Integration via Agencification of National Administrations: the Complete Transformation of Nation States into Member States?

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1) Independent administrative agencies as a new feature of European Union governance

The rise of independent administrative agencies (IAAs) as mandated by EU law has become a contemporary feature of European Union (EU) politics (Thatcher 2002; Coen and Thatcher 2008; Mathieu 2016). Member States had to generate or at least consolidate the competences of national bodies in charge of overseeing the implementation of EU administrative law. There was a variation among the Member States which already had several IAAs (e.g. France or Sweden) and those in which independent bodies did not feature in the administrative landscape (e.g. Germany and several new entrants of the EU since 2004). The reasons behind the empowerment of national authorities at the initiative of EU institutions has been largely debated in the literature (Kelemen and Tarrant 2011; Blauberger and Rittberger 2015; Martinsen, Mastenbroek and Scharma 2022). But their focus lies almost exclusively on the drivers that led to the original compromise between the Commission and the EU legislator regarding IAA empowerment and cooperation at the supranational level, and much less so regarding the subsequent evolution of IAAs as autonomous bodies exercising some form of agency (see however Yesilkagit and Jordana 2022; Vantaggiato 2022).

This paper attempts to bridge this gap by analyzing the evolution of some EU-empowered IAAs (also called National Competent Authorities [NCAs]) and draw the consequences in terms of European integration. It will contend that IAA-empowerment is an illustration of the transformation of "nation states into Member States" (Bickerton 2012). It carries a one-size-fit-all approach to governance that sidelines pre-established administrative cultures at national level. In other words, being a Member State not only means having to harmonize the substance of policies but also means applying a uniform procedural way of exercising such harmonization. Besides, the empowerment of IAAs by EU law does not simply lead to the creation of another type of executive authority submitted to a principal. Instead, it leads to the erection of national agencies as a fourth branch of government that hardly answers to pressures from the other powers and firmly remains out of the electorate's reach.

The paper proceeds as follows. Section 2 reviews the literature and points to the gap in scholarship about the evolution of IAAs over time. Section 3 details the institutional

evolutions of the institutions in charge of implementing EU administrative law and highlights the promotion of a single administrative model that bypasses the diversity of Member States. Section 4 takes a micro-sociological perspective and details the characteristics of IAA agents over time by using a CV analysis of the current heads of EU-empowered IAAs across four countries (France, Portugal, Poland, Romania) in order to control for spatial and temporal elements. Section 5 stresses the agency slack of IAAs and uses European administrative cooperation as an example, using the field of competition and railways as illustrations. Section 6 concludes by reflecting on the applicability of classic integration paradigms regarding IAAs.

2) The understated importance of EU-led agencification of Member States

Studying the development of IIAs does not necessarily feature at first glance as a relevant feature of European governance. These bodies remain state organs having oversight activities of EU law implementation. The focus on EU studies has therefore mostly lied on European Administrative Networks (EANs), since those gather the sectoral IAAs in settings usually orchestrated by the Commission (Kelemen and Tarrant 2011; Blauberger and Rittberger 2015; Martinsen and Mastenbroek 2018). The debate concentrates on the causes that lead to EAN empowerment or disempowerment in favor of EU agencies (such as the European Securities Markets Authority [ESMA] or the European Railway Agency [ERA]), leading to two major camps. One favors a functionalist understanding of the empowerment of IAAs at national level as well cooperation within EANs (Blauberger and Rittberger 2015; Mathieu, 2016 and 2020). The priorities in EU governance in terms of fostering cross-border activities of all aspects of the Single Market led the Commission and the IIAs to recognize and push for greater cooperation at the supranational level. This would have given rise to strong EANs such as the European Competition Network (ECN) or the Committee of European Securities Regulators (CESR) (for a comparison of both sectors, see Maggetti and Vagionaki 2022). Moreover, if the functional need for centralization is strong, this potentially fosters the transformation of EANs into EU agencies. The other camp favors a focus on the political drivers leading regulatory delegation. Member States (broadly defined) would design the (in)effectiveness of EANs according to their expectations, while placing IAAs (viewed as an emanation of Member States power) at center stage.

This literature is helpful in understanding the design of EANs and the causes behind their development. However, it does not bring answers to the following concerns, namely 1) the subsequent evolutions of EANs and IAAs over time and 2) the modification of state

structures, since IAAs are uncritically viewed as state organs representing national sovereignty. There a few studies that focus on the evolution of EANs and to a much lesser extent IAAs over time, e.g. on Medicine and Aviation (van Kreij 2022), Migration (Mastenbroek, Scharma and Martinsen 2022) and Energy (Vantaggiato 2022). These bring interesting insights regarding the development of EU-empowered IIAs over time and theorize the agency exercised by such bodies, but their focus lies on European cooperation and not on IAA individual development.

Therefore, the main source of theoretical inspiration remains in analyzes provided in the early years of the 20th century. The scholar that studied in depth the rise of IAAs in Member States is Mark Thatcher, especially in the utilities sectors (Thatcher 2002; 2005; 2007). He understands delegation to IAAs through principal-agent theory, and therefore tries to underscore the incentives that elected officials possess when voluntarily stripping themselves of power (2005). He therefore argues that governments accept the rise and consolidation of IIAs because it enhances credible commitments vis-à-vis the electorate and economic investors which perceive IIAs as a factor of stable regulatory environment (2002). Stressing the pitfalls that may come by building a distinct form of regulator, he argues that elected officials come over time to acknowledge the benefits of IAAs as efficient enforcement and oversight bodies. These incentives may not however necessarily set aside legitimacy concerns generated by the creation of powerful administrative bodies absent direct links with the electorate. That is where Majone's scholarship brought a powerful answer: the rise of independent regulatory bodies at the national and European levels does not generate legitimacy deficits since the 'agencified' regulated sectors were previously orchestrated by largely unaccountable ministerial services that were not either kept in check by voters. Instead of arguing about the presence or absence of legitimacy deficits, Majone claimed that an emphasis had to be brought concerning the accountability or answerability of IAAs, but that their design in itself was acceptable (Majone 1989; 1999; 2005). Since voters would support economic integration but not "true political integration", the orchestration of market-making policies by independent bodies would at worst be a secondary concern.

The rise of EU-led agencification at national level would thus face no serious barriers. Without democratic concerns nor genuine opposition by elected officials, the isomorphic spread of agencification across policy fields could only make sense. It would not even be politically costly since there was a general agreement that Member States retain ultimate control over these bodies. In his comparative work on France, the United Kingdom, Germany

and Italy, Thatcher discusses functional and political pressures in the agencification process, but firmly held that these pressures were dealt with by the sole principal that remains entrenched at Member State level. In the same vein when assessing the effects of integration on national administrations, Kassim argued that Europeanisation was mostly an upward movement allowing national officials to influence policy process at EU level, whereas the downloading effect (i.e. the impact of EU policies on national administrative designs) was very limited (Kassim 2003). Thatcher implicitly agreed by pinpointing the diversity of IAAs among Member States, stressing for example varying degrees of independence and enforcement abilities, and thus not raising concerns about a potential disregard of national institutional autonomy by EU institutions.

This paper will challenge the views held in the last paragraph by providing a contemporary account of EU-led agencification. It will stress that the Commission and the legislator promoted over the last 20 years a single governance model across fields that puts an emphasis on IAAs as obligatory passage points in terms of EU law enforcement and oversight, and that their empowerment, caught in a nexus between legal creation located at the EU level and accountability located at the national level, generates a form of agency slack that can no longer be overcome.

3) The EU-led institutional overhaul of national administrative structures: the consolidation of IIAs as a Fourth Branch of Government

The literature exposed above views for the most part IIAs as a part of the executive branch of government, and place IAAs under the hierarchical control of governments and ministries. Yet recent provisions included in EU secondary law and interpreted by the Court of Justice of the European Union (CJEU) across several policy fields displays a trend towards a single mode of enforcement and oversight by IAAs. In their recent overview of regulatory bodies, Coen and Tarrant (2022) do not perceive that EU legislation forces Member States to adopt a unified model of administrative bodies. This paper contends on the contrary that EU legislation does everything to harmonize administrative structures except for proving for a general label that would help us identify the category easily. The label found in the texts analyzed below often refer to ‘NCAs’, which seems to remain vague enough to leave room to Member States to design IAAs according to their own will, which for example translates in designing bodies in the utilities sectors according to different varieties of capitalism (Hall and Soskice 2001). However, EU rules (taken cumulatively as a succession of various legislative packages in the same sector) increasingly harmonize the procedures according to which

NCAs are created or reinforced. Therefore, the varying labels – regulators, authorities, boards, etc. – and specific arrangements – sector-specific regulators or bodies combining different policy oversights – may blur but should not lead us to overlook this one-size-fit-all administrative model. This section will first detail the different rules under study and pinpoint the similarities across the board. It will then discuss the institutional consequences in terms of principal-agent theory and the consolidation of IAAs as a genuine fourth branch of government.

3.1) Towards a single model of Member State: EU rules in market liberalization and beyond

Integration in several policy fields has taken an accelerator in the 21st century. Public policies related to the consolidation of the Single Market, fundamental rights protection and safety standards have all been subject to EU regulations and directives, especially in the last decade. The analysis of various texts and their subsequent application shows that the EU increasingly requires an harmonized administrative structure that leads to the emergence of IAAs in all Member States. Table 1 provides an illustration of the increasing trend of requiring procedural harmonization for IAAs.

If the instruments mentioned in the table deal with the last substantive modifications of IAA-empowerment[1], this trend may come in several packages. For areas such as fundamental protection, the establishment of an independent entity dates back from 1995[2], which is the first time that EU rules mentioned the obligation to have an independent body. It then concerned several networked economies[3] such as Postal Services in 1997, rail liberalization in 2001 or electronic communications in 2002. Competition authorities were acknowledged as empowered bodies for the first time in Regulation 2003/1. This period, which roughly corresponds to the context analyzed by Majone, Kassim or Thatcher, only displays a weak convergence in terms of administrative procedures. If texts mentioned an independent competent authority, they remained silent as to the precise features regarding them, leaving

[1] Some isolated decisions by the Commission may slightly amend some of these factors (e.g. creation of a Postal Services Network), but in no way as considerable as those mentioned in the table.

[2] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

[3] Networked economies, sector economies or utilities are sectors that traditionally required a public service in charge not only of the infrastructure (e.g. rail tracks) but also of the service provided. These are: "energy (electricity and gas), transport (rail, air, but sometimes also road and maritime transport), communications (telecommunications and postal services) and water (drinking water and wastewater)" (Finger 2022). Some also add the financial supervision sector in this category.

room for Member States to freely design them. More precisely, early 20th century rules mentioned the content of the activities that IIAs should carry out, but not how these were supposed to do so.

Table 1: Overview of recent legislative instruments dealing with the empowerment of IIAs

Sector	Instrument	Empowerment of IIA	Statutory Independence	Sanction powers	Adequate Staff or Ressouces	Guaranteed Budget
Postal services	*Directive 97/67*	Yes	Yes			
Electronic communications	*Directive 2002/21*	Yes	Yes	Yes		
Budget supervision	*Regulation 1176/2011*	Yes	Yes		Yes	Yes
Railways	*Directive 2012/34*	Yes	Yes	Yes	Yes	Yes
Banking supervision	*Regulation 1024/2013 - Directive 2013/36*	Yes	Yes	Yes	Yes	
Consumer Financial Protection	*Directive 2014/65*	Yes	Yes	Yes	Yes	
Data Protection	*Regulation 2016/679*	Yes	Yes	Yes	Yes	Yes
Consumer Protection	*Regulation 2017/2394*	Yes	Yes	Yes	Yes	
Competition	*Directive 2019/1*	Yes	Yes	Yes	Yes	Yes
Energy	*Directive 2019/944*	Yes	Yes	Yes	Yes	Yes
Veterinary medicinal products	*Regulation 2019/6*	Yes			Yes	
Digital Services	*Regulation 2022/2065*	Yes	Yes	Yes	Yes	Yes

In the last decade, the requirements regarding the design of IAAs increased substantially in all covered policy fields. The legislator not only requires statutory independence (which remained vague) but also precises the procedural means needed to carry out their activities. IAAs must always be guaranteed proper resources to perform their task, such as a sufficiently numbered and adequate staff. Sometimes, the text precises the content of this adequacy, which must specifically relate to the content of the activities as defined by the treaties, for example in the case of competition law:

> "*Member States shall ensure at a minimum that national competition authorities have a sufficient number of qualified staff and sufficient financial, technical and technological resources that are necessary for the effective performance of their duties, and for the effective exercise of their powers for the application of Articles 101 and 102 TFEU* […]"

If independence always featured in the texts empowering IAAs, the *acquis* from 2013 onwards exposes at great length what it means in contemporary European politics. The general idea is that IAAs are fully independent bodies shielded from interferences of the other branches of government. Only a few safeguarding mechanisms remain. The heads of IIAs remain appointed by the other branches of government, and national transposition must ensure that the procedure is public and the conditions for potential reappointment be clearly stated. That is however the only institutional mechanism that allows the other branches of the state to exercise control over EU-law empowered IAAs. The only other indirect mechanism at the disposal of national executive and legislative powers lies when voting the yearly expenditure of the State. If the proportion of the budget of IAAs remains statutorily guaranteed, the substantive amount may differ from one year to the other. Yet, this budgetary consideration is not even an issue anymore for the Polish and French banking supervisors: just like the European Central Bank does with Significant Institutions in the framework of the Single Supervisory Mechanism, the aforementioned authorities levy fees directly from supervised entities, and these constitute the vast majority of the resources needed by the *Autorité de Contrôle Prudentiel et de Résolution* (ACPR) and *Komisja Nadzoru Finansowego* (KNF) to exercise their tasks[4].

From a legal standpoint, the intervention of the legislator in national administrative structures is not a clear-cut issue, since the treaties are silent on the subject and that a comprehensive

[4] For Poland, see the Polish Act of Financial Market Supervision, 21 July 2006: https://www.ebrd.com/downloads/legal/securities/polfms.pdf (Accessed: 26/01/24); For France, see art. L. 612- 18 du code monétaire et financier (modified 26 July 2013): Section 3 : Moyens de fonctionnement (Articles L612-18 à L612-20) - Légifrance (legifrance.gouv.fr) (Accessed: 26/01/24)

approach to national (lack ok) institutional autonomy cannot be found at in the case law of the CJEU. This leaves a couple of broad options open. The first would consist in leaving EU institutions free leeway in demanding administrative adaptations. If the treaties bind the parties in terms of outputs, the processes by which such outputs are achieved should be left to the discretion of the EU bodies in charge of exercising the will of the Masters of the Treaties, i.e. Member States themselves. If the latter agreed to pool competences at EU level, they would de facto accommodate procedural technicalities that help achieving their common purposes (see Slautsky 2018).

The second option is at odds with the first one. Art. 5 of the Treaty of the EU states at §2 that:

> "*Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States*"

A strict reading of the principal of conferral would suggest that anything not expressly mentioned in the treaties falls outside the remit of EU competence. In that case, it could be argued that since the treaties do not expressly include the possibility for EU institutions to ask for administrative procedural and institutional changes, the Commission and the legislator should only be entitled to harmonize the substance of the policies enshrined in the treaties (the WHAT) and unconditionally leave to Member States the right to set up the processes required to achieve substance harmonization (the HOW).

As this already became clear, EU institutions favored the first option. This is not without incidences in some Member States. If several already had a strong tradition of adopting IAAs (even prior to EU accession) at national level such as France or Sweden, this did not generate much of an overhaul. In these cases, the option of reinforcing or consolidating the prerogatives of preestablished IAAs, rather than the creation of a new body, was the most general outcome. In the field of data protection for example, the entry into force of the General Data Protection Regulation only led to minor tweaks in the design of the *Commission Nationale de l'Informatique et des Libertés* (CNIL) and *Integritetsskyddsmyndigheten* (YMI). In other Member States however, the tradition of setting up IAAs was either weak or inexistent. It is first the case for long-standing Member States such as Germany. If the latter set up the *Bundeskartellamt* in the late 50's, it did not establish a similar type of body until being required under EU law to do. The institutional modifications brought by Germany to adapt to EU law requirements took a turn differing from the vast majority of other states. In

the utilities sector, it opted by a general regulatory body – *Bundesnetzagentur* – exercising oversight in almost sector economies: telecommunications, postal services, rail and energy[5]. The others instead mostly favored sectoral regulators. This is not an issue under EU law: the acquis even includes an acceptance to engraft sector regulators to competition authorities. What is however more stringent and caused several infringement and judicial proceedings concerned the independence of German IAAs. In a nutshell, the historical administrative tradition in Germany favored a strong parliamentary oversight of these bodies. That displeased the Commission and the CJEU, which respectively launched infringement proceedings and condemned Germany for lack of independence of IAAs in the data protection and energy sectors[6]. Even if there is no general approach in case law about the harmonized administrative model that Member States are obliged to follow, the CJEU came very close to adopt such a broad statement in the ruling on *Bundesnetzagentur* in September 2021, when it stated the following at §130:

> "[…] *the powers attributed exclusively to NRAs by Directives 2009/72 and 2009/73, and their independence, must be ensured in relation to any political body, and so not only the government, but also in relation to the national legislature, which can and must establish such powers in legislative acts but cannot, however, take powers away from NRAs and attribute them to other public bodies.*"

The diversity in terms of independence seen by Thatcher in the early 2000's seems long gone, as Member States – including the one considered the most powerful – must abide by these obligations.

3.2) Explaining the one-size-fits all administrative model

How can we understand the rise of this unified model that clearly strips national governments of their prerogatives? These remain co-legislators in the Council, and as rightfully pointed out by Coen and Tarrant (2022), they retained a blocking minority that could have barred such an evolution. This voluntary disempowerment seems puzzling, because IIA empowerment is a zero-sum game that leads to ministerial disempowerment. The scholars mentioned in the previous sections argued that national administrative designs were not substantially altered by the acquis, an argument that the previous subsection challenged. This section thus questions the incentives of both national governments and the Commission to empower IAAs. Both sides are needed to approve these changes, and seem *prima facie* on the losing side.

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[5] See "Bundesnetzagentur – About us": Bundesnetzagentur - About us (Accessed 26/01/24)

[6] C-518/07, Commission vs Germany, 9 March 2010, ECLI:EU:C:2010:125 (Data Protection); C-718/18, Commission vs Germany, 2 September 2021, ECLI:EU:C:2021:662 (Energy)

For national governments, several arguments can be made, pertaining the rationalist category and beyond. Regarding rational-actor considerations, an argument already mentioned is that empowerment concerns a national rather than European body. States remain in charge of orchestrating for the most part the realization of the procedural conditions included in the texts mentioned in Table 1. Second, the "government by committee" (Bickerton 2012) already exercised at EU level may constitute an appealing option for governments. If those favored pooling of competences at supranational level in order to bypass the electorate at home, it makes sense that they try to import such a model within their own state and use (as is often the case) the EU as a scapegoat that allegedly imposes unwelcome changes. Third, the argument in terms of credible commitments must be slightly modified. The enactment of IIAs in a Single Market that favors cross-border circulation of goods and services must be accompanied by strict competition rules restricting antitrust and abuses of dominant positions. Opening up networked economies to cross-border competition means bringing former state champions holding a monopoly in competition with other providers, the former precisely being "championed" by the state and more precisely by national executives having economic and societal stakes in supporting state-owned companies. Introducing competition in these sectors thus generated a conflict of interests that could not result in giving governments in charge of the liberalization of network economies. The question of credible commitments lies among Member States, and the introduction of uniform IIAs shows that all Member States are willing to play the game of liberalization on level terms[7].

In bounded rationality terms, IAA empowerment does not take center-stage in the integration process. It is a secondary consideration, since it remains shadowed by the substance of policy reforms. Substance precedes procedure, which is showed in the way directives and regulations are drafted. Provisions about IAAs are hardly ever mentioned in the first chapters. Second, the power of IAAs may be the result of unanticipated consequences that were not foreseen by governments. Since IAAs remain theoretically agents of their governmental principal, the institutional bargain may be perceived as low compared to a further strengthening of the EU with the creation of an agency.

Incentives for the Commission differ but lead to similar results. If the institutional bargain results in fostering national bodies over EU ones, this does not lead to setting the

[7] A good example of incomplete liberalization because of weak credible commitments can be found in the rail sector, where the incumbents Deutsche Bahn and DB Schenker enjoy a monopolistic position in Germany while enjoying the benefits of liberalization in neighboring countries such as Denmark. The Fourth Railway tries to counter these effects by stressing the complete separation of infrastructure manager and incumbent.

Commission aside completely. Eurocrats may willingly empower national bodies and try to gain control over IAAs, thus splitting the state into various conflicting coalitions and weakening as such national executive and legislative bodies. This is not a new phenomenon in European integration. A similar process occurred regarding courts and led to the famous "integration-through-law" thesis (Cappeletti and al. 1986; see Pavone 2022 for a refinement). The preliminary ruling procedure enabled national courts to seize the CJEU in case of doubts regarding the interpretation of the treaties. This allowed CJEU judges, who are not subject to the constraints of the joint-decision trap (Scharpf 2006), to adopt an expansive teleological reading of the treaties that national judges could fine-tune to the specificities of the case at hand. Adverse rulings could not easily be countered by governments since they would have to oppose national judges, i.e. other agents of the state in the process. Integration-through-law or more precisely integration-through-courts has been one of the most powerful drivers of European integration, and it makes perfect sense for the Commission to try replicate the process with agencies. This is perfectly clear in all the texts mentioned above. Regarding IAA empowerment, provisions always contain (along with independence at national level) mechanisms for closer cooperation at EU level. EANs are here a perfect illustration. These allow the Commission to attend these meetings and in some of them (such as the ECN) to take an agenda-setting position. Closer cooperation with IAAs seems likelier than with ministries. IAAs must be staffed with sectoral experts acquainted with EU rules, something that is not necessarily the case with ministries. These experts would theoretically share a similar governance vision with Eurocrats, allowing for fruitful dialogues between civil servants (e.g. within EU agencies board meetings) and potentially generate the establishment of a corporatist class of civil servants bypassing different levels of governance. Besides, IAAs perform a regulatory as well as an oversight function, i.e. they monitor potential infringements that are not corrected by other branches of government, assisting the Commission in its role of guardian of the treaties. The Commission always had to make priorities in its investigation strategy, because it does not possess the resources to monitor all situations in depth. Having agents on the ground – in a way, *its* agents – to help carrying out that task could prove immensely helpful.

Therefore, these actors all have incentives to create and empower IAAs despite the potential heavy democratic costs of doing so (Majone 1999). Both sides may believe that they can bend IAAs to their will. However, the institutional setup of the EU makes it difficult, once IAAs are empowered, to find a genuine principal. Since these bodies remain creatures of

national politics, governments could theoretically be held as principals. Yet the extensive procedural requirements detailed above do not allow them to modify broad design characteristics. Anything that could question of the independence of IIAs would potentially lead to an infringement action under EU law[8]. The only ways for governments and legislatures to exercise some institutional control is by controlling the appointment of the heads of IAAs. This does not differ from the constraints of the executive: heads must submit to the ballot box whereas permanent staff is shielded from external interference.

EU institutions do not possess any type of coercing device that could lead to IAA subjugation. The participation in EANs is compulsory and some exchanges of information are to be made, but the extent to which such cooperation is fruitfully exercised or not depends on the goodwill of IAA agents.

EU-law empowered IAAs are shielded from interferences. If the Commission or governments wanted to change this situation, they would have no choice but to launch a new legislative procedure and try to overcome the high joint-decision trap barriers caused by high Qualified-Majority Voting thresholds. This would therefore need an inter-institutional agreement that could prove difficult to reach. If this does not happen, IAAs will remain independent, only having to account for their activities to the other branches of government without possibilities of retaliation over than the non-reappointment of the heads of the concerned authorities. In the meantime, these bodies carry out a strong oversight activity with the possibility of imposing hefty sanctions to parties deemed to disregard their obligations. These decisions can be contested before courts and only so (while Members of Parliament and government also face direct electoral pressure), just like the acts of the executive and legislative powers. In sum, EU-empowered IAAs constitute nowadays a fourth branch of Member State government.

4) Differentiated sociological Europeanisation of Independent Administrative Authorities

This section still deals with the convergence towards a single administrative model but looks at it from a sociological standpoint, which is complementary to the institutional approach

[8] This is potentially one of the reasons why the ECN+ Directive (2019/1) has still not been implemented in Polish law. The guarantees of independence of competition authorities were already extensive in Regulation 1/2003 but were diluted in the 2010s. Incorporating the Directive's requirement would not only bring back these requirements but heavily strengthen them.

developed above. It seeks to attest whether EU-law driven convergence leads to a sociological one. While the institutional view developed in section 3 questioned the design of administrative structure, the sociological complementary approach here begs a closer look at the agents populating IAAs and see whether there also is a sociological convergence of the technocracy of Member States. Sociological convergence here would mean that Member States would recruit staff along similar lines. If there is a change in the way IAAs are populated leading to the homogenization of the background and trajectories, we could argue that the EU also drove to sociological convergence. If on the other hand Member States display some diversity in the way they populate the staff of IAAs, the argument would therefore be nuanced if not rejected.

This process may be tested two ways. The first (which I will not develop here) is a diachronic evolution of Member States' recruitment of technocrats. A comparison of the periods that occurred before and after the entry into force of a chosen instrument would lead to confirm or quash the sociological convergence argument. The other test is synchronic or spatial, and consists in comparing the recruitment practices of staff across policy domains. As stated above, the EU promotes a single type of administrative design empowering agencies – i.e. bodies needing competent *administrators* – across all policy fields. Here the legislator may have tried to combine two incompatible necessities: the need to recruit specialists of a given sector who at the same time must be able to perform administrative tasks in terms of policy management, which has often been crystallized in a single academic training provided in public policy schools, such as Public Administration. In traditional government settings, the specialization of agents can be balanced out by inter-ministerial consultations and cooperation. But since EU-empowered IAAs cannot take any instruction from any type of authority, this option is theoretically left out of the table (unless it is disregarded, which would therefore generate arguments about the lack of independence of such bodies).

In order to test this sociological convergence hypothesis, I chose to perform the synchronic test over four policy fields – competition, financial prudential supervision, railways and data protection – over four countries: France, Portugal, Poland and Romania. The choice of fields corresponds to the willingness to bypass certain category of sectors, such as utilities or weak-party protection, in order to assess whether these sectoral logics nevertheless come back to play a prominent causal role in the staffing of IAAs. The choice of Member States corresponds to the sequential logic of European integration. The four countries joined the EU at different times, and the first two were already members before the start of the

agencification trend whereas the last two were still applicants when it started. The specific actors under study here are the Presidents, Vice-Presidents and board members of the sixteen IAAs corresponding to each sector[9] (n = 61). The focus on the heads of IIAs is both theoretical and methodological. Theoretically, the heads remain directly appointed by the other branches of government, which would indicate the preferences of the executive and legislative powers of the state. The theoretical approach retained here is a microsociological one that pertains to Bourdieusian field theory (one that has already been fruitfully applied to the "field of Eurocracy" and the "weak field" of legal professionals: Georgakakis and Rowell 2013; Vauchez 2015) and to Actor-Network Theory (ANT) (historically Latour 1987; see for a recent use in EU studies Laurent 2022). These emphasize that the background and trajectories of actors convey when aggregated the social structure of institutions and provide sufficient analytical components to evaluate the agency of actors in a second step[10]. The methodology retained here is one of CV analysis. The CVS of the 61 heads of IAAs were all scrutinized in order to highlight their previous and current jobs exercised[11] according to the following classification: job in the executive branch of government (ministerial, local), justice, academia, private sector and (most interestingly) EU affairs. This last category aims at checking whether Europeanisation led to a downward effect (recruitment of EU professionals at national level) after Kassim described the upward effect (mostly via SNEs) 20 years ago. The general purpose is to assess whether there is convergence or variation according to sector, country or both.

[9] These are Autorité de la Concurrence (FR), Autoridade da concorrência (PT), Urzędu Ochrony Konkurencji i Konsumentów (PL) and Autoritatea română de concurenţă (RO) for competition; Autorité de contrôle prudentielle et de resolution (FR), Banco de Portugal (PT), Komisja Nadzoru Finansowego (PL) and Autoritatea de Supraveghere Financiara (RO) for prudential financial supervision; Autorité de Transports et de regulation (FR), Autoridade da Mobilidade e dos Transportes (PL) and Consiliul Naţional de Supraveghere din Domeniul Feroviar (RO) for railways; Commission Nationale de l'Informatique et des Libertés (FR), Comissão Nacional de Proteção de Dados (PT), Urząd Ochrony Danych Osobowych (PL) and Autoritatea Naţională de Supraveghere a Prelucrării Datelor cu Caracter Personal (RO) for data protection. The detailed numbers per persons are in the Annex 1 (Competition), Annex 2 (Financial prudential supervision), Annex 3 (Rail) and Annex 4 (Data Protection).

[10] The extent of such agency is what drastically opposes both approaches. Even if Bourdieu's epistemology remains probabilistic, agency viewed as a consequence of a combination of "capitals" was considered overly deterministic by Latour. He acknowledged however that past experience and professional trajectory – Bourdieu's "habitus" – was nonetheless a useful concept that could be employed by ANT students (see Latour 2005)

[11] Some agents have another professional activity at the same time, which is therefore included in the data.

Table 1: Previous/coexisting professional occupation of IAA heads per sector

	Ministry[12]	Justice	Academia	Other IAA	Private sector	EU affairs (public/private)
Competition (12)	5	2	4	2	1	5
Financial supervision (19)	5	2	7	6	6	3
Rail (14)	11	0	1	5	1	2
Data protection (16)	7	5	3	3	2	1
Total (61)	**28**	**9**	**15**	**16**	**10**	**11**

The analysis by sector displays substantial variation, without any discernable trend available. The majority of IAA heads occupied positions in other parts of the executive, and so at different levels (some were ministers, others high ministerial civil servants). More than a quarter occupied positions in other IAAs and almost 25% occupy/ied a position in academia. Only two things clearly stand out. There is a strong overrepresentation of the executive in the rail sector (with often a previous position in the ministry of transports), which partially confirms the disempowerment of ministries in favor of IAAs. Besides, competition heads tend to have occupied positions at EU level much more (42%) than in the other sectors (respectively 16, 18 and 9%).

Table 2: Previous/coexisting professional occupation of IAA heads per Member State

	France (18)	Portugal (19)	Pologne (10)	Romania (14)
Ministry	11	6	4	7
Justice	6	3	0	0
Academia	2	6	1	3
Other IAA	3	2	4	5
Private sector	1	3	1	4
EU affairs	4	4	0	1

The analysis per Member State similarly displays variation. There is an overrepresentation in the France of the executive (61%) compared to other sectors. Half the Romanian heads of IAAs also come from the executive. There is a lot of heterogeneity in Portugal, where a category never reaches the 33% mark.

[12] "Ministry" is a general label for the executive power other than IAAs (if the latter remains considered as part of the executive).

The main takeaway is that the EU-led convergence of the administrative model of Member States does not generate a similar sociological phenomenon, at least concerning the heads of these bodies. The sectoral logic has instead a much stronger pull: almost all display a strong specialization in the sector dealt by IAAs[13]. Besides, the Europeanisation of the administrative model has not led to a subsequent Europeanisation of the staff of IAAs. The part of agents that exercised activities at EU level, including in occasional settings such as expert committees, remains marginal. This means that EANs gather for the most parts heads of IAAs that had no previous experience with EU bodies. There is variation across sectors here: there is a discernable trend in competition fostering former experience in EU institutions, while this does not seem to be the case at all in the rail and data protection sectors.

Overall, these findings may be another explaining factor regarding the empowerment of IAAs. Even if the EU designs a size-fits-all model that must be applied in all Member States, these nonetheless retain some leeway in the choice of the agents populating these bodies.

5) The agency of IAAs: assessing cooperation in European Administrative Networks

This paper focused thus far on the structural consequences of EU-led agencification at national level. This last substantive section will now focus on the agency of IAAs. There are two major indicators. The first is enforcement and oversight, i.e. the bulk of IAA business. Here the analysis should concern the evolution of these activities in diachronic fashion, in order to assess whether EU-empowerment has led to substantial changes in the field of implementation, with useful indicators such as the rise of inquiries on state-owned companies for the utilities sectors and competition, or the rise of investigations and sanctions against state administrations in weak-party protection fields.

The second indicator – dealt with in this section – concerns the cooperation of IAAs at EU level. All the texts examined in Section 3 provide for stronger independence vis-à-vis national executives as well as enhanced contacts among IAAs, giving rise to EANs. Most of

[13] The only doubts in that regard refer to the few "political" appointments made in some Member States. See "Jan Nowak kandydatem PiS na nowego prezesa Urzędu Ochrony Danych Osobowych", (Jan Nowak kandydatem PiS na nowego prezesa Urzędu Ochrony Danych Osobowych (pulshr.pl)) for the head of the Polish Data Protection Authority, and "Mirela NISTOROIU este noul vicepreşedinte al ANSPDCP" (Mirela NISTOROIU este noul vicepreşedinte al ANSPDCP – DPO-net.RO) for the Vice-President of the Romanian Data Protection Authority.

the literature on EANs detailed in Section 2 focuses on the drivers of EAN creation rather than their development and agency (see however Vatanggiato 2022 and van Kreij 2022). But since IAAs are shielded from external interference (including from the Commission), they can define the extent to which such EANs are effective or not. While Kelemen and Tarrant argued that the designers of networks could willingly render those ineffective, this section will argue that the actors involved in said networks decide whether these are effective or not, definitely portraying IAAs as powerful actors no longer submitted to their principals. This section keeps the sociological focus but will trace the process by which networks are given are stripped of life by following an inductive process-tracing strategy (Beach and Pedersen 2018) that draws affinities with ANT (particularly Latour 1987). Methodologically, this brief section focuses on a few controversies and follows the actors reacting to these, using archive work along with interviews conducted in France, Portugal and Poland throughout 2022 in the competition, prudential financial supervision and rail sectors. It will briefly detail how the first sectors have seen increased cooperation, whereas the rail sector is mostly categorized by an opposition to the enhanced cooperation orchestrated by the Commission. It will also stress that sectoral specificities (as a partial rejoinder to the functional argument) condition the economy of EANs.

6.1) Successful enhanced cooperation in competition and financial prudential supervision

IAAs were established in most Member States in the 20th century, i.e. before the entry into force of Regulation 1/2003. The latter nonetheless precised the mandate of NCAs as well as their relationship with DG COMP which acts as a European regulator in this field. It also established the ECN, that has a double function: information-sharing and clarification of cross-border antitrust cases. Overall, the network has provided a stable platform for all participants (Vantaggiato and al. 2021). While interviewees disagree on the role of the Commission as "primus inter pares" (some agree, some don't), all see benefits in pursuing dialogues with the Commission and fellow NCAs. This success story equally applies to mergers (where the Commission plays no legal role) since the Merger Working Group (MWG) has been established in 2010. The gathering of professionals with similar backgrounds leads to the creation of a transnational corporatist class able and willing to cope with common challenges, including the relationship with the executive power at national level[14].

[14] This leads for example to joint publications stressing the common needs of NCAs to foster their cooperation as well as to pinpoint tensions with other branches of government. See for example the book edited by

Even though the ECN remains a network with no genuine binding enforcement prerogative, it has become an obligatory passage point for an harmonized understanding of competition policy. Concretely, it prevents distortions on the market, which significantly reduces the need for corrective measures taken by each NCA individually or the Commission. A great recent example of this trend is related to the war in Ukraine and the potential shortages of supply that could follow. The NCAs collectively agreed that EU competition rules would be generously interpreted (they did not say "suspended"), even though companies shall ensure their best to keep competitive prices on the market[15].

This enhanced cooperation has been a success story, and it is no surprise that NCAs strongly pushed for the adoption of the ECN+ Directive in 2019[16]. Overall, this network has clearly contributed to a policy harmonization of Member State practices, which further strengthened the role IAAs in this field.

6.2) Failed cooperation: the case railway market liberalization

Rail liberalization has been an ongoing process that started more than 30 years ago with the Directive that called for the separation of service provider (often a state-owned monopoly, called incumbent) and infrastructure manager[17]. With this move, the Commission hoped for an open access to private companies, thus ensuring competition on the tracks, a subsequent lowering of prices leading to the revival of this mode of competition that represented only a marginal modal share of transport compared to road and aviation. Problems persisted however. The initial investment on rolling stock is quite high, allowing only a few service providers to consider the opportunity. These potential providers kept facing uncertainties about the breaking up of state monopolies, since the separation between service and infrastructure did not necessarily lead to an institutional separation of the entity in charge of both aspects, but a simple separation of accounts (such was the case of Deutsche Bahn) within a single holding company raising suspicions of unfair competition. The EU therefore undertook a massive liberalization attempt resulting in four railway packages, asking for the creation and the consolidation of the prerogatives of independent railway regulators. These

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Mateusz Blachucki called "International Cooperation Of Competition Authorities In Europe :From Bilateral Agreements to Transgovernmental Networks" which gathers contributions from a vast sample of Member States representatives in the MWG.

[15] See ECN, "Antitrust: Joint statement by the European Competition Network (ECN) on the application of competition law in the context of the war in Ukraine", 21 March 2022: https://competition-policy.ec.europa.eu/document/download/5f4bec40-8d72-4845-9400-7e671ffb693f_en?filename=202203_joint-statement_ecn_ukraine-war.pdf

[16] See the responses of the national NCAs at: 2015 effective enforcers (archive.org)

[17] Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways

were not originally concerned by EU cooperation (unlike infrastructure managers within RailNet). They did not see the need to generate an informal cooperation until 2011, since most of the railway traffic remains firmly located at Member State level (about 93%) and that cross-broader traffic simply needed bilateral agreements. The creation of the Independent Regulators Group Rail (IRG Rail) in 2011, which remains to the day the most active network regarding railway liberalization[18], is a surprising feature of transnational cooperation. It was built less because of a willingness of regulators to cooperate than it was to oppose the project of the Commission and the Parliament to further centralize railway management by creating a Single European Regulator[19]. IRG Rail was built in the midst of the recast of the Third Railway Package in order to convince the Council – which had not yet adopted a position – to drop this idea (which eventually happened).

Wary of the strength of this newly created informal network, the Commission tried to short-circuit IRG by creating its own network in 2013: the European Network of Regulatory Rail Bodies (ENRRB)[20]. This network, originally supported by IRG, would meet twice a year to discuss the issues related to liberalization in the freight and (with the 4th package) passengers' markets. The disagreement here was about chairmanship: IRG thought that a national regulator should be the agenda-setter, whereas the Commission wanted to keep this prerogative, which it eventually did. ENRRB still convenes meetings chaired by Eurocrats of DG MOVE, but its activities hardly amount anything but a one-side monologue. As an interviewee put it, "ENRRB does not leave room for cooperation". IRG kept growing in importance however, and became a platform that constituted itself into an interest group aiming at securing a liberalization on the passenger market orchestrated by national regulators themselves. Members of IRG understand the benefits of EU-driven liberalization, but consider that the Commission prioritizes long trans-European journeys and ignores simple border-crossing for dropping passengers to the network of the neighboring state, which should be a priority for IRG. Despite the numerous advances in the liberalization of railways, the cooperation between national regulators remains distant. The former built a

[18] The technical pillar, which concerns the mutual recognition of safety standards, does not generate such tensions and is almost exclusively dealt by the European Railways Agency.

[19] See the following quote:
"we believe that the establishment of a rail regulatory body at European level would not offer sufficient flexibility and room for manoeuvre at national level which are essential for taking specific national conditions into account. Rail regulation is most effective and efficient when performed by strong and independent national regulatory bodies. They have the knowledge, flexibility and proximity necessary to establish and ensure non-discriminatory access to railway" (IRG 3rd Position paper, 28/29 November 2011: 2011-11-29_IRG-Rail_Third_Recast_Position_Paper.pdf)

[20] See: European Network of Rail Regulatory Bodies (ENRRB) (europa.eu)

stable network allowing to prepare common ground in order to influence the legislative process, but has not amounted to an obligatory passage point in railway governance, which remains firmly located at Member state level.

6) Conclusion

This paper defended the idea that the EU has substantially changed and harmonized the administrative structure of Member States. The acquis adopted in several policy fields in the last 20 years display a common trend towards the erection and the consolidation of IAAs not as simple executive bodies but as a genuine fourth branch of government. The legal adoption at EU level of a type of national administrative body leaves IAAs without principals and allowing their members unchecked agency slack. This finding transcends policy considerations and highlights a transcending feature of European integration. The enshrinement of IIAs does not however automatically lead to more supranationalization, since IIA staff retains sufficient agency to exercise or not a cooperation with EU institutions

The paper showed that this institutional administrative convergence did not however lead to a sociological streamlining of recruitment processes at Member State level. Using the example of IAA heads, the paper shows the variation in the pre-existing professional background of IIA staff that does not fit any Europeanization pattern. The following section discussed the agency of IAAs by developing the examples of competition and railways policies, which display opposite tendencies regarding cooperation despite similar settings.

More research shall be conducted into specific policy sectors and Member States to further grasp the effects of EU-led agencification. A broader quantitative approach would pinpoint the potential sociological similarities and differences across sectors, while in-depth case-studies would highlight the concrete perceptions of the actors benefitting from or being prejudiced by the empowerment of IAAs. In more normative terms, this process reopens the debate that Majone tried to settle a generation ago about delegation to non-majoritarian institutions. The newly established IAAs gained oversight and sanctioning powers in former core state powers such as budgetary soundness or utilities management. This means that policies involving high distributional and protection stakes are now firmly overseen by a set of non-majoritarian institutions that are barely accountable to the other branches of government, and do not answer to citizens' queries via the ballot box. In any case, analyses of EU-law empowered agencies remain at their infancy. But the preliminary bases highlighted in this paper highlighted a paradigmatic approach in terms of the substitution of democratic

governance by technocratic governance, the latter being a necessary feature of Member states administrations but remaining more than ever in search of normative benchmarks.

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8) Annexes: detailed datasets of the sociological characteristics of IIA heads

Annex 1:

Competition						
France	Ministry	Justice	Academia	Other IAA	Private sector	EU affairs (public/private)
Benoit Coeuré	1					1
Irène Luc		1		1		
Henri Piffaut						1
Fabienne Siredey-Garnier	1	1				1
Thibaud Vergé			1			
Portugal						
Nuno Cunha Rodrigues			1			
Maria João Melícias						1
Miguel Moura e Silva			1	1		
Poland						
Tomasz Chróstny	1					
Romania						
Bogdan Chiriţoiu	1		1			1
Elena Kleininger	1					
Dan Virgil Pascu					1	
Total: 12	5	2	4	2	1	5

Annex 2

Financial supervision	Ministry	Justice	Academia	Other IAA	Private sector	EU affairs (public/private)
France						
François Villeroy de Galhau	1				1	
Denis Beau						
Jean-Paul Faugère	1	1		1		
Portugal						
Mário Centeno	1		1			1
Luís Máximo dos Santos		1	1		1	1
Clara Raposo			1			
Hélder Rosalino	1					
Helena Adegas						1
Rui Pinto				1		
Francisca Guedes de Oliveira			1			
Poland						
Jacek Jastrzębski			1			
Rafał Mikusiński					1	
Marcin Mikołajczyk						
Krystian Wiercioch				1		
Romania						
Nicu Marcu			1	1		
Elena Doina DASCĂLU	1			1		
Gabriel GRĂDINESCU					1	
Cristian ROȘU				1	1	
ȘTEFAN DANIEL ARMEANU			1		1	
Total 19	5	2	7	6	6	3

Annex 3

Rail	Ministry	Justice	Academia	Other IAA	Private sector	EU affairs (public/private)
France						
Philippe Richert	1					
Florence Rousse	1					
Patrick Vieu	1					
Sophie Auconie	1					1
Portugal						
ANA PAULA VITORINO	1				1	
EDUARDO LOPES RODRIGUES	1			1		1
CRISTINA MARIA DOS SANTOS PINTO DIAS	1		1			
Poland						
Ignacy Góra				1		
Marcin Trela				1		
Kamil Wilde	1			1		
Romania						
László GYERKÓ				1		
Eugen Susu	1					
Anca Mihaela Marinescu	1					
Mihaela Monica Bărbulețiu	1					
Total 14	11		1	5	1	2

Annex 4

Data protection	**Ministry**	**Justice**	**Academia**	**Other IAA**	**Private sector**	**EU affairs (public/private)**
France						
Alexandre LINDEN		1				
Bertrand DU MARAIS	1	1				
Philippe-Pierre CABOURDIN	1			1		
Christine MAUGÜE	1	1				
Anne DEBET			1			
Alain DRU				1	1	

Portugal						
Filipa CALVÃO			1			
Maria Diniz		1				
Joaquim Correia Gomes		1				
Ana Paula Pinto Lourenço	1		1			
José Grazina Machado					1	
Luís Durão Barroso						1
Poland						
Jan Nowak	1					
Jakub Groszkowski	1					
Romania						
Ancuţa Gianina OPRE				1		
Mirela NISTOROIU	1					
Total 16	7	5	4	3	2	1