

The competence-control dilemma and the institutional design of European Union agencies

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Abstract

In the past decades, European Union (EU) agencies have proliferated to address a plethora of governance problems. When designing EU agencies, EU legislators confront a tension: Legislators want agencies to be competent problem-solvers, but they also want to keep agencies under control. How do EU legislators balance these two imperatives? We argue that agencies' political principals do not necessarily have to trade competence for control, and vice versa, but can draw on different institutional strategies – manipulating agencies' decision-making and decision-maker independence – to mitigate the competence-control dilemma. Drawing on an original dataset on EU agencies' formal independence, we demonstrate empirically that principals customize EU agencies' independence to match the respective competence and control demands that come with specific agency tasks: regulation, authorization, implementation and information. The paper makes an important contribution to the literature on the drivers of the EU's agencification and to debates on the

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institutional design of regulatory institutions in the EU and beyond.

1 | INTRODUCTION

The competence-control dilemma is an inherent feature of indirect governance (Abbott et al., 2020). The European Union (EU) is no exception. Its member state governments draw on a multitude of third-party “intermediaries” to regulate the EU’s common market: Alongside the Commission, the main hub of the EU’s regulatory polity (Genschel & Jachtenfuchs, 2014; Majone, 1996), the number of specialized agencies has proliferated in the past decades (see, e.g., Thatcher & Coen, 2008; Levi-Faur, 2011; Kelemen & Tarrant, 2011). These agencies cover a wide spectrum of tasks in different policy areas, ranging from recommendations to authorize vaccines, the registration of plant varieties, the provision of information on the spread of infectious diseases, to operational assistance to patrol the EU’s external borders. While the delegation of regulatory tasks to EU agencies provides their political principals with sought after competences, such as unbiased expertise, policy credibility and operational capacity (see, e.g., Egeberg & Trondal, 2017; Freudelsperger et al., 2022), it also raises a gamut of well-known control problems, such as agency capture and drift (see e.g. Ruffing, 2022). This creates a competence-control dilemma for governors. As Abbott et al. (2020, p. 620) put it: “Competent intermediaries are difficult to control, because the competency-based policy benefits they provide (or withhold) give them leverage over the governor. Conversely, tight control by the governor erodes intermediaries’ competencies or constrains their development.” Accordingly, it seems governors have to choose between competence and control.

How, then do EU agencies’ legislative principals – the Commission, the Council, the European Parliament (EP) – balance competence and control when they decide on the institutional design of EU agencies? Do they maximize their formal (de jure) independence to ensure competence, and thus eschew control concerns? Or do they rather emphasize control imperatives, but thus run the risk that the agency cannot develop sought after competence? We argue that claims about principals facing a dilemma between competence and control are only half the story, resulting from the analytical decision to conceptualize competence and control as the opposing ends of one and the same dimension. The theoretical perspective we adopt in this paper proposes that principals do not necessarily face a trade-off between competence and control, but can effectively mitigate the competence-control dilemma. We argue that the institutional design of EU agencies allows legislative principals to manipulate agency independence on two dimensions, what we refer to as *decision-maker independence* – rules that incentivize an agency’s staff to invest in competence – and *decision-making independence* – rules that allow the agency to decide on its own priorities and how to best use and develop its organizational capacities (Selin, 2015). For instance, when principals are worried about an agency lacking competence to address regulatory problems, they do not have to forgo control *tout court* in order to enhance an agency’s competence by granting it more statutory independence. Instead, we argue that they can calibrate concerns about competence and control by trading one independence dimension against the other. For example, while legislative principals granted the same level of aggregate independence to the EU’s pharmaceuticals regulator, the European Medicines Agency (EMA) and the novel European Cybersecurity Competence Centre

(ECCC), these agencies differ markedly in their respective levels of decision-making and decision-maker independence. Whereas the EMA is very independent when it comes to deciding on its internal processes and priorities, while its staff is rather tightly controlled, the ECCC is tightly controlled in its decision-making, while its staff is granted considerable independence. As a result, the EMA has to draw on expertise from national agencies, but is quite capable to act (Ruffing, 2022). The ECCC's staff, in turn, has more incentives to develop expertise by itself, but is limited in its actions and decision-making.

Principals' decisions on agencies' institutional design thus reflect different combinations of decision-maker and decision-making independence, which in turn result from the principals' decisions to balance the functional benefits from delegation with the distributive implications of delegation. We argue that this calculus is strongly affected by task characteristics, that is, the main tasks performed by an agency: regulation, authorization, implementation and information provision (Weinrich, 2021; see also Bach, 2022). How principals balance their demand for competent agencies and the political costs of delegation through control mechanisms has a considerable influence on agencies' institutional design. Our empirical results lend support to our main theoretical argument that the calculus driving this balancing act is strongly shaped by the tasks performed by an agency.

The paper contributes to several debates. First, we take issue with the EU agencification debate by zooming in on the institutional design of EU agencies. This debate revolves primarily around the question if functional demands for entrusting agencies with formal independence supersede the often-divergent interests about balancing the regulatory costs and benefits of delegation, which EU agencies' legislative principals exhibit (see Blauberger & Rittberger, 2015, 2017; Kelemen, 2002; Kelemen & Tarrant, 2011; Martinsen et al., 2022; Mathieu, 2020; Rangoni, 2019; Tarrant & Kelemen, 2017), and where these preferences come from (see, e.g., Thatcher, 2011). We argue and demonstrate that functional motivations to maximize agencies' competence and interest-based motivations to ensure principals' control are not mutually exclusive theoretical alternatives, but should be combined to explain the formal institutional design of EU agencies (see, for instance, Biermann & Rittberger, 2020). To this end, secondly, we draw on and extend Competence-Control Theory (Abbott et al., 2020) by arguing that political principals can mitigate the competence-control dilemma by calibrating competence and control on two dimensions of agency design – decision-maker and decision-making independence. We sketch a two-dimensional institutional design space, which provides a theoretically and empirically more valid expression of principals' institutional design choices, than the allegedly dilemma-like choice suggested by Competence-Control Theory. Third, we leverage data on the institutional design of the EU's entire agency population, which allows us to demonstrate how principals balance competence and control motivations in their decisions on the institutional design of agencies mandated with different types of tasks. While our empirical analysis is restricted to EU agencies, our theoretical argument is of a broader nature and should be applicable to non-majoritarian institutions fulfilling similar tasks, for example, agencies at the domestic level as well as transnational regulatory networks, which comprise domestic agencies as well as their international-level counterparts (see, e.g., Eberlein & Grande, 2005; Egeberg & Trondal, 2009; Eberlein & Newman, 2008). We are aware of the analytical limitations of our study: We analyze EU agencies' institutional design by focusing on their formal (de jure) independence. Our perspective comes with certain assumptions, for instance, that the rules defining agency independence can (dis-)incentivize agency staff to develop problem-solving capacity. It is, alas, beyond the scope of this paper to probe these assumptions, which would require to analyze the actual behavior or behavioral autonomy of agencies and their staff.

2 | THE INSTITUTIONAL DESIGN OF EU AGENCIES AND THE LIMITS OF COMPETENCE-CONTROL-THEORY

A central debate in the literature on the EU's agencification centers on the question how agencies' principals can balance demands for providing policy adequate and hence competent solutions, with the concern that granting agencies too much independence potentially allows them to escape principals' control and take actions which conflict with their interests. This tension between principals' twin objectives that agencies should be competent, yet under control lies at the heart of Competence-Control Theory (CCT) (Abbott et al., 2020). From the purview of CCT, principals confront a dilemma when they contemplate the institutional design of EU agencies: For purposes of regulatory problem-solving, principals want to incentivize agencies to develop expertise to provide policy-adequate solutions. Yet, the creation of control mechanisms to prevent agencies from going rogue counteracts these incentives, thus rendering the agency less competent. Political principals therefore have to balance the benefits of granting sufficient independence to an agency with the potential political costs resulting from the agency's actions. Existing explanations in the debate on agencies' institutional design emphasize either the competence-side or the control-side of the dilemma theorized by CCT.

Functional explanations for the design of EU agencies focus on the competence-side of the dilemma. They highlight that the credibility of regulatory policy decisions is undermined by the exigencies of majoritarian politics. To arrive at adequate solutions, the EU agencies' legislative principals – the Commission, the Council, and the EP – are expected to entrust regulatory bodies, such as EU agencies, with far-reaching formal independence to prevent political interference (see, e.g., Pollack, 1997, 2003; Majone, 2000, 2001; Thatcher & Stone Sweet, 2002). From a functional perspective, agencies' independence allows them to eschew re-election considerations and develop competent regulatory policy solutions that are guided by politically unbiased information and technical expertise (see, e.g., Everson, 1995; Pollitt et al., 2001; Koop & Hanretty, 2018). *Interest-based* explanations, by contrast, stress the control-side of the competence-control dilemma. These accounts put a strong emphasis on the divergence of principals' preferences when it comes to the design of regulatory institutions (see Christensen & Nielsen, 2010; Ennsner-Jedenastik, 2015; Moe, 1990). In the EU, the Commission and the EP are considered to favor more independent EU agencies, since their preferences for regulation and centralization tend to be aligned. Member states, by contrast, are expected to be more keen to keep agencies under intergovernmental control, given the costs regulatory actions of highly independent agencies can impose on important domestic constituencies (Kelemen, 2002; Kelemen & Majone, 2012; Kelemen & Tarrant, 2011). The core analytical focus of these accounts is on how principals devise the institutional rules that define agencies' leeway (Lupia & McCubbins, 2000; McCubbins et al., 1987).

Our approach in this paper ties in with CCT, since it does not consider functional and interest-based explanations of agencies' institutional design as competing theoretical accounts. Instead, we treat them as complementary explanations and hold that the design of EU agencies and hence their formal institutional independence from principals is driven by principals' motive to secure functional benefits *and* their political interest to avoid costs for important constituencies (see also Blauburger & Rittberger, 2015). Explanations for agencies' institutional design thus need to theorize both, principals' demand for competence as well as their demand for control. The interesting question to us is how exactly political principals balance these two objectives and how this balancing act is reflected in the design and reform of EU agencies. Rational institutionalist explanations, such as principal-agent theory (McCubbins et al., 1987) or

structural choice approaches (Moe, 1990), which underpin many analyses of agency design and independence, tend to conceive of control and competence as unrelated categories. In principal-agent theory, for instance, control and competence are considered unrelated categories: “agent competence does not affect principal control, and control does not affect competence” (Abbott et al., 2020, p. 4; see also Abbott et al., 2017). CCT is thus a useful starting point because it problematizes the relationship between the competence and control, and it also allows us to transcend the rather unproductive dichotomy in the literature pitting functional and interest-based accounts against each other. The competence-control dilemma at the heart of CCT stipulates that there is an inherent unsolvable tension between principals' motivation to enlist competent agents and their motivation to effectively control them. When agents are too competent, they may go rogue and escape principals' control. When agents are too tightly controlled, they can hardly develop competence. And whilst principals can try and address this dilemma by choosing different governance modes (Abbott et al., 2020) that either entail strong hierarchical controls – to the detriment of the agent's competence –, or weak hierarchical controls – allowing the agency to develop competence and exploit its discretion, principals always find themselves caught in the dilemma.

While we fully acknowledge the tension between competence and control imperatives, we argue that principals can *mitigate* the dilemma. Institutional design choices are not necessarily one-dimensional, as proponents of CCT claim. Principals do not always have to trade more control for less competence, and vice versa. We highlight that principals can draw on a *two-dimensional institutional design space*, which allows them to calibrate *different kinds* of competence and control imperatives according to the policy problem they face. To this effect, we distinguish two kinds of institutional design mechanisms through which principals can grant formal (de jure) independence to agencies. First, principals can attempt to model an agency's institutional design so that the agency's staff is incentivized to develop sought-after problem-solving expertise: The agency is granted *decision-maker independence*. Second, principals can institutionally empower an agency to decide on its internal processes and policy priorities: The agency is granted *decision-making independence* (see also Ruffing et al., 2023; Selin, 2015 for this distinction). By ceding control over *persons* – granting decision-maker independence – and/or control over *processes* – granting decision-making independence – principals can adjust their grip on agencies' activities by choosing any combination of the two mechanisms in a two-dimensional institutional design space. Principals can entrust an agency with strong (or weak) independence on both dimensions, thus maximizing competence (or control); or they can grant strong (or weak) independence on one dimension, while granting weak (or strong) independence on the second dimension, thus trading control for competence, as predicted by CCT. We first introduce the two dimensions, before illustrating the institutional design choices principals can entertain in the two-dimensional institutional design-space.

Decision-maker independence: Principals want competent agents. One of the benefits of delegation to agencies lies precisely in their ascribed competence to provide sound and unbiased expertise to solve policy problems. Expertise refers to an agency's stock of technical and factual knowledge in its policy domain. High levels of expertise allow agencies to analyze problems, develop sound strategies to address them and propose regulatory instruments to implement these strategies. Since EU agencies deal with variegated governance problems, the epistemic demands specific agencies and their staff are confronted with differ markedly: Some agencies are tasked to assess regulatory risks (see, e.g., Gehring & Krapohl, 2007) and propose regulatory solutions (see, e.g., Busuioc, 2013), others provide assistance with policy implementation and carry out operational missions (Busuioc & Groenleer, 2013; Groenleer et al., 2010), while still

others merely collect and disseminate information (Majone, 1997). If decision-makers inside an agency possess a high degree of independence from their political principals, agency staff and leadership have strong incentives to invest in developing expertise (Everson, 1995; Majone, 1997). Conversely, a low degree of independence reduces such incentives because principals reserve the ability to impose their preferred solutions.

To capture agency expertise, we focus on the *institutional* incentives for agency staff and leadership to develop and apply expertise in their area of responsibility (Abbott et al., 2020: 4, 12, 17–18). In line with the institutional design perspective taken in this paper, we thus do not investigate if agencies are actually competent in what they do and how they act. Principals deduce their motivation for institutional design decisions from agencies' *expected* behavior, not their actual behavior. Institutional incentives to develop competence will be present if decision-makers enjoy a high degree of independence from their principals, that is, the Commission, the EP, and the Council. We empirically assess such incentives by measuring the rules to select (independent) leadership personnel and management board members as well as the rules to punish them through removal. The existence of high levels of control of agencies' decision-makers through the Council, the Commission and/or the EP means that an agency's head and its board have to carefully consider their principals' views of and interests in their work. Rather than developing their own regulatory strategies and instruments, agency staff and leadership lacking institutional independence will wait for signals or orders from their principals before taking action. Conversely, if agency personnel enjoy high levels of independence to plan and carry out their tasks, they will have incentives to invest in professional knowledge and regulatory strategies that they consider appropriate to tackle the regulatory tasks in their area of competence (Gailmard & Patty, 2012).

We therefore assume that institutional opportunities for developing expertise will be strong, if agency personnel enjoy high levels of independence. When principals intend to increase an agency's problem-solving competence, they are likely to grant an agency more decision-maker independence and thus enhance institutional opportunities to invest in developing regulatory expertise. Conversely, when principals are worried that an agency's expertise runs counter to their preferences, they are likely to reduce an agency's decision-maker independence by tightening control mechanisms. For instance, the early years of the European Environment Agency's (EEA) existence were marred by rows between the responsible Directorate General in the Commission and the agency's leadership over the latter's course of action, which complicated the agency's work (see Groenleer, 2009; Martens, 2010). Overall, principals thus have to weigh the benefits of providing enough independence such that agencies provide sought-after expertise to solve pressing policy problems with the costs that come with the risk that agency decision-makers' expert-solutions contradict the principals' interests.

Decision-making independence: Independence is not only attributed to agencies for providing sought-after expertise. Principals can also grant agencies independence by ceding control over internal decision-making processes. By setting its own policy priorities, work program and decision processes, agencies are able to identify and act upon acute policy problems and not wait for principals' instructions to do so. In short, independent agencies have a higher capacity to act than those that are more tightly controlled by their principals. Decision-making independence thus refers to the formal rules that regulate an agency's ability to independently go about running its own business, most notably by deciding on its internal procedures, organization, its own policy priorities, work program, as well as by independently hiring its staff. Agencies with limited independence in deciding on their substantive priorities or in selecting their staff are under the principals' control: They have limited opportunities and incentives to

exploit and develop their agency's internal procedures and organizational structure to address the main governance tasks according to their own professional priorities and standards. Conversely, agencies enjoying high levels of independence to define their work program and internal working environment will have strong incentives and the institutional means to develop a work program that reflects the agency's priorities and preferred regulatory solutions. In short, they will invest in and exploit their capacity to act independently. Take as an example the European Food Safety Agency's (EFSA), which has more procedural leeway to determine its internal working methods than the European Medicines Agency (EMA). While EFSA is able to select and curate its own network of academic experts, EMA has to rely on experts nominated by national authorities. Compared with EMA, EFSA thus possesses more decision-making independence. As a result, EFSA's recommendations to authorize certain foodstuffs, such as genetically modified organisms, are often times at odds with the preferences of the Commission and national authorities (see Blom et al., 2014; Groenleer, 2014).

To empirically assess agencies' capacity to act, we focus on institutional rules that affect an agency's decision-making independence, which include rules on agencies' independence in policy decision-making, in taking managerial decisions, for example, with regard to hiring internal or external staff, and their status with regard to decision-making as well as reporting requirements vis-à-vis its legislative principals (see, for instance, Christensen & Nielsen, 2010; Wonka & Rittberger, 2010; Hanretty & Koop, 2012). These aspects all have a direct impact on the extent to which EU agencies can act independently in EU policy-making and the extent to which they can shape their internal organization according to the administrative and professional standards they consider appropriate (see Ruffing et al., 2023 for details). In sum, by granting an agency more decision-making independence, principals have to weigh the benefits of an agency that possesses a high capacity to act with the potential costs that the agency will leverage its internal capacities to act against the principals' interests.

From the purview of CCT, the dilemma principals are confronted with plays out between two poles: More independence, and hence the prospect of a more competent agency, implies less control over the agency; less independence, and hence more control, implies a prospect for a less competent agency. CCT thus lumps both dimensions of agency independence – decision-maker and decision-making independence – together in a one-dimensional continuum, whereby competence and control are inevitably traded against each other. For CCT, 'maximum' independence, and hence the prospect of a maximally competent agency, implies maximum independence on both dimensions, decision-making *and* decision-maker independence (pole C in Figure 1). Conversely, 'minimal' independence, and hence maximum control over the agency, implies minimal independence on both dimensions (pole A in Figure 1). Since CCT considers competence and control as a one-dimensional trade-off, CCT expects principals to opt for institutional designs on the diagonal connecting poles A and C. Our analytical distinction between decision-maker and decision-making independence opens-up a two-dimensional institutional design space of agency independence, which adds two additional poles: Full decision-maker independence/no decision-making independence (pole D in Figure 1), as well as full decision-making independence/no decision-maker independence (pole B in Figure 1). We argue that principals can use the full range between these two additional poles to mitigate the dilemma proposed by CCT by fine-tuning combinations of decision-maker and decision-making independence. The higher the level of independence, the stronger should be the incentive for agency staff to develop competence and the higher should be its capacity to act (and vice versa). The four poles are ideal typical institutional combinations of the two analytical dimensions. Principals can place agencies in the space among these poles to provide relatively stronger or weaker institutional incentives for competence formation and the capacity to act.

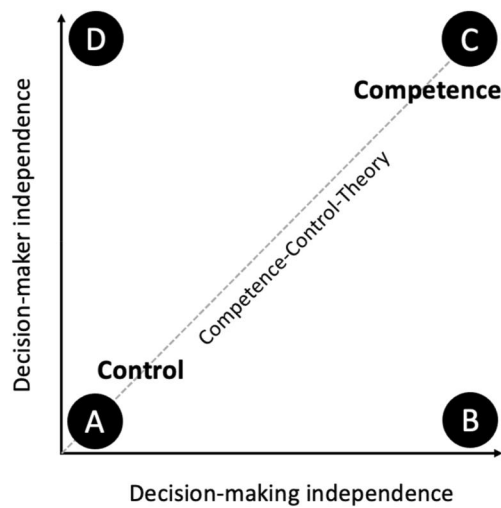


FIGURE 1 Institutional design space for European Union (EU) agencies.

By introducing the distinction between decision-maker and decision-making independence, we expand the analytically plausible space of EU agencies' institutional design. When deciding on how to weigh competence and control, principals have a much broader set of institutional design options than suggested by CCT: They can provide agencies with high decision-making independence, while at the same time keeping tight control over its staff via low levels of decision-maker independence. Agencies whose design follows this combination of principals' considerations about agency design are likely to be located towards the lower right pole B. Principals can also provide agencies with high decision-maker independence, thus incentivizing the development of competence, while at the same time strongly limiting an agency's capacity to translate this competence in regulatory action via low decision-making independence. Agencies which match this consideration are located towards the upper left pole D.

3 | TASKS TYPES AND EU AGENCIES' INSTITUTIONAL DESIGN

What informs principals' institutional design decisions for EU agencies and where, in the two-dimensional institutional space, do principals place EU agencies by designing their formal institutional rules accordingly? Existing explanations offer partial insights. Functional and interest-based explanations, which we introduced above, would expect that principal opt for institutional designs that are located on the diagonal connecting poles A and C. While functional accounts put emphasis on competence (pole C), interest-based accounts stress principals' preferences for control (pole A). In short, functional and interest-based accounts neatly map onto the competence-control dilemma. We argue that principals' choice of EU agencies' institutional design and hence of different combinations of decision-maker and decision-making independence is decisively shaped by the main task that an agency is supposed to fulfil. While the type of task is surely not the only factor explaining EU agencies' institutional design, we expect it to be of crucial importance, since an agency's tasks impacts both, the competencies principals expect from them, as well as the political costs that accrue from agencies' outputs for potentially affected constituents. Agencies' tasks range from gathering information, preparing

and authorizing regulatory decisions to providing assistance with implementation (Weinrich, 2021). An agency's main task affect how principals assess the costs and benefits of institutional independence and hence by weighing different combinations of decision-maker and decision-making independence. Let us turn to a description of the task types first: *Regulation agencies*, such as the European Banking Authority (EBA), are directly involved in preparing regulatory decisions and rules. *Authorization agencies*, such as the European Medicines Agency (EMA), are not only involved in preparing regulatory decisions and rules, they also implement them on a case-by-case basis, for example, when EMA prepares authorization decisions for medicines (authorization agencies, are – pun intended – regulators on steroids). *Implementation agencies* do not partake in the preparation of binding regulatory decisions, but have the operational task to implement rules laid down in EU legislation. For example, the European Asylum Support Office (EASO), directly assists member states with the implementation of EU asylum regulations. *Information agencies*, such as the European Environment Agency (EEA), have neither implementation nor regulatory tasks. They generate and disseminate technical information that is at the perusal of regulatory institutions, policy-makers and other stakeholders and which can help to identify political problems resulting from (a lack of) EU regulation and, consequently, stimulate future legislative initiatives by the agency's principals.

How does an agency's task type now affect the principals' decision to place an EU agency anywhere in the institutional design space constituted by different combinations of decision-making and decision-maker independence, defined by the four poles A-D (see Figure 1). Irrespective of the task an agency fulfils, we assume that the principals are generally interested that the agency provides functional solutions for the problem at hand (benefits), while – at the same time – they seek to limit putative distributive consequences of the agency's actions (costs). The kind of task an agency pursues affects these benefits and costs in variable, yet systematic ways. We discuss principals' task-specific cost-benefit calculations and their implication for institutional design choices in turn.

First, the essence of decades on research on *regulation agencies* is that principals are strongly motivated by functional motives when establishing such agencies. To meet their task of developing regulatory solutions to political problems faced by EU member states, regulation agencies need far-reaching independence (Gilardi, 2002; Jordana et al., 2018; Majone, 2001). In short, principals' expected benefits of delegation are high. They expect to benefit from high decision-maker independence, because they envisage agencies to develop problem-solving expertise. They also expect to benefit from high decision-making independence, because agencies purportedly possess the capacity to adopt such problem-solving decisions. Concerns about delegation costs pertain mainly to the possibility that agencies act against principals' political interests. Distributional effects that could be in conflict with principals' interests should, however, be less of a concern for regulation agencies, especially when compared to agencies directly involved in, for example, “on the ground” implementation. This is because regulatory decisions tend to be broad in nature, referring to groups of products or procedures. Consequently, the distributive consequences of proposals made or actions taken by regulatory agencies are (comparatively more) diffuse for potential stakeholders than the distributive consequences of case-based decisions taken by agencies with implementation or authorization tasks. We therefore expect regulation agencies to be located towards the upper right corner C in Figure 1.

Second, even though functional motives also play a strong role in the institutional design of *authorization agencies*, the expected costs of delegation resulting from these agencies' decisions to, for example, grant or deny market access for particular pharmaceutical or chemical

products, should lead principals to circumscribe the independence of authorization agencies. Authorization decisions imply that costs are concentrated and distributive effects become more visible for specific stakeholders, because authorization often affects a single product. Negative distributive effects are thus likely to hit a particular producer, sector and/or country. Decision-making independence is the *raison d'être* of authorization agencies, since they need to have the institutional capacity to hand down authorization decisions to fulfill their mandate of authorizing products and thus granting them access to the EU's single market. To keep these agencies under control (and mitigate possible distributive consequences), principals' focus is most likely on restricting the independence of decision-makers, thus being able to direct the attention of agency staff towards the preferences of their principals and to ensure that the goals pursued by agency staff do not diverge too far from those of their principals. We therefore expect authorization agencies to be situated towards lower right corner B in Figure 1.

Third, what is true for authorization agencies also holds for *implementation agencies*: The costs of delegation are highly specific, because implementation "on the ground" renders distributive effects immediately obvious. If, for example, Frontex takes the decision to oversee the Greek coast guard's efforts in the Mediterranean Sea, Greek officials (or the tourist industry) cannot ignore or counteract it, but have to directly deal with potential (reputational and operational) consequences. Given the costs for specific member states resulting from missions conducted by implementation agencies, we expect principals to opt for tighter controls of these agencies' ability to take the decision to carry out such missions and activities in the first place by granting implementation agencies low levels of decision-making independence. At the same time, principals want to ensure that agency staff is incentivized to uncover and point towards potential challenges when implementing an EU policy. Agency staff should thus have incentives to identify such challenges propose effective solutions. As a consequence, we expect principals to grant implementation agencies high decision-maker independence. We consequently expect implementation agencies to be situated towards top left corner D in Figure 1.

Fourth, with regard to *information agencies*, the benefits as well as the costs of delegation tend to be rather diffuse and uncertain: Since information agencies collect information, but do not take decisions, they cannot directly impose costs on their principals. Principals thus have less to worry when these agencies 'go rogue'. The benefits of collecting information, at the same time, are modest for principals. Given their limited mandate, information agencies do not directly contribute to addressing regulatory problems that are imminent. To fulfil their task – collecting, processing and providing information – decision-maker independence could be more important than decision-making independence, as agency staff need to develop expertise to effectively collect and process information that is useful for their political principals. On the other hand, providing information might just mean collecting readily available information from other actors and thus resemble administrative routine processes. Consequently, we expect information agencies to be scattered across our two-dimensional analytical space of agency design. Table 1 summarizes our expectations and the expected benefits and costs of delegation which drive principals' institutional design decisions.

4 | RESEARCH DESIGN AND DATA

To empirically analyze the actual design of EU agencies, we draw on an index and accompanying dataset developed by Ruffing et al. (2023). Like most existing indices of agency independence, the rationale for constructing this index rests on core premises of the principal-agent

TABLE 1 Costs, benefits and the institutional design of European Union (EU) agencies.

	Benefits of delegation	Costs of delegation	Agency design expectations
Regulation agencies	High	Diffuse	C
Authorization agencies	High; emphasis on decision-making independence	Concentrated	B
Implementation agencies	High; emphasis on decision-maker independence	Concentrated	D
Information agencies	Low	Diffuse	A–D

approach. It assumes that (in the case of EU agencies) multiple principals delegate a task to an agent and that the agent is subject to monitoring, control and sanctioning by the principals (for a comprehensive discussion of the conceptualization, construction and measurement of the index, see Ruffing et al., 2023).

We conceptualize agencies' *decision-making independence* as an agency's ability to decide on its work program and define its policy priorities, to hire staff and organize its internal processes. In essence, our measure of decision-making independence taps into an agency's institutional capacity to act and hence its ability to become active independent of the principals. This measurement comprises three sets of items: Independence in general decision-making (e.g., whether the agency's independence is formally stated in the founding regulation and whether it is subject to reporting obligations), independence in policy decision-making (e.g., whether an agency's decisions can be overruled by other actors) and independence in managerial decision-making (e.g., whether an agency can decide independently on hiring its staff) (see Ruffing et al., 2023).

Decision-maker independence reflects the extent to which agency staff can act without interference on the part of the principals and thus refers to the institutional incentives for agency staff and leadership to develop and apply competence in their area of responsibility. To operationalize decision-maker independence, we rely on two sets of items: institutional rules that specify the selection and the tasks of the agency head and the composition and terms of office for the members of agencies' management boards. Independence of agency heads constitutes an important source of decision-maker independence, because it affects the willingness to mobilize knowledge and invest in expertise that is geared towards (independent) problem-solving rather than directed towards reading their principals' minds. For instance, the longer the term of an agency head, the greater their independence from another principals-led selection process, and the more likely they invest in broadening the agency's competence. Similarly, a management board that consists primarily of representatives from national regulatory authorities encourages agency staff to develop expertise than a board whose members were directly selected by EU-level principals.

Our data sources to measure these items consist of the founding and amending legislation of EU agencies. For this paper, we draw on data extracted from the most recent regulation of all 38 EU agencies, that is, including all amendments to their decision-maker and decision-making independence since their establishment. The values of each of the 24 items that are part of our index vary between 0 and 1. We constructed an additive index and all five categories included in the index have the same weight in each of the two dimensions. To calculate the

score for an agency's decision-maker independence and decision-making independence, we add the means of each category and divide them by the number of categories for each dimension (three and two respectively). The resulting measures also vary between 0 and 1.¹

5 | ANALYSIS AND DISCUSSION

Following our theoretical argument, EU agencies' principals are not restricted to a one-dimensional choice to either expand or delimit EU agencies' overall level of independence. Instead, we argue that principals can design agencies along two dimensions to reap the benefits of delegation while, at the same time, limiting the potential political costs of delegation. They can do so by choosing different combinations of decision-making and decision-maker independence. Figure 2 displays the mean values for decision-making and decision-maker independence respectively for all EU agencies differentiated by their respective task. Across all 38 EU agencies, the mean values of both dimensions are identical: EU agencies, on average, have 0.52 decision-making independence and 0.52 decision-maker independence. When distinguishing EU agencies across tasks, we observe considerable differences between levels of decision-maker and decision-making independence for regulation, authorization, implementation and information agencies.² Principals equip regulation agencies, on average, with the highest independence scores: *regulation agencies* have higher decision-making *and* decision-maker independence than any other agency type (see Figure 2). This is in line with our expectation that diffuse political costs and high expected functional benefits from delegation lead principals to provide these agencies with high independence on both dimensions and consequently locate them near the C pole in our two-dimensional analytical space (Figure 1). While we did theorize regulation agencies' location towards the C pole, we did not theoretically specify differences between the level of independence between both dimensions. What we discover empirically, however, is that principals, across all EU regulation agencies, rely more strongly on decision-maker than on decision-making independence to exert control over regulation agencies. Despite the diffuse political costs that accrue from regulation agencies'

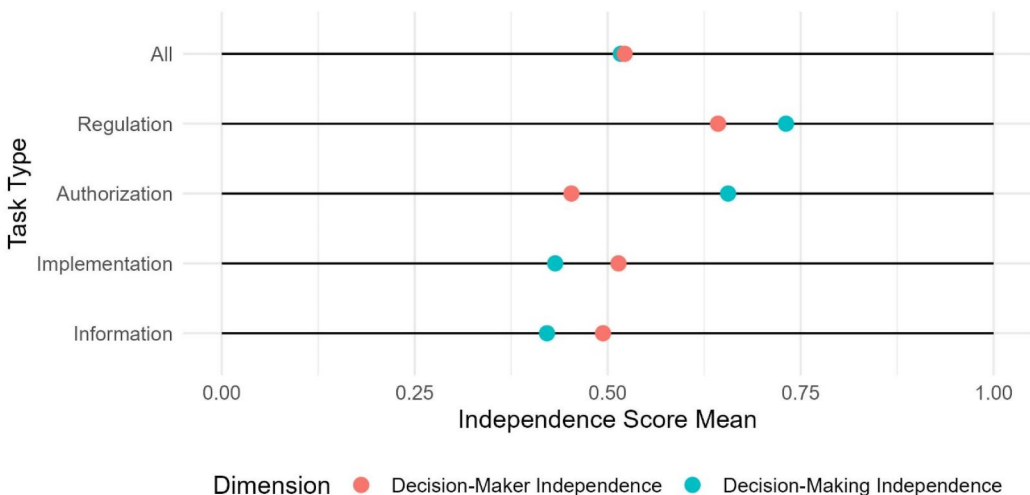


FIGURE 2 Scores for mean decision-making and decision-maker independence across agency task types.

actions, principals ensure that agency staff take their preferences into consideration when going about their work. Thus, although functional motives and expected gains from delegation exercise a strong overall independence-pull for regulation agencies, principals are nonetheless wary that agency staff becomes all too independent.

Turning to *authorization agencies*, we argued that principals expect high benefits from delegation to authorization agencies, but are also concerned about the concentrated costs that accrue to particular stakeholders. Since principals provide authorization agencies with the mandate to take decisions on the authorization of products for market access, we argued that they also seek to contain the distributive implications of such decisions by ensuring that agency staff keeps an eye on their principals' preferences. Our data support this argument: Authorization agencies are characterized by rather high-levels of decision-making independence, and at the same time relatively low decision-maker independence. In fact, on average, authorization agencies have the lowest decision-maker independence of the four types of agencies analysed in this paper. Principals thus provide these agencies with the independence to take decisions, but they also ensure that agency staff does not stray too far off principals' preferences when taking these decisions.

Our findings on *implementation agencies* are also in line with our theoretical expectations: Since implementation "on the ground" results in concentrated and immediate costs, we expect principals to opt for tighter controls of the decision-making capacities of implementation agencies. At the same time, principals have a strong interest in these agencies' ability to detect potential implementation problems and thus have an incentive to provide agency staff with relatively high decision-maker independence. This is indeed what we find (see Figure 2). Finally, we formulated no clear expectation, which of the two independence dimensions principals are likely to privilege in the case of *information agencies*, since the potential costs and benefits resulting from their actions are limited. Our findings suggest that they value decision-maker independence more highly than decision-making independence. This suggests that principals consider the ability of agency staff to independently develop relevant expertise more important than the agency's ability to decide which kind of activity or regulatory problem it prioritizes when it comes to collect information.

In Figure 3, we plot all EU agencies in the two-dimensional space constituted by decision-maker and decision-making independence. EU agencies' location in this analytical space allows us to better grasp and analyse variation in independence across and within the four types of agencies. In line with our expectations, regulation agencies cluster towards the upper-right hand corner (C). Only the telecommunication agency BEREC deviates from this pattern. While this is not the place to offer an explanation for this outlier, two possible explanations could be explored in more detail in future research. First, principals may have faced less functional pressure in telecommunications to create a comprehensively independent agency than in the crisis-ridden policy fields of energy, banking and financial markets. Second, the literature suggests that the process of agencification in telecommunication has been marred with distributive conflict, which could explain why principals sought to retain more process controls over the agency (see Blauburger & Rittberger, 2015).

Turning to authorization agencies, we find supporting evidence for our expectation that these agencies should cluster towards B in Figure 3. The foodstuff agency, EFSA, deviates from the general pattern, because it is the only authorization agency where decision-maker independence exceeds its decision-making independence. EU agencification of foodstuffs regulation occurred in the aftermath of the BSE crisis and hence as response to considerable functional pressure, yet the creation of the agency was equally fraught with conflict among member states about balancing risk assessment, where there was broad agreement, and risk management, where preferences strongly diverged (see Roederer-Rynning & Daugbjerg, 2010).

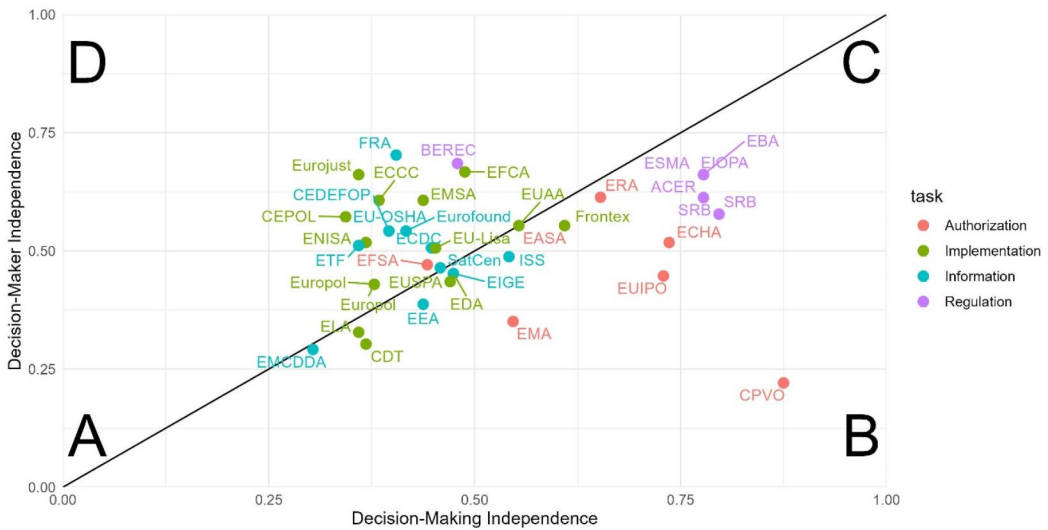


FIGURE 3 Mapping European Union (EU) agencies' decision-maker and decision-making independence.

Implementation agencies cluster less cohesively than regulation and authorization agencies (see Figure 3). The location of five implementation agencies (CDT, ELA, GSA, EASO, Frontex) diverges from our expectation that principals delegate higher decision-maker independence than decision-making independence to implementation agencies. However, most of these 'deviant' agencies have very similar levels of independence on both dimensions, since they are all closely located to the diagonal connecting A and C in Figure 3. The EU's translation center, CdT, the labor authority, ELA, and the satellite agency, GSA, provide services with little distributional consequences. The CdT does not interact with member states, while GSA's satellites are accessible to all member states. Only ELA's inspection competences are potentially intrusive and might conflict with member states' policy priorities. Still, owing to the relative absence of distributional consequences, principals may have decided that the competence-control dilemma is better mitigated by limiting decision-maker independence and thereby ensuring that principals' preferences are taken into account by agency staff. The activities of the EU's border and coast guard, Frontex, and the EU's defense agency, EDA, have distributional consequences, for example, through the use of Frontex's standing corps and EDA's involvement in the European Defense Fund. Concerns about delegation in areas of "core state powers" (Genschel & Jachtenfuchs, 2014) may have incentivized principals to exert stronger control over agency decision-makers. This argument is in line with the observation that the management board of EDA is the only board that consists of member state (defense) ministers instead of representatives of ministerial departments or national authorities.

Finally, we expect information agencies to scatter between the four poles of our two-dimensional independence space. The empirical pattern that we identified, however, shows that information agencies cluster more cohesively than we theoretically expected (see Figure 3): Most information agencies have more decision-maker independence than decision-making independence (see also Figure 2). The EU's fundamental rights agency, FRA, even has the highest decision-maker independence of all EU agencies. When deciding on the establishment of information agencies and their institutional make-up, principals seem to expect comparatively higher benefits from the expertise that independent agency staff is able to provide than

from allowing such agencies to define their own priorities and internal processes. One interpretation of this finding is that information agencies are first and foremost meant to provide substantive expertise that allows principals to identify and potentially solve regulatory problems. In turn, principals reserve the ability to pursue and decide on how to manage such problems for themselves, thus strongly limiting the potential political costs that might result from EU agencies' ability to identify regulatory problems on their own and without the principals' accord.

Overall, our empirical results broadly confirm our theoretical expectations: The formal institutional independence principals grant to agencies varies between different levels of decision-maker and decision-making independence. This supports our argument that both analytical dimensions are of importance in the actual design of EU agencies. Moreover, our findings qualify accounts that explain agencies' design on the basis of *either* functional (e.g., Majone, 2000, 2001; Pollack, 1997; Thatcher & Stone Sweet, 2002; Wonka & Rittberger, 2010) or control motives (Kelemen, 2002; Kelemen & Majone, 2012; Kelemen & Tarrant, 2011). Instead, we are able to show that functional *and* control motives explain principals' decisions on agencies' institutional design. To better understand how these two motivations inform principals' institutional design decisions, we argued that the particular task performed by an agency affects how principals balance the demand for competence (based on functional motives) and control. In confirmation of our argument, we found that principals tend to combine decision-maker and decision-making independence in variable, yet systematic ways, depending on the respective task to be fulfilled by agencies.

Our argument allows us to develop expectations about the relative weight of competence and control motives in relation to agencies' task type and hence where principals are likely to place an agency in relation to the four poles that define the institutional design space. Obviously, our explanation neither allows for point predictions, nor is our task-variable the only plausible explanation for principals' institutional design choices. The variation in institutional design among agencies of the same type suggests that other explanatory factors are likely to be at work. For instance, delegation decisions can be highly path dependent (Thatcher, 2011) and principals and other stakeholders can learn about agencies' actual behavior (Wood, 2018), which can affect subsequent design decisions. Another important strand of research highlights that agencies' reputation can affect principals' control behavior: When agencies enjoy a strong reputation among their stakeholders, principals can be disincentivized from exercising control (see, e.g., Busuioc & Rimkutė, 2020; Bertelli & Busuioc, 2021), which can affect the use of formal control mechanisms and also subsequent institutional design decisions. One interesting question for future research then is how agency behavior and reputation affect the institutional design of agency reform: Will principals tighten or rather loosen formal controls as a response?

6 | CONCLUSION

EU principals face a dilemma when designing EU agencies: Granting agencies far-reaching independence allows them to develop competences for effectively solving policy problems. At the same time, this bears the risk that agencies counteract principals' preferences. If principals, however, tighten the reins, they reduce agencies' ability to provide for effective policy solutions. Whereas Competence-Control-Theory sees an inherent trade-off – principals have to choose between either competence or control – we posit that principals can mitigate this dilemma, because from the analytical perspective taken in this paper they have a wider, two-dimensional

institutional choice set, which allows them to calibrate competence and control. Depending on the task an agency predominantly performs – regulation, authorization, implementation or information – we expected principals to weigh the benefits and costs of delegation differently, such that different types of agencies should cluster in different areas of our two-dimensional analytical space.

Our empirical findings thus support our general argument that principals seek to mitigate the competence control dilemma by leveraging the two different dimensions of independence, decision-making and decision-maker independence. For instance, with regard to authorization agencies, principals seek to balance competence and control-motivations by carefully calibrating differential grants of decision-making and decision-maker independence: They provide authorization agencies with comparatively high levels of decision-making independence – providing it with the capacity to act – to allow the agency to do its job properly. At the same time, they limit agencies' decision-maker independence by keeping a rather tight reign over agency staff in order to avoid that the agency takes decisions that stray too far from the principals' preferences.

While this paper advances our empirical and theoretical knowledge on patterns and drivers of EU agencies' independence, there are also notable limitations. There are putative limits to institutional design decisions. Institutional path dependence can circumscribe principals' design choices: The (non-)existence of prior delegation to agencies at the domestic level as well as the prevalence of EU-level regulatory networks can influence agencies' institutional design (see Levi-Faur, 2011; Thatcher, 2011). Explanations that emphasize institutional isomorphism and hence the emergence and diffusion of an “appropriate model” (Jordana et al., 2011) of agency governance equally hold that agencies' institutional design is path dependent, most likely leading to institutional design clusters in the institutional design space over time (but see Ruffing et al., 2023). Finally, reputation-based theories of agency behavior would consider institutional design decisions to be affected by the reputational authority EU agencies have acquired amongst stakeholders (Bertelli & Busuioc, 2021; Busuioc & Rimkutė, 2020). To probe these explanations in future research will require a research design that is sensitive to changes over time in order to capture how prior delegation decisions affect subsequent ones, and how agency behavior affect principals' institutional design decisions.

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DATA AVAILABILITY STATEMENT

The data informing the findings of this study are available from the authors upon request.

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ENDNOTES

¹ See Ruffing et al. (2023) for a list of all items for each category and dimension of the index: Table A4 for the values of every category for each EU agency and Figures A10 and A11 for a graphical representation of the dimensional values.

² One caveat is the small size of the task groups. Especially the groups for regulation agencies ($N = 6$) and authorization agencies ($N = 7$) are small compared to implementation ($N = 14$) and information agencies ($N = 11$). Yet, this is the full population of EU agencies.

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