# Wielders of Supranational Power? The Administrative Behaviour of the Heads of European Union Agencies

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**Abstract**

EU-level agencies, meant to operate independently from the main EU institutions, are headed by executive directors, acting under the supervision of management boards usually composed of member states' representatives. These executive directors are in charge of the operational functioning of these independent agencies. Despite the potential impact of executive directors as heads of independent European bodies, no research has been undertaken on this topic.

This paper thus aims to investigate the autonomous powers of European Union agency directors, the room for manoeuvre they acquire over time and the accountability arrangements they are subject to at the individual level. It asks to which extent executive directors of European Union agencies are autonomous and accountable vis-à-vis the management board, and explores the consequences of the wielding of supranational power for democratic governance in the European Union.

**1. Introduction: the Heads of European Union Agencies**

During the past decade the European Union (EU) has witnessed a veritable process of 'agencification'. Functions previously belonging to the EU Member States, the European Commission or the Council of Ministers were delegated to an array of independent agencies exercising tasks ranging from police co-operation in fighting cross border crime, to the prevention and control of communicable diseases, the management of the EU's chemical policy, and the authorisation of medicinal products. Currently, more than thirty EU agencies are operating throughout Europe. Together they spend over one billion Euros per year, and employ more than 3000 staff.

The creation of EU agencies is not without problems from a democratic governance perspective. Whereas agencies have often been created as part of the efforts to increase the effectiveness of EU policy-making and restore the legitimacy of the EU in areas of contested governance, they have increasingly become issue of contestation themselves and have been the subject of growing academic debate in recent years (e.g. Everson, 1995; Majone, 1997; Kreher, 1997; Chiti, 2000; Curtin, 2005; Groenleer, 2006, Dehousse, 2008; Busuioc, 2008). A

Dutch newspaper called them "the long tentacles of Brussels", encroaching on the sovereignty of Member State governments and making deep inroads on the life of European citizens.[1]

These agencies, meant to operate independently from all the EU Treaty organs, are headed by executive directors under the supervision of management boards. Executive directors are in charge of the operational functioning of these independent agencies. They bear responsibility for the day-to-day management, staff and personnel matters, the preparation of a draft budget, annual work programme and annual report, and the implementation of the budget. The executive directors are also the legal representatives of the agencies. To sum up, using Gulick's (1937) words that form the famous POSDCORB acronym: they plan, organize, staff, direct, coordinate, report and budget.

While they act under the supervision of management boards, agency heads are outside the reach of traditional controls that were relevant before delegation within the Member States, the Commission or the Council. Hence, scholars have pointed to the possible consequences of placing too much power in the hands of such 'Eurocrats' who cannot easily be held accountable for their actions (e.g. Everson, 1995; Shapiro, 1997; Vos, 2000; Flinders, 2004; Williams, 2005; Craig, 2006; Curtin, 2007).

Existing scholarly work is restricted to investigating the formal characteristics of agencies. No systematic research has been undertaken on how EU agency directors actually behave, why they behave as they do, and what effects their behaviour has. Hence, there is a serious discrepancy between the power formally attributed to EU agency heads and the actual information about the behaviour of these actors and their impact on the agency, and, more precisely, their autonomy, and the extent to which these actors are individually accountable. Indeed, the heads of EU agencies are, to borrow the words of Kaufman, 'sparsely studied wielders of power' (Kaufman, 1981: 1).

This study thus aims to investigate the autonomous powers of EU agency directors and the accountability arrangements they are subject to at the individual level, the room for manoeuvre they acquire over time, as well as the informal controls interfering with their discretion. It asks to which extent executive directors of European Union agencies are autonomous and accountable vis-à-vis the management board, and explores the consequences of the wielding of supranational power for democratic governance in the European Union.

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[1] *NRC Handelsblad*, 'De lange tentakels van Brussel. Agentschappen van Europese Unie breiden uit van Parma tot Stockholm', 26 September 2004, p. 1, 6.

The paper proceeds as follows. In section 2, the conceptual and theoretical framework underpinning this study is formulated. Section 3 sets out the methods and techniques used to investigate the behaviour of agency heads. The results of the empirical research are presented in section 4. Section 5 discusses the findings and presents a preliminary conclusion.

## 2. Theory: Studying Wielders of Supranational Power

*The Role of Leaders and Leadership*

The role of leaders and leadership is subject to continuing controversy among students of in international relations and European politics. As the focus is often on collective entities such as states, international organizations, and non-governmental organizations, "the possibility that the executive head may be the explanatory key to the emergence of a new kind of autonomous actor in the international system" (Cox, 1969: 206; see also Haas, 1964) has not been explored in depth. Some scholars have tried to bring the role of leaders and leadership back into the development of international institutions (Young, 1991; 1999), but most have remained sceptical arguing that international organizations are merely instruments of national states and that the potential for individuals to wield influence is limited, also (or perhaps, particularly so because of the abundance of actors) in the EU (Moravcsik, 1999).

Findings at the national level, concerning the impact of directors on government agencies are mixed. Some scholars studying agency heads ascribe to them a considerable amount of influence on agency decision-making. They point out that "bureau chiefs are independent power centers" (Kaufman, 1981: 3) and that "the leadership of an agency is the most frequent mechanism for changing agency behavior" (Wood and Waterman, 1991: 822). Following Selznick's (1957) seminal work on leadership in administrative organizations, agency leaders are said to shape the identity of agencies and promote their legitimacy among actors in their environments (Rourke, 1980: 110-111; Wilson, 1978; 1989: 217). Agency heads are thus able to leave their marks.

But even among scholars that recognize the role of leadership in agency behaviour, the exact role that leaders plays is not uncontested. Whereas some scholars argue agency leaders can act as proactive managers, often termed 'entrepreneurs' (Lewis, 1980; Doig and Hargrove, 1990) others question the "entrepreneurial model to public administration" contending that one of the most important tasks of leaders is to "*maintain* institutions through time" (Terry, 2003: xvii).

The constraints affecting the capacity of leaders to build and/or maintain their agencies are many. Kaufman, in his research on federal bureau chiefs in the United States, speaks of significant and largely paralyzing "confines of leadership" (Kaufman 1981: 91). "Their personal wishes too often had to give way to factors they could not control, including the demands of other people inside or outside the organization and the changes they could accomplish were too circumscribed, to warrant calling them autonomous" (Kaufman 1981: 161). Bureau chiefs found their activity largely programmed in advance by means of the agencies' statute, judicial interpretations of administrative powers, learned behaviour of staff imposed agendas, the Congress etc. He concludes that the chiefs "for all the power and independence attributed to their office and for all their striving, could not make a big difference in what their organizations did during they period in which they served [...] The chiefs were not as powerful or autonomous as they are sometimes alleged to be." Leaders, "make their marks in inches not miles" (Kaufman 1981: 135).

Yet others not only question the potential of leaders to impact on the agency's behaviour in the face of a variety of political, legal, administrative, constraints but are wary of leadership-based explanations from a democratic governance perspective.[2]

These perspectives on the role of leadership in agency behaviour do not seem irreconcilable. Boin and Christensen (2008: 3, 20) postulate that leaders play "a limited but crucial role" in the development of their agencies. Agency heads may make their marks in inches, but the inches that they make are decisive. If we agree that agency leaders can at least play some role in their organization's development, the question becomes under what *conditions* exactly leaders can have a significant impact.

*Between Autonomy and Accountability*

Agency creation at the European level is a classic instance of delegation of powers either directly by the Member States or at an intermediary level, by the Commission or the Council. The basic mandate of the agent (i.e. the EU agency) delimits the extent of the delegation and draws the boundaries within which the respective agent has autonomy of action *i.e.* the so-called 'zone of discretion' (Thatcher and Stone Sweet, 2002; Barnard, 1938; Simon, 1997).

Agents are said to have autonomy when they have the capacity to *act independently* of some or all of the actors that have authority to constrain it (Wilson, 1978). Autonomous agents can decide for themselves what to do instead of acting upon what their principals (*i.e.* the original

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[2] For a general critique on the leadership approach to organizational analysis, see Perrow (1970).

delegators of powers) and others tell them to do. They are not constrained by the demands that are placed on them (Pfeffer and Salancik, 1978: 95-97). An agent is particularly autonomous if the actors that have authority to constrain it defer to the wishes of the agent even though they would prefer that other actions (or no action at all) be taken (Carpenter, 2001). An agent thus controls the demands placed on it rather than rushing to comply with the needs and giving in to the attempts by principals and others to influence the organization (Pfeffer and Salancik, 1978: 97-104).

It is useful to distinguish the actual level of autonomy from the formal autonomy of an organization (Verhoest et al., 2004; Yesilkagit, 2004). When students of political science and law deal with autonomy, it is usually in terms of *discretion*, also referred to as *de jure* autonomy. They broadly consider discretion to be the latitude with which an agent officially acts in implementing policies (Davis, 1969; Bryner, 1987; Hawkins, 1992). Even though an agent may seem to act in an autonomous way, this does not imply that it really is autonomous, as an agent's decisions can always be traced back to the preferences of its principals (Calvert, McCubbins, and Weingast, 1989: 589; Huber and Shipan, 2002; Kiewiet and McCubbins, 1991).

Autonomy as it is used in this research, however, "is external to a contract and cannot be captured in a principal-agent relationship" (Carpenter, 2001: 17). While an agent is usually provided with some degree of discretion from the start, the amount of autonomy it makes use of in practice is not fixed. That is, once an EU agency has been created, it develops its own preferences and interests. While this does not necessarily mean that these preferences and interests will not be in conformity with those of its principals, the agent may very well develop views, build up capacities and pursue aims that are not those of its masters (Majone, 1996: 72; Moe, 1989: 282).

Agency autonomy often comes with arrangements for accountability and control; they are flip sides of the same coin (Lastra and Shams, 2000). Accountability consists of ascertaining *after the fact* whether the actor has acted within the boundaries specified by the mandate and has complied with its obligations. It is essentially an institutional relation by means of which public agents are *being held to account* for their actions by fora (Day and Klein, 1987; Mulgan, 2003; Bovens, 2007; Meijer and Schillemans, 2005) with the authority to monitor and assess their behaviour. More precisely, accountability refers to the "relationship between an actor and a forum, in which the actor has the obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor might face consequences" (Bovens, 2007: 452). Thus, at the core of accountability lies answerability for

one's actions and the imposition of sanctions in case of negative judgment by the forum (Brinkerhoff, 2004). Accountability can be exercised by a variety of bodies and the principal is just one of the various account holders.

In this understanding, accountability is *a non-intrusive dimension of control* in the sense that it does not amount to direct interference in the agent's zone of discretion or a limitation of the agent's statutory autonomy as granted by the mandate. As opposed to direct control, accountability amounts to information, explanation and justification *ex post facto*, to the evaluation of *past* behaviour. Thus, accountability preserves the agent's mandated independence while ensuring that the agent does not shirk from its duties, engage in self-serving behaviour or overstep its mandate. That is to say, accountability is not restrictive of the agent's statutory autonomy but it is meant to act, if successful in its operation, as a break on bureaucratic drift or the agent's *ultra vires* (*i.e.* non-mandated*)* behaviour.

However, to the extent to which an actor is successful in increasing over time its room for manoeuvre and/or the accountability arrangements fail to successfully monitor the actor, the actor increases its *de facto* powers and escapes control. Consequently, what becomes imperative to investigate in the context of EU agency heads is 1) their actual degree of autonomy and to which extent they have expanded their statutory autonomy, and 2) how they are accountable for their behaviour and whether the relevant arrangement(s) are successful in holding them to account.

In terms of autonomy, the paper demonstrates with what degree of autonomy from the management board agency heads have performed their leadership tasks and to what extent this surpassed the level of formal autonomy they are invested with. With regards to accountability, the paper shows how the accountability of agency heads vis-à-vis the management board operates de facto as well as diagnose the problematic aspects and reflect upon possible repercussions.

While most of the current literature on agencies at the European level focuses on the preferences and interests of principals manifested in the controls they apply to agencies, this research pays particular attention to the preferences and interests of agencies and notably their directors themselves. Thus, it will be assessed whether EU agency heads have become *de facto* wielders of supranational power and/or whether the checks in place avoid shirking and abuse of power.

**3. Method: A Comparative Case Study**

Data for this study is collected in two ways: document analysis and interviewing.[3] The analysis of documents, particularly the agencies' basic regulations and annual reports, constitutes the main source of information for describing the *de jure* autonomy and accountability of the various heads of agencies. Agency's websites have been checked for speeches, letters, memoranda etc from the agency head as well as from management board representatives notably its chairperson.

As the objective of the research consists not only of describing the formal situation but also of exploring the real level of autonomy and accountability, information concerning actual practices is needed. This information was gathered through semi-structured interviews with executive and administrative directors as well as with management board representatives of a selected number of agencies.

This paper reports on the study of eight EU agency heads, those of the European Medicines Agency (EMEA), the European Aviation Safety Agency (EASA), the European Food Safety Agency (EFSA), the European Environment Agency (EEA), the European Monitoring Centre for Racism and Xenophobia (EUMC)[4], the European body for the enhancement of judicial cooperation (Eurojust), the European Police Office (Europol) and the Office for Harmonisation in the Internal Market (OHIM).

Table 1. Selected EU agencies

| Agency | Creation | Pillar | Function | Funding |
|--------|----------|--------|----------|---------|
| EMEA | 1995 | Supranational | Decision-making | Community/self-financed |
| EASA | 2002 | Supranational | Decision-making | Community/self-financed |
| EFSA | 2002 | Supranational | Information providing | Community |
| EEA | 1990[a] | Supranational | Information providing | Community |
| EUMC | 1997 | Supranational | Information | Community |

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[3] The data presented is part of two research projects on the autonomy and accountability of European Agencies: 'The Autonomy of EU agencies', in the framework of the NWO Vernieuwingsimpuls 'The Early Years of Public Institutions', and 'The Accountability of European Agencies' also funded by the NWO, under the programme heading 'Multilevel Governance and Public Accountability in Europe: Which Institutions, Which Practices, Which Deficit?'.

[4] The EUMC has recently been transformed into the Fundamental Rights Agency (FRA). Data reported concerns the EUMC, unless otherwise stated.

| | | | providing | |
|---|---|---|---|---|
| **Eurojust** | 2002 | Intergovernmental | Operational coordination | Member state financed |
| **Europol** | 1999[b] | Intergovernmental | Operational coordination | Member state financed |
| **OHIM** | 1993 | Supranational | Decision-making | Self-financed |

*Note*: a=the agency only became operational in 1994, b=the agency was already operational in 1995

The sample selection is purposeful with the aim to maximize range by including agencies that display all of the relevant aspects that could impact the level of accountability and autonomy. Thus thorough consideration has been given to selecting a sample that allows for pillar variation (supranational vis-à-vis intergovernmental policy areas), variation in terms of functions/tasks (decision-making vis-à-vis information providing or operational coordination) as well as in terms of funding (Community or Member States financed vis-à-vis self-financed). Finally, the selected agencies vary with regard to the year in which they have been created, with the oldest agency being created already in 1990. Yet, even the youngest agencies, created in 2002, are old enough to assess the actual behaviour of their heads.

## 4. Results: A Multifaceted Picture

According to the agencies' founding regulations, the director is expected to operate at arm's length from the main EU institutions. Whereas the Commission, the Council and the EP can on some aspects limit the director's authority, the most direct confines on his powers are exercised by the agencies' management boards. This research is restricted to this key interaction between the agency head and the management board.

*Autonomy*

Most agencies are headed by an executive director, even though in the case of OHIM the director is referred to as president. The term *executive* is misleading, however, as the director does not merely execute what the management board wants, but actually runs the agency. Even in the case of Eurojust, which has an administrative director who falls under the authority of the College, the tasks of running the agency are vast.

Whereas in case of older agencies it is often implicitly assumed that agency directors in performing their tasks are endowed with *de jure* autonomy, the independence of the directors of more recently established agencies is explicitly laid down in their founding regulations. EASA's executive director is supposed to be "completely independent in the performance of

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his/her duties." [5] He/she is therefore neither allowed to seek nor to take instructions from the member states or the EU institutions. The Directors of the EFSA and the EUMC/FRA have to perform their tasks "independently" and "in the public interest", for the purpose of which they make a declaration of interests.[6]

In order to determine their *de jure* autonomy from the member states and the Commission or the Council, we consider (i) the appointment procedure, (ii) the term of office of the director, and (iii) the selection criteria.

*(i) Appointment procedure*

There are several appointing procedures for an agency's executive director. In the most commonly used procedure in Community agencies, the Commission (more in specific, the 'parent' Directorate General) proposes and the management board (mostly made up of member state representatives) appoints the executive director. The OHIM president, however, is appointed by the Council of Ministers, upon a proposal of the board. In Council agencies, such as Europol, the member states in the Council usually appoint the director. An exception is Eurojust where the administrative director is appointed by the College (which to some extent functions as a management board).

The different appointing procedures indicate the degree of formal autonomy an agency director has in relation to the Commission or the member states (Kreher, 1997: 234-235). In Council agencies, directors are dependent on the member states in the Council for their appointment. If not for the support (or the acquiescence) of the member states they would not come to the directorship. In Community agencies, directors depend on both the Commission and the board which makes it difficult to make a statement about a director's autonomy. The Commission can steer the appointment by short-listing candidates but the board eventually decides. The first EUMC director, while proposed by the Commission, was not its first pick. The same goes for EASA, where the board rejected the candidate favoured by the Commission (despite heavy pressure) and started the procedure again.

The appointment process has been subject to changes over time. Most notable is the increasing influence of the Parliament. Directors of new agencies are now first heard by the EP which can issue advice on the proposed candidate, but does not have the power to veto the appointment of a director.

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[5] Article 29 (1) of the EASA founding regulation
[6] Article 37 (1) of the EFSA founding regulation; Article 15(5) of the FRA founding regulation.

*(ii) Term of office and renewal*

More important to determine a director's autonomy vis-à-vis the board is the term he/she
spends in office and whether and how his/her mandate is renewed. Agency directors are
usually appointed for a period of five years. Appointments are typically renewable once and
with a maximum of five years. Because founding regulations are silent thereon, it is
currently debated as to whether the appointment of executive directors can simply be
extended by a decision of the board extending the mandate of an incumbent director or
whether the incumbent director has to apply for a new term and a full selection procedure has
to take place.[7] As the latter is costly and time-consuming, the former is common practice. In
the Commission's perspective, this practice poses a problem: renewal by the Board makes a
director susceptible to pressure from Board members, which decreases the Commission's
power towards the agencies.[8] It has therefore proposed to use the latter arrangement in all EU
agencies and has run it as pilot with the reappointment of the EMEA's second director.

The proposal is still pending as the member states in the Council have opposed it. The case of
EFSA is particularly interesting as its board is not made up member state representatives but
of members in a personal capacity and on the basis of their professional background and
expertise. Thus being independent from the Commission and the member states, the board
considered the Commission's proposal "an attack on its independence". The chair of the
board sent an open letter to the Secretary General of the Commission in which he called the
proposal to in effect transfer the power to reappoint an executive director from the board to
the Commission "unacceptable". (Respondent #9)

Up until now, appointments have usually been renewed. Even though some directors have
resigned and the mandate of others has not been extended, none of the directors has been
forced to resign before the end of their term (see table 2 below). Resignation has often been
for personal (EEA) or professional reasons (EMEA, EFSA) such as taking up other, more
attractive professional positions instead of resulting from the interference of the agency's
principals. The average length of tenure of the directors of the eight agencies under study is
therefore relatively high, with the first director of the EUMC/FRA spending almost nine years
in office. That this does not necessarily indicate a high level of performance, however, may

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[7] See Commission of the European Communities, *Proposal for a Regulation of the European
Parliament and of the Council amending Regulation […] as regards the term of office of the Executive
Director*, COM(2005) 190 final, Brussels, 13 May 2005.
[8]

be indicated by the recently adopted founding regulation of the FRA which explicitly provides for an evaluation of the director's performance before extending his/her mandate.[9]

*(iii) Selection Criteria*

Officially, all directors are appointed on the basis of their professional competences and managerial skills as opposed to, notably in the international setting, nationality. An overview of the countries of origin of the former and current directors of the eight cases under study shows that a majority of the agency directors comes from the Northern-European countries. According to some interviewees, this unequal geographical distribution clearly demonstrates that nationality does *not* play a role in the appointment of directors. (Interviews)

It is often suggested, however, that political forces drive the appointment of directors. Although clear evidence is lacking, there are some indications that political reasons played a role in the appointment of the first EEA director. The appointment of the Europol director and deputy directors has been the result of political compromise between the (large) member states. Because member states first insisted on their own candidates, the post of director was left vacant for more than eight months.

As for their professional backgrounds, it appears that a distinction can be made between directors having work experience in one of the EU institutions, particularly the Commission, and those that have been employed in national administrations or otherwise. Those executive directors that come from the Commission (such as the first EMEA director) have often assumed the function in the knowledge that they have to return to their previous (often lower) position once their term of office has ended. While there is no evidence of politicization of the director's appointment in the case of the EMEA, respondents have noted that it made it easier for the director to come to agreement on such matters as the budget (where the director makes a request to the Commission but the Commission puts forward a proposal to the Parliament and the Council).(Interviews)

Table 2. Directors of the selected EU agencies (1994 – present)

| Agency | Director | Nationality | Term of office |
|--------|----------|-------------|----------------|
| **EMEA** | Fernand Sauer | French | 1994 – 1999<br><br>1999 – 2000[a] |
| | Thomas Lönngren | Swedish | 2001 – 2005 |

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[9] Article 14(3) of the FRA founding regulation

| | | | 2005 – present |
|---|---|---|---|
| **EASA** | Patrick Goudou | French | 2003 – present |
| **EFSA** | Geoffrey Podger | British | 2003 – 2005[a] |
| | Catherine Geslain- Lanéelle | French | 2006 – present |
| **EEA** | Domingo Jimenez-Beltran | Spanish | 1994 – 1999 <br><br> 1999 – 2002[a] |
| | Jacqueline McGlade | British | 2003 – present |
| **EUMC** | Beate Winkler | German | 1998 – 2003 <br><br> 2003 – 2007[b] |
| **Eurojust** | Ernst Merz | German | 2002 – 2007 <br><br> 2007 – present |
| **Europol** | Jörgen Storbeck | German | 1995 – 2004 |
| | Max-Peter Ratzel | German | 2005 – present |
| **OHIM** | Jean-Claude Combaldieu | French | 1995 – 2000 |
| | Wubbo de Boer | Dutch | 2000 – 2005 <br><br> 2005 – present |

*Note*: a=resigned, b=transformation into FRA

While the above properties give an indication of the *de jure* autonomy that agency directors have vis-à-vis the member states and the Commission, they do not tell us much about the actual autonomy exercised by agency directors. Do agency directors, for instance, play an autonomous role in (iv) interpreting the agency's mandate? (v) prioritising its objectives and tasks? (vi) issuing its opinions, drawing its conclusions, or formulating its recommendations? (vii) deploying its staff and (re-)allocating its own budget? And in (viii) conducting relations with external actors?

*(iv) Interpreting the Agency's Mandate*

Most EU agencies have a limited mandate, laid down in the constituent act together with their objectives and tasks. Only two of the agencies studied for this paper have decision-making powers: OHIM registers Community trademarks and designs, and EASA issues certificates for aeronautical products. Their directors are charged with formally adopting decisions, which gives them a high level of autonomy. Two other agencies, the EMEA and the EFSA do not have decision-making powers of their own, but the Commission has to take the opinions issued by these agencies into account when considering whether or not to grant authorisation for medicinal products or food additives. Their directors have no direct influence over the opinions being issued, relying on networks of experts in the member states.

The other agencies in our sample have an information gathering or operational coordination function. This has not inhibited directors from interpreting their role differently. Indeed, the

more broad the agency's mandate on paper, the greater the possibility for agency heads to direct their agency in a course they preferred. The first director of the EEA, for instance, sought to contribute to the EU's environmental policy not only through the provision of information but also through prospective studies and assessments of policy effectiveness, therewith in the view of the Commission overstepping its role.

*(v) Prioritising Objectives and Tasks*

The constituent acts stipulate the objectives and tasks of agencies. Sometimes the constituent act also determines the agency's priority areas, but usually the agency has to translate the statutory objectives into more detailed priorities and the legal tasks into more concrete activities, for instance, in the form of (multi-)annual work programmes. The management board formally adopts these (multi-)annual work programmes, but as the director is responsible for submitting a draft he can exert influence over the agency's priorities.

Moreover, the agency's management board often has to consult or seek the opinion of the Commission or, as in the case of EFSA, even take into account the Commission's priorities. This has further reduced the influence of the board over the agency's priorities. The more so as in the case of the EEA, for instance, the negotiations with the Commission were actually conducted by the director without much interference from the board.

Yet, it is difficult for the executive head to effect real adjustments in the work of an agency as he is faced with often contradictory pressures of the board, the Commission, the Parliament and the member states in the Council. The EUMC management board asked the director to concentrate on campaigning against racism and xenophobia, while, at the same time, the Commission demanded that she focus the agency on collecting comparable data. (Respondent #22)

Prioritisation of objectives and tasks is not limited to the drafting of the work programme. Discussion over the agency's decisions and actions takes place throughout the year. While most of the agenda items are set because they follow from the legislation underlying the agency and concern the work programme, annual report or budget, the director can put forward proposals for adoption by the board. In the case of the EMEA, such proposals have often been adopted. As a respondent notes: *"The board meetings are more to receive information from the director and his services and to give formal approval to his proposals. Seldom are changes introduced."* (Respondent # 66) Interviews reveal that the EFSA board, especially after the early days, has usually looked at the overall picture not delving into the

details of the proposals that the director put up for adoption. About ninety percent of what the first EFSA director proposed to the board was followed. [10] (Respondent #62) While she generally ensured that the Board was informed, the EUMC's director has decided on activities that were not agreed upon in the work programme without even consulting the Board.[11]

The relation between the board and the director is almost reversed in Council agencies. Initially, the administrative director of Eurojust was not involved in the planning of activities, as the College wanted to keep him out of its operational work. Only now that the College increasingly has to rely on the administration for assistance also with regard to casework, the administrative director has been included in the drafting of an annual work plan.

*(vi) Issuing Opinions, Drawing Conclusions, Formulating Recommendations*

Several agencies are entitled to draw their own conclusions and formulate their own opinions, which are contained in the (annual) reports that they publish. The EEA, although it notifies the member states of *"uncomfortable messages"* in advance, has always stood by the results reported in its publications.(Respondent # 53)The Board early on took the decision not to interfere in substantial matters (Schout, 1999) and indeed has never meddled in the contents of the reports produced by the agency.

By contrast, the EUMC board has regularly meddled with the director's conclusions, mainly for reasons of national interest. From time to time, the Management Board almost seemed to be an *"editorial board"*, as one former Board Member put it. (Respondents #13 and #22) Another Board member considered this to be normal: *"When certain generalizations are thrown in the air about your country and you know that they do not apply, you intervene."* (Respondent #40) The affair unfolding over a report on anti-Semitism clearly demonstrated the politicization of the Board's decisions on the conclusions of EUMC reports, while at the same time revealing the Board's lack of control over the agency's internal management.

*(vii) Deploying Staff and (Re-) allocating the Budget*

Constituent acts generally do not mention much detail about the staffing of agencies. Staff is recruited under the responsibility of the executive director. Selection takes place on the basis of scientific or technical knowledge in a particular field or area, administrative or managerial expertise, whilst maintaining a balance with regard to the geographic distribution. Agency

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[10] EFSA External evaluation report, 2005, p. 11
[11] EUMC External evaluation report, 2002

directors generally have a high level of formal autonomy with regard to structuring their organisation. In the case of the EFSA the director introduced considerable changes to the organigram, adapting the organisation to the changed environment.

That said, the executive director usually maintains frequent contact with in particular the chairperson of the Board in order to keep him/her updated on staffing. (Respondent #31)The director is limited with regard to the number and type of staff employed, as the establishment plan comprising the number and type of staff is included in the agency's budget to be approved by the board. Moreover, while formally the director is autonomous in this area, he has little latitude to dismiss senior officials without displeasing particular member states. When the first EEA director wanted to fire a senior official from a large member state, the concerned member state intervened. Eventually the director got his way, however, as the senior official was laid off. (Respondent #31)

Agency directors have considerable freedom in allocating their financial resources. (Respondent #68)The budget is structured in different titles and chapters. Chapters are subdivided into articles and items.[12] During the year agency directors can make transfers within articles (from one budget item to another) with the approval of the Management Board. There are no limitations to alter appropriations within the various chapters (from one article to another). They, however, have to inform the European Parliament about transfers made between different titles and within chapters. Transfers from one title to another and from one chapter to another are authorised within the limit of ten percent.[13]

The fact remains that most of the agencies studied here are not self-financing, but rely on either the Commission or the member states for their funding. *"As the [EEA] you are in a difficult position because you are dependent on the Commission for money. If you do things that DG Environment does not like, than the Commission has the possibility to cut off the money supply or at least squeeze it. That was an unpleasant tension. But Beltran has never kept his mouth shut for this reason."*(Respondent #31)

*(viii) Conducting External Relations*

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[12] Budget title 1 contains personnel related expenses such as salaries, budget title 2 includes administrative expenses such as buildings, and budget title 3 contains operative expenses related to the tasks of the agency.

[13] See Articles 21 to 25, Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities.

Executive directors are the face of their agency. They spend considerable time on establishing and maintaining relations with actors in the agency's environment. By thus reducing their dependence on their principals, some directors have in effect increased their autonomy. The EEA's director also sought to become supported by other DGs, the EP, the member states and even the private sector. Especially in the early days of the agency, the Commission vehemently opposed this practice, considering that the agency should only work for its services.

Formally, most directors are invested with the power to conduct negotiations with other bodies. The director of the EEA enters into agreement with the Director-General of the Joint research Centre on additional tasks with regard to which cooperation takes place, and he agrees with the Director-General of Eurostat on the statistical programme in the field of the environment.[14] The results of negotiations with external actors often have to be submitted for approval to the management board, however. The Europol director cannot officially start negotiations and sign agreements with non-EU states and international organisations before the Council has given its green light; also the decision to cooperate with other EU bodies has to be approved by the management board.

Initially, the member states and particularly the Commission have been wary in allowing agencies direct contact with the Parliament and its committees. Over time, ties between the agencies and the EP have intensified, as agency directors learned how to lobby MEPs and as MEPs gained more knowledge of the agencies.[15] (Respondents #68 and #9) Indeed, the EFSA has made use of its contact with the EP to circumvent the Commission in the instance of the drafting of a new regulation on pesticides, in which the agency had not been involved. *"So we then thought, it is a co-decision so the Council and the Parliament must adopt, and we could lobby. Well, not really lobbying, but we can at a certain moment say to the Parliament that we are a bit concerned. I call that 'informing the discussion'."*[16] (Respondent #64)

In recent years, agency directors have come to realize that they can make their voices heard more clearly when acting in concert. They have therefore organised into the Heads of EU agencies network. Under the coordination of one of the directors, the directors of the different EU agencies meet twice a year to discuss outstanding issues, such as staff policies, and common concerns, such as the budgetary situation.[17] (Respondent #62) Apart from a platform for the representation of their interests, the network also serves as a means to share

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[14] Annex EEA founding regulation

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experiences and learn from each other, thus strengthening their autonomous status vis-à-vis their principals.

*Accountability*

The main and most direct confines on the agencies heads' grant of authority are exercised *de jure* by the management boards. Management boards carry out two basic functions: they steer the organization and they exercise oversight over the functioning of the agency by monitoring the work of the director. By virtue of their dual role, boards are hybrid bodies, simultaneously internal and external to the organization.

At the *de jure* level, an analysis of agencies' basic regulations reveals that the line of accountability to the boards is defined in a very cursory fashion. The legal instruments of most agencies specify: "the director shall be accountable to the Management Board in respect of the performance of his duties"[18], "the management board shall exercise disciplinary authority over the Executive director and over the Directors"[19], "the administrative director shall work under the authority of the College and its President."[20] Moreover, as we have seen above, although rules on this vary, most basic regulations reserve a role for the board in the appointment and the removal of the director.

However, other than representing a clear statement of the hierarchical relationship of the director to the board, these provisions give little guidance as to how this accountability arrangement is (to be) implemented. How is the director accountable to the board? In which manner? How often? On what type of issues? Is it a fully fledged process of accountability: is there informing, debating and sanctioning? The reading of the relevant legal texts provides little insight as to what exactly this accountability arrangement entails. In the pages below, it will be attempted to answer the questions above and to give a clear indication how these abstract and salutary legal formulations have been fleshed out in practice by the various agencies. The description will be structured along the three phases of an accountability arrangement: informing, debating and sanctioning. This will not amount to a solely descriptive exercise, however. Based on insights from interviews, in parallel an assessment will also be provided of some of the problematic aspects encountered in practice which negatively affect the effective operation of this arrangement.

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[18] Article 29(4) of the Europol Convention
[19] EASA Basic Regulation, Article 33(h)
[20] Eurojust Decision, Art 29 (4). There are exceptions to this rule. For example, the President of OHIM is "under the disciplinary authority of the Council" and the Administrative Board has only an advisory function.

*(i) Information: Informing vs. Being Informed*

The provision of information is an indispensable element of accountability. It gives the fora the possibility to evaluate the performance of the actors and to hold them to account for their behaviour. The manner, content, timing and frequency of informing has resulted in quite some variation from one agency to the next depending on the frequency of board meetings, agreed rules of procedure, established practices etc. There are, nevertheless, specific documents pertaining to the functioning of the agency which according to the provisions of agencies' basic regulations have to be submitted to the board. Such aspects include: the annual report and the implementation of the budget. These are implicitly moments of accountability of the director because they provide the board with information on the performance of the agency, and thus, by extension on the performance of the director. Moreover, according to the Financial Regulation, all EC agency directors, in their authorizing officer capacity, are expected to submit an annual activity report to the board together with financial and management information.[21]

In terms of additional informing and reporting to the board, however, various informal practices have emerged. For example, as a matter of practice, in the case of EMEA, the director has a 15 minute oral presentation during each board meeting entitled 'Highlights of the Executive Director', in which he gives an indication of the work of the agency for the previous 3 months as well as planning for the following 3 months. (Respondents # 12, #20, #24) At Eurojust, it was agreed with the College that the administrative director is to be present at all the meetings of the board and will present a formal report to the board three times a year. Moreover, the director reports weekly to the Presidency team, which is an ad-hoc sub-committee of the College, composed of the President of Eurojust, the two vice-Presidents and the chairs of the various college teams. (Respondent #22, Respondent # 23, Respondent #25) Thus, these reporting requirements differ from one agency to the next and are largely a combination of institutional practices, which have evolved outside the legal provisions. This in itself can be quite problematic given that these practices have not been formalized and as such, the process is completely not transparent to the outside.

De facto the annual report and the budget reporting obligations are complied with in all the agencies studied and in a timely fashion. These documents are part of a bigger reporting cycle and subsequent to being presented to the board, they are also submitted to several European institutions. The situation appears to be more equivocal in terms of the submission of the

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[21] Commission Regulation (EC, Euratom), No 2343/2002 of 23 December 2002, Art 40 (1)

annual activity reports. In some cases, according to the Commission's assessment for the European Parliament, although the reports are submitted, "it *may be* that the deadline set forth under Article 40 of the Framework Financial Regulation has not always been respected."[22]

Generally agencies have adopted rules as to when documents have to be submitted before the board. This is provided for in the rules of procedure adopted by the various management boards.[23] For example, in the case of the EMEA, EASA and Europol, the agenda accompanied by the relevant documents have to be submitted to the management board two weeks prior to the board meetings and at EEA at least 15 days in advance. At Eurojust, the agreed deadline is two days in advance given that board meetings take place twice a week.

This aspect is extremely important in terms of accountability given that delays in the submissions of information will significantly affect the ability of the member states' representatives in the board to prepare and as such, the quality of the accountability process as a whole. In this connection the situation appears to be quite dire in the case of Europol where information reportedly *always* arrives too late (Respondent # 17, # 27). In the words of one respondent the documents for the management board meeting would arrive *"sometimes indeed on the day itself or the day before …It's not for me the biggest problem but it's for the staff the biggest problem because they have to check and go through it. So this is a real problem indeed. It takes obviously too much time for Europol to prepare a document and we receive it too late."* (Respondent, #26)

However, one of the most serious cross-agency challenges to the level of informing appears to find its source not with the supply of information by the agency and the director to the boards but with the boards themselves due to the lack of preparation of many delegations. The quality of *being informed* does not only depend on being provided with sufficient information but also on whether the forum, in this case the management board prepares for the meetings. After all, as remarked by one agency director *'the level of discussions depends on the quality of the counterpart.'* (Respondent # 45) In this connection, the preparation of the forum for the

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[22] European Parliament, Committee on Budgetary Control, Discharge 2006, Questions to the Commission and Replies,
<http://www.europarl.europa.eu/comparl/cont/adopt/discharge/2006/questionnaires/commission_agencies.pdf>
[23] See for example, Art 3(2)of the EMEA Rules of Procedure ,
<http://www.emea.europa.eu/pdfs/general/manage/mbar/11533904en.pdf>; Art 5 , (1), (2), (4) Regulation N C-A-1-07 of the Administrative Board of the Office of the Harmonization in the Internal Market, laying down the rules of procedure of the Administrative Board,
http://ohmi.eu.int/en/office/admin/pdf/Regulation_CA-1-07_EN.pdf; European Environment Agency, Rules of Procedure of the Management Board and the Bureau, Art 3 (2),
http://www.eea.europa.eu/organisation/management-board/mb-rules-procedure.pdf, The Europol Rules of procedure are not available.

meetings becomes a very relevant issue and the interviews reveal that for a significant number of delegations this is less than optimal. In this connection the executive director of EASA observed, *"I think that the vast majority of the members of the board do not have time enough to go in detail and to be sufficiently informed about the agency. They know of course the agency but not sufficiently in detail and maybe they don't read sufficiently all the documents we send to them and it doesn't appear that they make a reflection on those documents."* (Respondent # 45) This was confirmed by another respondent, a member of the board, who perceived the situation as being in stark contrast with his own experience at the national level agency where the board *"works together very well and everybody is prepared and knows what's going on. It's not like that at all. And I'm sure some people come to the meetings who haven't read the papers and don't really understand the issues to be honest."* (Respondent #32)

EASA is not the only agency to be facing this type of problem. Similar observations were made in connection with some of the members of the EMEA management board. The director felt that the information that the board was provided with was quite complex and whereas some members were very professional and well prepared for the discussions in the meetings, *"there are some of them they are more or less coming here not to put their EMEA hat but just to sit and watch and you know, try to put their national perspective on it. So it's a mix of people. (…) And sometimes you could be happy to get good individuals in the board: professional people that have a professional understanding what the responsibility in the board is. And sometimes you have political people or coming from the ministries and things like that. And you know, think it's nice to come to London and sit in the board and go for some shopping and things like that"* (Respondent # 24) This was corroborated by other board respondents who were of the opinion that not all of their colleagues in the board read all the documents provided for the meetings. (Respondents # 12, #20) In this connection, the director gave a very telling anecdotal example: *"Some years ago, we made a mistake. We sent a mailing to the board in paper format, now we send it electronically and we forgot to copy, we had double copies…there was missing one page, not for all the members but for half of the members of the board. And before the meeting we didn't hear anything. Nobody noticed. They didn't read the document before they came to the meeting." (Respondent #24)*

*(ii) Debating: Too Much Board Too Little Management*

The information submitted by the director to the board is largely discussed during the meetings of the management board. The frequency of management board meetings varies

significantly. For example, the management board of Europol meets 6 times a year, the MB of EASA and EMEA meets 4 times a year whereas that of OHIM meets twice a year. A more special case is Eurojust, where the College members are also the drivers of the operational work, and thus, they meet twice a week.

Respondents largely felt that there was a possibility for discussions with the director. Specifically in the case of EASA and EMEA where the director is present at every board meeting, the members of the management board felt that they were able to intervene, ask questions as well as obtain additional information. Respondents did identify however, several factors that can negatively impact the level of discussions in the board: (i) the size of the board, (ii) the subject matter of the debates (iii) the lack of participation of members of the board in discussions.

Rules on the composition of the management boards vary but in general boards tend to be very large, comprising of 1 representative from each Member State[24] as well as depending on agency, representatives from the European Commission, and in some cases, the European Parliament and/ or relevant stakeholders. As such, the number of board participants can easily range between 70 (*i.e*. EASA) to 110-120 participants (*i.e*. Europol).The ensuing chaos is described by one member of the Europol board *"it's 27 Member States and then also you see a delegate and an alternate delegate and then an advisor in the back so then it's 27 times 4, then the Europol staff and the director with his two-three deputies and then 3 advisors around them and translating to 21 languages or 23 now of the European Union, this is terrible. I have to go to that meeting again and it takes each time two days and it's 6 time per year so it's more or less 12 days a year in this huge format with all this translation so it's a very cumbersome decision-making process also because every 6 months you have new incoming presidency and they have to learn."(Respondent # 17)* As such, the excessive size of the board allows very little time for interventions and for going in depth on specific topics. *(Respondent #41)*

In fact, a majority of agency respondents regarded the sheer size of the board as an impediment to efficient discussions. In this context, the director of EMEA felt that *"when you have boards large like this they are not operational, they can't be inspiring partner to you, so the board and the construction of this kind of board does not help and executive director and does not help the agency in a professional way to steer the organization." (Respondent # 24)* More specifically, some respondents felt that, partially due to the size and composition of the board, there was a deficit in the type of issues discussed. It appears that some issues that

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[24] Except EFSA

should have been the subject of discussions before the management board were recurrently left out of discussions. To the extent to which, highly relevant topics are systematically omitted from discussions and thus, not subject to monitoring, this can negatively impact on the quality of agency accountability. For example, in the case of EASA agency respondents felt that there was a lack of 'strategic discussions' and in the words of the executive director, when these discussions do take place in the board they are "*not very detailed and it's certainly a little bit frustrating.*" This was also echoed by the administrative director who mentioned "*I would expect more strategic discussion and long term view*" on the part of the board. Two members of the management board also felt that the EASA board was slow on reacting on issues pertaining to agency's efficient operation or performance and that issues affecting national interests were much more topical and subject to debate. *(Respondents #42, #43)*

This aspect appears to be particularly problematic in the case of Europol. Management board representatives were of the opinion that the monitoring by the board was almost exclusively focused on aspects of micromanagement to the detriment of issues pertaining to the strategic and operational performance of the agency. Reportedly, the board is "buried in details" with minute administrative issues being presented and discussed by the board, largely nullifying the autonomy of the director on these aspects: "*We even have a list of how many people, at which level work in every unit. Officially, the director can't decide to move someone from one unit to the other because then it wouldn't conform to the list anymore.*" *(Respondent # 16)*At the same time however, in terms of the core business of Europol, the oversight by the board seems to be seriously failing leaving complete free rein to the director: "*since we don't discuss the real strategic issues that much and the real work Europol should be doing, so how the AWFs[25] are functioning, if Europol is really delivering the products that a law enforcing agency needs, in that respect the director has a big room to manoeuvre.*" *(Respondent # 16)*

Finally, another aspect that seems to negatively impact the level of discussions in some agencies is the low level of interest and motivation of board delegations to engage in discussions or take the floor. In the case of EASA for example, one of the directors observed "*there is a big number of countries who are most of the time quiet.*" A similar statement was made by a management board representative who assessed that "*there are at least half the people to be honest which virtually say nothing, which is slightly strange.*" (Respondent # 32)

A similar situation appears to be the case at EMEA. On this aspect, a member of the board observed "*there's a substantial part of the board that doesn't speak during the meetings.*"

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[25] Analytical Work Files

*Mostly there are some people that you are absolutely sure that they will say something. I can give you 5 or 6 names that will speak up during the meeting next Thursday maybe even more but I can also tell you about 10 people that I am dead sure that they won't speak up.*" (Respondent # 20) This appears to have been quite problematic for EMEA given that actual remedial measures were instituted in an attempt to tackle the issue. As the director explained, *"I have my board; some of them are frustrated also. And for the moment, we have put together a little working group in the board in order to look at the rules and responsibility of the board and how the board could participate in a more active way.(…)"*

It is hard to assess the reasons behind the lack of participation, which could range from lack of interest in the workings of the agency to lack of preparation, as discussed above or even lack of time and resources. In fact, respondents have made reference to all these reasons as possible explanations for some of the delegations' non -engagement in debates. In the case of EASA, for example, it was observed that the active participants generally come from countries with a strong traditional manufacturing and aviation industry and as such with a big interest in the workings of the agency and its impact on the national industry. In the case of EMEA, the lack of time and resources of the participants was identified as a clear reason together with lack of interest. (Respondent # 20, Respondent #24)

The answer lies most likely in a combination of all these aspects. Put simply, oversight of agencies does not seem to have always been prioritised at the national level. Very often, not sufficient time and resources are expended on these matters *because those are not the problems for which the member states, people in the ministry and the ministers are accountable in the Parliament." (Respondent # 42)* Participation in the boards remains for most board members a part-time job, which they exercise sporadically, few times a year while being full time employed within the national ministry or parallel national level agencies. As such, they are occasional players on the European level with a strong national baggage and as a result their 'national outlook dominates their encounters' and they "come in with a focus on their national interests." (Geuijen et al., 2008) In this connection, management board participants recurrently reported high interest among board colleagues in issues pertaining to the national interest with member state representatives squabbling over issues affecting the national interest or the national industry but a lack of interest in issues pertaining to the overall performance of the agency, long terms strategy etc. (Respondent # 42, #43, #19)

*(iii) Sanctioning: A Double Edged Sword*

In terms of sanctioning the agencies' basic regulations provide for only one type of direct, formal sanctions: the dismissal of the director. Despite reported dissatisfaction with the work of the director, the ultimate sanction has never been used in practice in any of the agencies studied as reported above. A very strong reluctance to resort to this sanction has been voiced by all the MB respondents. In the words of one of them, dismissing the director *"is like the nuclear bomb you know…You don't want to use it because if you do, it destroys everything." (Respondent #)* Respondents felt that incompetence or inefficiency alone would not result in removal and that it would only be used in cases of criminal activities and fraud. *"For a director on a five year appointment to be sacked it would be a big step. Obviously if someone did something illegal or financially corrupt they would be removed straight away clearly but if it's just incompetence or inefficiency, he's not likely… They are on a limited term so in the end they just wouldn't be renewed." (Respondent #32)*

These findings are in line with conclusions at the national level, where low formal sanctioning has been documented. (Coen and Thatcher, 2005; Thatcher, 2005) For example, the study by Thatcher on the use of formal controls by elected politicians vis-à-vis IRAs found that in a significant sample of IRAs from Britain, France, Germany and Italy no IRA member had been formally dismissed. (Thatcher, 2005) Two possible interpretations were put forward for this state of affairs: 1. that principals did not use formal sanctions because alternative methods were effective; and 2. that the agency losses were outweighed by the costs of using controls. With regards to the latter, the principal would not automatically apply sanctions in cases of misbehaviour of the agent but instead would first assess the benefits and the costs of applying controls (Huber and Shipan, 2000; Thatcher, 2005) Both interpretations put forward by Thatcher are likely in the case of European agencies and find support in some of the illustrations provided by respondents.

With regards to the first interpretation, in the case of two European agencies, where dissatisfaction with a certain director was reported other *ad hoc, less disruptive* strategies short of dismissal were reportedly employed in an attempt to address the situation or signal dissatisfaction. In one case, where one of the directors was underperforming the executive director took internal managerial action and reorganized the agency in such a way as to *"circumscribe the problem*": "*the way it was resolved was for the executive director to change the organization of the agency. To move work from one place to another*."

Furthermore, in cases where the management board lacks the power to directly sanction the director, the management board resorted to alternative means to ensure compliance. *i.e.* threats to withhold its approval of basic agency documents rather than following the official

channel via the Council. This was reported in the case of Europol, where a MB representative recounted "*And we told him [the Executive Director] 'if you do not present a strategic analysis before the draft work program we will not adopt a work program,' which means he cannot function.'*" (Respondent # 17)

All the examples above indicate a strong tendency to keeping the problem contained within the organization and as such a clear reluctance to resort to formal sanctions, which would signal to the outside that the organization is underperforming. This relates to the second explanation put forward by Thatcher. It seems that the high costs involved in sanctioning for the board itself plays a significant role in the decision not to resort to formal sanctions. The dismissal of a director who very often is politically endorsed could become a politically sensitive issue for the management board: "*in practice that [removal of the director] would be a fairly extreme step and could become a political issue if you're not careful." (Respondent # 32*) Particularly in the case of high profile agencies such as Europol and Eurojust, one can easily imagine how the dismissal of the director could become a political hot potato. Another aspect which also seems to dampen the motivation of the forum to resort to such a measure is the negative reflection this would cast on the performance of the board itself. In other words: *"If you appoint someone for a 5 year period, apart from anything else you as a board you've appointed them, haven't you? So then sacking them after 3 years is in a sense an admission of failure of the board as well as of the person, isn't it?"* (Respondent # 32) All the respondents regarded non-renewal as the most likely alternative to sanctioning since firing would result in having to answer 'a lot of questions' back home. Although this solves the problem in the long term, it is very questionable whether it is an optimal solution for the functioning of the agency.

Finally, one other reason that could also serve to explain the low formal sanctioning in the case of European agencies is the size and composition of the board. Given the variety of interests represented in the board, it can be extremely difficult to reach concerted agreement in a board of 27 delegations particularly on such a sensitive issue. Thus, sheer impotence of the board to reach agreement plays a part in the board's failure to mobilize into action. (Respondent # 15, Respondent #19)

## 5. Discussion and Preliminary Conclusions: the Limited but Crucial Role of EU Agency Heads

The creation of agencies at the EU level leads to increasingly complex relations between a multitude of actors at different levels of government. This has two important potential

implications for the role of agency heads: considerable autonomy of agency heads and obscurity as regards their accountability. This paper set out to investigate the autonomous powers of European Union agency directors, the room for manoeuvre they acquire over time and the accountability arrangements they are subject to at the individual level. It asked to which extent executive directors of European Union agencies are autonomous and accountable, primarily focusing on the relations between the agency and the management board. We thus wanted to find out to what extent EU agency heads are wielders of supranational power (cf. Kaufman, 1981).

The picture that arises from the discussion above concerning the autonomy and accountability of EU directors is mixed. In general, agency directors' room for manoeuvre is limited. Even though they formally often have an independent status, they are usually not invested with much autonomous power and their decisions and actions are confined by formal-legal restrictions. While agency directors have considerable freedom in staffing and budgeting, they remain dependent on the Commission or the member states for their funding.

Yet, some agency directors have surpassed the level of formal autonomy they were endowed with upon the agency's creation. They played an important role in putting their agencies on the map and left their marks on the agency's development. In particular, when agency mandates were vague they succeeded in interpreting the role of the agency more broadly or at least differently than originally intended by its principals. They also managed to influence the priority-setting for their agencies, not only through drafting the work programme but also by putting forward proposals at board meetings. Finally, they actively conducted relations with actors in the environments of their agencies, thus decreasing the dependence on their principals (in the board).

We found that the tasks of first directors are different from those of second (and third etc) directors (Doig and Hargrove, 1990). The first director, after the members of the management board usually the first agency official to be appointed, is involved in setting up the agency, making it operational, whereas later directors most often enter the agency when it has already reached the phase of institutionalization (Selznick, 1957; Boin and Christensen, 2008). Particularly directors in the first phase thus found to have considerable leeway in deciding on the set-up of their agencies. But, as agency heads are part of long-term processes, their decisions and actions cannot easily be considered separate from the structures in which they operate. So even a first director cannot completely start from scratch. As such, the actual autonomy of agency directors should not be overstated.

Management boards often seem to display serious weaknesses in monitoring the work of the directors, thus potentially allowing agency directors to wield supranational power. Whereas some delegations to the boards are well prepared, an overwhelming number are not the vigilantes that they officially are supposed to be. Asymmetries of information represent the biggest threat in a delegation process (Kassim and Menon, 2002; Kiewiet and McCubbins, 1991; Lupia and McCubbins, 2000; McCubbins, Noll and Weingast 1987; Moe, 2005). In this case, the already present asymmetries inherent in any delegation process are only extrapolated through information delays and failures of a large number of delegations to the boards to prepare for the meetings and participate in discussions. Moreover, board members tend to be primordially preoccupied with aspects of the agencies' functioning directly impacting on the national interest but less so with the overall performance of the agency or the strategic planning of the future and development of the agency. Interestingly enough, these are exactly the areas where the agency heads have been able to leave their mark.

Furthermore, in cases of dissatisfaction with the performance of agency heads, board members are very reluctant to resort to formal sanctions as this can cast a negative reflection on the performance of the boards themselves. Consequently, formal sanctions can become an ineffective and non-credible means of exerting control.

However, these pervasive failures of the boards are not necessarily strictly due to individual failures but more likely, to more generic or systemic oversights. For example, the lack of preparation of board members might be to a large extent the by-product of the failure at the national level to prioritise EU agencies and to provide board members with the needed administrative support and resources to enable them to satisfactory carry out their tasks. The general set up in which members of the board are only occasional players at the European level and operate full time in parallel institutions at the national level, creates a bias towards a 'national -focused outlook' to the detriment of an 'agency -focused perspective.' Moreover, the size and composition of the boards as provided for in the agencies' basic acts is not conducive to efficient, in depth discussions. Additionally, the lack of formal sanctioning might find its source in the set up of the agency structure where a body such as the board, by virtue of its hybrid nature, is partially 'monitoring itself.'

The fact remains that boards have not fully stepped up to the challenge and due to either generic shortcomings or other reasons they may fail in some cases to adequately hold directors to account and to comprehensively assess the performance of the agency. Thus, account holders can become the weak links in the accountability chain leaving potential room

for excessive agency autonomy. What are the consequences of at least some agency directors wielding power for democratic governance in the European Union?

Under powerful directors EU agencies may turn into self-aggrandizing bureaucratic organizations contributing to the EU's democratic deficit rather than enhancing the EU's capacity to govern. The proliferation of agencies and the building-up of executive capacities would then further shift the balance of power in favour of the supranational level. In our research we have not come across autonomous 'Eurocrats' plotting against the EU and its member states to bureaucratize European life. Directors have not taken advantage of the room for manoeuvre afforded by deficiencies in the oversight exercised by the boards. Instead, whereas their role is *limited* due to 'straight- jacketing' formal-legal restrictions and procedures inherent in the EU agency set up, agency heads play a *crucial* part in the development of their agencies, precisely an area where management board monitoring and interest seems to be lacking.

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