

# Agent–Principal Dilemma and the EU Chemical Management

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**Abstract:** *In 2007, the EU adopted the most comprehensive chemical regulation in the world. The so-called REACH requires all chemical producers and importers to register and evaluate their chemical products and, when necessary, replace them with safer alternatives. For the administration of REACH, a new European Chemicals Agency (ECHA) was established. Establishment of this specialized body under the close supervision of the European Commission created in many ways an untraditional relationship which differs from the agent–principal model. The main aim of this article is to explore the specific nature of the agent–principal relationship between the ECHA and the European Commission in the areas of delegation, information asymmetry, motivation and control structures and emphasize how specific measures may limit the negative outcomes of the agent–principal dilemma.*

**Keywords:** *agent–principal model, chemical regulation, EU chemical management, European Commission, European Chemicals Agency, REACH*

## 1. Introduction

During the decades of its existence, the European Union has become a civilian, normative and ethical power, especially with regards to its institutions and policies (Jain & Pandey, 2013, p. 109; Bacon & Kato, 2013, p. 59). This is

particularly true for the field of chemical regulation where the EU, in 2007, adopted the most comprehensive measures aimed at the registration, evaluation, administration and restriction of chemicals in the world. In order to fulfil these complex tasks, covered by the so-called REACH regulation,<sup>1</sup> a specialized European Chemical Agency (ECHA) was established. While agencies have been part of European administrative structure since the Second World War (Braun, 2002, p. 94), the development of agencies at the EU level dates back to the 1970s. Today we can talk about the third generation of EU agencies with certain delegated powers. This is also the case with the ECHA, whose delegated powers raise many questions about the necessity, effectiveness, accountability, legitimacy and other issues central to modern public administration and the debate about democratic deficit (Majone, 1998; Moravcsik, 2002; Follesdal & Hix, 2006; Jensen, 2009). The powers of the ECHA are not delegated by the EU Member States but by the European Commission which acts as key principal.

However, the European Commission is not the only principal as multiple institutions are involved in controlling ECHA. Despite the fact that there are over 40 EU agencies and decentralized bodies with various degrees of autonomy and powers, the ECHA is considered as one of the most powerful agencies among them. For example, it has direct powers to grant or ban chemical products on the market with chemicals, it decides about substitution or the scope and nature of regulation. The ECHA has also a say in issues such as the classification and labelling of chemicals (CLP), biocides, nanomaterials or the Prior Informed Consent procedure related to the import and export of chemicals. It may impose penalties and sanctions on producers or importers who do not comply with the regulations. This raises questions about the agency control and management as well as about the relationship with the European Commission.

The main aim of this article is to explore the relationship between the European Commission and the European Chemical Agency in the context of the agent–principal model which has been used for analysing the relations between state institutions and state agencies. This perspective article does not deal with the delegation of powers by the Member States to the EU institutions in a more general sense, but with the specific delegation by the European Commission to

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<sup>1</sup> In full: Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (Text with EEA relevance).

an EU agency, which is further demarcated with a specific focus on the causes of delegation, information asymmetry and control mechanism, which are key aspects of the agent–principal concept. Tom Delreux and Johan Adriaensen (2017) refer in this sense to “micro delegation” which is now a much more topical issue in the research than “macro delegation”, focusing on the general delegation of powers by the Member States to the EU level (Delreux & Adriaensen, 2017, p. 4).

The article poses one principal research question: to what extent does the relationship between the ECHA and the European Commission match aspects of the classical agent–principal (AP) concept? The answer to this question will contribute to a deeper understanding of the relationship between the ECHA and the European Commission and will explore the environment of multiple principals, as the ECHA is not only responsible to the European Commission (EC), but other EU institutions also possess powers *vis-à-vis* the ECHA. In search for an answer, four more specific research questions were laid down: (1) What were the causes for the delegation of powers by the EC to the new agency and how they influence the AP logic? (2) What is the nature of information asymmetry between the EC and the ECHA and what is the implication for the AP relationship; (3) What are the motivation structures for the ECHA and what is their effectiveness in relation to the AP model; and (4) What are the control mechanisms established by the European Commission to control the ECHA and what is their effectiveness in relation to the AP model? Answers to these four questions will give us a better understanding of the specific nature of relations between the EC and the ECHA in the AP context and provide an answer to the principal question.

The main claim of this article is that despite the fact that the EC–ECHA relationship does not correspond to the classical concept of AP, the institutional structure of the EU creates a unique environment in which multiple principals help to limit the negative effects of the AP dilemma, while retaining the benefits of power delegation. The article’s structure is divided as follows: The next chapter introduces the theoretical concept of the AP with a special focus on delegation, information asymmetry, motivation and control, which are the key aspects of the AP concept and the main objective of our research questions. In the last chapter, these four areas are assessed within the relationship between the European Commission and the ECHA. The assessment will help us explore the nature of the relationship and discover how far the criteria of the classical AP concept have been met. As the European Commission is not the sole body in relation to the ECHA, the influence of other EU institutions (principals) is explored as well. The article bears all the pros and cons of case study research

(Yin, 2009). On the one hand it allows a deeper understanding of the relations between the European Commission and the ECHA within the applied theoretical concept of AP. In this sense, the article is similar to intrinsic study intended to achieve a complex understanding of the case (Stake, 1994). Nevertheless, conclusions of the research cannot be generalized to the relations with other agencies as the relationship between the two chosen subjects is unique and non-replicable. There are many studies using the application of the AP concept, but only few are using this concept within the EU mixed polity (Majone, 2002, p. 326). Many of the studies deal with the AP concept used for analysing delegation by the EU Member States to the EU institutions (see Majone, 1996; Delreux, 2008; Héritier & Lehmkuhl, 2008; Bailer, 2014). As pointed out by Karagiannis and Guidi (2017) in their overview, the AP theory has been, in some cases, used also in analysing the relations between the European Commission and EU agencies (Karagiannis & Guidi, 2017, p. 6).

This perspective article expands the previous research by Trondal and Jeppsen (2008), Dehousse (2008), Heritier and Lehmkuhl (2008), Zito (2009), Kelemen and Tarrant (2011) or Busuioc, Curtin and Groenleer (2012). While the latter try to find the right balance between autonomy and accountability on the case of Europol, others focus on organizational and policy learning (Zito, 2009) or the politics of institutional choice: why EU policy-makers establish agencies for analysing functionalist and political imperatives (Kelemen & Tarrant, 2011). The current article thus tries to extend the existing research with a more detailed look at the EU chemical regulatory management. Similarly to Zito's article it tries to map the influence of multiple principals on the agency to discover policy learning on the case of ECHA, and also test a hypothesis on the case of ECHA presented by Dehousse (2008, p. 796) that the creation of strong regulatory agencies in the environment of unclearly defined multiple principals is unlikely. In the general sense, the article will deepen the existing knowledge by application of AP model on a specific case.

## **2. Agent–principal model**

The agent–principal model has its roots in the economy where it has found wide application (see Maskin & Tirole, 1992). In the 1960s and 1970s, the concept spread in the USA also to the field of public administration and political science. At that time, many regulatory programmes emerged and the states were obliged to implement these through new institutions—agencies. This era of

“regulatory federalism” in the USA contributed to the scientific development of the theoretical concept in social sciences (Hedge, 1991). It took some more time, however, until the concept spread into research related to the EU where it has been rediscovered under the label of new institutionalism, which has placed a new emphasis on institutions and organizational analysis.<sup>2</sup>

The basis of the model is the relationship between two contracting parties: agent and principal (Dorwick, 1954, p. 24). This relationship is not balanced but is rather about the hierarchy when the principal delegates to an agent the responsibility for executing some functions. The logic behind this is the economization of the process: maximizing effectiveness or minimizing the costs associated with delegation. The model is strongly dependent on rational choice theory as it assumes that both agent and principals are rational actors. Nevertheless, rational choice has also implications for the behaviour of both actors as they might have their own interests, which could be in conflict. While the principal seeks maximization of benefits derived from the relation with agent, the agent follows the logic of fulfilling the delegated tasks at minimal cost. As the interests may be diverging, Moe (1984, p. 756) also stresses the necessity to develop appropriate motivation structures.

In the literature, the relation is simply demonstrated on the story of a sick person (principal) who finds a doctor (agent) who has been delegated the task to cure the sick. However, the doctor may also follow its own interests and may prescribe a treatment which is more expensive and next to benefitting the client's health also yields personal profit. In the original economic theory, the employee (agent) carried out some work for the company (principal). It is in the interests of the company to get the best work from an agent at minimal cost while finding the appropriate level of motivation. On the other hand, the agent seeks less work for more money. Opposite interests are strongly influenced by information asymmetry: the company has to trust the agent which is evaluated accordingly and the agent may use information asymmetry by misinterpreting them in promoting his own interests. Similar relations apply also to bureaucratic relations.

In all agent–principal (AP) relations the misuse of information asymmetry may lead to a *shrinking* or in the case of the administrative body to a *bureaucratic drift*. Pollack (1997) also talks about *slippage* when the structure of delegation allows the agent to behave against the interests of the principal and in some cases the interests may be conflicting. In some cases the agent may try to manipulate

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<sup>2</sup> For a detailed overview of the concept application within European studies, see a detailed review article in Delreux and Adriaensen, 2017.

the principal (Pollack, 1997, p. 108). Susan P. Shapiro (2005, p. 282) describes it as a “dance choreography” which may be led by the agent or the principal. In the reality of the EU, where the Member States often act as principals and EU institutions as their agents, it may result in the calibration of Member States in international negotiations, the attempt to set its own instructions or finding and exploiting the differences between principals (Delreux & Kerremans, 2010, p. 257). According to Waterman and Meier (1998, p. 178), in the case of multiple principals, agents may follow the instructions of its favourite principal with which it shares more interests. In order to avoid the negative effects from the delegation, a principal has to develop an appropriate motivation structure and control mechanism.

Based on the above introduction of the model, we can distinguish between several important features of the relationship between the agent–principal which may be developed further: delegation of powers, information asymmetry, and motivation structure and control mechanism.

## **2.1 Delegation of powers**

The AP concept provides several answers to the question of *why* to delegate powers to the agent. The reasons for delegation are both rational and functional. Modern public administration requires prompt decisions and clear solutions. Solutions based on passing laws are a lengthy and politically uncertain process. Moreover, law cannot predict all situations. The solution to possible gaps and organizational efficiency is to separate some powers and delegate them to another body (Craig, 2012, p. 140). In the reality of the EU, delegation of powers has been for a long time the subject of treaties. Mark A. Pollack (1997), in his study based on international relations theory, derives several reasons why the delegation of powers on a supranational body is beneficial (some of the points were further developed by other authors).

First, the states may expect supervision of their international obligations. A supranational body supervises the behaviour of the other actors and provides information to all actors which decreases transaction costs (Kassim & Menon, 2002, p. 123). Second, a supranational body may solve the problem of incomplete contracting by depriving the contracting parties of their uncertainty (Thatcher, 2006, p. 217). Third, a supranational body can manage regulation demanding bigger institutional capacities in a politically neutral way. As pointed out, for example by Schütze (2012, p. 126), delegation is the response to increasing regulatory demand. Fourth, in the case a supranational body has legislative power to initiate law it could be beneficial in three ways. The supranational body

may cover technically demanding areas and support law with technical expertise (Pollack, 1997, p. 103). Another advantage is the transfer of responsibility and guilt for unpopular acts (Thatcher, 2002, p. 111). Blaming “Brussels” is often used in domestic politics to redirect public attention. Moreover, as pointed out by Fabrizio Gilardi (2002, p. 101), delegation of powers may reduce the political space for political adversaries and ensure that a policy setting will continue also after the political term.

Next to the functional reasons there are also political reasons. For example, Martin Shapiro (2011) gives three other arguments. First, the delegation of powers by the European Commission to EU agencies allows it to increase the number of bureaucrats. According to Majone, the Commission on the one hand reacted to increase the need for regulation and on the other hand it kept the costs low (see also Majone, 2002, p. 334). Another reason presented by Shapiro is the reality of “hidden integration”. At a time when European integration was politically blocked, EU agencies allowed the hidden spread of EU structures in the technical areas of integration (Shapiro, 2011, p. 113). The third reason is depolitization of the agenda during decision making and interpretation of arguments which enabled a faster process and increased efficiency of solutions (Shapiro, 1997, p. 281). Supervision of the European Commission, a stable personnel and organizational independence and financial autonomy makes agencies less vulnerable to political processes (Jorges, 2002, p. 17). However, the establishment of agencies in especially technical areas may lead to information asymmetry.

## 2.2 Information asymmetry

In the classical AP concept there is information asymmetry between the agent and the principal, which is one reason why the principal delegates some powers to an agent. However, the level of asymmetry may vary as there are several possible combinations. Waterman and Meier (1998) have pointed out that there are two levels of knowledge (high and low) on the side of the agent and principal. This results in four combinations. However, the authors also add the element of conflict/consensus about interests. In the end we have eight possible outcomes, presented in Table 1.

This division, however, rather proposes eight ideal types of the relation and raises at least two methodological questions. Where is the dividing line between the low and high level of information, and how to determine that level? And how shall the nature of these interests be determined? Should that determination be based on policy interests or should it also be based on the functional interests involved?



Table 1. Agent–principal variability

Interests	Agent information level	Principal information level	Result
Conflicting	High	Low	Agent-principal
Conflicting	High	High	Advocacy coalitions
Conflicting	Low	Low	Bumper sticker politics
Conflicting	Low	High	Patronage systems
Shared	High	Low	Bottom line
Shared	High	High	Policy subsystems
Shared	Low	High	Plato's republic
Shared	Low	Low	Theocracy

Source: Author, based on Waterman & Meier, 1998, p. 188

In the reality of EU institutions, as pointed out by Dehousse (2008) there are multiple principals with a link to agents. However, the majority of them takes part in the control mechanism (European Parliament, Court of Justice of the EU, Court of Auditors, OLAF, etc.). In terms of agencies of the former first pillar, the strongest principal is the European Commission which has high expert capacity and is thus acting as a well-informed principal within the AP relation. Nevertheless, the position of the EC as principal varies depending on areas in which the delegation took place and the scope of powers delegated. While some areas are of technical nature, other have greater socio-economic impact and thus wider political capital. This has implications for the relationship between the EC and agencies regarding information asymmetry. As pointed out by Carol Harlow, in the 1990s situation went so far that Commissioners only approved reports from agencies without deeper understanding of the issue (Harlow, 2011, p. 459). In the case C-269/90 *München Universität* [2001] of the Court of Justice of the EU, it was noted that the European Commission did not have a different source of information and ordered the EC to use information from qualified experts. In other words, the EC relied too much on delegation and failed to develop alternative information structure. However, it is important to note that in decisions of technical nature, the EC must rely on the expert capacity of agencies and is unwillingly pushed towards formal and rather blind approval of the agency's will. Nevertheless, it can be expected that the European Commission as principal will likely delegate powers in



those areas of technical nature and maintain competences in areas generating political capital.

## 2.3 Motivation structure

In order to minimize costs and maximize the benefits of agent performance it is necessary to create a motivation structure based on sanctions and rewards (Mitnick, 1973, p. 15). Sanctions might be budgetary, personnel-based or legislative. In the case of the unwilling behaviour of the agent, a principal may apply sanctions varying from formal notice, personnel changes, financial limits to much stricter steps. The supreme sanction is the revision of the agent's mandate, limiting the powers or even cancellation of the relationship by dismissing the agent (Pollack, 1997, p. 118). A great part of the motivation may be based on money. Agents seek financial independence and follow the diversification of income in order to be less dependent on the principal. Money is a very important aspect in the dependency of the agency and the source of power of the principal over agent (White, 2005).

However, as demonstrated in the article of Waterman and Meier (1998), an AP relationship may have a variety of forms. In the reality of the EU, good regulatory performance may be a goal shared by both agent and principal. Agencies often aim at good reputation, image or high standards and are ambitious about their activities. Diversification and multiplication of tasks increase their importance and opens up new space for negotiation with principals. This shifts attention to a slightly different problem. In the environment of multiple agents there are dilemmas about agent selection and the question of why and when to select an agent may have important consequences in terms of conflict and cooperation (see Helwing, 2017). In other words, the presence of potential multiple agents contributes to competition among agents, as "being selected" as an agent gives the agent an opportunity to exert influence over the principal and gain advantages over unselected agents. Being selected as an agent may be motivation itself in line with agent interests.

The right degree of motivation may reduce tendencies to slippage or agent underperformance. However, due to self-interests of agent it is worth establishing appropriate control mechanism which may enhance agent performance and help to avoid costs for the principal.

## 2.4 Control mechanism

Due to self-interests and importance of agent activities it is necessary to establish an effective control mechanism which can save resources and increase the efficiency of the activities made by the agent. It has been established that there is an indirect relationship between controls and sanctions—the more control mechanisms there exist, the less sanctions shall be applied (Pollack, 1997, p. 110). According to Matthew McCubbins and Thomas Schwartz (1987) there are two types of control mechanisms which are applied almost in a universal way. The first type is similar to a police patrol oversight which directly involves the principal in the process. The principal is the controlling agent, of its aims and tasks. For this purpose it may use many tools from observing and investigating to periodic reporting. However, in many situations this solution is costly and would only be used when the benefits are higher than costs (McCubbins & Schwartz, 1987, p. 427). Moreover, the direct supervision of the agency attracts public attention and raises credibility question when the agency is punished (Majone, 1999, p. 19).

Another type is the fire alarm which allows the externalization of the control costs. The agent is entrusted by the agenda administration. In the case that somebody is not satisfied with the work of the agent or there is some deviant behaviour by the agent the principal shall be noticed by the actors. In this case, the costs are spread among third party actors (McCubbins & Schwartz, 1987, p. 427). For this reason the fire alarm control mechanism is more likely to appear than the police patrol oversight.

From the other point of view we can distinguish between *ex ante*, *ad locum* and *ex post* controls. According to Delreux and Kerremans, *ad locum* controls are the best solution because they have the potential to decrease the risk of disorderly conduct on the side of the agent or the principal especially in situations where more principals are present (Delreux & Kerremans, 2010, p. 372). *Ex ante* and *ex post* controls shall be made to find systemic problems in the mutual relationship between the agent and the principal.

In the reality of the EU, agencies are controlled “in process”. Principal is present within the agency’s board of management by participation of his own people who may observe activities from inside and the status of agencies often requires regular reporting. There are also systemic links to the principal who may be involved in the decision-making process of the agency and strongly influence the final outcome. Moreover, while the European Commission serves as the key principal for the majority of the EU agencies, other principals control the agent

as well. The Court of Justice of the EU and EU Ombudsman provide judicial and legal control, the Court of Auditors and OLAF are involved in financial control and, finally, the Member States and their relevant national authorities control the scope of activities and its content.

### 3. Application of the model

Every application of agent–principal concept on a selected EU agency presents a unique case. This is due to the great variability of the EU agencies, their mandates, powers, functions, interactions with other institutions, etc. In this sense, we can talk about individuality of agencies. Due to a broad mix of these variables entering analysis, every relationship between agent and principal is unique despite some similarities at a certain level of abstraction. For example, we can expect that the results will look different if we apply the concept on agencies in the former third pillar than those in the first pillar, which is more heterogeneous. Similarly, there might be expected similarities in the relations between the Commission and the agencies with a merely informative role or those that possess some regulatory powers. Unfortunately, there is no complex study comparing various types of EU agencies in the context of agent–principal concept.

In the previous chapter, the agent–principal concept was presented and some specific features of the concept developed in greater depth. In the next section, those features will be applied and explored in the context of the European Chemical Agency (ECHA) in order to study the nature of delegation and its implication for the AP relation.

#### 3.1 Delegation of powers

The ECHA was established under Article 75 of the REACH regulation. The REACH regulation also establishes the explicit content of delegated powers which gives a clear mandate to the agency. The delegation of powers in the EU shall reflect the so-called Meroni doctrine. Case 10/56 *Meroni v. High Authority* [1958] of the European Court of Justice sets limits to powers of delegation. In general, according to the judgement, a delegating authority cannot confer upon the authority receiving the delegation of powers different from those which it has itself received under the Treaty. The delegation of powers cannot be presumed and the delegating authority must make and announce the decision

to transfer the powers. The ECJ also advocated the principle of institutional balance by stating that the delegation of discretionary powers to bodies other than those which the treaty has established to effect and supervise the exercising of such power, each within the limits of its own authority, would render it a less effective guarantee resulting from the balance of powers. This decision has direct implications for the agent–principal relationship.

In this sense, European law is in need of establishing the content of delegation which would clarify the mandate of an agent and limits the scope of delegation. This clarifies the mutual relationship between the two actors. If we look at the ECHA powers under REACH, they are clearly set for areas of registration (Title II), evaluation (Title VI), authorization (Title VII) and restrictions (Title VIII) and other related areas.<sup>3</sup> However, while this clarification contributes to the accommodation of the AP concept, some parts do not comply.

For example, in the general concept the principal finds an appropriate agent to delegate its powers to. In the example of chemical management, the principal created a new agent for the sole purpose of delegation of power. The conditions of the agent's emergence has an important influence on the mutual relationship and limits the potential self-interest of the agent, as the goals within the policy are shared and the principal can influence the nature of the agent from the beginning.

The second aspect diverging from the general theory is the economy of delegation. The principal delegates powers to minimize costs and maximize benefits. However, if we look at the impact assessment reports, the purposes of the delegation become rather shallow. The company Deloitte & Touche, who put together the impact assessment report for the European commission (principal), considered three options. The first option was the extension of the powers of the existing European Chemicals Bureau, which was organizationally considered to be part of the European Commission. The second option was the establishment of the new European independent regulatory agency, and the third was the establishment of a new regulatory agency, directly subordinate to the European Commission. According to the assessment the costs of all options differed marginally. The report concluded that all options have some advantages and disadvantages; however the establishment of a new agency had an advantage in legal subjectivity, the prospect of specialization and financial independence (Deloitte & Touche, 2002, p. 12). This option was chosen in the end. Contrary to the theory, the

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<sup>3</sup> Currently the powers of the agency are extended due to the regulation of classification and labelling, biocides, nanomers, endocrine disruptors and other substances.

economic benefits were not the decisive factor—rather functional aspects of the agent based on its status prevailed.

### 3.2 Information asymmetry

Information asymmetry is another element which in the case of the relationship between the European Commission and the ECHA departs from the classical theory of the agent–principal. The ECHA is a fully specialized agency in terms of information flow and its operating personnel. The agency has direct access to data from the registrations and has high professional demands on its personnel which sometimes results in a lack of skilled workers (Bergkamp & Park, 2013, p. 25). However, also the principal is well specialized as there is an F1 unit which focuses on REACH at the DG Enterprise and Industry. Several employees are involved with ECHA relations and are considered to be specialists in specific parts of REACH. Moreover, the F2 unit is specialized in the chemical industry, so the European Commission has enough information about the status of the industry and its latest developments. The European Commission also uses information from existing networks, such as CARACAL (Competent Authorities for REACH and CLP), the Enterprise Policy Group or The Network of SME Envoys (EC, 2012). The European Commission also has its members in the ECHA Management Board and in some cases extracted some information from comitology.

Various sources of information from both agent and market operators, together with the specialization of the Commission personnel, decreases the information gap to a minimum. Even sources from the European Commission stress the fact that the work of the Commission is not suffering from the information asymmetry characteristic of the agent–principal model (EC, 2013). However, in order to determine the nature of the agent–principal model according to the systems developed by Waterman and Meier (1998), it is important to determine whether the agent and principal share these goals.

In the case of chemical management, the ECHA shares goals with the EU. As noted by Shapiro (2011), EU agencies are considered to be part of the Council or the Commission and thus problems arising from the agent–principal model are minor and attention should be paid to setting common priorities (Shapiro, 2011, p. 116). Policy priorities are well coordinated due to various means, especially through the F1 unit employees who are in daily contact with the ECHA (EC, 2013). Due to the shared policy goals between the Commission and the agency, the lack of information asymmetry places the relationship to the label of policy subsystems, as developed by Waterman and Meier (1998). Without knowing

the reality of modern chemical management, both authors predicted that this system is characteristic of the area of environmental problems where access to information is not exclusive. Chemical management clearly belongs to environmental politics where public interests can be distinctly identified.

### **3.3 Motivation structure**

In the case of the ECHA, the institution is encouraged to great performance in both positive and negative ways. ECHA sees itself as “a driving force among regulatory authorities in implementing the EU’s ground-breaking chemicals legislation for the benefit of human health and the environment as well as for innovation and competitiveness” (ECHA, 2016a). As other regulatory bodies, it seeks to maintain high credibility and transparency which contributes to the authority of the organization. In the case that credibility or transparency of the organization is in question, the European Commission as a principal may take the necessary action to improve the agency management. These may include personnel policy or budgetary measures. The executive director of the agency is responsible to the board of management which is composed of one person from each Member State, six persons nominated by the European Commission and two people nominated by the European Parliament. Compared to similar agencies, the European Commission enjoys a great amount of influence over ECHA personnel policy—for example, in the Office for Harmonization in the Internal Market Management Board or the European Food Safety Authority where the Commission has only one representative. Moreover, the executive director is selected by the management board from the list of three candidates prepared by the Commission. The European Parliament is also involved in this process because the executive director is invited to deliver a statement in the European Parliament and face questions from deputies. Unsurprisingly, the current executive director, Geert Dancet, worked for three years as head of the REACH Unit within the European Commission (ECHA, 2016b) and thus represents another personal link of the EC to the agent.

The European Commission may also adopt financial measures despite partial financial independence of the agency. Income of the agency is based on three resources: voluntary contributions, fees paid by enterprises, and contributions from the EU budget under the section of the European Commission. The last source of income covers around 80 per cent of ECHA’s activities. Moreover, all projects with a financial impact must be consulted with the Commission, which also sets its financial regulation (Article 99 of the REACH). It is not a regular practice that agencies have independent income and, in this sense, ECHA

represents an exception which might be interpreted against the classical relation of AP as it gives more independence to the agent. However, there are other financial issues which are in line with the AP concept. For example the budget is a source of conflicting interest between the Commission and the ECHA. Due to the increasing competences of the ECHA in other regulatory areas (biocides, polymers, nanomers, etc.), the agency is demanding more resources for its management (Blaha, 2014). In this sense, the ECHA is not different from typical agent.

### 3.4 Control mechanism

The ECHA is controlled through several mechanisms involving multiple principals. The key position in the control system is held by the Commission, who is involved directly via the management board and the F1 REACH unit. According to Article 83, the executive director annually submits to the board a draft report covering the activities of the agency, the draft work programme for the coming year, the drafts of annual accounts, budget forecasts, multiannual work programme and other documents. A general report is forwarded to the Member States and other institutions, including the European Parliament, Council, Commission, Court of Auditors, EU advisory bodies, and published. Moreover, according to Article 117, the powers and tasks of the agency are subject to a five-year review.

The ECHA is also subject to political control by the Member States present in the Member State Committee (MSC). MSCs participate in several REACH processes, including the evaluation and authorization of chemicals, and unanimously agree on the testing proposals and compliance checks or provide opinions to various REACH issues. However, from the policy perspective, it is the European Commission who may initiate changes in REACH and thus change the status of the ECHA and propose changes in the scope of the ECHA powers. The Commission, together with the Council and the European Parliament, also oversees the agency's budget. Financial management is controlled by EU Anti-Fraud Office.

REACH as a secondary act is part of the EU law, which is protected by the supervision of the Commission and under the jurisdiction of the Court of Justice of the EU. Third parties may initiate the appeal procedure against the decision of the agency and seek justice in front of the Board of Appeal which is an integral part of the agency (Article 89). Cases may be brought also to the Court of Justice of the EU (General Court, respectively). In accordance with the AP concept, multiple principals allow the division of tasks within the police patrol control



mechanism where each principal is responsible for controlling different areas. On the other hand, the review mechanism allows the effective control through the fire alarm method. Concerned parties have the choice to initiate the appeal procedure and in the case of an unsuccessful result they may use the “second scrutiny” of the General Court.

The involvement of the Member States and various EU institutions makes the control mechanism complex and extensive. The last review of REACH and the ECHA management showed that the ECHA works well and no serious concerns were found. This situation is in line with the AP concept regarding the proportionality of controls and sanctions—the more control applied by the principal, the less sanctions are adopted against the agent.

## 4. Conclusions

This article revealed the application of the agent–principal (AP) concept on the relations between European Commission and European Chemicals Agency. For the purposes of research there was one principal research question: *To what extent does the relationship between the ECHA and the European Commission match aspects of the classical agent–principal (AP) concept?* Due to complexity of the issue, four more detailed questions were posed in order to explore the unique nature of the relations between agent and principal: (1) What were the causes for delegation of powers from the EC to a new agency and how they influence AP logic? (2) What is the nature of information asymmetry between the EC and the ECHA and what is the implication for the AP relationship; (3) What are the motivation structures for the ECHA and what is their effectiveness in relation to the AP model; and (4) What are the control mechanisms established by the European Commission to control ECHA and what is their effectiveness in relation to AP model?

Searching for the answer to the first question revealed that there were multiple factors involved in the decision to establish the agent and delegate the task. Expansion of bureaucracy is in line with the theory of “hidden integration” by Martin Shapiro (2011). However, it may be also understood as a response to the need for better regulation while keeping costs low (Majone, 2002, p. 334). Expanding regulatory institutional structures was a natural answer to the increased demand. However, it is important to stress that the economic aspect of delegation was not the only reason why the EC decided to delegate. It was partially a political decision. There are some specific aspects in relation to the

classical AP concept. First, the principal did not enter into contract with already existing agent but created his agent especially for the purposes of delegation. This has important implications for the relationship as the principal shaped the nature of agent from the very beginning, contributing to the shared organizational culture and reduced tendencies to negative behaviour of the agent. Second, contrary to the AP concept, the agent has not been created to minimize costs but rather for the benefits related to its independent status and thus functional objectives.

Information asymmetry, which was the subject of the second research question, is another diverging aspect in relation to the classical AP concept. Both the principal and the agent maintain a high level of information capacity and information asymmetry is limited to the minimum. This is mainly due to the institutional capacity of principal where F1 unit at the DG Enterprise focus on REACH and communication with the ECHA. Moreover, the EC has access to existing networks and stakeholders and thus receives information from sources independent from the agent. It is also important to note that the EC also has its people in the management board of the agency and has a close link to the president. From this perspective, the principal is present within the agent and thus might be seen as “extended arm” of the EC, contributing to a symbiotic relation.

As for the third research question, it is the European Commission which maintains in some aspect (aims, personnel policy, and budget) motivation structure. It seems that the ECHA and the Commission work in the same direction and, except for some managerial issues (e.g., budgetary allocation), their relationship is mutually supportive. The ECHA is well aware of its responsibility and is committed to regulatory performance in line with expectations of principals and public. The agent is working on its performance which also serves a legitimization role. This is very important, especially in the context of debates about democratic deficit. In line with the AP concept are also claims of the agent for additional resources which were caused by an increasing number of tasks delegated to the agency under further regulation related to the REACH.

From the perspective of the AP concept, the EC succeeded in creating a unique control mechanism which is based on both police control and fire alarm. Police control mechanism is based on the presence of EC members in the administrative board of the ECHA and the close ties between the director of the ECHA and the European Commission. Moreover, there is a system of regular reporting and review. Fire alarm mechanisms have been formally set up by an appeal procedure and are strengthened by the possibility to communicate the

emerging problems directly with the European Commission. The combination of control mechanisms together with the involvement of other actors within the EU institutional system created a unique system which limits the possibility of shrinking or bureaucratic drift to the minimum. The system of multiple principals contributes to an increase in control effectiveness as more principals can see better and allow control specialization. Moreover, it reduced the possibility that an agent would prefer some principal over another and exploit the diverging preferences among principals, as the theory suggests. Still, the influence of the EC is crucial as it exerts the greatest power on the agent, has its people within and is the primary target of information flow.

The relationship between the European Commission is in key aspects different from those of the classic agent–principal concept. Despite the existence of two legal entities and delegation of powers, the ECHA may be considered as an extended arm of the European Commission with a formally autonomous organization. This conclusion is in line with the main claim that the EU has created a unique environment in which multiple principals help limiting the negative effects of the agent–principal dilemma. This is mainly due to the specialization of principals in overseeing the ECHA. In reality, the ECHA is surrounded by multiple principals who make a great effort not to allow shrinking or regulatory underperformance. Nevertheless, EU integration and the area of EU agencies have experienced very progressive development during the last two decades and, similarly, the EU's chemical management develops in a progressive way which may bring new institutional challenges and open the issues of the AP concept. For this reason, it was provident to incorporate a review mechanism within the REACH regulation which may repair the balance between the European Commission and the ECHA, if needed.

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## References

- Bacon, P. & Kato E.** (2013), 'Potential still untapped: Japanese perceptions of the European Union as an economic and normative power,' *Baltic Journal of European Studies Tallinn University of Technology*, vol. 3, no. 3, pp. 59–84.  
<https://doi.org/10.2478/bjes-2013-0021>
- Bailer, S.** (2014), 'An agent dependent on the EU Member States? The determinants of the European Commission's legislative success in the European Union,' *Journal of European Integration*, vol. 36, no. 1, pp. 37–53.  
<https://doi.org/10.1080/07036337.2013.809342>
- Bergkamp, L. & Young P. D.** (2013), 'The organizational and administrative structures,' in L. Bergkamp (ed.) *The European Union REACH Regulation for Chemicals*, Oxford: Oxford University Press.
- Blaha, K.** (2014), Interview from 15. 7. 2014 with Karel Blaha, European Chemicals Agency Administrative Board Member. Author's archive.
- Braun, D.** (2002), 'Debate: State intervention and delegation to independent regulatory agencies,' *Swiss Political Science Review*, vol. 8, no. 1, pp. 93–125.  
<https://doi.org/10.1002/j.1662-6370.2002.tb00336.x>
- Busuioc, M.; Curtin, D. & Groenleer, M.** (2012), 'Agency growth between autonomy and accountability: the European Police Office as a "living institution",' in B. Rittberger & A. Wonka (eds.) *Agency Governance in the EU*, New York: Routledge, pp. 70–98.
- Craig, P.** (2012), *EU Administrative Law*, 2nd ed., Oxford: Oxford University Press.  
<https://doi.org/10.1093/acprof:oso/9780199568628.001.0001>
- Dehousse, R.** (2008), 'Delegation of powers in the European Union: the need for a multi-principals model,' *West European Politics*, vol. 31, no. 4, pp. 187–204.  
<https://doi.org/10.1080/01402380801906072>
- Deloitte & Touche (2002), *Feasibility Study on the Source Requirements for a Central Entity*, June 2002. Ref. B4\_3040/2001/329289/MAR/C3. Retrieved from <http://chemicalspolicy.net/downloads/cereport.pdf> [accessed Feb 2018]
- Delreux, T.** (2008), 'The EU as a negotiator in multilateral chemicals negotiations: multiple principals, different agents,' *Journal of European Public Policy*, vol. 15, no. 7, pp. 1069–1086. <https://doi.org/10.1080/13501760802311858>
- Delreux, T. & Adriaensen, J.** (2017), 'Twenty years of principal-agent research in EU policies: how to cope with complexity?' *European Political Science*, vol. 16, pp. 1–18.
- Delreux, T. & Kerremans, B.** (2010), 'How agents weaken their principals' incentives to control: the case of EU negotiators and EU Member States in multilateral negotiations,' *European Integration*, vol. 32, no. 4, pp. 357–374.  
<https://doi.org/10.1080/07036331003797554>

- Dowrick, F. E.** (1954), ‘The relationship of principal and agent,’ *The Modern Law Review*, vol. 17, no. 1, pp. 24–40. <https://doi.org/10.1111/j.1468-2230.1954.tb02143.x>
- EC (2013), Interview from 24. 4. 2014 with the EU official from the European Commission, DG Enterprise and Industry, Unit F4 REACH.
- ECHA (2016a), ‘About us’, European Chemicals Agency. Retrieved from <http://echa.europa.eu/about-us> [accessed Feb 2018]
- ECHA (2016b), ‘Executive Director,’ European Chemicals Agency. Retrieved from [http://echa.europa.eu/documents/10162/13560/biography\\_geert\\_dancet\\_en.pdf](http://echa.europa.eu/documents/10162/13560/biography_geert_dancet_en.pdf) [accessed Feb 2018]
- Follesdal, A. & Hix, S.** (2006), ‘Why there is a democratic deficit in the EU: a response to Majone and Moravcsik,’ *Journal of Common Market Studies*, vol. 44, no. 3, pp. 533–562. <https://doi.org/10.1111/j.1468-5965.2006.00650.x>
- Gilardi, F.** (2002), ‘Delegation to independent regulatory agencies: insights from rational choice institutionalism,’ *Swiss Political Science Review*, vol. 8, no. 1, pp. 93–125. <https://doi.org/10.1002/j.1662-6370.2002.tb00336.x>
- Harlow, C.** (2011), ‘Three phases in the evolution of EU administrative law,’ in P. Craig & G. De Búrca (eds.) *The Evolution of EU Law*, 2nd ed., Oxford: Oxford University Press.
- Hedge, D. M.; Scicchitano, M. J. & Metz, P.** (1991), ‘The principal–agent model and regulatory federalism,’ *The Western Political Quarterly*, vol. 44, no. 4, pp. 1055–1080. <https://doi.org/10.2307/448807>
- Helwig, N.** (2017), ‘Agent interaction as a source of discretion of the EU High Representative,’ in T. Delreux & J. Adriaensen (eds.) *The Principal-Agent Model and the European Union*, London: Palgrave Macmillan. [https://doi.org/10.1007/978-3-319-55137-1\\_5](https://doi.org/10.1007/978-3-319-55137-1_5)
- Héritier, A. & Lehmkuhl, D.** (2008), ‘The shadow of hierarchy and new modes of governance,’ *Journal of Public Policy*, vol. 28, no. 1, pp. 1–17. <https://doi.org/10.1017/S0143814X08000755>
- Jain, K. R. & Pandey, S.** (2013), ‘Indian elites and the EU as a normative power,’ *Baltic Journal of European Studies*, vol. 3, no. 3, pp. 105–126. <https://doi.org/10.2478/bjes-2013-0023>
- Jansen, T.** (2009), ‘The democratic deficit of the European Union,’ *Living Reviews in Democracy*, vol. 1, pp. 1–8.
- Joergens, Ch.** (2002), ‘The law’s problems with the governance of the Single European Market,’ in Ch. Joergens & R. Dehousse (eds.) *Good Governance in Europe’s Integrated Market*, Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199246083.003.0001>
- Karagiannis, Y. & Guidi, M.** (2017), ‘Principal–agent models and EU policy-making,’ in N. Zahariadis & L. Buonanno (eds.) *Routledge Handbook of European Public Policy*, London: Routledge, pp. 1–11.

- Kassim, H. & Menon, A.** (2003), 'The principal–agent approach and the study of the European Union: promise unfulfilled?' *Journal of European Public Policy*, vol. 10, no. 1, pp. 121–139. <https://doi.org/10.1080/1350176032000046976>
- Kelemen, R. D. & Tarrant, A. D.** (2011), 'The political foundations of the eurocracy,' *West European Politics*, vol. 34, no. 5, pp. 922–947. <https://doi.org/10.1080/01402382.2011.591076>
- Majone, G.** (1996), *Regulating Europe*, London: Routledge.  
<https://doi.org/10.4324/9780203439197>
- Majone, G.** (1998), 'Europe's "democratic deficit": the question of standards,' *European Law Journal*, vol. 4, no. 1, pp. 5–28. <https://doi.org/10.1111/1468-0386.00040>
- Majone, G.** (2002), 'Delegation of regulatory powers in a mixed polity,' *European Law Journal*, vol. 8, no. 3, pp. 319–339. <https://doi.org/10.1111/1468-0386.00156>
- Maskin, E. & Tirole, J.** (1992), 'The principal–agent relationship with an informed principal, II: common values,' *Econometrica*, vol. 60, no. 1, pp. 1–42. <https://doi.org/10.2307/2951674>
- McCubbins, M. & Schwartz, T.** (1987), 'Congressional oversight overlooked: Police patrols versus fire alarms,' in M. McCubbins & T. Sullivan (eds.) *Congress: Structure and Policy*, Cambridge: Cambridge University Press.
- Meroni v. High Authority* [1958] Judgment of the Court from 13 June 1958 Meroni & Co., Industrie Metallurgiche, S.A.S., v High Authority of the European Coal and Steel Community, Case 10/56.
- München Universität v. Hauptzollamt München-Mitte* [2001] Judgement of the Court of 21 November 2001, Technische Universität München v Hauptzollamt München-Mitte. Reference for a preliminary ruling: Bundesfinanzhof – Germany, Case C-269/90.
- Mitnick, B. M.** (1973), *Fiduciary rationality and public policy: The theory of agency and some consequences*. Paper presented at the 1973 Annual Meeting of the American Political Science Association, New Orleans.
- Moe, T. M.** (1984), 'The new economics of organization,' *American Journal of Political Science*, vol. 28, no. 4, pp. 739–777. <https://doi.org/10.2307/2110997>
- Moravcsik, A.** (2002), 'In defence of the "democratic deficit": reassessing legitimacy in the European Union,' *Journal of Common Market Studies*, vol. 40, no. 4, pp. 519–538. <https://doi.org/10.1111/1468-5965.00390>
- Pollack, M. A.** (1997), 'Delegation, agency, and agenda setting in the European Community,' *International Organization*, vol. 51, no. 1, pp. 99–134. <https://doi.org/10.1162/002081897550311>
- Schütze, R.** (2012), *European Constitutional Law*, Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139031769>
- Shapiro, M.** (2011), 'Independent agencies,' in P. Craig & G. De Búrca (eds.) *The Evolution of EU Law*, 2nd ed., Oxford: Oxford University Press.

- Shapiro, S. P.** (2005), ‘Agency theory,’ *Annual Review of Sociology*, vol. 31, pp. 263–284. <https://doi.org/10.1146/annurev.soc.31.041304.122159>
- Stake, R.** (1994), ‘Case studies,’ in N. K. Denzin & Y. S. Lincoln (eds.) *Handbook of Qualitative Research*, Thousand Oaks: Sage.
- Thatcher, M.** (2006), ‘European regulation,’ in J. Richardson (ed.) *European Union. Power and Policy-Making*, 3rd ed., London: Routledge.
- Trondal, J. & Jeppesen, L.** (2008), ‘Images of agency governance in the European Union,’ *West European Politics*, vol. 31, no. 3, pp. 417–441. <https://doi.org/10.1080/01402380801939636>
- Waterman, R. W. & Meier, K. J.** (1998), ‘Principal–agent models: an expansion?’ *Journal of Public Administration Research and Theory*, vol. 8, no. 2, pp. 173–202. <https://doi.org/10.1093/oxfordjournals.jpart.a024377>
- White, R. E.** (2010), *Shall We Dance? The Role of Agents in Managing the Principal-Agent Relationship*, Iowa State University, Department of Management, College of Business.
- Yin, R. K.** (2009), *Case Study Research: Design and Methods*, Thousand Oaks: Sage Publications.
- Zito, A. R.** (2009), ‘European agencies as agents of governance and EU learning,’ *Journal of European Public Policy*, vol. 16, no. 8, pp. 1224–1243. <https://doi.org/10.1080/13501760903332795>