheses are empirically tested and assessed.

#### *Hypothesis 1: 'communitarization of competences'*

When analyzing formal independence of EU-level agencies, Wonka and Rittberger (2010) suggest that the Commission has more capacities to influence agencies that were created under the first pillar, even though their findings also advance that more formally independent agencies are concentrated in the former first pillar. In spite of the end of the pillar structure by virtue of the Lisbon Treaty, the relationship between the degree of communitarization of

competences (former first pillar) related to the tasks undertaken by agencies and autonomy from the Commission cannot be disregarded. Our data suggest that the Commission has minimal influence in agencies that were created under the second and third pillars. This is quite a clear prediction as agencies such as EDA, EUROJUST and EUROPOL were created under the umbrella of the Council with a very different rationale than those created under the first pillar. At EUROJUST, for instance, the Commission, with no representatives at the management board, is almost an absent player. It is eventually allowed to attend meetings of the agency and is regularly informed on the agencies activities. Similarly, EDA is a purely intergovernmental agency and the Commission has no capacity to exert any influence<sup>21</sup>. In conclusion, for this group of agencies, the hypothesis is confirmed. However, the Commission displays uneven capacities to exert influence and limit the autonomy of agencies that were created under the first pillar. First, some agencies covering highly communitarized issues may display intermediate levels of autonomy when they also operate in areas that are widely in the hands of the Member States. CFCA exemplifies this trend. While the conservation of marine biological resources under the common fisheries policy is an exclusive competence of the EU, CFCA activity is rather in the hands of the Member States, who are the ones providing resources and undertaking operations. In this context, some Member States are scarcely enthusiastic about the operations undertaken by CFCA because they consider their national system to be more appropriate. At the same time, however, most Member States cooperate with the agency as it represents no menace to their national interests, that is, it is not entitled to impose sanctions or bring them to the European Court of Justice –whereas the Commission could. Other agencies also displaying intermediate levels of autonomy were created under the first pillar but also deal with policies where the EU has competences to support, coordinate or supplement the actions of the Member States. For instance ECDC, ENISA and FRA deal with human health, cyber crime or human rights, respectively, which are rather intergovernmental in nature. This situation may generate certain reticence among Member States and even on the part of the Commission. At FRA, for instance, United Kingdom and France reject the idea that the agency undertakes too many (ex) third pillar tasks, whereas other Member States are reluctant to take a cooperative approach as a way to express disapproval of the agency publishing reports on human rights discrediting them. The relationship between the communitarization of the competence and autonomy is even less clear in the case of EEA, as this agency also presents intermediate levels of autonomy but, contrary to the above mentioned ones, deals with tasks related to shared competences.<sup>22</sup>

Finally, the group of agencies displaying higher levels of autonomy from the Commission, including EASA, CPVO and OHIM, presents a mix landscape as regards the degree of communitarization of competences. Air traffic is an essential part of EU transport policy and, while some of the aviation safety tasks had previously been implemented by Member States, EASA has currently become a new system of sharing tasks. At CPVO, the Commission, with no voting rights at the management board, has a very limited influence. With the EU not holding

powers on plant variety, Member States have large manoeuvring capacity and, as reported, sometimes may align together against the Commission. Similarly, the Commission has very limited capacity to influence OHIM decisions. Yet, as intellectual property rights have become an increasingly important issue for the Commission, it has incentives to tolerate relatively well high levels of agency autonomy and foster the agency's progress, even at the expense of losing control capacities. In conclusion, the association between the communitarization of competences and autonomy is not a straightforward one and therefore the hypothesis is only partially confirmed.

#### *Hypothesis 2: 'Relationships among multiple principals'*

Some scholars have suggested that the coexistence of multiple principals may reduce agencies' autonomy given that they are subject to a multiplicity of veto powers and controls (Gilardi 2008). In this line or arguing, Dehousse (2008) suggests that the absence of a hegemonic principal at the EU following the Treaty reforms since Maastricht affects agencies as they are subject to multiple controls from the Commission, the Member States, the European Parliament and/or stakeholders. This research shares the assumption that EU principals are fragmented and that, as Thatcher and Stone Sweet (2002) suggest, they are not always unified. Yet, this study suggests that multiple principals have a differential effect on agencies autonomy. The empirical evidence obtained in this study suggests that the current agency governance often reproduces uneven balance of powers among the Commission, the Member States and the European Parliament. Sometimes relationships between these institutions reproduce a rather hierarchical structure, with the Commission being on top of it in many cases, or the Member States in a reduce number of them. This idea goes is in line with the argument that EU-level agencies are much closer to the Commission than to the Council and national ministries (Egeberg and Trondal 2010), in spite of the Commission being in a minority at the agencies boards. When there is a dominance of a single principal over the others, namely the Commission, this one has stronger capabilities of exerting more influence on the agency than the others, including the Member States, the European Parliament and stakeholders. In such cases, the Commission is a dominant actor and plays a leading role. Clearly enough, the Commission appears to be the main principal in all of the agencies with the lowest levels of autonomy, typically at CFCA, EMSA, ERA, ETF or Eurofund. Conversely, when Member States are undoubtedly at the highest level of the principals' hierarchy within the agency governance, the agency is very much influenced by then and hardly by the Commission. Agencies performing higher levels of autonomy from the Commission exemplify it. For instance, it is reported that FRONTEX increasing its tasks through national pilot projects and training tools clearly enhances the capacities and the powers of the Member States and weakens the position of the Commission. Perhaps EDA constitutes the most illustrative example of Member States being on the highest

level of the principals' hierarchy. While the Commission shares some of the agency's objectives regarding, for instance, the 'Defence Package', it has no institutional role in it.<sup>23</sup>

What happens when relationships among multiple principals are more balanced? Contrary to the multiple principals' argument advanced by Dehousse (2008), Thatcher and Stone Sweet (2002) suggest that agencies may escape from the principals' control due to divided or multiple principals. Similarly, when analyzing formal independence of EU agencies, Wonka and Rittberger (2010) advance that being accountable to multiple principals may open political room for agencies to play the principals off against each other if their preferences diverge. This research partly goes in line with such argument by providing empirical evidence that the fragmentation of principals, when none of them has a clearly defined predominant position, may dilute the control capacities and influences on agencies and open the doors to agency autonomy. In those cases, no principal seems to play a pivotal role permanently but rather interact with other principals with competing interests. Put shortly, neither the Commission nor the Member States have the capacity to act as the leading actor. The cases of EASA, EEA, EMA and FRA, for instance, clearly exemplify this trend. In those agencies, multiple principals with competing interests may result in the dilution of control and influence by the parent institutions.<sup>24</sup>

Besides the Commission and the Member States, the European Parliament, having representation in a reduced number of EU agencies, has generally little power to influence agencies and, in those cases, it is normally one more member of the management board. Theoretically, however, the European Parliament has the possibility to use its double power, that is, acting as a member of the management board and approving the final budget to influence agencies. In practice, however, this situation is hardly observed. Other means for the European Parliament to try to gain influence on agencies is by holding hearings of the candidates to executive directors, but even in those cases it is normally the Commission the one having a preponderant role. Ultimately, informal contacts with executive directors may result in more effective influence. For instance, the European Parliament has established regular contacts with the executive director of FRA, especially as regards budget issues or, more exceptionally, reporting. Going one step ahead, the EEA's work for the European Parliament is likely to increase environmental legislation and therefore the co-decision procedure. The Commission is obviously scarcely enthusiastic about what it considers to be agencies serving the European legislative chamber.<sup>25</sup> In conclusion, the hypothesis associating multiple principals with autonomy is clearly confirmed, with agencies performing more autonomously from the Commission not only when member states are the dominant players but also when parent institutions keep balanced power relationships among them.

*Hypothesis 3: "Resource mobilization capacities"*

The literature on agencies has widely signalled the functional benefits derived from delegation, ranging from the solving of commitment problems, overcoming information asymmetries and enhancing efficiency of rule making (Majone 1997; Thatcher and Stone Sweet 2002). Similarly, the costs of delegation for principals have also extensively been reported. Principals' acknowledge that once agencies are created, they may produce differentiated outcomes and become uncontrolled (Thatcher and Stone Sweet 2002; Everson 1995). EU-level agencies are not an exemption. Many of them tend to display a more or less defined tendency to soften their principals' control and deploy higher levels of autonomy. The extent to which they may become more autonomous by developing unique capacities has also been a topic of interest in the literature (Trondal 2010; Majone 1996). The argument advanced by hypothesis 3 addressing at agencies' resource mobilization capacities focuses on how agencies capable of producing and mobilizing key resources, namely scientific information, reputation, self-funding and networking are in a better position to misplace the centrality of the Commission.

The specialized literature has widely reported that agencies contribute to solve problems of incomplete information by providing their parent institutions with the scientific knowledge and expertise necessary in increasingly complex decision making processes (Majone 1996, 1997). While the scientific capacities of EU agencies vary considerably, the expertise, research and data they provide is globally a highly valued input for the Commission. Most Commission officials and national representatives of agencies interviewed in this study acknowledge that agencies produce a valuable and even exceptional scientific input for legislation proposal. Although agencies are bounded by the Meroni judgement of the European Court of Justice, many of them provide independent assessments and crucial input for legislation. For instance, EASA, ECHA, EEA, EFSA and EMA generate key knowledge for the Commission to draft legislative proposals about aviation safety, chemicals and pesticides, environmental protection, food security and pharmaceutical legislation, respectively. The input of other agencies that are also considered to be highly autonomous, for instance CPVO, is nonetheless more related to efficient implementation rather than to legislation. Generally, the added value of most agencies is their scientific independence from the Commission and the Member States, with this being a particularly sensitive issue since the several food crises in the 1990s. This rationale was the underlying logic to create EFSA, first, and EMA, ECDC and CPVO later on. More recently, for instance, EFSA and the ECDC have been highly involved in issues related to the E.coli outbreak since they possess the scientific expertise and provide the Commission the source to develop the EU strategy. Globally, highly qualified agencies have developed strong technical capacities and become centres of excellence by themselves. EEA, for instance, has panels of experts producing rigorous data and research, attends and organizes international conferences and has gained an international reputation. It must be noted, however, that excessive reiteration on independence on the part of EFSA and EEA might have provoked hostility to the Commission (Busuioac 2010). Other agencies with lower levels autonomy, for instance ERA and

EIGE, may also provide valuable technical input for the Commission, as for instance the former when preparing technical specification aspects on behalf of the Commission. At ECDC, EIGE or ENISA, the Commission considers its scientific input is one more part of the whole body of information. At the bottom level, the Commission is scarcely dependent on the technical input provided by GSA. When addressing the Commission dependencies on agencies technical and scientific input, it must be noted, however, that a few of agencies believe that the Commission could better use the pool of data and expertise provided by them.<sup>26</sup>

As advanced by Majone (1997) agencies that are well equipped with expertise and scientific capacity are more likely to exploit their scientific superiority and take advantage of the Commission's informational dependencies. While this trend is observed in this study, informational capacity is one among other key resources fostering them higher levels of autonomy, with the reach of task performance, self-funding and networking capacities also having effects on agency autonomy. First, a few EU-level agencies including CPVO, OHIM, EASA and ECHA are entrusted with powers to adopt individual decisions which are legally binding on third parties (Commission 2008). Their task performance, therefore, is not limited to informational activity but include inspections, authorisations, certification and, in practice, rule-making. EASA and EMA, for instance, are considered to be quasi-regulatory agencies given their strong recommendation powers (Craig 2006; Dehousse 2008). EASA, in particular, provides one set of safety rulemaking as regards the certification of aircrafts, for which it has a concrete mandate to accomplish this task on its own behalf. Other agencies not having the capacity to adopt individual decisions but to provide direct assistance to the Commission, for instance EMA, are empowered to take in practice a final decision on the license of pharmaceutical products.<sup>27</sup> Far-reaching task performance, rather than the amount of workload, increases the complexity of agencies and is likely to reduce the principals' capacities to limit its autonomy.

Second, self-funding also appears to be widely connected with agencies capacities to display higher levels of autonomy, with CPVO, OHIM, EMA and EASA constituting clear examples. For instance, CPVO has its own budget and this allows overperforming and undertaking tasks outside the regulatory framework. Similarly, OHIM is self-financed and this enhances its administrative and financial autonomy, which has increased due to the increasing number of applications by users of property rights over the last years. EMA represents a particular case of agency strongly capable of mobilizing material resources not only because its funding is generated by fees charged for the work done but also because it is one of the biggest and more complex agencies of the EU. As regards EASA, it performs more autonomously from the Commission thanks to its technical superiority, its regulatory and decision-making capacities and, very outstandingly, its self-funding capacities. Interestingly, about two thirds of EASA revenues come from industry, which is a major stakeholder. A different landscape is provided by those agencies whose operations are financed by the Member States. Illustratively enough,

FRONTEX actions are paid by the Member States and this renders the Commission minimal budget control capacity. At the other extreme, agencies that are fully financed by the EU display lower levels of autonomy, as their strategic choices are to a large extent subject to the Commission priorities.<sup>28</sup>

Finally, agencies networking capacities, both at the global and European levels, are crucial resources for them to gain autonomy. Illustratively enough, CPVO, OHIM, EASA, EFSA, EMA and EEA, which display intermediate or high levels of autonomy, play a role at the global landscape. CPVO, for instance, represents the EU in the International Union for the Protection of New Varieties of Plants; EASA has a very high international profile in the negotiation of agreements with third countries concerning air security issues; OHIM is considered to be a leading actor in the international level; EFSA participates in global scientific debates on genetically modified organisms; and EMA has taken a place in the global landscape vis-à-vis other regulatory agencies around the world. At the European level, EMA has evolved a network structure by developing solid capacities drawing on about four thousand experts around the EU.<sup>29</sup> In conclusion, the argument associating agencies capacities to mobilize resources on their own and autonomy is clearly confirmed, with the combination of resources being a potential for autonomy.

### **Concluding remarks**

When analyzing the autonomy of EU-level agencies one must keep in mind that the topography of agencies is anything but homogeneous. Yet, heterogeneity must not restrain attempts to offer a general picture of the landscape. This paper provides accounts for variations in the level of *de facto* autonomy across 25 EU agencies. It presents empirical evidence assessing the arguments based on the communitarization, multiple principals' relationships and agencies capacities. Our empirical evidence assesses the explanatory validity of three accounts. The communitarization hypothesis is confirmed in those agencies that were created under the umbrella of the Council and are therefore purely intergovernmental. Here, the Commission is in practice a mute player. Yet, the hypothesis is less clear as regards agencies created under the first pillar since variations regarding their level of autonomy are observed. Next, the argument based on the structure of principals' relationships is better confirmed. It is grounded in the literature emphasizing the importance of multiple principals but confronts the idea suggested by some scholars highlighting that the fragmentation of principals multiplies veto points and controls on agencies, thus limiting their autonomy (Dehousse 2008). The argument provided by this paper takes a step forward by advancing the idea that the structure of the relationships among principals has clear effects on agencies autonomy. With multiple principals being an essential trend of EU agencies, it is the ways their relationships are framed that matters. The empirical evidence presented in this study reveals that agencies are likely to be more

autonomous from the Commission not only when Member States are the dominant actors but, significantly, when the power relationships among principals are more balanced. The former case is a clearly predicted outcome since the intergovernmental dynamics of agency governance leaves the Commission in a very secondary position. In the latter case, perhaps most interestingly, control powers are dispersed among principals with competing interests, no one can exert direct influence and as a result multiple principals' guidelines may become loose, contradictory and to a certain extent more easily bridgeable.

Finally, the argument advanced by hypothesis 3 is grounded in the literature debates focusing on agencies' organizational capacities (Trondal 2010). It looks at the relationship between agencies' endogenous capabilities to mobilize resources that enhance their own capacities vis-à-vis the Commission. Generally, agencies that are capable of generating and mobilizing technical information, scientific knowledge and expertise are better equipped to exploit the Commission's informational dependencies and gaining autonomy. Yet, this study reveals that the Commission's dependencies on informational input alone do not prove to be strongly associated with agency autonomy. The Commission often obtains highly valuable and unique data and information from agencies often constituting a straightforward input for legislation proposals, but this does not necessarily downplay the Commission's capacities to exert effective control of agencies. This finding does not contradict the theoretically relevant argument emphasizing informational asymmetries and scientific dependencies (Majone 1997), but nuances that agencies' informational superiority alone is the sole or sufficient resource agencies may exploit to become more autonomous. Self-funding and networking capacities are to a large extent associated to agency autonomy. Agencies better equipped to produce and mobilize scientific information, reputation, funding and networking resources are expected to take advantage of their position vis-à-vis the Commission and display higher levels of autonomy than those with lower resource building capacities. Self-funding does not only enhance agencies' capacities to diversify their priorities and strategies but also to establish narrow contact and mutual resource dependencies with stakeholders, with this sometimes resulting in the Commission's displacement from the epicentre of the principals' power balance. Similarly, agencies that have the capacities to evolve towards a large network structure across the EU and increase their visibility in the global landscape are more likely to perform with relatively less guidance from the Commission. This is particularly true for agencies acting on behalf of the Commission or representing the EU in international arena. More independent and less politicized than the Commission, agencies capable of making a name for themselves as centres of excellence in the global arena are in a better position to counterbalance the influence of the Commission.

To sum up, this study has addressed the relationships between EU-level agencies and the Commission and its effects on autonomy. By looking at the institutional dynamics in which the balance of powers between agencies and the Commission occurs, it aims to contribute to the

literature by providing accounts for variations in EU-level agency autonomy. Further research on the relationships between agencies and other principals, the institutional context in which agencies operate, the conditions under which agencies develop their own capacities, especially in the global landscape, are promising lines of research.

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<sup>1</sup> The agencies under study include: CdT, Cedefop, CEPOL, CFCA, CPVO, FRA, EASA, ECDC, EDA, EEA, EFSA, EIGE, EMCDDA, EMA, ENISA, EMSA, ECHA, EUROJUST, ERA, ETF, EU-OSHA, EUROFUND, FRONTEX, GSA and OHIM. Two other agencies (EUROPOL, EUSC and ISS) were excluded from the study as they did not respond to or declined our requests. Executive agencies were also excluded as they have a temporary mandate.

<sup>2</sup> Communication from the Commission to the European Parliament and the Council, European agencies – The way forward, COM (2008) 135 final.

<sup>3</sup> Interviews 4, 5 and 45.

<sup>4</sup> Interviews 15 and 23.

<sup>5</sup> Interviews 5 and 26.

<sup>6</sup> Interviews 4, 5 and 44.

<sup>7</sup> Interviews 17, 18, 19, 21, 27, 28, 35 and 52.

<sup>8</sup> Interview 31.

<sup>9</sup> Interviews 4, 6, 8, 12, 15, 18, 19, 22, 27, 37 and 40.

<sup>10</sup> Interviews 2, 12, 14, 15, 18, 26, 32 and 46.

<sup>11</sup> Interviews 6, 7, 8, 10, 21 and 38

<sup>12</sup> Interviews 1, 6, 7, 32, 37 and 46.

<sup>13</sup> Interviews 2, 4, 7, 10, 11 and 16.

<sup>14</sup> Interviews 1, 2, 3, 4, 5, 30, 32 and 52.

<sup>15</sup> Interviews 2, 12, 30, 39 and 40.

<sup>16</sup> Interviews 1, 2, 3, 14, 13, 15, 21, 23, 28 and 55.

<sup>17</sup> Interviews 3, 28, 30 and 39.

<sup>18</sup> Interviews 2, 6, 16, 30, 45 and 53.

<sup>19</sup> Interview 21.

<sup>20</sup> Interviews 6, 21, 23 and 24.

<sup>21</sup> Interviews 1, 2, 3, 14, 15, 20, 29, 35, 36, 38 and 42.

<sup>22</sup> Interviews 2, 3, 5, 6, 10, 37, 14, 15, 19, 20, 29, 48 and 52.

<sup>23</sup> Interviews 6, 8, 9, 11, 38, 45 and 46.

<sup>24</sup> Interviews 2, 6, 17 and 45.

<sup>25</sup> Interviews 2 and 4.

<sup>26</sup> Interviews 7, 9, 10, 12, 14, 17, 37, 45, 52 and 55.

<sup>27</sup> Interviews 3, 6 and 45.

<sup>28</sup> Interviews 6, 8, 17, 35, 42, 45, 46 and 50.

<sup>29</sup> Interviews 5, 17, 35, 42, 45 and 46.

## **Annex: List of agencies**

Community Fisheries Control Agency (CFCA)

Community Plant Variety Office (CPVO)

European Agency for Safety and Health at Work (EU-OSHA)

European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

European Aviation Safety Agency (EASA)

European Centre for Disease Prevention and Control (ECDC)

European Centre for the Development of Vocational Training (Cedefop)

European Chemicals Agency (ECHA)

European Defence Agency (EDA)

European Environment Agency (EEA)

European Food Safety Authority (EFSA)

European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)

European GNSS Supervisory Authority (GSA)

European Institute for Gender Equality (EIGE)

European Maritime Safety Agency (EMSA)

European Medicines Agency (EMA)

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

European Network and Information Security Agency (ENISA)

European Police Office (EUROPOL)

European Police College (CEPOL)

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European Railway Agency – promoting safe and compatible rail systems (ERA)  
European Training Foundation (ETF)  
European Union Agency for Fundamental Rights (FRA)  
European Union Institute for Security Studies (ISS)  
European Union's Judicial Cooperation Unit (EUROJUST)  
European Union Satellite Centre (EUSC)  
Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)  
Translation Centre for the Bodies of the European Union (CdT)