

## The Politics of 'Eurocratic' Structure and the New European Agencies

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*The establishment of agencies at the European level is one of the most notable recent developments in EU regulatory policy. This article examines how politics has shaped the design of EU regulatory agencies. Building on the American politics literature on delegation, the article explains how principal-agent concerns and political compromise have influenced agency design in the EU context; shows how conflicts between the EU's primary legislative actors – the Council and the Parliament – and its primary executive actor – the Commission – have influenced the design of new bureaucratic agencies; and discusses how the growing power of the European Parliament as a political principal has changed the politics of agency design.*

The establishment of agencies at the European level is one of the most notable recent developments in EU regulatory policy. Between May 1990 and November 1994, the EU engaged in a wave of agency creation, establishing six new European agencies dealing with regulatory policies, including environmental protection, pharmaceutical regulation, trademark and design registration, occupational health and safety, illegal drug trafficking and use, and patenting of plant varieties. Subsequently, the EU established two more agencies, the Monitoring Centre on Racism and Xenophobia and the European Agency for Reconstruction, and discussion of the creation of other agencies has continued.<sup>1</sup> In reaction to the BSE crisis, the EU has adopted a regulation establishing a European Food Safety Authority, which is to begin operation in 2002. At the Laeken summit in December 2001, member state negotiators clashed over the siting of a dozen planned agencies, including the European Food Safety Authority, a European Aviation Safety Authority, a European Maritime Safety Agency and a European Agency for Information Technology Security.<sup>2</sup> Finally, EU policy-makers continue to debate the merits of establishing European agencies in the areas of telecom regulation, anti-trust and securities regulation.

In some respects, the creation of European agencies is unsurprising. Legislative processes are generally too slow to keep up with the rapid pace of change in highly technical policy areas. Courts, too, have difficulty dealing with technically specialised regulatory issues. Therefore, legislators in many polities choose to delegate discretionary rule-making and adjudicative powers to bureaucratic agencies that can provide the necessary technical expertise.<sup>3</sup> Moreover, legislators often grant agencies some degree of autonomy in order to enhance the credibility of their policy commitments.<sup>4</sup> With these considerations in mind, the establishment of EU agencies may appear to be a natural response to the expansion of the EU's regulatory role in the late 1980s and early 1990s.

However, such functionalist accounts do not provide an adequate explanation of the creation of the new European agencies. The functional demands created by the completion of the internal market might have been addressed by delegating more resources and authority to the EU's existing bureaucracy, the European Commission. Much of the rhetoric surrounding the new agencies emphasises the need to delegate to 'independent' authorities. Yet, the Commission itself can be thought of as a generalist independent agency established by member states to promote the completion of the internal market.<sup>5</sup> Why then, instead of delegating more authority to the Commission, were new European agencies created? Of what exactly were these agencies intended to be independent? To understand why the agencies were created and, in particular, why they were structured as they were, we must analyse the politics of bureaucratic, or Eurocratic, structure in the EU. The designs of these agencies, including the scope of their powers and their management structures, were not determined solely by considerations of administrative efficiency; rather, inter-institutional politics played a decisive role.

This article explains why new EU agencies were created and how politics influenced their design. Literature on the politics of delegation and bureaucratic structure in the US offers insights into the politics of bureaucratic or 'Eurocratic' structure in the EU. While the institutional structure of the EU differs from that of the US in important respects, many of the same factors influence the politics of agency design in both polities. A number of EU scholars have already applied lessons from the American politics literature on delegation to bureaucratic and judicial actors in their analyses of the EU.<sup>6</sup> This article contributes to this literature in two ways. First, it analyses the politics of bureaucratic structure behind a new set of EU institutions, the European agencies, which have as yet been subject to little positive analysis. Second, most existing studies that apply the principal-agent framework to the EU view member states as principals who delegate powers to supranational agents, typically the Commission

and ECJ. This approach was entirely appropriate for much of the EU's history; however, in areas where the European Parliament has emerged as a co-equal legislative actor, it is appropriate to view the Parliament as a political principal alongside the member states.<sup>7</sup> Moreover, the Commission itself acts as a principal in the case of delegation to European agencies. Analysing the politics behind the European agencies allows one to view the EU as a coherent polity and to examine how interactions between its two primary legislative actors – the Council and the Parliament – and its primary executive actor – the Commission – influence the design of new bureaucratic institutions.

The establishment of European agencies has required the approval of the Council of Ministers, the European Commission and, in some cases, the European Parliament. To explain the creation of European agencies, we must understand how strategic interactions between these political principals influenced the design of the agencies. Furthermore, we must consider the role of the ECJ, as expectations concerning the role of the judiciary may have influenced the strategies of the political actors engaged in agency design. Building on the American politics literature on delegation, an argument is developed explaining how principal-agent concerns and political compromise have influenced agency design in the EU. In short, it is argued that, as the single market initiative expanded the EU's regulatory tasks, the Commission saw a need and an opportunity to expand the EU's regulatory capacity. Recognising that additional transfer of power and resources to the European Commission would be unacceptable to the Council of Ministers, the Commission proposed the establishment of specialised, European agencies.<sup>8</sup> The member states in the Council agreed to the establishment of agencies, but limited the scope of their authority and demanded that they be controlled by member state appointees. Since the mid-1990s, the increasing power of the European Parliament has led to significant changes in the politics of EU agency design. As the Parliament gained increased powers in the Maastricht and Amsterdam Treaties, it has voiced increasing concern about the democratic accountability of European agencies and has asserted a greater role in agency design. Whereas the Council prefers intergovernmental oversight structures, the Parliament has demanded the establishment of monitoring and control structures that emphasise transparency and opportunities for participation by concerned interests.

#### THE POLITICS OF EUROCRATIC STRUCTURE

When designing a bureaucratic agency, legislators – the principals – confront two potential problems: bureaucratic drift and political drift.

Bureaucratic drift occurs if a bureaucratic agent develops and pursues a policy agenda differing from that of its political principals. Political drift occurs if future holders of public authority direct a bureaucratic agency to pursue objectives different from those of the political coalition that originally delegated authority to the agency. In designing a bureaucratic agency, legislators will seek to prevent both forms of drift. A series of studies has identified a number of *ex ante* and ongoing control mechanisms that politicians use to limit bureaucratic drift.<sup>9</sup> Politicians can use appropriations powers,<sup>10</sup> appointment powers,<sup>11</sup> limits on agency jurisdiction and authority,<sup>12</sup> administrative procedures<sup>13</sup> and judicial review<sup>14</sup> to control the bureaucracy. Legislators may establish oversight mechanisms to monitor the agency's actions directly (police patrol monitoring) or they may establish more indirect mechanisms, relying on third parties to detect and report bureaucratic malfeasance (fire alarm monitoring).<sup>15</sup>

A second major concern of legislators in designing bureaucratic agencies is political drift. Current holders of political power want to prevent political opponents who might come to power in the future from dismembering their agency and reversing their preferred policy.<sup>16</sup> To that end, agency creators will try to design a bureaucratic structure that is insulated against future political interference. In order to insulate their agency from political interference in the long run, designers must sacrifice some degree of political control in the short run. To insulate their agency, the principals may place control of the agency in the hands of an independent commission or locate the agency within a friendly government bureau.<sup>17</sup> They may enact 'agency forcing' legislation that stipulates in great detail the administrative procedures the agency must follow and the deadlines it must meet, and they may subject the agency to extensive judicial review, assuring that their allies will have access to the courts should the agency deviate from its statutory mandate.<sup>18</sup> In political systems where new legislation is difficult to pass due to the existence of multiple veto players, such insulation mechanisms are likely to prove attractive and effective.<sup>19</sup>

Finally, in polities such as the US or EU, which fragment political power between a number of veto players, the need for political compromise between multiple principals influences the politics of delegation.<sup>20</sup> As conflict between principals increases, delegation to executive agencies is less likely to occur and, where it does occur, is more likely to be subject to constraints on discretion.<sup>21</sup> To the extent that opponents of regulation have an opportunity to shape the design of a new agency, they will attempt to saddle the agency with a weak, fragmented structure and a vague, non-enforceable mandate. They will also demand

access to the courts in order to challenge and delay agency actions that they oppose. As a result of political compromises with opponents of regulation, agencies may in part be designed to fail.<sup>22</sup>

In the EU context, the member states in the Council of Ministers have long acted as political principals that delegate authority to bureaucratic agents at the EU level, primarily the European Commission. When the Council began delegating implementation powers to the Commission in the early 1960s, it established a system of oversight committees (comitology) as a means to monitor the Commission's exercise of its executive powers.<sup>23</sup> The Council later formalised the procedures of the comitology system in the 'Comitology Decision' of 1987.<sup>24</sup> Given the Council's preference for minimising supranational bureaucratic drift, one would expect the Council to demand the establishment of similar mechanisms for ongoing intergovernmental oversight when creating any new EU level regulatory agencies outside the Commission hierarchy.<sup>25</sup>

By contrast, until recently, the European Parliament placed little emphasis on oversight of the Commission. Before the advent of the co-operation procedure, when its legislative role was extremely weak, the Parliament was not in the position to act as a political principal *vis-à-vis* the Commission bureaucracy.<sup>26</sup> The Parliament viewed the Commission as its ally in promoting deeper integration, rather than as a bureaucracy that needed to be controlled. It largely trusted the Commission to serve the 'Community interest' in performing its regulatory activities and did not place much emphasis on oversight. However, as the Parliament has gained legislative powers in recent years, it has begun to distance itself from the Commission and to place much greater emphasis on oversight of the Commission's executive activities. After legislative reforms made in the SEA, Maastricht and Amsterdam, the European Parliament has emerged as a co-equal legislator with the Council in the wide range of areas subject to the reformed co-decision procedure (Amsterdam Treaty, Art. 189b).<sup>27</sup> As a political principal in its own right, one would expect the Parliament to demand the creation of bureaucratic structures and administrative procedures that provide it or its interest group allies with opportunities for oversight and control.

However, one would not expect the Parliament to favour the same oversight mechanisms as the Council.<sup>28</sup> Where the well-resourced member states in the Council have relied heavily on the comitology's intergovernmental 'police patrol' mechanisms,<sup>29</sup> the less well-resourced European Parliament is likely to prefer 'fire-alarm' mechanisms relying on societal actors to identify instances of bureaucratic malfeasance. Moreover, whereas the Council preferred the comitology process to remain opaque, one would expect the Parliament to prefer open,

transparent oversight processes. Open, transparent, codified administrative procedures facilitate fire-alarm oversight. In particular, they make it easier for the diffuse public interest groups that are so often the Parliament's allies to monitor and influence bureaucratic actors. The Parliament's preferences have been evidenced in its demands for increased transparency, openness and parliamentary oversight in comitology processes. These demands resulted in a series of reforms embodied in the 1988 Plumb–Delors agreement, the 1996 *modus vivendi* and, most recently, the 1999 Comitology Decision.<sup>30</sup> One would expect the Parliament to demand the creation of similar oversight structures when it is involved in the design of other EU level bureaucratic agencies.

While the Commission is itself a bureaucratic agent of the Council and the Parliament, it plays an agenda-setting role in the EU's legislative process and, therefore, has influence over the design of new agencies created through the legislative process.<sup>31</sup> The Commission is a well-known self-aggrandiser. While EU scholars disagree regarding the success of the Commission's efforts, nearly all would agree that the Commission has for decades sought to expand its authority. One would, therefore, expect the Commission to prefer any new EU-level bureaucratic agencies to be situated within the Commission hierarchy, for instance as part of a Directorate-General.<sup>32</sup> However, even a self-aggrandising bureaucracy may support the delegation of regulatory functions to agencies outside its control where the loss of bureaucratic turf allows the agency to focus on its core competences.<sup>33</sup> In the EU context, we can expect the Commission to willingly forgo control of routine technical regulatory responsibilities where this allows it to concentrate on its core competences of policy planning, initiation and enforcement. By contrast, the Commission will be least willing to delegate authority to agencies where this would involve a surrender of its existing policy-making and enforcement competences.

In the design of EU administrative structures, the European Commission, the European Parliament and member states that support an extensive supranational role in regulation must often compromise with member states that are more sceptical of delegating authority to supranational bodies. While the former group may advocate extensive delegation of authority and administrative discretion, the latter group will attempt to limit and fragment the authority of supranational bodies and demand mechanisms for intergovernmental oversight and control.

Finally, while the ECJ plays no direct role in the design of agencies, concern over potential legal challenges and anticipation of the role the ECJ may play in the control of executive discretion have influenced the design of European agencies. Legal scholars have emphasised the importance of the ECJ's longstanding *Meroni*<sup>34</sup> doctrine, which limits the

Commission's ability to delegate broad, discretionary executive powers to bodies not foreseen in the treaties. In keeping with the *Meroni* doctrine, where European agencies have been granted discretionary executive powers, such as the EMEA's authority to grant marketing authorisations for pharmaceuticals, the Commission reviews and maintains ultimate legal responsibility for the decisions. However, regardless of *Meroni*, it is unlikely that the ECJ would block the establishment of, or substantially limit the authority of, an agency that had won the approval of the Parliament, Council and Commission. The ECJ's greatest influence over agencies is likely to come not from limitations it places on delegation to agencies, but from the ongoing controls of agency actions it can provide. In particular, we can expect political actors that favour fire alarm monitoring, such as the European Parliament, to call on the ECJ to play a role in reviewing agency actions.

#### THE FIRST WAVE OF EUROPEAN AGENCY CREATION

Between May 1990 and July 1994, the EU established six new European agencies dealing with regulatory matters (see Table 1). The agencies were allowed to commence operations only after the European Council announced a package deal agreeing on locations for the agencies and other decentralised EU bodies, such as the European Central Bank and Europol.<sup>35</sup> While distinct factors came into play in the establishment of each agency, they were created in a wave co-ordinated by the Commission's Secretariat-General. The outcome of the first wave of agency creation can best be understood as the result of a political compromise between the Commission, which was focused on expanding the EU's regulatory capacity, and the member states in the Council, a number of which were determined to maintain intergovernmental control. The Parliament played little direct role, as the legislative procedures used restricted it to mere consultation. Because member states opposed to the creation of powerful independent agencies had a key role in the agency design process, agencies were granted limited powers and were structured with management boards and operating procedures designed to provide opportunities for member state oversight and control.

The initial impetus for the creation of agencies came from the Commission. The single market initiative provided the Commission with an exceptional opportunity to expand its regulatory activity. However, with its small staff, the Commission was ill equipped to handle the flood of new information gathering, rule-making and product licensing tasks.<sup>36</sup> The Commission might have attempted to expand its regulatory capacity by enlarging its staff, but the Parliament and Council placed strict limits

TABLE 1  
NEW EUROPEAN AGENCIES

Agency	Location	Primary Functions
The European Environment Agency (EEA) <sup>1</sup>	Copenhagen, Denmark	Information gathering and publication. Networking of national administrators.
The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) <sup>2</sup>	Lisbon, Portugal	Information gathering and publication.
The European Agency for the Evaluation of Medicinal Products (EMEA) <sup>3</sup>	London, UK	Evaluating applications for Community -wide marketing approvals.
Office for Harmonisation in the Internal Market (OHIM-Trademarks and Designs) <sup>4</sup>	Alicante, Spain	Registration of Community trademarks. Licensing and publication.
European Agency for Safety and Health at Work <sup>5</sup>	Bilbao, Spain	Research and publication. Promotion of dialogue between social partners.
Community Plant Variety Office (CPVO) <sup>6</sup>	Angers, France	Granting of property rights for new plant varieties.
European Monitoring Centre on Racism and Xenophobia (EUMC) <sup>7</sup>	Vienna, Austria	Information gathering and publication.
European Food Safety Authority (EFSA) <sup>8</sup>	Brussels, Belgium <sup>9</sup>	Risk assessment (information gathering, analysis and advice).

*Notes:* Table 1 includes only agencies concerned in some way with matters of economic or social regulation. I have excluded new agencies focused on implementing assistance programmes in eastern and south-eastern Europe, such as the European Training Foundation and the European Agency for Reconstruction.

- 1 Reg. 1210/90 on the establishment of the European Environment Agency and the European environment information and observation network [1990] OJ L120, 11 May 1990.
- 2 Reg. 302/93 establishing a European Monitoring Centre for Drugs and Drug Addiction [1993] OJ L36, 12 Feb. 1993.
- 3 Reg. 2309/93 establishing a European Agency for the Evaluation of Medicinal Products [1993] OJ L214, 24 Aug. 1993.
- 4 Reg. 40/94 establishing an Office for Harmonisation in the Internal Market [1994] OJ L11, 14 Jan. 1994.
- 5 Reg. 2062/94 establishing a European Agency for Safety and Health at Work [1994] OJ L216, 20 Aug. 1994.
- 6 Reg. 2100/94 establishing a Community Plant Variety Office [1994] OJ L227, 1 Sept. 1994.
- 7 Reg. 1035/97 establishing a European Monitoring Centre on Racism and Xenophobia [1997] OJ L151, 15 June 1997.
- 8 Reg. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1, 1 Feb. 2002. The EFSA is scheduled to commence operations early in 2002.
- 9 The EFSA is commencing operations in Brussels, with its final location yet to be determined. Proposed sites include Helsinki, Parma and Lille. The member states were to select locations for the EFSA and other proposed agencies at the Laeken summit, but they failed to reach an agreement. The Laeken summit ended with Berlusconi blocking Finland's bid for the food agency, arguing that 'Parma is synonymous with good cuisine. The Finns don't even know what prosciutto is'. R. Kagan, 'Postcard from Belgium', *Washington Post*, 21 Dec. 2001, p.A45.

on increases of the Commission's personnel budget. Moreover, Commission President Delors and later President Santer must have recognised that attempting to expand the size of the Commission would invite attacks from Euro-sceptics critical of what they viewed as a burgeoning 'Eurocracy' in Brussels.



Given the limits on its expansion, the Commission turned to the idea of establishing independent agencies.<sup>37</sup> The idea of creating independent agencies to administer statutory regulation was gaining popularity in many member states.<sup>38</sup> This idea appealed to the Commission both because it promised an avenue by which the Commission could expand the Community's governing capacity and because it allowed the Commission to 'off-load' some highly technical, labour- and resource-intensive activities. Some lower level *fonctionnaires* saw agencies as a threat to their turf; however, Delors and other high ranking officials foresaw that delegating technical work to independent agencies would expand the EU's regulatory capacity while allowing the Commission to concentrate on its core competences, namely policy-making and long-term strategic planning.<sup>39</sup>

The Commission set in motion the wave of agency creation in January 1989. With environmental issues high on the Community policy agenda, Commission President Delors proposed the establishment of a European Environment Agency (EEA), suggesting the agency would improve the Community's monitoring and implementation capacity.<sup>40</sup> The legal basis of the EEA proposal called for the use of the consultation procedure. Therefore, establishing the EEA required the unanimous approval of the member states in the Council, but only required consultation with the European Parliament. The Parliament, with its consistently pro-integration and pro-environment stance, readily lent its support to the Commission proposal. In the Council, there was disagreement among member states concerning the powers the environment agency should be granted. Proponents of strict implementation, such as Germany and the Netherlands, supported granting the EEA substantial rule-making, monitoring and enforcement powers, while other member states, such as Britain and Spain, opposed granting a Community agency such far-reaching powers.<sup>41</sup> After nearly ten months of negotiation, the Council adopted the regulation establishing the EEA. Member states opposed to the creation of a powerful, independent regulatory agency at the EU level limited the EEA's powers to the co-ordination of information-gathering activities, not granting it any authority to engage in rule-making, inspections or enforcement.<sup>42</sup> These member states also demanded the establishment of management structures that would allow for ongoing member state oversight. Thus, the EEA was subject to the control of a management board dominated by member state appointees.

The creation of the EEA caught the attention of Commission officials in other policy areas, and calls for the creation of additional agencies emerged from a number of Directorates-General. The Commission's Secretariat-General then stepped in to oversee and co-ordinate the process

of agency design.<sup>43</sup> To satisfy Council demands for intergovernmental control of the agencies, the Commission followed the EEA example and designed management structures dominated by member state appointees. Control over each agency was vested in a management board, which was empowered to select an agency director and a scientific committee.<sup>44</sup> The management boards were composed of representatives of the member states, the Commission and, in some cases, also included representatives of the European Parliament, industry and labour. However, in all cases member state representatives greatly outnumbered representatives of the Commission and Parliament. For instance, the EMEA's operations are overseen by a management board that consists of two representatives from each member state, two representatives appointed by the Commission and two appointed by the European Parliament. As the management board takes decisions by a two-thirds majority vote, Commission and EP representatives are easily outvoted. Thus, to the extent that regulatory responsibilities were transferred from the Commission to one of the new agencies, they would be placed more firmly under intergovernmental control.

The Parliament played little direct role in the design of the agencies. The regulations establishing each of the agencies in this first wave were subject to the consultation procedure, which limited the Parliament to a consultative role. The Council deliberately acted to limit the Parliament's influence through its choice of legal bases. Where the Commission tried to base proposals for agencies on treaty articles subject to the co-operation procedure, the Council changed the legal basis back to Article 235, which was subject to the consultation procedure.<sup>45</sup> Many members of the European Parliament (MEPs) expressed concerns regarding the agencies' accountability, in particular on financial matters.<sup>46</sup> Nevertheless, the Parliament generally supported the agencies, accepting the Commission's view that the agencies provided the most promising means by which to expand the EU's regulatory capacity.

In terms of the scope of their authority, the agencies created between 1990 and 1994 can be divided into two groups: information gathering agencies and regulatory agencies.<sup>47</sup> The mandates of agencies in the first group – the European Environment Agency (EEA), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the European Agency for Safety and Health at Work – were limited to the gathering and dissemination of information and the development of networks of national administrators and technical experts. The second group of agencies – the European Agency for the Evaluation of Medicinal Products (EMEA), the Office for Harmonisation in the Internal Market (OHIM) and the Community Plant Variety Office (CPVO) – were given

more extensive regulatory powers. Most prominently, the EMEA was given authority to evaluate applications for Community-wide marketing authorisations.

To understand the differences in the powers delegated to these two categories of agencies, we can compare the politics behind the EEA and the EMEA. In the case of the EEA, the coalition of the Commission and member states with high environmental standards that supported the creation of an agency had to secure the approval of the member states in the Council that were those opposed to strict environmental regulation. The latter opposed the creation of a powerful EU-level regulatory agency. Moreover, the Commission had extensive regulatory authority in the area of environmental protection, which it was loath to cede to an agency outside of its control. In this context, it is unsurprising that the scope of the EEA's authority was limited to information gathering and dissemination. By contrast, in the case of the EMEA, there was much less conflict between the political principals. The debate over the delegation of regulatory authority to the EMEA did not pit proponents of strict regulation against opponents. Rather, all member states shared an interest in speeding up the process of drug approval, and differences between their standards for drug approval had been significantly reduced through a series of EU initiatives.<sup>48</sup> The Commission had little to lose from the delegation of regulatory authority to a European agency, as it had little authority in this area. Opposition to the centralisation of the drug approval process came primarily from member states concerned about the threat a European agency posed to their national regulatory authorities. After a network structure was proposed that would preserve a central role for national regulatory authorities, all member states agreed to delegate the drug approval process to the EMEA.<sup>49</sup>

The operating procedures of all the European agencies were designed to ensure that the agencies would be subject to intergovernmental control and would not threaten existing national administrations. Member state governments were sensitive to the potential threat that European agencies posed to their national administrations. In order to secure the approval of resistant member states, the Commission proposed that the agencies operate as the hubs of networks of national administrative agencies, research centres, testing laboratories and other expert bodies. Thus, the European agencies would rely on, rather than directly compete with, national agencies. The EMEA's procedures for testing and authorising new drugs and monitoring and inspecting drug manufacturing facilities exemplify this approach. In essence, the EMEA orchestrates a system whereby existing national drug assessment authorities take turns assessing drugs. When the EMEA in London receives an application for a

Community Marketing Authorisation for a new medicinal product, the agency delegates the assessment of the product to two national testing authorities, a rapporteur and a co-rapporteur. The laboratories of these national authorities do the actual testing of the product, subject to EMEA testing requirements, and report their findings back to the EMEA in London. If the drug in question satisfies the national labs and their overseers at the EMEA, it receives the approval of the EMEA and, after a final approval from the European Commission, a Community Marketing Authorisation. Similarly, the EMEA relies on national authorities in the area of inspections. When considering a marketing authorisation application, the EMEA's scientific committee may ask the national authority of the member state in which a drug is manufactured to conduct an inspection of the product's manufacturing process. The EMEA coordinates inspections and reviews inspection reports, but does not participate directly.

#### AGENCY DESIGN AFTER MAASTRICHT

As the European Parliament gained new legislative powers in the Maastricht and Amsterdam treaties, it began to demand more say in the design and oversight of European agencies. The reason for this shift is straightforward: the delegation of extensive implementation powers to agencies controlled by member state appointees threatened to undermine the Parliament's influence at the implementation stage. In order to assure that the new legislative powers it had gained translated into influence over policy outcomes, the Parliament needed to extend its influence over the EU's executive organs.

From 1995, the Parliament showed increasing concern regarding the accountability of the new European agencies. First, the Parliament used its budgetary powers to place some agency budgets on reserve, discharging funds on an ongoing basis subject to its approval of the agency's financial management.<sup>50</sup> Next, the Parliament began to press for agency designs that would provide it with increased opportunities for direct and indirect oversight. In the wake of the mad cow crisis, the European Parliament made it clear that it was sceptical of European agencies. MEPs criticised the fact that the European agencies were controlled by member state-dominated management boards and expressed concern regarding the transparency and democratic accountability of the agencies. The Parliament pressed for increased representation on agency management boards. Also, recognising that it had limited resources to conduct ongoing, direct monitoring, the Parliament pressed for the establishment of formalised, open, transparent administrative procedures that would create

opportunities for its interest group allies to engage in indirect, ‘fire-alarm’ oversight and control.

As the Parliament weighed in on debates over agency design, the Commission altered its strategy *vis-à-vis* the Council. In the early 1990s, when the Commission had seen the establishment of agencies as the best politically acceptable means by which to expand the EU’s regulatory capacity, it had favoured delegating extensive competences to the agencies, including the power to issue implementing regulations. However, by the late 1990s, after the Parliament had come out against the creation of powerful regulatory agencies, the Commission altered its position. The Commission saw that where it had the support of the Parliament, it might expand the EU’s regulatory capacity without delegating extensive powers to agencies controlled by the member states. These post-Maastricht politics of agency design are well illustrated by the politics surrounding the creation of the European Food Safety Authority, the first European agency established under the co-decision procedure.

#### *A European Food Safety Authority?*

The EU has sought to establish a common market in foodstuffs since its inception, but before the 1990s its competences in the area of food safety regulation remained extremely limited.<sup>51</sup> Since 1990, the development of the EU’s competence in food safety has been tied to the ongoing mad cow disease (BSE – Bovine Spongiform Encephalopathy) saga. In essence, the repeated outbreaks of BSE in the UK and the accusations of mismanagement and corruption supported the Commission’s case for strengthening the EU’s role in food safety regulations. As the mad cow crisis intensified in the mid-1990s, the European Parliament used its recently won powers to assert itself as an influential player in the design of the EU’s executive agencies in the area of food safety.

In 1986, the UK informed other member states about the BSE problem through the EU’s Standing Veterinary Committee. Tension escalated in the winter of 1989/90 when a massive outbreak of BSE occurred in the UK. Other member states responded by banning British beef imports, and in April 1990, the Commission banned the use of meat from mad cows for human consumption across the Community. The British accused other member states of using BSE as an excuse to erect unjustified trade barriers to British beef. Finally, in June 1990, tensions subsided when the EU Agricultural Council brokered a settlement.

The Commission used the concern generated regarding BSE as impetus to expand its regulatory capacity in the area of food safety. In December 1991, the Commission established the Office of Veterinary and Phytosanitary Inspection and Control (OVPIC), in DG VI (Agriculture).

OVPIC's approximately 30 inspectors were empowered to conduct on-site inspections and to audit national inspection systems regarding a range of areas covered by EU food safety legislation, including live animals, fresh meat (beef, pork, poultry and fishery products), hormone use, animal welfare and plant health. Initially, the Commission preferred not to transform OVPIC into an independent agency, because it was loath to surrender control over OVPIC's substantial powers. However, as part of the Commission, OVPIC had to compete for staff lines with other Directorates-General. By 1995, the Commission faced problems in attracting sufficient funding and staffing for OVPIC and concluded that the best way to sustain and eventually expand OVPIC would be to transform it into an independent European agency with its own source of funding.<sup>52</sup> The Commission then prepared a proposal for transforming OVPIC into an independent agency, to be named the European Agency for Veterinary and Phytosanitary Inspection.<sup>53</sup>

Meanwhile, concern regarding BSE exploded on 20 March 1996 when the British government announced that it could not rule out a link between BSE and Creutzfeld-Jacob Disease, a fatal human disease. A week later, the Commission banned the export of British beef and beef products. The British government viewed the ban as an attempt by other member states to wipe out the British beef industry. After the Standing Veterinary Committee refused to lift the ban, the British announced on 21 May that they would adopt a 'policy of non-cooperation' in all EU affairs, initiating the so-called 'mad cow crisis'. The crisis ended a month later when the member states agreed on a gradual phase-out of the beef ban.<sup>54</sup>

The European Parliament responded quickly, seizing on the mad cow crisis as a vehicle to exercise the new powers and new political stature it had won in the Maastricht Treaty. In July 1996, the Parliament convened a committee of inquiry to investigate the Commission's handling of the mad cow crisis. Article 138c of the Maastricht Treaty had given the Parliament the power to convene such committees, and the BSE committee was only the second committee to be established. On 7 February 1997, the Committee of Inquiry produced a report critical of the Commission's handling of BSE,<sup>55</sup> and on 18 February the Parliament issued a conditional censure of the Commission, calling on it to implement the recommendations in the Committee of Inquiry's report by October 1997. Many MEPs opposed the proposal to transform OVPIC into an agency outside the Commission. The proposed agency, like the European agencies created in the early 1990s, was to be governed by a management board controlled by member state appointees. Many MEPs feared that transferring food inspection from the Commission to an agency

controlled by a member state-dominated board might lead to a re-nationalisation of Community policy.<sup>56</sup>

As the parliamentary inquiry proceeded, the Commission debated various reform proposals.<sup>57</sup> Finally, on 7 February 1997, the very day the parliamentary committee reported its findings, the Commission announced a major internal reform in the way it dealt with food safety issues.<sup>58</sup> The reform increased the size and responsibilities of DG XXIV, the Consumer Policy Directorate-General (renamed the Consumer Policy and Health Protection Directorate) and separated the services responsible for monitoring implementation from those responsible for preparing food safety legislation. The Commission achieved this separation by transferring OVPIC (renamed the Food and Veterinary Office, FVO) to the strengthened Consumer Policy and Health Directorate, while leaving policy-making in the hands of DGVI Agriculture. Along with the move, the Commission announced its intention to expand the number of FVO inspectors from about 30 to about 200. The Commission's internal reorganisation did not, however, settle the question of whether an independent agency should be created, and the Commission's 1996 proposal to transfer control of the OVPIC/FVO to an independent agency remained on the table.

In January 1998, the Commission announced a reversal of its position concerning the creation of an independent food inspection agency. It withdrew its earlier proposal for the creation of an agency and explained that it planned to keep the FVO within the Commission. Justifying its *volte face*, the Commission noted that the European Parliament's temporary BSE follow-up committee had not supported the creation of an agency. More strikingly, the Commission concluded that the independence of any food safety inspection service would be better assured within the Commission than in an independent European agency. The Commission explained: 'By retaining the Commission's food safety control responsibilities within its own services, the necessary distance can be maintained between these services and the national authorities who will be the subject of its control activities (a situation that can be better achieved by an Office than by an Agency).'<sup>59</sup> In other words, in the Commission's view, an office within the Commission hierarchy would be more independent than a supposedly 'independent' European agency, controlled by a member state-dominated management board.

The Commission's *volte face* resulted from a change in political circumstances. The Commission's original plan to transform its Food and Veterinary Office (FVO) into an 'independent' agency was developed before the revelations surrounding the impact of BSE on humans, when there was less support for the Commission's food safety activities. At that

time, the Commission viewed the creation of an agency as the only way to increase the EU's capacity in the field of food and veterinary inspection. The Commission already had substantial inspection powers in this area, and a dramatic expansion of such activities would have threatened some member states. In order to win member state support for the expansion of the size and powers of an EU inspectorate, the Commission would have to surrender control of its inspection service to an agency controlled by a member state-dominated management board. However, after the mad cow crisis provoked public concern and parliamentary scrutiny, the Commission saw that it might be able to drastically enlarge its inspection service, while at the same time maintaining direct control over it. Given this potential and given the European Parliament's opposition to the agency proposal, the Commission decided not to transform the FVO into an agency.<sup>60</sup>

The corruption scandals and ensuing resignation of the Commission in 1999 put further reform of the EU's food safety services on the back-burner. However, shortly after taking office, the new Commission President Prodi announced that food safety would be among his central policy concerns and, in November 2000, the Commission presented a proposal for a regulation establishing a European Food Authority (later renamed the European Food Safety Authority – EFSA).<sup>61</sup> The legal basis of the regulation creating the EFSA called for the use of the reformed co-decision procedure, ensuring that the European Parliament would have a strong influence over the EFSA's design. In January 2002, after months of negotiation, the European Parliament and Council finally agreed on a regulation establishing the EFSA.<sup>62</sup> Both the Commission's original proposal and the final regulation that emerged from the legislative process reflected the increased power of the European Parliament. In contrast to the management boards of earlier agencies, which were dominated by hand-picked member state appointees, members of the EFSA's management board are appointed by the Council in consultation with the European Parliament. Under EFSA's founding regulation, member states are not be guaranteed a representative on the management board, and four of 14 members appointed by the Council and Parliament are to have backgrounds in consumer organisations and other interest groups involved in the food sector (Art. 25(1)). The candidate selected by the management board to serve as Executive Director of the EFSA is required to face a hearing before the European Parliament (Art. 26(1)). Finally, the regulation establishes a number of transparency provisions, including requirements to hold meetings in public and to specify and publish its internal procedures (Art. 38).

The Parliament was able to use its legislative power under co-decision to entrench institutional structures in the EFSA that allow the Parliament



and its interest group allies to play a powerful role in ongoing oversight. Throughout the negotiations over the design of the EFSA, the European Parliament insisted on management structures and operating procedures that would provide it with opportunities for oversight and control.<sup>63</sup> The Parliament has secured a powerful role in the appointment of the EFSA's management board. Transparency provisions and the inclusion of board members with backgrounds as interest group representatives facilitate interest group access to the decision-making process and thus allow the Parliament to engage in indirect, 'fire-alarm' monitoring.

The limited scope of the EFSA's powers also reflects the increase in the European Parliament's power and the changed political circumstances following the mad cow crisis. As mentioned above, in 1996, the Commission had proposed transferring its food safety inspectorate (OVPI/C/FVO) into an independent European agency along the lines of those created in the early 1990s, because it saw this as the only way to expand its inspection capacity. By contrast, in the Commission's 2000 proposal, and in the regulation adopted in 2002, EFSA is limited to 'risk assessment' activities, such as information-gathering, analysis and the provision of scientific advice, while inspections and other such 'risk management' activities remain responsibilities of the Commission-controlled inspectorate, the FVO. Empowered by backing from the European Parliament, the Commission is expanding the Community's information-gathering and analysis capacity through the EFSA, while at the same time expanding and maintaining control over inspection and enforcement in the FVO.

When the EFSA commences operations and its final location is determined, the EU will emerge with a Byzantine set of regulatory institutions divided between three cities. In Brussels, the Council and Parliament will adopt primary food legislation by co-decision, and the Commission will adopt implementing legislation on their behalf. In County Meath, Ireland, the Commission's Food and Veterinary Office will monitor the enforcement of Community laws. In a third, undetermined location, the European Food Safety Authority will organise a European-wide network of food safety experts and provide scientific advice on food legislation to the Commission and other institutions. Hardly the result of efficient design, the structure of food safety regulation in the EU is emerging as the result of strategic interaction among the major EU institutions.

#### *The Limits on European Agencies*

While new European agencies may be created and the authority of European agencies in the regulatory process may increase, such

expansions face a number of obstacles. Delegation to European agencies requires the agreement of a number of veto players.<sup>64</sup> The Council, the Commission and the Parliament all have opportunities to block the delegation of authority to existing or new European agencies. Opposition of powerful member states in the Council has derailed proposals for European agencies. In the mid-1990s, a debate emerged over whether a European telecom agency should be established to regulate the liberalised European telecom market. Supporters of a European-level regulator, in particular some MEPs, argued that national authorities might not be willing or able to ensure fair competition when the European telecom market opened up to competition from January 1998. They suggested a European regulator could play a role in allocating numbers and frequencies for mobile phones. However, opposition from Germany, France and the UK killed the proposal.<sup>65</sup> More generally, member states are reluctant to delegate powers to European agencies that would threaten the existence of national bureaucracies. Where member states do agree to the establishment of agencies, they are likely to continue to demand agency designs in which the agencies are controlled by member state-dominated management boards and serve as hubs of regulatory networks that rely on national administrative agencies.

The Parliament is likely to play a powerful role in the creation and oversight of future agencies and in the oversight of existing ones. As noted above, the Parliament has already used its budgetary powers to exert control over existing agencies. In policy areas subject to the reformed co-decision procedure, the Commission is likely to bring any proposals for new agencies under co-decision, thus providing the Parliament with substantial influence over agency design. Having gained significant legislative powers, the Parliament is likely to resist delegating broad decision-making authority to agencies for fear that it would lose in the administrative process what it has gained in the legislative. Where the Parliament does agree to delegate decision-making authority to agencies, it will demand the creation of structures that enable it to maintain direct or indirect oversight, as in the case of the EFSA. The Parliament is also likely to demand increased transparency, codification and judicial review of agency administrative procedures. Although the agencies functioned in a more open and transparent manner than had comitology committees, their operating procedures were not subject to any sort of uniform, judicially enforceable administrative guidelines. Already, the Parliament has supported inquiries by the European Ombudsman into the administrative procedures of the European agencies and has pressed them to adopt and publicise administrative codes of conduct, detailing procedures they will follow in dealing with citizens.<sup>66</sup> A number of

analysts have suggested that EU administrative processes, whether they take place in the context of European agencies or comitology committees, are likely increasingly to follow transparent, codified, judicialised procedures.<sup>67</sup> The ECJ has promoted this trend through its jurisprudence on the 'Giving Reasons Requirement'<sup>68</sup> and the right of defence in EU administrative procedures.<sup>69</sup>

The Commission may also block delegation to agencies. The Commission is likely to be most reluctant to delegate powers to agencies in policy areas where it already has far-reaching competences. For instance, in the area of competition policy where its powers are extensive, the Commission has consistently opposed the German proposal for the creation of an independent European Cartel Office and has refused to submit a proposal for the creation of such an agency.<sup>70</sup> Similarly, in the area of food safety discussed above, the Commission only proposed delegating inspection powers to a European agency when it appeared that there was no other way to expand its existing internal inspectorate, OVPIC (later renamed the FVO). After the mad cow crisis, when the Commission gained the political backing it needed to expand the FVO, it chose not to delegate its inspection powers to the proposed European Food Authority. The Commission is likely to resist the creation of agencies that strip it of authority in areas where it has well-established powers, and, given its role in policy initiation, it is well positioned to do so.

#### CONCLUSION

The creation of European agencies reveals a great deal about inter-institutional relations in the EU. The first wave of agencies established in the early 1990s reflected a political compromise whereby the Council would allow for the transfer of additional authority and resources to the EU level only if the new bureaucratic structures created were subject to substantial intergovernmental controls. The Commission and the Parliament consented to the creation of such agencies, viewing this as the most feasible means by which to expand the EU's regulatory capacity. However, the growing power of the European Parliament in the mid-1990s changed the politics of 'Eurocratic' structure. As the Parliament's legislative power increased, it asserted a more powerful role in the oversight of existing EU executive bodies and in the design of new ones. The Parliament's approach to oversight has differed considerably from that of the member states in the Council. The Parliament has demanded the establishment of open, transparent oversight processes, in particular those that facilitate indirect, 'fire-alarm' oversight by interest groups.

Despite the obstacles to agency expansion, the new European regulatory agencies are likely to have a significant impact on regulation in the EU. By gathering comparable information across the EU, the European agencies will improve the Community's monitoring capacity. By creating and coordinating networks of national administrators, they will encourage the spread of common administrative practices across the member states.<sup>71</sup> By relying on existing national authorities to perform tasks on their behalf, European agencies may manage to produce 'European' regulatory policy without eclipsing national regulatory authorities.

It is tempting to view the creation of European agencies as a diminution of the Commission's power in the executive arena. In so far as resources and responsibilities that might otherwise have been controlled by the Commission are transferred to the European agencies, this interpretation seems valid. However, for the most part, the agencies perform functions that would otherwise not have been transferred to the European level at all, or functions that the Commission was happy to delegate. More generally, the Commission recognises that political resistance precludes the creation of a Commission Eurocracy on par with other federal executives. Therefore, in order to realise its preference for expanding the EU's regulatory capacity, the Commission has supported shifting control over certain regulatory functions to agencies outside its direct control. While the creation of European agencies has led to some loss of bureaucratic 'turf' for the Commission, it has simultaneously allowed the Commission to focus on its core competences: policy planning and policy enforcement. With many routine information-gathering and product-licensing tasks being performed by European agencies, the Commission is moving away from its former role as the manifold engine of European integration and towards a more specialised role. The delegation of information-gathering tasks to European agencies may encourage the Commission to act more aggressively in enforcement, as it will diminish the Commission's concern that taking enforcement actions against member states will compromise its ability to gather information.

#### NOTES

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2. R. Macpherson, 'EU Leaders Move Forward on Reforms, Stumble on Agencies', *Agence France Press*, 16 Dec. 2001.
3. M. Shapiro, *Who Guards the Guardians* (Athens: University of Georgia Press 1988); S. Rose-Ackermann, *Controlling the Environment* (New Haven: Yale University Press 1995); G. Majone, *Regulating Europe* (London: Routledge 1996), p.16; M. Thatcher, 'Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation', *West European Politics* 25/1 (2002), pp.125–47.
4. Majone, 'The Credibility Crisis of Community Regulation'.
5. M. Shapiro, 'The Problems of Independent Agencies in the United States and the European Union', *Journal of European Public Policy* 4/2 (1997), p.281; C. Harlow, 'European Administrative Law and the Global Challenge', in P. Craig and G. de Búrca (eds.), *The Evolution of EU Law* (Oxford: Oxford University Press 1999), pp.267, 273; Yataganas, 'Delegation of Regulatory Authority in the European Union', p.41.
6. For instance, G. Garrett and B. Weingast, 'Ideas, Interests and Institutions: Constructing the European Community's Internal Market', in J. Goldstein and R. Keohane (eds.), *Ideas and Foreign Policy* (Ithaca: Cornell University Press 1993); M. Pollack, 'Delegation, Agency and Agenda Setting in the European Community', *International Organization* 51/1 (1997), pp.99–134; K. Alter, 'Who are the "Masters of the Treaty?" European Governments and the European Court of Justice', *International Organization* 52/1 (1998), pp.121–47; F. Franchino, 'Control of the Commission's Executive Functions: Uncertainty, Conflict and Decision Rules', *European Union Politics* 1/1 (2000), pp.63–92, and 'The Commission's Executive Discretion, Information and Comitology', *Journal of Theoretical Politics* 12/2 (2000), pp.155–81; J. Tallberg, 'The Anatomy of Autonomy: An Institutional Account of Variation in Supranational Influence', *Journal of Common Market Studies* 38/5 (2000), pp.843–64; G. Tsebelis and G. Garrett, 'The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union', *International Organization* 55/2 (2001), pp.357–90; and M. Thatcher and A. Stone Sweet, 'Theory and Practice of Delegation to Non-Majoritarian Institutions', *West European Politics* 25/1 (2002), pp.1–22.
7. See, for instance, Franchino, 'Control of the Commission's Executive Functions', and 'The Commission's Executive Discretion, Information and Comitology'; Tsebelis and Garrett, 'The Institutional Foundations'.
8. Shapiro, 'The Problems of Independent Agencies in the United States and the European Union'; R.D. Kelemen, 'The European "Independent" Agencies and Regulation in the EU', *CEPS Working Document No.112* (Brussels: Centre for European Policy Studies 1997).
9. *Ex ante* and ongoing controls are often intertwined, as many ongoing controls (such as judicial review) rely on the establishment of *ex ante* controls (such as reporting requirements or other procedural requirements). D. Epstein and S. O'Halloran, 'Administrative Procedures, Information, and Agency Discretion', *American Journal of Political Science* 38/3 (1994), p.699. For a recent overview of this literature see J. Huber and C. Shipan, 'The Costs of Control: Legislators, Agencies and Transaction Costs', *Legislative Studies Quarterly* 25/1 (2000), pp.25–52.

10. R. Calvert, M. Moran and B. Weingast, 'Congressional Influence over Policy Making: The Case of the FTC', in M. McCubbins and T. Sullivan (eds.), *Congress: Structure and Policy* (Cambridge: Cambridge University Press 1987); D.R. Kiewiet and M. McCubbins, *The Logic of Delegation: Congressional Parties and the Appropriations Process* (Chicago: University of Chicago Press 1991).
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12. Ibid.; Epstein and O'Halloran, 'Administrative Procedures, Information, and Agency Discretion', and *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*. (Cambridge: Cambridge University Press 1999).
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14. McCubbins *et al.*, 'Administrative Procedures as Instruments of Political Control'; J. Mashaw, 'Explaining Administrative Process: Normative, Positive and Critical Stories of Legal Development', *Journal of Law, Economics and Organization* 6 (1990), pp.267–98; C. Shipan, 'The Legislative Design of Judicial Review: A Formal Analysis', *Journal of Theoretical Politics* 12/3 (2000), pp.269–304.
15. M. McCubbins and T. Schwartz, 'Congressional Oversight Overlooked. Police Patrols versus Fire Alarms', *American Journal of Political Science* 28 (1984), pp.167–79.
16. Moe refers to this concept as political uncertainty. See T. Moe, 'The Politics of Bureaucratic Structure', in J. Chubb and P. Peterson (eds.), *Can the Government Govern?* (Washington, DC: The Brookings Institution 1989); 'The Politics of Structural Choice: Towards a Theory of Public Bureaucracy', in O. Williamson (ed.), *Organization Theory from Chester Barnard to the Present and Beyond* (New York: Oxford University Press 1990); 'Politics and the Theory of Organization', *Journal of Law, Economics and Organization* 7/SP, pp.107–29. Horn and Shepsle use the terms legislative or coalitional drift. See M. Horn, *The Political Economy of Public Administration: Institutional Choice in the Public Sector* (Cambridge: Cambridge University Press 1995); K. Shepsle, 'Bureaucratic Drift, Coalitional Drift, and Time Consistency: A Comment on Macey', *Journal of Law, Economics and Organization* 8 (1992), pp.111–18.
17. Moe, 'The Politics of Structural Choice', p.137.
18. Formalised, judicially enforceable administrative procedures constitute an effective tool for controlling against both bureaucratic drift and political drift. R. de Figueiredo, 'Electoral Competition, Political Uncertainty and Policy Insulation' (ms, UC Berkeley, 2000), p.5. Such procedural rules not only limit discretion; they also allow politicians to structure the environment in which the agency will act and, thus, 'stack the deck' in agency proceedings in favour of particular interests.
19. T. Moe and M. Caldwell, 'The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems', *Journal of Institutional and Theoretical Economics* 150/1 (1994), pp.171–95.
20. Moe, 'The Politics of Structural Choice', pp.125–27. On the fragmentation of power in the EU see Tsebelis and Garrett, 'The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union'.
21. Epstein and O'Halloran, *Delegating Powers*, pp.11, 129–33.
22. Moe, 'Politics and the Theory of Organization', p.125.
23. Pollack, 'Delegation, Agency and Agenda Setting in the European Community', pp.114–16; C. Joerges and E. Vos (eds.), *EU Committees: Social Regulation, Law and Politics* (Oxford: Hart Publishing 1999).
24. Decision 87/373/EEC [1987] OJ L 197/33. See R. Dogan, 'Comitology: Little Procedures

- with Big Implications', *West European Politics* 20/3 (1997), pp.31–60; E. Vos, 'EU Committees: the Evolution of Unforeseen Institutional Actors in European Product Regulation', in Joerges and Vos (eds.), *EU Committees*, pp.19–47.
25. While the Council will emphasise ongoing intergovernmental oversight, it may also favour some forms of 'fire alarm' monitoring.
  26. Even quite recently, analysts such as Pollack ('Delegation, Agency and Agenda Setting in the European Community') have treated the Parliament as an agent of member state principals, rather than as a political principal in its own right.
  27. For overviews of the literature on EU legislative procedures, see S. Hix, *The Political System of the European Union* (New York: St. Martin's Press 1999), pp.84–96; and, G. Tsebelis and G. Garrett, 'Legislative Politics in the European Union', *European Union Politics* 1/1 (2000), pp.9–36.
  28. Franchino 'Control of the Commission's Executive Functions', p.76.
  29. Pollack, 'Delegation, Agency and Agenda Setting in the European Community'.
  30. Council Decision 1999/468/EC 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17 July 1999, pp.23–6. Also see the agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC, OJ L 256, 10 Oct. 2000, pp.19–20. J.-P. Jacqué, 'Implementing Powers and Comitology', in Joerges and Vos (eds.), *EU Committees*, pp.59–70; Vos, 'EU Committees'.
  31. Though the Commission's agenda setting power may have diminished (Tsebelis and Garrett, 'The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union'), the Commission will certainly retain significant influence over issues of bureaucratic design where its co-operation is essential for the operation of an agency.
  32. On the importance of this logic in the American case, see Moe, 'The Politics of Structural Choice', p.141.
  33. J. Wilson, *Bureaucracy* (New York: Basic Books 1989), pp.182–3; Yataganas, 'Delegation of Regulatory Authority in the European Union', p.42.
  34. *Meroni v. High Authority* Case 9/56 [1957–58] ECR 133. See also the parallel judgment *Meroni v. High Authority* Case 10/56 [1957–58] ECR 157. See K. Lenaerts, 'Regulating the Regulatory Process: "Delegation of Powers" in the European Community', *European Law Review* 18/1 (1993), p.41; and M. Everson, 'Independent Agencies: Hierarchy Beaters?' *European Law Journal* 1 (1995), pp.180–83, 196–8; E. Vos, 'The Rise of Committees', *European Law Journal* 3/3 (1997), pp.210–29.
  35. Official Bulletin, EC, 29 Oct. 1993, pp.12–13. In addition to the agencies listed in Table 1, the Council also agreed on locations for the European Central Bank (Frankfurt), Europol (The Hague), the European Training Foundation (Turin), the Translation Centre (Luxembourg), and on a relocation of the European Centre for the Development of Vocational Training (from Berlin to Thessaloniki) and the Commission's Office of Veterinary and Plant Inspection and Control from Brussels to a site in Ireland. The site of the Community Plant Variety Office was not mentioned in this package deal, and was not finally settled until the 1996 IGC.
  36. R. Dehousse, 'Regulation by Networks in the European Community: The Role of European Agencies', *Journal of European Public Policy* 4/2 (1997).
  37. M. Shapiro, 'Independent Agencies: US and EU'. Jean Monnet Chair Papers #34 (Florence: EUI 1996); Kelemen, 'The European 'Independent' Agencies'. The idea of proposing such independent bodies was not new to the Commission. The Commission had proposed the establishment of a number of EU-level independent agencies in the 1960s and 1970s. However, member states opposed most of these proposals and only two weak agencies, the European Centre for the Development of Vocational Training (CEDEFOP) and the European Foundation for the Improvement of Living and Working Conditions, were established during that period.

38. Majone, *Regulating Europe*; A. Kreher (ed.), *The New European Agencies*. European University Institute (EUI) Working Papers, RSC No. 96/49 (Florence: EUI 1996); Thatcher, 'Delegation to Independent Regulatory Agencies'.
39. Interviews, European Commission, 29 Nov. 1996; and, EEA Taskforce, May 1994.
40. K.-H. Ladeur, 'The EEA and Prospects for a European Network of Environmental Administrations', European University Institute Working Paper, RSC No.96/50 (1996); M. Everson *et al.*, 'The Role of Specialised Agencies in Decentralising EU Governance', Report Presented to the Commission (1999), pp.86–7. Available at: [http://europa.eu.int/comm/governance/areas/group6/contribution\\_en.pdf](http://europa.eu.int/comm/governance/areas/group6/contribution_en.pdf) Accessed on 28 Oct. 2001.
41. 'Can Europe Compete?' *Financial Times*, 3 March 1994; Interview with William Reilly, former EPA administrator, May 1994.
42. In a compromise with advocates of a stronger agency, such as Germany, The Netherlands and the European Parliament's Environment Committee, the agency's founding regulation included a clause calling for a review of its functions after two years – with the possibility that monitoring and inspection activities would be expanded. Interview EEA Taskforce Official, May 1994
43. Interview, European Commission, 29 Nov. 1996.
44. Most agency directors are appointed by the management board following a proposal from the Commission, usually for a renewable five-year term. There are some exceptions to this pattern. For instance, the president and vice-president of the Office of Harmonisation are appointed by the Council from a list of candidates prepared by the administrative board. Members of the agencies' scientific committees, too, are appointed by the management boards.
45. A. Kreher, *The New European Agencies*, p.11.
46. Interview, European Parliament, 25 Nov. 1996, European Commission, 29 Nov. 1996; L.J. Brinkhorst, 'The Future of European Agencies: A Budgetary Perspective from the European Parliament', in A. Kreher (ed.), *The New European Agencies*.
47. For an alternate categorisation, see Yataganas, 'Delegation of Regulatory Authority in the European Union', p.25.
48. D. Vogel, 'The Globalization of Pharmaceutical Regulation', *Governance* 11/1 (1998), pp.1–22.
49. The governments of Germany and Denmark had been particularly resistant to delegating the power to approve new drugs to an EU agency. See R. Kingham, P. Bogaert and P. Eddy, 'The New European Medicines Agency', *Food and Drug Law Journal* 49 (1994), p.303.
50. Brinkhorst, 'The Future of European Agencies'; Interview, European Parliament, 25 Nov. 1996.
51. D. Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Cambridge, MA: Harvard University Press 1995), pp.24–43.
52. Interviews, European Commission, 28 Nov. 1996, 19 and 25 June 1997; G. Chambers, 'The BSE Crisis and the European Parliament', in Joerges and Vos (eds.), *EU Committees*, pp.95–108. OVPIC's staffing problem stemmed in part from the Council's 1993 decision to relocate the OVPIC to Ireland, where many inspectors refused to relocate.
53. European Commission, 'Proposal for a Council Regulation (EC) establishing a European Agency for Veterinary and Phytosanitary Inspection', COM(96) 223 final, 29 May 1996.
54. For a more detailed account of the mad cow crisis, see M. Westlake, 'Mad Cows and Englishmen – The Institutional Consequences of the BSE Crisis', *Journal of Common Market Studies* 35/Annual Review (1997), pp.11–36.
55. European Parliament, 'Report on alleged contraventions or maladministration in the implementation of Community law in relation to BSE', A4-0020/97, 7 Feb. 1997.
56. Interviews, European Commission, 28 Nov. 1996; 19 and 25 June 1997. Many MEPs also opposed the planned relocation to Ireland, fearing it would isolate inspectors from



- activities in Brussels. See European Parliament, 'EP Committee Hears Bonino on Vet Service Transfer to Ireland', *European Parliament News Report Press Release*, 22 May 1997; and *Agence Europe*, 'EU/EP/Health/Consumers – In Mrs. Bonino's presence, parliamentary committee strongly criticises the forthcoming transfer of the FVO to Ireland', 27 May 1997.
57. C. Southey, 'Fischler Proposes European-Type FDA', *Financial Times*, 4 Dec. 1996, p.2; *Agence Europe*, 'Jacques Santer Announces that Commission is to Modify Management of Veterinary Affairs', 16 Jan. 1997.
  58. European Commission, 'Communication from the Commission on Consumer Health and Food Safety', COM(97) 183 final, 30 April 1997.
  59. European Commission, 'Communication from the Commission to the European Parliament, the Council and the Economic and Social Committee on Food, Veterinary and Plant Health Control and Inspection', COM (98) 32 final, 28 Jan. 1998.
  60. *Ibid.*; *Agence Europe*, 'Food Control. Commission explains why it does not support creation of an independent agency for food control and inspections', 6 Jan. 1998.
  61. European Commission, 'Proposal for a Regulation of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Authority, and laying down procedures in the matters of food', COM 2000 (716) Final. The Commission had first suggested the creation of a food authority in a January 2000 white paper. European Commission, 'White Paper on Food Safety COM (99) 719 final', 12 Jan. 2000.
  62. Reg. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L 31/1, 1 Feb. 2002.
  63. Telephone Interviews, European Commission Secretariat General, 7 Dec. 2001; European Parliament, 7 Dec. 2001.
  64. Tsebelis and Garrett, 'The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union'.
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