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The Role of EU Agencies – Autonomous or ‘Inbetweener’ Bodies in Light of Agencies’ Inspection Power over National Authorities?

ABSTRACT

The mushrooming of EU agencies is one of the major changes in EU regulatory governance; however, questions arise as to whether these EU bodies can be considered appropriate solutions to fight against the substantive implementation deficit of EU law at national level. Carrying out inspections as labour-intensive activity and expertise-based competence to review the Member States’ implementation of EU law has not become broadly applied by EU agencies. This article focuses on the evolution of three different EU agencies, which have or have not been empowered to carry out inspections over national authorities by, *inter alia*, the European Environmental Agency, the European Aviation Safety Authority and the European Union Agency for Railways. The European Environmental Agency is an EU agency with more than two decades of history but it never could acquire such competence. On the other hand, transport agencies such as the European Aviation Safety Authority and European Union Agency for Railways have been made responsible for carrying out such inspections. Explaining further factors in relation to conferring such powers could help to better understand the EU agencification process and the inter- and intra-institutional relations of the EU’s composite administration.

KEYWORDS: agencification, EU, independent bodies, agencies, national authorities, inspection, administrative procedure

I. INTRODUCTION

Concerns over the implementation of EU law have been discussed in the literature for a long time, focussing on the driving forces behind the compliance performance of the Member States.¹ The compliance patterns, combined with territorial categorisation as a

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¹ K. J. Alter, The European Court’s Political Power, (1996) 19 (3) *West European Politics*, 458–487, <https://doi.org/10.1080/01402389608425146>; F. Duina, Explaining Legal Implementation in the

research agenda, also gained momentum.² However the institutional structures to ensure uniform and proper implementation of EU law on national level are far from complete. Nevertheless, it is far from the structure of the national ministerial administration with its classical centralistic organisation. The task of implementing Union norms remained at the level of the Member States including the national authorities as well as the national courts. Considering the implementation deficit, it is clear that appropriate and uniform implementation has to be supported by the European Union. EU-level intervention could be undertaken by a supranational body, which collects and analyses the related data on the implementation performance of the Member States and react appropriately in case of non-compliance. This article intends to analyse whether EU agencies can ensure better implementation of EU law by inspections and how their potential performance can be influenced by various factors and actors present at the EU's institutional landscape.

The European Environmental Agency's role has always been limited to information gathering and could never acquire inspection power. The transport agencies of the EU, such as the European Aviation Safety Authority along with the European Maritime Safety Authority, were the first ones in the evolution of the EU regulatory agencies with inspection powers over the national authorities.³ Nevertheless, the European Union Agency for Railways also acquired such formal power in course of the last reform package on railways, dated back to 2016.

European Union, (1997) 25 (2) *International Journal of the Sociology of Law*, 155–179, <https://doi.org/10.1006/ijsl.1997.0039>; J. Tallberg, Supranational influence in EU enforcement: the ECJ and the principle of state liability, (2000) 7 (1) *Journal of European Public Policy*, 104–121, <https://doi.org/10.1080/135017600343296>; D. Mabbett, The Development of Rights-based Social Policy in the European Union, (2005) 43 (1) *Journal of Common Market Studies*, 97–120, <https://doi.org/10.1111/j.0021-9886.2005.00548.x>; T. A. Börzel, Participation through Law Enforcement: The Case of the European Union, (2006) 39 (1) *Comparative Political Studies*, 128–152, <https://doi.org/10.1177/0010414005283220>; L. Conant, Compliance and What EU Member States Make of It, in M. Cremona (ed.), *Compliance and the Enforcement of EU Law* (Oxford University Press, Oxford, 2012) 1–30, <https://doi.org/10.1093/acprof:oso/9780199644735.003.0001>

² C. Knull and A. Lenchov, Coping with Europe – The Impact of German and British Administration on the Implementation of EU Environmental Policy, (1998) 5 (4) *Journal of European Public Policy*, 595–614, <https://doi.org/10.1080/13501769880000041>; T. A. Börzel, Why There is No 'Southern Problem', On Environmental Leaders and Laggards in the European Union, (2000) 7 (1) *Journal of European Public Policy*, 141–162, <https://doi.org/10.1080/135017600343313>; L. Dimitrova Antonateva, The new Member States of the EU in the aftermath of new Enlargement: Do new European rules remain empty shells?, (2010) 17 (1) *Journal of European Public Policy*, 137–148, <https://doi.org/10.1080/13501760903464929>

³ M. Groenleer, M. Kaeding and E. Versluis, Regulatory governance through agencies of the European Union? The role of the European agencies for maritime and aviation safety in the implementation of European transport legislation, (2010) 17 (8) *Journal of European Public Policy*, 1212–1230, <https://doi.org/10.1080/13501763.2010.513577>; E. Versluis and E. Tarr, Improving Compliance with European Union Law via Agencies: The Case of European Railway Agency, (2013) 51 (2) *Journal of Common Market Studies*, 316–333, <https://doi.org/10.1111/j.1468-5965.2012.02312.x>

The *definition* of inspection as a legal instrument has a relatively broad scope in the literature.⁴ This article defines inspection as the process of investigating of the facts, usually combined with on-site screening and visits by EU officials. However, this does not necessarily reflect the definition of inspection power applied by national administrative authorities and regimes, as EU agencies are usually not allowed to take decisions on infringements by Member States. This refers to the allocation of powers between EU agencies and further EU institutions, as the EU agency is mainly responsible as inspector for data-gathering but taking decisions on legal consequences (i.e. initiating infringement proceedings) is the exclusive task of the European Commission. Additionally, the sector-specific policy areas and the description of powers conferred upon EU institutions and EU bodies under the labels of 'monitoring' or 'audit' or 'inspection' do not necessarily distinguish between *direct control*, fulfilling the supervisory power with regard to Union citizens and the *control of control* with regard to the national authorities.⁵ The focus of this paper relies on the control of control, namely the power of EU agencies to inspect national authorities and their performance regarding the direct control of market participants. Therefore, the *rationale* of inspections is to provide reliable data and information on the implementation performance of the Member States and identify the crucial deficiencies and further implementation concerns.

There are some obvious factors which could be the main obstacles to carrying out inspections, especially that the demand for on-site visits makes it clear that, among the several methods for checking the implementation of the Member States, inspections represent a labour-intensive, time-consuming approach, which necessarily involves a significant number of EU officials. From the perspective of the Member States, the delegation of inspection powers to EU level creates a clear 'potential threat,' as this could serve as a basis for future infringement proceedings as well.⁶ Moreover, not only the Member States but the Commission would be keen to keep its prerogatives on whether to initiate infringement proceedings. Second, the independence of EU decision-making has multiple dimensions, as the profile of EU officials involved in certain inspections at micro level also need to be taken into account. The flexibility of staff policy based on the requirements of certain situations, ease of planning and deploying the human resources

⁴ A. David, Inspections as an instrument of Control of Implementation in the European Composite Administration, in J. Oswald and B. Schöndorf-Haubold (eds), *The European Composite Administration* (Intersentia Uitgevers, Cambridge–Antwerp–Portland, 2011) 357–381; K. Knipschild, European veterinary and food law and the European Composite Administration, in O. Jansen and B. Schöndorf-Haubold (eds), *The European Composite Administration* (Intersentia Uitgevers, Cambridge–Antwerp–Portland, 2011) 357–381; M. Kaeding and E. Versluis, EU Agencies as Solution to Pan-European Implementation Problems, in M. Everson, C. Monda, and E. Vos (eds), *European Agencies in between Institutions and Member States* (Wolter Kluwer International BV, The Netherlands, 2014) 73–87.

⁵ David, Inspections as an instrument of Control of Implementation..., 359.

⁶ Ibid, 368.

and the number of experts involved might also have a crucial impact on the efficiency of inspections carried out by EU agencies. Further factors in relation to inspections include ensuring that the information acquired by inspections is well-targeted, with a focus on both specific deficiencies and the concerns of Member States, which could serve as basis for further country-specific analysis and related recommendations. The risk analysis and crisis management using earlier country-specific findings makes it possible to build up a proper follow-up mechanism based on the identified weaknesses.

This paper starts with the theoretical examination of EU agencies and the process of agencification, which is one of the major changes in the EU institutional landscape of recent times. The theoretical considerations on EU agencies will be followed by the institutional history of the agencies concerned and/or the experience gained during their inspection cycles. Finally, the article concludes by evaluating the elements that will be decisive when EU agencies carry out inspections.

II. EU AGENCIES AS INSPECTORS AND THE 'AGENCIFICATION' PROCESS

EU agencification over the last decades marks the era, when the European Union is seeking new governance mechanisms by creating these 'inbetweeners' EU bodies, which function between EU institutions and Member States, while having regulatory tasks over market participants.⁷ They functioning at the centre of a triangle consisting of EU institutions and national authorities as well as market participants, a position that could substantially influence their inspection performance.

There are various approaches to classifying EU agencies.⁸ The so-called mushrooming of EU agencies refers not only to the phenomenon that the number of such bodies has expanded tremendously in recent decades, but also to the fact that substantial powers have been conferred upon them by creating a direct relationship between market participants/citizens and these kinds of bodies. This shift of power has led to some common rules on their establishment and functioning, in the form of the Joint Statement and Common Approach of the European Parliament, the Council of the EU and the European Commission on decentralised agencies. However, EU agencies, as non-Treaty bodies, still lack a proper primary legal basis for their functioning, Article 263.1 of the Treaty on the Functioning of the European Union

⁷ M. Everson, C. Monda and E. Vos, European Agencies in between Institutions and Member States, in M. Everson, C. Monda and E. Vos (eds), *European Agencies in between Institutions and Member States* (Wolters Kluwer International BV, The Netherlands, 2014, 3–9) 4.

⁸ E. Vos, European Agencies and the Composite EU Executive, in M. Everson, C. Monda and E. Vos (eds), *European Agencies in between Institutions and Member States* (Wolters Kluwer International BV, The Netherlands, 2014) 20–23.

only guarantees judicial review of agencies' acts intended to produce legal effects *vis-à-vis* third parties before the Court of Justice of the European Union.

In relation to the agencies, it should be obvious that their actual development (as well as of other EU-level actors) also involves the diffusion of values and ideas among agency personnel and national experts involved in the implementation at the national (as well as the EU) level.⁹ Nevertheless, it has also been identified, in relation to various competences exercised by EU agencies that they 'should be flexible and resort to a combination of compliance strategies in order to be able to have an impact at the domestic level'.¹⁰ As a theoretical expectation, the inspection powers conferred on EU agencies could reveal potential conflicts between the actors in the EU regulatory space.

The general concept of *independence* not only refers to the relationship with the regulated market participants, but also to national counterparts, as well as the EU institutions. The inspections are addressed in more or less direct form to certain segments of the internal market (direct control) and/or the national authorities acting as direct inspectors (control of control). The labour-intensive nature of inspections combined with the resources required by this kind of competence could potentially lead to conflicts between the Commission and the agency as well. Additionally, the Commission and single commissioners do not function in the form of a centralised ministerial administration although the Commission could have substantial impact on the agency's work in form of influencing its staffing policy, by initiating the related budget proposals. EU officials have various integrity requirements related to their tasks based on the Treaties and the EU Staff Regulation, as well as the related requirements of sector-specific laws. Employment at EU agencies could include 'double-hattedness' problems at the level of individual EU officials, considering the fact that European personnel selection is also reliant on national candidates, especially with regard to highly qualified experts needed to be employed for on-site inspections.

In several cases, the EU agency has been created as response to crisis situations related to the inadequate risk analysis and crisis management capacities at EU-level. As such, how agencies are allowed to *formulate their own work plan*, including risk analysis and crisis management plans, could be an essential consideration. Theoretically, agencies gained the opportunity to build up close relations with the national authorities, although indirectly with market participants. This close link and the horizontal overview concerning the regulated market enable the agencies to identify the emerging risk factors effectively. Moreover, the identified risks, based on the inspection reports and recommendations can serve as a basis to build up a proper follow-up mechanism. A certain level of flexibility should also be guaranteed in the planning of inspections

⁹ Groenleer, Kaeding and Versluis, Regulatory governance through agencies of the European Union?, 1218.

¹⁰ Versluis and Tarr, Improving Compliance with European Union Law via Agencies..., 332.

based on the former findings as well as ever-changing market environment. Moreover, the agencies should keep their flexibility to monitor market changes and threats, as well as potential deficiencies, regardless of the outcome of the previous inspection cycles, which requires effort and resources to invest into areas that do not necessarily have a high position on the agenda of the Commission. On the whole, swift responsiveness and ongoing flexibility regarding risk analysis and crisis management are crucial to maintain each agency's credibility.

Transparency could be crucial in inspection cycles. More specifically, *information* as an outcome of the data-gathering process of the agency might vary widely covering general as well as more targeted issues. Depending on its preparation and focus, the inspection will certainly, produce more detailed, country-specific information on the implementation performance of the Member State concerned as well. Obviously the combination of various inspection reports gives the opportunity to have a more horizontal and comprehensive view of market circumstances, and potentially formulate policy-oriented statements rather than just technical and scientific evaluations of the related subjects. As for theoretical expectations in this regard, the transparency of the outcome of the investigation process can also serve as a basis for addressing the general public as well.

III. EU AGENCIES AS INSPECTORS OVER NATIONAL AUTHORITIES

1. The European Environmental Agency

The European Environmental Agency (EEA) was established in 1993, operating from 1994 in Denmark (Copenhagen). Schout summarised that the EEA 'started as a chaotic body that only few really wanted and which was partly created because it was, in 1994, necessary to have enough agencies to satisfy'¹¹ the regulatory needs. The underlying reason for such a difficult beginning was that 'each of the tasks mentioned during the negotiations was conferred upon the EEA without the required staff and budget to perform adequately – even though the EEA after twenty years managed to become a 'highly regarded organisation'.¹²

¹¹ A. Schout, *Inspecting Aviation Safety in the EU: EASA as an Administrative Innovation?*, in E. Vos (ed.), *European Risk Governance: Its Science, Its Inclusiveness and Its Effectiveness* (Mannheim University Press, Mannheim, 2008, 257–294) 265.

¹² Ibid.

Inspection power over national authorities has never been conferred upon the EEA. It might be worth analysing what arguments took place during the evolution of the EEA in this regard. The first period of the EEA (1994–2003) has been summarised by Martens as the era of inter-institutional tensions due to the political vision of its first director Mr. Jiménez-Beltrán, who put much emphasis on the EEA producing policy analyses rather than gathering facts.¹³ The EEA also undertook an analysis of the institutional performance of DG Environment as well as exercising its inspection power over national authorities, which led to the Commission proposing a budget freeze. Citing the three factors of the theoretical assumptions, the Commission expressed its position clearly and provided the staffing and budget for the EEA to conduct its core tasks related to data-gathering. As for its independence on work plans and methods, the Commission criticised the EEA for focusing too much on general analyses without providing hard facts for further evaluation. As for the third factor, this period of the EEA could create its own identity by the transparency of its analyses, even if this led to some tensions with other EU institutions, especially the Commission.

The next chapter of the relationship between the Commission and the EEA can be characterised as an inter-institutional partnership (2004–), as the EEA gave more emphasis to DG Environment's priorities; the European Parliament clearly positioned itself as the EEA's ally in the budget-proposal process, and EIONET (European Environment Information and Observation Network) was able to acquire a substantial position in data gathering.¹⁴ The networks could counter the problems of lack of information and motivation that occur, according to the findings of organisational theory, in hierarchical organisations in particular.¹⁵ With regard to uniform application, it has to be borne in mind that there is no mechanism like preliminary ruling procedures, which ensure the uniform application of EU law. As a result, divergent practices might also occur if no court process or infringement proceeding is initiated in certain cases. In this regard, networks, could have a substantial role, especially in environmental policy-making and enforcement.¹⁶

¹³ K. Martens (cf.), *Mechanisms of OECD Governance* (Oxford University Press, Oxford, 2010) 888–889.

¹⁴ Ibid, 890–892.

¹⁵ J. Sommer, Information cooperation procedures – With European environmental law serving as an illustration, in J. Oswald and B. Schöndorf-Haubold (eds), *The European Composite Administration* (Intersentia Uitgevers, Cambridge–Antwerp–Portland, 2011, 55–91) 68.

¹⁶ M. Angelov and L. Cashman, Environmental inspections and environmental compliance assurance networks in the context of European Union environment policy, in M. Faure, P. De Smedt and A. Stas (eds), *Environmental Enforcement Networks: Concepts, Implementation and Effectiveness* (Edward Elgar Publishing, 2015) 350–376, <https://doi.org/10.4337/9781783477401.00030>

2. The European Aviation Safety Authority

The European Aviation Safety Authority (EASA) established in 2002 has its headquarters in Cologne (Germany). EASA could be considered as a pioneer in performing inspections of national authorities, being mainly standardisation inspections. More precisely, EASA took over the coordination of standardisation activities previously carried out by the Joint Aviation Authorities in Air Operations, Synthetic Training Devices and Flight Crew Licensing on 1st January 2007. In recent years the related Regulation on standardisation inspections has been updated,¹⁷ while the policy areas covered by standardisation inspections have also been expanded.

As for *independence* and the relationship with the Commission in term of *staffing policy and budgetary issues*, there is a clear relationship between the number of inspections and inspection visits carried out yearly. As a result, there is a relatively stable number of inspection visits¹⁸ according to EASA's annual reports. Interestingly, the number of findings of deficiencies which 'may raise safety concerns' is also stable (26–28%). In course of 2014/2015, so-called Continuous Monitoring Activities (CMA) have been introduced, which resulted in a slight decrease of inspection visits. The capping of resources¹⁹ has its impact on overall functioning of the EASA. Recent annual reports reveal that EASA is already following a more proactive recruitment policy, involving forward planning and prioritisation of activities in favour of others. CMA have also been part of this prioritisation programme, which has been combined with the system of National Coordinators to keep the effective level of inspections but with fewer on-site visits. In practice, the National Coordinators are responsible for continuously submitting data on the performance of national authorities. However, it might also raise some institutional concerns related to independence. Nevertheless the revision of EASA's Basic Regulation foresees an emergency oversight mechanism by temporarily transferring national certification, oversight and enforcement tasks to EASA, if a Member State fails to act.²⁰ Even if the emergency oversight mechanism is intended to be applied only in an emergency situation, EASA would require additional staff to handle the workload while functioning as a 'substitute' authority.

¹⁷ Commission's Implementing Regulation No. 628/2013.

¹⁸ The number of the inspection visits available in the EASA's Annual Reports: 2009 (85), 2010 (111), 2011 (107), 2012 (121), 2013 (103), 2014 (107), 2015 (99).

¹⁹ Regulation (EU, Euratom) No. 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union [OJ L 287/15].

²⁰ Article 55 of Proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council, COM(2015)613.

EASA reached full occupancy of all posts according to the establishment plan for the first time in 2015.²¹ There are some agency-specific needs related to HR policy, even if the HR policy of agencies is considered to be less-flexible, with more focus on the 'Commission's harmonised planning system and less on agencies' particular idiosyncrasies'.²² However, EASA could move towards having more room for manoeuvre in this regard. Consequently it has proposed that the Commission should have an agency-specific category of staff members on a structural part-time basis in order to allow them to continue the outside activities that are necessary for keeping their professional qualifications required for performing their occasional duties in the Agency.²³ A competency-based assessment of staff performance using EASA-specific factors was also introduced that year.²⁴

Regarding the formulation of its *own work plans* and applying a risk-based approach, certain factors could influence EASA's performance. Even if the standardisation inspections could be streamlined due to the new CMA system, there are no further requirements²⁵ on the independence of Coordinators, which might lead to 'double-hattedness' problems in the future considering also the decreasing number of visits.

Further conclusions on inspections have been drawn related to the revision of EASA's Basic Regulation: The ground handling industry highlighted the inefficiencies stemming from repetitive audits and inspections of the same service providers by aviation authorities. On the other hand, the EASA's standardisation inspections could reveal the clear demand for a common EU mechanism for conformity assessment of aviation security equipment, which led recently to the submission of the related legislative proposal.²⁶

As for the *transparency* factor, the lack of transparency of individual inspection reports created a clear concern in first years after the creation of EASA.²⁷ The Implementation Regulation on standardisation inspections similarly follows the approach that individual report availability is dependent on the conclusions produced and the opportunity to react to its findings.²⁸ In terms of the figures, the annual reports

²¹ EASA's Annual Activity Report Year 2015, 35.

²² A. Schout and F. Pereyra, The institutionalization of EU agencies: agencies as 'mini commissions', (2011) 89 (2) *Public Administration*, (418–432) 429, <https://doi.org/10.1111/j.1467-9299.2010.01821.x>

²³ EASA's Annual Activity Report Year 2015, 36.

²⁴ EASA's Annual Activity Report Year 2015, 45.

²⁵ Article 6.2 of Commissions Implementing Regulation No. 628/2013 only requires from Competent Authorities to ensure clear lines of communication with the Coordinator without stipulating further requirements on the Coordinator's independent functioning as such.

²⁶ Proposal for a Regulation of the European Parliament and of the Council on establishing a Union certification system for aviation security screening equipment, COM(2016)491 final.

²⁷ Schout, *Inspecting Aviation Safety in the EU...*, 284.

²⁸ Article 21.4 Commissions Implementing Regulation No. 628/2013.

for 2008 and 2009 only highlighted the statistical data on the inspection performance (number of overall visits) by EASA.²⁹ Later on this has been combined with figures on findings, with a focus on the stable level of safety concerns, sometimes including information on the number of inspectors and standardisation training sessions. However no further information has been made available on further investigation measures or case-specific safety issues.³⁰

3. The European Union Agency for Railways

The European Union Agency for Railways, formerly known as the European Railway Agency, acquired inspection power over national authorities in the course of 2016, as the Agency Regulation enacted this kind of competence as part of the reform package,³¹ so there is no available data yet on the inspection performance of this Agency. The inspection power of the European Union Agency for Railways refers to monitoring the performance of the national safety authorities, as well as the notified conformity assessment bodies, which is combined with monitoring the progress of railway safety and interoperability.³² As for *staffing policy and budgetary issues*, the Basic Regulation foresees that the Agency should promote the inclusion of qualified auditors from national safety authorities in the audit team.³³ The Union legislator added to the related provision (presumably to avoid double-hattedness problems), that the auditors are not subject to the actual audit.³⁴ What can be expected of the Agency, also in terms of budgetary requirements, is the establishment of a list of qualified auditors and providing training when needed.³⁵ As for *risk analysis and prerogatives over its own work plan*, no requirements are yet available. However, the related provisions reflect the seriousness of the deficiency, but the right to take final decisions will certainly be kept by the Commission.³⁶ The *transparency* factor, as in the case of EASA, will be highly dependent on the practice followed by the Agency itself. In future it might be interesting to see whether monitoring could also serve as a basis for mutual learning, which can be stimulated by the enhanced transparency of the audit reports. Nevertheless, the

²⁹ EASA's Annual Activity Report Year 2008, 23–26; EASA's Annual Activity Report Year 2009, 25.

³⁰ M. Scholten, *The Political Accountability of EU and US Independent Regulatory Agencies* (Brill Nijhoff, 2014) 106–110, <https://doi.org/10.1163/9789004262997>

³¹ Chapter 7 of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing the Regulation (EC) No. 881/2004 [OJ L 138/1].

³² Article 33–35 of Regulation (EU) 2016/796.

³³ Article 33.2 of Regulation (EU) 2016/796.

³⁴ Article 33.2 of Regulation (EU) 2016/796.

³⁵ Article 33.2 of Regulation (EU) 2016/796.

³⁶ Article 33.3–33.7 and Article 34.4–34.6 of Regulation (EU) 2016/796.

European Parliament's proposal also foresaw a further competence for the Agency as a dispute resolution body in the event of conflicting decisions by national authorities, although this was not implemented in the Regulation concerned.³⁷

Scholars have revealed the motivation of the Agency's staff on the conferral of the new power. The case studies of this Agency highlight that this inspection power might be seen by agencies in general as a threat to their well-established relationship with market participants as well as with national regulators, while making them more exposed to EU-level political consequences.

Kaeding and Verslius concluded, by citing Trieb, that the major compliance problems occur following one or a combination of the following factors: non-compliance due to (a) opposition or unwillingness (b) unclear rules or a lack of expertise; and/or (c) administrative capacity problems.³⁸ However, the case of the European Railway Agency does not necessarily lead us to conclude that the more powerful agencies could be considered as 'always-true-solutions' for non-compliance problems, especially taking the unwillingness of the agency itself to gain new competences over national authorities to ensure conformity with EU requirements.

Interviews with European Railway Agency staff made it clear that they were afraid of losing the essential mutual trust for keeping up with and obtaining relevant information from national authorities.³⁹ It has also been revealed that the Commission itself put more emphasis on securing the 'policeman role' for the European Railway Agency compared to that of EEA as it lacked the staffs to get a better insight on the application of EU railway rules at national level.⁴⁰ Additionally, territorial heterogeneity based on regulatory capacity and performance could be identified between larger and 'older' Member States and newer, especially smaller EU countries, as the latter ones pointed out the potential benefits of the stronger position of a more powerful agency, also against their own governments.⁴¹

IV. CONCLUSIONS

EU agencies can still be considered as 'inbetweeners' bodies in light of their inspection power over national authorities, even if there is no ministerial administration as such,

³⁷ European Parliament legislative resolution of 26 February 2014 on the proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 [COM(2013)0027 – C7-0029/2013 – 2013/0014(COD)] (Ordinary legislative procedure: first reading) Am. 88.

³⁸ Kaeding and Verslius, *EU Agencies as Solution to Pan-European Implementation Problems*, 85.

³⁹ *Ibid.*, 86.

⁴⁰ Verslius and Tarr, *Improving Compliance with European Union Law via Agencies...*, 327.

⁴¹ *Ibid.*, 328–330.

with its classical centralistic organisation, in the European composite administration. EU agencies are therefore influenced by the Commission and further EU institutions as well, while being keen to keep their good relationship with their national counterparties. Theoretically, the EU agencies' staff and resources available for inspections, especially with regard to on-site visits, can be crucial due to the labour-intensive and costly nature of this competence. However, the Commission's followed different approaches to give political support for stronger agencies. On the input side, the effectiveness of the agency's activity as inspector is highly dependent on the flexibility in creating its own work plan for inspections by following a risk-based approach and its independence from national as well as supranational political considerations in order to examine certain Member States. This factor can only be further examined based on data and figures related not just to EASA (which could acquire enough experience in this regard) but other agencies as well. Theoretically, the opportunity should also be guaranteed for EU agencies to formulate non-country-specific reports by summarising their inspection reports and by creating some kind of public personality. However, the Commission has taken steps to keep certain 'out of the political limelight' and reserving the political decision-making as its own prerogative.

It might be interesting to examine the underlying factors for the different approaches followed by the Commission, even if these are rather theoretical assumptions. Environmental policy-making tends to be a subject matter with a far-reaching character, so the Commission might have felt itself threatened by the proactive approach followed during the first period of the EEA. On the other hand, the safety and standardisation issues of the inspections performed by the two transport agencies are clearly essential for the proper functioning of the internal market, while they tend to refer to technical regulatory issues, which can hardly serve as a clear basis for political activism and image-building by any of the related agencies. However, the reluctance to create the EU's road transport agency,⁴² with the potential to conflate far-reaching environmental and economic matters leads us to believe that the political 'exposedness' of the related policy area could be a material factor, nevertheless an obstacle to further agencification of the EU Executive.

⁴² Euobserver, *Why doesn't the EU have a road transport agency?*, <https://euobserver.com/dieselgate/136011> (Last accessed: 9 July 2017).