

Compliance Problems in the EU

What potential role for agencies in securing compliance?

Esther Versluis

Department of Political Science / European Studies

Faculty of Arts and Culture, Maastricht University

PO Box 616, 6200 MD Maastricht, The Netherlands

Tel +31 (0)43 3882558 / Fax +31 (0)43 3884917

e.versluis@philosophy.unimaas.nl

ABSTRACT

The European Union (EU) is increasingly confronted with compliance problems. Whereas the legislative acts are passed at EU level, the Member States alone are responsible for complying with them. Since countries have different legislative cultures, and therefore different approaches to compliance, it is not uncommon that Member States apply European legislation incorrectly, unevenly, or even not at all. Such situations have to be remedied as they may have a negative impact on the efficiency of the internal market and on the credibility and legitimacy of the EU in general. In line with the recent trend of 'agencification' in modern societies, a suggestion to address compliance problems is the use of European agencies as they are expected to improve the way rules are applied within the EU. This is no grounded expectation, however. Empirical evidence on this presumably positive impact of agencies on compliance within the Member States is lacking.

This paper provides an ex-ante evaluation of the assumption that agencies play a positive role in securing compliance. By bringing together the state of the art in compliance theories and an analysis of the phenomenon of agencification within the European Union, light can be shed on this potential role for agencies in improving compliance. This shows that the link between agencies and compliance is not obvious. Compliance theories such as rationalism, managerialism and constructivism do not explicitly mention agencies as a solution to compliance problems, nor are agencies generally established with the aim of improving compliance. However, findings in compliance-related theorizing do not exclude the possibility of agencies having a positive impact. As no empirical evidence on the impact of agency-behavior on compliance records exists as of yet, general conclusions about the overall effectiveness of agencies in securing compliance are not possible and the 'improved-compliance' legitimation for agency-establishment of the Commission is still to be empirically tested.

Paper prepared for the 3rd ECPR General Conference, Budapest, 8-10 September 2005

Panel 3.3: 'Theorizing Regulatory Enforcement and Compliance'

Work in progress; all comments welcome

TABLE OF CONTENTS

- 1. INTRODUCTION 3**
- 2. COMPLIANCE PROBLEMS IN THE EU 4**
- 3. WHY COMPLY? THE STATE OF THE ART IN COMPLIANCE THEORIES 6**
 - 3.1 RATIONALIST PERSPECTIVE 6
 - 3.2 MANAGEMENT PERSPECTIVE 8
 - 3.3 CONSTRUCTIVIST PERSPECTIVE 10
 - 3.4 CONCLUSION 11
- 4. EU AGENCIES: A NEW ‘POLICY FASHION’ 12**
 - 4.1 EU AGENCIES: AN OVERVIEW 13
 - 4.2 AGENCIFICATION IN THE EUROPEAN UNION: AN ANALYSIS OF THE PHENOMENON 15
 - 4.3 CONCLUSION 18
- 5. BRINGING THE TWO TOGETHER: WHAT ROLE FOR AGENCIES IN SECURING COMPLIANCE? 19**
 - 5.1 A PLACE FOR AGENCIES IN COMPLIANCE THEORIES? 20
 - 5.2 THE EMPIRICAL REALITY: CAN AGENCIES SECURE COMPLIANCE? 21
 - 5.3 CONCLUDING REMARKS 22
- 6. REFERENCES 23**

1. Introduction

The European Union (EU) is increasingly confronted with compliance problems. Whereas the legislative acts are passed at EU level, the Member States alone are responsible for complying with them. There are numerous examples of Member States only partly or incorrectly adhering or conforming to European legislation (e.g. Jordan 1999; Knill 1997; Mendrinou 1996; Versluis, 2003). Non-compliance with European maritime safety legislation, for example, led to the *Erika* and *Prestige* oil tanker accidents. Countries have different legislative cultures – ‘In some countries, rules are there to be followed, in others it seems if they merely exist to be violated’ (Van Waarden, 1998: 2) – which leads to different approaches to, and thus different levels of, compliance in EU Member States.

Attention for compliance with Community law is increasing the last decade. The European Commission explicitly states that compliance with European law is a necessity, ‘not only for the sake of efficiency of the internal market but also to strengthen the credibility of the Union and its Institutions’ (COM(2001) 428: 5). The latest enlargement of the Union is likely to deepen the compliance problem, as most of the new members are thought to be less stable environments for rule application (e.g. Nicolaidis et al, 2003).

A suggestion to address compliance problems is the use of European agencies. This suggestion is in line with the recent ‘policy fashion’ of ‘agencification’ (Pollitt et al, 2001). Currently there are 17 EU agencies (e.g. the ‘European Environment Agency’ and the ‘European Food Safety Agency’), and the trend of agencification continues. In March 2005 the Commission announced the need for a ‘European Institute for Gender Equality’ (Commission, Press Releases, IP/05/266), and the EU ministers of agriculture and fisheries unanimously agreed to establish a ‘European Agency for Fishery Control’ (Council, Presse 46, 6974/05). As Geradin and Petit state, the EU’s ‘appetite for creating new agencies seems limitless’ (Geradin and Petit, 2004: 4). The European Commission argues that agencies ‘will improve the way rules are applied and enforced across the Union’ (COM(2001) 428: 24). The ‘European Maritime Safety Agency’ was even established to address compliance problems as the above-mentioned oil tanker accidents. Scholars also assume the added value of agencies in securing compliance; they ‘will contribute to an improved compliance with EC regulation’ (Kreher, 1997: 241, see also Faure, 2004; Kelemen, 2002).

It is thus expected that European agencies can provide a (part of the) solution to compliance problems; however, these expectations are not grounded. While theoretical and normative analyses of the pros and cons of agencies are widespread (e.g. Dehousse, 1997; Everson et al, 1999; Majone, 1997; Shapiro, 1997; Vos, 2003), empirical evidence of the presumably positive impact of agencies on compliance is lacking. What is more, the entire fashion of agency-building seems not to be based on proper analysis: ‘[t]he decision to grant regulatory duties to EC-wide regulatory agencies (...) has

often been based on ad-hoc political considerations rather than on any coherent reflection' (Geradin and Petit, 2004: 6). Basing these kinds of grand policy-schemes on assumptions, however, should only be the case when such assumptions are clearly valid. Before raising expectations of improved rule application, it is necessary to analyze whether and under what conditions agencies could in fact contribute to solving compliance problems.

This paper will provide an ex-ante evaluation of the assumption that agencies have a positive influence on compliance. Theorizing compliance is traditionally undertaken by scholars of International Law and International Relations, and different schools analyze compliance from different angles and offer various solutions to compliance problems. So far, the solution of agencies has not been explicitly touched upon. Agency literature mainly concentrates on questions of the creation and competences of agencies. It usually, often departing from the Principal-Agent tradition, discusses advantages and disadvantages of delegation of specific tasks to agencies and its impact on European governance.

By bringing the different traditions of compliance and agency literature together, this paper will provide an overview of what insights this combination can offer into a potential role for agencies in securing compliance. It will thus analyze the validity of the often-heard assumptions that agencies will lead to improved compliance within the EU. After a brief overview of the nature of the compliance problems, this paper will first present the state of the art in compliance theories, followed by an analysis of the trend of 'agencification' within the EU. The last part of the paper will bring the different traditions together. It will conclude that even though compliance theories do not explicitly name agencies as a solution to compliance problems, and none of the EU agencies have been established with the explicit aim of improving compliance, there still is a potential role for agencies to play in securing compliance.

2. Compliance problems in the EU

The European Union is thought to have a 'compliance problem'. But what is compliance? Compliance is '(...) behavior which conforms to a predetermined set of regulatory measures' (Matthews, 1993: 2) and thus refers to the extent to which 'agents act in accordance with and fulfillment of the prescriptions contained in (...) rules and norms' (Checkel, 1999: 3). In the example of the European Union compliance thus refers to the extent to which the Member States act in accordance with the provisions of the Treaties and all regulatory measures such as the regulations, directives and decisions that spring from it. Compliance is not the same as effectiveness or as implementation. Effectiveness refers to 'the efficacy of a given regulation in solving the political problem' (Neyer and Zürn, 2001: 4). Member States can perfectly comply with regulations, without this being effective; i.e. without

compliance solving the problem.¹ Implementation refers to ‘the process of putting international commitments into practice’ (Raustiala and Slaughter, 2002: 539). Compliance can also occur without implementation, for example when there is a complete ‘fit’ between the domestic practice and the accord. In such a case compliance is automatic and implementation is not required.

Compliance problems especially seem to occur when the ambitions are high and demanding. Regulations that require little of states will be relatively easy to comply with. Most empirical studies on compliance with international law are found in international regimes other than the European Union, e.g. WTO, IMF, and GATT. These studies clearly show a correlation between the demands and ambitions of international regimes and their compliance rates; the more demanding a regime, the less likely that its rules will be complied with and the less demanding a regime, the more likely that its rules will be put into practice.² Especially compliance rates in the human rights area seem to demonstrate this correlation between ambitious goals and lacking results (see Downs and Trento, 2004). Again, compliance does not equal effectiveness. It is argued that low compliance with demanding rules does not say anything about whether or not this is in the end more or less effective than high compliance with less demanding rules.

When analyzing compliance and compliance problems, it has to be kept in mind that compliance is relative and not objectively measurable; there is no ‘invariant standard’ (Chayes and Chayes, 1993: 198). Acceptable levels of compliance change over time and differ depending on the context. In the European Union, records are kept on infringements, but not on compliance; not all violations with Community law are ‘discovered’ (Börzel, 2002: 4). Up until now, compliance in the EU is to a large extent measured by studying the infringement data (following the infringement procedure, Article 226 TEC) published by the European Commission in the Annual Reports on Monitoring the Application of Community Law. However, several scholars have argued that one has to be careful with this information provided by the Commission as it does not tell the complete story about compliance in the EU (Börzel, 2001, 2002; Versluis 2004b; Williams, 1994). First, the results published by the Commission are often inaccurate and incomplete. When comparing the reports with other sources of information it shows ‘disturbing discrepancies and apparent errors’ (Williams, 1994: 374). Second, they mainly provide information on the transposition of directives into national law and do not address practical compliance (Versluis 2004b).

¹ There is a clear example of perfect compliance with the Montreal Protocol (on substances that deplete the ozone layer) without this having substantive effects (i.e. low effectiveness) due to the low ambitions of the Protocol (see Downs and Trento, 2004: 20).

² ‘No state ever failed to comply with either the Convention Concerning the Protection of the World Cultural and National Heritage or the Convention on Wetlands of International Importance since they require nothing more than the optional registration of cultural sites and wetlands at the discretion of the state. Nor have the vast majority of the thirty-nine states that are signatories to the International Convention for the Regulation of Whaling, but which have never done any whaling, failed to comply with that agreement’ (Downs and Trento, 2004: 31).

Even when taking into account these ‘obstacles’ when studying compliance, the conclusion is justified that the EU has a ‘compliance problem’. Mendrinou even refers to non-compliance as a ‘systemic phenomenon’ (Mendrinou, 1996: 2). Attention for compliance with European law is relatively new. Most empirical examples referring to non-compliance deal with issues of absent or incorrect transposition of directives into national legislation (see, amongst others, Falkner et al, 2004; Jordan, 1999; Mastebroek 2003; Pappas, 1995). While considerable attention is paid to this legal phase of transposition (formal implementation, the ‘law in the books’), the practical implementation (the ‘law in action’) remains to a large extent a ‘black box’. Only recently Versluis (2003; 2004a) demonstrated the large extent to which levels of compliance differ among regulated within the Member States.³ This study particularly demonstrated that compliance with EU legislation is not self-evident and it concluded that because of the large differences in enforcement practices, ‘enforcement could be called the Achilles heel of European regulation’ (Versluis, 2003: 323).

3. Why Comply? The state of the art in compliance theories

Thinking about compliance fits in the old Internal Relations debate of why nations behave the way they do (Mitchell, 1996: 4). One of the first modern works specifically to address the question of why nations obey international law was Alfred Verdross’ *Le Fondement du Droit International* of 1927 (see Koh, 1997: 2613). Attention for compliance especially increased with the marked decline of national sovereignty (Chayes and Chayes, 1995).

Different theoretical approaches within International Relations differently perceive problems of non-compliance and thus identify different solutions for addressing compliance problems. Various divisions are used to categorize these approaches or perspectives. Whereas Tallberg (2002) identifies the two main schools ‘enforcement’ and ‘management’, Downs and Trento (2004) go as far as identifying seven different schools, namely realism, Kantian liberalism, democratic process, strategic, managerial, transformationalist and transnationalism. This paper will concentrate on the three perspectives that are most commonly referred to: the rationalist, management and constructivist perspective.

3.1 Rationalist perspective

Rationalism dominated thinking about compliance in the 1980s and is anchored in the political economy tradition of game theory and collective action theory (Koh, 1997). States are conceived as rational actors that weigh costs and benefits. Bargaining agents, in this example EU Member States,

³ Comparative dissertation (based on 106 interviews and 210 questionnaires) on the transposition and enforcement of, and compliance with, two EU directives in four Member States.

make choices – decide whether or not to comply – on the basis of cost/benefit calculations (Checkel, 1999: 4). Why do states comply or not comply with international law? Compliance is a matter of choice. When states do not comply, this is because they prefer not to comply. Non-compliance may be preferred simply because the costs of compliance outweigh its benefits (Mitchell, 1996: 11). States make strategic cost/benefit calculations, either in response to putative regime benefits or in response to the threat of sanctions (Checkel, 1999: 2).⁴

Besides non-compliance as a preference, non-compliance as opposition is also worth mentioning under the rationalist perspective. Liberal intergovernmentalists (see especially Moravcsik, 1993) argue that non-compliance can occur as opposition, in which respect it is a means to protest against being outvoted within the EU. As intergovernmental bargaining is the key to understanding compliance, votes in the Council of Ministers and a country's relative (economic) importance are crucial. Countries that are able – due to their number of votes in the Council and their relative importance – to 'upload' their preferences at the EU level are not expected to show compliance problems. Countries that are not able to do so, however, are expected not to comply out of opposition (Falkner et al, 2004: 453).⁵

What options does the European Union have to address compliance problems according to a rationalist account? The answer is straightforward: compliance requires enforcement (hence the rationalist perspective is also often referred to as the 'enforcement school'). International enforcement is necessary because without it all parties will violate (Mitchell, 1996: 10). International law will only be complied with when there is an effective enforcement system; when there is coercive leadership provided within the regime (Underdal, 1998: 9). When there is no effective system to detect and respond to violations or infringements, actors will not comply. Monitoring increases transparency and exposes possible defectors. The more an international organization actually has capabilities to monitor implementation, and the more financial and legal tools this organization has to its disposal, the more likely it is that compliance will take place (Sverdrup, 2003).⁶ This implies that the international organization with the best – or most legalized – 'enforcement model' will show the best compliance

⁴ Whereas rationalism claims that nations obey international law only to the extent that it serves national self-interest, the more extreme variant of realism goes one step further by arguing that international law is not really law because it cannot be enforced (Koh, 1997: 2602). Realists thus doubt that there is a correlation between international treaties and nations' behavior (Mitchell, 1996: 4). They are skeptical about the impact of international treaties on behavior; 'legal constraints beyond the nation-state are non-existent or, at best, very weak' (Neyer and Zürn, 2001:3).

⁵ This non-compliance out of opposition can occur in two variants (see Falkner et al, 2004: 456): opposition through the backdoor (governments did not want the directive and thus do not implement it correctly) and opposition due to the wish to protect older national patterns but without any dispute at the prior decision-making stage (i.e. because the country was not yet a member when the decision was taken).

⁶ Sverdrup stresses his argument by stating that the transposition record within the EU increased in the period 1995-2001 due to the increased use of the infringement procedure by the European Commission (Sverdrup, 2003: 19-20).

results. Determinants of successful compliance thus are effective monitoring and an institutionalization of enforcement (Neyer and Zürn, 2001: 8).

Only a coercive strategy of monitoring and sanctioning will induce compliance (Tallberg, 2002: 609). Therefore, in order to address compliance problems, the EU should concentrate on its enforcement system. Tools or instruments that are considered to have an impact on compliance are coercive instruments such as ‘naming and shaming’. Examples hereof are press releases and scoreboards (as used in the internal market) with compliance results. ‘Harder’ instruments are (economic) sanctions and fines, withholding military or financial assistance or charging higher interest rates for loans (Downs and Trento, 2004: 27). Sanctions ‘raise the costs of shirking and make non-compliance a less attractive option’ (Tallberg, 2002: 612). In order for sanctions to be effective they must be both credible and potent. Reluctant actors must be convinced that the likelihood that an infringement will be detected and sanctioned in a form that exceeds the costs of compliance (Mitchell, 1996: 14; Tallberg, 2002: 611).⁷

3.2 Management perspective

Especially induced by several publications by Chayes and Chayes (1991, 1993, 1995), the beginning of the 1990s showed a boost in a main alternative way of thinking about compliance. Whereas the rationalist perspective starts from the assumption that states are rational actors that only comply when the benefits outweigh the costs or when coerced in doing so, the managerial perspective departs from the idea that states are generally willing to comply with international rules and that overall compliance levels are relatively good. To this end, an old quote from Henkin’s 1968 book *How Nations Behave* is often repeated: ‘almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time’ (amongst others quoted in Chayes and Chayes, 1993: 177). According to the ‘founding fathers’ of the management perspective, ‘[n]oncompliance is not necessarily, perhaps not even usually, the result of *deliberate* defiance of the legal standard’ (Chayes and Chayes, 1991: 280; emphasis added).⁸ When states do not comply with international legislation, this is not necessarily intentional or a calculation of interests, but rather the result of incapacity or inconsistency in the rules that need to be complied with: ‘Non-compliance, when it occurs, is not the result of deliberate decisions to violate treaties, but an effect of capacity limitations and rule ambiguity’ (Tallberg, 2002: 613).⁹ Non-compliance may be inadvertent; actors may take sincerely

⁷ As compliance will only occur when the benefits outweigh the costs, a variant to realism is the ‘strategic’ school that argues that besides coercion a solution can be found in increasing the benefits of cooperation. Solutions could thus be sought in subsidies, technological transfers or aid (Downs and Trento, 2004: 29).

⁸ The managerial school has been dubbed the ‘no-fault’ theory of compliance (Downs et al, 1996).

⁹ Next to capacity limitations and rule ambiguity, Chayes and Chayes also identify the ‘temporal dimension’ of social and economic changes as a third explaining variable (1993: 188). This third variable, however, is hardly taken into consideration when the management school is described.

intended actions and expect to achieve compliance, but nonetheless fail to meet the requirements (Mitchell, 1996: 13).

States may not be capable to comply because of a lack of necessary resources, e.g. financial, administrative, scientific or technological incapacities, poverty in general, governmental inefficiency or corruption. Examples given of non-compliance due to incapacity are numerous.¹⁰ For example, in Italy the requirement of parliamentary adoption, coupled with the high turnover rate of Italian governments, was for a long time the primary source of its compliance problems (Tallberg, 2002: 630). Also the new member states in Central and Eastern Europe are thought to be vulnerable to this problem: 'Many developing countries and formerly centrally planned economies have greater difficulties in complying with international obligations than industrialized countries owing to less developed administrative systems and fewer monitoring and financial resources which can be devoted to enforcement' (Haas, 1998: 20).

Ambiguities and inconsistencies in rule setting and application can also cause non-compliance. Franck adds to this that the key to explaining compliance with international rules is the legitimacy of the rules. Rules that are regarded as 'legitimate' exert a 'compliance pull' on governments (see Koh, 1997: 2641-45). Problems with the implementation of Community law are often attributed to the complex policy-making structure of the EU and the vague and poorly drafted policies that spring from it (e.g. Jordan, 1999; Mendrinou, 1996; Neyer and Zürn, 2001; Tallberg, 2002). The EU often produces legislation that is vague and hard to implement. Directives are often loosely worded in order to accommodate differences in the decision-making process. As a consequence, the resulting European policies are often open for different (possibly even equally plausible) interpretations (Falkner et al, 2004: 463).

Instead of sanctioning, non-compliance should be 'managed' (hence the reference to 'managerial school'). Managerialists do not believe in the enforcement model: 'sanctioning authority is rarely granted by treaty, rarely used when granted, and likely to be ineffective when used' (Chayes and Chayes, 1995: 32-33). Of the various perspectives, managerialism is the most explicit in providing solutions to the compliance puzzle; solutions are to have a cooperative and problem-solving approach based on capacity building (e.g. funding or sharing of best practices), rule interpretation (e.g. guidelines, EU-wide inspection criteria) and transparency (Tallberg, 2002: 609).

¹⁰ Downs et al (1996) argue that the empirical findings of the managerial school must be treated with care as they suffer from selection problems.

3.3 Constructivist perspective

While the rationalist and management perspectives are often presented as the two main ends of the spectrum when theorizing compliance, recent years – especially since the late 1990s – see the rise of an alternative approach that is less concerned with thinking in terms of voluntary or involuntary mechanisms of non-compliance, but that is more concentrated on a normative analysis of compliance (Raustiala and Slaughter, 2002: 544). Key words for constructivists when analyzing compliance are social mobilization and social learning. States are persuaded into compliance with international law as their preferences change as a result of socialization or internalization of shared norms (e.g. Börzel, 2002; Checkel, 1999, 2001, 2002; Koh, 1997; Raustiala and Slaughter, 2002; Underdal, 1998).¹¹ As constructivists see principles, identities, norms, etc. as socially constructed, processes of social learning can lead to a redefinition of preferences. Nations comply with international law because of an internalization of these new preferences. The main mechanism through which this socialization or internalization takes place is persuasion. Checkel defines argumentative persuasion as ‘an activity or process in which a communicator attempts to induce a change in the belief, attitude, or behavior of another person (...) through the transmission of a message in a context in which the persuadee has some degree of free choice’ (Checkel, 2001: 562). Actors are considered to be most ‘open’ to be persuaded, and thus most open to learn, when they have little historical and cognitive baggage and act in an insulated institutional setting (Checkel, 2001: 564).

Constructivism thus does not depart from the logic of consequentialism, a maximization of self-interest, but rather from the logic of appropriateness (March and Olsen, 1998). States are persuaded to internalize socially accepted norms of behavior. ‘Nations thus obey international rules not just because of sophisticated calculations about how compliance or non-compliance will affect their interests, but because a repeated habit of obedience remakes their interests so that they come to value rule compliance’ (Koh, 1997: 2634). Especially non-state actors such as NGOs, epistemic communities, churches, press, and trade unions are considered to play an important, catalytic, role in generating pressure and thus stimulating social learning (Checkel, 2001: 557; Luck, 2004: 322). Such social learning is most likely to take place between countries in similar ideological or cultural groups (Underdal, 1998: 21).

Non-compliance exists because ‘actors have not internalized the norm (yet), i.e. they do not accept the norm as a standard for appropriate behavior’ (Börzel, 2002: 16). Of the three perspectives described, constructivism is the most optimistic about the prospects for compliance. Compliance will occur as

¹¹ Liberalism also emphasizes social mobilization and the importance of changing preferences, but here the existence of a liberal democracy is seen as crucial. As liberal governments are known to supply policies in response to societal demand, changes in preferences of societal actors can – via social mobilization and pressure – lead to changes in preferences of governments, which in turn may induce greater incentives to comply (e.g. Moravcsik, 1997).

long-term exposure to, or participation in, a ‘norm-governed process’ will always lead to socialization (Raustiala and Slaughter, 2002: 546). Constructivism thus does not provide clear-cut short-term solutions to solve compliance problems; socialization, and thus compliance, will take place in the long run.

3.4 Conclusion

Non-compliance can hardly ever be attributed to a single factor or explained by a single perspective (Neyer and Zürn, 2001: 16). Falkner et al showed that many different explanations are in place at the same time. In a study of 29 infringement cases (related to the implementation of 6 EU directives in 15 member states), they found that 8 were caused by deliberate opposition, 9 by issue linkage, 7 by administrative shortcomings and 5 by interpretation problems (Falkner et al, 2004: 465-467). The different compliance theories are not competing; the mechanisms are most effective when combined (Börzel, 2002: 22; Checkel, 1999: 32; Raustiala and Slaughter, 2002: 549). As Underdal argues, the question is not which model is ‘true’, but more how much of the variance in compliance each model can explain (Underdal, 1998: 5). Or, as Coleman and Doyle state, the question is not whether the various models on compliance are true, ‘but *when* they are true’ (Coleman and Doyle, 2004: 10; emphasis in original).

The perspectives each place a different emphasis on why non-compliance occurs. Whereas it is a rational preference when the costs of compliance outweigh the benefits according to the rationalists, managerialists argue that the main reason has to be found in problems of capacity limitations or rule ambiguity, and constructivists claim that non-compliance mostly occurs when states have not (yet) internalized the norms of appropriate behavior. Despite the differences in argumentation why non-compliance takes place, there is overlap in the solutions offered to address compliance problems, but the emphasis differs per school (Downs and Trento, 2004: 31). When simplifying the three perspectives, the emphasis in the solutions offered by rationalists are mostly found in ‘stick’ terminology (and to a lesser extent ‘persuasion’), while managerialists more often think in terms of ‘carrots’ (and partly ‘learning’). Constructivists are less concerned with carrots and sticks and prefer to seek their solutions in terms of ‘persuasion’ and ‘socialization’.

Table 1: Comparison of three compliance perspectives

Perspective	Non-compliance as a / due to...	Solutions
Rationalism	<i>voluntary mechanisms</i> Non-compliance as a preference Non-compliance as opposition	<i>type of solution: negative sanctioning, i.e. stick</i> Coercive strategy of monitoring and sanctioning, e.g. fines, trade restrictions, military actions, scoreboards, blacklisting, etc.
Management	<i>involuntary mechanisms</i> Non-compliance due to incapacity Non-compliance due to inadvertence Non-compliance due to rule ambiguity Non-compliance due to rule illegitimacy	<i>type of solution: positive sanctioning, i.e. carrot</i> Cooperative and problem-solving strategy of capacity building and rule interpretation, e.g. subsidies, funding, knowledge or technology transfer, benchmarking, etc.
Constructivism	Non-compliance due to a lack of internalization of the norms of appropriate behavior	<i>type of solution: socialization</i> Persuasive strategy of changing states' preferences via the catalytic role of non-state actors, e.g. letter writing campaigns, consumer boycotts, press releases, etc.

Solutions offered to address compliance problems are numerous, yet the explicit option of using agencies is not widespread in any of the perspectives. Before analyzing the 'successfulness' of agencies in securing compliance according to the various perspectives, it is necessary to provide an insight into the trend of 'agencification' in the European Union.

4. EU agencies: a new 'policy fashion'

From the creation of the 'European Centre for the Development of Vocational Training' in 1975 onwards, but especially since the 1990s, we see an increasing trend of delegation of specific tasks to independent agencies within the European Union. Delegation or transference of authority – or 'distributed public governance' as Flinders (2004) refers to it – is a common phenomenon in modern society in general (Gilardi, 2002: 873; Tallberg, 2002: 23). As Moravcsik argues, 'the mode of EU delegation (...) is consistent with the late twentieth-century practice of most advanced industrial democracies' (Moravcsik, 2002: 611). The increase in delegation, and thus rise of autonomous public bodies, demonstrates a trend in modern governance towards decentralization or autonomization. Pollitt et al even go as far as to name this a trend of 'agencification'; they even typify agencies as a 'kind of administrative fashion accessory' (Pollitt et al, 2001: 286).

4.1 EU agencies: an overview

Agencies can be referred to as a ‘variety of organizations (...) that perform functions of a governmental nature, and which often exist outside the normal departmental framework of government’ (Majone, 2000: 290). Many different wordings are used to address agencies on European level; some are called ‘centre’, ‘foundation’, or ‘office’ and others ‘authority’ or ‘agency’. The official documents of the Council of Ministers, European Commission and European Parliament refer to them as ‘satellite bodies’, but they are most commonly addressed as European agencies.¹²

Table 2: Overview of the 17 EU agencies¹³

Agency	Abbreviation	Founding Regulation
European Centre for the Development of Vocational Training	Cedefop	Council Regulation 337/75
European Foundation for the Improvement of Living and Working Conditions	Eurofound	Council Regulation 1365/75
European Environment Agency	EEA	Council Regulation 1210/90
European Training Foundation	ETF	Council Regulation 1360/90
European Monitoring Centre for Drugs and Drug Addiction	EMCDDA	Council Regulation 302/93
European Agency for the Evaluation of Medicinal Products	EMA	Council Regulation 2309/93
Office for Harmonization in the Internal Market	OHIM	Council Regulation 40/94
European Agency for Safety and Health at Work	EU-OSHA	Council Regulation 2062/94
Community Plant Variety Office	CPVO	Council Regulation 2100/94
Translation Centre for the Bodies of the EU	CdT	Council Regulation 2965/94
European Monitoring Centre on Racism and Xenophobia	EUMC	Council Regulation 1035/97
European Agency for Reconstruction	EAR	Council Regulation 2454/99
European Food and Safety Authority	EFSA	Parliament and Council Regulation 178/2002
European Maritime Safety Agency	EMSA	Parliament and Council Regulation 1406/2002
European Aviation Safety Agency	EASA	Parliament and Council Regulation 1592/2002
European Network and Information Security Agency	ENISA	Parliament and Council Regulation 460/2004
European Centre for Disease Prevention and Control	ECDC	Parliament and Council Regulation 851/2004

¹² This paper concentrates on those 17 currently functioning agencies that were created under the EC Treaty and therefore does not include agencies created under the Euratom Treaty (Euratom Supply Agency), agencies operating under the second or third pillar (EU Institute for Security Studies, Europol, EU Satellite Centre and Eurojust), internal bodies of the Commission (e.g. the Statistical Office) or financial institutions such as the European Central Bank that are sometimes confused with agencies (they are autonomous institutions and not agencies because they are mentioned in the Treaty).

¹³ For more information on these agencies, see the ‘agency website’ of the European Union:

http://europa.eu.int/agencies/index_en.htm

Besides these 17, at least 3 other agencies will become active within the following years:

- 1) European Railway Agency (COM(2002) 23)
- 2) Community Fisheries Control Agency (COM(2003) 130)
- 3) European Chemical Agency (COM(2003) 644)

The creation of EU agencies took place in three waves. The first two agencies were already created in 1975: the ‘European Centre for the Development of Vocational Training’ and the ‘European Foundation for the Improvement of Living and Working Conditions’. After a period of ‘silence’, the ‘second generation agencies’, were created in the 1990s, ranging from the ‘European Environment Agency’ in 1990 to the ‘European Agency for Reconstruction’ in 1999, with eight others in between. Recently, in the first few years of the 21st century, we see the third wave of agency creation with five new ones. These last five agencies have two elements in common that separate them from the twelve earlier established agencies. Firstly, these five all have tasks related to safety or security: food, maritime and aviation safety, disease prevention and network and information security. Secondly, while the first twelve agencies were all created by a Council Regulation based on article 308 (TEC)¹⁴ – which permits Community action in areas not covered by the Treaty (and thus requiring unanimity in the Council of Ministers and the opinion of the European Parliament under the consultation procedure) – the latest five agencies were adopted under the co-decision procedure, thus allowing more parliamentary influence. These agencies were all created by a regulation based on articles referring to specific policy domains; e.g. EMSA and EASA refer to article 80(2) (TEC), which allows for further provisions as regards sea and air transport.

Even though the 17 EU agencies differ considerably in tasks and set-up, they do have some characteristics in common.¹⁵ First of all, they are not mentioned directly in the EC Treaty.¹⁶ Secondly, they are all created by a regulation that clearly identifies their aims and tasks. Thirdly, they have legal personality and enjoy (within their defined mandate) a certain degree of organizational and financial autonomy. And finally, they have in common that a management board composed of Member State and Commission representatives governs them. Different scholars classify agencies in different types¹⁷, but when following the classification of the Commission, four types can be identified:

¹⁴ With the exception of EEA which is based on the environmental article 175 (ex-130s).

¹⁵ See Flinders, 2004; Geradin and Petit, 2004; Kreher, 1997; Vos, 2003; Yataganas, 2001.

¹⁶ Would the Constitutional Treaty be ratified, agencies will be named in several articles of the Treaty (e.g. in relation to transparency (I-50) or the right to access documents (II-102)), but nowhere reference is made of characteristics of, or common establishment procedures for, agencies.

¹⁷ For example, Flinders (2004) distinguishes the two categories of executive and regulatory agencies, Geradin and Petit (2004) identify a third category of decision-making agencies and Vos (2003) refers to four distinct types with information, management and two categories of regulatory agencies.

Table 3: Classification of EU agencies

<p><u>1. Agencies that promote the social dialogue:</u></p> <ul style="list-style-type: none"> ✓ Cedefop ✓ Eurofound ✓ EU-OSHA 	<p><u>2. Observatory agencies:</u></p> <ul style="list-style-type: none"> ✓ EEA ✓ EMCDDA ✓ EUMC ✓ ECDC 								
<p><u>3. Executive agencies:</u></p> <ul style="list-style-type: none"> ✓ ETF ✓ CdT ✓ EAR 	<p><u>4. Regulatory agencies:</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">✓ EMEA</td> <td style="width: 50%;">✓ EMSA</td> </tr> <tr> <td>✓ OHIM</td> <td>✓ EASA</td> </tr> <tr> <td>✓ CPVO</td> <td>✓ ENISA</td> </tr> <tr> <td>✓ EFSA</td> <td></td> </tr> </table>	✓ EMEA	✓ EMSA	✓ OHIM	✓ EASA	✓ CPVO	✓ ENISA	✓ EFSA	
✓ EMEA	✓ EMSA								
✓ OHIM	✓ EASA								
✓ CPVO	✓ ENISA								
✓ EFSA									

The agencies of the first category have in common that they aim to promote the social dialogue in different areas such as vocational training and living and working conditions. In order to stimulate such dialogue, all three agencies have a quadripartite management board with representatives of employers and trade unions as well as Member States and Commission representatives. This category is therefore also sometimes referred to as the ‘cooperation model’ (Yataganas, 2001: 24). The second category consists of the observatory agencies, or ‘monitoring model’ (Yataganas, 2001: 24), with the main task to collect and disseminate information in diverse areas such as the environment, drug addiction, racism and infectious diseases. An additional commonality is their responsibility to coordinate networks of national experts. The third category of executive agencies is the most diverse group of agencies with the similarity that they operate as ‘subcontractors’ to the European public service (Geradin and Petit, 2004: 43). The last and largest category is composed of the regulatory agencies that facilitate the operation of the internal market, with the main common characteristic that they exercise (quasi-)regulatory functions.

4.2 Agencification in the European Union: an analysis of the phenomenon

The European Union does not stand alone in this trend of agencification. The delegation of specific tasks is a phenomenon that can also be widely observed at the national level. Why would governments want to delegate tasks? According to Principle-Agent literature, originating from the economic analysis of relations between managers and employees, delegation of tasks takes place from principals to agents because it, in the long run, produces better results as agents can solve specific problems that principals encounter (Braun and Guston, 2003: 303; Egan, 1998: 487). In general, four main reasons

are provided why delegation takes place.¹⁸ Firstly, delegation is said to reduce political transaction costs, e.g. direct costs for the time and effort to negotiate deals. Secondly, agents are thought to have (or be able to collect) knowledge and expertise that principals do not have because most regulatory issues are too complex and specialized. The knowledge and information as provided by the agents is claimed to improve the efficiency and quality of policy-making. Thirdly, governments may be willing to delegate because it offers them the opportunity of ‘blame-shifting’; agents can be blamed for ‘unpopular’ decisions. The fourth and final reason provided why delegation may be advantageous is that it can enhance credibility. According to Majone ‘political sovereigns are willing to delegate important powers to independent experts in order to increase the credibility of their policy commitments’ (quoted in Gilardi, 2002: 874).

Next to these more general reasons as identified in the Principal-Agent literature, there seems to be a specific feature to the European case of agencification. According to Dehousse (1997) the setting up of European agencies is a response to the crisis in the harmonization model. This harmonization model – referring to the functioning of the EU in the approximation of national provisions in order to create a single market – has several shortcomings in that decision-making is very slow and not very flexible to account for technological changes and the use of directives leads to transposition deficits. Dehousse argues that there is a functional logic behind their creation: “The bodies must be seen as an attempt to reconcile a functional need for greater uniformity in the implementation of Community law” (Dehousse, 1997: 257). This functionalist argument is also used by Kelemen, who claims that the creation of agencies is ‘unsurprising’ because of the slow legislative process and inflexibility to take account of the rapid changing technology as already identified by Dehousse (Kelemen, 2002: 94).

Kelemen is, however, of the impression that this functionalist account alone is insufficient to explain the creation of the (then) latest agencies. Whereas it is perfectly plausible to explain the coming about of the first agencies, the explanation for the setting up of the agencies in the late 1990s must most of all be found in the expansion of EU policy due to the creation of the single market and the unwillingness of the member governments to transfer more powers to the Commission (Kelemen, 2002: 95; see also Vos, 2000: 1113-1115). A main reason behind their creation can be found, as argued by some, in, on the one hand, a wish for greater cooperation between Member States in some sectors, while, on the other hand, the Community and especially the Commission witnessed immense critique related to the subsidiarity debate (e.g. Flinders, 2004: 523; Shapiro, 1997). Hostility towards the Commission, especially after the fall of the Santer Commission in 1999, and anti-EU sentiment in general caused for the situation in which the only possibility for a step forward lay in the creation of independent agencies (Vos, 2003: 141). This underlying reason makes Shapiro come to the rather negative conclusion that ‘the proliferation and expansion of agencies is clearly a strategy for enlarging

¹⁸ See Egan, 1998; Geradin and Petit, 2004; Gilardi, 2002; Magnette et al, 2003; Majone, 1997; Nicolaidis et al, 2003; Pollitt et al, 2001; Tallberg, 2002; Vos, 2000.

the Union by evading the current popular hostility to the Commission' (Shapiro, 1997: 290). The agencies are thus to a large extent set up as a 'smoke screen': 'because Europeans don't like the technocrats in Brussels and fear concentrating even more governance there, if we want more EU technocrats, we need to split them up and scatter them about Europe' (Shapiro, 1997: 281).

Opinions differ when it comes to the positive and negative sides of this trend of agencification within the EU. Apart from the supposedly positive impact that agencies will have on implementation of and compliance with Community law, which is central in this paper, agencies are thought to bring other advantages as well. Several scholars stress an improved legitimacy as a result of agency-establishment. Agencies are more visible and are more subject to control than comitology committees, where many agencies take their rise from, and therefore they are considered to contribute to improving transparency (e.g. Dehousse, 1997: 258; Flinders, 2004: 535; Kreher, 1997: 242; Shapiro, 1997: 291; Vos, 2000: 1119). In the late 1990s, the Commission requested a team of scholars, headed by Majone, to study the agency model. This study resulted in a report that emphasizes the need for agencies, in particular the need to segregate certain elements from political influence in order to strengthen policy credibility and allow for greater policy consistency (Everson et al, 1999; see also Flinders, 2004: 521). During other occasions Majone also emphasized the advantages of delegation; he argued that agencies and especially their networks could be important 'for raising the general quality of EC regulation and reducing the implementation deficit that threatens its credibility' (Majone, 2002: 388). Especially the informational role of agencies grants them much power. In today's society problems can be complex and the regulatory process is in need of scientific and technical, and particularly credible, information. This credibility is guaranteed by the teamwork of all national agencies and their EU partner, as Majone's 'Information Game' shows that only agencies with a reliable reputation will become partners (Majone, 1997: 271-274). Shapiro agrees that the informational role of the agencies grants them power since contemporary politics is a politics of information (Shapiro, 1997: 285). Contrary to Majone, this leads him to the more negative conclusion that we should not delegate information responsibilities to independent agencies to foster the growth of networks, but rather that experts need to be brought under control of politicians (Shapiro, 1997: 287).

Shapiro's argument relates to a down-side of delegation: the issue of political responsibility. Who is responsible for policy failures? Kreher describes this accountability problem in relation to the EMEA: 'Who will be responsible if a new medical product with European-wide approval causes problems? Blaming the new European Agency for the Evaluation of Medicinal Products (EMEA) in London would be far too easy! It is, in fact, the Commission which takes the decision to approve a medical product, based on the expertise provided by the EMEA, the exact legal status of which is a complex

matter' (Kreher, 1997: 229). When the 'ownership' of responsibility is not defined clearly, this can lead to situations of 'blame-shifting' (Flinders, 2004: 535).¹⁹

Apart from the accountability problem, arguments against delegation usually insist that the concept of delegation is not laid down in the Treaties – and the agencies are not listed either – and that it therefore is in violation with the principals of the Treaty (Flinders, 2004: 527; Vos, 2000: 1121; Vos, 2003: 115). The Constitutional Treaty (if ratified) would not change this situation since, even though agencies are mentioned in several occasions, there is still no legal basis for them. The Meroni case law²⁰ heavily influenced the practice of delegation as it rejected the transfer of powers to authorities outside the institutions; only 'clearly defined executive powers' could be delegated (Vos, 2000: 1123). Even more specific, it states that institutions cannot 'confer upon the authority, powers different from those which the delegating authority itself received under the Treaty' (Geradin and Petit, 2004: 12).

4.3 Conclusion

The above overview shows that EU agencies exist in different forms and types. Despite a few similarities, agencies are not set up according to common establishment procedures and the Constitutional Treaty (if ratified) will not change this situation. While most of the earlier agencies spring from comitology committees (Kreher, 1997: 232; Vos, 2003: 114), there is no single conclusion to be drawn to answer the question who or what promoted the creation of the agencies in general. Agency creation did not follow a coherent administrative method, '[i]t has responded to ad hoc circumstances, instead of having been based upon a carefully reflected approach' (Geradin and Petit, 2004: 40). Agencies have certainly not been established with the explicit aim to improve compliance. Whereas the then French president Mitterrand promoted the establishment of the EMCDDA, the EEA was pushed for by former Commission president Delors who argued that such an environmental agency would improve the Community's monitoring and implementing capacity (Kelemen, 2002: 101). Some of the latest agencies have in common that their establishment was triggered by a crisis of some sort. The EAR is linked to the Kosovo crisis, the EMSA was created after the Erika oil tanker disaster and the BSE crisis led to the creation of the EFSA.

The history of agencification in the EU shows that over time it became easier to set up agencies and that more and more powers are transferred to agencies. While the first agencies mainly had tasks to promote the social dialogue and to collect and disseminate information, some of the latest agencies

¹⁹ Not all scholars agree to the rise of accountability problems due to the creation of agencies. Accountability problems already exist within the European Union for a long time. The EC Treaty did not arrange a 'neat separation of powers' between the EU institutions and the setting up of agencies did not change much in this respect (Dehousse, 1997: 258).

²⁰ Case 9/56, *Meroni & Co., Industrie Metallurgiche S.p.A. v. High Authority*, [1957-58] ECR 133 and Case 10/56, *Meroni & Co., Industrie Metallurgiche S.p.A. v. High Authority*, [1957-58] ECR 157.

have far-reaching powers such as the registration of Community trade marks (OHIM) or conducting standardization inspections (EASA). Especially the first agencies were granted limited powers due to the unwillingness of most Member States to hand over sovereignty (Kelemen, 2002: 99). This is clearly seen in the example of the EEA. Whereas the Commission in first instance suggested a rather powerful agency with extensive decision-making and enforcement powers, notorious ‘environmental laggards’ opposed this idea in the Council of Ministers (Kelemen, 2002: 101). This is also illustrated by the fact that the first agencies were all established under the consultation procedure to allow maximum intergovernmental control. In all cases the agencies’ management boards are composed of Member State representatives for this exact same reason; Member States allowed a delegation of powers to the agencies, but only under firm intergovernmental control.

For a long time, the Commission has not been in favor of delegating some of its tasks to (semi-)independent agencies as this would mean a loss of powers (Vos, 2003: 130; Yataganas, 2001: 20). For example in the area of competition, the Commission has actively resisted the establishment of a European Cartel Office (Majone, 1997: 263). In its White Paper on European Governance, the Commission explicitly addresses the issue of agencies. Scholars read different stances of the Commission towards agency-building in this White Paper. Whereas Vos states that for the first time the Commission explicitly recognized the need for agencies with decision-making powers (Vos, 2003: 113) – for example to be seen in the statement that the creation of agencies will improve rule application and enforcement across the Union and that ‘such agencies should be granted the power to take individual decisions in application of regulatory measures’ (COM(2001) 428: 24) –, Steinberg argues that the ‘very careful approach of the White Paper towards agencies (...) in general, and regulatory agencies in particular, clearly reflects the Commission’s reticence with regard to the establishment of further agencies’ (Steinberg, 2001: 14).

It appears to be the case that agencies are only ‘allowed’ when there is agreement between both Member States and the Commission.²¹ In order for an agency to be granted tasks that are likely to secure an improved compliance, it seems to require a crisis of some sort, or otherwise consensus between the Member States on the need for harmonization in that particular area, as well as – when necessary – a willingness of the Commission to ‘hand over’ responsibilities.

5. Bringing the two together: what role for agencies in securing compliance?

The European Commission legitimizes the new ‘policy fashion’ of EU agencies partly with claims about the positive role these agencies will play in improving compliance. The above empirical analysis

²¹ Since the co-decision procedure has been applied since the creation of EFSA in 2002, the European Parliament is also a partner that has to be taken into account.

of the phenomenon of agencification, however, shows that this legitimation is not obvious. Agencies are not generally established with the aim of improving compliance, nor does it seem to be the case that agencies with expanded competences are allowed in areas where compliance forms a clear problem. Agency-establishment rather seems to take place on an ad-hoc basis without a clear coherent underlying method. Furthermore, on a theoretical level, it can be seen that the various compliance perspectives do not automatically name agencies as a solution to compliance problems. Without the obvious link between agencies and compliance, is the Commission mistaken in arguing that agencies will improve compliance with EU legislation?

5.1 A place for agencies in compliance theories?

Even though compliance theories do not explicitly mention agencies as a solution to compliance problems, this is not to say that agencies are disqualified. Within each of the three compliance perspectives, agencies could potentially be integrated as a part of the solution. The role to be played for agencies would differ per perspective, however. Since rationalism stresses the coercive element in solutions to compliance problems, agencies could be expected to play a role in securing compliance according to rationalists when they have clear financial and legal tools at their disposal to coerce actors into compliance. As managerialists argue, however, that sanctioning authority is likely to be ineffective, an agency in the understanding of ‘enforcer’ is no answer to compliance problems according to them. Since such problems are caused by incapacity or rule ambiguity, the role an agency should play lies in improving capacity and clarifying the rules. While this potential role for agencies to play according to the rationalist and management perspectives is rather straightforward, the role to be played for agencies according to constructivism is less easy to visualize. Constructivists argue that for compliance to occur, actors have to internalize the norms. Agencies should thus play a role in inducing such processes of socialization. In this respect, agencies could be used to voice or express societal demands, i.e. stimulate mobilization or pressure via information gathering or press releases.

Table 4: The role for agencies in securing compliance

Compliance perspective	In order for a EU agency to play a relevant role in securing compliance, its main task would be to...
Rationalism	... act as an ‘enforcer’ and monitor levels of compliance and where necessary sanction non-compliance.
Management	... provide guidance (rule interpretation), expertise, and (technical or financial) assistance.
Constructivism	... persuade actors into a commonly accepted behavior and thus to trigger a process of internalization of the shared norms.

5.2 The empirical reality: can agencies secure compliance?

While the link between compliance and agencies seems to be theoretically feasible, the remaining question is to what extent this link is valid from the empirical ‘EU agency’ perspective. A first element that needs to be addressed is the question of competences. Are agencies legally allowed to play a role in securing compliance? The Meroni Doctrine clearly states that institutions cannot ‘confer upon the authority [i.e. agency], powers different from those which the delegating authority itself received under the Treaty’ (Geradin and Petit, 2004: 12). In order to assure compliance with Community law, it needs to be asserted that Member States actually implement this legislation. As the power to implement European legislation lies with the Member States and not with any of the institutions, the institutions thus cannot themselves decide to transfer implementing powers upon agencies. The decision to grant agencies explicit implementing tasks that allow them to secure compliance is thus a decision that can only be made by the Member States.

The fact that the Member States have to agree in the Council of Ministers on the tasks of agencies, as it are ‘their’ powers to delegate, explains a part of the variation between the agencies. The establishment of the first twelve agencies required unanimity in the Council and thus required agreement between the (then 9, 12 or 15) Member States. This explains why most of these agencies mainly have informational tasks; required unanimity makes it impossible to set up agencies with implementing tasks as Member States with obvious compliance problems will not likely allow such a power transfer. Since the establishment of the EFSA in 2002, the Member States decide via qualified majority and the European Parliament plays a decisive role in the decision-making process via the co-decision procedure. The latest agencies therefore have more far-reaching powers of which some might play a role in securing compliance. The EMSA and EASA can respectively carry out visits and conduct inspections in order to secure maritime and aviation safety. Besides the use of qualified majority voting, another explanation for these enhanced powers seems to lie in the fact that, due to crises, Member States seem to be more willing to hand over sovereignty in issues dealing with safety and security.

When combining this information on specific tasks that agencies conduct with compliance theories, it can be observed that the management and constructivist perspectives prevail for the time being. The most important overarching task that agencies have is to collect, process and disseminate information. Founding regulations of many of the agencies mention tasks such as ‘compile selected documentation’, ‘provide a forum for debate and exchange of ideas’, ‘provide guidance and advice to policy makers’, ‘report on developments and trends’, ‘stimulate the exchange of information’, ‘organize exchanges of experts’, ‘organize training activities’, etc. The nature of these tasks seems to indicate that from a management and constructivist perspective agencies could play a role in securing

compliance: informational tasks could lead to capacity building and rule interpretation according to managerialists, and they are likely to stimulate social learning according to constructivists.

Such tasks fit less obviously in the rationalist perspective on compliance as the coercive element is missing. According to rationalists, agencies are only likely to have an impact on compliance when acting as enforcers and thus when sanctioning non-compliance. Historically, none of the 17 agencies have been granted such enforcement tasks, but the last years, however, show a slight shift towards an easier establishment of agencies with enhanced powers. The type of powers that are more recently ‘allowed’ seem to indicate that the rationalist perspective on improving compliance might be coming to the fore after all. While agencies that promote the social dialogue could be seen as especially a constructivist approach to improving compliance, agencies with explicit inspection tasks could be easier categorized under a rationalist perspective of monitoring compliance.

5.3 Concluding remarks

To what extent the informational and newly received inspection tasks of EU agencies indeed lead to improved compliance levels within the Member States remains to be seen, however. No empirical evidence on the impact of agency-behavior on compliance records exists. Coleman and Doyle have argued that there is plenty of theorizing on compliance, but that ‘it is remarkable how little this plethora of competing hypotheses has been put to an empirical test’ (Coleman and Doyle, 2004: 5). This exact same observation applies to the presumed role for agencies in improving compliance. While this paper shows that it is not unthinkable for agencies to play a positive role in securing compliance, the ‘improved-compliance’ legitimation for agency-establishment of the Commission is still to be empirically tested.

Recent developments in compliance theory have focused on the question what compliance perspective holds true in what situation or under what conditions. This increased attention for the institutional context offers good opportunities for applying theoretical compliance insights to a more thorough empirical study of the phenomenon of EU agencification and its presumed impact on compliance. The central question then will not be ‘do agencies in general improve compliance with EU policy?’, but rather ‘do the specific characteristics of individual EU agencies offer chances for increased compliance, given the institutional context of the area they are applied to?’.

6. References

- Börzel, T.A. (2001) 'Non-compliance in the European Union: pathology or statistical artefact?', *Journal of European Public Policy*, 8(5): 803-824.
- Börzel, T.A. (2002) 'Why do states not obey the law?', 6 June, ARENA, University of Oslo.
- Braun, D, and D.H. Guston (2003) 'Principal-agent theory and research policy: an introduction', *Science and Public Policy*, 30(5): 302-308.
- Chayes, A. and A.H. Chayes (1991) 'Adjustment and Compliance Processes in International Regulatory Regimes', In Tuchman Mathews, J. (ed.) *Preserving the Global Environment*, Norton & Company: New York, pp. 280-308.
- Chayes, A. and A.H. Chayes (1993) 'On Compliance', *International Organization*, 47(2): 175-205.
- Chayes, A. and A.H. Chayes (1995) *The New Sovereignty. Compliance with International Regulatory Regimes*, Harvard University Press: Cambridge.
- Checkel, J.T. (1999) 'Why Comply? Constructivism, Social Norms and the Study of International Institutions', *ARENA Working Papers*, 99/24, Oslo: Advanced Research on the Europeanisation of the Nation-State.
- Checkel, J.T. (2001) 'Why Comply? Social Learning and European Identity Change', *International Organization*, 55(3): 553-588.
- Checkel, J.T. (2002) 'Persuasion in International Institutions', *ARENA Working Papers*, 02/14, Oslo: Advanced Research on the Europeanisation of the Nation-State.
- Coleman, K.P. and M.W. Doyle (2004) 'Introduction: Expanding Norms, Lagging Compliance', In Luck, E.C. and M.W. Doyle (eds.) *International Law and Organization*, Lanham: Rowman and Littlefield, pp. 1-18.
- Commission of the European Communities (2001) *European Governance. A White Paper*, COM(2001) 428 final, 25 July, Brussels.
- Commission of the European Communities (2005) 'Commission proposes Institute for Gender Equality', Press Releases, IP/05/266, Brussels, 8 March 2005.
- Conceil de l'Union Européenne (2005) 'Communiqué de Presse, 2648^{ème} session du Conseil, Agriculture et pêche', 6974/05 (Presse 46), Bruxelles, le 14 mars 2005.
- Dehousse, R. (1997) 'Regulation by networks in the European Community: the role of European agencies', *Journal of European Public Policy*, 4: 4, pp. 246-61.
- Downs, G.W., D.M. Roocke and P.N. Barsoom (1996) 'Is the good news about compliance good news about cooperation?', *International Organization*, 50(3): 379-406.
- Downs, G.W. and A.W. Trento (2004) 'Conceptual Issues Surrounding the Compliance Gap', in: Luck, E.C. and M.W. Doyle (eds.) *International Law and Organization*, New York: Rowman & Littlefield, pp. 19-40.
- Egan, M. (1998) 'Regulatory strategies, delegation and European market integration', *Journal of European Public Policy*, 5: 3, pp. 485-506.
- Everson, M., G. Majone, L. Metcalfe and A. Schout (1999) *The Role of Specialised Agencies in Decentralising EU Governance*, Maastricht: EIPA.
- Falkner, G., M. Hartlapp, S. Leiber and O. Treib (2004) 'Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor?', *West European Politics*, 27(3): 452-473.
- Faure, M. (2004) 'European Environmental Criminal Law: Do we really need it?', *European Environmental Law Review*, pp. 18-29.
- Flinders, M. (2004) 'Distributed public governance in the European Union', *Journal of European Public Policy*, 11: 3, pp. 520-544.
- Geradin, D. and N. Petit (2004) 'The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform', *Jean Monnet Working Paper* 01/04.
- Gilardi, F. (2002) 'Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis', *Journal of European Public Policy*, 9(6): 873-893.
- Haas, P.M. (1998) 'Compliance with EU directives: insights from international relations and comparative politics', *Journal of European Public Policy*, 5(1): 17-37.
- Jordan, A. (1999) 'The implementation of EU environmental policy: a policy problem without a political solution?', *Environment and Planning C: Government and Policy*, 17: 69-90.
- Kelemen, R.D. (2002) 'The Politics of 'Eurocratic' Structure and the New European Agencies', *West European Politics*, 25(4): 93-118.
- Knill, C. (1997) 'Implementing European Policies: The Impact of National Administrative Traditions', *EUI Working Papers* 97/56.
- Koh, H.H. (1997) 'Why Do Nations Obey International Law', *The Yale Law Journal*, 106: 2599-2659.
- Kreher, A. (1997) 'Agencies in the European Community – a step towards administrative integration in Europe', *Journal of European Public Policy*, 4(2): 225-245.

- Luck, E.C. (2004) 'Conclusion: Gaps, Commitments, and the Compliance Challenge', in: Luck, E.C. and M.W. Doyle (eds.) *International Law and Organization*, New York: Rowman & Littlefield, pp. 303-330.
- Magnette, P., C. Lequesne, N. Jabko and O. Costa (2003) 'Conclusion: Diffuse democracy in the European Union: the pathologies of delegation', *Journal of European Public Policy*, 10: 5, pp. 834-840.
- Majone, G. (1997) 'The new European agencies: regulation by information', *Journal of European Public Policy*, 4(2): 262-275.
- Majone, G. (2000) 'The Credibility Crisis of Community Regulation', *Journal of Common Market Studies*, 38(2): 273-302.
- Majone, G. (2002) 'The European Commission: The Limits of Centralization and the Perils of Parliamentarization', *Governance: An International Journal of Policy, Administration, and Institutions*, 15(3): 375-392.
- March, J.G. and J.P. Olsen (1998) 'The Institutional Dynamics of International Political Orders', *International Organization*, 52(4): 943-969.
- Mastenbroek, E. (2003) 'Surviving the Deadline. The Transposition of EU Directives in the Netherlands', *European Union Politics*, 4(4): 371-395.
- Matthews, D. (1993) 'Enforcement of Health and Safety Law in the UK, Germany, France and Italy', *Economic & Social Research Council Working Paper 18*, London: National Institute of Economic and Social Research.
- Mendrinou, M. (1996) 'Non-compliance and the European Commission's role in integration', *Journal of European Public Policy*, 3(1): 1-22.
- Mitchell, R.B. (1996) 'Compliance theory: an overview', in: Cameron, J. (ed.) *Improving compliance with international environmental law*, London: Earthscan, pp. 3-28.
- Moravcsik, A. (1993) 'Preferences and Power in the European Community: a Liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, 31(4): 473-523.
- Moravcsik, A. (1997) 'Taking Preferences Seriously: A Liberal Theory of International Politics', *International Organization*, 51(4): 513-53.
- Moravcsik, A. (2002) 'In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union', *Journal of Common Market Studies*, 40(4): 603-624.
- Neyer, J. and M. Zürn (2001) 'Compliance in Comparative Perspective. The EU and Other International Institutions', *InIIS-Arbeitspapier*, nr. 23/01, Universität Bremen.
- Nicolaides, P., A. Geveke and A.M. den Teuling (2003) *Improving Policy Implementation in an Enlarged European Union. The Case of National Regulatory Authorities*, Maastricht: EIPA.
- Pappas, S.A., ed. (1995) *National Administrative Procedures for the Preparation and Implementation of Community Decisions*, Maastricht: EIPA.
- Pollitt, C., K. Bathgate, J. Caulfield, A. Smullen and C. Talbot (2001) 'Agency Fever? Analysis of an International Policy Fashion', *Journal of Comparative Policy Analysis: Research and Practice*, 3: 271-290.
- Raustiala, K. and A.M. Slaughter (2002) 'International Law, International Relations and Compliance', In Carlsnaes, W., T. Risse and B.A. Simmons (eds.) *Handbook of International Relations*, London: Sage Publications, pp. 538-558.
- Shapiro, M. (1997) 'The problems of independent agencies in the United States and the European Union', *Journal of European Public Policy*, 4(2): 276-291.
- Steinberg, P. (2001) 'Agencies, Co-Regulation and Comitology – And what about politics?', *Jean Monnet Working Paper*, 6/01.
- Sverdrup, U. (2003) 'Compliance and styles of conflict management in Europe', *ARENA Working Papers*, 08/3, Oslo: Advanced Research on the Europeanisation of the Nation-State.
- Tallberg, (2002) 'Paths to Compliance: Enforcement, Management, and the European Union', *International Organization*, 56(3): 609-643.
- Underdal, A. (1998) 'Explaining Compliance and Defection: Three Models', *European Journal of International Relations*, 4(1): 5-30.
- Versluis, E. (2003) *Enforcement Matters. Enforcement and Compliance of European Directives in Four Member States*, Delft: Eburon.
- Versluis, E. (2004a) 'Explaining Variations in Implementation of EU Directives', *European Integration online Papers*, Vol. 8, N° 19, <http://eiop.or.at/eiop/texte/2004-019a.htm>.
- Versluis, E. (2004b) "'The Achilles Heel of European Regulation". The Commission's Neglect of Enforcement', *Paper presented at the ECPR Joint Sessions of Workshops, Workshop 'International Organizations and Policy Implementation'*, 13-18 April 2004, Uppsala, Sweden.
- Vos, E. (2000) 'Reforming the European Commission: what role to play for EU agencies', *Common Market Law Review*, 37, pp. 1113-1134.
- Vos, E. (2003) 'Agencies and the European Union', In Verhey, L. and T. Zwart (eds.) *Agencies in European and*

- Comparative Perspective*, Antwerp: Intersentia, pp. 113-148.
- Waarden, F. van (1998) 'European Harmonization of National Regulatory Styles?', *Paper presented at the Karolus Programme of the European Institute of Public Administration*, 9 December 1998, Maastricht.
- Williams, R. (1994) 'The European Commission and the Enforcement of Environmental Law: an Invidious Position', *Yearbook of European Law* 14: 351-399.
- Yataganas, X.A. (2001) 'Delegation of Regulatory Authority in the European Union. The Relevance of the American Model of Independent Agencies', *Jean Monnet Working Paper*, 3/01.