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**EU Agencies and Security of Europe: Challenges of Institutional
Cooperation in the Principal-Agent Concept**

Master's Thesis

Olomouc 2024

I hereby declare that I have independently prepared this thesis on the topic "EU Agencies and Security of Europe: Challenges of Institutional Cooperation in the Principal-Agent Concept" in 116 645 characters and have acknowledged all sources used.

In Salzburg, 2024

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List of abbreviations

Common Foreign and Security Policy	CFSP
Common Security and Defence Policy	CSDP
Coordinated Annual Defence Review	CARD
EU External and Security Actions	SESA
European Command and Control System from strategic to tactical level	ESC2
European Defence Agency	EDA
European External Action Service	EEAS
European Public Prosecutor's Office	EPPO
European Union	EU
European Union Institute for Security Studies	EUISS
European Union Satellite Centre	SatCen
European Union Space Programme Agency	EUSPA
Geospatial Information Hub	GeohuB
High Representative of the Union for Foreign Affairs and Security Policy	HR
HUB for EU Defence Innovation	HEDI
Permanent Structured Cooperation	PESCO
Political and Security Committee	PSC
Principal-agent concept	PA concept
Treaty of the European Union	TEU
Western European Union	WEU

Introduction

Imagine a common situation that many of us have encountered. You have a toothache and are unable to solve the problem yourself. So you go to see a specialist - a dentist. You enter his office, hoping that the treatment will not be too expensive, but at the same time, you realize that you do not know how much time, effort, and money it will take to solve it. You find yourself in a typical principal-agent relationship, where you have chosen the agent, the dentist, because of his expertise, which you lack. This relationship is usually accompanied by information asymmetry and a potential conflict of interest between the two parties – while on the one hand, the dentist may be interested in making more money from your treatment, on the other hand, you primarily want the most efficient and least expensive solution to the problem. This simple example illustrates the basic tenets of the principal-agent relationship. In academic research, scholars have found a way to adapt this concept to more complex settings. The reason behind it is very simple – to allowing us better understand, for example, the democratic nature of the EU's institutional structure. This thesis will explore a similar analysis in the context of the complex environment of the European Union (EU) and its agencies.

EU agencies are autonomous legal entities whose main purpose is to assist the EU institutions in performing their activities properly by carrying out specific tasks under EU law. The scope of European integration has been extended to include the Common Foreign and Security Policy (CFSP), which has led to the creation of several EU agencies that differ in certain specific ways from their traditional "classmates". As EU agencies are mainly analyzed in the area of the single market (former first pillar), this thesis will focus on areas that were previously the domain of the intergovernmental approach to EU integration – the CFSP. The main objective of the thesis is to identify potential challenges in the cooperation of selected EU agencies with other EU institutions and to subject them to a comprehensive analysis. This will be facilitated by developing an analytical framework for examining inter-institutional cooperation in the context of security within the principal-agent concept (hereafter referred to as 'the concept' or 'PA concept'). For a truly comprehensive analysis, the debate on the delegation of powers within the EU will be approached, both in terms of their recent development and in the context of the constraints posed by the jurisprudential judgment of the so-called Meroni doctrine. In seeking an answer to the above main research question of this thesis, three additional research questions were formulated, namely:

(RQ1) Can the principal-agent concept be adapted to analyze the security cooperation at the level of EU institutions/agencies, and if so, how can this adaptation be conceptualized?

(RQ2) How is the delegation of powers within EU agencies structured, and how is the current interpretation of the Meroni doctrine influencing the nature of this delegation?

(RQ3) What are the principal-agent concept's similarities and differences when applied to the CFSP agencies, and what are its implications?

The created analytical framework will be used for a comparative study of specific security-focused EU agencies, such as the European Defence Agency (EDA), the EU Satellite Centre (SatCen), and the EU Institute for Security Studies (EUISS). EDA coordinates defense cooperation and enhances member states' capabilities, while SatCen provides the necessary geospatial information for conflict monitoring. EUISS supports the formulation of foreign policy by providing analysis and strategic advice. Together, within CFSP, they provide the necessary tools to ensure the EU's strategic independence.

Through comparative analysis, the research seeks to identify their set framework for cooperation with other institutions, with a complementary view of the similarities and differences between these agencies. Despite numerous academic papers on the principal-agent relationship at the global level, its potential for studying the EU, particularly in analyzing EU agencies, remains underutilized, although this area of research is slowly gaining attention. At the same time, it is necessary to mention the uniqueness of the topic, which has not yet been treated in a way that allows for comparison in the context of the application of the theoretical framework of the PA concept. Hence, this thesis seeks to fill these research gaps by applying the PA concept to EU agencies within the framework of the CFSP. The selection of agencies was no mere coincidence. As already mentioned, the three agencies working in the CFSP landscape are characterized by their particularities and distinct settings of the cooperation paradigm. Simultaneously, CFSP plays a significant role throughout the EU's existence, if not more so today than before. It includes the framework of the Common Security and Defence Policy (CSDP), which ensures the development and creation of political and military structures within the EU. To achieve its objectives, a robust institutional structure is essential, comprising not only the primary EU institutions but also the EU agencies and other bodies (entities). It is the rationale behind the establishment of these three EU agencies marks elements of certain differences typical of the intergovernmental area of cooperation in which the agencies operate.

CFSP Agencies

The European Satellite Centre's (SatCen) life started under the Western European Union (WEU) structures for the first ten years of its existence, later integrated into the EU as an agency in 2001. Various factors initiated the establishment of this agency, the primary one being to deliver a comprehensive and actionable analysis of geospatial intelligence, utilizing satellite imagery and other pertinent data sources. SatCen is a purely support agency that provides assistance to CSDP missions and other related CFSP matters, in particular to the Council. While part of the WEU structures, SatCen was set up for a temporary period of three years, but it has nevertheless proved its worth, and its creation was considered an incredibly forward-thinking choice, according to Sorin Ducar, the Director of SatCen.¹ Today, SatCen is mainly responsible for providing products and services that result from the exploitation of pertinent space assets and collateral data, such as satellite and aerial imagery, and now consists of 146 employees.²

The European Union Institute for Security Studies (EUISS), established in 2001, is dedicated to fostering a unified security culture across the EU, advancing the CFSP, and stimulating strategic discourse within Europe.³ Similar to SatCen, it represents a gradual transfer of the WEU's mission to the EU. As an EU-funded think tank, its primary task is to collect and process information for EU officials and experts and, ultimately, to serve as a link between the EU institutions and this wider community of external experts, including security actors.⁴ It is also one of the three agencies that continue to have a Board of Appeal (BoA), which can overturn a decision of EUISS, order rule on reimbursement of justified expenses for an application or material damages.⁵

The European Defence Agency (EDA) was formally established in 2004. Being the first truly EU-wide armaments managing institution in the EU,⁶ it was never here to replace the

¹ WEBER, Gesine. 30 years of the European Union Satellite Centre (SatCen). *The European Security and Defence Union*, 2022, p. 41

² Ibid.

³ TURNER, Barry. Main EU Agencies. *The Statesman's Yearbook: The Politics, Cultures and Economies of the World 2013*, 2012, p. 76.

⁴ THE EUROPEAN UNION INSTITUTE FOR SECURITY STUDIES. Summaries of EU Legislation. EUR-Lex. 2014. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A25010101_2&qid=1710336119007>.

⁵ Article 28(3), b) - d) of the Council Decision (CFSP) 2016/1182 of 18 July 2016 concerning the Staff Regulations of the European Union Institute for Security Studies, OJ L 195, 20.7.2016, p. 31–74.

⁶ OIKONOMOU, Iraklis. The European Defence Agency and EU military space policy: Whose space odyssey?, *Space Policy*, 2012, 28:2, 102-109, ISSN 0265-9646. Available at: <<https://doi.org/10.1016/j.spacepol.2012.02.008>>

defense procurement agencies and mechanisms of member states but rather to complement them.⁷ EDA plays a crucial role not only in crisis management but also in the broader context of defense cooperation within the EU. Its creation, influenced heavily by different visions from member states about the future of EU defense integration, highlights its foundational role in enhancing the operational capacity and strategic autonomy of the EU. With the High Representative of the Union for Foreign Affairs and Security Policy (HRVP), who wears multiple hats, the EDA functions as a coordinator of the activities of Member States.

The three agencies mentioned above have in common their accountability to the Council. However, as the analysis later in this thesis will show, these agencies differ in many ways, not only in their mandate and mission, but also in the control mechanisms set up for these agencies. Their relationship with their principals is also different, and the scrutiny regime put in place reflects the degree of independence that has been invested in these agencies to carry out their activities. Nevertheless, the author expects that the analysis will reveal some similarities in the structure and management of two agencies, in particular the ones that have been transferred from WEU structures, i.e. SatCen and EUISS. The EDA, being the most influential of these three agencies and whose activities are crucial in today's global context, should be subject to strict oversight by the principals.

State-of-art

The PA concept has been subject to scholarly attention mainly because of its universality of use across a wide range of disciplines. With the foundations laid by Moe⁸ and Mitnick⁹ in the context of organizational economics on public bureaucracy, many scholars have focused on developing the basic elements of concept¹⁰ and mapping its evolution.¹¹ Within the application of the concept in EU studies is the work of Mark Pollack that marks a significant turning point, showcasing the concept's utility for understanding the influence of supranational actors within

⁷ TRYBUS, Martin. The new European Defence Agency: A contribution to a common European security and defence policy and a challenge to the Community acquis?. *Common Market Law Review*, 2006, 43.3, p. 683.

⁸ MOE, Terry M. The new economics of organization. *American journal of political science*, 1984, pp. 739-777.

⁹ MITNICK, Barry M. Fiduciary rationality and public policy: The theory of agency and some consequences. In: *1973 Annual Meeting of the American Political Science Association*, New Orleans, LA, 1973, pp. 1-17.

¹⁰ e.g. WATERMAN, Richard W, MEIER, Kenneth J. Principal-agent models: an expansion?. *Journal of public administration research and theory*, 1998, 8.2; MCCUBBINS, Mathew D.; SCHWARTZ, Thomas. Congressional oversight overlooked: Police patrols versus fire alarms. *American journal of political science*, 1984, 165-179.

¹¹ e.g. MILLER, Gary J. The political evolution of principal-agent models. *Annual Review of Political Science*, 2005, 8:1, 203-225

the EU.¹² It has been followed up in the context of EU studies by many scholars, led by Delreux and Adriaensen¹³, Kassim and Menom¹⁴ or Conceição-Heldt.¹⁵ More recently, we may see an increase in the use of the concept across different fields, from its use to analyze relations in the context of trade agreements¹⁶ to the EU's interregional relations (Africa-EU Partnership).¹⁷ This evolution highlights the concept's adaptability and its critical role in examining the dynamics of power delegation and institutional cooperation within the EU, challenging previous reservations about its suitability for such studies. Despite the existence of many academic papers on the agent-principal relationship, especially at the global level, there is a constant lack of use of its potential for the analysis of EU agencies. However, a certain phenomenon can be observed in this area of research.

Pollack¹⁸ also presents a pivotal publication on the delegation of powers in the EU, followed by Dehousse.¹⁹ In general, the delegation of powers is a well-researched area and has been addressed by many authors. In addition to Craig²⁰ and together with De Búrca²¹, Franchino's publication²² can be considered the cornerstone of the field. They are followed by more recent publications, such as Ballenghi and Vos.²³ Their work is considered to be groundbreaking as it deals with the current constitutional framework of EU executive rule-making and suggests possibilities for its redesign. Mention can also be made of Volpato's successful 2022 publication "*Delegation of Powers in the EU Legal System*." In the context of

¹² POLLACK, Mark A. Delegation, agency, and agenda setting in the European Community. *International organization*, 1997, 51.1.

¹³ DELREUX, Tom; ADRIAENSEN, Johan. Twenty years of principal-agent research in EU politics: How to cope with complexity?. *European Political Science*, 2018, 17: 258-275.; DELREUX, Tom; ADRIAENSEN, Johan. Principal-Agent Analysis and the European Union. In: *Oxford Research Encyclopedia of Politics*. 2019.

¹⁴ KASSIM, Hussein; MENON, Anand. The principal-agent approach and the study of the European Union: promise unfulfilled?. *Journal of European Public Policy*, 2003, 10.1: 121-139.

¹⁵ CONCEIÇÃO-HELDT, Eugénia da. Multiple Principals' Preferences, Types of Control Mechanisms and Agent's Discretion in Trade Negotiations. In: *The principal agent model and the European Union*. Palgrave Macmillan, Cham, 2017. p. 203-226

¹⁶ GASTINGER, Markus and ADRIAENSEN, Johan. Of principal (s') interest? A disaggregated, multiple Principals' approach to commission discretion." *JCMS: journal of common market studies*, 2019, 57(2), 353-370.

¹⁷ ASLETT, Kevin and MAGISTRO, Beatrice. Principal-Agent Problems with EU Funds: A Case Study of Patronage in Hungary, *Europe-Asia Studies*, 2022. DOI: 10.1080/09668136.2022.2122405.

¹⁸ POLLACK, Mark A. Delegation, agency, and agenda setting in the European Community ...

¹⁹ DEHOUSSE, Renaud. Delegation of powers in the European union: The need for a multi-principals model. *West European Politics*, 2008, 31:4, 789-805, DOI: 10.1080/01402380801906072.

²⁰ CRAIG, Paul. *EU Administrative Law*. Oxford University Press, 2012.

²¹ CRAIG, Paul; DE BÚRCA, Gráinne. *EU Law: Text, Cases, and Materials*. Third Edition. Oxford University Press, 2003.

²² FRANCHINO, Fabio. *The Powers of the Union. Delegation in the EU*. Cambridge: Cambridge University Press. 2007. ISBN: 9780521866422.

²³ BELLENGHI, Guido, and VOS, Ellen. Rethinking the Constitutional Architecture of EU Executive Rulemaking: Treaty Change and Enhanced Democracy. *European Journal of Risk Regulation*, 2024, 1–19. doi: 10.1017/err.2024.35.

the Meroni doctrine, it is impossible not to mention Chamon,²⁴ whose publications inspired the third chapter of this thesis. This is followed by Simoncini,²⁵ which discusses the most recent developments of the doctrine. In this context, it should be noted that the last known judgment on this issue was handed down less than two weeks before the end of writing of this thesis and is therefore only briefly mentioned.

In the context of EU agencies, several publications stand out as particularly influential. Key among these are works by Everson et al.,²⁶ Chiti²⁷ and Wonka and Rittberger²⁸ which have provided foundational insights into the field. A more recent overview by Hodson et al.²⁹ offers an updated perspective on the role and operations of EU agencies. Worth mentioning are also EU Agencies studies in the context of experimental governance³⁰ or, as in this case, the PA concept.³¹ For the purposes of this thesis, the EU Law Live Symposium from December 2023³² is particularly noteworthy, focusing on the legal issues and challenges currently facing EU Agencies, providing valuable contemporary insights.³³ Additionally, the literature extensively discusses the established framework of cooperation between EU agencies and EU institutions.

²⁴ CHAMON, Merijn. EU agencies between Meroni and Romano or the devil and the deep blue sea. *Common Market Law Review*, 2011, 48(4), pp. 1055 – 1075. Available at: <<https://doi.org/10.54648/cola2011043>>; CHAMON, Merijn. The empowerment of agencies under the Meroni doctrine and article 114 TFEU: comment on United Kingdom v Parliament and Council (Short-selling) and the proposed Single Resolution Mechanism. *European Law Review*, 2014, 39(3), pp. 380-403.

²⁵ SIMONCINI, Marta. Live and let die? The Meroni doctrine in 2023. In *Symposium: The Agencies of the European Union: Legal Issues and Challenges*. EU Law Live, 2023, pp. 1-6, ISSN 2695-9593.

²⁶ EVERSON, Michelle, et al.. *The Role of Specialised Agencies in Decentralising EU Governance*. Report Presented to the Commission. 1999.

²⁷ CHITI, Edoardo. An important part of the EU's institutional machinery: features, problems and perspectives of European agencies. *Common Market Law Review*, 2009, 46(5), pp. 1395 – 1442. <https://doi.org/10.54648/cola2009059>.

²⁸ RITTBERGER, Berthold, and WONKA, Arndt. Introduction: agency governance in the European Union. *Journal of European Public Policy*, 2011, 18(6), 780-789.

²⁹ HODSON, Dermot, et al., eds.. *The Institutions of the European Union, 5th edition*. Oxford University Press. 2022, ISBN 978019886222-2.

³⁰ ZEITLIN, Jonathan and RANGONI, Bernardo. EU regulation between uniformity, differentiation, and experimentalism: Electricity and banking compared. *European Union Politics*, 2023, 24(1), 121-142. <https://doi.org/10.1177/14651165221126387>.

³¹ RANGONI, Bernardo and THATCHER, Mark.. National de-delegation in multi-level settings: Independent regulatory agencies in Europe. *Governance*. 2023, 36(1), pp.81-103. <https://doi.org/10.1111/gove.12722>.

³² EU LAW LIVE. *Symposium. The Agencies of the European Union: Legal Issues and Challenges*. December 2023. Available at: <https://eulawlive.com/symposia/the-agencies-of-the-european-union-legal-issues-and-challenges/>.

³³ Ibid.

Topics range from their founding acts³⁴ and autonomy³⁵, to the role of the Commission.³⁶ For purposes of this thesis, it is important to focus on research on CFSP agencies in particular. Research tends to focus on studies of each agency individually, primarily in terms of their mandate and scope of authority or in the context of the CFSP environment. In Czech academia, Havlín's article entitled "*Agentury v rámci bývalého 'druhého pilíře' Evropské unie.*" [*Agencies within the former 'second pillar' of the European Union*]³⁷ can be considered an introduction to the CFSP agencies. Of the three CFSP agencies, the EDA is the most analyzed, given the scope of its mandate and its role within the EU's security dimension. Here, publications by Bátora,³⁸ Trybus³⁹ and most recently Calcara's publications⁴⁰ contribute. Among the academic publications dealing with all three CFSP agencies, the findings of Butler⁴¹ which focus on legal aspects, appear to be the most beneficial for the research in this thesis.

Methodology

In order for the thesis to fulfill its main objective, i.e. to identify and comprehensively analyze possible challenges in the cooperation of selected EU agencies with other institutions, an appropriate data collection method and definition of the approach is necessary. The thesis focuses on a comparative analysis of CFSP agencies, highlighting similarities and differences in several key areas of analysis. The agencies will be compared in terms of the rationale for

³⁴ CHAMON, Merijn. In Search of an Agency Model: The Provisions in Agencies' Establishing Acts. In: *EU agencies: legal and political limits to the transformation of the EU administration*. Oxford University Press, 2016. DOI:10.1093/acprof:oso/9780198784487.003.0003.

³⁵ GRONLEER, Martijn. *The autonomy of European Union agencies: A comparative study of institutional development*. Eburon Uitgeverij BV, 2009. ISBN 9789059723467.

³⁶ VOS, Ellen. Reforming the European Commission: What role to play for EU agencies? *Common Market Law Review*, 37: 1113–1134, 2000.

³⁷ HAVLÍN, Miloslav. Agentury v rámci bývalého „druhého pilíře“ Evropské unie. *Vojenské rozhledy*, 2010, roč. 19 (51), č. 2, s. 114–118, ISSN 1210-3292.

³⁸ BÁTORA, Jozef. European Defence Agency: A Flashpoint of Institutional. Logics, *West European Politics*, 2009, 32:6, 1075-1098, DOI: 10.1080/01402380903230561.

³⁹ TRYBUS, Martin. The new European Defence Agency: A contribution to a common European security and defence policy and a challenge to the Community *acquis*?. *Common Market Law Review*, 2006, 43.3.

⁴⁰ CALCARA, Antonio. Italy's defence policy in the European context: the case of the European Defence Agency. *Contemporary Italian Politics*, 2017, 9:3, 277-301, DOI: 10.1080/23248823.2017.1396064; CALCARA, Antonio. State–defence industry relations in the European context: French and UK interactions with the European Defence Agency. *European security*, 2017, 26.4: 527-551. DOI: 10.1080/09662839.2017.1384379.

⁴¹ BUTLER, Graham. Leaps in Time through the EU's Common Foreign and Security Policy Post-Enlargement. *EU Law Live*, 2024. Available at: <<https://eulawlive.com/op-ed-leaps-in-time-through-the-eus-common-foreign-and-security-policy-post-enlargement/>>; BUTLER, Graham. The Balance of Powers and the EU's Common Foreign and Security Policy. In FROMAGE, Diane and HERRANZ-SURRALLÉS, Anna (eds). *Executive-legislative (Im)balance in the European Union*. Oxford: Hart Publishing, 2020. Available at: <<http://dx.doi.org/10.5040/9781509930036>>; BUTLER, Graham. The Balance of Powers and the EU's Common Foreign and Security Policy. In FROMAGE, Diane and HERRANZ-SURRALLÉS, Anna (eds). *Executive-legislative (Im)balance in the European Union*, Hart Publishing, 2021.

their creation, the scope of their mandate, and their internal structure. Special attention will be paid to the control mechanisms, which should reveal their specificities.

The research employs a rigorous empirical approach while using qualitative methodology for data collection, focusing on analyzing relevant documents, decisions, case studies, and doctrinal opinions. The research methodology integrates traditional desktop research with a comprehensive review of both primary and secondary literature. A significant portion of the sources are international, including scholarly articles and various secondary materials. The thesis works largely with publicly available information from minutes of meetings, decisions, policies, and other relevant documents published on the official websites of the relevant EU agencies. This approach allows for a deeper understanding of the structural and functional aspects of the agencies and their interactions with other institutions.

The methodological limitations are mainly due to the general shortcomings of comparative analyses, which focuses only on certain areas suitable for comparison. While in some areas, the availability of information is quite adequate, in others, it is difficult to find data (i.e., CFSP agencies' BoA judgments), even if it is publicly available, often containing only very general and politically correct formulations, which do not allow for the identification of more specific strategies and the course of actual debates. In this context, one could note the "hidden" separateness of the CFSP area and the jealous guarding of the Council, which maintains control in this area. By establishing this specific analytical framework, the thesis aims to outline the framework of cooperation between the CFSP agencies, EU institutions and other actors, and to identify certain challenges associated with this cooperation. The thesis also works with primary sources of European law, such as the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and judgments from the Court of Justice of the European Union (CJEU), alongside with secondary legislative materials like regulations and directives. Additionally, non-binding documents such as recommendations, opinions, and declarations are also considered. Despite these shortcomings, the author argues that the comparative approach not only enhances the objectivity of the findings, but also allows conclusions to be drawn about the efficiency and effectiveness of institutional arrangements within the EU.

1. Introducing the Theoretical Framework: the Principal-Agent Concept

This chapter provides an insight into the theoretical framework by introducing the principal-agent concept. This chapter is particularly important because it will allow us to establish a framework for the subsequent analysis, in other words, it will provide us with the basic elements for successfully applying the concept to such a complex environment as security cooperation at the level of EU institutions/agencies. The history and basic elements of the concept will be presented, and the potential problems associated with the PA concept will be highlighted. The subchapter will also address the necessary additions and modifications that are required to adapt the PA concept to the EU context. The chapter will seek to answer the following research question "*Can the principal-agent concept be adapted to analyze the security cooperation at the level of EU institutions/agencies, and if so, how can this adaptation be conceptualized?*"

The PA concept originates in economic theory, initially developed for analyzing firm delegation relations.⁴² It has since expanded to address issues of partial information and risk pooling, becoming a key tool for studying international organizations.⁴³ By the 1980s, it had found its application in US congressional politics, particularly in analyzing regulatory agency control. Later, in the 1990s, the concept was quickly recognized as a potential for the study of European integration under the new institutionalism.⁴⁴ Building on critical assessment, Waterman and Meier extend the discussion by critically examining the concept, particularly its adaptability as a theory of bureaucracy, providing critical insights that can be applied to other models using the concept. They argue that the essence of the concept, incorporating key elements that scholars have previously neglected, deserves considerable attention.⁴⁵ In their critical evaluation, they came across the challenges caused by the existence of multiple principals, where agents may opt to align themselves with principals who share similar

⁴² See: MOE, Terry M. The new economics of organization. *American journal of political science*, 1984, pp. 739-777; MITNICK, Barry M. Fiduciary rationality and public policy: The theory of agency and some consequences. In: *1973 Annual Meeting of the American Political Science Association*, New Orleans, LA, 1973, pp. 1-17.

⁴³ JENSEN, Michael C.; RUBACK, Richard S. The market for corporate control: The scientific evidence. *Journal of Financial economics*, 1983, 11.1-4: 5-50.

⁴⁴ DELREUX, Tom, ADRIAENSEN, Johan. Principal-Agent Analysis and the European Union. In: *Oxford Research Encyclopedia of Politics*. 2019. p. 3.

⁴⁵ WATERMAN, Richard W, MEIER, Kenneth J. Principal-agent models: an expansion?. *Journal of public administration research and theory*, 1998, 8.2: p. 174.

interests.⁴⁶ This aspect continues to persist and has been extensively researched by numerous scholars to this day.⁴⁷

1. 1. The basic premises of the PA concept

To effectively use the PA concept as a core structure for analysis, it is necessary to define its components comprehensively. At the heart of the concept is the dichotomy between the principal and the agent, wherein the former engages in a contractual relationship with the latter. This relationship is characterized by the principal's delegation of specific responsibilities to the agent for executing a designated function, imposing an examination of the motives behind the delegation of powers. In the traditional principal-agent dynamic, the principal's main impulse for delegation is the desire to mitigate the operational costs.⁴⁸ However, the rationale for selecting an agent may extend beyond cost-reduction objectives and include cases where the principal lacks the necessary expertise, accreditation, or capability to address the demands of the tasks at hand.⁴⁹ This can be seen, for example, in the case study of the European Public Prosecutor's Office (EPPO), which highlights diverse reasons for delegation.⁵⁰ The relationship between principal and agent is often accompanied by an element of conflict of interest and consequent information asymmetry. This disparity is further compounded by the principal's limited access to relevant information, which makes it difficult for the principal to evaluate the agent's performance effectively. At this point, we identify two potential challenges within the principal-agent paradigm. Firstly, the dilemma of *hidden action* leads to a scenario where the principal may depend solely on the outcomes of the agent's work. This situation sets the stage for a so-called *moral hazard*, where the agent might prioritize its interests over the principal's, especially in the absence of strict oversight.⁵¹ Secondly, when a principal selects an agent without comprehensive knowledge of the agent's capabilities and motives, a scenario of *hidden*

⁴⁶ Ibid, p. 185.

⁴⁷ See CONCEIÇÃO-HELDT, Eugénia da. Multiple Principals' Preferences, Types of Control Mechanisms and Agent's Discretion in Trade Negotiations. In: *The principal agent model and the European Union*. Palgrave Macmillan, Cham, 2017.; VAUBEL, Roland. Principal-agent problems in international organizations. *The Review of International Organizations*, 2006.

⁴⁸ WATERMAN, Richard W, MEIER Kenneth J. Principal-agent models: an expansion?... p. 174.

⁴⁹ KASSIM, Hussein; MENON, Anand. The principal-agent approach and the study of the European Union: promise unfulfilled?. *Journal of European Public Policy*, 2003, p. 122.

⁵⁰ VAVŘINOVÁ, Katka. Aplikace konceptu agent-principál na Úřad evropského veřejného žalobce. Bakalářská práce, Univerzita Palackého v Olomouci, 2019.

⁵¹ HLAVÁČEK Jiří, HLAVÁČEK, Michal. Morální hazard a nepříznivý výběr při maximalizaci pravděpodobnosti ekonomického přežití. *IES WP*, Univerzita Karlova, 2006. p. 5.

information emerges. This imbalance, where the agent holds an informational advantage, can be used to the disadvantage of the principal, leading to *adverse selection*.⁵²

When applying this framework to EU agencies, a significant deviation from the traditional principal-agent relationship becomes evident. Traditionally, the principal searches for a potential agent. However, in the case of most EU agencies, this search is unnecessary. EU agencies are usually established with specific mandates, often directly involving their principal(s). Consequently, the risk of *adverse selection*, concerning whether the agency can fulfill the principal's expectations⁵³, is markedly reduced or even eliminated. However, other challenges may arise even in the case of EU agencies, notably the phenomena of *shrinking* and *slippage*.⁵⁴ The former represents a subtle yet profound issue wherein an agent may behave opportunistically, possibly through misrepresenting information due to the principal's lack of specific expertise.⁵⁵ The latter refers to instances when the agent, within its delegated powers, acts against the principal's preferences.⁵⁶ This does not imply total powerlessness of the principal, who retains the ability to define the scope of the agent's operational remit, specifying the legal parameters and rules to which the agent must adhere⁵⁷, not to mention the control mechanisms that the principal establishes vis-à-vis the agent, as fully aware of the risks entailed by diverse preferences and information asymmetry. In addition to control mechanisms, principals have the capability to establish incentive structures (system of sanctions), which may include formal warnings, financial constraints, or personnel adjustments.⁵⁸ For EU agencies, options like budget cuts or staff dismissal and reappointment are also on the table, as well as revision of their mandate or outright termination.⁵⁹ However, sanction imposition faces obstacles, especially with multiple principals requiring unanimity or a qualified majority for action, complicating the enforcement process.⁶⁰

Moving to the control mechanisms, scholars differentiate between *ex-ante* (before delegation) and *ex-post* (after delegation) while agreeing that too much control can undermine

⁵² POSPÍŠILOVÁ, Jaroslava, et al. Teorie principála a agenta a její využití při popisu vztahu volič–zástupce. *Sředoevropské politické studie*, 2017, 19.3-4, p. 220.

⁵³ WORSHAM, Jeff; GATRELL, Jay. Multiple principals, multiple signals: A signaling approach to principal-agent relations. *Policy Studies Journal*, 2005, 33.3, p. 364.

⁵⁴ KASSIM, Hussein; MENON, Anand. The principal-agent approach and the study...p. 122.

⁵⁵ Ibid.

⁵⁶ POLLACK, Mark A. Delegation, agency, and agenda setting...p. 108-109; KASSIM, Hussein; MENON, Anand. The principal-agent approach and the study...

⁵⁷ Ibid.

⁵⁸ FILIPEC, Ondřej. agent–principal dilemma and the Eu chemical Management. *TalTech Journal of European Studies*, 2018, 8.1, p.166.

⁵⁹ Ibid.

⁶⁰ Ibid., p. 113.

the original benefits associated with delegation.⁶¹ These mechanisms often overlap, especially for those that apply both – during and after the agent's tenure. This is also why some scholars distinguish a third type of control mechanism, *ad locum*⁶², with the involvement of *police patrol* and *fire alarm* control mechanisms.⁶³ The former involves the active principal engagement in monitoring agent compliance through methods like observation and reporting, though at higher costs. In contrast, "*fire alarm*" monitoring is more cost-effective, relying on external parties – citizens, interest groups, courts – to notify the principal of any agent missteps, thus distributing monitoring expenses.⁶⁴

1. 2. PA concept as a framework for analysis in EU Studies

For the purposes of this thesis, it is also necessary to address the application of this concept to the study of the EU, which is made more challenging by the current complex EU structure characterized by a multitude of transnational actors.⁶⁵ The foundations can be seen in Pollack's publication (1997) whose analysis sheds light on why and how member states, as principals, delegate powers to EU institutions such as the European Commission or the European Parliament, as agents.⁶⁶

To use the concept as a framework for analysis in the context of EU studies, several conditions are to be met. According to Delreux and Adriaensen (2018), the concept of two-step inquiry helps preserve the reductionist goals of the concept while covering the complexity of modern decision-making processes within the EU.⁶⁷ The initial phase of the analysis is the successful identification of the principal, the agent, and the object of delegation. In other words, we need to find "*who delegates what to whom.*"⁶⁸ Although this step may seem rather trivial at first glance, identifying the agent from the principal can prove challenging under certain circumstances. A possible solution to this dilemma is proposed through the concept of a

⁶¹ DELREUX, Tom, ADRIAENSEN, Johan. Introduction. Use and limitations of the principal-agent... p. 4.

⁶² ELSIG, Manfred. European Union Trade Policy After Enlargement: Larger Crowds, Shifting Priorities and Informal Decision-Making. *Journal of European Public Policy*, 2010, 17 (6): 781–798. doi:10.1080/13501763.2010.486975; DELREUX, Tom, KERREMANS, Bart. How agents weaken their principals' incentives to control: The case of EU negotiators and EU member states in multilateral negotiations. *European integration*, 2010, 32.4, p. 4.

⁶³ CONCEIÇÃO-HELDT, Eugénia da. Multiple Principals' Preferences, Types of Control Mechanisms ... p. 211.

⁶⁴ MCCUBBINS, Mathew D.; SCHWARTZ, Thomas. Congressional oversight overlooked: Police patrols versus fire alarms. *American journal of political science*, 1984, p. 165-179.

⁶⁵ DELREUX, Tom; ADRIAENSEN, Johan. Twenty years of principal-agent research in EU politics: How to cope with complexity?. *European Political Science*, 2018, 17: 258-275.

⁶⁶ POLLACK, Mark A. Delegation, agency, and agenda setting in the European Community. *International organization*, 1997, 51.1: p. 2.

⁶⁷ DELREUX, Tom; ADRIAENSEN, Johan. Twenty years of principal-agent research in EU politics... p. 258-275

⁶⁸ Ibid: p. 265.

delegation chain, which allows for an actor to simultaneously function as an agent and a principal to another agent.⁶⁹ As Vaubel (2006) notes, within the context of an international organization (as well as EU agencies), this typically necessitates multiple principals and, consequently, multiple distinct principal-agent relationships.⁷⁰ From an analytical perspective, the decision on whom to designate as the principal and the agent mostly depends on the researcher's viewpoint. However, it is important to note that merely possessing the capacity or intent to influence or control another actor is insufficient to be recognized as a principal; rather, delegating responsibility for executing a specific function is crucial.⁷¹ In the next section of the analysis, it needs to be introduced how and why the delegation of powers to the agent occurred, the institutional structure of this delegation, the ramifications of such delegation, and the legitimacy of the agent's role.⁷² In the case of EU agencies, it explores the necessity for the establishment of the EU agency in question, the reasons for its creation at a particular time in history, the rationale behind not delegating powers to alternative entities, and the scope of powers to the EU agency (as an agent). This completes the scrutiny of the set "rules of the game" defined by the *politics of delegation*.⁷³ At this point, it is essential to investigate the incentive structures (sanction systems) and control mechanisms created by the principal, as their actual use and activation are covered within the *politics of discretion*, referring to a certain degree of agent discretion. Discretion can be defined as "*room for maneuver the agent has in carrying out the delegated task.*"⁷⁴

Table 1: Combination of information level and conflict or consensus in objectives

Information level		Agent		Conflict or consensus in objectives
		Low	High	
Principal	High	Patronage system	Advocacy coalitions	Conflict
		Plato's Republic	Policy subsystems	Consensus
	Low	Bumper sticker politics	Principal-agent	Conflict
		Theocracy	Bottom line	Consensus

Source: Waterman and Meier (1998), Filipec (2018), author's adaptation

⁶⁹ VAUBEL, Roland. Principal-agent problems in international organizations ... p.126.

⁷⁰ Ibid.

⁷¹ DELREUX, Tom; ADRIAENSEN, Johan. Introduction. Use and limitations of the principal-agent ... p. 14-15.

⁷² DELREUX, Tom; ADRIAENSEN, Johan. Twenty years of principal-agent research in EU politics ... p. 267.

⁷³ Ibid.

⁷⁴ PLANK, Friedrich. Principal-agent relations, politics of discretion, and the Africa-EU Partnership on Peace and Security, *Journal of European Integration*, 2023, 45:5, 767-783, DOI: 10.1080/07036337.2023.2177647, p. 769..

For a truly comprehensive analysis, it is possible to complete their approach with an analysis of information asymmetry and potential conflicts or consensus between the principal and agent objectives, as outlined by Waterman and Meier (1998).⁷⁵ The authors differentiate four variations of the principal-agent relationship based on the degree of information accessibility, with the added factor of potential alignment or discord in pursuing objectives, adding an additional four variations.⁷⁶ EU agencies, in particular, present unique challenges to the application of the concept, primarily due to their placement within the EU's complex, multi-layered, and continuously evolving milieu. As it is particularly relevant for EU agencies that they serve multiple principals (Member States, European Commission, Parliament, etc.), which can complicate their tasks and increase the risk of conflicts of interest ⁷⁷, they contribute to developing the analytical framework in *multiple principals* context. Therefore, the application of the concept to the case of EU agencies presents an opportunity for refinement and improvement of this analytical framework.

From the above mentioned, it can be said that the theoretical framework of the PA concept offers a comprehensive tool for analyzing the delegation of powers within the EU. This chapter has demonstrated how the concept, originally developed for analyzing firm delegation relations, is crucial for understanding the complex interactions between multiple actors in the EU's multifaceted environment. By examining key elements such as information asymmetry and conflicts of interest, this chapter highlighted fundamental issues in multi-agent structures that must be addressed to ensure effective governance. Applying the PA concept to the EU context requires significant adaptation due to the complexity of the EU's institutional framework, which lacks a singular, clearly defined principal. Instead, the EU operates within a multi-level governance system involving multiple principals. Nonetheless, the Commission's role as the primary actor in delegating powers to EU agencies stands out in this context. The involvement of multiple principals introduces both opportunities and challenges. While it can enhance oversight and reduce the risk of agency shirking or slippage, it also complicates the coordination of control mechanisms and the alignment of diverse interests. Recognizing the multi-level nature of this system, it is imperative to grasp the rationale behind the delegation of powers to the EU agencies, their institutional setup, and the frameworks for cooperation that have been established.

⁷⁵ WATERMAN, Richard W.; MEIER, Kenneth J. Principal-agent models: an expansion...pp. 173-202.

⁷⁶ Ibid: pp. 185-190.

⁷⁷ CONCEIÇÃO-HELDT, Eugénia da. Multiple Principals' Preferences... p. 204.

2. Delegation of powers and C-9/56 Meroni Doctrine: Still in the Game?

The previous chapter laid the groundwork for further exploration of the institutional dynamics between the principals (member states and EU institutions) and the agents (specific EU agencies). Building on this, the current chapter examines the delegation of powers within the EU and, in particular, the Meroni doctrine, which plays an indispensable role in the role of EU agencies. This will provide a deeper insight into the legal framework that defines the possibilities and limits of the delegation of powers to EU agencies and will have implications for the examination of the inter-institutional cooperation between EU agencies and other actors such as the EU institutions, which is the main objective of the thesis. The subchapter will focus on an introduction to the Meroni doctrine and its recent developments, as the question of whether it still represents the current thinking of the CJEU⁷⁸ on the limits of external delegation within the EU continues to circulate in current discourse. Ultimately, this chapter seeks to address the following research question, "*How is the delegation of powers within EU agencies structured, and how is the current interpretation of the Meroni doctrine influencing the nature of this delegation?*"

2.1. Delegation of powers within the EU

Delegating powers offers many advantages, the most fundamental being the reduction of certain political transaction costs. The logic of delegation provides a comprehensive insight into these abstract considerations. There are various forms of delegation, such as *treaty* or *executive* delegation⁷⁹ or, as referred to by other authors, *external* and *internal* delegation⁸⁰, varying in terms of the actors (Member States to the EU institutions and even vice versa⁸¹; Council to Commission) and the scope of the delegated powers (from mere external delegation of a very limited nature to broad discretionary powers).⁸² The *treaty (external)* delegation is characterized by the decision of the Member States to delegate. Pollack (1997) explains that this type of delegation is motivated by practical reasons, such as better management of member states'

⁷⁸ In this thesis, the term CJEU will refer to the institution of the Court of Justice of the European Union. When referring to the Court of Justice within the CJEU, the term 'Court of Justice' will be used, similarly to 'General Court' where appropriate.

⁷⁹ FRANCHINO, Fabio. *The Powers of the Union. Delegation in the EU*. Cambridge: Cambridge University Press. 2007. ISBN: 9780521866422, p. 14.

⁸⁰ EVERSON, Michelle, et al. *The Role of Specialised Agencies in Decentralising EU Governance*. Report Presented to the Commission. 1999.

⁸¹ See e.g. Case 23/75 *Rey Soda v. Cassa Congruaglio Zucherro* ECLI:EU:C:1975:142.

⁸² EVERSON, Michelle, et al. *The Role of Specialised Agencies...* p. 40.

compliance and the ability to handle complex regulations.⁸³ Dehousse (2008) further emphasizes that it helps decrease the transaction expenses linked with the adoption and implementation of transnational policies.⁸⁴ Recognition of these advantages has made delegation a key aspect of the functioning of the EU. *Executive* delegation occurs when powers are delegated internally, e.g., by the Council to the Commission through secondary legislation. This can be driven by the need to speed up the legislative process or a lack of expertise. The *Rey Soda case*⁸⁵ illustrates how broad implementation powers can be granted, highlighting the role of the comitology system, where the Council can maintain control over delegated powers.⁸⁶ This case also serves as a prime example of how the EU (formerly the European Communities) has dealt with the problem of its limited administrative capacity, as it highlights its willingness to grant a wide degree of discretion in powers delegated by the Council (to the Commission), and subsequently by the Commission (to the comitology system).⁸⁷ The comitology system also allows interaction between Member States and the Commission, with veto power held by the European Parliament and the Council, reflecting the principle of executive subsidiarity.⁸⁸ Modified by the Lisbon Treaty for transparency reasons, the comitology system remains a critical tool for consultation and oversight despite ongoing debates about its efficiency and clarity.⁸⁹ Since then, it has received considerable academic interest⁹⁰ and case-law⁹¹ attention. In the new form, the Lisbon Treaty distinguishes between delegated acts and implementing acts with a legal basis in Articles 290 TFEU and 291 TFEU, making the Council and Parliament equal partners in the control of the delegation.⁹² However, Vos (2024) argues that this step has not brought any significant efficiency or clarified the framework for delegation but rather

⁸³ POLLACK, Mark A. Delegation, agency, and agenda setting in the European Community ... p. 102.

⁸⁴ DEHOUSSE, Renaud. Delegation of powers in the European union... p. 791.

⁸⁵ Case 23/75 *Rey Soda v. Cassa Congruaglio Zucherro*, ECLI:EU:C:1975:142.

⁸⁶ EVERSON, Michelle, et al. The Role of Specialised Agencies... p. 40.

⁸⁷ *Ibid*, p. 13.

⁸⁸ BELLENGHI, Guido, and VOS, Ellen. Rethinking the Constitutional Architecture of EU Executive Rulemaking: Treaty Change and Enhanced Democracy. *European Journal of Risk Regulation*, 2024, 1–19. doi: 10.1017/err.2024.35, p. 1.

⁸⁹ MACHYTKA, Daniel. Komitologie jako hybný mechanismus evropské integrace [Comitology as a driving mechanism of European integration]. *World Economy and Policy*, 2011, 2011(2): 103-20, p. 114.

⁹⁰ e.g. MACHYTKA, Daniel. Komitologie jako hybný mechanismus evropské integrace...; HARDACRE, Alan and KAEDING, Michael. Delegated & Implementing Acts. The New Comitology, *EIPA Essential Guide*, 2013, 5(1): 1-28.; CHAMON, Merijn. Institutional balance and Community method in the implementation of EU legislation following the Lisbon Treaty. *Common Market Law Review*, 2016, 53(6): 1501-1543, <https://doi.org/10.54648/cola2016141>.; BELLENGHI, Guido, and VOS, Ellen. Rethinking the Constitutional Architecture of EU Executive Rulemaking: Treaty Change and Enhanced Democracy. *European Journal of Risk Regulation*, 2024, 1–19. doi: 10.1017/err.2024.35.

⁹¹ before Lisbon Treaty e.g. Case 5/77 *Carlo Tedeschi v Denkavit Commerciale s.r.l.*, ECLI:EU:C:1977:144., after Lisbon Treaty e.g. Case C-270/12 *United Kingdom v Parliament and Council*, ECLI:EU:C:2014:1.

⁹² VOLPATO, Annalisa. *Delegation of Powers in the EU Legal System*. Routledge, 1st Edition, 2022. DOI: 10.4324/9781003174004, p. 53.

resulted in a fragmented legal environment. Also, the Commission prefers implementing acts, maintaining elements of the comitology system despite its original plan to move away from it.⁹³ Vos (2024) suggests integrating Articles 290/291 TFEU into a single article focusing on EU executive rule-making, linking it to Article 11 TEU to enhance participation and legitimacy.⁹⁴ Busuioc adds that the current procedure imposes significant constraints on the Commission, creating a "gap between the treaty text and legal realities"⁹⁵, in addition to the limitations of the Meroni doctrine, which will be discussed further. As comitology is not the main subject of this thesis, the focus will be on the delegation of powers to EU agencies. In this regard, the prime protagonist is mostly the Commission, but the CFSP agencies, more aligned with the Council, present unique distinctions. This might explain their relative neglect in research. Key to delegating powers to EU agencies is an understanding of the principle of non-delegation doctrine, which is essential to maintaining the institutional balance. According to this principle, "each institution must exercise its powers with due regard for the powers of other institutions."⁹⁶ This is particularly relevant in the context of EU agencies, which often operate under delegated powers in specific EU policy areas.

2.2. Delegation of powers to EU Agencies

"Gradually, then suddenly" this Hemingway-esque statement can partly characterize the process of *agentification* or as some authors referred to "*mushrooming*" of EU agencies.⁹⁷ Their development, traditionally described as a „waves" of EU agencies, can be traced back to 1970s. At that time, the first two agencies⁹⁸ were created, and the EU was slowly getting used to the creation of these autonomous administrative structures. The reason for their creation was purely technocratic and did not represent a major reform of European public administration, as it might

⁹³ BELLENGHI, Guido, and VOS, Ellen. Rethinking the Constitutional Architecture of EU Executive Rulemaking: Treaty Change and Enhanced Democracy. *European Journal of Risk Regulation*, 2024, 1–19. doi: 10.1017/err.2024.35, p. 18.

⁹⁴ *Ibid.*, p. 1.

⁹⁵ BUSUIOC, Madalina. Rule-Making by the European Financial Supervisory Authorities: Walking a Tight Rope. *European Law Journal*, 2013, 19(1): 111-125, <https://doi.org/10.1111/eulj.12016>, p. 117.

⁹⁶ C-70/88 *European Parliament v Council (Chernobyl)* [1991] ECR I-04529, para 22; C-133/06 *European Parliament v Council* [2008] ECR I-03189, para 57; C-409/13 *Council v Commission (MFA)* [2015] ECLI:EU:C:2015:217, para 64; C-660/13 *Council v Commission (Swiss Memorandum of Understanding)* ECLI:EU:C:2016:616, para 32.

⁹⁷ See BUSUIOC, Madalina. Accountability, control, and independence: The case of European agencies. *European Law Journal*, 2009, 15(5), pp. 599-615. Available at: <<https://doi.org/10.1111/j.1468-0386.2009.00480.x>>; MEUWESE, Anne, SCHUURMANS, Ymre, and VOERMANS Wim. Towards a European Administrative Procedure Act. *Review of European Administrative Law*, 2009, 2(2), pp. 3-35. Available at: <https://doi.org/10.7590/REAL_2009_02_02>.

⁹⁸ CRAIG, Paul; DE BÚRCA, Gráinne. *EU Law: Text, Cases, and Materials*. Third Edition. Oxford University Press, 2003, p. 105.

seem at first sight.⁹⁹ As the role of EU agencies has shifted from merely operational¹⁰⁰ to more far-reaching tasks, involving them more actively in the development and implementation of EU policies or making decisions that are binding on third parties, the delegation has been associated with certain question marks. It raised the question of delegating powers from EU institutions to other bodies and what powers can be delegated. As time passed, EU agencies were created mainly due to the increasing environment requiring complex technical expertise that the EU institutions (mainly the Commission) simply did not have. While these experts could have been created within existing institutional structures, they would not have been able to provide much-needed independence.¹⁰¹ And as Everson et al. (1999) point out, „*Agencies' separateness from government may also make them a preferred mechanism for co-opting certain groups into the decision-making process.*“¹⁰² The need for effective implementation of EU law in an expanding range of EU competencies was thus addressed through institutionalization, and EU agencies could initially be seen as a kind of replacement for the comitology system.¹⁰³ The EU agencies also represented something of a compromise for cases where Member States were unwilling to delegate the required powers directly to the Commission, mainly because of their perception as politically neutral entities.¹⁰⁴ From the Commission's point of view, devolution has made its work easier and reduced the Commission's workload.¹⁰⁵

In this section, it is necessary to define CFSP agencies, sometimes referred to as "Council agencies."¹⁰⁶ They are referred to as such because of their exclusive link to the Council, not the Commission. This specific relationship reflects the specific nature of the CFSP within the EU legal order.¹⁰⁷ This area of EU law was intergovernmental in nature, which set it apart from other EU policies. Again, the delegation of powers in this area is specific and built around one institution – the Council. Delegating certain tasks to agencies is also linked to the question of establishing EU agencies in a legislative act. The legal basis for the creation of EU agencies has

⁹⁹ DEHOUSSE, Renaud. Delegation of powers in the European union: The need for a multi-principals model. *West European Politics*, 2008, 31:4, 789-805, DOI: 10.1080/01402380801906072, p. 790.

¹⁰⁰ KELEMEN, Daniel and MAJONE, Giandomenico. Managing Europeanisation: The European Agencies. In: PETERSON, John and SHACKLETON, Michael (eds.) *The Institutions of the European Union*, III edition, Oxford University Press, 2012. ISBN 978-0-19-957080-5, p. 220.

¹⁰¹ EVERSON, Michelle, et al.. The Role of Specialised Agencies in Decentralising EU Governance ...p. 32.

¹⁰² Ibid.

¹⁰³ VOLPATO, Annalisa. *Delegation of Powers in the EU Legal System...* p. 78.

¹⁰⁴ KELEMEN, Daniel. The politics of 'eurocratic' structure and the new European agencies. *West European Politics*, 2002, 25(4), p. 95.

¹⁰⁵ EVERSON, Michelle and COSIMO, Monda and VOS, Ellen (eds.) *EU agencies in between institutions and member states*. European Monographs Series Set. The Netherlands: Wolters Kluwer, 2014, p. 15, ISBN 9789041128430.

¹⁰⁶ CRAIG, Paul. *EU Administrative Law*. Oxford University Press, 2012.

¹⁰⁷ BUTLER, Graham. Hidden Administrative Review in EU Law ...p. 125.

changed over time. The powers of the first and second wave of agencies were delegated based on the flexibility clause expressed in the current Article 352 TFEU. This basis is gradually being abandoned, as more than 26 agencies are based on policy-specific legal bases.¹⁰⁸ In this context, the specificity of the CFSP agencies inherited from the WEU structures should be noted, as will be discussed in more detail in the next chapter. Even before the Lisbon Treaty, these agencies never used the flexibility clause and had the same legal basis in Article 28 TEU (formerly 14 TEU). Now, each of them has a different legal basis. Butler (2022) sees this situation as a "*form of legal isolation*" of the CFSP agencies, even though they cooperate with the EU Agency Network.¹⁰⁹ There is essentially no independence as these agencies are not endowed with independence due to their specific nature within the CFSP. They are not regulatory agencies with a broader mandate, as we see with agencies in the post-Lisbon era. Furthermore, these three specific agencies do not possess genuine decision-making powers.¹¹⁰ However, this does not mean that their actions are not subject to judicial review, particularly in the context of acts of staff management. The analysis of their Boards of Appeal (BoAs) in the next section of this thesis will show that agencies' actions make reviewable decisions that have legal effects and are, therefore, subject to the necessary scrutiny. The balance of powers in the CFSP itself is a long-standing concern, and academic discourse speaks of the need to reform the CFSP.¹¹¹

The delegation of powers to EU agencies is also accompanied by some challenges, namely their lack of accountability and coordination.¹¹² The former is quickly apprehended if the control mechanisms are properly set up, as contracting authorities have many mechanisms to control agencies and enforce public accountability without „micromanaging" agencies or interfering with their day-to-day decisions.¹¹³ The second issue mentioned is a bit more complex. Lack of coordination seems to have been a problem since its inception, and according to many authors, it persists to this day. In this context, an EU Agencies Network has been set

¹⁰⁸ VOLPATO, Annalisa. *Delegation of Powers in the EU Legal System...* p. 110.

¹⁰⁹ BUTLER, Graham. *Hidden Administrative Review in EU Law...* p. 127.

¹¹⁰ *Ibid.*, p. 125.

¹¹¹ See BUTLER, Graham. *The Balance of Powers and the EU's Common Foreign and Security Policy*. In FROMAGE, Diane and HERRANZ-SURRALLÉS, Anna (eds). *Executive-legislative (Im)balance in the European Union*. Oxford: Hart Publishing, 2020. Available at: <<http://dx.doi.org/10.5040/9781509930036>>; POSNER, Eric. *Balance-of-Powers Arguments, The Structural Constitution, and the Problem of Executive Underenforcement*. *University of Pennsylvania Law Review*. 2016, 164(7), pp. 1677-1714.; BIEDENKOPF, Katja, COSTA, Oriol, and GÓRA, Magdalena. *Introduction: Shades of Contestation and Politicisation of CFSP*. *European Security*, 2021, 30 (3), pp. 325-43. doi:10.1080/09662839.2021.1964473.; BACIU, Cornelia-Adriana, FRIEDE, Alexandra. *The EU's CFSP/CSDP in 2030: Towards an alternative vision of power?* *New Perspectives*. 2020, 28(3), pp. 398-412. Available at: <<https://doi.org/10.1177/2336825X20935245>>.

¹¹² EVERSON, Michelle, et al. *The Role of Specialised Agencies in Decentralising EU Governance...* p. 13..

¹¹³ *Ibid.*

up, which allows agencies to communicate more with stakeholders and the general public on issues of common interest and provides a focal point for the collection and dissemination of information between all EU agencies.¹¹⁴

The problem currently facing the EU agencies is in the extension of the mandate of some of them, which extended to the area substantially far from the technical and scientific areas where the initial instances of agencification arose.¹¹⁵ Limited academic attention has been paid to the operational powers of these EU agencies. Indeed, their de facto practices, which by their very nature are not endowed with legal effect, may, if unlawful, give rise to a right to compensation. Which ironically reflects the success of these agencies in the context of their increasing involvement in operational activities in the field.¹¹⁶ The CJEU, in particular, has a significant role to play here, based on Article 268 TFEU, which applies to EU agencies. As Volpato (2023) points out, the judicial accountability of EU agencies is not only an important principle for respecting the right to effective judicial protection and the general principle of the rule of law. Still, it is also one of the conditions for the lawful delegation of powers (even after the erosion of the Meroni doctrine).¹¹⁷ That is why a closer look at the Meroni doctrine and its recent development.

2.3. Meroni Doctrine and its recent development

An important question within the EU agencies' context remains unanswered: the qualitative dimension of EU agencies. Here, not even the Lisbon Treaty's provisions provide the necessary clarity. In this context, the CJEU cases *Meroni v. Authority* (9/56 and 10/56) and *Romano* became the basis for defining the limits of delegation, developing the famous Meroni doctrine. It also deals with an essential principle in the delegation of powers, namely the principle of

¹¹⁴ EUROPEAN COURT OF AUDITORS. *2022 Audit of EU agencies in brief. Introducing the European Court of Auditors' 2022 annual report on EU agencies*. Publications Office of the European Union, 2023, p. 19. Available at: <https://www.eca.europa.eu/ECAPublications/SAR-AGENCIES-AIB-2022/RAS-2022-Audit-in-brief_EN.pdf>.

¹¹⁵ For example: EU agencies in the Area of Freedom, Security and Justice (AFSJ), namely Europol, the European Union Agency for Law Enforcement Training (CEPOL), Eurojust, the EU Fundamental Rights Agency (FRA), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Border and Coast Guard Agency (Frontex), the EU Agency for Asylum (EUAA), and the EU Agency for the Operational Management of Large-Scale IT Systems (eu-LISA).

¹¹⁶ VOLPATO, Annalisa. Unchecked action of AFSJ agencies: an issue for delegation of powers. In *Symposium: The Agencies of the European Union: Legal Issues and Challenges*. EU Law Live, 2023, pp. 31-33. Available at: <<https://eulawlive.com/op-ed-unchecked-action-of-afs-j-agencies-an-issue-for-delegation-of-powers-by-annalisa-volpato/>>.

¹¹⁷ VOLPATO, Annalisa. Unchecked action of AFSJ agencies: an issue for delegation of powers. In *Symposium: The Agencies of the European Union: Legal Issues and Challenges*. EU Law Live, 2023, pp. 32. Available at: <<https://eulawlive.com/op-ed-unchecked-action-of-afs-j-agencies-an-issue-for-delegation-of-powers-by-annalisa-volpato/>>.

institutional balance. However, some scholars argue that the case law of the CJEU shows this principle as an unenforceable feature of EU law.¹¹⁸ In this context, it is important to examine the limits of delegation or where is the so-called boundary between executive and discretionary powers. The fundamental difference between the two is the scope for administrative discretion left to discretionary powers, as opposed to the strict scrutiny to which executive powers may be subject. The CJEU has also contributed to this distinction in a judgment known as *Meroni*.

The *Meroni* case concerns the applicant *Meroni & Co, Industrie Metallurgiche, S.P.A.*, and its action against the High Authority. The High Authority (today's parallel to the Commission) had delegated powers to two bodies established under Belgian private law, the so-called Brussels Agencies, which, according to *Meroni*, was contrary to primary law. The CJEU ruled in favor of *Meroni*, although it did not rule out the possibility of delegation to private law entities.¹¹⁹ It further ruled out the delegation of discretionary powers and stated that only clearly defined executive powers could be delegated.¹²⁰ By establishing three key conditions, the so-called *Meroni* doctrine developed:

- (1) The principle *Nemo plus iuristransfere (ad alium) repotest quam ipse habet* applies, meaning that an institution cannot delegate powers it does not possess; that is powers beyond primary law or explicitly granted to authorities.
- (2) It is permissible to delegate executive powers that are clearly defined and subject to strict control based on objective criteria established by the delegating authority.
- (3) Delegations of discretionary powers that give broad discretionary powers that may affect the implementation of economic policy are impermissible.¹²¹

The *Romani* case then further developed this doctrine, although it did not directly address *Meroni* in its conclusions. The reason for this may be the different delegating authority (i.e., not so much the Commission, but the Parliament and the Council). In this decision, the CJEU held that legislative powers could not be delegated to a body such as an administrative commission.¹²² While the *Romano* case confirmed the possibility of delegating powers to an entity established by secondary legislation, it prohibited delegating legislative powers to such an entity, i.e., to a body other than the EU legislator. This means that EU agencies can only

¹¹⁸ CHAMON, Merijn. The empowerment of agencies under the *Meroni* doctrine and article 114 TFEU: comment on *United Kingdom v Parliament and Council (Short-selling)* and the proposed Single Resolution Mechanism. *European Law Review*, 2014, 39(3), p. 397.

¹¹⁹ Case 9/56 *Meroni v High Authority* ECLI:EU:C:1958:7, para 151 subpara 2.

¹²⁰ *Ibid.*, para 152.

¹²¹ Case 10/56 *Meroni v High Authority* ECLI:EU:C:1958:7, para 170-175.

¹²² Case C 98/80 *Romano* ECLI:EU:C:1980:267, Opinion of AG Warner, p. 1264.

adopt non-binding decisions. The *Romano* case may be closer to the context of EU agencies, but *Meroni* is more referenced.¹²³ However, due attention was paid to both judgments, particularly regarding the clarity and the search for academic consensus on their legal merits and "precedential" significance. The relatively brief reasoning of the Advocates General (AGs) also played a part in this.¹²⁴ It is possible to agree with Simoncini (2023) that by developing the *Meroni* Doctrine and therefore "*through the limitation of agencies' powers, the Court of Justice ensured that the structure of powers as set in the Treaties was kept unchanged.*"¹²⁵

How this judgment should be understood in relation to EU agencies was brought to our attention once again by a more recent *ESMA short-selling* case.¹²⁶ In light of both judgments and with some progress, the aforementioned *ESMA* case came about, often referred to in the literature as "*Meroni-light*" or "*mellowed Meroni.*"¹²⁷ This case concerned the intervention powers of the European Securities and Markets Authority (ESMA), which the UK argued were in breach of the *Meroni* doctrine due to their wide discretionary powers. The Court of Justice sided with the ESMA despite a dissenting opinion from AG Jääskinen.¹²⁸ It has recognized that it is possible to entrust EU agencies with a certain degree of discretionary powers if they are clearly defined, meet objective criteria, and require a high degree of expertise to achieve specific objectives set by EU legislation, in this case, the creation of a functioning single financial market.¹²⁹ The *ESMA* case also shows that this can be the case without a significant transfer of accountability. According to Simoncini, this CJEU approach „*has started to pave the way towards administrative regulation.*"¹³⁰ The CJEU's reasoning, in this case, was also aided by the changed structure of the Treaties, which made it possible for judicial review of the

¹²³ e.g. Case C-378/00 *Commission of the European Communities v European Parliament and Council of the European Union* ECLI:EU:C:2002:561, Opinion of AG Geelhoed, para 59; Case C 301/02 *Carmine Salvatore Tralli v European Central Bank* ECLI:EU:C:2005:306.

¹²⁴ Case C 98/80 *Romano*, ECLI:EU:C:1980:267, Opinion of AG Warner; Case C 9/56 *Meroni*, ECLI:EU:C:1958:4, Opinion of AG Roemer. See KOZINA, Ana, MARTINIĆ, Stefan, and MIHALIĆ Vedrana. The Delegation of Executive Powers to EU Agencies and the *Meroni* and *Romano* Doctrines. *Pravnik: časopis za pravna i društvena pitanja*, 2017, 51(102), p. 71

¹²⁵ SIMONCINI, Marta. Live and let die? The *Meroni* doctrine in 2023. In *Symposium: The Agencies of the European Union: Legal Issues and Challenges*. EU Law Live, 2023, ISSN 2695-9593, p. 10.

¹²⁶ Case C 270/12 *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union (ESMA)* ECLI:EU:C:2014:18.

¹²⁷ PELKMANS, Jacques, and SIMONCINI, Marta. Mellowing *Meroni*: Hows ESMA can help build the single market. [Policy Paper], *CEPS Commentaries*, 2014, pp.1-6. Available at: <<http://aei.pitt.edu/id/eprint/50129>>

¹²⁸ Case C 270/12 *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union (ESMA)* ECLI:EU:C:2014:18; Case C-270/12 *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union* [2012] ECLI:EU:C:2013:562, Opinion AG Jääskinen.

¹²⁹ Case C 270/12 *ESMA* ECLI:EU:C:2014:18, para 41- 85.

¹³⁰ SIMONCINI, Marta. *Administrative regulation beyond the non-delegation doctrine: A study on EU agencies*. Bloomsbury Publishing, 2018. ISBN: 9781509911721, p. 17.

EU agencies' acts.¹³¹ Although it also generated some controversy in the academic community, particularly on the scope of ESMA's powers and the question of democratic accountability and legitimacy. And even in other judgments, the CJEU has recognized the reality of the functioning of EU agencies.¹³² However, the *ESMA* case can no longer be considered a "*current underestimation of the Meroni doctrine*," as more recent CJEU judgments on this issue can be pointed out.

The General Court, with its five judgments in the *Banco Popular* resolution case, has added new elements to the Meroni doctrine and expanded the powers of EU agencies.¹³³ It recognizes allocating technical and semi-discretionary powers to the agencies while avoiding a shift of the underlying accountability. The participation of the Commission in the Board of the SRB is considered crucial to ensure sufficient control over the discretionary aspects of the final decision.¹³⁴ Recently, another decision was issued in the aforementioned case, C-551/22 P¹³⁵ and thus the latest development in interpreting the Meroni doctrine. In this decision, the Court of Justice, in its composition of the Grand Chamber, responded to the Commission's appeal to the previous General Court judgment. CJEU, in this decision, reaffirms the ultimate role of the Commission, its responsibility and control over the discretionary powers of the SRB, whose act is therefore not an independently challengeable legal act and does not obtain legal force without the Commission's approval. From its conclusion, it appears that the CJEU is reluctant to leave the well-trodden path of the Meroni doctrine and continues to enforce it despite the obvious contradictions that its shortcomings entail. Although these new judgments indicate a slow trend towards greater flexibility in the delegation of powers, conditioned by adequate control and transparency, they still point to the unresolved surroundings of the use of the Meroni doctrine, or a „mellowed-*Meroni*” and to the need for a possible reconstruction of the non-delegation doctrine.¹³⁶ From the above mentioned, it seems that the Meroni doctrine is here to stay and will be with us for some time.

¹³¹ Articles 263 and 267 TFEU.

¹³² E.g. Case T 96/10 *Rütgers Germany GmbH and Others v European Chemicals Agency* (ECHA) ECLI:EU:T:2013:109.

¹³³ Case T-481/17 *Fundación Tatiana Pérez de Guzmán el Bueno and Stiftung für Forschung und Lehre (SFL) v Single Resolution Board* ECLI:EU:T:2022:311; Case T-510/17 *Del Valle Ruíz and Others v Commission and SRB* ECLI:EU:T:2022:312; T-523/17 *Eleveté Invest Group, SL and Others v European Commission and Single Resolution Board* ECLI:EU:T:2022:313; Case T-570/17 *Algebris (UK) Ltd and Anchorage Capital Group LLC v European Commission* ECLI:EU:T:2022:314; Case T-628/17 *Aeris Invest Sàrl v European Commission and SRB* ECLI:EU:T:2022:315.

¹³⁴ SIMONCINI, Marta. Live and let die? The Meroni doctrine in 2023... p. 12.

¹³⁵ Case C-551/22 P. *European Commission v Single Resolution Board*. ECLI:EU:C:2024:520.

¹³⁶ CHAMON, Merijn. The non-delegation doctrine in the *Banco Popular* cases. *REALaw.blog*. 2022. Available at: <<https://wp.me/pcQ0x2-s6>>.

3. Comparing CFSP Agencies: Case of EDA, SatCen, and EUISS

The CFSP is currently attracting considerable attention, particularly regarding the unjustified Russian invasion of Ukraine in 2022. Although the future of the CFSP is seen within the broader EU structures, it is still identified with its former isolated form, and the academic community is calling for reform.¹³⁷ The objectives of CFSP are supported by a robust institutional structure comprising EU institutions and bodies, including three selected CFSP agencies – SatCen, EUISS, and EDA. These agencies play a pivotal role here, performing specific technical, scientific, and managerial tasks. It is the very separateness of the CFSP that also affects these agencies, which are distinguished from other EU agencies by their close ties to the relationship with the Council, which also puts them out of the focus of research. What is important is their cooperation and interaction with other EU institutions such as the Commission, the Council, the Parliament, or the CJEU.

As outlined in the theoretical part of this thesis, applying the PA concept necessitates identifying the key actors, and it primarily depends on the author's viewpoint to determine whom to treat as principal and agent. The second part introduced us to the act of delegation, which is a key element of this relationship. In this chapter, the PA concept will be applied to explore the relationships between individual agencies, as agents, and EU institutions, as principals, to analyze the established framework of cooperation with a focus on accountability structures that regulate limits and ensure adequate checks and balances on the exercise of powers by EU agencies. The examination, to address the thesis's main research question, will answer an additional question (*RQ3*): *What are the similarities and differences of the PA concept when applied to the CFSP agencies, and what are their implications?* This will link the theoretical framework and practical analytical application within this thesis.

3.1. Rationale of CFSP Agencies

The European Satellite Centre's (SatCen) life started under the Western European Union (WEU) structures for the first ten years of its existence, later integrated into the EU as an agency in 2001. The preamble of the Council Joint Action 2001/555/CFSP on the establishment of a European Satellite Centre on 20 July 2001 indicates the principal's broader interests behind creating the agent – SatCen agency. The reasoning behind SatCen's establishment was seen as

¹³⁷ BUTLER, Graham. Leaps in Time through the EU's Common Foreign and Security Policy Post-Enlargement. *EU Law Live*, 2024. Available at: <<https://eulawlive.com/op-ed-leaps-in-time-through-the-eus-common-foreign-and-security-policy-post-enlargement/>>

"essential for strengthening early warning and crisis monitoring functions within the context of the CFSP, and in particular of the ESDP."¹³⁸ Various factors initiated the establishment of this agency. The Gulf War, for instance, in which coalition forces responded to the Iraqi invasion of Kuwait, can be seen as one of the reasons for the establishment of SatCen.¹³⁹ The primary aim of SatCen, even at its inception, was to deliver a comprehensive and actionable geospatial intelligence analysis, utilizing satellite imagery and other pertinent data sources. At that time, there was a clear desire to create situational awareness to provide WEU member states with a better understanding of relevant developments around crisis events.¹⁴⁰ Nevertheless, the creation of SatCen was considered an incredibly forward-thinking choice, according to Sorin Ducar, the Director of SatCen.¹⁴¹ Today, SatCen is mainly responsible for providing products and services that result from exploiting pertinent space assets and collateral data, such as satellite and aerial imagery. This support is intended to assist the EU in making decisions and taking action in the field of the CSDP and CFSP.¹⁴² In other words, its role is to alert the decision-makers of any possible crises in advance and ensure that they have information about the global situation. Due to the increasing activities of SatCen, the agency's staff number has also increased. Currently, SatCen employs around 146 people, with 90 in permanent positions and 56 in temporary positions. Moreover, SatCen has national experts seconded by the member states, enabling them to participate in the operation of the SatCen.¹⁴³

The European Union Institute for Security Studies (EUISS), established in 2001, is dedicated to fostering a unified security culture across the EU, advancing the CFSP, and stimulating strategic discourse within Europe.¹⁴⁴ Originating from the WEU's Institute for Security Studies, the EUISS represents a gradual shift of WEU competencies to the EU, similar to the integration process of SatCen. The inception of the EUISS must be viewed against the backdrop of its predecessor, established by a WEU Council decision in 1989, during a time when Europe was in the midst of considerable political and social change with a very significant impact on the security landscape. The inception of the Institute was a definite move towards

¹³⁸ Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre, OJ L 2001, 25.7.2001: Para 2.

¹³⁹ WEBER, Gesine. 30 years of the European Union Satellite Centre (SatCen). *The European Security and Defence Union*, 2022, p. 41.

¹⁴⁰ WEBER, Gesine. 30 years of the European Union Satellite Centre (SatCen)...p. 40.

¹⁴¹ Ibid.

¹⁴² Article 2 of the Council Decision 2014/401/CFSP of 26 June 2014 on the European Union Satellite Centre and repealing Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre, OJ L 188, 27.6.2014.

¹⁴³ Ibid.

¹⁴⁴ TURNER, Barry. Main EU Agencies. *The Statesman's Yearbook: The Politics, Cultures and Economies of the World 2013*, 2012, p. 76.

promoting the emergence of a European security identity and awareness of security issues. These principles have been carefully preserved and expanded in the operational spirit of EUISS.¹⁴⁵ However, this was not without some members of the WEU Council of Ministers questioning the need for such an institution.¹⁴⁶ In its present capacity, the EUISS plays a crucial role within the CFSP/CSDP framework, undertaking the analysis and facilitation of discussions on the EU's external strategy, focusing on conflict prevention and peace-building.¹⁴⁷ Beyond gathering and processing information for EU officials and experts, the EUISS also focuses on organizing networking events and workshops, which serve as platforms for exchanging experiences and enlightenment in the realm of security policy. Additionally, the EUISS serves as a connection between EU institutions and the broader community of external experts, including security actors.¹⁴⁸

The European Defence Agency (EDA), formally established in 2004, is the first truly EU-wide armaments managing institution in the EU.¹⁴⁹ According to Bátorá (2009), there were several reasons for creating the EDA, namely strategic, economic, and identity variables (or motivations) for creating the agency.¹⁵⁰ The traditional reluctance of member states, and hence their national governments, to give up the sovereignty of their defense policies in exchange for establishing a common defence policy in favor of supranational organizations (such as the EU) has played a central role in many disputes. There were numerous proposals for creating such a body – one of which was proposed in the context of the Convention's work on a Constitution for Europe.¹⁵¹ In the 1990s, the upheaval caused by events such as the Balkan wars caused states to reevaluate their positions and adopt a more serious approach and desire to create an EU defense policy that could bolster their shared foreign policy objectives. It is worth mentioning

¹⁴⁵ ROMAN, Mr. The WEU Institute for Security Studies. Assembly of Western European Union Fortieth Ordinary Session (Second Part) Document 1430, 31st October 1994. 1994. Available at: <<http://aei.pitt.edu/53125/1/B0872.pdf>>.

¹⁴⁶ Particularly Mr. Younger, then UK Secretary of State for Defence and President of the Council, who expressed doubts to the Assembly. His doubts were well-founded since, at that time, there were already about 20 similar institutions, and therefore, creating an entity that would have a truly distinctive and useful role was undoubtedly necessary (ROMAN, Mr. The WEU Institute for Security Studies. Assembly of Western European Union Fortieth Ordinary Session...p. 4)

¹⁴⁷ Council Decision 2014/75/CFSP: Art. 2.

¹⁴⁸ THE EUROPEAN UNION INSTITUTE FOR SECURITY STUDIES. Summaries of EU Legislation. EUR-Lex. 2014. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A25010101_2&qid=1710336119007>.

¹⁴⁹ OIKONOMOU, Iraklis. The European Defence Agency and EU military space policy: Whose space odyssey?, *Space Policy*, 2012, 28:2, 102-109, ISSN 0265-9646. Available at: <<https://doi.org/10.1016/j.spacepol.2012.02.008>>.

¹⁵⁰ BÁTORA, Jozef. European Defence Agency: A Flashpoint of Institutional. Logics, *West European Politics*, 2009, 32:6, p. 1076, DOI: 10.1080/01402380903230561.

¹⁵¹ CALCARA, Antonio. State–defence industry relations in the European context: French and UK interactions with the European Defence Agency. *European security*, 2017, p. 538.

that the EDA was never here to replace the defense procurement agencies and mechanisms of member states but rather to complement them.¹⁵² There has been, unsurprisingly, much debate about the shape of the EDA. As Bátorá noted, "*the EDA has been a flashpoint of institutional logics representing different visions of how various aspects of defense integration in the EU should be organized.*"¹⁵³ The difference between the French vision and the British one, in particular, was the most striking one.¹⁵⁴ The discussion on the form of the EDA also involved the presidencies of the European Council, namely Greece and Italy.¹⁵⁵ The Italian presidency, in particular, had quite a significant influence on the later creation of the EDA, as it devoted a large part of its presidency to the discussion on its establishment.¹⁵⁶ EDA's primary mission is "*to support the Council and the Member States in their effort to improve the EU's defense capabilities in the field of crisis management and to sustain the ESDP as it stands now and develops in the future.*"¹⁵⁷ This formulation is unfortunate, as one might conclude that the EDA is limited to crisis management, but a closer look at the Agency's functions and tasks rules out this limitation. In fact, the EDA's mandate to develop military capabilities far exceeded expectations and requests at the time of its creation.

3.2. Institutional Structure of CFSP Agencies

EU agencies are given their own legal identity by establishing acts. This enables them to carry out their functions and fulfill their tasks.¹⁵⁸ The act of establishment refers to the principal delegating specific powers to the agent, a crucial aspect of the principal-agent relationship. The first characteristic that differentiates CFSP agencies from other EU agencies is their legal basis within the CFSP in Article 23-45 TEU. The EDA holds the most privileged status among the three CFSP agencies. This is because it is explicitly mentioned in Articles 42 and 45 TEU, which give it immunity from discontinuation by Council Decision unless the Treaties themselves are amended.¹⁵⁹ With Article 28 TEU and Article 31(1) TEU as its legal basis,

¹⁵² TRYBUS, Martin. The new European Defence Agency: A contribution to a common European security and defence policy and a challenge to the Community acquis?. *Common Market Law Review*, 2006, 43.3, p. 683.

¹⁵³ BÁTORA, Jozef. European Defence Agency: A Flashpoint of Institutional. Logics...p. 1076.

¹⁵⁴ CALCARA, Antonio. Italy's defence policy in the European context: the case of the European Defence Agency. *Contemporary Italian Politics*, 2017, 9:3, p.281, DOI: 10.1080/23248823.2017.1396064.

¹⁵⁵ GIOVACHINI, Laurent. L'Agence européenne de défense: un progrès décisif pour l'Union?. *Politique étrangère*, 2004, p. 183.

¹⁵⁶ CALCARA, Antonio. Italy's defence policy in the European context...p. 282.

¹⁵⁷ Council Joint Action 2004/551/CFSP: Art. 2.

¹⁵⁸ CHAMON, Merijn. *EU agencies: legal and political limits to the transformation of the EU administration*. Oxford University Press, 2016. Available at: <<https://doi.org/10.1093/acprof:oso/9780198784487.001.0001>>

¹⁵⁹ BUTLER, Graham. EU agencies within the common foreign, security, and defence policies. In Symposium: The Agencies of the European Union: Legal Issues and Challenges. *EU Law Live*, 2023, p. 14.

EUISS and Satcen operate within the provisions of the EU Treaties related to the CFSP. However, unlike the EDA, their activities and integration into EU structures are regulated by secondary legislation. As a result, the Council has the authority to shut them down without requiring additional measures.¹⁶⁰ All three agencies are then subject to the regulation of secondary legislation - Council Joint Action, defining their scope of mandates. SatCen was established by Council Joint Action 2001/555/CFSP, with operational functions by 1 January 2002.¹⁶¹ However, SatCen operates under Council Decision 2014/401/CFSP. EUISS was established by the Council Joint Action 2001/554/CFSP and redefined by the Council Decision 2014/75/CFSP.¹⁶² In these two cases, we can see the overlapping period of their origin. This may indicate a common EU effort to strengthen the EU's security and defense capabilities. It was also a logical step in transferring tasks from the WEU to the EU's CSDP. EDA was formally established by Council Joint Action 2004/551/CFSP, with full operation dating back to mid-2005.¹⁶³ This act was twice repealed in 2011¹⁶⁴, then replaced in 2015¹⁶⁵ by a Council Decision currently in force.

Taking the agencies delegation framework, the delegation within agencies is limited by the Meroni Doctrine, as discussed in the previous chapter. Starting with SatCen's mandate, SatCen was not vested with any discretionary powers, as stressed out in current Council Decision 2014/401/CFSP, as its mission is to „*support the decision making and actions of the Union in the field of the CFSP [...] by providing, at the request of the Council or the HR, products and services resulting from the exploitation of relevant space assets and collateral data, including satellite and aerial imagery, and related services [...]*“¹⁶⁶ Its functions, like those of the EUISS, are merely informative, with no broader mandate entrusted to either SatCen or the EUISS. EUISS essentially "*contribute to the development of EU strategic thinking in the field of the Union's [CFSP and CSDP] including conflict prevention and peace-building,*

¹⁶⁰ Ibid.

¹⁶¹ Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre, OJ L 2001, 25.7.2001.

¹⁶² On September 20th, 2011, the HR submitted a report to the Council regarding the EUISS's functioning report, which PSC noted and suggested that the Council amend Joint Action 2001/554/CFSP on February 1st, 2012. (Par. 4 of the Council Decision 2014/75/CFSP of 10 February 2014 on the European Union Institute for Security Studies, OJ L 41, 12.2.2014)

¹⁶³ Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency, OJ L 245, 17.7.2004.

¹⁶⁴ Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP, OJ L 183, 13/07/2011, p. 16–26.

¹⁶⁵ Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency, OJ L 266, 13/10/2015, p. 55–74

¹⁶⁶ Council Decision 2014/401/CFSP: Art. 2.

[...]strengthening the EU's analysis, foresight and networking capacity in external action."¹⁶⁷ EUISS has a small staff, and its work is centered around the Council and EEAS, raising the question of whether EUISS's status as a separate actor is necessary. On the other hand, the EDA has the most extensive mandate of the three agencies, although the scope of its powers cannot even come close to those agencies of the financial regulatory sphere. Article 42(3) of the TEU serves as the basis for its creation, with Article 45 defining its tasks as:

- a) *"contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;*
- b) *promote harmonisation of operational needs and adoption of effective, compatible procurement methods;*
- c) *propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;*
- d) *support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;*
- e) *contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.*"¹⁶⁸

As Council Decision (CFSP) 2015/1835 further clarifies, the EDA is "only" a coordinating EU agency. As EU member states face challenges due to military capability shortfalls, efforts are being made to integrate national capabilities into large multinational formations. Consequently, the expansion of the powers and activities of the EDA could be in the spotlight.¹⁶⁹ From the above, it can be concluded that none of the agencies has decision-making powers in the classical sense, and thus, the functions of these three CFSP agencies are more technical and informative. This also implies their compliance with the Meroni doctrine, which most of today's agencies have difficulty complying with (especially those in financial regulation).

The control mechanisms and sanction systems embodied by the principal can be observed in the governance and management settings of individual agencies. Although the EU agencies generally differ, particularly in their mandates, they share some critical bodies in

¹⁶⁷ Council Decision 2014/75/CFSP: Art. 2.

¹⁶⁸ Article 45 TEU.

¹⁶⁹ FABBRINI, Federico. European Defence Union ASAP: The Act in Support of Ammunition Production and the development of EU defence capabilities in response to the war in Ukraine. *European Foreign Affairs Review*, 2024, 29(1), pp. 67-84. Available at: <<https://doi.org/10.54648/eerr2024004>>

principle. The Management Board and the President, or in the case of CFSP agencies, the Board (or Steering Board) and the Director (Chief Executive), are the crucial ones.¹⁷⁰ The composition of the EU agency's Board is key, as it is usually a combination of representatives of Member States, relevant organizations, and representatives of the Commission or the European Parliament, allowing them to play an essential role in the agency's governance. From this pattern, the CFSP agencies differ as their Boards consist only of representatives of Member States and representatives of the Commission (without voting rights). Interestingly, this participation of the Commission is considered a consequence of the Meroni doctrine for the sake of institutional balance and distribution of powers.¹⁷¹

In the case of SatCen and EUISS, the Commission mainly has a certain observer status¹⁷² but develops cooperation based on working agreements, mostly in the case of SatCen.¹⁷³ In the case of EDA, the Commission is not only fully involved in the work, but it may even participate in projects, and in that case, with decision power.¹⁷⁴ SatCen and EUISS share some similarities in this context, as their boards are a "forum" for discussing the agencies' main tasks and functioning and are chaired by the High Representative (HR). The Board does not have fully discretionary powers but is an important actor, thanks to the necessary approval. Also, the European External Action Service (EEAS) participates in the EUISS board as its secretariat. HR plays a role here, heading and exercising control over the board by reporting to the Council on its activities and giving the agency overall "operational direction."¹⁷⁵ For SatCen, it is stressed that the HR role in the agency is held "*without prejudice to the responsibilities of the board and the director...*"¹⁷⁶ By contrast, the EUISS has no such limitation in the role of HR, it has assured the legal personality and "intellectual independence" that allows it to exercise its mandate broadly without prejudice to the obligations of the Council and the HR.¹⁷⁷ In the case of EDA's Steering Board composition, the representatives of the Member States are present at the level of the Defence ministers, which highlights that EDA is the only EU agency where the Steering Board is composed of members of the Council.¹⁷⁸ Unlike the EUISS and SatCen board's roles, the EDA Steering Board is characterized as the EDA's main

¹⁷⁰ FILIPEC, Ondřej. agent–principal dilemma and the Eu chemical Management. *TalTech Journal of European Studies*, 2018, 8.1, p. 190.

¹⁷¹ CHAMON, Merijn. In Search of an Agency Model: The Provisions in Agencies' Establishing Acts...p.18.

¹⁷² Council Decision 2014/75/CFSP: Art. 5.

¹⁷³ Council Decision 2014/401/CFSP: Art. 18.

¹⁷⁴ Council Decision 2015/1835/CFSP: Art. 24.

¹⁷⁵ Council Decision 2014/401/CFSP: Article 6; Council Decision 2014/75/CFSP: Art. 5.

¹⁷⁶ *Ibid.*, Art. 3.

¹⁷⁷ Council Decision 2014/75/CFSP: Preamble Par. 3.

¹⁷⁸ BUTLER, Graham. EU agencies within the common foreign, security, and defence policies...p. 14.

decision-making body.¹⁷⁹ Therefore, its composition differs and is considered strongly intergovernmental, which underlines the role of the Board.¹⁸⁰

3.3. Accountability and Transparency: The Role of Multiple Principals

The role of multiple principals is often associated in the literature with both advantages and disadvantages. This is due to the situations that may arise in this context. Disadvantages can arise, for example, in a situation in which an agent is more reflective of a principal with whom it has more common interests¹⁸¹ or in a situation in which sanctions are imposed by multiple principals, depending primarily on their cooperation or consent.¹⁸² The advantage, on the other hand, is the unique sophisticated system of control mechanisms, which in turn can help to reduce the costs associated with control, while at the same time interestingly shaping the agent's discretion. When using the PA concept for analysis in the EU environment, it is important to remember the absence of a defined hegemon within the EU, which is itself a consequence of the multi-level nature of the system. This peculiarity reflects the impossibility of clearly defining a "principal" in relations with EU agencies, as the European institutional architecture has been carefully designed to avoid any concentration of power.¹⁸³ Nevertheless, the Commission can still be seen as playing a dominant role in terms of the environment for EU agencies. However, CFSP agencies are specifically accountable to the Council. In the case of SatCen and EUISS, political oversight is exercised by one of the Council's preparatory bodies, the Political and Security Committee (PSC).¹⁸⁴ In contrast, the Council directly controls the EDA and provides it with political oversight.¹⁸⁵ This is further highlighted in the provision of legal personality to all agencies to carry out specified activities while emphasizing maintaining close liaison with the Council.¹⁸⁶

Accountability and transparency go hand in hand with agency independence. In terms of the independence of EU agencies, it should be noted that it is not independence in the true sense of the word, as the agencies are subject to a rather elaborate structure of control mechanisms -

¹⁷⁹ Council Decision CFSP 2015/1835: Art. 8

¹⁸⁰ BÁTORA, Jozef. *European Defence Agency: A Flashpoint of Institutional Logics...* p. 1081.

¹⁸¹ WATERMAN, Richard W, MEIER, Kenneth J. *Principal-agent models: an expansion?...*

¹⁸² MCCUBBINS, Mathew D., NOLL, Roger G., and WEINGAST Barry R.. *Structure and process, politics and policy: Administrative arrangements and the political control of agencies.* " *Va. L. Rev.* 1989, 75: 431-482. p. 439.

¹⁸³ DEHOUSSE, Renaud. *Delegation of powers in the European union: The need for a multi-principals model.* *West European Politics*, 2008, 31:4, 789-805, DOI: 10.1080/01402380801906072, p. 790.

¹⁸⁴ Council Decision 2014/75/CFSP; Council Joint Action 2001/554/CFSP: Art. 3.

¹⁸⁵ Council Joint Action 2004/551/CFSP: Art. 4.

¹⁸⁶ Council Decision 2014/401/CFSP: Art. 5.

scrutiny of the attention of multiple actors - such as EU Parliament, Commission, CJEU and others. Due to the specific nature of the CFSP, the CFSP agencies are not endowed with any independence whatsoever; they are not regulatory agencies with a broader mandate, as we see with agencies in the post-Lisbon era. Furthermore, these three agencies do not possess genuine decision-making powers.¹⁸⁷ And "collect, analyze and disseminate information" is the main role of these agencies.¹⁸⁸

3. 3. 1. Information Asymmetry

The information through which CFSP agencies carry out their activities varies. Starting with SatCen, this agency possesses a high level of information. SatCen operates on a demand basis, meaning that it performs services when requested by specific actors (called users). The requests can be submitted by a wide range of actors, from a Member State, EEAS, the Commission, or Union bodies with which SatCen cooperates to international organizations and third countries participating in SatCen's activities.¹⁸⁹ It is important to note that SatCen does not possess nor manage its own space assets. To this end, it cooperates with national and international institutions, as well as with the EDA, the Commission, and the revised European Union Space Programme Agency (EUSPA). In the case of EUSPA, in particular, it can be seen that there is an overlap between some of SatCen's activities and those of this agency.¹⁹⁰ SatCen is increasingly moving towards this activity, particularly within the Copernicus program, the Commission initiative, as evidenced by the new contribution agreement between the Commission and SatCen for the implementation of the Copernicus Security Service in support of EU External and Security Actions (SESA) until 2027.¹⁹¹ According to Butler (2023), SatCen exhibits certain points that call for a closer assessment of its effectiveness and inclusion within the institutional structure of the EU. He identifies several issues, such as the fact that SatCen does not have its own satellites, increased involvement in activities outside the CFSP framework, or participation of various stakeholders from within and outside the EU.¹⁹²

¹⁸⁷ BUTLER, Graham. Hidden Administrative Review in EU Law...p. 125.

¹⁸⁸ Ibid., p. 135.

¹⁸⁹ Ibid., p. 125.

¹⁹⁰ BUTLER, Graham. EU agencies within the common foreign, security, and defence policies. In Symposium: The Agencies of the European Union: Legal Issues and Challenges. *EU Law Live*, 2023, p. 16.

¹⁹¹ EUROPEAN COMMISSION. Signature of the contribution agreement for the implementation of the Copernicus Security Service component on Support to EU External and Security Actions (SESA). 2023. [online] Available at:<https://defence-industry-space.ec.europa.eu/signature-contribution-agreement-implementation-copernicus-security-service-component-support-eu-2023-08-30_en.>

¹⁹² BUTLER, Graham. EU agencies within the common foreign, security, and defence policies...p. 14-17.

In the case of EUISS and its main focus, it can also be considered as an agent with a high information level. In its work, it leverages its collaboration with national think tanks, academia, and the broader community of experts. It is the composition of the EUISS, with analysts recruited from among nationals of the Member States, that encourages such cooperation.¹⁹³ It has contractual agreements not only with the Commission's DG DEVCO, but also with the Parliament, EDA, and SatCen.¹⁹⁴ On the other hand, if we look at the EUISS's scope of activities, it seems advisable to address a critical evaluation of its position in the CFSP structure. Some scholars ask if its activities must be done through an independent body in CFSP structure rather than internally through some dedicated unit e.g., within EEAS.¹⁹⁵ There are certainly advantages and disadvantages to this approach. A definite advantage would be its inclusion in the structures (EEAS) for which its work is oriented anyway and thus a more efficient use of resources could be made. However, a great deal of attention should be paid to independence. In such a sensitive area as the EUISS's work with information, independence is one of the most important (perhaps the most important) benchmark for the successful performance of the activities entrusted to it. The risk of politicization of research is also something that could jeopardize the EUISS's independent academic approach.

There is no doubt about the high information level of the next agent, the EDA. The EDA obtains information not only through synergies with other institutions or other Union bodies but also with third countries, organizations, and entities. However, most of its data is obtained from the national defence ministries themselves.¹⁹⁶ It also acts as a project manager of the EDIDP 'European Command and Control System from strategic to tactical level' (ESC2) project, and via cooperation of SatCen, it promotes the 'Geospatial Information Hub' (GeohuB).¹⁹⁷ The EDA cooperates on several programs and projects with various bodies, such as the Permanent Structured Cooperation (PESCO) and the Coordinated Annual Defence Review (CARD). Recently, as a direct result of the Strategic Compass, the EDA launched its HUB for EU Defence Innovation (HEDI), with 97 ad hoc cooperation projects and programs managed by the EDA in 2022.¹⁹⁸

¹⁹³ Council Decision 2014/75/CFSP: Art. 7.

¹⁹⁴ EUISS. Annual Activities Report 2015. [online] Available at: <<https://www.iss.europa.eu/sites/default/files/25%20April%202016.pdf>>

¹⁹⁵ BUTLER, Graham. EU agencies within the common foreign, security, and defence policies...p. 16

¹⁹⁶ EDA. *Defence Data 2005 - 2022*. [online]. Available at: <<https://eda.europa.eu/publications-and-data/defence-data.>>

¹⁹⁷ EUROPEAN DEFENCE AGENCY. *Annual Report 2022*, p. 14 [online]. Available at: <<https://eda.europa.eu/publications-and-data/all-publications/annual-report-2022.>>

¹⁹⁸ Ibid.

3. 3. 2. Control mechanisms *ex-ante*

As mentioned in the theoretical section, agent control can be divided into *ex-ante* and *ex-post* control. However, these types of control often overlap or combine to form ad locum control. Principals have at least three incentive or sanctioning structures: budgetary, personnel, and legislative. These mechanisms can take a variety of forms. Their effectiveness and credibility can largely determine the autonomy of the agency itself. For clarity, this thesis distinguishes between personnel, political, financial, and legal control. *Ex-ante* control is often exercised before delegation. One effective tool is establishing a contract between the agent and the principal, specifying the agent's mandate, the tools to carry out the agent's activities, and other procedures that enable the agency to perform its function. The basis on which CFSP agencies operate has already been presented here. However, other mechanisms include selecting the agency's key personnel or controlling the budget for performing the agent's activities.¹⁹⁹

Personal control

The Board is also responsible for selecting and appointing the agency's Director (in the case of the EDA Chief Executive), who is selected from a list of candidates drawn from the Member States and falls under its disciplinary oversight. The appointment procedure not only contributes to the comparison of agencies but is also a parameter of the independence of an agency from its principal(s). In the case of SatCen and EUISS, the director is the "legal representative" of those agencies. In the case of SatCen, the list is prepared by the Advisory Panel, which includes HR as a chair, three representatives of the member states of the Trio Presidency, and one representative of the EEAS.²⁰⁰ The EUISS has a pre-selection procedure in which individual Member States submit nominations to the HR. Interestingly, the pre-selection panel consists of seven members, larger than the SatCen advisory panel but with a similar composition. The 3-3-1 composition: three representatives of the EEAS, three representatives from the Trio Presidency and HR, propose at least three potential candidates to the Board, with the Board deciding on the final candidate who will act as legal representative of the EUISS.²⁰¹ Unlike SatCen, the EUISS Director is endowed with "*intellectual independence and operational autonomy in carrying out the Institute's activities.*"²⁰² The situation at EDA is quite complex, with the HR acting as the head of the agency, though the EDA is managed day-to-day

¹⁹⁹ MCCUBBINS, Mathew D.; SCHWARTZ, Thomas. Congressional oversight overlooked: Police patrols versus fire alarms. *American journal of political science*, 1984, 165-179.

²⁰⁰ Council Decision 2014/401/CFSP: Art. 7.

²⁰¹ Council Decision 2014/75/CFSP: Art. 6/2.

²⁰² Council Decision 2014/75/CFSP: Art. 8.

by a Chief Executive.²⁰³ HR proposes an appointment to the Steering Board. The Chief Executive falls directly under the authority of HR.²⁰⁴ It can be said that the composition of agency boards and the procedure for appointing key figures of the agency can also be considered empirical indicators of the level of independence of agencies, in addition to the system of personnel and political control set up by the principal.²⁰⁵

Financial control

The agent's budget is monitored as part of the financial control. A sufficient financial framework is vital for the proper functioning of the EU agencies. The EDA's budget is quite complex and can be divided into a general budget and an ad hoc budget(s) within an ad hoc project or program.²⁰⁶ The EUISS operates with its own budget. Contributions from Member States primarily fund this, but other sources, particularly from the EU institutions, may also be used to cover certain projects and activities.²⁰⁷ While most EU agencies have their accounts, receipts, and payments audited annually by the European Court of Auditors, SatCen, EUISS, and EDA are audited by independent auditors, primarily due to the diversity of their budgets. In all three agencies, their Director must submit the agency's draft annual budget for the following financial year to the Board, which approves the budget unanimously. In addition, an independent financial controller, appointed by the Board, is responsible for audit. The Council serves as the ultimate safeguard in financial control, with the Director presenting a comprehensive report of all income and expenditure for the previous financial year and a report on the agency's activities to both the Council and the Board.²⁰⁸ In case of SatCen, the Commission's auditors, in their 2021' Pillar Assessment of SatCen, identified the lack of control and recommended that the Board should consider implementing a different system of independent external audit or filling the vacancies, as it was not audited by the full members of the College of Auditors at the time.²⁰⁹ EDA has faced some opposition from MEPs, as Parliament's role is not mentioned in the Constitutional Treaty or in the joint regulation on the EDA. The Parliament wants to be involved in the EDA's practical organization, including

²⁰³ Council Decision (CFSP) 2015/1835: Art. 10.

²⁰⁴ Ibid.

²⁰⁵ KREHER, Alexander. Agencies in the European Community - a step towards administrative integration in Europe. *Journal of European Public Policy*, 1997, 4.2: 225-245.

²⁰⁶ Council Decision (CFSP) 2015/1835: Art. 12.

²⁰⁷ Council Decision 2014/75/CFSP: Art. 10.

²⁰⁸ Council Decision 2014/401/CFSP: Art. 11.

²⁰⁹ EUROPEAN UNION SATELLITE CENTRE. SatCen Closing Budget 2021. [online]. Available at:<
<https://www.satcen.europa.eu/keydocuments/CLOSING%20BUDGET%202021%20REPORT62ea2602cada70000152f97e.pdf>>

decisions on its funding. In 2017, the EDA's mandate was strengthened, allowing it to become the main operator of defense activities funded by the EU budget.²¹⁰ This change gives the Parliament, which is involved in approving the overall EU budget, the possibility to exercise oversight over the EDA budget.

3. 3. 3. Control mechanisms *ex-post*

The above analyses left political and legal controls for analysis, as they can be classified as *ex-post*, during or after the agent's activity. Here, the principal may apply a system of sanctions and rewards, and control is often exercised by monitoring and requiring periodic reports on the agent's activities. These mechanisms are therefore referred to by some scholars as *ad locum* type of control and as the most important of them.²¹¹ This is followed by two universal control mechanisms, namely *police patrolling* and *fire alarm* control.²¹² As the analysis will show, multiple principals' control of these agencies cannot be clearly subsumed under one model or the other. This offers a successful combination of the two models, creating a strong control mechanism with a multi-principal system that allows for reduced monitoring costs by spreading them across multiple entities.

Political control

From the point of view of information asymmetry and divergence of interests, it is necessary to look at how the principal obtains the information of the agent's activities. Political control is one of them. One of the most essential documents for the principal to become aware of the EU agencies' activities are its work program and annual report. The preparation of these documents, in particular the work program, can be seen both in terms of autonomy and accountability.²¹³ Similarities can be found in all three cases of CFSP Agencies - draft of the annual work program is the responsibility of the agency's Director (in the case of EDA Chief Executive) and is subject to the approval of the Board agencies.²¹⁴ In the case of SatCen and EUISS, the work program has to be notified to PSC; in the case of EDA, it is the notification to the Council itself.²¹⁵ The latter and its advisory bodies (such as the PSC) are empowered to

²¹⁰ EUROPEAN DEFENCE AGENCY. Mission and Function. [online]. Available at: < <https://eda.europa.eu/who-we-are/Missionandfunctions.>>

²¹¹ DELREUX, Tom; KERREMANS, Bart. How agents weaken their principals' incentives to control... p. 4.

²¹² CONCEIÇÃO-HELDT, Eugénia da. Multiple Principals' Preferences... p. 211.

²¹³ CHAMON, Merijn. In Search of an Agency Model: The Provisions in Agencies' Establishing Acts... p.31.

²¹⁴ Council Decision 2014/401/CFSP: Article 6; Council Decision 2014/75/CFSP: Art. 5; Council Joint Action 2004/551/CFSP: Art. 9.

²¹⁵ Council Decision (CFSP) 2015/1835: Art. 4 (2).

issue guidelines that the EDA must follow in setting the work program.²¹⁶ The agencies's annual activity report, i.e., the other side of the work program coin, is submitted to the Council in all three instances. The Director must forward the report to the Board and then to the Council through HR. Subsequently, the report is sent to the European Parliament and the Commission.²¹⁷ In the case of the EUISS, neither of the Member States is spared from the report.²¹⁸ In the case of the EDA, submitting the report is the sole responsibility of HR, who forwards it to the Council, with the approval of the Steering Board.²¹⁹ In the case of EDA, the Chief Executive is also responsible for preparing the three-year Planning Framework.²²⁰ The Council also relies on HR to provide information about these agencies; his prominent role cannot be overlooked. The frequency of the reports he delivers varies - for SatCen is at least once every six months.²²¹ In the case of the EUISS, as the agency with perhaps the highest degree of independence of these three agencies, the role of the HR is to provide operational guidance rather than to act as a provider of information to the Council. In SatCen, the role of HR is even more prominent, as it has the power to prioritize requests addressed to the agency.²²²

Legal control

The agencies are also supervised by other EU institutions, such as the CJEU. Within the CFSP, judicial review is exercised quite liberally, although particularly in the distinction between CFSP and non-CFSP activities and in relation to restrictive measures as set out in the EU Treaties.²²³ As noted in second chapter, the CJEU has jurisdiction under Article 263 TFEU to review acts of EU agencies where they have legal effects against third parties. In the case of the three CFSP agencies, judicial review of their actions is not straightforward, as they lack traditional decision-making powers. Nonetheless, personnel management is one clear area where their decisions could be reviewed. For all agencies, CJEU exercises jurisdiction as per the arbitration clause included in the contracts that these agencies conclude.²²⁴ Indeed, these agencies make decisions that can be reviewed and have legal implications, such as those concerning their staff - both seconded and locally hired personnel. Boards of Appeal (BoAs)

²¹⁶ Ibid., Art. 4 (3).

²¹⁷ Council Decision 2014/401/CFSP: Art. 7 (8).

²¹⁸ Council Decision 2014/75/CFSP: Art. 6 (8).

²¹⁹ Council Decision (CFSP) 2015/1835: Art. 7 (3).

²²⁰ Ibid., Art. 10 d).

²²¹ Council Decision 2014/401/CFSP: Art. 3.

²²² Council Decision 2014/75/CFSP: Art. 3.

²²³ BUTLER, Graham. *Hidden Administrative Review in EU Law*...p. 122-123.

²²⁴ Council Decision 2014/401/CFSP: Art. 14; Council Decision 2014/75/CFSP: Art. 14.

play a role in this context, although their role is limited as administrative review.²²⁵ Recognition of their existence can be found in Article 263 para 5 TFEU.²²⁶ The difference between the BoA of CFSP agencies and the BoA of EU agencies can be seen as the BoA of CFSP agencies in principle do not publish their decisions. In the case of CFSP agencies, as throughout the CFSP, the Council sought to avoid judicial review. As will be seen below, it has clearly failed to do so.

Until 2022, two BoAs were operating under SatCen and EUISS.²²⁷ EDA had a BoA in the past, but it was never convened to hear the case, and its existence was eventually removed from the legal texts.²²⁸ In this context, however, it is necessary to mention SatCen's Amending Council Decision, which annulled SatCen's BoA, and the CJEU was entrusted with the competence.²²⁹ It can be said that this was a natural continuation in T-286/15 and C-14/19 P, known as *KF v SatCen* line of case law.²³⁰ The *KF v SatCen* case²³¹ had an interesting impact on the BoAs of other agencies as well. The General Court held that applicants could in fact bypass the BoA and lodge an annulment claim directly before the General Court. This was the outcome of the first case following the first judgment of the General Court in the *KF v SatCen* litigation, based on which SatCen had suspended the functioning of its own BoA. Thus, under the EDA and SatCen, personnel disputes fall squarely within the jurisdiction of the CJEU.

From above, it can be concluded the transfer of BoA jurisdiction to the CJEU is undoubtedly a step in the right direction, more even so as they have been criticized for their lack of independence, focusing only on administrative review and rarely transcending agency boundaries unless escalated to the CJEU. The EUISS remains the only one of the three CFSP agencies with a functioning BoA. Despite its improvement in terms of legally qualified members, the non-public nature of its rules of procedure, and thus its lack of independence, are no more than blades of grass in the otherwise endless field of criticism that has been heaped on its activities.²³² No case has ever been brought before the CJEU, so we do not even know how

²²⁵ BOLZONELLO, Luca. Independent Administrative Review Within the Structure of Remedies under the Treaties: The Case of the Board of Appeal of the European Chemicals Agency. *European Public Law*, 2016, 22(3), p. 572.

²²⁶ "Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them." Art. 263 para 5 TFEU.

²²⁷ Art. 28 Council Decision (CFSP) 2016/1182 of 18 July 2016 concerning the Staff Regulations of the European Union Institute for Security Studies OJ L 195, 20.7.2016.

²²⁸ BUTLER, Graham. Hidden Administrative Review in EU Law... p. 124

²²⁹ Council Decision (CFSP) 2021/1838 of 18 October 2021 amending Decision (CFSP) 2017/824 concerning the Staff Regulations of the European Union Satellite Centre, OJ L 372, 20.10.2021, p. 24–26

²³⁰ Case C-14/19 P European Union Satellite Centre v KF. ECLI:EU:C:2020:492.

²³¹ Case T-619/19, *KF v SatCen (No 2)*, ECLI:EU:T:2020:337.

²³² BUTLER, Graham. Hidden Administrative Review in EU Law... p. 135

many cases the BoA has dealt with. This internal process potentially limits the scope of their decision-making and raises questions about their effectiveness as oversight mechanisms.²³³ Returning to the specification of the CFSP, a fundamental change has been made through the joined cases C-29/22 P and C-44/22 P, where the most mentioned is the Opinion of AG Ćapeta as the CJEU has jurisdiction to hear an action for damages brought by an individual under the CFSP.²³⁴

²³³ *Ibid.*, p. 125.

²³⁴ Case C-29/22 P. *KS and KD v Conseil e. a.* ECLI:EU:C:2023:901.

Conclusion

As recent studies have confirmed, EU agencies tend to be more responsive to the Commission than to other potential masters.²³⁵ However, the question has been whether this is also true for CFSP agencies, whose analysis has often been neglected, focusing mainly on internal market agencies. Given the EU's role as a global actor and the increasingly important security environment, an analysis of the CFSP agency landscape seems necessary. Through the application of the PA concept, a framework for the analysis of CFSP agencies, namely the European Defense Agency (EDA), the EU Satellite Centre (SatCen) and the EU Institute for Security Studies (EUISS), has been developed and subsequently applied. As the CFSP agencies do not fall within the scope of the so-called Common Approach, many differences can be identified, highlighting their operation in the former second pillar. The analysis shows the characteristics of the CFSP agencies, in particular their direct accountability to the Council, the organization of their main bodies, the lack of real decision-making powers, and the absence of greater independence in the sense that is granted to other EU agencies. The analytical review also identified potential challenges in cooperating with selected CFSP agencies.

The first part of the thesis dealt with the question of whether the concept of PA can be adapted to such a complex environment as security cooperation at the level of EU institutions/agencies and, if so, how this adaptation can be conceived. In this part of the thesis, key elements such as information asymmetry and conflicts of interest were introduced, highlighting potential problems in multi-agency structures. The chapter also presented the necessary adaptation of the PA concept to the EU context, given the complexity of the EU institutional framework. Most emphasis was placed on the specificities of multi-agent structures, which offer both opportunities and challenges. EU agencies are specifically designed to serve multiple principals, which may complicate their tasks and increase the risk of conflicts of interest. In this context, the multi-level nature of the EU environment could strengthen oversight and reduce the risk of agents shrinking or slippage. However, it also complicates the coordination of control mechanisms and the alignment of different interests. In the context of establishing such a unique analytical framework for the subsequent examination of the institutional configuration of the relationship between the principals (EU member states and

²³⁵ e.g. EGEBERG, Morten; TRONDAL, Jarle. Research by EU Agencies: What Have We Learned (and Where Are We Going)? *JCMS: Journal of Common Market Studies*, 2017, 55.4: 675-690.

institutions) and the agents (specific EU agencies), Waterman and Meier's approach²³⁶ has been introduced. Their differentiation into four variations of principal-agent relationships based on the degree of information availability, with the added factor of potential alignment or discord in the pursuit of objectives, seems ideal for applying this modified version of the PA concept to the cases of selected EU agencies. From the above, it is clear that the PA concept understands the regularities of the personnel policies of an international organization (as well as EU agencies) and allows for a better understanding of the democratic nature of the EU institutional structure. The analysis confirms the utility of the concept for the study of the EU, which remains a relevant analytical tool despite the complex structure of the delegation within the EU, as evidenced by many researchers.²³⁷

Since a critical element of the relationship between the agent and the principal is the delegation of powers, it was necessary to address this topic. Therefore, the next part of the thesis was a more detailed examination of this element, its current form, and a focus on its problematic aspects. Several problematic aspects were identified in relation to the delegation of powers to European agencies, in particular, the lack of clarification of the nature, scope, and limits of their powers. In addition, it was necessary to see how EU agencies could legitimately participate in the regulatory function regarding the constitutional principle of non-delegation. As we have seen, the reasoning of the CJEU in relation to the delegation of powers to non-Treaty bodies has been the same for quite some time. The shift in the CJEU's reasoning of the "balance of powers" can be seen slightly, from a reference to the preservation of the principle of institutional balance (Article 13/2 TEU) to a reference to the lack of judicial review that would arise in the event of delegation to such a body.²³⁸ The restriction resulting from Meroni and Romano had some understandable reasoning; however, as Chamon suggests, it needs to point out the importance of taking into account the different contexts within which such CJEU judgments

²³⁶ WATERMAN, Richard W, MEIER, Kenneth J. Principal-agent models: an expansion?. *Journal of public administration research and theory*, 1998, 8.2.

²³⁷ See WATERMAN, Richard W, MEIER, Kenneth J. Principal-agent models: an expansion?. *Journal of public administration research and theory*, 1998, 8.2; DELREUX, Tom; ADRIAENSEN, Johan (eds.). The principal agent model and the European Union. *Basingstoke: Palgrave Macmillan*, 2017; DELREUX, Tom; ADRIAENSEN, Johan. Principal-Agent Analysis and the European Union. In: *Oxford Research Encyclopedia of Politics*. 2019; DELREUX, Tom; ADRIAENSEN, Johan. Twenty years of principal-agent research in EU politics: How to cope with complexity?. *European Political Science*, 2018, 17: 258-275; GASTINGER, Markus and ADRIAENSEN, Johan. Of principal (s') interest? A disaggregated, multiple Principals' approach to commission discretion." *JCMS: journal of common market studies*, 2019, 57(2), 353-370; ASLETT, Kevin and MAGISTRO, Beatrice. Principal-Agent Problems with EU Funds: A Case Study of Patronage in Hungary, *Europe-Asia Studies*, 2022. DOI: 10.1080/09668136.2022.2122405;

²³⁸ Ibid. pp. 1059-1060.

have been made and those within which contemporary EU agencies are operating.²³⁹ Thesis returned to the question already raised by Everson et al. (1999) and asked whether the Meroni doctrine still represents the current thinking of the CJEU on the limits of external delegation within the EU, as overcoming the Meroni doctrine is being discussed across the academic community. The analysis showed that the *ESMA* case has challenged the Meroni doctrine to some extent, although it has been treated with some controversy within academic discourse. While it is understandable where the CJEU drew the line and looked for reasons for uncertainty, the present integration of the EU agencies into the institutional framework of the EU and the judicial review of their acts by the CJEU (Articles 263 and 267 TFEU) raises the question of whether this objection to delegation could be overcome. It can be seen that the limitations brought about by the Meroni doctrine have slowed down the procedure under Articles 290-291 TFEU by restricting the Commission in the exercise of its delegated powers.

The gradual limitation of the Meroni doctrine can be seen in the *Banco Popolaris* case. However, it is the most recent, and for a long while the last, it appears that the CJEU is reluctant to leave the well-trodden path of the Meroni doctrine and continues to enforce it despite the obvious contradictions that its shortcomings entail. Although these new judgments indicate a slow trend towards greater flexibility in the delegation of powers, conditioned by adequate control and transparency, they still point to the unresolved surroundings of the use of the Meroni doctrine, or a „mellowed-Meroni“ and to the need for a possible reconstruction of the non-delegation doctrine. As recently shown, the role of EU agencies has long gone beyond that of mere advisory or secondary bodies. Their role is becoming increasingly clear, which is why it is still necessary to subject their legal aspects to a detailed analysis. This brief introduction to Meroni and its recent development reflects not only the growing role and powers of EU agencies in a complex legal and regulatory environment but also the evolution of the CJEU's view on this issue. The thesis explained the legal *condiciones sine quibus non* of delegation of executive powers to EU agencies, i.e., an insight into the complex world of delegation rules and the Meroni doctrine that the CJEU has developed over the years. Apart from the well-researched subject of the legality of their acts and their limits, the operational powers of these agencies need to be subjected to wider academic scrutiny as part of the control mechanism we have at our disposal. This part of the thesis thus answers the second research question, "*How is the*

²³⁹ CHAMON, Merijn. EU agencies between Meroni and Romano or the devil and the deep blue sea. *Common Market Law Review*, 2011, 48(4), p. 1072. Available at: <<https://doi.org/10.54648/cola2011043>>

delegation of powers within EU agencies structured, and how is the current interpretation of the Meroni doctrine influencing the nature of this delegation?"

The third part is probably the greatest contribution of this thesis. Within this part, the theoretical knowledge has been applied to the specific cases of CFSP agencies in order to specify the differences and similarities of the PA concept in the context of its application to the environment of EU agencies, to explore in depth the set relationships between agencies and institutions and to bring a comprehensive view on the issue of their cooperation with other EU institutions. The application of the PA concept has highlighted several elements that differ from the classical principal-agent relationship, which will be discussed below. In all three agencies, there is a strong role of the multiple principals and, as a result, also the influence of the EU bureaucracy to maintain accountability of the agencies. In the case of the EDA, links to the national administration are also visible, not to mention the direct presence of member states on the boards of the agencies. The first visible difference from the classical agent-principal relationship is the search for an agent. Here, the principal does not have to search for the agent, since principal participated in the creation of the agency and/or, as in the case of the EDA, was created directly to carry out defined tasks. Therefore, the issue of adverse selection does not arise as to whether the agent possesses the skills actually needed to meet the principal's requirements.

Here it is necessary to highlight the nature of the two agents, SatCen and EUISS, which were separated from the WEU, rescued and integrated into the EU structure, and whose inclusion has been criticized. The thesis identified some differences between CFSP agencies and other EU agencies. The first distinguishing feature of CFSP agencies is their legal basis within the CFSP in Articles 23 to 45 TFEU. The establishment of the EDA is explicitly mentioned in Articles 42 and 45 TFEU. At the same time, the EUISS and the SatCen operate within the provisions of the EU Treaties relating to the CFSP, although they are established by secondary legislation. Another difference lies in their independence. The CFSP agencies are not granted any independence; they are not regulatory agencies, and they do not have a broader mandate or real decision-making powers. Nevertheless, their exceptional status is often referred to when discussing them, even though this thesis argues for reforms to their status within the EU structure. The functions of the three CFSP agencies are more technical and informative, which means that, unlike many EU agencies that have problems complying with the Meroni Doctrine, these agencies do not have such shortcomings. However, the structure of most EU agencies is similar.

The CFSP agencies also have different terminology for their internal bodies - in the case of the CFSP agencies, the Board and the President are referred to as the Steering Board and the Director (or Chief Director). In contrast to the usual composition of governing boards, the CFSP agencies, in particular the EDA, are different. Their Boards are less diverse, consisting only of representatives of the Member States (in case of EDA defence ministers) and the Commission (without voting rights). The representatives of the Member States and the Commission can thus supervise the agencies more effectively. The Commission's participation is seen as a consequence of the Meroni doctrine, and its role varies from fulfilling an observer function (EUISS), signing working arrangements (SatCen) to participating in projects (EDA).

Unlike the EUISS and SatCen board's roles – as a forum, the EDA Steering Board is characterized as the EDA's main decision-making body. This also reflects EDA's intergovernmental composition at the ministerial level. In the case of CFSP agencies, it is also important to mention the position of the High Representative (HR), who is wearing many hats. The HR chairs the SatCen and EUISS boards, provides the overall operational direction, has a role in the selection and appointment of agency directors, and in the case of the EDA, acts as the head of the agency. The Council also relies on HR to provide information on these agencies, although, in the case of EUISS, its role is rather limited to providing operational guidance. The European External Action Service (EEAS) and the Political and Security Committee (PSC) are also involved, for example in political oversight. In the case of EUISS, EEAS is also the secretariat of the agency, which represents a very interesting relationship between these two entities.

In analysis, it was impossible to overlook the dominant position of the Council, which it holds either directly or indirectly. As CFSP agencies do not have any independence, they are obliged to follow the instructions given to them directly or indirectly by the Council. The Parliament, Commission, and, in the case of the EUISS, the Member States are also directly informed of the agencies' activities. However, in the case of the EDA in particular, there is some resistance from the Parliament, which is not mentioned at all in connection with the EDA, neither in the Constitutional Treaty nor in the common regulation of the EDA, and which seems to likely be more involved in the practical organization of the agency, including decisions on funding. There are also some differences from other EU agencies concerning financial control. While most EU agencies have their accounts, revenue and expenditure audited annually by the European Court of Auditors, SatCen, EUISS and the EDA are audited by independent auditors, mainly due to the diversity of their budgets. The Council serves as the ultimate financial control

authority. Regarding the role of the CJEU, there can be slow progress toward the transfer of BoA jurisdiction to the CJEU, as this internal administrative review process has been criticized for its lack of independence and effectiveness as an oversight mechanism. This process can be seen in the impact of the General Court decision in the *KF v SatCen* case, with the outcome of SatCen revoking its BoA and personnel disputes now falling within the jurisdiction of the CJEU. We could assume that the EUISS will follow this case.

The roles of the principal were as follows – Member States mainly in the position of members of the Boards, the Commission role: fulfilling an observer function (EUISS), through working agreements (SatCen), or even participating in projects (EDA). For the Parliament, a more limited role is visible, with the CJEU slowly expanding, with particularly two jurisdictions in the pocket – per the arbitration clause, resolving any disputes between the agency and its staff. A multi-principal approach allows for control at minimal cost and can resolve the potential conflict between agency autonomy and political control, although, in the case of CFSP, we can see that the Council still holds the strongest position. The benefits of this type of control clearly outweigh the negative aspects of the classic principal-agent dynamic, creating a unique context for the delegation of powers and weakening some of its negative elements. It is worth reflecting on whether this does not point to increasing policy integration and a gradual erosion of the traditional division between CFSP and non-CFSP areas of EU external relations. With well-adjusted control mechanisms, there is not as much room for phenomena of *shrinking* or *slippage*. This is further facilitated by the alignment of interests between the agencies and their principals. This work further stresses that the current system of control shows that there is no need to worry about the selfish interests of these agencies.

The above also reflects the CFSP context in which the agencies operate. Despite the abolition of the pillar structure by the Lisbon Treaty, one cannot help but notice a certain "hidden" separability of the CFSP, which, in the case of CFSP agencies, seems to do more harm than good. The CFSP agencies seem to be operating in isolation, awkwardly, and without a clear definition of their purpose, which may be why no other agency has been set up in the CFSP area. It is debatable whether, in their cases, we can talk about the prestige of an EU agency based on expertise, transparency, and independence as we know it in other EU agencies. There is no doubt about their important role, but their position in the EU structure is questionable. Therefore we can agree with Butler's opinion that at least two CFSP agencies, SatCen and

EUISS, can be considered for possible relocation.²⁴⁰ In the case of SatCen, a merger with EUSPA could be an option, as their activities often overlap. In the case of EUISS, its integration into the EEAS through a dedicated unit could be under discussion, as the EEAS already acts as the secretariat of this agency. However, one has to keep in mind the loss of independence of research that such a move could severely test, as noted by Butler.²⁴¹ In a positive development for the EDA, Denmark has given up its defense opt-out in 2022 and joined all other member states in participating in EU defense actions, which undoubtedly strengthens the potential of the EDA. However, criticism of the EDA's shortcomings could now be pointed out: they are seen primarily in the EDA's inability to successfully address current and future challenges, as the EDA lacks binding decisions and a binding legal framework, causing its possible insufficiency. In light of Russia's unjustified aggression against Ukraine, the evolution of the security landscape has confirmed the need for such components as these three CFSP agencies create in the process of providing the necessary tools to ensure the EU's strategic independence. It is, therefore, necessary to enhance its status and improve its analysis.

²⁴⁰ BUTLER, Graham. EU agencies within the common foreign, security, and defence policies. In *Symposium: The Agencies of the European Union: Legal Issues and Challenges*. EU Law Live, 2023, pp. 14-17. Available at: <<https://eulawlive.com/op-ed-eu-agencies-within-the-common-foreign-security-and-defence-policies-by-graham-butler/>>.

²⁴¹ Ibid.

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Abstract

This thesis provides a comprehensive analysis of the cooperation of selected EU agencies with other EU institutions to identify potential challenges in this area. In order to address this objective, an analytical framework within the principal-agent concept has been developed, which was adapted to the complexity of the EU environment. This framework is applied to three specific agencies: the European Defense Agency (EDA), the EU Satellite Center (SatCen), and the European Institute for Security Studies (EUISS). These agencies are analyzed because of their unique position within the CFSP, aspects of which are also addressed. For a truly comprehensive analysis, the debate on the delegation of powers within the EU, particularly in the context of EU agencies, is approached, including the limitations imposed by the Meroni Doctrine and its recent developments. The thesis contributes to a better understanding of the functioning of these CFSP agencies and their interaction with other EU institutions, while identifying the key factors that influence the effectiveness and transparency of their activities in the context of the CFSP. This analysis is supported by a comparative method and theoretical framework that allows the application of the PA concept to the complex EU structure and offers a new perspective on the institutional dynamics within the EU, providing a unique multidisciplinary political-legal approach in its overall perspective.