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Accountability of European Regulatory Agencies Between the Delegation of Powers and Public Accountability Models[2]

Abstract

The question of accountability of the European Regulatory Agencies (ERAs) has been the subject of the interinstitutional debate within the 'institutional triangle' of the European Union, but also the subject of the theoretical deliberations. In this paper the author is expounding two prominent standpoints in respect to the accountability of ERAs – the delegation of powers (principal-agent) and public accountability (actor-forum) models. The aim of the paper is to present the assessment of the EU agencies' accountability through the lenses of these models, and to point out the troublesome accountability of the account holders. Finally, the author concludes that the two models are not mutually exclusive in assessing the EU agencies' accountability, but that the actor-forum model provides a better framework for the implementation of the accountability mechanisms.

Keywords: European Union, European Regulatory Agencies, accountability, delegation of powers, principal-agent, public accountability, actor-forum.

Introduction

The European Regulatory Agencies (ERAs) encompass the bodies established within the former First and Third pillars of the European

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Union (EU), and the ones established after the Treaty of Lisbon came into force (when the pillar structure was abolished). Unlike the previous founding treaties, where there was no explicit provision of the agencies, the Lisbon Treaty places the agencies within the EU institutional framework (comprising of "institutions, bodies, offices or agencies"[3]). However, despite the various provisions regarding the agencies, they still lack the single legal base in the Treaty. The lack of explicit mention of the agencies in the previous founding treaties and no unique legal base for their creation placed the agencies in the middle of the inter-institutional debate between the Council, the Commission and the EP, in the so-called 'institutional triangle'. One of the major issues for consideration by the 'triangle' is the question of accountability of the European Regulatory Agencies – to whom they are accountable and how?

Despite the lack of the formal definition of the ERAs[4], for the purpose of this paper they will be designated as the independent EU bodies founded by the Council, the European Parliament (EP) or the Commission, governed by the management boards (comprising of the representatives of EU member states, the EP and the Commission as well as other stakeholders), managed by the director (or chairperson), and subjects to various accountability obligations. The account holders in respect of the EU agencies are: the institutions within the 'institutional triangle', the Court of the EU, the European Ombudsman, the European Anti-Fraud Office (OLAF) and the European Court of Auditors. Additionally, one of the most important accountability relationships is established between the agencies and their management boards.

Apart from being the subject of the interinstitutional debate, the question of EU agencies' accountability was brought to the attention of various scholars. Two prominent standpoints were singled out with regard to EU agencies' accountability – the delegation of powers (principal-agent) model and public accountability (actor-forum) model.

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3   It is worth noting that the German version of the Lisbon Treaty doesn't contain the explicit mention of the agencies (Meškić, Samardžić 2012: 126).

4   Some of the authors whose work was used for the purpose of this paper are referring particularly to the European Regulatory Agencies, especially the authors within the actor-forum model. However, some of them are considering the phenomenon of EU agencies in a broader scope, without distinguishing the regulatory from the non-regulatory ones (including the executive EU agencies and those within the former Second pillar, and now included in the Common Foreign and Security policy framework). Therefore, the term "EU agencies" will be used hereinafter, to avoid the inevitable confusion over the distinction each time when someone's findings are delivered.

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The findings of some of the scholars following one of those models will be presented hereinafter. While the list includes the names of Dehousse, Curtin, Saurer, Keleman, Thatcher and Stone Sweet following the principal-agent model, and that of Bovens, Busuioc and Scholten following the actor-forum model, it is far from being exhaustive in the ever-expanding theoretical deliberations between the two models.

The paper is organised as follows: the first chapter outlines the models of accountability of EU agencies; the second chapter enumerates the most important classifications of EU agencies' accountability; the third chapter presents the assesement of EU agencies' accountability along the ex ante, ongoing and ex post lines; and finally, the fourth chapter raises the question of accountability of the account holders.

1. Models of Accountability of EU Agencies

1.1. Accountability of EU Agencies within the Delegation of Powers (Principal-Agent) Model

The principle-agent (p-a) theory is based on the relationship between an actor (or a group of them) called the 'principal' and another actor (or a group of them) called the 'agent' in which an agent undertakes an action on behalf of a principal. The principal may make decisions to affect the incentives of the agent who is taking an action, having as a result the contract between the two of them. Rather than being a single theory, the p-a can be perceived as a "family of models" (Gailmard 2014: 91). While widely labeled as 'agency theory', the p-a model is also known as the 'delegation' theory. The principal is relaying on the agent to act on his (principal's) behalf, thus producing delegation (Curtin 2007: 525).

The adapted p-a model developed in the American literature to analyse the delegation of powers by the Congress towards administrative agencies is being used to assess the establishment of EU agencies (Dehousse 2008:790). Primarily used to explain the mere creation of EU agencies (Dehousse 2008: 793; Coen, Thatcher 2008: 52-54), it contains limitations regarding the explanation of the post-delegation behaviour of the agent.

The 'principal-agent' analysis is the most commonly used to explain the delegation and accountability in political systems. While the EU is

a political system, and according to the Lisbon Treaty is founded on representative democracy (Art. 10(1) of the Treaty of the EU (TEU)), it is not a parliamentary democracy which can be understood as "a chain of delegation and a chain of accountability (running in opposite directions)" (Curtin 2007: 525) from the voters to the policy makers with various stages (links) of delegation from the principal to the agent. However, at EU level there is no unbroken chain of delegation from the voters to EU administrative actors. Moreover, there are often multiple principals (Curtin 2007: 525; Dehousse 2008: 795).

The p-a theory recognises the possibility of multiple principals ('common agency') as a system based on the assumption "that each principal is doing its best, with whatever tools it has, to induce a favorable reaction from bureaucratic agents, taking as given that each other principal is trying to do so as well" (Gailmard 2014: 100). In the EU context, there are various possible answers to the question of who makes the principal (having EU agencies as an agent). Thatcher and Stone Sweet use the term "composite principals" to mark a principal comprised of multiple actors, which can produce the competitiveness among the principals and induce the parceling out of the initial act of delegation. "The linkages between the principals' policy preferences, the agent's performance, and the principals' capacity to control the agent may be diluted" (Thatcher, Stone Sweet 2002: 6).

We can identify at least four political principals in the EU: member states, the Council, the Commission and the EP (Saurer 2009: 468-469; Keleman 2002: 94-95). The member states are the primary external principal, while the EU institutions represent the internal principals (Saurer 2009: 475).

By tailoring the definition of delegation made by Thatcher and Stone Sweet (Thatcher, Stone Sweet 2002: 2), Curtin offered the understanding of delegation to non-majoritarian institutions in the EU context. Delegation represents "an authoritative decision, formalised as a matter of public law, that (a) transfers policy making authority away from the established, representative organs (those that are directly or indirectly elected, or are appointed by elected politicians) to (b), a public non-majoritarian institution" (Curtin 2005: 91). The representative organs are the EP (directly elected) and the Council and the European Council (indirectly elected). The Commission is a "putative principal" in the chain of delegation, because it is appointed by the representative institutions. The non-majoritarian institutions are entities which

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"spend public money and fulfil a public function, but exist with some degree of independence from elected politicians" (Curtin 2005: 92). The principals (the Commission, the Council and potentially the European Council) are the institutions using "their authority to establish non-majoritarian institutions through a public act of delegation". The agents are "those who govern by excercising delegated powers" (Curtin 2005: 92).

Given the number of principals, we can note at least three problems in applying the p-a model to EU agencies as an analytical framework: 1) the delegation of powers is not necessarily done by EU legislative institutions; 2) multiple principals are often involved in establishing agencies; and 3) the 'delegated' tasks may originate from the member states, instead from the formal principals (Curtin 2007: 528-529).

In the EU context, there is no guarantee that the agents will be held to account. The principal might also not be held to account in a further link in the 'chain' (Curtin 2007: 525).

1.2. Accountability of EU Agencies within the Public Accountability (Actor-Forum) Model

The designation of accountability as an actor-forum (a-f) relation was made by Mark Bovens, and followed by the contribution of several other authors, who used this model to study different aspects of EU agencies. Contrary to the broad understanding of accountability as an evaluative concept which should "qualify positively a state of affairs or the performance of an actor", there is a narrow definition of accountability, which is related to concrete practices of giving account. In this sense, accountability represents "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences" (Bovens 2007a: 450). In the accountability relationship, the actor could be and individual or an organisation, and the forum could be a specific person or an agency (Bovens 2007a: 450).

The advocates of the a-f model embrace the multi-level character of the EU governance, implying the need to answer whether new forms of governance (multi-level in the case of EU) require setting up new forms of accountability beyond the accountability arrangements at the

national level (Bovens 2007b: 105). The 'traditional' accountability is a vertical one, and it is being established between the people and elected bodies, following principal-agent (top-down) model. However, the hierarchical relations (embedded in vertical accountability) are being replaced by 'new' accountability (horizontal and diagonal), characterised by the pluralistic set of accountability relationships, where the 'recipients' of account are administrative forums, citizens, clients and civil society. In the case of EU governance there are also tides between national and European fora which then form multi-level accountability networks. The examples are the Court and European Ombudsman which are cooperating with national counterparts (Bovens 2007b: 109-113). It is interesting to note that the 'new' forms of accountability in EU do not enhance popular control, because most of the 'new' forums are not democratic ones. However, OLAF, European Court of Auditors or European Ombudsman may indirectly contribute to democratic control if their reports reach national parliaments or the EP. The same conclusion is valid for the accountability to media, citizen panels or civil society organisations, which are not the substitute to democratic control (Bovens 2007b: 115-117).

Following the a-f model, we can assess accountability from three different perspectives. The democratic perspective (assuming the p-a model – S.M.) reflects the popular control through the accountability chain. Citizens are at the end of the chain, thus making public accountability an essential condition for the democratic process. The constitutional perspective is focused on providing 'checks and balances', enabling not only voters, parliament and political officials, but also other public institutions to request rendering account, thus preventing the corruption and abuse of power. The learning perspective is enchancing government effectiveness by keeping the agents effective in delivering the promises they made. The emphasis is on the process of learning, in which the actors are motivated to find ways to organise their business better (Bovens 2007a: 463-464).

The theoretical debate over the accountability of EU agencies focused on two problematic assumptions. The first one refers to the 'organisational divorce' of the agencies from the Commission or the Council, during which they were supposed to gain significant degree of independence, raising the question of their control. The second is the contradictory relation between independence and accountability, having as a consequence that the desirable level of control over the agencies can be achieved at the expense of independence (Busuioc 2009: 601-

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602).[5] These assumptions are problematic, because there are no clear definitions of independence, accountability and control of EU agencies on a normative level. While 'independence' is perceived as identical to 'formal institutional separation', 'accountability' is often replaced with 'control' (Busuioc 2009: 602). Although the agencies were formally institutionally separated from the Commission or the Council, in some cases the real decision-making power of agencies is below the formal scope of authority delegated to them. In order to tackle the issue of accountability, the question whether the agencies benefit from the independence formally granted to them has to be raised, because accountability precludes direct control. Control encompasses a range of mechanisms aimed at directing, steering and influencing decision-making and behavior of controlled agents. Therefore, control is necessary contradictory to independence, while accountability is not (Busuioc 2009: 604-605).

2. Typology of the EU Agencies' Accountability

The accountability of EU agencies can be classified even without resorting to the p-a or a-f model, placing it along political, judicial, financial, administrative and public accountability lines (Andoura, Timmerman 2008: 14-15). However, EU agencies' accountability is extensively classified using Bovens' theoretical framework of accountability, although it was not initially set for the EU agencies.

Bovens asked a set of questions regarding accountability within the a-f model: 1) to whom is account to be rendered; 2) who should render account; 3) about what is account to be rendered; and 4) why the actor feels compelled to render account (Bovens 2007a: 454-455).

The first question concerns the types of the fora. We can identify: 1) political accountability (towards elected representatives, political parties, voters and media); 2) legal accountability (towards the courts); 3) administrative accountability (towards auditors, inspectors and controllers); 4) professional accountability (towards professional peers); and 5) social accountability (towards interest groups, charities and other stakeholders) (Bovens 2007a: 455-457).

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5   For the wider explanation of how accountability problems of EU agencies (and the US agencies to which they were compared) are not caused by their independence, see: Scholten 2011.

The answer to the second question is related to the actors. The key issue in determining the actors which should be held accountable is related to the question of who in particular should be deemed most responsible for the conduct of the actor. If the actor is a public organisation, especially if it is a large one, the question of accountability should be asked both concerning the organisation as such and its individual officials. Bovens specifies four dimensions of actor responsibility, the first being focused on the organisation as such, and the remaining three on the officials: 1) corporate accountability; 2) hierarchical accountability (one for all – along the lines of 'chain of command'); 3) collective accountability (all for one – choosing any member of the organisation and holding him/her personally accountable for the organisation as a whole); and 4) individual accountability (each for himself – based on personal contribution) (Bovens 2007a: 457-459).

Bearing in mind that the actor is obliged to explain and justify his conduct, the answer to the third question (about what the account should be rendered) is associated with the particular aspect of a certain conduct, usually the most dominant one. The classification deriving from this question can coincide with the classification made according to the type of the forum (Bovens 2007a: 459).

When it comes to the fourth question – why an actor should render account to a forum, the answer can be found in either the actor's obligation or voluntary decision. If the actor is forced to account to the forum, we call it the vertical accountability. Horizontal accountability, which is on the opposite side of the spectrum, exists when an actor answers to a forum without formal obligation to do so. The term can also be used in the case of mutual accountability of bodies which are not in hierarchical relation. Apart from these two, we can also identify diagonal accountability, emerging in administrative accountability relations, where administrative forums (such as ombudsmen, auditors etc.) cannot enforce compliance of public organizations, but due to their obligation to report to ministers or parliaments, they gain informal power (Bovens 2007a: 460).

Busuioc embraced Bovens' definition on accountability in its narrow meaning (Busuioc 2013: 46), and made the classification of the accountability of European agencies: 1) vis-à-vis the management boards; 2) political accountability (vis-à-vis the European Parliament and the Council); 3) financial accountability (internal audit, external audit performed by the European Court of Auditors and the discharge

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procedure); 4) judicial accountability (before the Court of the EU); and 5) extra-judicial accountability (before the European Ombudsman).

Scholten focused on the political accountability of EU agencies, defining it in institutional terms as "accountability of executive institutions, such as EU agencies, before representative institutions, which usually implies parliaments, although it includes both the Council and the European Parliament in the EU context (Article 10 TEU)" (Scholten 2014: 8). She identified five dimensions of political accountability: 1) creation of agencies, and delegation to them by representative bodies; 2) appointment/removal of unelected officials of the agencies by representative bodies; 3) statutory regulation of accountability aspects in the operation of agencies; 4) financial oversight; and 5) parliamentary scrutiny of agencies (Scholten 2014: 10).

The various classifications of the EU agencies accountability represent a framework for assessing the real scope of their accountability in practice. It will be presented in the following chapter along the "temporal dimension" (Busuioc 2009: 606) by pointing out some of the most important accountability obligations of EU agencies along the ex ante, ongoing and ex post accountability lines. Due to the limited space, only the most important accountability relations will be presented, encompassing EU agencies' relationships towards the institutions of the EU 'institutional triangle', and the accountability towards the management boards as a central element of the ongoing control.

3. Assessment of the EU Agencies' Accountability

The p-a model is comprised of the ex ante, ongoing and ex post control of the principal over the agent. On the other hand, the a-f model focuses on the ex post analysis, because the forums are not the principals. Instead, the forums are establishing social relationship with the (administrative) actors, and there is no need for the relationship of delegation between them. The 'public' moments of accountability which are not tied into the p-a model are in correlation with the inclusion of the EP in the institutional design of the agencies (Curtin 2007: 531).

The ex post accountability within the p-a model exists if two sets of requirements are met: 1) monitoring and reporting; and 2) catch-all category (institutional checks and balances). The need for ex post

accountability is determined depending on the ex ante mechanisms. If the agent is without discretion in comparison to the principal, the need for accountability mechanisms is reduced, because there is the ongoing control of the principal over the agent. Such control would be provided ex ante in the scope of the institutional design of the agent. The ongoing control is necessary in order to control the real level of agency discretion, by pointing to the informal aspects of agencies' work. While control exists in the p-a relation, the a-f relation is characterised by the existence of accountability.[6] The combination of the two approaches, with the existence of multiple principals makes the agents who have been given delegated powers subjects to multiple accountability fora apart from the direct principal. The fora can encompass third parties of institutions with partially opposing mandates (Curtin 2007: 525-526; Busuioc 2009: 606-607).

Ex ante control of EU agencies consists in delimitating the boundaries of agencies' autonomy of action by drawing up available actions for accomplishing the delegated tasks. It can be established in founding regulations of agencies and other legal documents (financial regulations, fees and charges, etc.). The mechanisms of ongoing control lead to the decrease of original discretion of the agencies, which affects their decision-making autonomy through direct interference of their principals. Ex post control encompases budget discharge and hearings of agency directors (before the European Parliament), financial accountability to the Court of Auditors, Ombudsman's role and various reports (Busuioc 2009: 606-608). Ex ante and ex post control over the agencies refer to their formal obligations to give account, but they do not provide the insight into the daily operation of the agencies and control over it. The central accountability relation providing the ongoing control over the agencies is their accountability vis-à-vis the management boards. Being generally mandated to monitor performance of the agencies and to hold their directors to account, boards have an advantaged position in comparison to other accountholders (EU institutions) due to their formal position as highest steering organs, proximity, access to internal documents, involvement in decision-making of the agency, and powers to undertake punitive measures and enact consequences (Busuioc 2012: 720).

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6   Gailmard expressed the opposite view – that the core ingredient of the p-a theory is the "specification of who is (or is supposed to be) accountable to whom" (Gailmard 2014:91).

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Within the 'institutional triangle', the Council and the EP can be labeled as 'Union Legislators', 'EU Budgetary Authority' and also the 'EU Political Accountability Forum'. The first two powers are formalised in the Lisbon Treaty, but the former is not treaty regulated. Instead, Art. 14(1) TEU reserves the political control only for the EP. The only treaty-based powers of EP upon the agencies include power to conduct investigation and to give the discharge. The EP and the Council have additionally engaged in appointing and removing agencies' top officials and scrutinising the agencies' performance, which is foreseen in the agencies' founding acts (Scholten 2014: 30-31). The lack of formal rules generated the development of informal practices of scrutiny by these two institutions. Clear laws and established practices can only be noticed in relation to financial oversight within the annual budgetary and discharge procedures with the help of the Court of Auditors (Scholten 2014: 152). The ex ante control of the Council and the EP is performed through appointment hearings[7], the ongoing by the parliamentary committees and the Council's lower structures, and the ex post control takes the form of the discharge procedure and parliamentary investigations. The sanctions which the Council and the EP can impose upon EU agencies can be: 1) personal (during the processes of (re)appointment and removal of agencies' directors); and 2) institutional (postponement/refusal of discharge, cut to the agency's budget, and reconsideration of the mandate and existence of an agency) (Scholten 2014: 154).

Within the Commission the central steering role over the agencies is played by the Directorates General (DGs). In the newest development of the interinstitutional relations towards the EU regulatory agencies, the Commission revealed its intention to closely integrate the DGs and 'their' agencies. The Commission is using the labels 'partner' and 'parent' DGs when presenting the relationship of DGs towards the agencies. The term 'partner' "suggests a more equal role between the agencies and the Commission while 'parent' advises a more superior role of the Commission vis-à-vis EU agencies" (Egeberg, Trondal, Vestlund 2014: 9). The EU agencies are framed as integral to Commission activities, rather than being perceived as "free-floating bodies" (Egeberg, Trondal, Vestlund 2014: 12).

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7   The hearing obligations regarding the agencies can be threefold: 1) before the appointment of the director/chairperson; 2) before the reappointment; and 3) on the performance of the agency.

The assession of the political accountability of EU agencies can be made by following the 'formula' of accountability: "Political accountability = availability of accountability mechanisms ensuring the three stages of accountability[8] + their design (specificity of accountability obligations and interplay of accountability mechanisms) + their practical application" (Scholten 2014: 13).

When it comes to the availability of accountability mechanisms, Scholten noticed the diversity of obligations of various agencies. The implication of this is the avoidance of accountability obligations of certain agencies (Scholten 2014: 153).

The design of accountability mechanisms consists of the specificity of accountability obligations and the interplay between obligations in a way to promote accountability. While the accountability provisions are specific, they are used inconsistently. The interplay between obligations is not promoting accountability, because an institution may hold an agency to account in one aspect, but lack the mechanism in a related aspect. The multi-principal environment in which the EU agencies operate can produce situations in which albeit the mechanisms to ensure accountability are present, they may not exist in relation to the same representative institution (Scholten 2014: 160-162).

The practical application of accountability provisions represents the third element of the political accountability 'formula'. The challenges in ensuring the three stages of accountability are twofold: 1) the challenges in ensuring the information and discussion stages; and 2) the challenges in ensuring the rectification stage. Ensuring of the information stage is done by reporting, which all agencies are obliged to provide. Apart from the annual reports, the EP and the Council can receive various evaluations of the agencies and their programs. The question of whether the EP is actually informed depends upon the organisation of the oversight by the appropriate parliamentary committee, which is conditioned by the formal powers of the EP in regards to particular agency and the EP's legislative power. On the other hand, the EP's Rules of Procedure failed to specify how to hold an agency accountable, so different committees have developed different practices. Above all, the

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8   Scholten followed Bovens' definition of (political) accountability (Bovens 2007a: 451) to distinguish three stages: 1) information stage – the actor is justifying his/her conduct; 2) discussion stage – forum can pose questions, and the actor has to explain/justify his/her conduct; and 3) rectification stage – the forum passes judgment, the actor faces consequences (Scholten 2014: 8).

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EP and the Council have too many agencies to oversee. It is quite unclear how the Council is performing the scrutiny over the agencies, but it is being done probably by its lower structures. The prominence of the agency and its presence on the Council's and EP's agenda is also related to the scrutiny. The quality of the oversight is also related to the weak check upon the Council and the EP, due to their accountability weaknesses (Scholten 2014: 163-165). The challenges in ensuring the rectification stage can be both personal and institutional. The personal challenges are: 1) no collective accountability of the management boards; 2) the lack of removal provisions regarding the individual members of the boards in agencies' founding acts; 3) difficulty in assessing the performance of individual members of the boards; and 4) the lack of removal clauses regarding the agencies' directors, or the autorisation of the EP to remove the director for malperformance despite the director's accountability for the implementation of the budget. The institutional challenges are also complex. While the agency's budget may be cut, it could have negative impact on its function. The EP's authority to conduct investigations using temporary committees of inquiry and temporary specialised committees may not be properly applied to EU agencies, and the scrutiny is more likely to take place within the permanent specialised committees. In practice, even the reconsideration of the existence of the agencies can be placed among the institutional sanctions (Scholten 2014: 165-166).

4. Troublesome Accountability of the Account Holders

An important question regarding the EU agencies' accountability should be asked – is there a possibility to hold to account the principal(s) and the accountability fora to which the agencies are rendering account? The three institutions from the 'institutional triangle' and the management boards of the agencies have troublesome accountability in relation to the agencies, which needs to be assessed in order to determine whether they can hold agencies to account.

The accountability of the management boards can be assessed in three dimensions: 1) democratic accountability of national representatives; 2) democratic accountability of the board's members designated by the Commission and the EP; and 3) the issue of the collective accountability of the board. Two questions regarding the national representatives' accountability are: 'for what should they be held to account?'

and 'how?' can that be achieved. Similar questions are raised regarding the Commission's representatives, which could probably be held accountable internally within the DGs. The Commission as a whole is politically accountable before the EP (Art. 17(8) TEU). The EP's Conference of Presidents adopted a decision in 1998 and regulated the designation procedure for agencies' boards therein, and since 2004 the permanent specialised committees are responsible for holding the nomination hearings of the candidates for the boards. The boards are not being held accountable collectively (Scholten 2014: 82-86).

The question of specific accountability of the Commission or the Council acting as principals regarding the agencies can be asked in the cases where these institutions exercise ongoing control over the agencies, indicating that the agencies don't have the de facto decision-making autonomy. The burden of accountability of such agencies should be shared with their principals, because in those cases next to the accountability deficits at agency's level, there are also deficits at principal's level (Busuioc 2009: 614-615).

The institutional design of the 'EU Political Accountability Forum', i.e. the Council and the EP, may have implications on the accountability of EU agencies. These implications can be observed threefold: 1) their troubling accountability may affect the accountability of the bodies being held to account; 2) the political accountability forum has to be transparent in order to perform scrutiny over other entities; and 3) there has to be a correlation between interinstitutional development of shared functions between the Council and EP and the exercise of those functions. The later has several features: 1) mutual 'power struggle' against the Commission; 2) defence of common position regarding the adopted acts before the Court; and 3) holding agencies to account as the latest challenge to interinstitutional relationship between the two EU institutions (Scholten 2014: 33-42).

Conclusion

The standard delegation of powers (p-a model) with its unbroken chain of delegation from the people to administrative actors is not suitable for the explanation of the complexity of EU governance within which the EU agencies operate. The adapted p-a model used for explaining the delegation of powers to American agencies was further

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adjusted in order to be applied in the EU. It was primarily done by designating multiple principals for the certain agent. However, as was noted, there is no compliance over the principals for the EU agencies. Although there is concurrence over the principals from the 'institutional triangle', there is a disagreement over the role of the EU member states. Even if that problem is resolved, two additional problems of the p-a model emerge: 1) the issue of mainly procedural (institutional) demands for accountability and 2) the lack of questioning the accountability in the post-delegation period of the functioning of the actor.

The public accountability model is complementing the p-a model, above all by pointing to the accountability chains beyond the formal principals, and acknowledging the European and national fora, thus moving EU agencies closer to the citizens, the ultimate accountability holders. On the other hand, the a-f model focuses on the ex post accountability, making it necessary to resort to the ex ante and ongoing mechanisms, used to a greater extent in the p-a model.

Hence, the relation between the two models regarding the accountability of EU agencies is not 'either-or'. The p-a model adjusted to the EU governance includes multiple principals, which moves this model away from the merely vertical and hierarchical relation. The a-f model is including the p-a model as a necessary part of the a-f relation, and supplementing it by the multiple accountability fora. The a-f model seems to be more suitable in assessing the various aspects of EU agencies' accountability, providing the better framework for the implementation of the accountability mechanisms.

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