

Draft paper on EU agencies

Working title: “Working conditions of statutory and non-statutory staff in EU agencies”

To be presented at the USF Congress

Abstract

The paper presents anecdotal evidence and statistics from a set of agencies on working conditions and social dialogue. After presenting some evidence for recurring problems in agencies, the importance of collective action is highlighted. The paper presents a series of strategies used to guarantee the implementation of the Staff Regulations and the alignment of the Gips with Commission Decisions. The paper will conclude with reflections on what works and what not and stress the need for a more united and stronger trade union movement in and across agencies.

Introduction

- Eu agencies are a relatively recent creation to implement the work of the European institutions. The first agencies were established in the 1970s to decentralize EU policy making.
- The creation of EU agencies is often describe as a move towards the decentralization of the regulatory authority (and the delegation of responsibility) from a supranational political body, such as the Commission, to more technocratic (efficient), independent institutions (Levi-Faur, 2011: 811). They are designed as administrative innovations complementing or competing with the established structures of regulatory governance such as the European Commission (Rittberger and Wonka 2013: 33), emerging as part of a new ‘regulatory architecture’ in Europe (Levi-Faur 2011).
- Groenleer (2009: 96-101) has identified three waves of agency creation: the first one started in the mid-1970s with the creation of agencies under the former first pillar. Their mission was to offer expert information to the EU Commission (i.e. CEDEFOP and EUROFUND). The second wave started in the early 1990s when several agencies were created in areas dedicated to social policy and regulation. The third wave started in the early 2000’s and they included an important expansion towards the creation of the European Supervisory Authorities (ESAs) and three agencies (i.e. EBA, EIOPA and ESMA) amidst the 2008 financial crisis.
- EU agencies can be defined as “EU level public authorities with (a distinct) legal personality and a certain degree of organizational and financial autonomy that are created by acts of secondary legislation in order to perform clearly specific tasks.” (Kelemen, 2005: 175-6; Kelemen & Tarrant, 2011: 929).
- Today around 17% of the EU staff works in agencies today (Official Journal of the European Union, 2018, C 434/12).
- The move towards the agencification at the European level has been termed as the reconfiguration of the EU executive power (Egeberg and Trondal, 2009), but also as the emergence of a new actor with influence over the policy-making and the whole EU

institutional framework (Coen and Thatcher, 2008; Wonka and Rittberger, 2010). They have been set up by the EU to perform technical and scientific tasks that help the EU institutions implement policies and take decisions.

- Sometimes called regulatory agencies, they were designed to be a public authority or government agency responsible for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity. In this capacity they were designed to act independently.
- Regulatory agencies are typically part of the central government but have statutory authority to perform their tasks with oversight from the legislative branch. The existence of independent regulatory agencies is justified by the complexity of certain regulatory and supervisory tasks, and the drawbacks of political interference.
- According to a judgement of the European Court of justice, however, the EU Commission (High Authority) cannot delegate executive powers to EU agencies without an explicit decision of the Member States (C-9/56 and C-10/56), although an explicit Treaty base is not indispensable. If powers are delegated, they cannot be 'discretionary' to such an extent that the 'wide margin of discretion' might enable the 'execution of actual economic policy' (Pelkmans & Simoncini, 2014).
- Any delegated powers should be embedded in or accompanied by guarantees of judicial review, transparency and active consultation. To that end, it is also required to delegate powers under precise rules and within boundaries carefully defined by the EU legislator (*idem*).
- As a result, in today's EU jargon, the term used for some agencies is "decentralized agencies". Other agencies that have a regulatory role are termed "executive agencies" and usually closely linked to the Commission. For example, the management of executive agencies is entirely staffed with EU officials.
- Unlike executive agencies, "decentralised agencies" are not established under a general legislative framework. Each "decentralized agency" has its own legal basis. Not all of them have the word "agency" in their name. Some agencies have a regulatory role (e.g. EASA), others have dedicated operational tasks (e.g. EU-IPO, Eurojust) and others are centres of expertise in a specialised field, with advisory and information-gathering functions (Eurofound, Cedefop and EU-OSHA, ETF). A fourth group is primarily involved in facilitating and co-ordinating cooperation between the Member States' authorities in specific fields (e.g. Eurojust, FRONTEX).
- Articles 263 and 277 TFEU also offer an instrument to put the European Court of Justice in a position to "review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties" (TFEU, Article 263).
- In a general way, decentralized agencies do not exert any discretionary powers, but see their task limited to "help the EU institutions implement policies and take decisions". Executive agencies are closely linked to the EU Commission via their management.
- Executive agencies typically have 75% contract agents as staff, and one of the main issues in this type of agency is the glass ceiling for TAs – as management positions are reserved for seconded Commission officials, and as the Commission also tries to second their staff on any other positions of "responsibility" below HoU level. Another issue is the ongoing absence of a CPPT (Joint Committee on Security and Hygiene), the lack of a frame work agreement with

Trade Unions, the lack of secondments for statutory staff representatives, and a number of uncertainties related to interagency mobility and career perspectives per change of staff category.

- Moreover, in Executive agencies there is a number of doubts concerning the actual autonomy (and in my view: the fictionality of the legal personality) of the Executive Agencies, the role of the Steering Committees vs. the role of the Commission / parent DGs, and the re-organisation of Executive Agencies under the next MFF. E.g. the Commission discusses again whether to centralise a number of tasks, such as HR functions of the EAs in one EA (which would leave the Director as AHCC but without the support of a HR Unit...?).
- Only three agencies with trade union member organizations affiliated to the USF have a tripartite governing board: Eurofound, EU-OSHA and Cedefop. The influence of the EU Commission is minimized by design in these three agencies. In The other two cases, the EU-Commission is closely involved in the supervision of the management of the ETF and in the case of Eurojust, seconded national senior civil servants. Each form of governance has its advantages and disadvantages.
- In the case of decentralized agencies with tripartite governing board, the selection of members of the governing board is crucial as is the dedication to the task of the members of the governing board. Also conflicts of interest are reported.

This paper focusses mostly on so-called regulatory or de-centralized agencies. The issues encountered do have their origin in the governing structure of each agency. This has also been dealt with in a recent flyer from USF after the disastrous case of mismanagement in the Malta agency EASO which has lead to ten court cases filed at the European Court of Justice, an OLAF investigation and eventually the (forced?) resignation of their director, José Antonio Carreira.

The following table describes the role and governance structure of those agencies affiliated to the Union Syndicale Federale.

Agency (est.)	Role	Governance structure
Eurofound (1975)	Eurofound provides research-based input for the development of social, employment and work-related policies	Eurofound is managed by a director and deputy director, who report in turn to a Governing Board. The Board is made up of representatives of employers, workers, EU governments and the Commission. An executive board, known as the Bureau, meets every two months to facilitate the Governing Board's work.
ETF (1994)	The ETF supports human development in neighbouring countries	The Board appoints the ETF's director for a 5-year period, which may be extended for a further 3 years. The ETF's Governing Board comprises a representative of each EU country, three representatives of the European Commission, three independent experts nominated by the European Parliament and three observers from partner countries. The governing board is chaired by one of the 3 European commission representatives and meets twice a year to discuss and adopt the work programme and annual budget.
Cedefop (1975)	Cedefop provides the data on which vocational education and training policy in the EU is based	The director is responsible for the overall management of the agency's work and staff. Cedefop is a tripartite agency. Its Governing Board comprises representatives of national

		governments, employers' organisations and trade unions and the European Commission.
EU-OSHA (1994)	Collect, analyse and disseminate information for those involved in safety and health at work	The Director manages EU-OSHA and is accountable to a tripartite Governing Board (EU governments, employers, workers) and the European Commission. It sets strategies and goals. A smaller steering group of the Board, the Bureau, oversees the operational performance.
Eurojust (2002)	Helps national authorities cooperate to combat terrorism and serious organised crimes involving more than one EU country	Eurojust's policymaking body ('College') comprises one senior prosecutor or judge from each EU country. Each of these national members oversees a national desk. The administration is led by an Administrative Director.

A general question is to ask as to why the role and involvement of the EU Commission is so different in decentralized agencies?

Why are governing boards involved to different degrees in internal governance of agencies?

Who is ultimately responsible for the respect and implementation of Staff Regulations and GIPS in agencies and who is ultimately going to supervise this?

Commenté [JJ1]: Please enter some of your comments and reflections here.

Respect of Staff Regulations Article 110

The rules that are applied in decentralized agencies should be de-facto same as those in the core institution of the EU. Article 110 prescribes that “the general provisions implementing these Staff Regulations shall be adopted by the appointing authority of each institution after consulting the Staff Committee and the Staff Regulations Committee” and that “Implementing rules adopted by the Commission to give effect to these Staff Regulations, including the general implementing provisions referred to in paragraph 1, shall apply by analogy to the agencies. To that end, the Commission shall inform the agencies of any such implementing rule without delay after adoption” (SR, Article 110, 1§). The rules adopted by the commission shall enter into force in agencies at the latest nine months after their entry into force at the Commission or nine months after the date on which the Commission informed the agencies of the adoption of the respective implementing rule.

The only exception is foreseen when some general implementing provision does not make sense to be applied in an agency. The SR expressly stipulates that “by way of derogation, an agency may, before the expiry of the nine-month period referred to in the second subparagraph of this paragraph and after consulting its Staff Committee, submit to the Commission for its agreement implementing rules which are different from those adopted by the Commission. Under the same conditions, an agency may request the agreement of the Commission to the non-application of certain of those implementing rules. In the latter case, the Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission” (SR, Article 110, 2§).

Are there any reflections regarding this way of implementing rules in other agencies? Please add. Also some comments on the so called standing working party would be welcome.

Commenté [JJ2]: Please add and complete.

Social dialogue in agencies

Social dialogue as it is experienced at Eurofound does not necessary meet expectations. At least in the past, under the former head of HR, social dialogue did not meet the criterium of being a consultation, which necessary means that staff has a say, must be heard and can influence on the decision making, even if this is not guaranteed. The practice at Eurofound stopped short of being more a right of information. At most, management always claims that compliance with the EU Commission is the primary reason behind the implementation of rules, even if the entitlements do no longer seem to meet the allowances of the Commission decisions.

The move to implementing Article 110 after the 2014 reforms, became a welcomed occasion to dismiss the social dialogue altogether. It was expressed by management that the social dialogue will now be taking place at the standing working party in Brussels, which of course excluded any staff representation. The Staff Committee at the time and the USEF did vehemently protest this conception or reinterpretation of the rules by Eurofound management. The so-called “Joint working group” where trade union reps and the Staff Committee meets with management representatives was re-defined as a “technical group” without any specific mission (Joint Working Group (JWG) from 28 August 2017). Management also stressed that a document signed by the social partners on 2013 was the terms of reference for social dialogue. This document clearly mentions that discussions between the social partners cannot be revealed to the respective constituencies, effectively becoming a gagging order.

What is the experience with social dialogue in other agencies?

Commenté [JJ3]: Social dialogue in other agencies.

HR policy strategies

Establishment plan and HR budgets (Title 1)

Budget 2018	Agency				
	Eurofound ¹	ETF	CEDEFOP	OSHA	Eurojust
1100 Basic salaries	7,491,000				
1120 Further training for staff	155,000				
1175 Other services & work sent out	175,000				
1177 Trainee officials (stagiaires)	101,000				
1180	50,000				

¹ Source: Annex to WPR-2017-08-GB, https://www.eurofound.europa.eu/sites/default/files/eurofound_2018_budget_by_budget_lines.pdf.

Misc. expend. on staff recruitment											
Total Title 1	13,400,000										
Total Final Budget	20,571,000										
Establishment plan 2018 (total) ²	91										
2016											
Permanent	16										
Temporary	79										
2017											
Permanent	15										
Temporary	78										
2018											
Permanent	11										
Temporary	80										
Contract agents											
	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	
FGIV	3	6									
FGIII	4	3									
FGII	5	2									
FGI	2	2									
Total	15	14									
Temporary Agents / Officials											
>AD8	31	31									
<AD7	5	4									
>AST8	7	7									
<AST7	28	28									
Total	71	70									

Source: Financial Information on the main website of each Institutions: [Eurofound 2018 budget by budget lines](#) and [Eurofound 2018 budget: Official Journal of the European Union C108/7](#).

Eurofound's budget broken down per staff member is around 224K Euro per year per member of staff. The personnel costs (Title 1) make up 65% of the total budget and basic salaries are 55.9% of Title 1, the total of all personnel cost. The average basic salary per member of staff is A little less than 1% is spent on training and recruitment of staff was .37% of Title 1, which seems very low. Recruitment cost was linked to the recruitment of a head of unit for HR and research³ which represents a recruitment cost of 30% of the average annual basic salary. Not only is this high in comparison with standard estimates (15-25%) but this should be considered as an unnecessary additional cost that are increasing with turn-over.

² Establishment as published in the Official Journal C 108/10. 22.3.2018, https://www.eurofound.europa.eu/sites/default/files/eurofound_budget_2018_official_journal_c_108_7_on_22_february_2018.pdf

³ Source: https://www.eurofound.europa.eu/sites/default/files/eurofound_2018_budget_by_budget_lines.pdf

Recruitment Strategy

As shown in the above table, recruitments have mainly increased for contract agents, and tasks linked to research activities. This is very problematic, as contract agents are supposed to be used for intermittent replacements and non-recurrent tasks.

Is there a procedure to inform candidates of their right to challenge an unfavourable decision in this area, for example, a decision excluding them from a competition? Are there cases where this has been refused?

Commenté [JJ4]: Please complete your own contributions

Lately at Eurofound is only recruiting contract agents to replace temporary agents and officials. Mainly FGII for admin jobs and FGIV for research posts, replacing staffs that were formerly on AST and AD grades for temporary agents and officials. All posts offered are fixed term, renewable once (essentially FGII) or potentially becoming permanent (mainly FGIV). In some cases TA vacancies were "offered" to the compliant contract agents without a proper internal competition. The precondition for this was a dubious "director's decision" from 2013 whereby competitions were organized to form reserve lists for two distinct grades: temporary agents AD5 and contract agents FGIV but each competitor would qualify for both at the same time. This practice was deemed illegal and had to be stopped. Indeed the successful participant would be offered a contract agent post and after a few years of monitoring "offered" a temporary agent post after vacancy.

One recruit was hired in 2012 on a FGIV post after passing a competition for contract agents. He was nevertheless considered as a research officer and once renewed in May 2015. It was argued that he did not partake in the competitions mentioned above (2013) and so could not access to any internal competitions for temporary agent posts. Nevertheless, contract agents should be allowed to participate in internal competitions after three years of service or at least should be able to claim a revision of their contracts and a possible re-qualification should be possible. The contract agent was not renewed in 2018 and has left Eurofound since, despite the fact that he has had successive positive evaluations. He was part of three members of Eurofound staff (out of four) that were not renewed or knew difficulties after having sought the support of the union.

Turnover

Recently, the European Court of Auditors has identified high staff turnover as a risk to the implementation of the work programme in some agencies (Ares(2018)106151 - 08/01/2018). The attractiveness of the contracts and the remuneration offered for posts in certain agencies are sub-optimal. High turnover comes at a high cost to organizations. Employee turnover creates both tangible and intangible costs. The tangible costs include recruitment, selection, training, adjustment time, possible product and/or service quality problems, and the costs of agency workers/temporary staff (Morrell, Loan-Clarke and Wilkinson 2004).

The intangible costs, which may be even more significant than the tangibles, involve the effect of turnover on organizational culture, employee morale, social capital and organizational memory (Morrell et al. 2004). One reason why a high rate of voluntary turnover should be alarming for an organization is that employees with better skills and abilities and thus better chances to find a better position will be those to leave while those who remain will be those who cannot find other jobs (Tanova, C., & Holtom, B. C., 2008).

Eurofound	2016	2017	2018
Movement			
New recruits	5	2	6
Departures	8	8	6
Retired	3		2
Contract ended	3	2	2
Left for another position	2	6	2

Eurofound	2016	2017	2018
Movement			
New recruits	5	2	6
Departures	8	8	6
Retired	3		2
Contract ended	3	2	2
Left for another position	2	6	2
TURNOVER	8%	8%	6%

The turnover at Eurofound has been exceptionally high over the last couple of years. In 2016-2017, eight people have left the Foundation for another post elsewhere (out of 100 staff), two officials, three contract agents (one fixed-term, one permanent, the other AST1 refusing to be reclassified as FGI in a new position) and temporary agents 2f for the rest, all permanent. It appears that all the staff leaving were to some degree unhappy with their work environment and career perspectives.

The turnover rate for 2017 and 2018 reached 8% and has slightly dropped to 4% in 2018. As a comparison, the average voluntary turnover rate in the private industry in the US is 13% in 2017. Estimates for the private sector in the EU show turnover rates ranging from 7% to 12% (Croucher et al. 2011). It is quite unheard of such high turnover rates in the public sector and I guess never heard of in the European public service. When confronted with the current high turnover our head of HR just pointed out that for him the rate is not high enough!

In the case of EASO (not affiliated to USF) the European Court of auditors highlighted major risks in the lack of a solid governance structure with effective controls, which led to numerous instances of material non-compliance with the legal framework, notably in relation to recruitment regarding the principles of competition, transparency, equal treatment and non-discrimination.

How is the situation in other agencies?

Commenté [JJ5]: Please fill in.

Promotions

The average promotion speed per grade are laid down in Annex IB of the Staff Regulations, by means of 'promotion rates' expressed in percentage points. These are not to be understood as individual

entitlements for promotion, but counted across the entire Commission population, over a period of 5 years. The so-called 'guarantees' emitted by Commissioner Sefcovic guarantee a minimum percentage of population in a grade to be promoted at average speed or quicker for the various types of grades (3-4-5 years).

Promotions in agencies do not follow the prescriptions from other EU bodies. Some managers at Eurofound were promoted at a regular pace every two years, even if the average seniority in the grade is normally much longer (>3 from AD8 on), while other member of staff are not promoted at all for very long times. At least three managers at Eurofound were promoted from AD7 to AD12 in just about twelve years. Taking the reference for the commission this career would on average take at least 19 years. This fact was criticized by the

Grade	Years in the grade on average until promoted	Rate of staff to be promoted after time in the grade	Grade	years on average in the grade until promoted	Share of staff to be promoted after time in the grade
			AST1	3	85%
			AST2	3	85%
			AST3	3	85%
			AST4	3	85%
AD5	2,8	85%	AST5	4	75%
AD6	2,8	85%	AST6	4	75%
AD7	2,8	85%	AST7	4	75%
AD8	3	85%	AST8	4	75%
AD9	4	75%	AST9	12	
AD10	4	75%	AST10	5	
AD11	4	75%			
AD12	6,5				

One member of staff hired as a temporary agent AST1 in 2014 was initially proposed to be promoted after three years of service to AST2, but a lack of vacancies in the establishment plan have prevented this. The fault was an evident mistake of the human resources department. A change in the establishment plan would have been possible but was not done. The member chose not to continue the procedures after submitting an Article 90.1. She was finally promoted the following year, but without backdating her salaries to the previous year.

Staff retention problems

Workload

Grievances and procedures

In its report of 2018, the EU Ombudsman has declared that EU bodies should help to mitigate adverse working conditions which increase the risk of harassment, such as stress, heavy workload, workplace conflict, a lack of clear roles and poor managerial practices. Regular assessment of

psychosocial risks at work should be a key measure. Further, a clear anti-harassment policy should demonstrate a commitment that harassment is not tolerated. Such a policy should explain what constitutes harassment and set out a procedure that includes both formal and informal actions to follow up incidents. The anti-harassment policy should be clear and precise, so that staff members are aware of the procedures and how to use them. It should be monitored regularly and improved, where necessary.

One case of harassment was signalled to the AHCC of Eurofound and an internal investigation was launched. The investigation concluded that there was no harassment per se, but that the grievances were serious and worth investigating. A related issue dealing with a breach of data confidentiality is now lodged with the European Court of Justice.

Governance of Eu Agencies

The literature dealing with the phenomenon of EU agencies has extensively relied on the principal-agent perspective to study the political logic behind the governance of agencies, to spell out the functional and political drivers behind their creation (Heims 2015, Font & Perez 2015, Dehousse 2008, Christensen and Nielsen, 2010). The principal-agent logic also meant trying to understand how their design makes agencies more or less autonomous from multiple principals and how accountable they are to other EU institutions and member states (Kelemen and Tarrant, 2011; Busuoc and Groenleer, 2012).

In 2011, The EU Parliament's budgetary control committee requested to put all EU agencies under increased scrutiny following reports from the European Court of Auditors critical of the 2009 accounts. The MEPs have raised concerns that agencies are not doing enough to guarantee the independence of staff and experts, and over weaknesses in procurement and recruitment.

In his address to Address to Heads of EU agencies in 2015, the Ombudsman identified a series of incidents related to systemic issues of possible maladministration, including first, the so-called 'revolving door' challenge whereby officials leave the Commission and take up private sector roles, second, how the transparency and balance in terms of its system of Expert Groups is assured. Both inquiries come under the common theme of 'influence', seeking answers to questions such as: who the key influencers in EU decision-making are, how are laws and other decisions made, who or what has brought their thinking or interest to bear on what ultimately emerges from the legislative or regulatory process.

Further the Ombudsman also pointed out that "there is a residual, but in no way negligible as far as raw statistics are concerned, category of personnel-related cases that I will not go into now but that do, at times, raise sensitive and delicate issues, including harassment, discrimination and unfair dismissal (European Ombudsman (2015), Address to Heads of EU agencies – European Ombudsman).

Recently it transpired that at the EU asylum agency (EASO) in 2018, over a tenth of the payments made by the EU's asylum agency, amounting to €7.7 million, involved non-compliance with EU financial rules, according to the body that audits the finances of EU agencies. In addition to this, the European Court of Auditors points out that a critical situation in the human resources at the agency has contributing to its budgetary malpractice — mainly relating to public procurement and

recruitment (Politico, 9.10.2018). Earlier reports of maladministration, psychological violence and harassment had led to the resignation of the EASO director in June 2018 (Politico 6.6.2018).

For a number of agencies, the European Court of auditors mentions that the hierarchical position of an accounting officer within an agency did not guarantee his or her independence. As an example, the accounting officer at Eurofound was hired as an AST2 grade with a fixed-term contract. Similar issue exists at EU-OSHA.

The new regulations (2019/217) in place since February 2019, replacing the Founding Regulations of Eurofound now make sure that the position of the director is no longer unchallenged as the role of AHCC (Appointing Authority) is given to the management board. Further the new rules foresee that the Management Board delegates powers to the now Executive Director and sets up the conditions under which the delegation of powers can be suspended.

The Executive Director of Eurofound is now a member of staff and no longer a seconded temporary agent of the EU Commission. The Executive Director is engaged as a temporary agent of Eurofound under point (a) of Article 2 of the Conditions of Employment of Other Servants and appointed by the Management Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure. Further, the selected candidate is invited to make a statement before the European Parliament.

This is a very dramatic change to the initial regulations which invested all powers in the agency director.

Summary and outlook

Are some agency directors not enough aware of the modalities in public services and force a liberal HR agenda on staff?

Does a lack of structures conduct to abuse of power and maladministration?

Are the supervisory organs not playing their part in overseeing management?

Is the EU Commission not taking too much distance to managerial issues in agencies by claiming it has no remit in agencies?

What strategies should unions pursue to counter aversive behaviour by top and middle management?

What can USF do?

The role of the trade union is to act as a counsel in cases of maladministration and abuse of power. Managerial decisions are of course not always wrong and unfounded. However, the relative impunity of management, the lack of supervision may conduct to occasional abuses. The trade union should help victims of harassment, denounce conflicts of interests and fraud and act as an additional supervisory organ. The level of organization and interconnectivity of the trade union is of high importance in such a context.

The union can also have supportive functions, encouraging and helping with HR issues. It should be encouraged that

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