

Mapping the European administrative space

EU Agencies' Formal Independence

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1 Introduction

EU agencies are – together with the European Commission – the heart of the European administrative system and an important part of the European polity (Egeberg, forthcoming). A thorough understanding of the agency landscape is therefore pivotal: EU agencies are growing both in number and in their competences. Whereas this is visible for quite some time with regard to regulatory tasks, they are nowadays of paramount importance in operational fields, such as border protection or internal security (Scholten, Maggetti, & Papadopoulos, 2020; Scipioni, 2018). This important regulatory and operational position in the EU's political system raises the core question for agencies in democratic systems: How independent are they? Do they have the independence considered the “raison d'être” for fulfilling their tasks (European Commission, 2002), while maintaining sufficient democratic controls? Though there are numerous studies on single EU agencies or small samples of them, we nevertheless still have hardly any systematic knowledge on the EU agency landscape and its development. We strive to answer this question not for the individual case level, but for the whole EU agency population. To do so, we compile an index for measuring EU agencies' de jure independence. This index builds upon the seminal work by Gilardi (2002, 2008), who measured the independence of national agencies, operating in a different institutional context than their EU-level counterparts, and by Wonka & Rittberger (2010), who presented the most recent and comprehensive measurement of EU agencies independence. However, it does not account for post-Lisbon and other recent developments in the EU's political system.¹ This paper is a work-in-progress report: We present our updated independence index, including its categories, items and values. On this basis, we present a first comprehensive measurement of EU agency's current de facto independence. This measurement shall be the basis for future research in two directions: First of all, how can we explain variance in de jure independence across EU agencies? Do standard theoretical explanations account for this? Second,

¹ We developed the updated index in close cooperation with Berthold Rittberger and Arndt Wonka.

we want to expand the data, incorporating how EU agencies' independence changed over time. EU agencies' legal bases are regularly revised or recast. Over time, today's 38 agencies operated on the basis of 70 different regulations that were 143 times amended. These legal documents allow us to trace how the independence of EU agencies developed. With it, we can identify general trends among EU agencies, i.e. towards more or less independence or whether EU agencies at-large became more similar or more differentiated over time. Most importantly, we want to move towards explanations of EU agencies' development over time.

Before we move to capture EU agencies' independence over time, we want to further strengthen our index measurement. In this paper, we therefore present our reasoning behind our measurement as well as first results to discuss its strengths and more importantly space for improvement. The remainder of the paper is organized as follows: First, building upon the extant literature, we motivate our endeavour to develop an updated index. We continue with a presentation of the index and the rationale behind each item. We conclude with a presentation of our preliminary coding and an outlook on the research questions and theoretical approaches our future research aims to address with this measurement.

2 Why We Need an Updated Index of EU Agencies' Formal Independence

Between 2008 and 2010, several studies analysed the formal independence of EU agencies. The last encompassing indices of EU agencies' institutional structure or independence stem from 2010. First, the index by Wonka and Rittberger (2010), which we wish to revisit in this paper, assigns each EU agency an independence score. In their subsequent analysis, they argue that political insecurity is the main driver of EU agencies' formal independence. Legislators focus on locking-in their preferences in more independent agencies in case of greater political insecurity in an agency's policy field. In other words, because member states worry being outvoted within the former first EU pillar, they create more independent agencies to shield their policy preferences from political decision-making. As they could veto decisions in the former second and third pillar, they are less interested in creating independent agencies working on internal and external security. In an earlier study, Barbiero and Ongaro (2008) show that despite their idiosyncratic creation process, EU agencies share structural characteristics (like their management boards and decision-making procedures) that are distinguishable from national agencies. Their index is more descriptive but invites reflection about which elements of EU agencies' structures actually show variation. Third, Christensen and Nielsen (2010) measure four authority dimensions of EU agencies as well as their institutional embeddedness. Their prime finding is an inverse relationship between authority and independence. With greater competences, EU agencies' initial independence seems to be lower.

However, EU agencies have grown in numbers, size, and relevance since 2010. The population rose from 27 to 38 agencies. The founding regulations of 16 of the 27 agencies already existing in 2010 were overhauled. Moreover, during the EU's poly-crisis, EU agencies played a prominent role and gained competences. For instance, the EU created three powerful financial supervisory authorities and the Single Resolution Board as a response to 2008's banking crisis and during the refugee crisis it increased Frontex and EASO's staff and resources. All this had an impact on EU agencies' formal independence. With an updated measurement, we can revisit and refine the findings from previous studies regarding delegation practices to EU agencies and the structural variance across EU agencies. Through incorporating the temporal dimension into the index as a future step in our research, we can explain changes in EU agencies' independence. For instance, does the delegation of further competences correlate with strengthened independence or strengthened oversight? Thereby, we can also test whether inertia is indeed a landmark of de novo bodies in the EU as argued by some observers of the third wave of agencification (Bickerton, Hodson, & Puetter, 2015; Kelemen & Tarrant, 2011).

Following the earlier measurements of agencies formal independence, most studies on EU agencies focused on their de facto independence and autonomy in recent years. Such analyses of EU agencies' de facto independence require information about the decisions of EU agencies and the behaviour of its staff as well as its accountability holders. This data is difficult to obtain for all 37 EU agencies. Thus, indices and encompassing studies of EU agencies' de facto independence are rare, such studies usually rely on smaller comparisons or case studies. Among the research covering the entire population, Wood (2018) maps EU agencies' entrepreneurial strategies and classifies whether EU agencies' communication, interaction with stakeholders and knowledge acquisition reflect a technical-functional, network-seeking, insulating or politicised entrepreneurial strategy. He finds equal numbers of agencies for all four strategies. Busuioc and Rimkute (2020) also focus on EU agencies' strategies. They measure on EU agencies' annual activity reports how EU agencies attempt to manage their reputation vis-à-vis EU institutions. They find that EU agencies primarily communicate the technical dimension of their work and least often refer to the moral dimension. However, over time they broadened their reputational outlook, increasingly addressing performative and procedural dimensions of their work. Thereby, the current formal independence of EU agencies is a blind spot. However, such analyses become all the more informative if we know whether an agency's de facto independence sticks close to its formal independence, whether the agency is able to overstretch or underuses the room of maneuver granted by its political principals. An updated measurement can thus serve as a point of reference for studies of EU agencies' de facto independence. Both measurements complement each other.

Studies focusing on comparing the development of multiple EU agencies over time are even rarer than comparative studies of de facto independence. Levi-Faur (2011) outlines that many EU agencies are institutional successors of previous networks. Thus, the structure and competences of an EU agency depends on the competences and structure of the preceding network, thus being to some extent path-dependent. He also does not create a formal index of all EU agencies for this, but most agencies feature in his list of networks that evolved into EU agencies. Migliorati (2020a; 2020b) studied two formal aspects of EU agencies over time that are related to their autonomy: the development of EU agencies' budgets and their inclusion in other EU regulations. On 15 EU agencies, she shows that with an increase in the Commission's competences in a policy field, legislators also refer implementation tasks more often to EU agencies in EU regulations. However, once the Commission reaches a high level of competences, legislators become less likely to refer implementation tasks to EU agencies. She observes punctuated equilibriums in EU agencies' budgets: financial resources remain relatively constant except in cases where a crisis or a shift in governmental priorities leads to a radical shift of competences and thereby the budget volume. Within this project, we also want to explain how delegation changed over time and what global and agency-specific factors explain the degree of formal independence in EU agencies. Thereby, we can both examine established delegation theories and explore whether we need new ones for capturing development over time. Such findings add to the debate around EU agencies' role in the EU polity (Egeberg & Trondal, 2017; Kelemen & Tarrant, 2011). Moreover, a temporal independence measurement can also be linked with the development of competences and budgets to develop further insights into the evolving administrative space in the EU.

To sum up, we both require an updated and a revised independence index that includes all agencies and their updated regulations and captures the changes in EU agencies' competences and structure. First, this enables us to improve our explanations for formal independence of EU agencies through analyzing the independence values with existing and new theories of delegation. Second, an up-to-date measurement of EU agencies' formal independence can serve as a yardstick for analyzing EU agencies de facto independence. Finally, incorporating a temporal dimension into our measurement, we can analyze and explain the drivers behind changes in formal independence. Through this, our project identifies factors that strengthen or weaken certain delegation and agency arrangements and thereby improves our understanding how the agencification process of the last decades impacted the EU's polity. The revision of the index in this paper is therefore only a first step in our research project.

3 The index

We revise the index of Wonka and Rittberger (2010), which in turn draws heavily on Gilardi's (2002) index for national agencies' independence. Both are empirically well tested and validated. Before we

introduce the dimensions, categories and items of the index, we elaborate on the theoretical backdrop of the independence measurement.

3.1 Measuring EU Agencies' Formal Independence

Theoretically, the index rests on the principal-agent approach (P-A). It assumes that (in the case of EU agencies) several principals delegate a task to an agent. Afterwards, the agent is subject to monitoring, control and sanctioning by the principals, with the hardest sanction being withdrawal of delegation, or in our case: agency termination (cf. Moe, 2012). The literature on P-A differentiates between ex ante and ex post control mechanisms. Ex ante mechanisms are for example decision-making procedures that limit the agent's room for maneuver and selecting agents that share the principals' preferences, while ex post mechanisms consist typically of sanctions such as reducing the agents' budget or replacing senior staff (Lupia & McCubbins, 1994; McCubbins, Noll, & Weingast, 1987).

The conceptualization of the index rests furthermore on three foundational decisions: First of all, we measure the formal, de jure independence of EU agencies. Thereby, we study EU agencies as a part of the EU's political system where actors at least try to shape institutions according to their interests. Thus, it allows to study and explain delegation choices. In addition, the measurement of the de jure independence is a necessary prerequisite for any meaningful assessment of the de facto independence of EU agencies: As elaborated above, only knowledge about the de jure independence of EU agencies allows for an understanding of whether an agency overstretches or underuses its room of maneuver in its day-to-day operations. A reliable measurement of formal independence thus also allows to explain agency behavior.

Second, our index measures independence from EU institutions, i.e. the Commission, the European Parliament and the Council. This conceptualization is on the one hand motivated by our research interest to study EU agencies as part of the EU's political system. On the other hand, EU institutions are the only formal principals: they formulate and issue the delegation contracts and sanction EU agency behaviour (Dehousse, 2008). This means, in turn, that we do not measure EU agencies' independence from national governments, interest groups and the like. Our index, hence, does not contain items measuring the extent to which EU agencies have to include private actors on their management board, in advisory groups or through consultations. More importantly, it considers members of the management board as potentially increasing the independence of EU agencies from other EU institutions. EU agencies' management boards of course have an accountability function (Busuioac, 2013). However, in practice national board members' perspective is often that of their national authority or agency leading to a substantive rather than an administrative focus on an EU agencies' work (Busuioac, 2012; Font, 2018). While still able to constrain EU agencies' independence, we treat national board members like Gilardi (2002) treats board members in national agencies: the

greater their independence from appointing institutions, the greater the formal independence of the agency. In the case of EU agencies' formal independence from EU institutions, this is complemented by a focus on measuring board members independence from EU institutions like the Commission, Council and Parliament.

Third, we aim to measure absolute independence of EU agencies, not relative independence. By adapting insights from research on national agencies to the EU's political system, we ask how utmost independence at the EU level would look like. As a result, this might result in empirically empty values. For example, we assign the value 1, which means perfect independence, to management board members whose term is longer than six years. Thereby, their term of office would be significantly longer than the elected term of any Commissioner, MEP or member of the Council. However, in our preliminary coding, no term of office was longer than six years. We also have the inverse situation in our preliminary coding. For instance, we assign the value 0, which means no formal independence, to EU agencies whose internal structure is determined by other EU institutions, i.e. already through the founding regulation. In this case, neither the members of the management board nor the director of the agency would be able to adapt or shape an EU agency's internal structure. Again, in our preliminary coding no internal structure of an EU agency was determined by another EU institution. We argue that measuring the absolute independence of EU agencies is not only more informative but also necessary to capture the development of formal independence over time. Instead of merely measuring the distance between the most and the least formally independent EU agency at a given space, our measurement allows to both capture past independence levels and leaves room for future developments in EU agencies' formal independence.

3.2 Constructing an Index of EU Agencies' Formal Independence

Our data sources to measure formal independence are legal texts. For our preliminary coding, we employ the most recent consolidated regulation upon which an EU agency operates. For our future coding, we plan to use amendments and now defunct regulations to measure the formal independence of EU agencies over time.

Building upon state-of-the-art research on agency independence, our index is divided in five distinct categories forming two dimensions. Dimension 1, measures the formal independence in *decision-making*, Dimension 2 the formal independence of *decision-makers*. Dimension 1 encompasses categories A1 to A3. Category A1 captures policy independence and measures the agencies' formal independence in making policy-decisions. Category A2 measures managerial independence, and measures the agencies' formal independence in organizational matters. Category A3 measures the agencies' independence in general decision-making, simultaneously encompassing policy and managerial matters, such as reporting and evaluation obligations. Dimension 2, containing categories

A4 and A5, measures the formal independence of *decision-makers*. Category A4 focuses on the formal independence of agency head, category A5 on the management board of agencies. All categories consist of several items, ranging from three items in the categories A1 and A2 to seven items in the categories A4 and A5. All in all, the index is additive and all categories have the same weight in the index. The values of each item vary between 0 and 1, with 1 meaning maximum independence and 0 meaning minimum independence. To compile an independence score for an agency, we add the means of each category and divide them by five. Thus, our independence scores in the index also vary between 0 and 1.

This aggregation approach results in two consequences: First of all, independence in decision-making has a slightly higher weight in the overall index than independence of decision-makers. This higher weight mirrors the institutionalist assumptions or our formal independence measurement: For example, an agency head's high independence is only meaningful if they are involved in decision-making procedures, whose final results are not determined by other EU institutions. Second, as we operationalize the categories with different numbers of items, with Categories A4 and A5 having seven, more technical items and Categories A1 to A3 having fewer, but broader items, contribution of items to an EU agency's independence score differs. In other words: The measurement of the independence of decision-makers is more fine-grained than the measurement of independence in decision-making. This is in line with existing indices of agency independence, such as those of Gilardi (2002, 2008) and Wonka & Rittberger (2010), but has also been criticized in the literature. Most prominently, Hanretty & Koop (2012) reviewed Gilardi's independence index and argue that assigning the same weight to different categories – as is the standard procedure in crafting independence indices – bears the risk of introducing arbitrariness. One example of the many categories that they discuss is that the question whether an agency head is dismissible during their term is much more impactful for the independence of an agency than who appoints them in Gilardi's index. In their own analysis of national agencies' independence, they apply an item response model, to calculate discrimination parameters and therefore the actual contribution of each item to agencies' formal independence as perceived by agency staff. However, due to the small population of EU agencies, this is on the one hand not possible for EU agencies. Moreover, it is also not in line with our approach to calculate the absolute formal independence of agencies. Instead, their model reveals which items discriminate most between the perceived formal independence of agencies. Still, we used their criticism of Gilardi's index to drop some categories of the index and revise criticized items.

We especially incorporate Hanretty and Koop's (2012) core criticism that independence indices tend to equate independence with competences. Wonka and Rittberger's (2010) previous index consisted of one item that measured whether an EU agency takes binding decisions and made up 25% of the

independence score. To distinguish between competences and independence, we changed this item to a measurement of the degree to which EU institutions can interfere with EU agencies' policy-decisions. Moreover, we grouped it with two other items in Category A1. Thereby, we have a value that measures the policy decision-making independence but is not interrelated with an agency's competence.

3.3 The Categories and Items of the Independence Index

Next, we elaborate on the dimensions, categories and items of the index. Table 1 provides an overview of all these components and additionally shows the values for each item.

Dimension 1 encompasses the categories A1 to A3, measuring independence in *decision-making*. A3 is a framework category, entailing the *fundamental independence characteristics* of EU agencies such as whether an agency has a formally stated independence guarantee (V7), to which degree it is obliged to report prospectively and retrospectively on its actions (V8 & V9) and whether it is subject to regular or non-regular evaluations by other EU institutions (V10). Agency reports serve as a basis for steering and control attempts. Even though, evaluations theoretically might recommend expanding an agency's mission, from an independence perspective they

Categories A1 and A2 differentiate between the agencies' independence in policy and managerial matters. This is in line with mainstream research on national agencies, that distinguishes between an agency's room for maneuver in policy and organizational questions. This distinction has also been applied to EU agencies (Kleizen & Verhoest, 2020). Moreover, even though this is not yet relevant at this stage of our research project, the differences measured by these categories might be the result of different agencification motives: Whereas Category A1 clearly mirrors Majone's (2001) take on agencies as hubs of decision-making based upon independent expertise, Category A2 reflects the New Public Management take on agencification, identifying the intention to separate policy and operation (Verschuere & Bach, 2012).

Category A1 focuses on independence in *policy decision-making*. V1 measures whether an agency's decisions can be overruled by other actors, or whether it can act independently. Establishing decision-making procedures, in which an agency has to work together with other actors or can be overruled, is a typical ex-ante control mechanism (McCubbins et al., 1987). In V1, we account for two distinct decision-making lines in EU agencies: What is EU agencies' independence in taking regulatory decisions and what is their independence in engaging in operational tasks? If the agency is at least in some tasks free of control, it is assigned the highest value of independence. If it free of such constraints in none of its tasks, the value zero is assigned for this item. This also applies when the effect of EU agencies decisions solely depends on other EU institutions (voluntarily) considering them, i.e. when the agency

solely provides information. V2 complements this decision-making measurement. It accounts for an agency's ability to decide independently when to act or whether it is bound to specific requests in its actions. Empirically, it occurs most often that the Commission can request certain services or actions of the agency. V2's logic is inverse to V1's: If the Commission can commit the agency to act in one case, we code it with the lowest value of independence as this has repercussions for other, legally more independent tasks. The third item in this category is whether an agency has an appeal board. The argument behind this item is that appeal boards shield an agency from other types of external review. Usually, this board has to decide first before a case may go to the ECJ (Wonka & Rittberger, 2010). In sum, Category A1 measures policy decision-making independency by three questions: Do agency decisions require consent by other EU institutions? Is it free to act at will? And how accessible are its decisions for external review?

Category A2 focuses on independence in *managerial decision-making*. V4 considers who decides on the internal organization of the agency. Bureaucratic theory argues that the organizational structure is decisive for attention focus and internal distribution of resources, for example, for which tasks exist specific units and how are they staffed (Egeberg, 2003; Simon, 1946). The less the principals – which are to some extent also represented in the management board – are involved in this decision, the more independent is the agency in channeling its attention through its internal organization. Thus, an agency is most independent if its head decides alone over its structure. V5 turns to the question who is entitled to recruit the agency's staff. One important ex ante control mechanism is the principals' right to select personnel that shares its preferences (Ennsner-Jedenastik, 2016; Moe, 2012). The smaller the involvement of the principals in these decisions, the greater therefore the independence of the agency. Regarding its values, V5 shares the same indicators with V4. V6 measures the independence with regard to financial resources: If the agency is financed mostly by fees, paid for example by market participants, it is financially independent from its principals and the reduction of budget is not available as a sanctioning mechanism for them. In sum, Category A2 measures independence in managerial decision-making by an EU agency's ability to decide about its internal structures, the selection of its staff and whether its budget is shielded from principals' influence.

Dimension 2 focuses on the *independence of the decision-makers* within the agency and asks in particular for selection and de-selection rules of the agency head (Category A4) and the management board (Category A5) as the main decision-making body within EU agencies.

Category A4 focuses on the *independence of agency heads*. The selection of the agency head is an important ex-ante control mechanism, the de-selection one of the most obvious ex-post control mechanisms. The first item in Category A4 is the term duration of the agency head (V11). The assumption behind this item is that the longer the term of an agency head, the greater their

independence. V14 follows a similar logic, but asks whether an agency head can be reappointed. If reappointment is not a possibility, an agency head can fulfil their duties without considering the impact on principals' willingness to reappoint them. V12 concerns the selection and appointment procedure: An agency head has the greatest independence if they are selected and appointed by the agency's own management board. The more other EU institutions are involved in the selection and appointment process, the smaller the agency head's independence. V16 measures whether the agency head needs to fulfil any formal qualification, which shrinks the possibilities for nepotism. Three items measuring ex-post control complement these measurements of ex-ante controls. V13 captures the rules for agency head dismissal: If the agency head cannot be dismissed for political reasons, they are most independent. If the agency head can be dismissed for political reasons, they are more independent, the lower influence of other EU institutions on the dismissal decision. V15 measures whether independence of the agency head's duties is formally laid down. All of these items of Category 4 are very close to the established operationalization by Gilardi (2002) and Wonka & Rittberger (Wonka & Rittberger, 2010). However, we added formal reporting obligation towards the European Parliament as a new item (V17). By being able to report directly to the European Parliament, agency heads can counter-balance their frequent interactions – and thereby control – with Commission officials. To sum up, Category A4 measures agency heads independence through four ex-ante and three ex-post control mechanisms.

With regard to the independence of management board members, measured in Category A5, we likewise remained very closely to the Gilardi and Wonka & Rittberger indices. The four items measuring ex-ante control are analogous to category 4, capturing term of office (V18), possibility of reappointment (V 20), statement of formal independence (V21) and requirement of formal qualifications (V22). For measuring independence of ex-post controls, however, we added three new items, that take hitherto neglected peculiarities of EU agencies into account: First, we consider the composition of the management board. V19 asks, how strongly other EU institutions are represented with voting members on the management boards. Thereby, it captures to what extent they are able to shape the decisions of the management board and reduce its independence. Second, V23 sets this in relation to the voting quorum in the management board: The smaller the majority needed, the lesser the influence of voting members from other EU institutions and the more independent the agency. Finally, we added an item V24 capturing whether an EU agency's management boards has a sub-board for administrative questions. Considering studies showing that the member state members on management boards are often too busy domestically to keep up with the engagement of Commission members (Busuioc, 2012; Font, 2018) and that these sub-boards mushroomed in recent years across EU agencies, we assume a formally required sub-board for financial, administrative or similar tasks frees resources among member state members of the management board to address substantial

questions otherwise left to the Commission representatives. This increases the independence of the agency. To sum up, Category A5 measures management board members' independence from EU institutions through items capturing four ex-ante and three ex-post control mechanisms.

Nr.	Item Title	Item Values
A1	Formal independence in policy decision-making	
V1	Other involved actors	1.00 = agency can take binding regulatory decisions / takes part in operations – no consent from other EU institutions needed 0.67 = prepares regulatory decisions for which consent by Comitology of legislative actors is needed/ organises operations 0.33 = agency is consulted for regulatory decisions / coordinates operational capacities 0.00 = agency provides information and best-practice examples
V2	Agency discretion to decide on activities	1.00 = agency decides autonomously when to act 0.50 = other EU institutions can ask agency to act 0.00 = other EU institutions can commit agency to act
V3	Agency appeal boards	1.00 = agency does have an appeal board 0.00 = agency does not have an appeal board
A2	Formal independence in managerial decision-making	
V4	Competence to design agency's internal organization	1.00 = AH alone 0.67 = AH with MMB 0.33 = MMB with other institutions 0.00 = other EU institutions
V5	Recruitment of agency's permanent staff	1.00 = AH alone 0.67 = AH together with MMB 0.33 = MMB with other EU institutions 0.00 = MMB on proposal of other EU institutions
V6	Resource dependency of agency	1.00 = agency levies fees for its services and exclusively finances itself with these 0.5 = agency is run on mixed financial resources (EU budget, member state contributions, fees) 0.0 = agency is run on the EU's (yearly) budget plan
A3	Formal independence in general decision-making	
V7	Formal independence of agency	1.00 = agency's independence formally stated 0.00 = agency's independence not formally stated
V8	Agency's formal reporting obligations – annual reports (retrospective)	1.00 = no reporting obligations 0.50 = annual report – for information 0.00 = annual report – for approval
V9	Agency's formal reporting obligations – annual working programme (prospective)	1.00 = no reporting obligations 0.5 = annual working programme – for information 0.00 = annual working programme – for approval
V10	Official evaluation of agency performance	1.00 = no regular evaluation required 0.5 = non-regular evaluation required

		0.00 = yes, regular evaluation required
A4	Formal independence of agency head (AH)	
V11	Term of AH	1.00 = over 6 years 0.75 = 5 to 6 years 0.50 = 3 to 4 years 0.25 = 1 to 2 years 0.00 = no fixed term
V12	Selectorate / appointees of AH	1.00 = MMB select and appoint AH 0.67 = MMB select AH candidates, other institution(s) appoint(s) AH 0.33 = other institution(s) select(s) AH candidates, MMB appoint AH 0.00 = other institution(s) select(s) and appoint(s) AH
V13	Rules for AH dismissal	1.00 = dismissal impossible (except in cases of legal breaches/disciplinary offenses) 0.67 = dismissal by MMB 0.33 = dismissal by MMB upon suggestion from other institution 0.00 = dismissal at discretion of other institution
V14	Reappointment of AH	1.00 = no 0.50 = yes, once 0.00 = yes, more than once
V15	(Formal) AH independence	1.00 = yes, formal requirement 0.00 = no formal requirement
V16	Formal requirement of AH qualifications	1.00 = yes 0.00 = no
V17	Reporting obligations towards EP	1.00 = yes 0.00 = no
A5	Members of the Management Board (MMB)	
V18	Term of office MMB	1.00 = over 6 years 0.75 = 5 to 6 years 0.50 = 3 to 4 years 0.25 = 1 to 2 years 0.00 = no fixed term
V19	Composition of MMB	1.00 = only member state representatives (nominated members) with voting rights 0.67 = EU institution representatives (nominated members) with voting rights (less than 1/3 of votes) 0.33 = EU institution representatives (nominated members) with voting rights (more than 1/3 of votes) 0.00 = only EU institution representatives (nominated members)
V20	Reappointment of MMB	1.00 = no 0.50 = yes, once 0.00 = yes, more than once
V21	(Formal) MMB independence	1.00 = yes, formal requirement 0.00 = no formal requirement
V22	Formal requirement MMB qualification	1.00 = yes 0.00 = no

V23	Voting quorum MMB	1.00 = simple majority 0.67 = absolute majority 0.33 = qualified majority/two-thirds 0.00 = unanimity
V24	Budgetary, administrative or other sub-forum of MMB	1.00 = sub-forum in founding regulation 0.00 = no sub-forum in founding regulation

Table 1 - EU Agency Independence Index - Categories, Items and Values

4 Preliminary Results and Outlook

We created independence scores for today's EU agencies with the independence measurement, we presented in this paper. However, the core aim of this work-in-process paper is to stimulate a discussion about this measurement process. Our findings should thus be taken with a grain of salt. They rather illustrate the usefulness of this formal independence index: it creates descriptive insights through comparing the independence scores, it invites analyses explaining the differences in formal independence and exploring the relationship with de facto independence and finally it enables us to measure and explain the development of independence over time. Thus, we present the preliminary results next and combine it with a short discussion of variables employable to explain differences in formal independence.

Figure 1 shows the preliminary independence scores for all 38 EU agencies. Descriptively, the preliminary values allow for three observations. First, our measurement captures differences between EU agencies and therefore variance in need of explanation. An in-depth analysis of our results will have to show, whether all differences in our index are meaningful. However, the wide range between the EU's translation centre CdT as the agency with the lowest formal independence score of 0.3 and the Single Resolution Board (SRB) as the agency with the highest formal independence score of 0.79 is very large. Even though half of all EU agencies falls between the independence scores 0.43 and 0.57, there are differences between EU agencies' formal independence to explain.

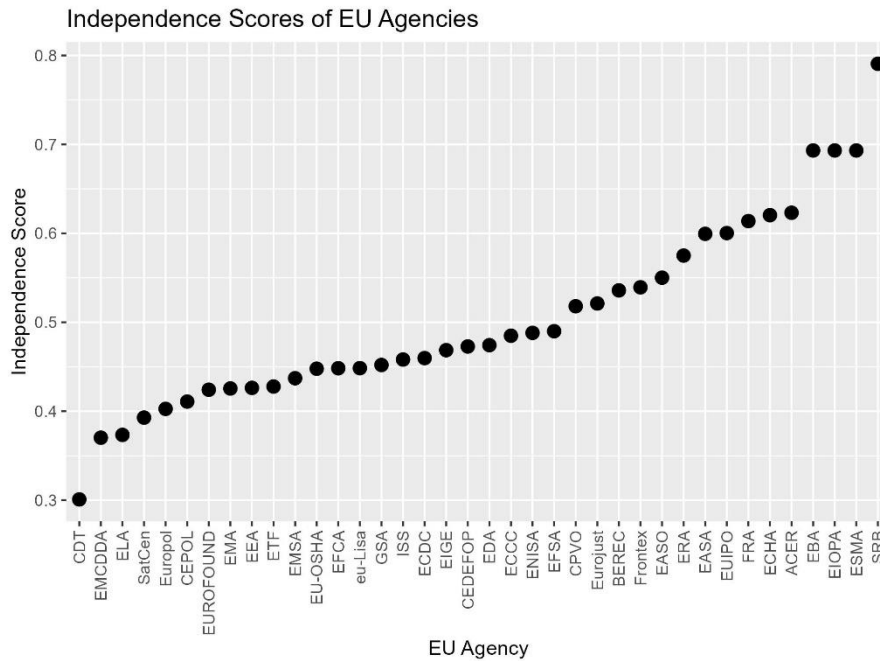


Figure 1 – Independence Scores of 38 EU Agencies

Second, we also find variance when we compare the two dimensions of formal independence. Figure 2 positions each EU agency on a two-dimensional grid indicating its independence in decision-making and the independence of its decision-makers. At face-value, there seems to be a trade-off between the two dimensions: the more independent the decision-makers of an EU agency, the lower the agency’s independence in decision-making and vice versa. However, agencies like the financial supervisory authorities (EBA, EIOPA, ESMA and the SRB) and strong regulators such as the aviation safety authority (EASA), the chemicals agency (ECHA) and the energy regulators agency (ACER) are outliers. Moreover, there are agencies like the drug monitoring centre (EMCDDA), the medicines agency (EMA) and or the labour authority (ELA) that neither have high independence in decision-making nor independent decision-makers. Again, a descriptive look at the preliminary results invites more questions regarding the sources of differences across EU agencies.

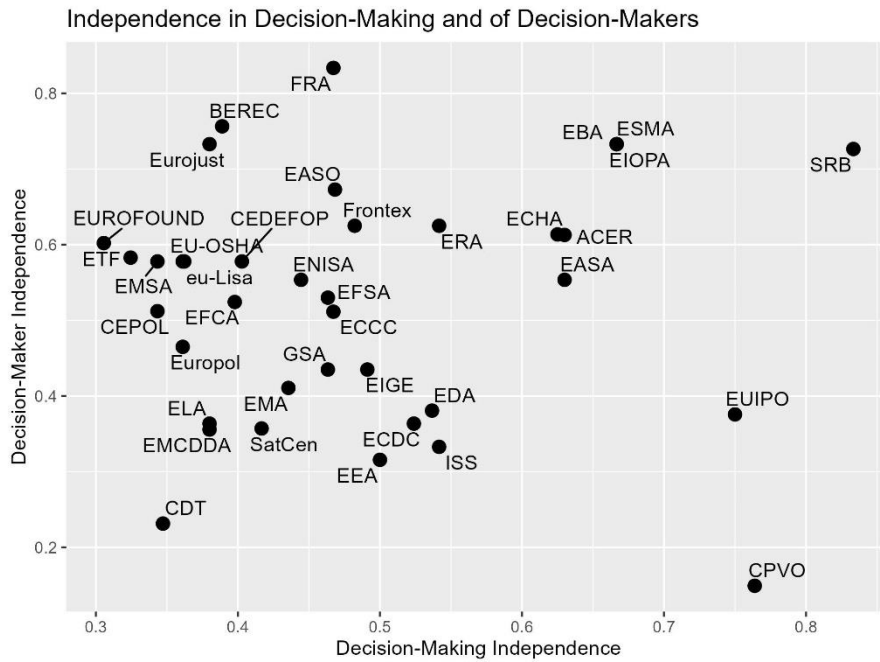


Figure 2 - 38 EU Agencies' Independence Score on the Two Dimensions Independence of Decision-Making and Independence of Decision-Makers

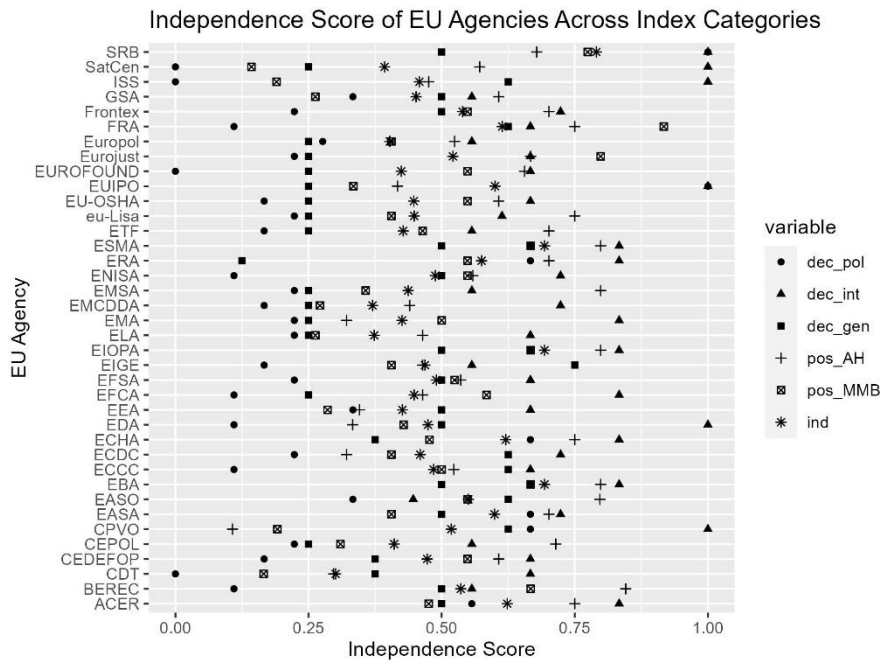


Figure 3 - Independence Score of 38 EU Agencies on the five categories and the overall score. [dec_pol = A1 - Policy Decision-Making, dec_int = A2 - Managerial Decision-Making, dec_gen = A3 - General Decision-Making, pos_AH = A4 - Agency Heads, pos_MMB = A5 - management board members, ind = overall independence score]

A final observation of variance are the individual categories of the index. Figure 3 shows the independence scores for each agency across the five index categories. While the figure does not reveal an obvious pattern, it shows even though many EU agencies have similar independence scores, they

are driven by very different values across the five categories. This invites reflection about researching not only explanations for the differences in aggregated independence scores but also for the different categories of our independence measurement.

Our first step to proceed with this project is to make our independence measurement more robust and reliable. Discussing this paper is a first step in that direction. Afterwards, we will begin by replicating previous analyses of EU agencies' formal independence with the up-to-date data. Most founding regulations have been revised or even re-cast within the last ten years. Moreover, EU agencies' principals, the Commission, the Parliament and the Council, agreed at the beginning of this revision process in 2012 on a Common Approach outlining a standardized template for EU agencies' institutional structure (Joint Statement, 2012). Do previous explanations of EU agencies' formal independence still hold? In their analysis of their index, Wonka and Rittberger (2010) employed variables such as the task of an EU agency, its salience, the complexity of its policy field and its age. As we changed the measurement of the independence scores, our results are not comparable to those of Wonka and Rittberger (2010) more than a decade ago. However, by testing their and other researchers' hypotheses (Christensen & Nielsen, 2010) on the new data, combining them with new hypotheses, will generate new insights into explaining EU agencies' formal independence.

Our second step, however, is to move away from snapshot images of agency independence and take the dynamic nature of EU agencies' independence into account. As we elaborated above, we will code all 70 regulations that EU agencies operated upon in the past for this as well as the 143 amendments to them. First pilot probes indicate that especially a re-casting of a founding regulations leads to changes in the formal independence of EU agencies. Such data enables us to update statist theories of delegation with dynamic theories for the repeated delegation agreements typical for EU agencies. Moreover, it allows us to investigate the drivers behind EU agencification and thereby the fastest-growing and increasingly salient part of the EU's administrative space.

To capture such developments over time theoretically we would need to distinguish between systemic and agency-level explanations. For instance, explanations of isomorphism (Barbieri & Ongaro, 2008) or of rational-choice considerations of member states in the delegation process (Kelemen, 2002; Kelemen & Tarrant, 2011) apply to all EU agencies: EU agencies are created and reformed on the basis of blueprints and experiences in other agencies and the willingness of legislators to delegate competences depends on their attitude towards delegating to EU agencies (and their experience with such delegation processes) in general. On the other hand, neo-functional accounts focusing either on spillovers driven by epistemic communities (Versluis & Tarr, 2013) or bureaucratic politics between the Commission and national agencies (Mathieu, 2016) highlight the relevance of the respective EU agency's environment, tasks and decisions and whether they support spillovers. Changes in formal

independence in these accounts stem less from a changed mindset of delegators in the Council and Parliament but are consequences of developments that already occurred within individual agencies and that delegators formalise. A potential example for this might be the European Medicines Agency (EMA). Even though its independence score is low, it is possible that it was even lower before the expansion of its tasks permitting the agency to also engage in pharmacovigilance. Even though it is not comparable, in Wonka and Rittberger's (2010) measurement, EMA was the agency with the lowest independence score. Its higher position in our index might be driven by our category and item changes or by the amendments to its founding regulation since 2010. Hence, we would need to consider how we distinguish these two levels when formulating our dynamic models of delegation over time.

References

- Barbieri, D., & Ongaro, E. (2008). EU agencies: what is common and what is distinctive compared with national-level public agencies. *International Review of Administrative Sciences*, 74(3), 395-420.
- Bickerton, C. J., Hodson, D., & Puetter, U. (2015). The New Intergovernmentalism: European Integration in the Post-Maastricht Era. *JCMS: Journal of Common Market Studies*, 53(4), 703-722.
- Busuioc, M. (2012). European agencies and their boards: promises and pitfalls of accountability beyond design. *Journal of European Public Policy*, 19(5), 719-736.
- Busuioc, M. (2013). *European agencies: Law and practices of accountability*: Oxford University Press.
- Busuioc, M., & Rimkutė, D. (2020). The promise of bureaucratic reputation approaches for the EU regulatory state. *Journal of European Public Policy*, 27(8), 1256-1269.
- Christensen, J. G., & Nielsen, V. L. (2010). Administrative Capacity, Structural Choice and the Creation of EU Agencies. *Journal of European Public Policy* 17(2), 176-204.
- Dehousse, R. (2008). Delegation of Powers in the European Union: The Need for a Multi-Principals Model. *West European Politics*, 31(4), 789-805.
- Egeberg, M. (2003). *How bureaucratic structure matters: An organizational perspective*. London: Sage.
- Egeberg, M. (forthcoming). Supranationalization of government and governance. In J. Tosun & P. Graziano (Eds.), *Encyclopedia of European Union Public Policy*. Cheltenham: Edward Elgar.
- Egeberg, M., & Trondal, J. (2017). Researching European Union Agencies: What Have We Learnt (and Where Do We Go from Here)? *Journal of Common Market Studies*, DOI: 10.1111/jcms.12525.
- Ennsner-Jedenastik, L. (2016). The politicization of regulatory agencies: Between partisan influence and formal independence. *Journal of Public Administration Research and Theory*, 26(3), 507-518.
- European Commission. (2002). *Communication from the Commission—The operating framework for the European Regulatory Agencies, COM(2002) 718 final*.
- Font, N. (2018). Informal rules and institutional balances on the boards of EU agencies. *Administration & Society*, 50(2), 269-294.
- Gilardi, F. (2002). Policy Credibility and Delegation to Independent Regulatory Agencies: A Comparative Empirical Analysis. *Journal of European Public Policy*, 9(6), 873-893.
- Gilardi, F. (2008). *Delegation in the Regulatory State*. Cheltenham: Edward Elgar.

- Hanretty, C., & Koop, C. (2012). Measuring the formal independence of regulatory agencies. *Journal of European Public Policy*, 19(2), 198-216.
- Joint Statement. (2012). *Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies*
- Kelemen, D. R., & Tarrant, A. D. (2011). The Political Foundations of the Eurocracy. *West European Politics*, 34(5), 922-947.
- Kleizen, B., & Verhoest, K. (2020). Opportunities and threats of agency autonomy in EU governance: integrating separate debates. In *Controlling EU Agencies*: Edward Elgar Publishing.
- Levi-Faur, D. (2011). Regulatory Networks and Regulatory Agencification: Towards a Single European Regulatory Space. *Journal of European Public Policy*, 18(6), 810-829.
- Lupia, A., & McCubbins, M. D. (1994). Learning from Oversight: Fire Alarms and Police Patrols Reconstructed. *Journal of Law, Economics, & Organization*, 10(1), 96-125.
doi:10.2307/764815
- Majone, G. (2001). Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance. *European Union Politics*, 2(1), 103-122.
- Mathieu, E. (2016). When Europeanization Feeds Back into EU Governance: EU Legislation, National Regulatory Agencies, and EU Regulatory Networks. *Public Administration*, 94(1), 25-39.
doi:10.1111/padm.12156
- McCubbins, M., Noll, R., & Weingast, B. (1987). Administrative Procedures as Instrument of Control. *Journal of Law, Economics, and Organization*, 3, 243-277.
- Moe, T. (2012). Delegation, Control, and the Study of Public Bureaucracy. *The Forum*, 10(2), Article 4.
- Scholten, M., Maggetti, M., & Papadopoulos, Y. (2020). Towards a comprehensive system of controls for EU agencies. In *Controlling EU Agencies*: Edward Elgar Publishing.
- Scipioni, M. (2018). De Novo Bodies and EU Integration: What is the Story behind EU Agencies' Expansion? *JCMS: Journal of Common Market Studies*, 56(4), 768-784.
- Simon, H. (1946). The proverbs of administration. *Public Administration Review*, 6(1), 53-67.
- Verschuere, B., & Bach, T. (2012). Executive Agencies, Ministers, and Departments: Can Policy and Management Ever be Separated? *Administration & Society*, 44(2), 183-206.
- Versluis, E., & Tarr, E. (2013). Improving Compliance with European Union Law via Agencies: The Case of the European Railway Agency. *JCMS: Journal of Common Market Studies*, 51(2), 316-333.
- Wonka, A., & Rittberger, B. (2010). Credibility, Complexity and Uncertainty: Determinants of Institutional Independence of 29 EU Agencies. *West European Politics*, 33(4), 730-752.
- Wood, M. (2018). Mapping EU agencies as political entrepreneurs. *European Journal of Political Research*, 57(2), 404-426.

5 Appendix

Agency	C1	C2	C3	C4	C5	Independence Score
ACER	0,56	0,83	0,50	0,75	0,48	0,62
BEREC	0,11	0,56	0,50	0,85	0,67	0,54
CDT	0,00	0,67	0,38	0,30	0,17	0,30
CEDEFOP	0,17	0,67	0,38	0,61	0,55	0,47
CEPOL	0,22	0,56	0,25	0,71	0,31	0,41
CPVO	0,67	1,00	0,63	0,11	0,19	0,52
EASA	0,67	0,72	0,50	0,70	0,41	0,60
EASO	0,33	0,45	0,63	0,80	0,55	0,55
EBA	0,67	0,83	0,50	0,80	0,67	0,69
ECCC	0,11	0,67	0,63	0,52	0,50	0,48

ECDC	0,22	0,72	0,63	0,32	0,41	0,46
ECHA	0,67	0,83	0,38	0,75	0,48	0,62
EDA	0,11	1,00	0,50	0,33	0,43	0,47
EEA	0,33	0,67	0,50	0,35	0,29	0,43
EFCA	0,11	0,83	0,25	0,46	0,58	0,45
EFSA	0,22	0,67	0,50	0,54	0,52	0,49
EIGE	0,17	0,56	0,75	0,46	0,41	0,47
EIOPA	0,67	0,83	0,50	0,80	0,67	0,69
ELA	0,22	0,67	0,25	0,46	0,26	0,37
EMA	0,22	0,83	0,25	0,32	0,50	0,43
EMCDDA	0,17	0,72	0,25	0,44	0,27	0,37
EMSA	0,22	0,56	0,25	0,80	0,36	0,44
ENISA	0,11	0,72	0,50	0,56	0,55	0,49
ERA	0,67	0,83	0,13	0,70	0,55	0,58
ESMA	0,67	0,83	0,50	0,80	0,67	0,69
ETF	0,17	0,56	0,25	0,70	0,46	0,43
EUIPO	1,00	1,00	0,25	0,42	0,33	0,60
eu-Lisa	0,22	0,61	0,25	0,75	0,41	0,45
EU-OSHA	0,17	0,67	0,25	0,61	0,55	0,45
EUROFOUND	0,00	0,67	0,25	0,66	0,55	0,42
Eurojust	0,22	0,67	0,25	0,67	0,80	0,52
Europol	0,28	0,56	0,25	0,52	0,41	0,40
FRA	0,11	0,67	0,63	0,75	0,92	0,61
Frontex	0,22	0,72	0,50	0,70	0,55	0,54
GSA	0,33	0,56	0,50	0,61	0,26	0,45
ISS	0,00	1,00	0,63	0,48	0,19	0,46
SatCen	0,00	1,00	0,25	0,57	0,14	0,39
SRB	1,00	1,00	0,50	0,68	0,77	0,79

Table 2 - Independence Score Across EU Agencies and Categories